

[Waxman-Markey Amendment]
AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. WAXMAN OF CALIFORNIA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

TITLE I—CLEAN ENERGY

Subtitle A—Combined Efficiency and Renewable Electricity Standard

Sec. 101. Combined efficiency and renewable electricity standard.

Subtitle B—Carbon Capture and Sequestration

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

Subtitle C—Clean Transportation

- Sec. 121. Electric vehicle infrastructure.
- Sec. 122. Large-scale vehicle electrification program.
- Sec. 123. Plug-in electric drive vehicle manufacturing.

- Sec. 124. Investment in clean vehicles.
- Sec. 125. Advanced Technology Vehicle Manufacturing Incentive Loans.
- Sec. 126. Amendment to renewable fuels standard.
- Sec. 127. Open fuel standard.

Subtitle D—State Energy and Environment Development Accounts

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

Subtitle E—Smart Grid Advancement

- Sec. 141. Definitions.
- Sec. 142. Assessment of Smart Grid cost effectiveness in products.
- Sec. 143. Inclusions of Smart Grid capability on appliance ENERGY GUIDE labels.
- Sec. 144. Smart Grid peak demand reduction goals.
- Sec. 145. Reauthorization of energy efficiency public information program to include Smart Grid information.
- Sec. 146. Inclusion of Smart Grid features in appliance rebate program.

Subtitle F—Transmission Planning

- Sec. 151. Transmission planning.

Subtitle G—Technical Corrections to Energy Laws

- Sec. 161. Technical corrections to Energy Independence and Security Act of 2007.
- Sec. 162. Technical corrections to Energy Policy Act of 2005.

Subtitle H—Clean Energy Innovation Centers

- Sec. 171. Clean Energy Innovation Centers.

Subtitle I—Marine Spatial Planning

- Sec. 181. Study of ocean renewable energy and transmission planning and siting.

TITLE II—ENERGY EFFICIENCY

Subtitle A—Building Energy Efficiency Programs

- Sec. 201. Greater energy efficiency in building codes.
- Sec. 202. Building retrofit program.
- Sec. 203. Energy efficient manufactured homes.
- Sec. 204. Building energy performance labeling program.

Subtitle B—Lighting and Appliance Energy Efficiency Programs

- Sec. 211. Lighting efficiency standards.
- Sec. 212. Other appliance efficiency standards.
- Sec. 213. Appliance efficiency determinations and procedures.
- Sec. 214. Best-in-Class Appliances Deployment Program.

Subtitle C—Transportation Efficiency

- Sec. 221. Emissions standards.

“PART B—MOBILE SOURCES

- “Sec. 821. Greenhouse gas emission standards for mobile sources.
- Sec. 222. Greenhouse gas emissions reductions through transportation efficiency.

“PART D—PLANNING REQUIREMENTS

- “Sec. 841. Greenhouse gas emissions reductions through transportation efficiency.
- Sec. 223. SmartWay transportation efficiency program.
- “Sec. 822. SmartWay transportation efficiency program.
- Sec. 224. State vehicle fleets.

Subtitle D—Industrial Energy Efficiency Programs

- Sec. 241. Industrial plant energy efficiency standards.
- Sec. 242. Electric and thermal waste energy recovery award program.
- Sec. 243. Clarifying election of waste heat recovery financial incentives.

Subtitle E—Improvements in Energy Savings Performance Contracting

- Sec. 251. Energy savings performance contracts.

Subtitle F—Public Institutions

- Sec. 261. Public institutions.
- Sec. 262. Community energy efficiency flexibility.
- Sec. 263. Small community joint participation.
- Sec. 264. Low income community energy efficiency program.

TITLE III—REDUCING GLOBAL WARMING POLLUTION

- Sec. 301. Short title.

Subtitle A—Reducing Global Warming Pollution

- Sec. 311. Reducing global warming pollution.

“TITLE VII—GLOBAL WARMING POLLUTION REDUCTION PROGRAM

“PART A—GLOBAL WARMING POLLUTION REDUCTION GOALS AND TARGETS

- “Sec. 701. Findings and purpose.
- “Sec. 702. Economy-wide reduction goals.
- “Sec. 703. Reduction targets for specified sources.
- “Sec. 704. Supplemental pollution reductions.
- “Sec. 705. Review and program recommendations.
- “Sec. 706. National Academy review.
- “Sec. 707. Presidential response and recommendations.

“PART B—DESIGNATION AND REGISTRATION OF GREENHOUSE GASES

- “Sec. 711. Designation of greenhouse gases.
- “Sec. 712. Carbon dioxide equivalent value of greenhouse gases.
- “Sec. 713. Greenhouse gas registry.

“PART C—PROGRAM RULES

- “Sec. 721. Emission allowances.
- “Sec. 722. Prohibition of excess emissions.
- “Sec. 723. Penalty for noncompliance.
- “Sec. 724. Trading.
- “Sec. 725. Banking and borrowing.
- “Sec. 726. Strategic reserve.
- “Sec. 727. Permits.
- “Sec. 728. International emission allowances.

“PART D—OFFSETS

- “Sec. 731. Offsets Integrity Advisory Board.
- “Sec. 732. Establishment of offsets program.
- “Sec. 733. Eligible project types.
- “Sec. 734. Requirements for offset projects.
- “Sec. 735. Approval of offset projects.
- “Sec. 736. Verification of offset projects.
- “Sec. 737. Issuance of offset credits.
- “Sec. 738. Audits.
- “Sec. 739. Program review and revision.
- “Sec. 740. Early offset supply.
- “Sec. 741. Environmental considerations.
- “Sec. 742. Trading.
- “Sec. 743. International offset credits.

“PART E—SUPPLEMENTAL EMISSIONS REDUCTIONS FROM REDUCED DEFORESTATION

- “Sec. 751. Definitions.
- “Sec. 752. Findings.
- “Sec. 753. Supplemental emissions reductions through reduced deforestation.
- “Sec. 754. Requirements for international deforestation reduction program.
- “Sec. 755. Reports and reviews.
- “Sec. 756. Legal effect of part.
- Sec. 312. Definitions.
- “Sec. 700. Definitions.

Subtitle B—Disposition of Allowances

- Sec. 321. Disposition of allowances for global warming pollution reduction program.

“PART H—DISPOSITION OF ALLOWANCES

- “Sec. 781. Allocation of allowances for supplemental reductions.
- “Sec. 782. Allocation of emission allowances.
- “Sec. 783. Electricity consumers.
- “Sec. 784. Natural gas consumers.
- “Sec. 785. Home heating oil and propane consumers.
- “Sec. 787. Allocations to refineries.
- “Sec. 788. **【SECTION RESERVED】**.
- “Sec. 789. Climate change rebates.
- “Sec. 790. Exchange for State-issued allowances.
- “Sec. 791. Auction procedures.
- “Sec. 792. Auctioning allowances for other entities.

“Sec. 793. Establishment of funds.

Subtitle C—Additional Greenhouse Gas Standards

Sec. 331. Greenhouse gas standards.

“TITLE VIII—ADDITIONAL GREENHOUSE GAS STANDARDS

“Sec. 801. Definitions.

“PART A—STATIONARY SOURCE STANDARDS

“Sec. 811. Standards of performance.

“PART C—EXEMPTIONS FROM OTHER PROGRAMS

“Sec. 831. Criteria pollutants.

“Sec. 832. International air pollution.

“Sec. 833. Hazardous air pollutants.

“Sec. 834. New source review.

“Sec. 835. Title V permits.

Sec. 332. HFC Regulation.

Sec. 333. Black carbon.

“PART E—BLACK CARBON

“Sec. 851. Black carbon.

Sec. 334. States.

Sec. 335. State programs.

“PART F—MISCELLANEOUS

“Sec. 861. State programs.

“Sec. 862. Grants for support of air pollution control programs.

Sec. 336. Enforcement.

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Sec. 341. Carbon market assurance.

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Sec. 351. Regulation of certain transactions in derivatives involving energy commodities.

Sec. 352. No effect on authority of the Federal Energy Regulatory Commission.

Sec. 353. Inspector General of the Commodity Futures Trading Commission.

Sec. 354. Settlement and clearing through registered derivatives clearing organizations.

Sec. 355. Limitation on eligibility to purchase a credit default swap.

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TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY

Subtitle A—Ensuring Real Reductions in Industrial Emissions

Sec. 401. Ensuring real reductions in industrial emissions.

“PART F—ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS

- “Sec. 761. Purposes.
- “Sec. 762. International negotiations.
- “Sec. 763. Definitions.

“SUBPART 1—EMISSION ALLOWANCE REBATE PROGRAM

- “Sec. 764. Eligible industrial sectors.
- “Sec. 765. Distribution of emission allowance rebates.

“SUBPART 2—INTERNATIONAL RESERVE ALLOWANCE PROGRAM

- “Sec. 766. International reserve allowance program.

“SUBPART 3—PRESIDENTIAL DETERMINATION

- “Sec. 767. Presidential reports and determinations.

Subtitle B—Green Jobs and Worker Transition

PART 1—GREEN JOBS

- Sec. 421. Clean energy curriculum development grants.
- Sec. 422. Increased funding for energy worker training program.

PART 2—CLIMATE CHANGE WORKER ADJUSTMENT ASSISTANCE

- Sec. 425. Petitions, eligibility requirements, and determinations.
- Sec. 426. Program benefits.
- Sec. 427. General provisions.

Subtitle C—Consumer Assistance

- Sec. 431. Energy tax credit.
- Sec. 432. Energy refund program for low-income consumers.

Subtitle D—Exporting Clean Technology

- Sec. 441. Findings and purposes.
- Sec. 442. Definitions.
- Sec. 443. Governance.
- Sec. 444. Determination of eligible countries.
- Sec. 445. Qualifying activities.
- Sec. 446. Assistance.

Subtitle E—Adapting to Climate Change

PART 1—DOMESTIC ADAPTATION

SUBPART A—NATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

- Sec. 451. National Climate Change Adaptation Program.
- Sec. 452. Climate services.
- Sec. 453. State programs to build resilience to climate change impacts.

SUBPART B—PUBLIC HEALTH AND CLIMATE CHANGE

- Sec. 461. Sense of Congress on public health and climate change.
- Sec. 462. Relationship to other laws.

- Sec. 463. National strategic action plan.
- Sec. 464. Advisory board.
- Sec. 465. Reports.
- Sec. 466. Definitions.
- Sec. 467. Climate Change Health Protection and Promotion Fund.

SUBPART C—NATURAL RESOURCE ADAPTATION

- Sec. 471. Purposes.
- Sec. 472. Natural resources climate change adaptation policy.
- Sec. 473. Definitions.
- Sec. 474. Council on Environmental Quality.
- Sec. 475. Natural Resources Climate Change Adaptation Panel.
- Sec. 476. Natural Resources Climate Change Adaptation Strategy.
- Sec. 477. Natural resources adaptation science and information.
- Sec. 478. Federal natural resource agency adaptation plans.
- Sec. 479. State natural resources adaptation plans.
- Sec. 480. Natural Resources Climate Change Adaptation Fund.
- Sec. 481. National Wildlife Habitat and Corridors Information Program.
- Sec. 482. Additional provisions regarding Indian tribes.

PART 2—INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

- Sec. 491. Findings and purposes.
- Sec. 492. Definitions.
- Sec. 493. International Climate Change Adaptation Program.
- Sec. 494. Distribution of allowances.
- Sec. 495. Bilateral assistance.

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.

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 electric output, and the
3 electricity saved due to the mechanical output, of a
4 combined heat and power system, adjusted to reflect
5 any increase in fuel consumption by that system as
6 compared to the fuel that would have been required
7 to produce an equivalent useful thermal energy out-
8 put in a separate thermal-only system.

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

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

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

24 “(4) CUSTOMER FACILITY SAVINGS.—The term
25 ‘customer facility savings’ means a reduction in end-

1 use electricity consumption (including recycled en-
2 ergy savings) at a facility of an end-use consumer of
3 electricity served by a retail electric supplier, as
4 compared to—

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

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

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

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

1 “(5) DISTRIBUTED RENEWABLE GENERATION
2 FACILITY.—The term ‘distributed renewable genera-
3 tion facility’ means a facility that—

4 “(A) generates renewable electricity;

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

7 “(C) is no greater than 2 megawatts in ca-
8 pacity.

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

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

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

22 “(C) CHP savings; and

23 “(D) fuel cell savings.

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

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

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

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

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

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

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

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

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

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

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

21 “(A) Landfill gas.

22 “(B) Wastewater treatment gas.

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

25 “(D) Qualified waste-to-energy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(E) Algae;

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

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

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

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

25 “(I) prior to January 1, 2009; or

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

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

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

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

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

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

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

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

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

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

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

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

6 “(A) Wind energy.

7 “(B) Solar energy.

8 “(C) Geothermal energy.

9 “(D) Renewable biomass.

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

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

14 “(G) Qualified hydropower.

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

19 “(19) RETAIL ELECTRIC SUPPLIER.—

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(23) TOTAL ANNUAL ELECTRICITY SAVINGS.—
5 The term ‘total annual electricity savings’ means
6 electricity savings during a specified calendar year
7 from measures that were placed into service since
8 the date of the enactment of this section, taking into
9 account verified measure lifetimes or verified annual
10 savings attrition rates, as determined in accordance
11 with such regulations as the Commission may pro-
12 mulgate and measured in megawatt hours.

13 “(b) ANNUAL COMPLIANCE OBLIGATION.—

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

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

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

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

11 “(4) STATE PETITION.—

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

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

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

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

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

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

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

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

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

17 “(3) cooperate with the States to facilitate co-
18 ordination between State and Federal renewable
19 electricity and energy efficiency programs and to
20 minimize administrative burdens and costs to retail
21 electric suppliers.

22 “(d) ANNUAL COMPLIANCE REQUIREMENT.—

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

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

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

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

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

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

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

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

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

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

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

5 “(3) CERTAIN POWER SALES CONTRACTS.—

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

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

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

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

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

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

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

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

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

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

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

1 electricity that is attributable to the renewable en-
2 ergy resource or other qualifying energy resource.

3 “(7) PROHIBITION AGAINST DOUBLE-COUNT-
4 ING.—Except as provided in paragraph (4) of this
5 subsection, the Commission shall ensure that no
6 more than 1 Federal renewable electricity credit will
7 be issued for any megawatt hour of renewable elec-
8 tricity and that no Federal renewable electricity
9 credit will be used more than once for compliance
10 with this section.

11 “(8) TRADING.—The lawful holder of a Federal
12 renewable electricity credit may sell, exchange,
13 transfer, submit for compliance in accordance with
14 subsection (b), or submit such credit for retirement
15 by the Commission.

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

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

6 “(f) ELECTRICITY SAVINGS.—

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

15 “(A) specify the types of energy efficiency
16 and energy conservation measures that can be
17 counted;

18 “(B) require that energy consumption esti-
19 mates for customer facilities or portions of fa-
20 cilities in the applicable base and current years
21 be adjusted, as appropriate, to account for
22 changes in weather, level of production, and
23 building area;

24 “(C) account for the useful life of meas-
25 ures;

1 “(D) include deemed savings values for
2 specific, commonly used measures;

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

6 “(F) include procedures for counting CHP
7 savings, recycled energy savings, and fuel cell
8 savings;

9 “(G) avoid double-counting of savings used
10 for compliance with this section, including sav-
11 ings that are transferred pursuant to paragraph
12 (3);

13 “(H) ensure that, except as provided in
14 subparagraph (J), the retail electric supplier
15 claiming the savings played a significant role in
16 achieving the savings (including through the ac-
17 tivities of a designated agent of the supplier or
18 through the purchase of transferred savings);

19 “(I) include savings from programs admin-
20 istered by a retail electric supplier (or a retail
21 electricity distributor that is not a retail electric
22 supplier) that are funded by State, Federal, or
23 other sources;

24 “(J) in any State in which the State regu-
25 latory authority has designated 1 or more enti-

1 ties to administer electric ratepayer-funded effi-
2 ciency programs approved by such State regu-
3 latory authority, provide that electricity savings
4 achieved through such programs shall be dis-
5 tributed equitably among retail electric sup-
6 pliers in accordance with the direction of the
7 relevant State regulatory authority; and

8 “(K) exclude savings achieved as a result
9 of compliance with mandatory appliance and
10 equipment efficiency standards or building
11 codes.

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

20 “(3) TRANSFERS OF SAVINGS.—

21 “(A) BILATERAL CONTRACTS FOR SAVINGS
22 TRANSFERS.—Subject to the limitations of this
23 paragraph, a retail electric supplier may use
24 electricity savings transferred, pursuant to a bi-
25 lateral contract, from another retail electric

1 supplier, an owner of an electric distribution fa-
2 cility that is not a retail electric supplier, a
3 State, or a third-party efficiency provider to
4 meet the applicable compliance obligation under
5 subsection (b).

6 “(B) REQUIREMENTS.—Electricity savings
7 transferred and used for compliance pursuant
8 to this paragraph shall be—

9 “(i) measured and verified in accord-
10 ance with the procedures specified under
11 this subsection;

12 “(ii) reported in accordance with
13 paragraph (4) of this subsection; and

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

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

23 “(4) REPORTING SAVINGS.—

24 “(A) REQUIREMENTS.—The regulations
25 promulgated under this section shall establish

1 requirements governing the submission of re-
2 ports to demonstrate, in accordance with the
3 protocols and standards for measurement and
4 third-party verification established under this
5 subsection, the total annual electricity savings
6 achieved by a retail electric supplier within the
7 relevant year.

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

14 “(5) STATE ADMINISTRATION.—

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

1 determination approving or disapproving a
2 State application under this subparagraph,
3 after notice and comment, within 180 days of
4 receipt of a complete application.

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

17 “(C) REVIEW OF STATE IMPLEMENTA-
18 TION.—The Commission shall, not less fre-
19 quently than once every 4 years, review State’s
20 implementation of delegated authority under
21 this paragraph to ensure conformance with the
22 requirements of this section. The Commission
23 may, at any time, revoke the delegation of au-
24 thority under this section upon a finding that
25 the State is not implementing its delegated re-

1 sponsibilities in conformity with this paragraph.
2 As a condition of maintaining its delegated au-
3 thority under this paragraph, the Commission
4 may require a State to submit a revised appli-
5 cation under subparagraph (A) if the Commis-
6 sion has—

7 “(i) promulgated new or substantially
8 revised measurement and verification pro-
9 cedures and standards under this sub-
10 section; or

11 “(ii) otherwise substantially revised
12 the program established under this section.

13 “(g) ALTERNATIVE COMPLIANCE PAYMENTS.—

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

24 “(2) PAYMENT TO STATE FUNDS.—Except as
25 otherwise provided in this paragraph, payments

1 made under this subsection shall be made directly to
2 the State or States in which the retail electric sup-
3 plier is located, in proportion to the portion of the
4 retail electric supplier's base amount that is sold
5 within each relevant State, provided that such pay-
6 ments are deposited directly into a fund in the State
7 treasury established for this purpose and that the
8 State uses such funds in accordance with para-
9 graphs (3) and (4). If the Commission determines at
10 any time that a State is in substantial noncompli-
11 ance with paragraph (3) or (4), the Commission
12 shall direct that any future alternative compliance
13 payments that would otherwise be paid to such State
14 under this subsection shall instead be paid to the
15 Commission and deposited in the United States
16 Treasury.

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

21 “(A) deploying technologies that generate
22 electricity from renewable energy resources; or

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

1 “(4) REPORTING.—As a condition of continued
2 receipt of alternative compliance payments pursuant
3 to this subsection, a State shall, within 12 months
4 of receipt of any such payments and at 12-month in-
5 tervals thereafter until such payments are expended,
6 provide a report to the Commission, in accordance
7 with such regulations as the Commission may pre-
8 scribe, giving a full accounting of the use of such
9 payments, including a detailed description of the ac-
10 tivities funded thereby.

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

19 “(i) ENFORCEMENT AND JUDICIAL REVIEW.—

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

1 “(A) double the alternative compliance
2 payment calculated under subsection (g)(1),
3 and

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

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

14 “(3) VIOLATION OF REQUIREMENT OF REGULA-
15 TIONS OR ORDERS.—Any person who violates, or
16 fails or refuses to comply with, any requirement of
17 a regulation promulgated or order issued under this
18 section shall be subject to a civil penalty under sec-
19 tion 316A(b) of the Federal Power Act. Such pen-
20 alty shall be assessed by the Commission in the
21 same manner as in the case of a violation referred
22 to in section 316A(b) of such Act.

23 “(j) JUDICIAL REVIEW.—Any person aggrieved by a
24 final action taken by the Commission under this section,
25 other than the assessment of a civil penalty under sub-

1 section (i), may use the procedures for review described
2 in section 313 of the Federal Power Act (16 U.S.C. 825l).
3 For purposes of this paragraph, references to an order in
4 section 313 of such Act shall be deemed to refer also to
5 all other final actions of the Commission under this section
6 other than the assessment of a civil penalty under sub-
7 section (i).

8 “(k) SAVINGS PROVISIONS.—Nothing in this section
9 shall—

10 “(1) diminish or qualify any authority of a
11 State or political subdivision of a State to—

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

20 “(B) regulate the acquisition and disposi-
21 tion of Federal renewable electricity credits by
22 retail electric suppliers within the jurisdiction of
23 such State or political subdivision, including the
24 authority to require such retail electric supplier
25 to acquire and submit to the Secretary for re-

1 tirement Federal renewable electricity credits in
 2 excess of those submitted under this section; or
 3 “(2) affect the application of, or the responsi-
 4 bility for compliance with, any other provision of law
 5 or regulation, including environmental and licensing
 6 requirements.

7 “(1) SUNSET.—This section expires on December 31,
 8 2040.”.

9 (b) CONFORMING AMENDMENT.—The table of con-
 10 tents set forth in section 1(b) of the Public Utility Regu-
 11 latory Policies Act of 1978 (16 U.S.C. 2601 and following)
 12 is amended by inserting after the item relating to section
 13 609 the following:

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

14 **Subtitle B—Carbon Capture and**
 15 **Sequestration**

16 **SEC. 111. NATIONAL STRATEGY.**

17 (a) IN GENERAL.—Not later than 1 year after the
 18 date of enactment of this Act, the Administrator of the
 19 Environmental Protection Agency, in consultation with
 20 the Secretary of Energy and the heads of such other rel-
 21 evant Federal agencies as the President may designate,
 22 shall submit to Congress a report setting forth a unified
 23 and comprehensive strategy to address the key legal, regu-
 24 latory and other barriers to the commercial-scale deploy-
 25 ment of carbon capture and sequestration.

1 (b) BARRIERS.— The report under this section
2 shall—

3 (1) identify those regulatory, legal, and other
4 gaps and barriers that could be addressed by a Fed-
5 eral agency using existing statutory authority, those,
6 if any, that require Federal legislation, and those
7 that would be best addressed at the State or re-
8 gional level;

9 (2) identify regulatory implementation chal-
10 lenges, including those related to approval of State
11 programs and delegation of authority for permitting;
12 and

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

16 **SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION**
17 **SITES.**

18 (a) COORDINATED CERTIFICATION AND PERMITTING
19 PROCESS.—Title VIII of the Clean Air Act, as added by
20 section 331 of this Act, is amended by adding after section
21 812 (as added by section 116 of this Act) the following:

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

23 **“(a) COORDINATED PROCESS.—**The Administrator
24 shall establish a coordinated approach to certifying and
25 permitting geologic sequestration, taking into consider-

1 ation all relevant statutory authorities. In establishing
2 such approach, the Administrator shall—

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

10 “(2) to the extent practicable, reduce the bur-
11 den on certified entities and implementing authori-
12 ties.

13 “(b) REGULATIONS.—Not later than 2 years after
14 the date of enactment of this title, the Administrator shall
15 promulgate regulations to protect human health and the
16 environment by minimizing the risk of escape to the at-
17 mosphere of carbon dioxide injected for purposes of geo-
18 logic sequestration.

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

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

23 “(2) requirements for—

24 “(A) monitoring, record keeping, and re-
25 porting for emissions associated with injection

1 into, and escape from, geologic sequestration
2 sites, taking into account any requirements or
3 protocols developed under section 713;

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

6 “(C) the sharing of data between States,
7 Indian tribes, and the Environmental Protec-
8 tion Agency; and

9 “(D) other elements or safeguards nec-
10 essary to achieve the purpose set forth in sub-
11 section (b).

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

21 “(1) data regarding injection, emissions to the
22 atmosphere, if any, and performance of active and
23 closed geologic sequestration sites, including those
24 where enhanced hydrocarbon recovery operations
25 occur;

1 “(2) an evaluation of the performance of rel-
2 evant Federal environmental regulations and pro-
3 grams in ensuring environmentally protective geo-
4 logic sequestration practices;

5 “(3) recommendations on how such programs
6 and regulations should be improved or made more
7 effective; and

8 “(4) other relevant information.”.

9 (b) SAFE DRINKING WATER ACT STANDARDS.—Sec-
10 tion 1421 of the Safe Drinking Water Act (42 U.S.C.
11 300h) is amended by inserting after subsection (d) the fol-
12 lowing:

13 “(e) CARBON DIOXIDE GEOLOGIC SEQUESTRATION
14 WELLS.—

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

20 “(2) FINANCIAL RESPONSIBILITY.—The regula-
21 tions referred to in paragraph (1) shall include re-
22 quirements for maintaining evidence of financial re-
23 sponsibility, including financial responsibility for
24 emergency and remedial response, well plugging, site
25 closure, and post-injection site care. Financial re-

1 sponsibility may be established for carbon dioxide
2 geologic sequestration wells in accordance with regu-
3 lations promulgated by the Administrator by any
4 one, or any combination, of the following: insurance,
5 guarantee, trust, standby trust, surety bond, letter
6 of credit, qualification as a self-insurer, or any other
7 method satisfactory to the Administrator.”.

8 **SEC. 113. STUDIES AND REPORTS.**

9 (a) STUDY OF LEGAL FRAMEWORK FOR GEOLOGIC
10 SEQUESTRATION SITES.—

11 (1) ESTABLISHMENT OF TASK FORCE.—As
12 soon as practicable, but not later than 6 months
13 after the date of enactment of this Act, the Adminis-
14 trator of the Environmental Protection Agency shall
15 establish a task force to be composed of an equal
16 number of subject matter experts, nongovernmental
17 organizations with expertise in environmental policy,
18 academic experts with expertise in environmental
19 law, State officials with environmental expertise,
20 representatives of State Attorneys General, and
21 members of the private sector, to conduct a study
22 of—

23 (A) existing Federal environmental stat-
24 utes, State environmental statutes, and State
25 common law that apply to geologic sequestra-

1 tion sites for carbon dioxide, including the abil-
2 ity of such laws to serve as risk management
3 tools;

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

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

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

21 (E) the subsurface mineral rights, water
22 rights, or property rights issues associated with
23 geologic sequestration of carbon dioxide.

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

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

5 (b) ENVIRONMENTAL STATUTES.—

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

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

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

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

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

23 (2) DISTRIBUTION UTILITY.—The term “dis-
24 tribution utility” means an entity that distributes

1 electricity directly to retail consumers under a legal,
2 regulatory, or contractual obligation to do so.

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

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

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

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

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

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

3 (b) CARBON STORAGE RESEARCH CORPORATION.—

4 (1) ESTABLISHMENT.—

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

1 fossil fuel-based electricity represented by their
2 vote.

3 (B) STATE REGULATORY AUTHORITIES.—

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

19 (2) TERMINATION.—The Corporation shall be
20 authorized to collect assessments and conduct oper-
21 ations pursuant to this section for a 10-year period
22 from the date 6 months after the date of enactment
23 of this Act. After such 10-year period, the Corpora-
24 tion is no longer authorized to collect assessments
25 and shall be dissolved on the date 15 years after

1 such date of enactment, unless the period is ex-
2 tended by an Act of Congress.

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

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

21 (i) Investor-owned utilities.

22 (ii) Utilities owned by a State agency
23 or a municipality.

24 (iii) Rural electric cooperatives.

25 (iv) Fossil fuel producers.

1 (v) Non-profit environmental organi-
2 zations.

3 (vi) Independent generators or whole-
4 sale power providers.

5 (vii) Consumer groups.

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

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

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

1 if they have not been members for a period of 2
2 years. Initial appointments to the Corporation Board
3 shall be for terms of 1, 2, 3, and 4 years, staggered
4 to provide for the selection of 3 members each year.

5 (6) STATUS OF CORPORATION.—The Corpora-
6 tion shall not be considered to be an agency, depart-
7 ment, or instrumentality of the United States, and
8 no officer or director or employee of the Corporation
9 shall be considered to be an officer or employee of
10 the United States Government, for purposes of title
11 5 or title 31 of the United States Code, or for any
12 other purpose, and no funds of the Corporation shall
13 be treated as public money for purposes of chapter
14 33 of title 31, United States Code, or for any other
15 purpose.

16 (c) FUNCTIONS AND ADMINISTRATION OF THE COR-
17 PORATION.—

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

1 eligible entities. Except as provided in paragraph (8),
2 the Corporation shall use all funds derived from as-
3 sessments under subsection (d) to issue grants and
4 contracts to eligible entities.

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

20 (3) ELIGIBLE ENTITIES.—Entities eligible for
21 grants, contracts or assistance under this subsection
22 may include distribution utilities, electric utilities
23 and other private entities, academic institutions, na-
24 tional laboratories, Federal research agencies, State
25 research agencies, non-profit organizations, or con-

1 sortiums of 2 or more entities. Pilot-scale and simi-
2 lar small-scale projects are not eligible for support
3 by the Corporation. Owners or developers of projects
4 supported by the Corporation shall, where appro-
5 priate, share in the costs of such projects.

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

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

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

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

1 projects that are storing carbon dioxide emissions, or
2 for other purposes consistent with the purposes of
3 this section. The Corporation shall make publicly
4 available at no cost information learned as a result
5 of projects which it supports financially.

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

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

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

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

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

1 principles the assessment collection authority of the Cor-
2 poration under subsection (d) shall be suspended
3 until a certified public accountant renders a subse-
4 quent opinion that the failure has been corrected.
5 The Corporation shall make its books and records
6 available for review by the Secretary or the Comp-
7 troller General of the United States.

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

19 (12) ANNUAL REPORT.—Each year the Cor-
20 poration shall prepare and make publicly available a
21 report which includes an identification and descrip-
22 tion of all programs and projects undertaken by the
23 Corporation during the previous year. The report
24 shall also detail the allocation or planned allocation
25 of Corporation resources for each such program and

1 project. The Corporation shall provide its annual re-
 2 port to the Congress, the Secretary, each State regu-
 3 latory authority, and upon request to the public. The
 4 Secretary shall, not less than 60 days after receiving
 5 such report, provide to the President and Congress
 6 a report assessing the progress of the Corporation in
 7 meeting the objectives of this section.

8 (d) ASSESSMENTS.—

9 (1) AMOUNT.—(A) In all calendar years fol-
 10 lowing its establishment, the Corporation shall col-
 11 lect an assessment on distribution utilities for all
 12 fossil fuel-based electricity delivered directly to retail
 13 consumers (as determined under subsection (f)). The
 14 assessments shall reflect the relative carbon dioxide
 15 emission rates of different fossil fuel-based elec-
 16 tricity, and initially shall be not less than the fol-
 17 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.

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

1 than \$1.1 billion annually. The Corporation is au-
2 thORIZED to supplement assessments through addi-
3 tional financial commitments.

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

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

1 utilities upon which such fees were assessed, in pro-
2 portion to their collected assessments.

3 (e) ERCOT.—

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

8 (i) levied directly on qualified scheduling
9 entities, or their successor entities;

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

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

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

18 (i) determined by the amount and types of
19 fossil fuel-based electricity delivered directly to
20 all retail customers in the prior calendar year
21 beginning with the year ending immediately
22 prior to the period described in subsection
23 (b)(1); and

24 (ii) take into account the number of renew-
25 able energy credits retired by the load-serving

1 entities represented by a qualified scheduling
2 entity within the prior calendar year.

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

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

12 (4) DEFINITIONS.—For the purposes of this
13 subsection:

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

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

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

23 (D) The term “renewable energy credit”
24 has the meaning as promulgated and adopted
25 by the Public Utility Commission of Texas pur-

1 suant to section 39.904(b) of the Public Utility
2 Regulatory Act of 1999, and in effect on the
3 date of enactment of this Act.

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

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

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

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

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

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

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

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

1 modify the methodology for making such determina-
2 tions.

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

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

1 (g) COMPLIANCE WITH CORPORATION ASSESS-
2 MENTS.—The Corporation may bring an action in the ap-
3 propriate court of the United States to compel compliance
4 with an assessment levied by the Corporation under this
5 section. A successful action for compliance under this sub-
6 section may also require payment by the defendant of the
7 costs incurred by the Corporation in bringing such action.

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

21 (i) RECOVERY OF COSTS.—

22 (1) IN GENERAL.—A distribution utility whose
23 transmission, delivery, or sales of electric energy are
24 subject to any form of rate regulation shall not be
25 denied the opportunity to recover the full amount of

1 the prudently incurred costs associated with com-
2 plying with this section, consistent with applicable
3 State or Federal law.

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

10 (j) TECHNICAL ADVISORY COMMITTEE.—

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

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

1 (3) CHAIRPERSON AND VICE CHAIRPERSON.—

2 The Board shall designate one member of the Tech-
3 nical Advisory Committee to serve as Chairperson of
4 the Committee and one to serve as Vice Chairperson
5 of the Committee.

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

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

17 (A) Reviewing and evaluating the Corpora-
18 tion's plans and budgets described in subsection
19 (c)(8), as well as any other appropriate areas,
20 which could include approaches to prioritizing
21 technologies, appropriateness of engineering
22 techniques, monitoring and verification tech-
23 nologies for storage, geological site selection,
24 and cost control measures.

1 (B) Making annual non-binding rec-
2 ommendations to the Board concerning any of
3 the matters referred to in subparagraph (A), as
4 well as what types of investments, scientific re-
5 search, or engineering practices would best fur-
6 ther the goals of the Corporation.

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

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

18 (l) DAVIS-BACON COMPLIANCE.—The Corporation
19 shall ensure that entities receiving grants, contracts, or
20 other financial support from the Corporation for the
21 project activities authorized by this section are in compli-
22 ance with the Davis-Bacon Act (40 U.S.C. 276a–276a–
23 5).

1 **SEC. 115. COMMERCIAL DEPLOYMENT OF CARBON CAP-**
2 **TURE AND SEQUESTRATION TECHNOLOGIES.**

3 Title VII of the Clean Air Act (as added by section
4 321 of this Act) is amended by adding the following new
5 section after section 785:

6 **“SEC. 786. COMMERCIAL DEPLOYMENT OF CARBON CAP-**
7 **TURE AND SEQUESTRATION TECHNOLOGIES.**

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

16 “(b) ELIGIBILITY CRITERIA.—To be eligible to re-
17 ceive emission allowances under this section, the owner or
18 operator of a project must—

19 “(1) implement carbon capture and sequestra-
20 tion technology—

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

22 “(i) has a nameplate capacity of 200
23 megawatts or more;

24 “(ii) derives at least 50 percent of its
25 annual fuel input from coal, petroleum

1 coke, or any combination of these 2 fuels;
2 and

3 “(iii) upon implementation of capture
4 and sequestration technology, will achieve
5 an emission limit that is at least a 50 per-
6 cent reduction in emissions of the carbon
7 dioxide produced by the unit, measured on
8 an annual basis, determined in accordance
9 with section 812(b)(2); or

10 “(B) at an industrial source that—

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

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

20 “(iii) does not produce a liquid trans-
21 portation fuel from a solid fossil-based
22 feedstock;

23 “(2) geologically sequester carbon dioxide at a
24 site that meets all applicable permitting and certifi-
25 cation requirements for geologic sequestration, or,

1 pursuant to such requirements as the Administrator
2 may prescribe by regulation, convert captured car-
3 bon dioxide to a stable form that will safely and per-
4 manently sequester such carbon dioxide;

5 “(3) meet all other applicable State and Fed-
6 eral permitting requirements; and

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

8 “(c) PHASE I DISTRIBUTION TO ELECTRIC GENER-
9 ATING UNITS.—

10 “(1) APPLICATION.—This subsection shall
11 apply only to projects at the first 6 gigawatts of
12 electric generating units, measured in cumulative
13 generating capacity of such units.

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

19 “(A) the product obtained by multi-
20 plying—

21 “(i) the number of metric tons of car-
22 bon dioxide emissions avoided through cap-
23 ture and sequestration of emissions by the
24 project, as determined pursuant to such

1 methodology as the Administrator shall
2 prescribe by regulation; and

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

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

7 “(3) BONUS ALLOWANCE VALUES.—

8 “(A) For a generating unit achieving the
9 capture and sequestration of 85 percent or
10 more of the carbon dioxide that otherwise would
11 be emitted by such unit, the bonus allowance
12 value shall be \$90.

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

20 “(C) For a generating unit that achieves
21 the capture and sequestration of at least 50
22 percent of the carbon dioxide that otherwise
23 would be emitted by such unit by not later than
24 January 1, 2017, the otherwise applicable
25 bonus allowance value under this paragraph

1 shall be increased by \$10, provided that the
2 owner of such unit notifies the Administrator of
3 its intent to achieve such rate of capture and
4 sequestration by not later than January 1,
5 2012.

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

15 “(E) All monetary values in this section
16 shall be adjusted annually for inflation.

17 “(d) PHASE II DISTRIBUTION TO ELECTRIC GENER-
18 ATING UNITS.—

19 “(1) APPLICATION.—This subsection shall
20 apply only to the distribution of emission allowances
21 to carbon capture and sequestration projects at elec-
22 tric generating units after the capacity threshold
23 identified in subsection (c)(1) is reached.

24 “(2) REGULATIONS.—Not later than 2 years
25 prior to the date on which the capacity threshold

1 identified in subsection (c)(1) is projected to be
2 reached, the Administrator shall promulgate regula-
3 tions to govern the distribution of emission allow-
4 ances to the owners or operators of eligible projects
5 under this subsection.

6 “(3) REVERSE AUCTIONS.—

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

24 “(B) AUCTION PROCESS.—At each reverse
25 auction—

1 “(i) the Administrator shall solicit
2 bids from eligible projects;

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

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

19 “(C) FORM OF DISTRIBUTION.—The Ad-
20 ministrator shall provide deployment incentives
21 to the owners or operators of eligible projects
22 selected through a reverse auction under this
23 paragraph pursuant to a formula equivalent to
24 that described in subsection (c)(2), except that

1 the incentive level that is bid by the entity shall
2 be substituted for the bonus allowance value.

3 “(4) ALTERNATIVE DISTRIBUTION METHOD.—

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

15 “(B) MULTIPLE TRANCHES.—The Admin-
16 istrator shall divide emission allowances avail-
17 able for distribution to the owners or operators
18 of eligible projects into a series of tranches,
19 each supporting the deployment of a specified
20 quantity of cumulative electric generating ca-
21 pacity utilizing carbon capture and sequestra-
22 tion technology, each of which shall not be
23 greater than 6 gigawatts.

24 “(C) METHOD OF DISTRIBUTION.—The
25 Administrator shall distribute emission allow-

1 ances within each tranche, on a first-come,
2 first-served basis—

3 “(i) based on the date of full-scale op-
4 eration of capture and sequestration tech-
5 nology; and

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

14 “(D) REQUIREMENTS.—For each tranche
15 established pursuant to subparagraph (A), the
16 Administrator shall establish a schedule for dis-
17 tributing emission allowances that—

18 “(i) is based on a sliding scale that
19 provides higher bonus allowance values for
20 projects achieving higher rates of capture
21 and sequestration;

22 “(ii) for each capture and sequestra-
23 tion rate, establishes a bonus allowance
24 value that is lower than that established
25 for such rate in the previous tranche (or,

1 in the case of the first tranche, than that
2 established for such rate under subsection
3 (c)(1)); and

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

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

20 “(i) the reduced cost of compliance
21 with section 722 of this Act;

22 “(ii) the reduced cost associated with
23 sequestering in a geological formation for
24 purposes of enhanced hydrocarbon recovery
25 when compared to sequestration into geo-

1 logical formations solely for purposes of se-
2 questration;

3 “(iii) the relevant factors defining the
4 project category; and

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

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

11 “(e) LIMITS FOR CERTAIN ELECTRIC GENERATING
12 UNITS.—

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

17 “(2) COVERED EGUS INITIALLY PERMITTED
18 FROM 2009 THROUGH 2015.—For a covered EGU
19 that is initially permitted on or after January 1,
20 2009, and before January 1, 2015, the Adminis-
21 trator shall reduce the quantity of emission allow-
22 ances that the owner or operator of such covered
23 EGU would otherwise be eligible to receive under
24 this section as follows:

1 “(A) In the case of a unit commencing op-
2 eration on or before January 1, 2019, by the
3 product of—

4 “(i) 20 percent; and

5 “(ii) the number of years between—

6 “(I) the earlier of January 1,
7 2020, or the date that is 5 years after
8 the commencement of operation of
9 such covered EGU; and

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

18 “(B) in the case of a unit commencing op-
19 eration after January 1, 2019, by the product
20 of—

21 “(i) 20 percent; and—

22 “(I) the number of years be-
23 tween—

1 “(aa) the commencement of
2 operation of such covered EGU;
3 and

4 “(bb) the first year that
5 such covered EGU achieves (and
6 thereafter maintains) an emission
7 limit that is at least a 50 percent
8 reduction in emissions of the car-
9 bon dioxide produced by the unit,
10 measured on an annual basis, as
11 determined in accordance with
12 section 812(b)(2).

13 “(3) COVERED EGUS INITIALLY PERMITTED
14 FROM 2015 THROUGH 2020.—The owner or operator
15 of a covered EGU that is initially permitted on or
16 after January 1, 2015, and before January 1, 2020,
17 shall be ineligible to receive emission allowances pur-
18 suant to this section if such unit, upon commence-
19 ment of operations or thereafter, does not achieve
20 and maintain an emission limit that is at least a 50
21 percent reduction in emissions of the carbon dioxide
22 produced by the unit, measured on an annual basis,
23 as determined in accordance with section 812(b)(2).

24 “(f) INDUSTRIAL SOURCES.—

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

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

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

21 “(B) an incentive schedule, similar to that
22 described under subsection (d)(4), which shall
23 ensure that incentives are set so as to satisfy
24 the requirement described in subsection
25 (d)(4)(E).

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

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

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

22 “(1) In distributing bonus allowances under
23 this subsection, the Administrator shall ensure that
24 qualifying projects receiving allowances receive dis-
25 tributions for 10 years.

1 “(2) If the Administrator determines that the
2 allowances allocated under section 782(f) with a vin-
3 tage year that matches the year of distribution will
4 be exhausted once the estimated full 10-year dis-
5 tributions will be provided to current eligible partici-
6 pants, the Administrator shall provide to new eligible
7 projects allowances from vintage years after the year
8 of the distribution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(B) January 1, 2025.

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

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

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

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

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

5 **Subtitle C—Clean Transportation**

6 **SEC. 121. ELECTRIC VEHICLE INFRASTRUCTURE.**

7 (a) AMENDMENT OF PURPA.—Section 111(d) of the
8 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
9 2621(d)) is amended by adding at the end the following:

10 “(20) PLUG-IN ELECTRIC DRIVE VEHICLE IN-
11 INFRASTRUCTURE.—

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

22 “(i) battery exchange, fast charging
23 infrastructure and other services;

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

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

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

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

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

21 “(ii) consider adopting minimum re-
22 quirements for deployment of electrical
23 charging infrastructure and other appro-
24 priate requirements necessary to support
25 the use of plug-in electric drive vehicles.

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

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

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

24 “(ii) include, to the extent feasible,
25 the ability for each plug-in electric drive

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

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

18 (b) COMPLIANCE.—

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

23 “(7)(A) Not later than 3 years after the date
24 of enactment of this paragraph, each State regu-
25 latory authority (with respect to each electric utility

1 for which it has ratemaking authority) and each
2 nonregulated utility shall commence the consider-
3 ation referred to in section 111, or set a hearing
4 date for consideration, with respect to the standard
5 established by paragraph (20) of section 111(d).

6 “(B) Not later than 4 years after the date of
7 enactment of the this paragraph, each State regu-
8 latory authority (with respect to each electric utility
9 for which it has ratemaking authority), and each
10 nonregulated electric utility, shall complete the con-
11 sideration, and shall make the determination, re-
12 ferred to in section 111 with respect to the standard
13 established by paragraph (20) of section 111(d).”.

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

22 (3) PRIOR STATE ACTIONS.—Section 112(d) of
23 the Public Utility Regulatory Policies Act of 1978
24 (16 U.S.C. 2622(d)) is amended by striking “(19)”
25 and inserting “(20)” before “of section 111(d)”.

1 **SEC. 122. LARGE-SCALE VEHICLE ELECTRIFICATION PRO-**
2 **GRAM.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) criteria for evaluating applications sub-
25 mitted under subsection (c), including the antici-

1 pated ability to promote deployment and market
2 penetration of vehicles that are less dependent on
3 petroleum as a fuel source; and

4 (3) reporting requirements for entities that re-
5 ceive financial assistance under this section, includ-
6 ing a comprehensive set of performance data charac-
7 terizing the results of the deployment program.

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

14 (g) AUTHORIZATION.—There are authorized to be ap-
15 propriated to carry out this section such sums as may be
16 necessary.

17 **SEC. 123. PLUG-IN ELECTRIC DRIVE VEHICLE MANUFAC-**
18 **TURING.**

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

1 (b) FINANCIAL ASSISTANCE.—The Secretary of En-
2 ergy may provide financial assistance to an automobile
3 manufacturer under the program established pursuant to
4 subsection (a) for—

5 (1) the reconstruction or retooling of facilities
6 for the manufacture of plug-in electric drive vehicles
7 that are developed and produced in the United
8 States; and

9 (2) if appropriate, the purchase of domestically
10 produced vehicle batteries to be used in the manu-
11 facture of vehicles manufactured pursuant to para-
12 graph (1).

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

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

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

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

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

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

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

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

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

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

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

20 (a) DEFINITIONS.—In this section:

21 (1) **ADVANCED TECHNOLOGY VEHICLES AND**
22 **QUALIFYING COMPONENTS.**—The terms “advanced
23 technology vehicles” and “qualifying components”
24 shall have the definition of such terms in section 136
25 of the Energy Independence and Security Act of

1 2007, except that for purposes of this section, the
2 average base year as described section 136(a)(1)(C)
3 shall be the following:

4 (A) in each of the years 2012 through
5 2016, the average base year shall be model year
6 2009; and

7 (B) in 2017, the Administrator shall, not-
8 withstanding section 136(a)(1)(C), determine
9 an appropriate baseline based on technological
10 and economic feasibility.

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

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

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

22 (1) IN GENERAL.—The Administrator shall, at
23 the direction of the Secretary of Energy, provide
24 emission allowances allocated pursuant to section
25 782(i) to applicants, joint sponsors and automobile

1 manufacturers pursuant to sections 122 and 123 of
2 this Act.

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

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

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

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

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

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

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

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

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

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

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

22 (d) ADVANCED TECHNOLOGY VEHICLES.—

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

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

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

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

10 (ii) qualifying components; and

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

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

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

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

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

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

5 “(J) RENEWABLE BIOMASS.—The term
6 ‘renewable biomass’ means any of the following:

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

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

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

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

1 “(v) Algae.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (b) OPEN FUEL STANDARD FOR TRANSPOR-
13 TATION.—Chapter 329 of title 49, United States Code, is
14 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 to manufacture fuel-choice ena-

1 bling automobiles subsequent to model year 2015 if
2 the Secretary, in coordination with the Secretary of
3 Energy and the Administrator of the Environmental
4 Protection Agency, determines—

5 “(A) E85 or M85 will be available in quan-
6 tities sufficient to be used by fuel-choice ena-
7 bling automobiles manufactured by light-duty
8 automobile manufacturers;

9 “(B) there will be adequate infrastructure
10 for distributing E85 or M85; and

11 “(C) such requirement is a cost-effective
12 way to achieve the nation’s energy independence
13 and environmental objectives.

14 “(2) TEMPORARY EXEMPTION FROM REQUIRE-
15 MENTS.—

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

24 “(B) EVALUATION.—After evaluating an
25 application received from a manufacturer, the

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

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

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

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

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

1 “(D) CONDITIONS.—Any exemption grant-
2 ed under subparagraph (B) shall be conditioned
3 upon the manufacturer’s commitment to recall
4 the exempted automobiles for installation of the
5 omitted components within a reasonable time
6 proposed by the manufacturer and approved by
7 the Secretary after such components become
8 available in sufficient quantities to satisfy both
9 anticipated production and recall volume re-
10 quirements.

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

13 “(i) notice of each application received
14 from a manufacturer;

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

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

19 **Subtitle D—State Energy and Envi-** 20 **ronment Development Accounts**

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

22 (a) DEFINITIONS.—In this section:

23 (1) SEED ACCOUNT.—The term “SEED Ac-
24 count” means a State Energy and Environment De-

1 velopment Account established pursuant to this sec-
2 tion.

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

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

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

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

21 (1) to ensure that each State operates its
22 SEED Account and any subaccounts thereof effi-
23 ciently and in accordance with this Act and applica-
24 ble State and Federal laws;

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

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

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

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

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

14 (e) OPERATION.—

15 (1) DEPOSITS.—

16 (A) IN GENERAL.—In the allowance track-
17 ing system established pursuant to section
18 724(d) of the Clean Air Act, the Administrator
19 shall establish a SEED Account for each State
20 and place in it the allowances to be distributed
21 to States pursuant to sections 132 and 201 of
22 this Act.

23 (B) FINANCIAL ACCOUNT.—A State may
24 create a financial account associated with its
25 SEED Account to deposit, retain, and manage

1 any proceeds of any sale of any allowance pro-
2 vided pursuant to this Act pending expenditure
3 or disbursement of those proceeds for purposes
4 permitted under this section. The funds in such
5 an account shall not be commingled with other
6 funds not derived from the sale of allowances
7 provided to the State; however, loans made by
8 the State from such funds pursuant to para-
9 graph (2)(C)(i) may be repaid into such a fi-
10 nancial account, including any interest charged.

11 (2) WITHDRAWALS.—

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

18 (B) DEDICATED ALLOWANCES.—Allow-
19 ances distributed pursuant to sections 132 and
20 201 that are required by law to be used for spe-
21 cific purposes for a specified period shall be
22 used according to those requirements during
23 that period.

24 (C) UNDEDICATED ALLOWANCES.—To the
25 extent that allowances distributed pursuant to

1 sections 132 and 201 are not required by law
2 to be used for specific purposes for a specified
3 period as described in subparagraph (B), such
4 allowances or the proceeds of their sale may be
5 used for any of the following purposes:

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

16 (ii) GRANTS.—Grants of allowances or
17 the proceeds of their sale may be provided
18 to support programs authorized to use
19 SEED Account allowance value or any
20 other renewable energy or energy efficiency
21 purpose authorized or approved by the
22 Federal Government.

23 (iii) OTHER FORMS OF SUPPORT.—Al-
24 lowances or the proceeds of the sale of al-
25 lowances may be provided for other forms

1 of support for programs authorized to use
2 SEED Account allowance value or any
3 other renewable energy or energy efficiency
4 purpose authorized or approved by the
5 Federal Government.

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

14 (D) SUBACCOUNTS.—A State may request
15 that the Administrator establish accounts for
16 local governments that request such sub-
17 accounts to hold allowances distributed to local
18 governments for renewable energy or energy ef-
19 ficiency programs authorized or approved by
20 the Federal Government.

21 (E) INTENDED USE PLANS.—

22 (i) IN GENERAL.—After providing for
23 public review and comment, each State ad-
24 ministering a SEED Account shall annu-
25 ally prepare a plan that identifies the in-

1 tended uses of the allowances or proceeds
2 from the sale of allowances in its SEED
3 Account.

4 (ii) CONTENTS.—An intended use
5 plan shall include—

6 (I) a list of the projects or pro-
7 grams for which withdrawals from the
8 SEED Account are intended in the
9 next fiscal year that begins after the
10 date of the plan, including a descrip-
11 tion of each project;

12 (II) the relationship of each of
13 the projects or programs to an identi-
14 fied Federal purpose authorized by
15 this Act, or any other Federal statute;

16 (III) the expected terms of use of
17 allowance value to provide assistance;

18 (IV) the criteria and methods es-
19 tablished for the distribution of allow-
20 ances or allowance value;

21 (V) a description of the equiva-
22 lent financial value and status of the
23 SEED Account; and

1 (VI) a statement of the mid-term
2 and long-term goals of the State for
3 use of its SEED Account.

4 (3) ACCOUNTABILITY AND TRANSPARENCY.—

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

18 (B) AUDITS.—Any State that has a SEED
19 Account shall have an annual audit conducted
20 of the SEED Account by an independent public
21 accountant in accordance with generally accept-
22 ed auditing standards, and shall transmit the
23 results of that audit to the Administrator.

24 (C) STATE REPORT.—Each State admin-
25 istering a SEED Account shall make publicly

1 available and submit to the Secretary a report
2 every 2 years on its activities related to its
3 SEED Account.

4 (D) PUBLIC INFORMATION.—Any—

5 (i) controls and procedures established
6 under subparagraph (A); and

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

14 shall be made publicly available.

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

21 (f) REQUIREMENTS FOR ELIGIBILITY.—A State's eli-
22 gibility to receive allowances in its SEED Account shall
23 depend on that State's compliance with the requirements
24 of this Act (and the amendments made by this Act).

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Administrator
3 such sums as may be necessary for SEED Account oper-
4 ations.

5 **SEC. 132. SUPPORT OF STATE RENEWABLE ENERGY AND**
6 **ENERGY EFFICIENCY PROGRAMS.**

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

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

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

23 (3) STATE.—The term “State” shall have the
24 meaning given that term in section 302(d) of the
25 Clean Air Act (42 U.S.C. 7602(d)).

1 (b) DISTRIBUTION AMONG STATES.—For each vin-
2 tage year from 2012 through 2050, the Administrator
3 shall, in accordance with this section, distribute emission
4 allowances allocated pursuant to section 782(g)(1) of the
5 Clean Air Act not later than September 30 of the year
6 preceding the vintage year. The Administrator shall dis-
7 tribute the emission allowances to States for renewable en-
8 ergy and energy efficiency programs to be deposited in and
9 administered through the State Energy and Environment
10 Development (SEED) Accounts established pursuant to
11 section 131. The Administrator shall distribute allowances
12 among the States under this section each year in accord-
13 ance with the following formula:

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

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

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

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

5 (c) USES.—The allowances distributed to each State
6 pursuant to this section shall be used exclusively for the
7 purposes listed in this subsection, as set forth below:

8 (1) Not less than 12.5 percent shall be distrib-
9 uted by the State to units of local government within
10 such State to be used exclusively to support the en-
11 ergy efficiency and renewable energy purposes listed
12 in paragraphs (2), (3), and (4).

13 (2) Not less than 15 percent shall be used ex-
14 clusively for the following energy efficiency pur-
15 poses—

16 (A) implementation and enforcement of
17 building codes adopted in compliance with sec-
18 tion 201;

19 (B) implementation of the energy efficient
20 manufactured homes program established pur-
21 suant to section 203;

22 (C) implementation of the building energy
23 performance labeling program established pur-
24 suant to section 204;

1 (D) enabling the development of a Smart
2 Grid (as described in section 1301 of the En-
3 ergy Independence and Security Act of 2007
4 (42 U.S.C. 17381)) for State, local government,
5 and other public buildings and facilities, includ-
6 ing integration of renewable energy resources
7 and distributed generation, demand response,
8 demand side management, and systems anal-
9 ysis;

10 (E) transportation planning pursuant to
11 section 841 of the Clean Air Act; and

12 (F) other cost-effective energy efficiency
13 programs for end-use consumers of electricity,
14 natural gas, home heating oil, or propane, in-
15 cluding, where appropriate, programs or mecha-
16 nisms administered by local governments and
17 entities other than the State.

18 (3) Not less than 5 percent shall be used exclu-
19 sively for implementation of the Retrofit for Energy
20 and Environmental Performance (REEP) program
21 established pursuant to section 202.

22 (4) Not less than 20 percent shall be used ex-
23 clusively for capital grants, tax credits, production
24 incentives, loans, loan guarantees, forgivable loans,
25 and interest rate buy-downs for—

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

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

10 (ii) electricity storage systems;

11 (B) deployment of technologies to generate
12 electricity from renewable energy sources; and

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

18 (5) The remaining 47.5 percent shall be used
19 exclusively for any of the purposes described in sub-
20 paragraphs (A) through (E) of paragraph (2) and in
21 paragraphs (3) and (4).

22 (d) REPORTING.—Each State receiving emission al-
23 lowances under this section shall include in its biennial
24 reports required under section 131, in accordance with
25 such requirements as the Administrator may prescribe—

1 (1) a list of entities receiving allowances or al-
2 lowance value under this section;

3 (2) the amount and nature of allowances or al-
4 lowance value received by each recipient;

5 (3) the specific purposes for which such allow-
6 ances or allowance value was conveyed;

7 (4) the amount of energy savings, emission re-
8 ductions, renewable energy deployment, or new or
9 retooled manufacturing capacity resulting from such
10 allowances or allowance value; and

11 (5) an assessment of the cost-effectiveness of
12 any energy efficiency program supported under sub-
13 section (c)(2)(F).

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

1 **Subtitle E—Smart Grid**
2 **Advancement**

3 **SEC. 141. DEFINITIONS.**

4 For purposes of this subtitle:

5 (1) The term “Administrator” means the Ad-
6 ministrator of the Environmental Protection Agency.

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

12 (3) The term “Commission” means Federal En-
13 ergy Regulatory Commission.

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

20 (5) The term “peak demand” means the high-
21 est point of electricity demand, net of any distrib-
22 uted electricity generation or storage from sources
23 on the load-serving entity’s customers’ premises,
24 during any hour on the system of a load serving en-
25 tity during a calendar year, expressed in Megawatts

1 (MW), or more than one such high point as a func-
2 tion of seasonal demand changes.

3 (6) The term “peak demand reduction” means
4 the reduction in annual peak demand as compared
5 to a previous baseline year or period, expressed in
6 Megawatts (MW), whether accomplished by dimin-
7 ishing the end-use requirements for electricity or by
8 use of locally stored or generated electricity to meet
9 those requirements from distributed resources on the
10 load-serving entity’s customers’ premises and with-
11 out use of high-voltage transmission.

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

16 (8) The term “peak period” means the time pe-
17 riod on the system of a load-serving entity relative
18 to peak demand that may warrant special measures
19 or electricity resources to maintain system reliability
20 while meeting peak demand.

21 (9) The term “Secretary” means the Secretary
22 of Energy.

23 (10) The term “Smart Grid” has the meaning
24 provided by section 1301 of the Energy Independ-
25 ence and Security Act of 2007 (15 U.S.C. 17381).

1 **SEC. 142. ASSESSMENT OF SMART GRID COST EFFECTIVE-**
2 **NESS IN PRODUCTS.**

3 (a) ASSESSMENT.—Within one year after the date of
4 enactment of this Act, the Secretary and the Adminis-
5 trator shall each assess the potential for cost-effective in-
6 tegration of Smart Grid technologies and capabilities in
7 all products that are reviewed by the Department of En-
8 ergy and the Environmental Protection Agency, respec-
9 tively, for potential designation as Energy Star products.

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

17 (A) The products possessed Smart Grid capa-
18 bility and interoperability that is tested and proven
19 reliable.

20 (B) The products were utilized in an electricity
21 utility service area which had Smart Grid capability
22 and offered customers rate or program incentives to
23 use the products.

24 (C) The utility's rates reflected national average
25 costs, including average peak and valley seasonal
26 and daily electricity costs.

1 (D) Consumers using such products took full
2 advantage of such capability.

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

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

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

22 (A) Inform the manufacturer of such product of
23 such finding of cost effectiveness.

24 (B) Assess the potential contributions the devel-
25 opment and use of products with Smart Grid tech-

1 nologies bring to reducing peak demand and pro-
2 moting grid stability.

3 (C) Assess the potential national energy savings
4 and electricity cost savings that could be realized if
5 Smart Grid potential were installed in the relevant
6 products reviewed by the Energy Star program.

7 (D) Assess and identify options for providing
8 consumers information on products with Smart Grid
9 capabilities, including the necessary conditions for
10 cost-effective savings.

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

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

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

22 “(J)(i) Not later than 3 years after the
23 date of enactment of this subparagraph, the
24 Federal Trade Commission shall initiate a rule-
25 making to consider making a special note in a

1 prominent manner on any ENERGY GUIDE
2 label for any product actually including Smart
3 Grid capability that—

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

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

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

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

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

2 (a) GOALS.—Not later than one year after the date
3 of enactment of this Act, load-serving entities, or, at their
4 option, States with respect to load-serving entities that
5 they regulate, shall determine and publish peak demand
6 reduction goals for any load-serving entities that have an
7 applicable baseline in excess of 250 megawatts.

8 (b) BASELINES.—(1) The Commission, in consulta-
9 tion with the Secretary and the Administrator, shall de-
10 velop and publish, after an opportunity for public com-
11 ment, a methodology to provide for adjustments or nor-
12 malization to a load-serving entity's applicable baseline
13 over time to reflect changes in the number of customers
14 served, weather conditions, general economic conditions,
15 and any other appropriate factors external to peak de-
16 mand management, as determined by the Commission.

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

23 (3) The Secretary, in consultation with the Commis-
24 sion, the Administrator, and the National Electric Reli-
25 ability Corporation, shall develop a system and rules for
26 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 or regional entity, by that State or regional entity
5 for a larger region that shares a common system peak de-
6 mand and for which peak demand reduction measures
7 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 National
12 Electric Reliability Corporation, and other relevant au-
13 thorities.

14 (3) In determining the applicable peak demand reduc-
15 tion goals, States and other jurisdictional entities may uti-
16 lize the results of the 2009 National Demand Response
17 Potential Assessment, as authorized by section 571 of the
18 National Energy Conservation Policy Act (42 U.S.C.
19 8279).

20 (4) The applicable peak demand reduction goals shall
21 provide that—

22 (A) load-serving entities will reduce or mitigate
23 peak demand by a minimum percentage amount
24 from the applicable baseline to a lower peak demand
25 during calendar year 2012;

1 (B) load-serving entities will reduce or mitigate
2 peak demand by a minimum percentage greater
3 amount from the applicable baseline to a lower peak
4 demand during calendar year 2015; and

5 (C) the minimum percentage reductions estab-
6 lished as peak demand reduction goals shall be the
7 maximum reductions that are realistically achievable
8 with an aggressive effort to deploy Smart Grid and
9 peak demand reduction technologies and methods,
10 including but not limited to those listed in sub-
11 section (d).

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

16 (1) Direct reduction in megawatts of peak de-
17 mand through energy efficiency measures with reli-
18 able and continued application during peak demand
19 periods.

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

24 (A) Megawatts enrolled in demand re-
25 sponse programs.

1 (B) Megawatts subject to the ability of a
2 load-serving entity to call on demand response
3 programs, smart appliances, smart electricity
4 storage devices, distributed generation resources
5 on the entity's customers' premises, or other
6 measures directly capable of actively,
7 controllably, reliably, and dynamically reducing
8 peak demand ("dynamic peak management con-
9 trol").

10 (C) Megawatts available from distributed
11 dynamic electricity storage under agreement
12 with the owner of that storage.

13 (D) Megawatts committed from
14 dispatchable distributed generation dem-
15 onstrated to be reliable under peak period con-
16 ditions and in compliance with air quality regu-
17 lations.

18 (E) Megawatts available from smart appli-
19 ances and equipment with Smart Grid capa-
20 bility available for direct control by the utility
21 through agreement with the customer owning
22 the appliances or equipment.

23 (F) Megawatts from a demonstrated and
24 assured minimum of distributed solar electric
25 generation capacity in instances where peak pe-

1 riod and peak demand conditions are directly
2 related to solar radiation and accompanying
3 heat.

4 (3) If any of the methods listed in subpara-
5 graph (C), (D), or (E) of paragraph (2) are relied
6 upon to meet its peak demand reduction goals, the
7 load-serving entity must demonstrate this capability
8 by operating a test during the applicable calendar
9 year.

10 (4) Nothing in this section shall require the
11 publication in peak demand reduction goals or in
12 any peak demand reduction plan of any information
13 that is confidential for competitive or other reasons
14 or that identifies individual customers.

15 (e) EXISTING AUTHORITY AND REQUIREMENTS.—
16 Nothing in this section diminishes or supersedes any au-
17 thority of a State or political subdivision of a State to
18 adopt or enforce any law or regulation respecting peak de-
19 mand management, demand response, distributed storage,
20 use of distributed generation, or the regulation of load-
21 serving entities. The Commission, in consultation with
22 States having such peak management, demand response
23 and distributed storage programs, shall to the maximum
24 extent practicable, facilitate coordination between the Fed-
25 eral program and such State programs.

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

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

8 (h) COMPLIANCE.— (1) The Commission shall within
9 one year after the date of enactment of this Act establish
10 a public website where the Commission will provide infor-
11 mation and data demonstrating compliance by States, re-
12 gional entities, and load-serving entities with this section,
13 including the success of load-serving entities in meeting
14 applicable peak demand reduction goals.

15 (2) The Commission shall, by April 1 of each year
16 beginning in 2012, provide a report to Congress on com-
17 pliance with this section and success in meeting applicable
18 peak demand reduction goals and, as appropriate, shall
19 make recommendations as to how to increase peak de-
20 mand reduction efforts.

21 (3) The Commission shall note in each such report
22 any State, political subdivision of a State, or load-serving
23 entity that has failed to comply with this section, or is
24 not a part of any region or group of load-serving entities
25 serving a region that has complied with this section.

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

6 (i) ASSISTANCE TO STATES AND FUNDING.—

7 (1) ASSISTANCE TO STATES.—Any costs in-
8 curred by States for activities undertaken pursuant
9 to this section shall be supported by the use of emis-
10 sion allowances allocated to the States' SEED Ac-
11 counts pursuant to section 132 of this Act. To the
12 extent that a State provides allowances to local gov-
13 ernments within the State to implement this pro-
14 gram, that shall be deemed a distribution of such al-
15 lowances to units of local government pursuant to
16 subsection (c)(1) of that section.

17 (2) FUNDING.—There are authorized to be ap-
18 propriated such sums as may be necessary to the
19 Commission, the Secretary, and the Administrator to
20 carry out the provisions of this section.

21 **SEC. 145. REAUTHORIZATION OF ENERGY EFFICIENCY PUB-**
22 **LIC INFORMATION PROGRAM TO INCLUDE**
23 **SMART GRID INFORMATION.**

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

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

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

9 (3) In paragraph (2) of subsection (a) by strik-
10 ing “benefits to consumers of reducing” and insert-
11 ing “economic and environmental benefits to con-
12 sumers and the United States of optimizing”.

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

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

22 “(D) purchasing and utilizing equipment
23 that includes Smart Grid features and capa-
24 bility; and”.

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

5 (7) In subsection (d) by striking “2010” and
6 inserting “2020”.

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

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

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

13 **SEC. 146. INCLUSION OF SMART GRID FEATURES IN APPLI-**
14 **ANCE REBATE PROGRAM.**

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

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

20 (2) By redesignating paragraphs (4) and (5) of
21 subsection (a) as paragraphs (5) and (6), respec-
22 tively, and inserting after paragraph (3) the fol-
23 lowing:

24 “(4) SMART APPLIANCE.—The term ‘smart ap-
25 pliance’ means a product that the Administrator of

1 the Environmental Protection Agency or the Sec-
2 retary of Energy has determined qualifies for such
3 a designation in the Energy Star program pursuant
4 to section 142 of the American Clean Energy and
5 Security Act of 2009, or that the Secretary or the
6 Administrator has separately determined includes
7 the relevant Smart Grid capabilities listed in section
8 1301 of the Energy Independence and Security Act
9 of 2007 (15 U.S.C. 17381).”.

10 (3) In subsection (b)(1) by inserting “and
11 smart” after “efficient” and by inserting after
12 “products” the first place it appears “, including
13 products designated as being smart appliances,”.

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

16 (5) In subsection (d), by inserting “the admin-
17 istration of” after “carrying out” and by inserting
18 “, and up to 100 percent of the value of the rebates
19 provided pursuant to this section” before the period
20 at the end.

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

1 (7) In subsection (f), by striking
2 “\$50,000,000” through the period at the end and
3 inserting “\$100,000,000 for each fiscal year from
4 2010 through 2015.”.

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

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

9 **Subtitle F—Transmission Planning**

10 **SEC. 151. TRANSMISSION PLANNING.**

11 Part II of the Federal Power Act (16 U.S.C. 824 et
12 seq.) is amended by adding after section 216 the following
13 new section:

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

15 “(a) FEDERAL POLICY.—

16 “(1) OBJECTIVES.—It is the policy of the
17 United States that regional electric grid planning
18 should facilitate the deployment of renewable and
19 other zero-carbon energy sources for generating elec-
20 tricity to reduce greenhouse gas emissions while en-
21 suring reliability, reducing congestion, ensuring
22 cyber-security, and providing for cost-effective elec-
23 tricity services throughout the United States.

24 “(2) OPTIONS.—In addition to the policy under
25 paragraph (1), it is the policy of the United States

1 that regional electric grid planning to meet these ob-
2 jectives should take into account all significant de-
3 mand-side and supply-side options, including energy
4 efficiency, distributed generation, renewable energy
5 and zero-carbon electricity generation technologies,
6 smart-grid technologies and practices, demand re-
7 sponse, electricity storage, voltage regulation tech-
8 nologies, high capacity conductor and super-
9 conductor technologies, underground transmission
10 technologies, and new conventional electric trans-
11 mission capacity and corridors.

12 “(b) PLANNING.—

13 “(1) PLANNING PRINCIPLES.—Not later than 1
14 year after the date of enactment of this section, the
15 Commission shall adopt, after notice and oppor-
16 tunity for comment, national electricity grid plan-
17 ning principles derived from the Federal policy es-
18 tablished under subsection (a) to be applied in ongo-
19 ing and future transmission planning that may im-
20 plicate interstate transmission of electricity

21 “(2) REGIONAL PLANNING ENTITIES.—Not
22 later than 3 months after the date of adoption by
23 the Commission of national electricity grid planning
24 principles pursuant to paragraph (1), entities that
25 conduct or may conduct transmission planning pur-

1 suant to State or Federal law or regulation, includ-
2 ing States, entities designated by States, public util-
3 ity transmission providers, operators and owners, re-
4 gional organizations, and electric utilities, and that
5 are willing to incorporate the national electricity grid
6 planning principles adopted by the Commission in
7 their electric grid planning, shall identify themselves
8 and the regions for which they propose to develop
9 plans to the Commission.

10 “(3) COORDINATION OF REGIONAL PLANNING
11 ENTITIES.—The Commission shall encourage re-
12 gional planning entities described under paragraph
13 (2) to cooperate and coordinate across regions and
14 to harmonize regional electric grid planning with
15 planning in adjacent or overlapping jurisdictions to
16 the maximum extent feasible. The Commission shall
17 work with States, public utilities transmission pro-
18 viders, load-serving entities, transmission operators,
19 and other organizations to resolve any conflict or
20 competition among proposed planning entities in
21 order to build consensus and promote the Federal
22 policy established under subsection (a). The Com-
23 mission shall seek to ensure that planning that is
24 consistent with the national electricity grid planning
25 principles adopted pursuant to paragraph (1) is con-

1 ducted in all regions of the United States and the
2 territories.

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

6 “(A) incorporate any ongoing planning ef-
7 forts undertaken pursuant to section 217; and

8 “(B) consult with and invite the participa-
9 tion of the Secretary of Energy in relationship
10 to the Secretary’s duties pursuant to section
11 216.

12 “(5) ASSISTANCE.—

13 “(A) IN GENERAL.—The Commission shall
14 provide support to and participate in the re-
15 gional grid planning processes conducted by re-
16 gional planning entities. The Commission may
17 provide planning resources and assistance as re-
18 quired or as requested by regional planning en-
19 tities, including system data, cost information,
20 system analysis, technical expertise, modeling
21 support, dispute resolution services, and other
22 assistance to regional planning entities, as ap-
23 propriate.

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

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

9 “(7) SUBMISSION OF PLANS.—The Commission
10 shall require regional planning entities to submit ini-
11 tial regional electric grid plans to the Commission
12 not later than 18 months after the date the Commis-
13 sion promulgates national electricity grid planning
14 principles pursuant to paragraph (1). Regional elec-
15 tric grid plans should, in general, be developed from
16 sub-regional requirements and plans, including plan-
17 ning input reflecting individual utility service areas.
18 Regional plans may then in turn be combined into
19 larger regional plans, up to interconnection-wide and
20 national plans, as appropriate and necessary as de-
21 termined by the Commission. The Commission shall
22 review such plans for consistency with the national
23 grid planning principles and may return a plan to
24 one or more planning entities for further consider-
25 ation, along with the Commission’s own rec-

1 ommendations for resolution of any conflict or for
2 improvement. To the extent practicable, all plans
3 submitted to the Commission shall be public docu-
4 ments and available on the Commission’s website.

5 “(8) MULTI-REGIONAL MEETINGS.—As regional
6 grid plans are submitted to the Commission, the
7 Commission may convene multi-regional meetings to
8 discuss regional grid plan consistency and integra-
9 tion, including requirements for multi-regional
10 projects, and to resolve any conflicts that emerge
11 from such multi-regional projects. The Commission
12 shall provide its recommendations for eliminating
13 any inter-regional conflicts.

14 “(9) REPORT TO CONGRESS.—Not later than 3
15 years after the date of enactment of this section, the
16 Commission shall provide a report to Congress con-
17 taining the results of the regional grid planning
18 process, including summaries of the adopted regional
19 plans. The Commission shall provide an electronic
20 version of its report on its website with links to all
21 regional and sub-regional plans taken into account.
22 The Commission shall note and provide its rec-
23 ommended resolution for any conflicts not resolved
24 during the planning process. The Commission shall
25 make any recommendations to Congress on the ap-

1 appropriate Federal role or support required to ad-
2 dress the needs of the electric grid, including rec-
3 ommendations for addressing any needs that are be-
4 yond the reach of existing State and Federal author-
5 ity.”.

6 **Subtitle G—Technical Corrections** 7 **to Energy Laws**

8 **SEC. 161. TECHNICAL CORRECTIONS TO ENERGY INDE-** 9 **PENDENCE AND SECURITY ACT OF 2007.**

10 (a) TITLE III—ENERGY SAVINGS THROUGH IM-
11 PROVED STANDARDS FOR APPLIANCE AND LIGHTING.—

12 (1) Section 325(u) of the Energy Policy and Conservation
13 Act (42 U.S.C. 6295(u)) (as amended by section 301(c)
14 of the Energy Independence and Security Act of 2007
15 (121 Stat. 1550)) is amended—

16 (A) by redesignating paragraph (7) as
17 paragraph (4); and

18 (B) in paragraph (4) (as so redesignated),
19 by striking “supplies is” and inserting “supply
20 is”.

21 (2) Section 302 of the Energy Independence and Se-
22 curity Act of 2007 (121 Stat. 1551)) is amended—

23 (A) in subsection (a), by striking “end of the
24 paragraph” and inserting “end of subparagraph
25 (A)”;

1 (B) in subsection (b), by striking “6313(a)”
2 and inserting “6314(a)”.

3 (3) Section 343(a)(1) of the Energy Policy and Con-
4 servation Act (42 U.S.C. 6313(a)(1)) (as amended by sec-
5 tion 302(b) of the Energy Independence and Security Act
6 of 2007 (121 Stat. 1551)) is amended—

7 (A) by striking “TEST PROCEDURES” and all
8 that follows through “At least once” and inserting
9 “TEST PROCEDURES.—At least once”; and

10 (B) by redesignating clauses (i) and (ii) as sub-
11 paragraphs (A) and (B), respectively.

12 (4) Section 342(a)(6) of the Energy Policy and Con-
13 servation Act (42 U.S.C. 6313(a)(6)) (as amended by sec-
14 tion 305(b)(2) of the Energy Independence and Security
15 Act of 2007 (121 Stat. 1554)) is amended—

16 (A) in subparagraph (B)—

17 (i) by striking “If the Secretary” and in-
18 serting the following:

19 “(i) IN GENERAL.—If the Secretary”;

20 (ii) by striking “clause (ii)(II)” and insert-
21 ing “subparagraph (A)(ii)(II)”;

22 (iii) by striking “clause (i)” and inserting
23 “subparagraph (A)(i)”;

24 (iv) by adding at the end the following:

1 “(ii) FACTORS.—In determining
2 whether a standard is economically justi-
3 fied for the purposes of subparagraph
4 (A)(ii)(II), the Secretary shall, after receiv-
5 ing views and comments furnished with re-
6 spect to the proposed standard, determine
7 whether the benefits of the standard ex-
8 ceed the burden of the proposed standard
9 by, to the maximum extent practicable,
10 considering—

11 “(I) the economic impact of the
12 standard on the manufacturers and
13 on the consumers of the products sub-
14 ject to the standard;

15 “(II) the savings in operating
16 costs throughout the estimated aver-
17 age life of the product in the type (or
18 class) compared to any increase in the
19 price of, or in the initial charges for,
20 or maintenance expenses of, the prod-
21 ucts that are likely to result from the
22 imposition of the standard;

23 “(III) the total projected quan-
24 tity of energy savings likely to result

1 directly from the imposition of the
2 standard;

3 “(IV) any lessening of the utility
4 or the performance of the products
5 likely to result from the imposition of
6 the standard;

7 “(V) the impact of any lessening
8 of competition, as determined in writ-
9 ing by the Attorney General, that is
10 likely to result from the imposition of
11 the standard;

12 “(VI) the need for national en-
13 ergy conservation; and

14 “(VII) other factors the Sec-
15 retary considers relevant.

16 “(iii) ADMINISTRATION.—

17 “(I) ENERGY USE AND EFFI-
18 CIENCY.—The Secretary may not pre-
19 scribe any amended standard under
20 this paragraph that increases the
21 maximum allowable energy use, or de-
22 creases the minimum required energy
23 efficiency, of a covered product.

24 “(II) UNAVAILABILITY.—

1 “(aa) IN GENERAL.—The
2 Secretary may not prescribe an
3 amended standard under this
4 subparagraph if the Secretary
5 finds (and publishes the finding)
6 that interested persons have es-
7 tablished by a preponderance of
8 the evidence that a standard is
9 likely to result in the unavail-
10 ability in the United States in
11 any product type (or class) of
12 performance characteristics (in-
13 cluding reliability, features, sizes,
14 capacities, and volumes) that are
15 substantially the same as those
16 generally available in the United
17 States at the time of the finding
18 of the Secretary.

19 “(bb) OTHER TYPES OR
20 CLASSES.—The failure of some
21 types (or classes) to meet the cri-
22 terion established under this sub-
23 clause shall not affect the deter-
24 mination of the Secretary on
25 whether to prescribe a standard

1 for the other types or classes.”;

2 and

3 (B) in subparagraph (C)(iv), by striking “An
4 amendment prescribed under this subsection” and
5 inserting “Notwithstanding subparagraph (D), an
6 amendment prescribed under this subparagraph”.

7 (5) Section 306(c) of the Energy Independence and
8 Security Act of 2007 (121 Stat. 1559) is amended—

9 (A) by striking “Section” and all that follows
10 through “is amended” and inserting “Section
11 342(a)(6)(C) of the Energy Policy and Conservation
12 Act (42 U.S.C. 6313(a)(6)(C)) (as amended by sec-
13 tion 305(b)(2)) is amended”;

14 (B)(i) by redesignating clause (iii) of section
15 342(a)(6)(B) of the Energy Policy and Conservation
16 Act (as added by section 306(c) of the Energy Inde-
17 pendence and Security Act of 2007) as clause (vi) of
18 section 342(a)(6)(C) of the Energy Policy and Con-
19 servation Act (as amended by section 305(b)(2) of
20 the Energy Independence and Security Act of 2007).

21 (6) Section 340 of the Energy Policy and Conserva-
22 tion Act (42 U.S.C. 6311) (as amended by sections
23 312(a)(2) and 314(a) of the Energy Independence and Se-
24 curity Act of 2007 (121 Stat. 1564, 1569) is amended
25 by redesignating paragraphs (22) and (23) (as added by

1 section 314(a) of that Act) as paragraphs (23) and (24),
2 respectively.

3 (7) Section 345 of the Energy Policy and Conserva-
4 tion Act (42 U.S.C. 6316) (as amended by section 312(e)
5 of the Energy Independence and Security Act of 2007
6 (121 Stat. 1567)) is amended—

7 (A) by striking “subparagraphs (B) through
8 (G)” each place it appears and inserting “subpara-
9 graphs (B), (C), (D), (I), (J), and (K)”;

10 (B) by striking “part A” each place it appears
11 and inserting “part B”; and

12 (C) in subsection (h)(3), by striking “section
13 342(f)(3)” and inserting “section 342(f)(4)”.

14 (8) Section 340(13) of the Energy Policy and Con-
15 servation Act (42 U.S.C. 6311(13)) (as amended by sec-
16 tion 313(a) of the Energy Independence and Security Act
17 of 2007 (121 Stat. 1568)) is amended—

18 (A) by striking subparagraphs (A) and (B) and
19 inserting the following:

20 “(A) IN GENERAL.—The term ‘electric
21 motor’ means any motor that is—

22 “(i) a general purpose T-frame, sin-
23 gle-speed, foot-mounting, polyphase squir-
24 rel-cage induction motor of the National
25 Electrical Manufacturers Association, De-

1 sign A and B, continuous rated, operating
2 on 230/460 volts and constant 60 Hertz
3 line power as defined in NEMA Standards
4 Publication MG1-1987; or

5 “(ii) a motor incorporating the design
6 elements described in clause (i), but is con-
7 figured to incorporate one or more of the
8 following variations—

9 “(I) U-frame motor;

10 “(II) NEMA Design C motor;

11 “(III) close-coupled pump motor;

12 “(IV) footless motor;

13 “(V) vertical solid shaft normal
14 thrust motor (as tested in a horizontal
15 configuration);

16 “(VI) 8-pole motor; or

17 “(VII) poly-phase motor with a
18 voltage rating of not more than 600
19 volts (other than 230 volts or 460
20 volts, or both, or can be operated on
21 230 volts or 460 volts, or both).”; and

22 (B) by redesignating subparagraphs (C)
23 through (I) as subparagraphs (B) through (H), re-
24 spectively.

1 (9)(A) Section 342(b) of the Energy Policy and Con-
2 servation Act (42 U.S.C. 6313(b)) is amended—

3 (i) in paragraph (1), by striking “paragraph (2)” and
4 inserting “paragraph (3)”;

5 (ii) by redesignating paragraphs (2) and (3) as para-
6 graphs (3) and (4);

7 (iii) by inserting after paragraph (1) the following:

8 “(2) STANDARDS EFFECTIVE BEGINNING DE-
9 CEMBER 19, 2010.—

10 “(A) IN GENERAL.—Except for definite
11 purpose motors, special purpose motors, and
12 those motors exempted by the Secretary under
13 paragraph (3) and except as provided for in
14 subparagraphs (B), (C), and (D), each electric
15 motor manufactured with power ratings from 1
16 to 200 horsepower (alone or as a component of
17 another piece of equipment) on or after Decem-
18 ber 19, 2010, shall have a nominal full load ef-
19 ficiency of not less than the nominal full load
20 efficiency described in NEMA MG-1 (2006)
21 Table 12-12.

22 “(B) FIRE PUMP ELECTRIC MOTORS.—Ex-
23 cept for those motors exempted by the Sec-
24 retary under paragraph (3), each fire pump
25 electric motor manufactured with power ratings

1 from 1 to 200 horsepower (alone or as a compo-
2 nent of another piece of equipment) on or after
3 December 19, 2010, shall have a nominal full
4 load efficiency that is not less than the nominal
5 full load efficiency described in NEMA MG-1
6 (2006) Table 12-11.

7 “(C) NEMA DESIGN B ELECTRIC MO-
8 TORS.—Except for those motors exempted by
9 the Secretary under paragraph (3), each
10 NEMA Design B electric motor with power rat-
11 ings of more than 200 horsepower, but not
12 greater than 500 horsepower, manufactured
13 (alone or as a component of another piece of
14 equipment) on or after December 19, 2010,
15 shall have a nominal full load efficiency of not
16 less than the nominal full load efficiency de-
17 scribed in NEMA MG-1 (2006) Table 12-11.

18 “(D) MOTORS INCORPORATING CERTAIN
19 DESIGN ELEMENTS.—Except for those motors
20 exempted by the Secretary under paragraph
21 (3), each electric motor described in section
22 340(13)(A)(ii) manufactured with power rat-
23 ings from 1 to 200 horsepower (alone or as a
24 component of another piece of equipment) on or
25 after December 19, 2010, shall have a nominal

1 full load efficiency of not less than the nominal
2 full load efficiency described in NEMA MG-1
3 (2006) Table 12-11.”; and

4 (iv) in paragraph (3) (as redesignated by clause (ii)),
5 by striking “paragraph (1)” each place it appears in sub-
6 paragraphs (A) and (D) and inserting “paragraphs (1)
7 and (2)”.

8 (B) Section 313 of the Energy Independence and Se-
9 curity Act of 2007 (121 Stat. 1568) is repealed.

10 (C) The amendments made by—

11 (i) subparagraph (A) take effect on December
12 19, 2010; and

13 (ii) subparagraph (B) take effect on December
14 19, 2007.

15 (10) Section 321(30)(D)(i)(III) of the Energy Policy
16 and Conservation Act (42 U.S.C. 6291(30)(D)(i)(III)) (as
17 amended by section 321(a)(1)(A) of the Energy Independ-
18 ence and Security Act of 2007 (121 Stat. 1574)) is
19 amended by inserting before the semicolon the following:
20 “or, in the case of a modified spectrum lamp, not less than
21 232 lumens and not more than 1,950 lumens”.

22 (11) Section 321(30)(T) of the Energy Policy and
23 Conservation Act (42 U.S.C. 6291(30)(T)) (as amended by
24 section 321(a)(1)(B) of the Energy Independence and Se-
25 curity Act of 2007 (121 Stat. 1574)) is amended—

1 (A) in clause (i)—

2 (i) by striking the comma after “household
3 appliance” and inserting “and”; and

4 (ii) by striking “and is sold at retail,”; and

5 (B) in clause (ii), by inserting “when sold at re-
6 tail,” before “is designated”.

7 (12) Section 325 of the Energy Policy and Conserva-
8 tion Act (42 U.S.C. 6295) (as amended by sections
9 321(a)(3)(A) and 322(b) of the Energy Independence and
10 Security Act of 2007 (121 Stat. 1577, 1588)) is amended
11 by striking subsection (i) and inserting the following:

12 “(i) GENERAL SERVICE FLUORESCENT LAMPS, GEN-
13 ERAL SERVICE INCANDESCENT LAMPS, INTERMEDIATE
14 BASE INCANDESCENT LAMPS, CANDELABRA BASE INCAN-
15 DESCENT LAMPS, AND INCANDESCENT REFLECTOR
16 LAMPS.—

17 “(1) ENERGY EFFICIENCY STANDARDS.—

18 “(A) IN GENERAL.—Each of the following
19 general service fluorescent lamps, general serv-
20 ice incandescent lamps, intermediate base in-
21 candescent lamps, candelabra base incandescent
22 lamps, and incandescent reflector lamps manu-
23 factured after the effective date specified in the
24 tables listed in this subparagraph shall meet or

1 exceed the following lamp efficacy, new max-
 2 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

3 “(B) APPLICATION.—

1 “(i) APPLICATION CRITERIA.—This
2 subparagraph applies to each lamp that—

3 “(I) is intended for a general
4 service or general illumination applica-
5 tion (whether incandescent or not);

6 “(II) has a medium screw base
7 or any other screw base not defined in
8 ANSI C81.61–2006;

9 “(III) is capable of being oper-
10 ated at a voltage at least partially
11 within the range of 110 to 130 volts;
12 and

13 “(IV) is manufactured or im-
14 ported after December 31, 2011.

15 “(ii) REQUIREMENT.—For purposes
16 of this paragraph, each lamp described in
17 clause (i) shall have a color rendering
18 index that is greater than or equal to—

19 “(I) 80 for nonmodified spectrum
20 lamps; or

21 “(II) 75 for modified spectrum
22 lamps.

23 “(C) CANDELABRA INCANDESCENT LAMPS
24 AND INTERMEDIATE BASE INCANDESCENT
25 LAMPS.—

1 “(i) CANDELABRA BASE INCANDES-
2 CENT LAMPS.—Effective beginning Janu-
3 ary 1, 2012, a candelabra base incandes-
4 cent lamp shall not exceed 60 rated watts.

5 “(ii) INTERMEDIATE BASE INCANDES-
6 CENT LAMPS.—Effective beginning Janu-
7 ary 1, 2012, an intermediate base incan-
8 descent lamp shall not exceed 40 rated
9 watts.

10 “(D) EXEMPTIONS.—

11 “(i) STATUTORY EXEMPTIONS.—The
12 standards specified in subparagraph (A)
13 shall not apply to the following types of in-
14 candescent reflector lamps:

15 “(I) Lamps rated at 50 watts or
16 less that are ER30, BR30, BR40, or
17 ER40 lamps.

18 “(II) Lamps rated at 65 watts
19 that are BR30, BR40, or ER40
20 lamps.

21 “(III) R20 incandescent reflector
22 lamps rated 45 watts or less.

23 “(ii) ADMINISTRATIVE EXEMP-
24 TIONS.—

1 “(I) PETITION.—Any person may
2 petition the Secretary for an exemp-
3 tion for a type of general service lamp
4 from the requirements of this sub-
5 section.

6 “(II) CRITERIA.—The Secretary
7 may grant an exemption under sub-
8 clause (I) only to the extent that the
9 Secretary finds, after a hearing and
10 opportunity for public comment, that
11 it is not technically feasible to serve a
12 specialized lighting application (such
13 as a military, medical, public safety,
14 or certified historic lighting applica-
15 tion) using a lamp that meets the re-
16 quirements of this subsection.

17 “(III) ADDITIONAL CRITERION.—
18 To grant an exemption for a product
19 under this clause , the Secretary shall
20 include, as an additional criterion,
21 that the exempted product is unlikely
22 to be used in a general service lighting
23 application.

24 “(E) EXTENSION OF COVERAGE.—

1 “(i) PETITION.—Any person may peti-
2 tion the Secretary to establish standards
3 for lamp shapes or bases that are excluded
4 from the definition of general service
5 lamps.

6 “(ii) INCREASED SALES OF EXEMPT-
7 ED LAMPS.—The petition shall include evi-
8 dence that the availability or sales of ex-
9 empted incandescent lamps have increased
10 significantly since the date on which the
11 standards on general service incandescent
12 lamps were established.

13 “(iii) CRITERIA.—The Secretary shall
14 grant a petition under clause (i) if the Sec-
15 retary finds that—

16 “(I) the petition presents evi-
17 dence that demonstrates that commer-
18 cial availability or sales of exempted
19 incandescent lamp types have in-
20 creased significantly since the stand-
21 ards on general service lamps were es-
22 tablished and likely are being widely
23 used in general lighting applications;
24 and

1 “(II) significant energy savings
2 could be achieved by covering exempt-
3 ed products, as determined by the
4 Secretary based in part on sales data
5 provided to the Secretary from manu-
6 facturers and importers.

7 “(iv) NO PRESUMPTION.—The grant
8 of a petition under this subparagraph shall
9 create no presumption with respect to the
10 determination of the Secretary with respect
11 to any criteria under a rulemaking con-
12 ducted under this section.

13 “(v) EXPEDITED PROCEEDING.—If
14 the Secretary grants a petition for a lamp
15 shape or base under this subparagraph,
16 the Secretary shall—

17 “(I) conduct a rulemaking to de-
18 termine standards for the exempted
19 lamp shape or base; and

20 “(II) complete the rulemaking
21 not later than 18 months after the
22 date on which notice is provided
23 granting the petition.

24 “(F) EFFECTIVE DATES.—

1 “(i) IN GENERAL.—In this paragraph,
2 except as otherwise provided in a table
3 contained in subparagraph (A) or in clause
4 (ii), the term ‘effective date’ means the last
5 day of the month specified in the table
6 that follows October 24, 1992.

7 “(ii) SPECIAL EFFECTIVE DATES.—

8 “(I) ER, BR, AND BPAR
9 LAMPS.—The standards specified in
10 subparagraph (A) shall apply with re-
11 spect to ER incandescent reflector
12 lamps, BR incandescent reflector
13 lamps, BPAR incandescent reflector
14 lamps, and similar bulb shapes on and
15 after January 1, 2008, or the date
16 that is 180 days after the date of en-
17 actment of the Energy Independence
18 and Security Act of 2007.

19 “(II) LAMPS BETWEEN 2.25–2.75
20 INCHES IN DIAMETER.—The stand-
21 ards specified in subparagraph (A)
22 shall apply with respect to incandes-
23 cent reflector lamps with a diameter
24 of more than 2.25 inches, but not
25 more than 2.75 inches, on and after

1 the later of January 1, 2008, or the
2 date that is 180 days after the date of
3 enactment of the Energy Independ-
4 ence and Security Act of 2007.

5 “(2) COMPLIANCE WITH EXISTING LAW.—Not-
6 withstanding section 332(a)(5) and section 332(b),
7 it shall not be unlawful for a manufacturer to sell
8 a lamp that is in compliance with the law at the
9 time the lamp was manufactured.

10 “(3) RULEMAKING BEFORE OCTOBER 24,
11 1995.—

12 “(A) IN GENERAL.—Not later than 36
13 months after October 24, 1992, the Secretary
14 shall initiate a rulemaking procedure and shall
15 publish a final rule not later than the end of
16 the 54-month period beginning on October 24,
17 1992, to determine whether the standards es-
18 tablished under paragraph (1) should be
19 amended.

20 “(B) ADMINISTRATION.—The rule shall
21 contain the amendment, if any, and provide
22 that the amendment shall apply to products
23 manufactured on or after the 36-month period
24 beginning on the date on which the final rule is
25 published.

1 “(4) RULEMAKING BEFORE OCTOBER 24,
2 2000.—

3 “(A) IN GENERAL.—Not later than 8 years
4 after October 24, 1992, the Secretary shall ini-
5 tiate a rulemaking procedure and shall publish
6 a final rule not later than 9 years and 6 months
7 after October 24, 1992, to determine whether
8 the standards in effect for fluorescent lamps
9 and incandescent lamps should be amended.

10 “(B) ADMINISTRATION.—The rule shall
11 contain the amendment, if any, and provide
12 that the amendment shall apply to products
13 manufactured on or after the 36-month period
14 beginning on the date on which the final rule is
15 published.

16 “(5) RULEMAKING FOR ADDITIONAL GENERAL
17 SERVICE FLUORESCENT LAMPS.—

18 “(A) IN GENERAL.—Not later than the
19 end of the 24-month period beginning on the
20 date labeling requirements under section
21 324(a)(2)(C) become effective, the Secretary
22 shall—

23 “(i) initiate a rulemaking procedure to
24 determine whether the standards in effect
25 for fluorescent lamps and incandescent

1 lamps should be amended so that the
2 standards would be applicable to additional
3 general service fluorescent lamps; and

4 “(ii) publish, not later than 18
5 months after initiating the rulemaking, a
6 final rule including the amended stand-
7 ards, if any.

8 “(B) ADMINISTRATION.—The rule shall
9 provide that the amendment shall apply to
10 products manufactured after a date which is 36
11 months after the date on which the rule is pub-
12 lished.

13 “(6) STANDARDS FOR GENERAL SERVICE
14 LAMPS.—

15 “(A) RULEMAKING BEFORE JANUARY 1,
16 2014.—

17 “(i) IN GENERAL.—Not later than
18 January 1, 2014, the Secretary shall ini-
19 tiate a rulemaking procedure to determine
20 whether—

21 “(I) standards in effect for gen-
22 eral service lamps should be amended;
23 and

24 “(II) the exclusions for certain
25 incandescent lamps should be main-

1 tained or discontinued based, in part,
2 on excluded lamp sales collected by
3 the Secretary from manufacturers.

4 “(ii) SCOPE.—The rulemaking—

5 “(I) shall not be limited to incan-
6 descent lamp technologies; and

7 “(II) shall include consideration
8 of a minimum standard of 45 lumens
9 per watt for general service lamps.

10 “(iii) AMENDED STANDARDS.—If the
11 Secretary determines that the standards in
12 effect for general service lamps should be
13 amended, the Secretary shall publish a
14 final rule not later than January 1, 2017,
15 with an effective date that is not earlier
16 than 3 years after the date on which the
17 final rule is published.

18 “(iv) PHASED-IN EFFECTIVE
19 DATES.—The Secretary shall consider
20 phased-in effective dates under this sub-
21 paragraph after considering—

22 “(I) the impact of any amend-
23 ment on manufacturers, retiring and
24 repurposing existing equipment,

1 stranded investments, labor contracts,
2 workers, and raw materials; and

3 “(II) the time needed to work
4 with retailers and lighting designers
5 to revise sales and marketing strate-
6 gies.

7 “(v) BACKSTOP REQUIREMENT.—If
8 the Secretary fails to complete a rule-
9 making in accordance with clauses (i)
10 through (iv) or if the final rule does not
11 produce savings that are greater than or
12 equal to the savings from a minimum effi-
13 cacy standard of 45 lumens per watt, effec-
14 tive beginning January 1, 2020, the Sec-
15 retary shall prohibit the manufacture of
16 any general service lamp that does not
17 meet a minimum efficacy standard of 45
18 lumens per watt.

19 “(vi) STATE PREEMPTION.—Neither
20 section 327(c) nor any other provision of
21 law shall preclude California or Nevada
22 from adopting, effective beginning on or
23 after January 1, 2018—

1 “(I) a final rule adopted by the
2 Secretary in accordance with clauses
3 (i) through (iv);

4 “(II) if a final rule described in
5 subclause (I) has not been adopted,
6 the backstop requirement under
7 clause (v); or

8 “(III) in the case of California, if
9 a final rule described in subclause (I)
10 has not been adopted, any California
11 regulations relating to these covered
12 products adopted pursuant to State
13 statute in effect as of the date of en-
14 actment of the Energy Independence
15 and Security Act of 2007.

16 “(B) RULEMAKING BEFORE JANUARY 1,
17 2020.—

18 “(i) IN GENERAL.—Not later than
19 January 1, 2020, the Secretary shall ini-
20 tiate a rulemaking procedure to determine
21 whether—

22 “(I) standards in effect for gen-
23 eral service lamps should be amended;
24 and

1 “(II) the exclusions for certain
2 incandescent lamps should be main-
3 tained or discontinued based, in part,
4 on excluded lamp sales data collected
5 by the Secretary from manufacturers.

6 “(ii) SCOPE.—The rulemaking shall
7 not be limited to incandescent lamp tech-
8 nologies.

9 “(iii) AMENDED STANDARDS.—If the
10 Secretary determines that the standards in
11 effect for general service lamps should be
12 amended, the Secretary shall publish a
13 final rule not later than January 1, 2022,
14 with an effective date that is not earlier
15 than 3 years after the date on which the
16 final rule is published.

17 “(iv) PHASED-IN EFFECTIVE
18 DATES.—The Secretary shall consider
19 phased-in effective dates under this sub-
20 paragraph after considering—

21 “(I) the impact of any amend-
22 ment on manufacturers, retiring and
23 repurposing existing equipment,
24 stranded investments, labor contracts,
25 workers, and raw materials; and

1 “(II) the time needed to work
2 with retailers and lighting designers
3 to revise sales and marketing strate-
4 gies.

5 “(7) FEDERAL ACTIONS.—

6 “(A) COMMENTS OF SECRETARY.—

7 “(i) IN GENERAL.—With respect to
8 any lamp to which standards are applicable
9 under this subsection or any lamp specified
10 in section 346, the Secretary shall inform
11 any Federal entity proposing actions that
12 would adversely impact the energy con-
13 sumption or energy efficiency of the lamp
14 of the energy conservation consequences of
15 the action.

16 “(ii) CONSIDERATION.—The Federal
17 entity shall carefully consider the com-
18 ments of the Secretary.

19 “(B) AMENDMENT OF STANDARDS.—Not-
20 withstanding section 325(n)(1), the Secretary
21 shall not be prohibited from amending any
22 standard, by rule, to permit increased energy
23 use or to decrease the minimum required en-
24 ergy efficiency of any lamp to which standards
25 are applicable under this subsection if the ac-

1 tion is warranted as a result of other Federal
2 action (including restrictions on materials or
3 processes) that would have the effect of either
4 increasing the energy use or decreasing the en-
5 ergy efficiency of the product.

6 “(8) COMPLIANCE.—

7 “(A) IN GENERAL.—Not later than the
8 date on which standards established pursuant
9 to this subsection become effective, or, with re-
10 spect to high-intensity discharge lamps covered
11 under section 346, the effective date of stand-
12 ards established pursuant to that section, each
13 manufacturer of a product to which the stand-
14 ards are applicable shall file with the Secretary
15 a laboratory report certifying compliance with
16 the applicable standard for each lamp type.

17 “(B) CONTENTS.—The report shall include
18 the lumen output and wattage consumption for
19 each lamp type as an average of measurements
20 taken over the preceding 12-month period.

21 “(C) OTHER LAMP TYPES.—With respect
22 to lamp types that are not manufactured during
23 the 12-month period preceding the date on
24 which the standards become effective, the re-
25 port shall—

1 “(i) be filed with the Secretary not
2 later than the date that is 12 months after
3 the date on which manufacturing is com-
4 menced; and

5 “(ii) include the lumen output and
6 wattage consumption for each such lamp
7 type as an average of measurements taken
8 during the 12-month period.”.

9 (13) Section 325(l)(4)(A) of the Energy Policy and
10 Conservation Act (42 U.S.C. 6295(l)(4)(A)) (as amended
11 by section 321(a)(3)(B) of the Energy Independence and
12 Security Act of 2007 (121 Stat. 1581)) is amended by
13 striking “only”.

14 (14) Section 327(b)(1)(B) of the Energy Policy and
15 Conservation Act (42 U.S.C. 6297(b)(1)(B)) (as amended
16 by section 321(d)(3) of the Energy Independence and Se-
17 curity Act of 2007 (121 Stat. 1585)) is amended—

18 (A) in clause (i), by inserting “and” after the
19 semicolon at the end;

20 (B) in clause (ii), by striking “; and” and in-
21 serting a period; and

22 (C) by striking clause (iii).

23 (15) Section 321(e) of the Energy Independence and
24 Security Act of 2007 (121 Stat. 1586) is amended—

1 (A) in the matter preceding paragraph (1), by
2 striking “is amended” and inserting “(as amended
3 by section 306(b)) is amended”; and

4 (B) by striking paragraphs (1) and (2) and in-
5 serting the following:

6 “(1) in paragraph (5), by striking ‘or’ after the
7 semicolon at the end;

8 “(2) in paragraph (6), by striking the period at
9 the end and inserting ‘; or’; and”.

10 (16) Section 332(a) of the Energy Policy and Con-
11 servation Act (42 U.S.C. 6302(a)) (as amended by section
12 321(e) of the Energy Independence and Security Act of
13 2007 (121 Stat. 1586)) is amended by redesignating the
14 second paragraph (6) as paragraph (7).

15 (17) Section 321(30)(C)(ii) of the Energy Policy and
16 Conservation Act (42 U.S.C. 6291(30)(C)(ii)) (as amend-
17 ed by section 322(a)(1)(B) of the Energy Independence
18 and Security Act of 2007 (121 Stat. 1587)) is amended
19 by inserting a period after “40 watts or higher”.

20 (18) Section 322(b) of the Energy Independence and
21 Security Act of 2007 (121 Stat. 1588)) is amended by
22 striking “6995(i)” and inserting “6295(i)”.

23 (19) Section 327(c) of the Energy Policy and Con-
24 servation Act (42 U.S.C. 6297(c)) (as amended by sec-

1 tions 324(f) of the Energy Independence and Security Act
2 of 2007 (121 Stat. 1594)) is amended—

3 (A) in paragraph (6), by striking “or” after the
4 semicolon at the end;

5 (B) in paragraph (8)(B), by striking “and”
6 after the semicolon at the end;

7 (C) in paragraph (9)—

8 (i) by striking “except that—” and all that
9 follows through “if the Secretary fails to issue”
10 and inserting “except that if the Secretary fails
11 to issue”;

12 (ii) by redesignating clauses (i) and (ii) as
13 subparagraphs (A) and (B), respectively; and

14 (iii) by striking the period at the end and
15 inserting a semicolon; and

16 (D) by adding at the end the following:

17 “(10) is a regulation for general service lamps
18 that conforms with Federal standards and effective
19 dates;

20 “(11) is an energy efficiency standard for gen-
21 eral service lamps enacted into law by the State of
22 Nevada prior to December 19, 2007, if the State has
23 not adopted the Federal standards and effective
24 dates pursuant to subsection (b)(1)(B)(ii); or”.

1 (20) Section 325(b) of the Energy Independence and
2 Security Act of 2007 (121 Stat. 1596)) is amended by
3 striking “6924(c)” and inserting “6294(c)”.

4 (b) TITLE IV—ENERGY SAVINGS IN BUILDINGS AND
5 INDUSTRY.—(1) Section 401 of the Energy Independence
6 and Security Act of 2007 (42 U.S.C. 17061) is amend-
7 ed—

8 (A) in paragraph (2), by striking “484” and in-
9 sserting “494”; and

10 (B) in paragraph (13), by striking “Agency”
11 and inserting “Administration”.

12 (2) Section 422 of the Energy Conservation and Pro-
13 duction Act (42 U.S.C. 6872) (as amended by section
14 411(a) of the Energy Independence and Security Act of
15 2007 (121 Stat. 1600)) is amended by striking 1 of the
16 2 periods at the end of paragraph (5).

17 (3) Section 543 of the National Energy Conservation
18 Policy Act (42 U.S.C. 8253) (as amended by sections 432
19 and 434(a) of the Energy Independence and Security Act
20 of 2007 (121 Stat. 1607, 1614) is amended by redesignig-
21 nating subsection (f) (as added by section 434(a) of that
22 Act) as subsection (g).

23 (4) Section 305(a)(3)(D)(i) of the Energy Conserva-
24 tion and Production Act (42 U.S.C. 6834(a)(3)(D)(i)) (as

1 amended by section 433(a) of the Energy Independence
2 and Security Act of 2007 (121 Stat. 1612)) is amended—

3 (A) in subclause (I)—

4 (i) by striking “in fiscal year 2003 (as
5 measured by Commercial Buildings Energy
6 Consumption Survey or Residential Energy
7 Consumption Survey data from the Energy In-
8 formation Agency” and inserting “as measured
9 by the calendar year 2003 Commercial Build-
10 ings Energy Consumption Survey or the cal-
11 endar year 2005 Residential Energy Consump-
12 tion Survey data from the Energy Information
13 Administration”; and

14 (ii) in the table at the end, by striking
15 “Fiscal Year” and inserting “Calendar Year”;
16 and

17 (B) in subclause (II)—

18 (i) by striking “(II) Upon petition” and in-
19 serting the following:

20 “(II) DOWNWARD ADJUSTMENT
21 OF NUMERIC REQUIREMENT.—

22 “(aa) IN GENERAL.—On pe-
23 tition”; and

24 (ii) by striking the last sentence and in-
25 serting the following:

1 “(bb) EXCEPTIONS TO RE-
2 QUIREMENT FOR CONCURRENCE
3 OF SECRETARY.—

4 “(AA) IN GENERAL.—
5 The requirement to petition
6 and obtain the concurrence
7 of the Secretary under this
8 subclause shall not apply to
9 any Federal building with
10 respect to which the Admin-
11 istrator of General Services
12 is required to transmit a
13 prospectus to Congress
14 under section 3307 of title
15 40, United States Code, or
16 to any other Federal build-
17 ing designed, constructed, or
18 renovated by the Adminis-
19 trator if the Administrator
20 certifies, in writing, that
21 meeting the applicable nu-
22 meric requirement under
23 subclause (I) with respect to
24 the Federal building would
25 be technically impracticable

1 in light of the specific func-
2 tional needs for the building.

3 “(BB) ADJUSTMENT.—
4 In the case of a building de-
5 scribed in subitem (AA), the
6 Administrator may adjust
7 the applicable numeric re-
8 quirement of subclause (I)
9 downward with respect to
10 the building.”.

11 (5) Section 436(c)(3) of the Energy Independence
12 and Security Act of 2007 (42 U.S.C. 17092(c)(3)) is
13 amended by striking “474” and inserting “494”.

14 (6) Section 440 of the Energy Independence and Se-
15 curity Act of 2007 (42 U.S.C. 17096) is amended by strik-
16 ing “and 482”.

17 (7) Section 373(c) of the Energy Policy and Con-
18 servation Act (42 U.S.C. 6343(c)) (as amended by section
19 451(a) of the Energy Independence and Security Act of
20 2007 (121 Stat. 1628)) is amended by striking “Adminis-
21 trator” and inserting “Secretary”.

22 (c) TITLE V—ENERGY SAVINGS IN GOVERNMENT
23 AND PUBLIC INSTITUTIONS.—Section 541(3)(A)(i)(II) of
24 the Energy Independence and Security Act of 2007 (42

1 U.S.C. 17151(3)(A)(i)(II)) is amended by striking “and”
2 after the semicolon at the end and inserting “or”.

3 (d) DATE OF ENACTMENT.—Section 1302 of the En-
4 ergy Independence and Security Act of 2007 (42 U.S.C.
5 17382) is amended in the first sentence by striking “en-
6 actment” and inserting “the date of enactment of this
7 Act”.

8 (e) REFERENCE.—Section 1306(c)(3) of the Energy
9 Independence and Security Act of 2007 (42 U.S.C.
10 17386(c)(3)) is amended by striking “section 1307 (para-
11 graph (17) of section 111(d) of the Public Utility Regu-
12 latory Policies Act of 1978)” and inserting “paragraph
13 (19) of section 111(d) of the Public Utility Regulatory
14 Policies Act of 1978 (16 U.S.C. 2621(d))”.

15 (f) EFFECTIVE DATE.—This section and the amend-
16 ments made by this section take effect as if included in
17 the Energy Independence and Security Act of 2007 (Pub-
18 lic Law 110–140; 121 Stat. 1492).

19 **SEC. 162. TECHNICAL CORRECTIONS TO ENERGY POLICY**
20 **ACT OF 2005.**

21 (a) TITLE I—ENERGY EFFICIENCY.—Section
22 325(g)(8)(C)(ii) of the Energy Policy and Conservation
23 Act (42 U.S.C. 6295(g)(8)(C)(ii)) (as added by section
24 135(e)(2)(B) of the Energy Policy Act of 2005) is amend-
25 ed by striking “20°F” and inserting “–20°F”.

1 (b) EFFECTIVE DATE.—This section and the amend-
2 ments made by this section take effect as if included in
3 the Energy Policy Act of 2005 (Public Law 109–58; 119
4 Stat. 594).

5 **Subtitle H—Clean Energy**
6 **Innovation Centers**

7 **SEC. 171. CLEAN ENERGY INNOVATION CENTERS.**

8 (a) PURPOSE.—The Secretary shall carry out a pro-
9 gram to establish Clean Energy Innovation Centers to en-
10 hance the Nation’s economic, environmental, and energy
11 security by promoting commercial deployment of clean, in-
12 digenous energy alternatives to oil and other fossil fuels,
13 reducing greenhouse gas emissions, and ensuring that the
14 United States maintains a technological lead in developing
15 and deploying state-of-the-art energy technologies. To
16 achieve these purposes the program shall—

17 (1) leverage the expertise and resources of the
18 university and private research communities, indus-
19 try, venture capital, national laboratories, and other
20 participants in energy innovation to support cross-
21 disciplinary research and development in areas not
22 being served by the private sector in order to develop
23 and transfer innovative clean energy technologies
24 into the marketplace;

1 (2) expand the knowledge base and human cap-
2 ital necessary to transition to a low-carbon economy;
3 and

4 (3) promote regional economic development by
5 cultivating clusters of clean energy technology firms,
6 private research organizations, suppliers, and other
7 complementary groups and businesses.

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

9 (1) ALLOWANCE.—The term “allowance”
10 means an emission allowance established under sec-
11 tion 721 of the Clean Air Act.

12 (2) CENTER.—The term “Center” means a
13 Clean Energy Innovation Center established in ac-
14 cordance with this section.

15 (3) CLEAN ENERGY TECHNOLOGY.—The term
16 “clean energy technology” means a technology
17 that—

18 (A) produces energy from solar, wind, geo-
19 thermal, biomass, tidal, wave, ocean, and other
20 renewable energy resources (as such term is de-
21 fined in section 610 of the Public Utility Regu-
22 latory Policies Act of 1978);

23 (B) more efficiently transmits, distributes,
24 or stores energy;

1 (C) enhances energy efficiency for build-
2 ings and industry, including combined heat and
3 power;

4 (D) enables the development of a Smart
5 Grid (as described in section 1301 of the En-
6 ergy Independence and Security Act of 2007
7 (42 U.S.C. 17381)), including integration of re-
8 newable energy resources and distributed gen-
9 eration, demand response, demand side man-
10 agement, and systems analysis;

11 (E) produces an advanced or sustainable
12 material with energy or energy efficiency appli-
13 cations;

14 (F) enhances water security through im-
15 proved water management, conservation, dis-
16 tribution, and end use applications; or

17 (G) improves energy efficiency for trans-
18 portation, including electric vehicles.

19 (4) CLUSTER.—The term “cluster” means a
20 concentration of firms directly involved in the re-
21 search, development, finance, and commercialization
22 of clean energy technologies whose geographic prox-
23 imity facilitates utilization and sharing of skilled
24 human resources, infrastructure, research facilities,

1 educational and training institutions, venture cap-
2 ital, and input suppliers.

3 (5) PROJECT.—The term “project” means an
4 activity with respect to which a Center provides sup-
5 port under subsection (e).

6 (6) QUALIFYING ENTITY.—The term “quali-
7 fying entity” means each of the following:

8 (A) A research university.

9 (B) A State institution with a focus on the
10 advancement of clean energy technologies.

11 (C) A nongovernmental organization with
12 research or commercialization expertise in clean
13 energy technology development.

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

16 (8) TECHNOLOGY FOCUS.—The term “tech-
17 nology focus” means the unique technology area in
18 which a Center will specialize, and may include solar
19 electricity, fuels from solar energy, batteries and en-
20 ergy storage, electricity grid systems and devices, en-
21 ergy efficient building systems and design, advanced
22 materials, modeling and simulation, and other clean
23 energy technology areas designated by the Secretary.

24 (9) TRANSLATIONAL RESEARCH.—The term
25 “translational research” means clean energy tech-

1 nology research to coordinate basic or applied re-
2 search with technical and commercial applications to
3 enable promising discoveries or inventions to attract
4 investment sufficient for market penetration and dif-
5 fusion.

6 (c) ROLE OF THE SECRETARY.—The Secretary
7 shall—

8 (1) have ultimate responsibility for, and over-
9 sight of, all aspects of the program under this sec-
10 tion;

11 (2) provide for the distribution of allowances to
12 consortia for the establishment of 8 Centers pursu-
13 ant to this section, with each Center designated a
14 unique technology focus area;

15 (3) coordinate the innovation activities of Cen-
16 ters with those occurring through other Department
17 of Energy entities, including the National Labora-
18 tories, the Advanced Research Projects Agency—En-
19 ergy, and Energy Frontier Research Centers, and
20 within industry, and to avoid duplication of research,
21 by annually—

22 (A) issuing guidance regarding national
23 energy research and development priorities and
24 strategic objectives; and

1 (B) convening a conference of staff of the
2 Department of Energy and representatives from
3 such other entities to share research results,
4 program plans, and opportunities for collabora-
5 tion.

6 (d) CONSORTIUM.—A consortium shall be eligible to
7 receive allowances to support the establishment of a Cen-
8 ter under this section if—

9 (1) it is composed of—

10 (A) 2 research universities with a com-
11 bined annual research budget of \$500,000,000;
12 and

13 (B) no fewer than 1 additional qualifying
14 entity;

15 (2) its members have established a binding
16 agreement that documents—

17 (A) the structure of the partnership agree-
18 ment;

19 (B) the governance and management
20 structure to enable cost-effective implementa-
21 tion of the program;

22 (C) an intellectual property management
23 policy;

24 (D) conflicts of interest policy consistent
25 with subsection (e)(4);

1 (E) an accounting structure that meets the
2 requirements of the Department and can be au-
3 dited under subsection (f)(3); and

4 (F) has an Advisory Board consistent with
5 subsection (e)(3);

6 (3) it receives financial contributions from
7 States, consortium participants, or other non-Fed-
8 eral sources, to be used pursuant to subsection
9 (e)(2);

10 (4) it is part of an existing cluster or dem-
11 onstrates high potential to develop a new cluster;
12 and

13 (5) it operates as a nonprofit organization.

14 (e) CLEAN ENERGY INNOVATION CENTERS.—

15 (1) ROLE.—Centers shall provide support to ac-
16 tivities leading to commercial deployment of clean
17 energy technologies pursuant to the purposes of this
18 section through issuance of awards to projects man-
19 aged by qualifying entities and other entities meet-
20 ing the Center's project criteria, including national
21 laboratories. Each Center shall—

22 (A) develop and publish for public review
23 and comment proposed plans, programs, and
24 project selection criteria;

1 (B) submit an annual report to the Sec-
2 retary summarizing the Center's activities, or-
3 ganizational expenditures, and Board members,
4 which shall include a certification of compliance
5 with conflict of interest policies and a descrip-
6 tion of each project in the research portfolio;

7 (C) establish policies—

8 (i) regarding intellectual property de-
9 veloped as a result of Center awards and
10 other forms of technology support that en-
11 courage individual ingenuity and invention
12 while speeding knowledge transfer and fa-
13 cilitating the establishment of rapid com-
14 mercialization pathways;

15 (ii) to prevent resources provided to
16 the Center from being used to displace pri-
17 vate sector investment likely to otherwise
18 occur, including investment from private
19 sector entities which are members of the
20 consortium;

21 (iii) to facilitate the participation of
22 private investment firms or other private
23 entities that invest in clean energy tech-
24 nologies to perform due diligence on award
25 proposals, to participate in the award re-

1 view process, and to provide guidance to
2 projects supported by the Center; and

3 (iv) to facilitate the participation of
4 entrepreneurs with a demonstrated history
5 of commercializing clean energy tech-
6 nologies;

7 (D) oversee project solicitations, review
8 proposed projects, and select projects for
9 awards; and

10 (E) monitor project implementation.

11 (2) USE AND DISTRIBUTION OF AWARDS BY
12 CENTERS.—A Center shall allocate awards and other
13 support for—

14 (A) clean energy technology projects con-
15 ducting translational research and related ac-
16 tivities, at least 40 percent of which shall be
17 utilized for projects related to the Center's tech-
18 nology focus; and

19 (B) administrative expenses, which may
20 constitute no more than 10 percent of the
21 award.

22 (3) ADVISORY BOARDS.—

23 (A) IN GENERAL.—Each Center shall es-
24 tablish an Advisory Board whose members shall
25 have extensive and relevant scientific, technical,

1 industry, financial, or research management ex-
2 pertise. The Advisory Board shall review the
3 Center's proposed plans, programs, project se-
4 lection criteria, and projects and shall ensure
5 that projects selected for awards meet the con-
6 flict of interest policies of the Center. Advisory
7 Board members other than those representing
8 consortium members shall serve for no more
9 than three years and must comply with conflict
10 of interest provisions.

11 (B) MEMBERS.—Each Advisory Board
12 shall consist of—

13 (i) 5 members selected by the consor-
14 tium's research universities;

15 (ii) 2 members selected by the consor-
16 tium's other qualifying entities; and

17 (iii) 2 members selected at large by
18 other Board members to represent the en-
19 trepreneur and venture capital commu-
20 nities.

21 Individuals appointed under clause (iii) shall
22 not be State or Federal employees or affiliated
23 with the consortium's qualified entities.

1 (C) NONVOTING MEMBERS.—The Board
2 shall also include 1 nonvoting member ap-
3 pointed by the Secretary.

4 (D) COMPENSATION.—Members of an Ad-
5 visory Board may receive reimbursement for
6 travel expenses and a reasonable stipend.

7 (4) CONFLICT OF INTEREST.—

8 (A) PROCEDURES.—Centers shall establish
9 procedures to ensure that employees or con-
10 sortia designees for Center activities who are in
11 decisionmaking capacities shall—

12 (i) disclose any financial interests in,
13 or financial relationships with, applicants
14 for or recipients of awards under para-
15 graph (1), including those of his or her
16 spouse or minor child, unless such relation-
17 ships or interests would be considered to
18 be remote or inconsequential; and

19 (ii) recuse himself or herself from any
20 funding decision for projects in which he
21 or she has a personal financial interest.

22 (B) DISQUALIFICATION AND REVOCA-
23 TION.—The Secretary may disqualify an appli-
24 cation or revoke allowances distributed to the
25 Center or awards provided under paragraph

1 (1), if cognizant officials of the Center fail to
2 comply with procedures required under sub-
3 paragraph (A).

4 (f) DISTRIBUTION OF ALLOWANCES TO CLEAN EN-
5 ENERGY INNOVATION CENTERS.—

6 (1) SELECTION AND SCHEDULE.—Allowances to
7 support the establishment of a Center shall be dis-
8 tributed through a competitive process. Not later
9 than 120 days after the date of enactment of this
10 Act, the Secretary shall solicit proposals from eligi-
11 ble consortia to establish Centers, which shall be
12 submitted not later than 180 days after the date of
13 enactment of this Act. The Secretary shall select the
14 program consortia not later than 270 days after the
15 date of enactment of this Act pursuant to subsection
16 (d). The Secretary shall award 3 grants for the es-
17 tablishment of 3 Centers of Excellence to be located
18 on the campus of 1890 Land Grant Institution (as
19 defined in section 2 of the Agricultural Research,
20 Extension, and Education Reform Act of 1998 (7
21 U.S.C. 7061)).

22 (2) TERM AND USE OF ALLOWANCES.—Allow-
23 ances distributed to Centers shall be used to provide
24 awards pursuant to subsection (e)(1). The amount
25 of allowances distributed to support the establish-

1 ment of a Center under this section shall not be less
2 than 10 and not more than 30 percent of the allow-
3 ances allocated under section 782(h) of the Clean
4 Air Act, each year for a 6 year period. Centers shall
5 be eligible to compete for additional allowance dis-
6 tribution after the expiration of the initial period.
7 Centers shall establish award periods for individual
8 awards. The transfer of allowances to a Center shall
9 occur at the start of each calendar year.

10 (3) AUDIT.—Each Center shall conduct an an-
11 nual audit to determine the extent to which allow-
12 ances distributed to the Center, and awards under
13 subsection (e) have been utilized in a manner con-
14 sistent with this section. The auditor shall transmit
15 a report of the results of the audit to the Secretary
16 and to the Government Accountability Office. The
17 Secretary shall include such report in the annual re-
18 port to Congress, along with a plan to remedy any
19 deficiencies cited in the report. The Government Ac-
20 countability Office may review such audits as appro-
21 priate and shall have full access to the books,
22 records, and personnel of the Center to ensure that
23 allowances distributed to the Center, and awards
24 made under subsection (e), have been utilized in a
25 manner consistent with this section.

1 **Subtitle I—Marine Spatial**
2 **Planning**

3 **SEC. 181. STUDY OF OCEAN RENEWABLE ENERGY AND**
4 **TRANSMISSION PLANNING AND SITING.**

5 (a) DEFINITIONS.—In this section:

6 (1) MARINE SPATIAL PLAN.—The term “marine
7 spatial plan” means the analysis and allocation of
8 ocean space for various uses to achieve ecological,
9 economic, and social objectives, based on the prin-
10 ciple of ecosystem-based management.

11 (2) MARINE SPATIAL PLANNING.—The term
12 “marine spatial planning” means the process of de-
13 veloping a marine spatial plan.

14 (3) ECOSYSTEM-BASED MANAGEMENT.—The
15 term “ecosystem-based management” means a man-
16 agement approach that ensures the future ecological
17 and economic sustainability of natural resources
18 by—

19 (A) accounting for all ecosystem inter-
20 actions and direct, indirect, and cumulative im-
21 pacts of human activities on the ecosystem;

22 (B) emphasizing protection of ecosystem
23 structure, functions, patterns, and processes;
24 and

1 (C) maintaining ecosystems in a healthy
2 and resilient condition.

3 (4) OFFSHORE RENEWABLE ENERGY.—The
4 term “offshore renewable energy” means energy
5 generated from offshore wind or offshore
6 hydrokinetic (wave, tidal, ocean current, and tidal-
7 current) energy technologies.

8 (5) OFFSHORE RENEWABLE ENERGY FACIL-
9 ITY.—The term “offshore renewable energy facility”
10 means a facility that generates offshore renewable
11 energy or any offshore transmission line associated
12 with such facility.

13 (b) STUDY.—

14 (1) IN GENERAL.—As soon as practicable after
15 the date of enactment of this section, the Federal
16 Energy Regulatory Commission, the Secretary of the
17 Interior, and the National Oceanic and Atmospheric
18 Administration, in consultation with the Council on
19 Environmental Quality and, as appropriate, coastal
20 States, regional organizations of coastal States, and
21 relevant nongovernmental organizations, shall jointly
22 conduct a study of the potential for marine spatial
23 planning to facilitate the development of offshore re-
24 newable energy facilities in a manner that protects
25 and maintains coastal and marine ecosystem health.

1 (2) REQUIREMENTS.—The study under para-
2 graph (1) shall include—

3 (A) identification of the steps involved in
4 regional marine spatial planning for the siting
5 of offshore renewable energy facilities;

6 (B) a recommended approach for the de-
7 velopment of regional marine spatial plans for
8 the siting of offshore renewable energy facilities
9 that provides for—

10 (i) the participation of relevant Fed-
11 eral agencies and State governments;

12 (ii) coordination, to the maximum ex-
13 tent practicable, with any marine spatial
14 planning undertaken by States;

15 (iii) public input; and

16 (iv) the periodic revision of such plans
17 as necessary to account for significant new
18 information and ensure achievement of
19 plan objectives;

20 (C) identification of required elements of
21 such regional marine spatial plans, including
22 rules that Federal agencies shall apply to appli-
23 cations for any authorizations required under
24 existing Federal law to construct or operate off-

1 shore renewable energy facilities within areas
2 covered by such plans;

3 (D) an assessment of the adequacy of ex-
4 isting data, including baseline environmental
5 data, to support such marine spatial planning
6 and identification of gaps in such data and the
7 studies needed to fill such gaps;

8 (E) an assessment of the resources re-
9 quired to carry out such marine spatial plan-
10 ning;

11 (F) recommended mechanisms for the for-
12 mal adoption and implementation of regional
13 marine spatial plans for the development of off-
14 shore renewable energy facilities by relevant
15 Federal agencies;

16 (G) identification of any additional author-
17 ity relevant Federal agencies would need to
18 adopt and implement regional marine spatial
19 plans for the development of offshore renewable
20 energy facilities; and

21 (H) such other recommendations as appro-
22 priate.

23 (3) REPORT.—Not later than 6 months after
24 the date of enactment of this section, the Federal
25 Energy Regulatory Commission, the Secretary of the

1 Interior, and the National Oceanic and Atmospheric
2 Administration shall jointly publish the findings and
3 recommendations of the study conducted pursuant
4 to this subsection and shall accept public comment
5 for at least 30 days after such publication. Following
6 consideration of any public comments, and not later
7 than 8 months after the date of enactment of this
8 section, the Federal Energy Regulatory Commission,
9 the Secretary of the Interior, and the National Oce-
10 anic and Atmospheric Administration shall jointly
11 submit to Congress and the Council on Environ-
12 mental Quality the findings and recommendations of
13 the study conducted pursuant to this subsection.

14 (c) ASSESSMENT OF REPORT.—

15 (1) IN GENERAL.—Not later than 4 months
16 after the date of submission of the report required
17 under subsection (b)(3), the Council on Environ-
18 mental Quality shall assess the recommendations of
19 such report, issue a written determination as to
20 whether the recommended approach to marine spa-
21 tial planning should be implemented, and transmit
22 such written determination to the relevant Federal
23 agencies and Congress.

24 (2) COORDINATION FOR RECOMMENDED AP-
25 PROACH.—If the Council on Environmental Quality

1 determines that the recommended approach to ma-
2 rine spatial planning should be implemented, the rel-
3 evant Federal agencies shall implement such ap-
4 proach no later than 18 months after the written de-
5 termination required by paragraph (1), and the
6 Council on Environmental Quality shall coordinate
7 such implementation. At the time of the written de-
8 termination required by paragraph (1), the Council
9 on Environmental Quality shall notify Congress if
10 the relevant Federal agencies lack authority to carry
11 out any aspect of the recommended approach.

12 (3) ALTERNATIVE APPROACH.—If the Council
13 on Environmental Quality determines that the rec-
14 ommended approach to marine spatial planning
15 should not be implemented, the Council on Environ-
16 mental Quality shall formulate an alternative ap-
17 proach and submit such alternative approach to the
18 relevant Federal agencies and Congress at the time
19 of the written determination required by paragraph
20 (1).

21 (d) RELATIONSHIP TO EXISTING LAW.—Nothing in
22 this section shall affect or be construed to affect any law,
23 regulation, or memoranda of understanding governing the
24 development of offshore renewable energy facilities in ef-

1 fect prior to the implementation of the recommended or
2 alternative approach pursuant to subsection (c).

3 (e) AUTHORIZATION.—There are authorized to be ap-
4 propriated such sums as may be necessary to carry out
5 this section.

6 **TITLE II—ENERGY EFFICIENCY**

7 **Subtitle A—Building Energy**

8 **Efficiency Programs**

9 **SEC. 201. GREATER ENERGY EFFICIENCY IN BUILDING** 10 **CODES.**

11 Section 304 of the Energy Conservation and Produc-
12 tion Act (42 U.S.C. 6833) is amended to read as follows:

13 **“SEC. 304. GREATER ENERGY EFFICIENCY IN BUILDING** 14 **CODES.**

15 “(a) ENERGY EFFICIENCY TARGETS.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2) or (3), the national building code energy
18 efficiency target for the national average percentage
19 improvement of a building’s energy performance
20 when built to a code meeting the target shall be—

21 “(A) effective on the date of enactment of
22 the American Clean Energy and Security Act of
23 2009, 30 percent reduction in energy use rel-
24 ative to a comparable building constructed in
25 compliance with the baseline code;

1 “(B) effective January 1, 2014, for resi-
2 dential buildings, and January 1, 2015, for
3 commercial buildings, 50 percent reduction in
4 energy use relative to the baseline code; and

5 “(C) effective January 1, 2017, for resi-
6 dential buildings, and January 1, 2018, for
7 commercial buildings, and every 3 years there-
8 after, respectively, through January 1, 2029,
9 and January 1, 2030, 5 percent additional re-
10 duction in energy use relative to the baseline
11 code.

12 “(2) CONSENSUS-BASED CODES.—If on any ef-
13 fective date specified in paragraph (1)(A), (B), or
14 (C) a successor code to the baseline codes provides
15 for greater reduction in energy use than is required
16 under paragraph (1), the overall percentage reduc-
17 tion in energy use provided by that successor code
18 shall be the national building code energy efficiency
19 target.

20 “(3) TARGETS ESTABLISHED BY SECRETARY.—
21 The Secretary may by rule establish a national
22 building code energy efficiency target for residential
23 or commercial buildings achieving greater reductions
24 in energy use than the targets prescribed in para-
25 graph (1) or (2) if the Secretary determines that

1 such greater reductions in energy use can be
2 achieved with a code that is life cycle cost-justified
3 and technically feasible. The Secretary may by rule
4 establish a national building code energy efficiency
5 target for residential or commercial buildings achiev-
6 ing a reduction in energy use that is greater than
7 zero but less than the targets prescribed in para-
8 graph (1) or (2) if the Secretary determines that
9 such lesser target is the maximum reduction in en-
10 ergy use that can be achieved through a code that
11 is life cycle cost-justified and technically feasible.

12 “(4) ADDITIONAL REDUCTIONS IN ENERGY
13 USE.—Effective on January 1, 2033, and once every
14 3 years thereafter, the Secretary shall determine,
15 after notice and opportunity for comment, whether
16 further energy efficiency building code improvements
17 for residential or commercial buildings, respectively,
18 are life cycle cost-justified and technically feasible,
19 and shall establish updated national building code
20 energy efficiency targets that meet such criteria.

21 “(5) ZERO-NET-ENERGY BUILDINGS.—In set-
22 ting targets under this subsection, the Secretary
23 shall consider ways to support the deployment of
24 distributed renewable energy technology, and shall
25 seek to achieve the goal of zero-net-energy commer-

1 cial buildings established in section 422 of the En-
2 ergy Independence and Security Act of 2007 (42
3 U.S.C. 17082).

4 “(6) BASELINE CODE.—For purposes of this
5 section, the term ‘baseline code’ means—

6 “(A) for residential buildings, the 2006
7 International Energy Conservation Code
8 (IECC) published by the International Code
9 Council; and

10 “(B) for commercial buildings, the code
11 published in ASHRAE Standard 90.1-2004.

12 “(7) CONSULTATION.—In establishing the tar-
13 gets required by this section, the Secretary shall
14 consult with the Director of the National Institute of
15 Standards and Technology.

16 “(b) NATIONAL ENERGY EFFICIENCY BUILDING
17 CODES.—

18 “(1) REQUIREMENT.—

19 “(A) IN GENERAL.—There shall be estab-
20 lished national energy efficiency building codes
21 under this subsection, for residential and com-
22 mercial buildings, sufficient to meet each of the
23 national building code energy efficiency targets
24 established under subsection (a), not later than

1 the date that is one year after the deadline for
2 establishment of each such target.

3 “(B) EXISTING CODE.—If the Secretary
4 finds prior to the date one year after the dead-
5 line for establishing a target that one or more
6 energy efficiency building codes published by a
7 recognized consensus-based code development
8 organization meet or exceed the established tar-
9 get, the Secretary shall select the code that
10 meets the target with the highest efficiency in
11 the most cost-effective manner, and such code
12 shall be the national energy efficiency building
13 code.

14 “(C) REQUIREMENT TO ESTABLISH
15 CODE.— If the Secretary does not make a find-
16 ing under subparagraph (B), the national en-
17 ergy efficiency building code shall be established
18 by rule by the Secretary under paragraph (2).

19 “(2) ESTABLISHMENT BY SECRETARY.—

20 “(A) PROCEDURE.—In order to establish a
21 national energy efficiency building code as re-
22 quired under paragraph (1)(C), the Secretary
23 shall—

24 “(i) not later than six months prior to
25 the effective date for each target, review

1 existing and proposed codes published or
2 under review by recognized consensus-
3 based code development organizations;

4 “(ii) determine the percentage of en-
5 ergy efficiency improvements that are or
6 would be achieved in such published or
7 proposed code versions relative to the tar-
8 get;

9 “(iii) propose improvements to such
10 published or proposed code versions suffi-
11 cient to meet or exceed the target; and

12 “(iv) unless a finding is made under
13 paragraph (1)(B) with respect to a code
14 published by a recognized consensus-based
15 code development organization, adopt a
16 code that meets or exceeds the relevant na-
17 tional building code energy efficiency tar-
18 get by not later than one year after the ef-
19 fective date of such target.

20 “(B) CALCULATIONS.—Each code estab-
21 lished by the Secretary under this paragraph
22 shall be set at the maximum level the Secretary
23 determines is life cycle cost-justified and tech-
24 nically feasible, in accordance with the fol-
25 lowing:

1 “(i) SAVINGS CALCULATIONS.—Cal-
2 culations of energy savings shall take into
3 account the typical lifetimes of different
4 products, measures, and system configura-
5 tions.

6 “(ii) COST-EFFECTIVENESS CALCULA-
7 TIONS.—Calculations of life cycle cost-ef-
8 fectiveness shall be based on life cycle cost
9 methods and procedures under section 544
10 of the National Energy Conservation Pol-
11 icy Act (42 U.S.C. 8254), but shall incor-
12 porate to the extent feasible externalities
13 such as impacts on climate change and on
14 peak energy demand that are not already
15 incorporated in assumed energy costs.

16 “(C) CONSIDERATIONS.—In developing a
17 national energy efficiency building code under
18 this paragraph, the Secretary shall consider—

19 “(i) for residential codes—

20 “(I) residential building stand-
21 ards published or proposed by
22 ASHRAE;

23 “(II) residential building codes
24 published or proposed in the Inter-

1 national Energy Conservation Code
2 (IECC);

3 “(III) data from the Residential
4 Energy Services Network (RESNET)
5 on compliance measures utilized by
6 consumers to qualify for the residen-
7 tial energy efficiency tax credits estab-
8 lished under the Energy Policy Act of
9 2005;

10 “(IV) data and information from
11 the Department of Energy’s Building
12 America Program;

13 “(V) data and information from
14 the Energy Star New Homes pro-
15 gram;

16 “(VI) data and information from
17 the New Building Institute and simi-
18 lar organizations; and

19 “(VII) standards for practices
20 and materials to achieve cool roofs in
21 residential buildings, taking into con-
22 sideration reduced air conditioning en-
23 ergy use as a function of cool roofs,
24 the potential reduction in global
25 warming from increased solar reflec-

1 tance from buildings, and cool roofs
2 criteria in State and local building
3 codes and in national and local vol-
4 untary programs; and
5 “(ii) for commercial codes—
6 “(I) commercial building stand-
7 ards proposed by ASHRAE;
8 “(II) commercial building codes
9 proposed in the International Energy
10 Conservation Code (IECC);
11 “(III) the Core Performance Cri-
12 teria published by the New Buildings
13 Institute;
14 “(IV) data and information de-
15 veloped by the Director of the Com-
16 mercial High-Performance Green
17 Building Office of the Department of
18 Energy and any public-private part-
19 nerships established under that Office;
20 “(V) data and information from
21 the Energy Star for Buildings pro-
22 gram;
23 “(VI) data and information from
24 the New Building Institute,

1 RESNET, and similar organizations;
2 and

3 “(VII) standards for practices
4 and materials to achieve cool roofs in
5 commercial buildings, taking into con-
6 sideration reduced air conditioning en-
7 ergy use as a function of cool roofs,
8 the potential reduction in global
9 warming from increased solar reflec-
10 tance from buildings, and cool roofs
11 criteria in State and local building
12 codes and in national and local vol-
13 untary programs.

14 “(D) CONSULTATION.—In establishing any
15 national energy efficiency building code re-
16 quired by this section, the Secretary shall con-
17 sult with the Director of the National Institute
18 of Standards and Technology.

19 “(3) CONSENSUS STANDARD ASSISTANCE.—(A)
20 To support the development of consensus standards
21 that may provide the basis for national energy effi-
22 ciency building codes, minimize duplication of effort,
23 encourage progress through consensus, and facilitate
24 the development of greater building efficiency, the
25 Secretary shall provide assistance to recognized con-

1 sensus-based code development organizations to de-
2 velop, and where the relevant code has been adopted
3 as the national code, disseminate consensus based
4 energy efficiency building codes as provided in this
5 paragraph.

6 “(B) Upon a finding by the Secretary that a
7 code developed by such an organization meets a tar-
8 get established under subsection (a), the Secretary
9 shall—

10 “(i) send notice of the Secretary’s finding
11 to all duly authorized or appointed State and
12 local code agencies; and

13 “(ii) provide sufficient support to such an
14 organization to make the code available on the
15 Internet, or to accomplish distribution of such
16 code to all such State and local code agencies
17 at no cost to the State and local code agencies.

18 “(C) The Secretary may contract with such an
19 organization and with other organizations with ex-
20 pertise on codes to provide training for State and
21 local code officials and building inspectors in the im-
22 plementation and enforcement of such code.

23 “(D) The Secretary may provide grants and
24 other support to such an organization to—

1 “(i) develop appropriate refinements to
2 such code; and

3 “(ii) support analysis of options for im-
4 provements in the code to meet the next sched-
5 uled target.

6 “(4) CODE DEVELOPED BY SECRETARY.—If the
7 Secretary establishes a national energy efficiency
8 building code under paragraph (2), the Secretary
9 shall—

10 “(A) to the extent that such code is based
11 on a prior code developed by a recognized con-
12 sensus-based code development organization,
13 negotiate and provide appropriate compensation
14 to such organization for the use of the code ma-
15 terials that remain in the code established by
16 the Secretary; and

17 “(B) disseminate the national energy effi-
18 ciency building codes to State and local code of-
19 ficials, and support training and provide guid-
20 ance and technical assistance to such officials
21 as appropriate.

22 “(c) STATE ADOPTION OF ENERGY EFFICIENCY
23 BUILDING CODES.—

24 “(1) REQUIREMENT.—Not later than 1 year
25 after a national energy efficiency building code for

1 residential or commercial buildings is established or
2 revised under subsection (b), each State—

3 “(A) shall—

4 “(i) review and update the provisions
5 of its building code regarding energy effi-
6 ciency to meet or exceed the target met in
7 the new national code, to achieve equiva-
8 lent or greater energy savings;

9 “(ii) document, where local govern-
10 ments establish building codes, that local
11 governments representing not less than 80
12 percent of the State’s urban population
13 have adopted the new national code, or
14 have adopted local codes that meet or ex-
15 ceed the target met in the new national
16 code to achieve equivalent or greater en-
17 ergy savings; or

18 “(iii) adopt the new national code;

19 and

20 “(B) shall provide a certification to the
21 Secretary demonstrating that energy efficiency
22 building code provisions that apply throughout
23 the State meet or exceed the target met by the
24 new national code, to achieve equivalent or
25 greater energy savings.

1 “(2) CONFIRMATION.—

2 “(A) REQUIREMENT.—Not later than 90
3 days after a State certification is provided
4 under paragraph (1)(B), the Secretary shall de-
5 termine whether the State’s energy efficiency
6 building code provisions meet the requirements
7 of this subsection.

8 “(B) ACCEPTANCE BY SECRETARY.—If the
9 Secretary determines under subparagraph (A)
10 that the State’s energy efficiency building code
11 or codes meet the requirements of this sub-
12 section, the Secretary shall accept the certifi-
13 cation.

14 “(C) DEFICIENCY NOTICE.—If the Sec-
15 retary determines under subparagraph (A) that
16 the State’s building code or codes do not meet
17 the requirements of this subsection, the Sec-
18 retary shall identify the deficiency in meeting
19 the national building code energy efficiency tar-
20 get, and, to the extent possible, indicate areas
21 where further improvement in the State’s code
22 provisions would allow the deficiency to be
23 eliminated.

24 “(D) REVISION OF CODE AND RECERTIFI-
25 CATION.—A State may revise its code or codes

1 and submit a recertification under paragraph
2 (1)(B) to the Secretary at any time.

3 “(3) COMPLIANT CODE.—For the purposes of
4 meeting the target described in subsection (a)(1)(A)
5 for residential buildings, a State that adopts the
6 code represented in California’s Title 24-2009 by the
7 date two years after the date of enactment of the
8 American Clean Energy and Security Act of 2009
9 shall be considered to have met the requirements of
10 this subsection for the applicable period.

11 “(d) APPLICATION OF NATIONAL CODE TO STATE
12 AND LOCAL JURISDICTIONS.—

13 “(1) IN GENERAL.—Upon the expiration of 1
14 year after a national energy efficiency building code
15 is established under subsection (b), in any jurisdic-
16 tion where the State has not had a certification re-
17 lating to that code accepted by the Secretary under
18 subsection (c)(2)(B), and the local government has
19 not had a certification relating to that code accepted
20 by the Secretary under subsection (e)(6)(B), the na-
21 tional code shall become the applicable energy effi-
22 ciency building code for such jurisdiction.

23 “(2) STATE LEGISLATIVE ADOPTION.—In a
24 State in which the relevant building energy code is
25 adopted legislatively, the deadline in paragraph (1)

1 shall not be earlier than 1 year after the first day
2 that the legislature meets following establishment of
3 a national energy efficiency building code.

4 “(3) VIOLATIONS.—It shall be a violation of
5 this section for an owner or builder of a building to
6 knowingly occupy, permit occupancy of, or convey
7 the building if the building is subject to the require-
8 ments of—

9 “(A) a State energy efficiency building
10 code with respect to which a certification has
11 been accepted by the Secretary under sub-
12 section (c)(2)(B);

13 “(B) a local energy efficiency building code
14 with respect to which a certification has been
15 accepted by the Secretary under subsection
16 (e)(6)(B); or

17 “(C) a national energy efficiency building
18 code adopted under subsection (c)(1)(A)(i) or
19 made applicable under paragraph (1) of this
20 subsection,

21 if the building was constructed out of compliance
22 with such code.

23 “(e) STATE ENFORCEMENT OF ENERGY EFFICIENCY
24 BUILDING CODES.—

1 “(1) IN GENERAL.—Each State, or where appli-
2 cable under State law each local government, shall
3 implement and enforce applicable State or local
4 codes with respect to which a certification was ac-
5 cepted by the Secretary under subsection (c)(2)(B)
6 or paragraph (6)(B) of this subsection, or the na-
7 tional energy efficiency building codes, as provided
8 in this subsection.

9 “(2) STATE CERTIFICATION.—Not later than 2
10 years after the date of a certification under sub-
11 section (c)(1) or the establishment of a national en-
12 ergy efficiency building code under subsection (b),
13 each State shall certify that it has—

14 “(A) achieved compliance with—

15 “(i) State codes, or, as provided under
16 State law, local codes, with respect to
17 which a certification was accepted by the
18 Secretary under subsection (c)(2)(B); or

19 “(ii) the national energy efficiency
20 building code, as applicable; or

21 “(B) for any certification submitted within
22 7 years after the date of enactment of the
23 American Clean Energy and Security Act of
24 2009, made significant progress toward achiev-
25 ing such compliance.

1 “(3) ACHIEVING COMPLIANCE.—A State shall
2 be considered to achieve compliance with a code de-
3 scribed in paragraph (2)(A) if at least 90 percent of
4 new and substantially renovated building space in
5 that State in the preceding year upon inspection
6 meets the requirements of the code. A certification
7 under paragraph (2) shall include documentation of
8 the rate of compliance based on—

9 “(A) independent inspections of a random
10 sample of the new and substantially renovated
11 buildings covered by the code in the preceding
12 year; or

13 “(B) an alternative method that yields an
14 accurate measure of compliance as determined
15 by the Secretary.

16 “(4) SIGNIFICANT PROGRESS.—A State shall be
17 considered to have made significant progress toward
18 achieving compliance with a code described in para-
19 graph (2)(A) if—

20 “(A) the State has developed a plan, in-
21 cluding for hiring enforcement staff, providing
22 training, providing manuals and checklists, and
23 instituting enforcement programs, designed to
24 achieve full compliance within 5 years after the
25 date of the adoption of the code;

1 “(B) the State is taking significant, timely,
2 and measurable action to implement that plan;

3 “(C) the State has not reduced its expendi-
4 tures for code enforcement; and

5 “(D) at least 50 percent of new and sub-
6 stantially renovated building space in the State
7 in the preceding year upon inspection meets the
8 requirements of the code.

9 “(5) SECRETARY’S DETERMINATION.—Not later
10 than 90 days after a State certification under para-
11 graph (2), the Secretary shall determine whether the
12 State has demonstrated that it has complied with
13 the requirements of this subsection, including accu-
14 rate measurement of compliance, or that it has made
15 significant progress toward compliance. If such de-
16 termination is positive, the Secretary shall accept
17 the certification. If the determination is negative,
18 the Secretary shall identify the areas of deficiency.

19 “(6) OUT OF COMPLIANCE.—

20 “(A) IN GENERAL.—Any State for which
21 the Secretary has not accepted a certification
22 under paragraph (5) by a deadline established
23 under this subsection is out of compliance with
24 this section.

1 “(B) LOCAL COMPLIANCE.—In any State
2 that is out of compliance with this section as
3 provided in subparagraph (A), a local govern-
4 ment may be in compliance with this section by
5 meeting all certification requirements applicable
6 to the State.

7 “(C) NONCOMPLIANCE.—Any State that is
8 not in compliance with this section, as provided
9 in subparagraph (A), shall, until the State re-
10 gains such compliance, be ineligible to receive—

11 “(i) emission allowances pursuant to
12 subsection (h)(1);

13 “(ii) Federal funding in excess of that
14 State’s share (calculated according to the
15 allocation formula in section 363 of the
16 Energy Policy and Conservation Act (42
17 U.S.C. 6323)) of \$125,000,000 each year;
18 and

19 “(iii) for—

20 “(I) the first year for which the
21 State is out of compliance, 25 percent
22 of any additional funding or other
23 items of monetary value otherwise
24 provided under the American Clean
25 Energy and Security Act of 2009;

1 “(II) the second year for which
2 the State is out of compliance, 50 per-
3 cent of any additional funding or
4 other items of monetary value other-
5 wise provided under the American
6 Clean Energy and Security Act of
7 2009;

8 “(III) the third year for which
9 the State is out of compliance, 75 per-
10 cent of any additional funding or
11 other items of monetary value other-
12 wise provided under the American
13 Clean Energy and Security Act of
14 2009; and

15 “(IV) the fourth and subsequent
16 years for which the State is out of
17 compliance, 100 percent of any addi-
18 tional funding or other items of mone-
19 tary value otherwise provided under
20 the American Clean Energy and Secu-
21 rity Act of 2009.

22 “(f) FEDERAL ENFORCEMENT.—Where a State fails
23 and local governments in that State also fail to enforce
24 the applicable State or national energy efficiency building
25 codes, the Secretary shall enforce such codes, as follows:

1 “(1) The Secretary shall establish, by rule,
2 within 2 years after the date of enactment of the
3 American Clean Energy and Security Act of 2009,
4 an energy efficiency building code enforcement capa-
5 bility.

6 “(2) Such enforcement capability shall be de-
7 signed to achieve 90 percent compliance with such
8 code in any State within 1 year after the date of the
9 Secretary’s determination that such State is out of
10 compliance with this section.

11 “(3) The Secretary may set and collect reason-
12 able inspection fees to cover the costs of inspections
13 required for such enforcement. Revenue from fees
14 collected shall be available to the Secretary to carry
15 out the requirements of this section upon appropria-
16 tion.

17 “(g) ENFORCEMENT PROCEDURES.—(1) The Sec-
18 retary shall assess a civil penalty for violations of this sec-
19 tion, pursuant to subsection (d)(3), in accordance with the
20 procedures described in section 333(d) of the Energy Pol-
21 icy and Conservation Act (42 U.S.C. 6303). The United
22 States district courts shall also have jurisdiction to re-
23 strain any violation of this section or rules adopted there-
24 under, in accordance with the procedures described in sec-

1 tion 334 of the Energy Policy and Conservation Act (42
2 U.S.C. 6304).

3 “(2) Each day of unlawful occupancy shall be consid-
4 ered a separate violation.

5 “(3) In the event a building constructed out of com-
6 pliance with the applicable code has been conveyed by a
7 knowing builder or knowing seller to an unknowing pur-
8 chaser, the builder or seller shall be the violator.

9 “(h) FEDERAL SUPPORT.—

10 “(1) ALLOWANCE ALLOCATION FOR STATE
11 COMPLIANCE.—For each vintage year from 2012
12 through 2050, the Administrator shall distribute al-
13 lowances allocated pursuant to section 782(g)(2) of
14 the Clean Air Act to the SEED Account for each
15 State that the Secretary identifies as a State from
16 which he has accepted the State’s certification under
17 subsection (e)(5) for compliance with the then cur-
18 rent national energy efficiency building codes. Such
19 allowances shall be distributed according to a for-
20 mula established by the Secretary as follows:

21 “(A) One-fifth in an equal amount to each
22 of the 50 States and United States territories.

23 “(B) Two-fifths as a function of the rel-
24 ative energy use in all buildings in each State

1 in the most recent year for which data is avail-
2 able.

3 “(C) Two-fifths based on the number of
4 building construction starts recorded in each
5 State, the number of new building permits ap-
6 plied for in each State, or other relevant avail-
7 able data indicating building activity in each
8 State, in the judgment of the Secretary, for the
9 year prior to the year of the distribution.

10 “(2) ALLOWANCE ALLOCATION TO LOCAL GOV-
11 ERNMENTS.—In the instance that the Secretary cer-
12 tifies that one or more local governments are in com-
13 pliance with this section pursuant to subsection
14 (e)(6)(B), the Administrator shall provide to each
15 such local government the portion of the emission al-
16 lowances that would have been provided to that
17 State as a function of the population of that locality
18 as a proportion of the population of that State as a
19 whole.

20 “(3) UNALLOCATED ALLOWANCES.—To the ex-
21 tent that allowances are not provided to State or
22 local governments for lack of certification in any
23 year, those allowances shall be added to the amount
24 provided to those States and local governments that
25 are certified as eligible in that year.

1 “(4) USE OF ALLOWANCES.—Each State or
2 each local government shall use such emission allow-
3 ances as it receives pursuant to this section exclu-
4 sively for the purposes of this section, including cov-
5 ering a reasonable portion of the costs of the devel-
6 opment, adoption, implementation, and enforcement
7 of a State or local energy efficiency building code
8 with respect to which a certification is accepted by
9 the Secretary under subsection (c)(2)(B) or sub-
10 section (e)(6)(B), or the national energy efficiency
11 building code. In a State where local governments
12 provide building code enforcement, a minimum of 50
13 percent of the allowance value received pursuant to
14 this section shall be distributed to local governments
15 as a function of the relative populations of such lo-
16 calities.

17 “(i) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary of En-
19 ergy \$100,000,000 for each of fiscal years 2010 through
20 2020 and such sums thereafter as may be necessary to
21 support the purposes of this section.

22 “(j) ANNUAL REPORTS BY SECRETARY.—The Sec-
23 retary shall annually submit to Congress, and publish in
24 the Federal Register, a report on—

1 “(1) the status of national building energy effi-
2 ciency codes;

3 “(2) the status of energy efficiency building
4 code adoption and compliance in the States;

5 “(3) the implementation of this section; and

6 “(4) impacts of past action under this section,
7 and potential impacts of further action, on lifetime
8 energy use by buildings, including resulting energy
9 and cost savings.”.

10 **SEC. 202. BUILDING RETROFIT PROGRAM.**

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

12 (1) NONRESIDENTIAL BUILDING.—The term
13 “nonresidential building” means a building with a
14 primary use or purpose other than residential hous-
15 ing, including commercial offices, schools, academic
16 and other public and private institutions, nonprofit
17 organizations, hospitals, hotels, and houses of wor-
18 ship. Such buildings shall include mixed-use prop-
19 erties used for both residential and nonresidential
20 purposes in which more than half of building floor
21 space is nonresidential.

22 (2) PERFORMANCE-BASED BUILDING RETROFIT
23 PROGRAM.—The term “performance-based building
24 retrofit program” means a program that determines
25 building energy efficiency success based on actual

1 measured savings after a retrofit is complete, as evi-
2 denced by energy invoices or evaluation protocols.

3 (3) PRESCRIPTIVE BUILDING RETROFIT PRO-
4 GRAM.—The term “prescriptive building retrofit pro-
5 gram” means a program that projects building ret-
6 rofit energy efficiency success based on the known
7 effectiveness of measures prescribed to be included
8 in a retrofit.

9 (4) RECOMMISSIONING;
10 RETROCOMMISSIONING.—The terms “recommis-
11 sioning” and “retrocommissioning” have the mean-
12 ing given those terms in section 543(f)(1) of the Na-
13 tional Energy Conservation Policy Act (42 U.S.C.
14 8253(f)(1)).

15 (5) RESIDENTIAL BUILDING.—The term “resi-
16 dential building” means a building whose primary
17 use is residential. Such buildings shall include sin-
18 gle-family homes (both attached and detached),
19 owner-occupied units in larger buildings with their
20 own dedicated space-conditioning systems, and build-
21 ings used for both residential and nonresidential
22 purposes in which more than half of building floor
23 space is residential.

24 (6) STATE ENERGY PROGRAM.—The term
25 “State Energy Program” means the program under

1 part D of title III of the Energy Policy and Con-
2 servation Act (42 U.S.C. 6321 et seq.).

3 (b) ESTABLISHMENT.—The Administrator shall de-
4 velop and implement, in consultation with the Secretary
5 of Energy, standards for a national energy and environ-
6 mental building retrofit policy for single-family and multi-
7 family residences. The Administrator shall develop and
8 implement, in consultation with the Secretary of Energy
9 and the Director of Commercial High-Performance Green
10 Buildings, standards for a national energy and environ-
11 mental building retrofit policy for nonresidential buildings.
12 The programs to implement the residential and nonresi-
13 dential policies based on the standards developed under
14 this section shall together be known as the Retrofit for
15 Energy and Environmental Performance (REEP) pro-
16 gram.

17 (c) PURPOSE.—The purpose of the REEP program
18 is to facilitate the retrofitting of existing buildings across
19 the United States to achieve maximum cost-effective en-
20 ergy efficiency improvements and significant improve-
21 ments in water use and other environmental attributes.

22 (d) FEDERAL ADMINISTRATION.—

23 (1) EXISTING PROGRAMS.— In creating and op-
24 erating the REEP program—

1 (A) the Administrator shall make appro-
2 priate use of existing programs, including the
3 Energy Star program and in particular the En-
4 vironmental Protection Agency Energy Star for
5 Buildings program; and

6 (B) the Secretary of Energy shall make
7 appropriate use of existing programs, including
8 delegating authority to the Director of Commer-
9 cial High-Performance Green Buildings ap-
10 pointed under section 421 of the Energy Inde-
11 pendence and Security Act of 2007 (42 U.S.C.
12 17081), who shall designate and provide fund-
13 ing to support a high-performance green build-
14 ing partnership consortium pursuant to sub-
15 section (f) of such section to support efforts
16 under this section.

17 (2) CONSULTATION AND COORDINATION.—The
18 Administrator and the Secretary of Energy shall
19 consult with and coordinate with the Secretary of
20 Housing and Urban Development in carrying out the
21 REEP program.

22 (3) ASSISTANCE.—The Administrator and the
23 Secretary of Energy shall provide consultation and
24 assistance to State and local agencies for the estab-
25 lishment of revolving loan funds, loan guarantees, or

1 other forms of financial assistance under this sec-
2 tion.

3 (e) STATE AND LOCAL ADMINISTRATION.—

4 (1) DESIGNATION AND DELEGATION.—A State
5 may designate one or more agencies or entities, in-
6 cluding those regulated by the State, to carry out
7 the purposes of this section, but shall designate one
8 entity or individual as the principal point of contact
9 for the Administrator regarding the REEP Pro-
10 gram. The designated State agency, agencies, or en-
11 tities may delegate performance of appropriate ele-
12 ments of the REEP program, upon their request
13 and subject to State law, to counties, municipalities,
14 appropriate public agencies, and other divisions of
15 local government, as well as to entities regulated by
16 the State. In making any such designation or delega-
17 tion, a State shall give priority to entities that ad-
18 minister existing comprehensive retrofit programs,
19 including those under the supervision of State utility
20 regulators. States shall maintain responsibility for
21 meeting the standards and requirements of the
22 REEP program. In any State that elects not to ad-
23 minister the REEP program, a unit of local govern-
24 ment may propose to do so within its jurisdiction,
25 and if the Administrator finds that such local gov-

1 ernment is capable of administering the program,
2 the Administrator may provide allowances to that
3 local government, prorated according to the popu-
4 lation of the local jurisdiction relative to the popu-
5 lation of the State, for purposes of the REEP pro-
6 gram.

7 (2) EMPLOYMENT.—States and local govern-
8 ment entities may administer a REEP program in
9 a manner that authorizes public or regulated inves-
10 tor-owned utilities, building auditors and inspectors,
11 contractors, nonprofit organizations, for-profit com-
12 panies, and other entities to perform audits and ret-
13 rofit services under this section. A State may pro-
14 vide incentives for retrofits without direct participa-
15 tion by the State or its agents, so long as the result-
16 ing savings are measured and verified. A State or
17 local administrator of a REEP program shall seek
18 to ensure that sufficient qualified entities are avail-
19 able to support retrofit activities so that building
20 owners have a competitive choice among qualified
21 auditors, raters, contractors, and providers of serv-
22 ices related to retrofits. Nothing in this section is in-
23 tended to preclude or preempt the right of a building
24 owner to choose the specific providers of retrofit

1 services to engage for a retrofit project in that own-
2 er'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 appropriate 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.

5 (8) Determination of energy savings in a per-
6 formance-based building retrofit program through—

7 (A) for residential buildings, comparison of
8 before and after retrofit scores on the Home
9 Energy Rating System (HERS) Index, where
10 the final score is produced by an objective third
11 party;

12 (B) for nonresidential buildings, Environ-
13 mental Protection Agency Portfolio Manager
14 benchmarks; or

15 (C) for either residential or nonresidential
16 buildings, use of an Administrator-approved
17 simulation program by a contractor with the
18 appropriate certification, subject to appropriate
19 software standards and verification of at least
20 15 percent of all work done, or such other per-
21 centage as the Administrator may determine.

22 (9) Guidelines for utilizing the Energy Star
23 Portfolio Manager, the Home Energy Rating System
24 (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; and

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.

19 The Administrator shall conduct or require each State to
20 have such independent financial audits of REEP-related
21 funding as the Administrator considers necessary or ap-
22 propriate to carry out the purposes of this section.

23 (h) OPTIONS TO SUPPORT REEP PROGRAM.—The
24 emission allowances provided pursuant to this Act to the
25 States' SEED Accounts shall support the implementation

1 through State REEP programs of alternate means of cre-
2 ating incentives for, or reducing financial barriers to, im-
3 proved energy and environmental performance in build-
4 ings, consistent with this section, including—

5 (1) implementing prescriptive building retrofit
6 programs and performance-based building retrofit
7 programs;

8 (2) providing credit enhancement, interest rate
9 subsidies, loan guarantees, or other credit support;

10 (3) providing initial capital for public revolving
11 fund financing of retrofits, with repayments by bene-
12 ficiary building owners over time through their tax
13 payments, calibrated to create net positive cash flow
14 to the building owner;

15 (4) providing funds to support utility-operated
16 retrofit programs with repayments over time
17 through utility rates, calibrated to create net positive
18 cash flow to the building owner, and transferable
19 from one building owner to the next with the build-
20 ing's utility services;

21 (5) providing funds to local government pro-
22 grams to provide REEP services and financial as-
23 sistance; and

1 (6) other means proposed by State and local
2 agencies, subject to the approval of the Adminis-
3 trator.

4 (i) SUPPORT FOR PROGRAM.—

5 (1) USE OF ALLOWANCES.—Direct Federal sup-
6 port for the REEP program is provided through the
7 emission allowances allocated to the States' SEED
8 Accounts pursuant to section 132 of this Act. To the
9 extent that a State provides allowances to local gov-
10 ernments within the State to implement elements of
11 the REEP Program, that shall be deemed a dis-
12 tribution of such allowances to units of local govern-
13 ment pursuant to subsection (c)(1) of that section.

14 (2) INITIAL AWARD LIMITS.—Except as pro-
15 vided in paragraph (3), State and local REEP pro-
16 grams may make per-building direct expenditures
17 for retrofit improvements, or their equivalent in indi-
18 rect or other forms of financial support, from funds
19 derived from the sale of allowances received directly
20 from the Administrator in amounts not to exceed the
21 following:

22 (A) RESIDENTIAL BUILDING PROGRAM.—

23 (i) AWARDS.—For residential build-
24 ings—

1 (I) support for a free or low-cost
2 detailed building energy audit that
3 prescribes, as part of a energy-reduc-
4 ing measures sufficient to achieve at
5 least a 20 percent reduction in energy
6 use, by providing an incentive equal to
7 the documented cost of such audit,
8 but not more than \$200, in addition
9 to any earned by achieving a 20 per-
10 cent or greater efficiency improve-
11 ment;

12 (II) a total of \$1,000 for a com-
13 bination of measures, prescribed in an
14 audit conducted under subclause (I),
15 designed to reduce energy consump-
16 tion by more than 10 percent, and
17 \$2,000 for a combination of measures
18 prescribed in such an audit, designed
19 to reduce energy consumption by more
20 than 20 percent;

21 (III) \$3,000 for demonstrated
22 savings of 20 percent, pursuant to a
23 performance-based building retrofit
24 program; and

1 (IV) \$1,000 for each additional 5
2 percentage points of energy savings
3 achieved beyond savings for which
4 funding is provided under subclause
5 (II) or (III).

6 Funding shall not be provided under
7 clauses (II) and (III) for the same energy
8 savings.

9 (ii) MAXIMUM PERCENTAGE.—Awards
10 under clause (i) shall not exceed 50 per-
11 cent of retrofit costs for each building. For
12 buildings with multiple residential units,
13 awards under clause (i) shall not be great-
14 er than 50 percent of the total cost of ret-
15 rofitting the building, prorated among indi-
16 vidual residential units on the basis of rel-
17 ative costs of the retrofit.

18 (iii) ADDITIONAL AWARDS.—Addi-
19 tional awards may be provided for pur-
20 poses of increasing energy efficiency, for
21 buildings achieving at least 20 percent en-
22 ergy savings using funding provided under
23 clause (i), in the form of grants of not
24 more than \$600 for measures projected or
25 measured (using an appropriate method

1 approved by the Administrator) to achieve
2 at least 35 percent potable water savings
3 through equipment or systems with an es-
4 timated service life of not less than seven
5 years, and not more than an additional
6 \$20 may be provided for each additional
7 one percent of such savings, up to a max-
8 imum total grant of \$1,200.

9 (B) NONRESIDENTIAL BUILDING PRO-
10 GRAM.—

11 (i) AWARDS.—For nonresidential
12 buildings—

13 (I) support for a free or low-cost
14 detailed building energy audit that
15 prescribes, as part of a energy-reduc-
16 ing measures sufficient to achieve at
17 least a 20 percent reduction in energy
18 use, by providing an incentive equal to
19 the documented cost of such audit,
20 but not more than \$500, in addition
21 to any award earned by achieving a
22 20 percent or greater efficiency im-
23 provement;

24 (II) \$0.15 per square foot of ret-
25 rofit area for demonstrated energy use

1 reductions from 20 percent to 30 per-
2 cent;

3 (III) \$0.75 per square foot for
4 demonstrated energy use reductions
5 from 30 percent to 40 percent;

6 (IV) \$1.60 per square foot for
7 demonstrated energy use reductions
8 from 40 percent to 50 percent; and

9 (V) \$2.50 per square foot for
10 demonstrated energy use reductions
11 exceeding 50 percent.

12 (ii) MAXIMUM PERCENTAGE.—
13 Amounts provided under subclauses (II)
14 through (V) of clause (i) combined shall
15 not exceed 50 percent of the total retrofit
16 cost of a building. In nonresidential build-
17 ings with multiple units, such awards shall
18 be prorated among individual units on the
19 basis of relative costs of the retrofit.

20 (iii) ADDITIONAL AWARDS.—Addi-
21 tional awards may be provided, for build-
22 ings achieving at least 20 percent energy
23 savings using funding provided under
24 clause (i), as follows:

1 (I) WATER.—For purposes of in-
2 creasing energy efficiency, grants may
3 be made for whole building potable
4 water use reduction (using an appro-
5 priate method approved by the Sec-
6 retary of Energy) for up to 50 percent
7 of the total retrofit cost, including
8 amounts up to—

9 (aa) \$24.00 per thousand
10 gallons per year of potable water
11 savings of 40 percent or more;

12 (bb) \$27.00 per thousand
13 gallons per year of potable water
14 savings of 50 percent or more;
15 and

16 (cc) \$30.00 per thousand
17 gallons per year of potable water
18 savings of 60 percent or more.

19 (II) ENVIRONMENTAL IMPROVE-
20 MENTS.—Additional awards of up to
21 \$1,000 may be granted for the inclu-
22 sion of other environmental attributes
23 that the Secretary, in consultation
24 with the Administrator, identifies as
25 contributing to energy efficiency. Such

1 attributes may include, but are not
2 limited to waste diversion and the use
3 of environmentally preferable mate-
4 rials (including salvaged, renewable,
5 or recycled materials, and materials
6 with no or low-VOC content). The Ad-
7 ministrator may recommend that
8 States develop such standards as are
9 necessary to account for local or re-
10 gional conditions that may affect the
11 feasibility or availability of identified
12 resources and attributes.

13 (iv) INDOOR AIR QUALITY MINIMUM.—
14 Nonresidential buildings receiving incen-
15 tives under this section must satisfy at a
16 minimum the most recent version of
17 ASHRAE Standard 62.1 for ventilation, or
18 the equivalent as determined by the Ad-
19 ministrator. A State may issue a waiver
20 from this requirement to a building project
21 on a showing that such compliance is in-
22 feasible due to the physical constraints of
23 the building's existing ventilation system,
24 or such other limitations as may be speci-
25 fied by the Administrator.

1 (C) HISTORIC BUILDINGS.—Notwith-
2 standing subparagraphs (A) and (B), a building
3 in or eligible for the National Register of His-
4 toric Places shall be eligible for awards under
5 this paragraph in amounts up to 120 percent of
6 the amounts set forth in subparagraphs (A) and
7 (B).

8 (D) SUPPLEMENTAL SUPPORT.—State and
9 local governments may supplement the per-
10 building expenditures under this paragraph
11 with funding from other sources.

12 (3) ADJUSTMENT.—The Administrator may ad-
13 just the specific dollar limits funded by the sale of
14 allowances pursuant to paragraph (2) in years sub-
15 sequent to the second year after the date of enact-
16 ment of this Act, and every 2 years thereafter, as
17 the Administrator determines necessary to achieve
18 optimum cost-effectiveness and to maximize incen-
19 tives to achieve energy efficiency within the total
20 building award amounts provided in that paragraph,
21 and shall publish and hold constant such revised lim-
22 its for at least 2 years.

23 (j) REPORT TO CONGRESS.—The Administrator shall
24 conduct an annual assessment of the achievements of the
25 REEP program in each State, shall prepare an annual re-

1 port of such achievements and any recommendations for
2 program modifications, and shall provide such report to
3 Congress at the end of each fiscal year during which fund-
4 ing or other resources were made available to the States
5 for the REEP Program.

6 (k) OTHER SOURCES OF FEDERAL SUPPORT.—

7 (1) ADDITIONAL STATE ENERGY PROGRAM
8 FUNDS.—Any Federal funding provided to a State
9 Energy Program that is not required to be expended
10 for a different federally designated purpose may be
11 used to support a REEP program.

12 (2) PROGRAM ADMINISTRATION.—State Energy
13 Offices or designated State agencies may expend up
14 to 10 percent of available allowance value provided
15 under this section for program administration.

16 (3) AUTHORIZATION OF APPROPRIATIONS.—
17 There are authorized to be appropriated for the pur-
18 poses of this section, for each of fiscal years 2010,
19 2011, 2012, and 2013—

20 (A) \$50,000,000 to the Administrator for
21 program administration costs; and

22 (B) \$20,000,000 to the Secretary of En-
23 ergy for program administration costs.

24 **SEC. 203. ENERGY EFFICIENT MANUFACTURED HOMES.**

25 (a) DEFINITIONS.—In this section:

1 (1) MANUFACTURED HOME.—The term “manu-
2 factured home” has the meaning given such term in
3 section 603 of the National Manufactured Housing
4 Construction and Safety Standards Act of 1974 (42
5 U.S.C. 5402).

6 (2) ENERGY STAR QUALIFIED MANUFACTURED
7 HOME.—The term “Energy Star qualified manufac-
8 tured home” means a manufactured home that has
9 been designed, produced, and installed in accordance
10 with Energy Star’s guidelines by an Energy Star
11 certified plant.

12 (b) PURPOSE.—The purpose of this section is to as-
13 sist low-income households residing in manufactured
14 homes constructed prior to 1976 to save energy and en-
15 ergy expenditures by providing support toward the pur-
16 chase of new Energy Star qualified manufactured homes.

17 (c) STATE IMPLEMENTATION OF PROGRAM.—

18 (1) MANUFACTURED HOME REPLACEMENT PRO-
19 GRAM.—Any State may provide to the owner of a
20 manufactured home constructed prior to 1976 a re-
21 bate to use toward the purchase of a new Energy
22 Star qualified manufactured home pursuant to this
23 section.

24 (2) USE OF ALLOWANCES.—Direct Federal sup-
25 port for the program established in this section is

1 provided through the emission allowances allocated
2 to the States' SEED Accounts pursuant to section
3 132 of this Act. To the extent that a State provides
4 allowances to local governments within the State to
5 implement this program, that shall be deemed a dis-
6 tribution of such allowances to units of local govern-
7 ment pursuant to subsection (c)(1) of that section.

8 (3) REBATES.—

9 (A) PRIMARY RESIDENCE REQUIRE-
10 MENT.—A rebate described under paragraph
11 (1) may only be made to an owner of a manu-
12 factured home constructed prior to 1976 that is
13 used on a year-round basis as a primary resi-
14 dence.

15 (B) DISMANTLING AND REPLACEMENT.—A
16 rebate described under paragraph (1) may be
17 made only if the manufactured home con-
18 structed prior to 1976 will be—

19 (i) rendered unusable for human habi-
20 tation (including appropriate recycling);
21 and

22 (ii) replaced, in the same general loca-
23 tion, as determined by the applicable State
24 agency, with an Energy Star qualified
25 manufactured home.

1 (C) SINGLE REBATE.—A rebate described
2 under paragraph (1) may not be provided to
3 any owner of a manufactured home constructed
4 prior to 1976 that was or is a member of a
5 household for which any other member of the
6 household was provided a rebate pursuant to
7 this section.

8 (D) ELIGIBLE HOUSEHOLDS.—To be eligi-
9 ble to receive a rebate described under para-
10 graph (1), an owner of a manufactured home
11 constructed prior to 1976 shall demonstrate to
12 the applicable State agency that the total in-
13 come of all members the owner's household does
14 not exceed 200 percent of the Federal poverty
15 level for income in the applicable area.

16 (E) ADVANCE AVAILABILITY.—A rebate
17 may be provided under this section in a manner
18 to facilitate the purchase of a new Energy Star
19 qualified manufactured home.

20 (4) REBATE LIMITATION.—Rebates provided by
21 States under this section shall not exceed \$7,500 per
22 manufactured home from any value derived from the
23 use of emission allowances provided to the State
24 pursuant to section 132.

1 (5) USE OF STATE FUNDS.—A State providing
2 rebates under this section may supplement the
3 amount of such rebates under paragraph (4) by any
4 additional amount is from State funds and other
5 sources, including private donations or grants from
6 charitable organizations.

7 (6) COORDINATION WITH SIMILAR PRO-
8 GRAMS.—

9 (A) STATE PROGRAMS.—A State con-
10 ducting an existing program that has the pur-
11 pose of replacing manufactured homes con-
12 structed prior to 1976 with Energy Star quali-
13 fied manufactured homes, may use allowance
14 value provided under section 782 to support
15 such a program, provided such funding does not
16 exceed the rebate limitation amount under
17 paragraph (4).

18 (B) FEDERAL PROGRAMS.—The Secretary
19 of Energy shall coordinate with and seek to
20 achieve the purpose of this section through
21 similar Federal programs including—

22 (i) the Weatherization Assistance Pro-
23 gram under part A of title IV of the En-
24 ergy Conservation and Production Act (42
25 U.S.C. 6861 et seq.); and

1 (ii) the program under part D of title
2 III of the Energy Policy and Conservation
3 Act (42 U.S.C. 6321 et seq.).

4 (C) COORDINATION WITH OTHER STATE
5 AGENCIES.—A State agency using allowance
6 value to administer the program under this sec-
7 tion may coordinate its efforts, and share funds
8 for administration, with other State agencies in-
9 volved in low-income housing programs.

10 (7) ADMINISTRATIVE EXPENSES.—A State
11 using allowance value under this section may expend
12 not more than 10 percent of such value for adminis-
13 trative expenses related to this program.

14 **SEC. 204. BUILDING ENERGY PERFORMANCE LABELING**
15 **PROGRAM.**

16 (a) ESTABLISHMENT.—

17 (1) PURPOSE.—The Administrator shall estab-
18 lish a building energy performance labeling program
19 with broad applicability to the residential and com-
20 mercial markets to enable and encourage knowledge
21 about building energy performance by owners and
22 occupants and to inform efforts to reduce energy
23 consumption nationwide.

24 (2) COMPONENTS.—In developing such pro-
25 gram, the Administrator shall—

1 (A) consider existing programs, such as
2 Environmental Protection Agency's Energy
3 Star program, the Home Energy Rating System
4 (HERS) Index, and programs at the Depart-
5 ment of Energy;

6 (B) support the development of model per-
7 formance labels for residential and commercial
8 buildings; and

9 (C) utilize incentives and other means to
10 spur use of energy performance labeling of pub-
11 lic and private sector buildings nationwide.

12 (b) DATA ASSESSMENT FOR BUILDING ENERGY PER-
13 FORMANCE.—

14 (1) INITIAL REPORT.—Not later than 90 days
15 after the date of enactment of this Act, the Adminis-
16 trator shall provide to Congress, as well as to the
17 Secretary of Energy and the Office of Management
18 and Budget, a report identifying—

19 (A) all principal building types for which
20 statistically significant energy performance data
21 exists to serve as the basis of measurement pro-
22 tocols and labeling requirements for achieved
23 building energy performance; and

1 (B) those building types for which addi-
2 tional data are required to enable the develop-
3 ment of such protocols and requirements.

4 (2) ADDITIONAL REPORTS.—Additional updated
5 reports shall be provided under this subsection as
6 often as The Administrator considers practicable,
7 but not less than every 2 years.

8 (c) BUILDING DATA ACQUISITION.—

9 (1) RESOURCE REQUIREMENTS.—For all prin-
10 cipal building types identified under subsection (b),
11 the Secretary of Energy, not later than 90 days
12 after a report by the Administrator under subsection
13 (b), shall provide to Congress, the Administrator,
14 and the Office of Management and Budget a state-
15 ment of additional resources needed, if any, to fully
16 develop the relevant data, as well as the anticipated
17 timeline for data development.

18 (2) CONSULTATION.—The Secretary of Energy
19 shall consult with the Administrator concerning the
20 Administrator's ability to use data series for these
21 additional building types to support the achieved
22 performance component in the labeling program.

23 (3) IMPROVEMENTS TO BUILDING ENERGY CON-
24 SUMPTION DATABASES.—

1 (A) COMMERCIAL DATABASE.—The Sec-
2 retary of Energy shall support improvements to
3 the Commercial Buildings Energy Consumption
4 Survey (CBECS) as authorized by section
5 205(k) of the Department of Energy Organiza-
6 tion Act (42 U.S.C. 7135(k))—

7 (i) to enable complete and robust data
8 for the actual energy performance of prin-
9 cipal building types currently covered by
10 survey;

11 (ii) to cover additional building types
12 as identified by the Administrator under
13 subsection (e)(1)(B), to enable the develop-
14 ment of achieved performance measure-
15 ment protocols are developed for at least
16 90 percent of all major commercial build-
17 ing types within 5 years after the date of
18 enactment of this Act; and

19 (iii) to include third-party audits of
20 random data samplings to ensure the qual-
21 ity and accuracy of survey information.

22 (B) RESIDENTIAL DATABASES.—The Ad-
23 ministrator, in consultation with the Energy In-
24 formation Administration and the Secretary of
25 Energy, shall support improvements to the Res-

1 idential Energy Consumption Survey (RECS)
2 as authorized by section 205(k) of the Depart-
3 ment of Energy Organization Act (42 U.S.C.
4 7135(k)), or such other residential energy per-
5 formance databases as the Administrator con-
6 siders appropriate, to aid the development of
7 achieved performance measurement protocols
8 for residential building energy use for at least
9 90 percent of the residential market within 5
10 years after the date of enactment of this Act.

11 (C) CONSULTATION.—The Secretary of
12 Energy and the Administrator shall consult
13 with public, private, and nonprofit sector rep-
14 resentatives from the building industry and real
15 estate industry to assist in the evaluation and
16 improvement of building energy performance
17 databases and labeling programs.

18 (d) IDENTIFICATION OF MEASUREMENT PROTOCOLS
19 FOR ACHIEVED PERFORMANCE.—

20 (1) PROPOSED PROTOCOLS AND REQUIRE-
21 MENTS.—At the earliest practicable date, but not
22 later than 1 year after identifying a building type
23 under subsection (b)(1)(A), the Administrator shall
24 propose a measurement protocol for that building
25 type and a requirement detailing how to use that

1 protocol in completing applicable commercial or resi-
2 dential performance labels created pursuant to this
3 section.

4 (2) FINAL RULE.—After providing for notice
5 and comment, the Administrator shall publish a
6 final rule containing a measurement protocol and
7 the corresponding requirements for applying that
8 protocol. Such a rule—

9 (A) shall define the minimum period for
10 measurement of energy use by buildings of that
11 type and other details for determining achieved
12 performance, to include leased buildings or
13 parts thereof;

14 (B) shall identify necessary data collection
15 and record retention requirements; and

16 (C) may specify transition rules and ex-
17 emptions for classes of buildings within the
18 building type.

19 (e) PROCEDURES FOR EVALUATING DESIGNED PER-
20 FORMANCE.—The Administrator shall develop protocols
21 for evaluating the designed performance of individual
22 building types. The Administrator may conduct such feasi-
23 bility studies and demonstration projects as are necessary
24 to evaluate the sufficiency of proposed protocols for de-
25 signed performance.

1 (f) CREATION OF BUILDING ENERGY PERFORMANCE
2 LABELING PROGRAM.—

3 (1) MODEL LABEL.—Not later than 1 year
4 after the date of enactment of this Act, the Adminis-
5 trator shall propose a model building energy label
6 that provides a format—

7 (A) to display achieved performance and
8 designed performance data;

9 (B) that may be tailored for residential
10 and commercial buildings, and for single-occu-
11 pancy and multitenanted buildings; and

12 (C) to display other appropriate elements
13 identified during the development of measure-
14 ment protocols under subsections (d) and (e).

15 (2) INCLUSIONS.—Nothing in this section shall
16 require the inclusion on such a label of designed per-
17 formance data where impracticable or not cost effec-
18 tive, or to preclude the display of both achieved per-
19 formance and designed performance data for a par-
20 ticular building where both such measures are avail-
21 able, practicable, and cost effective.

22 (3) EXISTING PROGRAMS.—In developing the
23 model label, the Administrator shall consider exist-
24 ing programs, including—

1 (A) the Environmental Protection Agency's
2 Energy Star Portfolio Manager program and
3 the California HERS II Program Custom Ap-
4 proach for the achieved performance component
5 of the label;

6 (B) the Home Energy Rating System
7 (HERS) Index system for the designed per-
8 formance component of the label; and

9 (C) other Federal and State programs, in-
10 cluding the Department of Energy's related
11 programs on building technologies and those of
12 the Federal Energy Management Program.

13 (4) FINAL RULE.—After providing for notice
14 and comment, the Administrator shall publish a
15 final rule containing the label applicable to covered
16 building types.

17 (g) DEMONSTRATION PROJECTS FOR LABELING
18 PROGRAM.—

19 (1) IN GENERAL.—The Administrator shall con-
20 duct building energy performance labeling dem-
21 onstration projects for different building types—

22 (A) to ensure the sufficiency of the current
23 Commercial Buildings Energy Consumption
24 Survey and other data to serve as the basis for
25 new measurement protocols for the achieved

1 performance component of the building energy
2 performance labeling program;

3 (B) to inform the development of measure-
4 ment protocols for building types not currently
5 covered by the Commercial Buildings Energy
6 Consumption Survey; and

7 (C) to identify any additional information
8 that needs to be developed to ensure effective
9 use of the model label.

10 (2) PARTICIPATION.—Such demonstration
11 projects shall include participation of—

12 (A) buildings from diverse geographical
13 and climate regions;

14 (B) buildings in both urban and rural
15 areas;

16 (C) single-family residential buildings;

17 (D) multihousing residential buildings with
18 more than 50 units, including at least one
19 project that provides affordable housing to indi-
20 viduals of diverse incomes;

21 (E) single-occupant commercial buildings
22 larger than 30,000 square feet;

23 (F) multitenanted commercial buildings
24 larger than 50,000 square feet; and

1 (G) buildings from both the public and pri-
2 vate sectors.

3 (3) PRIORITY.—Priority in the selection of dem-
4 onstration projects shall be given to projects that fa-
5 cilitate large-scale implementation of the labeling
6 program for samples of buildings across neighbor-
7 hoods, geographic regions, cities, or States.

8 (4) FINDINGS.—The Administrator shall report
9 any findings from demonstration projects under this
10 subsection, including an identification of any areas
11 of needed data improvement, to the Department of
12 Energy’s Energy Information Administration and
13 Building Technologies Program.

14 (5) COORDINATION.—The Administrator and
15 the Secretary of Energy shall coordinate demonstra-
16 tion projects undertaken pursuant to this subsection
17 with those undertaken as part of the Zero-Net-En-
18 ergy Commercial Buildings Initiative adopted under
19 section 422 of the Energy Independence and Secu-
20 rity Act of 2007 (42 U.S.C. 17082).

21 (h) IMPLEMENTATION OF LABELING PROGRAM.—

22 (1) IN GENERAL.—The Administrator, in con-
23 sultation with the Secretary of Energy, shall work
24 with all State Energy Offices established pursuant
25 to part D of title III of the Energy Policy and Con-

1 servation Act (42 U.S.C. 6321 et seq.) or other
2 State authorities as necessary for the purpose of im-
3 plementing the labeling program established under
4 this section for commercial and residential buildings.

5 (2) OUTREACH TO LOCAL AUTHORITIES.—The
6 Administrator shall, acting in consultation and co-
7 ordination with the respective States, encourage use
8 of the labeling program by counties and other local-
9 ities to broaden access to information about building
10 energy use, for example, through disclosure of build-
11 ing label contents in tax, title, and other records
12 those localities maintain. For this purpose, the Ad-
13 ministrator shall develop an electronic version of the
14 label and information that can be readily trans-
15 mitted and read in widely-available computer pro-
16 grams but is protected from unauthorized manipula-
17 tion.

18 (3) MEANS OF IMPLEMENTATION.—In adopting
19 the model labeling program established under this
20 section, a State shall seek to ensure that labeled in-
21 formation be made accessible to the public in a man-
22 ner so that owners, lenders, tenants, occupants, or
23 other relevant parties can utilize it. Such accessi-
24 bility may be accomplished through—

1 (A) preparation, and public disclosure of
2 the label through filing with tax and title
3 records at the time of—

4 (i) a building audit conducted with
5 support from Federal or State funds;

6 (ii) a building energy-efficiency ret-
7 rofit conducted in response to such an
8 audit;

9 (iii) a final inspection of major ren-
10 ovations or additions made to a building in
11 accordance with a building permit issued
12 by a local government entity;

13 (iv) a sale that is recorded for title
14 and tax purposes consistent with sub-
15 section (h)(8) of this section;

16 (v) a new lien recorded on the prop-
17 erty for more than a set percentage of the
18 assessed value of the property, if that lien
19 reflects public financial assistance for en-
20 ergy-related improvements to that building;
21 or

22 (vi) a change in ownership or oper-
23 ation of the building for purposes of utility
24 billing; or

25 (B) other appropriate means.

1 (4) STATE IMPLEMENTATION OF PROGRAM.—

2 (A) ELIGIBILITY.—A State may become el-
3 igible to utilize allowance value to implement
4 this program by—

5 (i) adopting by statute or regulation a
6 requirement that buildings be assessed and
7 labeled, consistent with the labeling re-
8 quirements of the program established
9 under this section; or

10 (ii) adopting a plan to implement a
11 model labeling program consistent with
12 this section within one year of enactment
13 of this Act, including the establishment of
14 that program within 3 years after the date
15 of enactment of this Act, and dem-
16 onstrating continuous progress under that
17 plan.

18 (B) USE OF ALLOWANCES.—Direct Fed-
19 eral support for the program established in this
20 section is provided through the emission allow-
21 ances allocated to the States' SEED Accounts
22 pursuant to section 132 of this Act. To the ex-
23 tent that a State provides allowances to local
24 governments within the State to implement this
25 program, that shall be deemed a distribution of

1 such allowances to units of local government
2 pursuant to subsection (c)(1) of that section.

3 (5) GUIDANCE.—The Administrator may create
4 or identify model programs and resources to provide
5 guidance to offer to States and localities for creating
6 labeling programs consistent with the model pro-
7 gram established under this section.

8 (6) PROGRESS REPORT.—The Administrator, in
9 consultation with the Secretary of Energy, shall pro-
10 vide a progress report to Congress not later than 3
11 years after the date of enactment of this Act that—

12 (A) evaluates the effectiveness of efforts to
13 advance use of the model labeling program by
14 States and localities;

15 (B) recommends any legislative changes
16 necessary to broaden the use of the model label-
17 ing program; and

18 (C) identifies any changes to broaden the
19 use of the model labeling program that the Ad-
20 ministrator has made or intends to make that
21 do not require additional legislative authority.

22 (7) STATE INFORMATION.—The Administrator
23 may require States to report to the Administrator
24 information that the Administrator requires to pro-
25 vide the report required under paragraph (6).

1 (8) PREVENTION OF DISRUPTION OF SALES
2 TRANSACTIONS.—No State shall implement a new
3 labeling program pursuant to this section in a man-
4 ner that requires the labeling of a building to occur
5 after a contract has been executed for the sale of
6 that building and before the sales transaction is
7 completed.

8 (i) IMPLEMENTATION OF LABELING PROGRAM IN
9 FEDERAL BUILDINGS.—

10 (1) USE OF LABELING PROGRAM.—The Sec-
11 retary of Energy and the Administrator shall use the
12 labeling program established under this section to
13 evaluate energy performance in the facilities of the
14 Department of Energy and the Environmental Pro-
15 tection Agency, respectively, to the extent prac-
16 ticable, and shall encourage and support implemen-
17 tation efforts in other Federal agencies.

18 (2) ANNUAL PROGRESS REPORT.—The Sec-
19 retary of Energy and Administrator shall provide an
20 annual progress report to Congress and the Office of
21 Management and Budget detailing efforts to imple-
22 ment this subsection, as well as any best practices
23 or needed resources identified as a result of such ef-
24 forts.

1 (j) PUBLIC OUTREACH.—The Secretary of Energy
2 and the Administrator, in consultation with nonprofit and
3 industry stakeholders with specialized expertise, and in
4 conjunction with other energy efficiency public awareness
5 efforts, shall establish a business and consumer education
6 program to increase awareness about the importance of
7 building energy efficiency and to facilitate widespread use
8 of the labeling program established under this section.

9 (k) DEFINITIONS.—In this section:

10 (1) BUILDING TYPE.—The term “building
11 type” means a grouping of buildings as identified by
12 their principal building activities, or as grouped by
13 their use, including office buildings, laboratories, li-
14 braries, data centers, retail establishments, hotels,
15 warehouses, and educational buildings.

16 (2) MEASUREMENT PROTOCOL.—The term
17 “measurement protocol” means the methodology,
18 prescribed by the Administrator, for defining a
19 benchmark for building energy performance for a
20 specific building type and for measuring that per-
21 formance against the benchmark.

22 (3) ACHIEVED PERFORMANCE.—The term
23 “achieved performance” means the actual energy
24 consumption of a building as compared to a baseline
25 building of the same type and size, determined by

1 actual consumption data normalized for appropriate
2 variables.

3 (4) DESIGNED PERFORMANCE.—The term “de-
4 signed performance” means the energy consumption
5 performance a building would achieve if operated
6 consistent with its design intent for building energy
7 use, utilizing a standardized set of operational condi-
8 tions informed by data collected or confirmed during
9 an energy audit.

10 (l) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated—

12 (1) to the Administrator \$50,000,000 for imple-
13 mentation of this section for each fiscal year from
14 2010 through 2020; and

15 (2) to the Secretary of Energy \$20,000,000 for
16 implementation of this section for fiscal year 2010
17 and \$10,000,000 for fiscal years 2011 through
18 2020.

19 **Subtitle B—Lighting and Appliance** 20 **Energy Efficiency Programs**

21 **SEC. 211. LIGHTING EFFICIENCY STANDARDS.**

22 (a) OUTDOOR LIGHTING.—

23 (1) DEFINITIONS.—

24 (A) Section 340(1) of the Energy Policy
25 and Conservation Act (42 U.S.C. 6311(1)) is

1 amended by striking subparagraph (L) and in-
2 serting the following:

3 “(L) Outdoor luminaires.

4 “(M) Outdoor high light output lamps.

5 “(N) Any other type of industrial equip-
6 ment which the Secretary classifies as covered
7 equipment under section 341(b).”.

8 (B) Section 340 of the Energy Policy and
9 Conservation Act (42 U.S.C. 6311) is amended
10 as adding at the end the following:

11 “(25) The term ‘luminaire’ means a complete
12 lighting unit consisting of one or more light sources
13 and ballast(s), together with parts designed to dis-
14 tribute the light, to position and protect such lamps,
15 and to connect such light sources to the power sup-
16 ply.

17 “(26) The term ‘outdoor luminaire’ means a lu-
18 minaire that is listed as suitable for wet locations
19 pursuant to Underwriters Laboratories Inc. stand-
20 ard UL 1598 and is labeled as ‘Suitable for Wet Lo-
21 cations’ consistent with section 410.4(A) of the Na-
22 tional Electrical Code 2005, or is designed for road-
23 way illumination and meets the requirements of Ad-
24 dendum A for IESNA TM-15-07: Backlight,
25 Uplight, and Glare (BUG) Ratings, except for—

1 “(A) luminaires designed for outdoor video
2 display images that cannot be used in general
3 lighting applications;

4 “(B) portable luminaires designed for use
5 at construction sites;

6 “(C) luminaires designed for continuous
7 immersion in swimming pools and other water
8 features;

9 “(D) seasonal luminaires incorporating
10 solely individual lamps rated at 10 watts or
11 less;

12 “(E) luminaires designed to be used in
13 emergency conditions that incorporate a means
14 of charging a battery and a device to switch the
15 power supply to emergency lighting loads auto-
16 matically upon failure of the normal power sup-
17 ply;

18 “(F) components used for repair of in-
19 stalled luminaries and that meet the require-
20 ments of section 342(h);

21 “(G) a luminaire utilizing an electrode-less
22 fluorescent lamp as the light source;

23 “(H) decorative gas lighting systems;

24 “(I) luminaires designed explicitly for
25 lighting for theatrical purposes, including per-

1 formance, stage, film production, and video pro-
2 duction;

3 “(J) luminaires designed as theme ele-
4 ments in theme/amusement parks and that can-
5 not be used in most general lighting applica-
6 tions;

7 “(K) luminaires designed explicitly for ve-
8 hicular roadway tunnels designed to comply
9 with ANSI/IESNA RP-22-05;

10 “(L) luminaires designed explicitly for haz-
11 ardous locations meeting UL Standard 844;

12 “(M) searchlights;

13 “(N) luminaires that are designed to be re-
14 cessed into a building, and that cannot be used
15 in most general lighting applications;

16 “(O) a luminaire rated only for residential
17 applications utilizing a light source or sources
18 regulated under the amendments made by sec-
19 tion 321 of the Energy Independence and Secu-
20 rity Act of 2007 and with a light output no
21 greater than 2,600 lumens;

22 “(P) a residential pole-mounted luminaire
23 that is not rated for commercial use utilizing a
24 light source or sources meeting the efficiency
25 requirements of section 231 of the Energy

1 Independence and Security Act of 2007 and
2 mounted on a post or pole not taller than 10.5
3 feet above ground and with a light output not
4 greater than 2,600 lumens;

5 “(Q) a residential fixture with E12 (Can-
6 delabra) bases that is rated for not more than
7 300 watts total; or

8 “(R) a residential fixture with medium
9 screw bases that is rated for not more than 145
10 watts.

11 “(27) The term ‘outdoor high light outputlamp’
12 means a lamp that—

13 “(A) has a rated lumen output not less
14 than 2601 lumens;

15 “(B) is capable of being operated at a volt-
16 age not less than 110 volts and not greater
17 than 300 volts, or driven at a constant current
18 of 6.6 amperes;

19 “(C) is not a Parabolic Aluminized Reflec-
20 tor lamp; and

21 “(D) is not a J-type double-ended (T-3)
22 halogen quartz lamp, utilizing R-7S bases, that
23 is manufactured before January 1, 2015.

24 “(28) The term ‘outdoor lighting control’ means
25 a device incorporated in a luminaire that receives a

1 signal, from either a sensor (such as an occupancy
2 sensor, motion sensor, or daylight sensor) or an
3 input signal (including analog or digital signals com-
4 municated through wired or wireless technology),
5 and can adjust the light level according to the sig-
6 nal.”.

7 (2) STANDARDS.— Section 342 of the Energy
8 Policy and Conservation Act (42 U.S.C. 6313) is
9 amended by adding at the end the following:

10 “(g) OUTDOOR LUMINAIRES.—

11 “(1) Each outdoor luminaire manufactured on
12 or after January 1, 2011, shall—

13 “(A) have an initial luminaire efficacy of
14 at least 50 lumens per watt; and

15 “(B) be designed to use a light source with
16 a lumen maintenance, calculated as mean rated
17 lumens divided by initial lumens, of at least 0.6.

18 “(2) Each outdoor luminaire manufactured on
19 or after January 1, 2013, shall—

20 “(A) have an initial luminaire efficacy of
21 at least 70 lumens per watt; and

22 “(B) be designed to use a light source with
23 a lumen maintenance, calculated as mean rated
24 lumens divided by initial lumens, of at least 0.6.

1 “(3) Each outdoor luminaire manufactured on
2 or after January 1, 2015, shall—

3 “(A) have an initial luminaire efficacy of
4 at least 80 lumens per watt; and

5 “(B) be designed to use a light source with
6 a lumen maintenance, calculated as mean rated
7 lumens divided by initial lumens, of at least
8 0.65.

9 “(4) In addition to the requirements of para-
10 graphs (1) through (3), each outdoor luminaire man-
11 ufactured on or after January 1, 2011, shall have
12 the capability of producing at least two different
13 light levels, including 100 percent and 60 percent of
14 full lamp output as tested with the maximum rated
15 lamp per UL1598 or the manufacturer’s maximum
16 specified for the luminaire under test.

17 “(5)(A) Not later than January 1, 2017, the
18 Secretary shall issue a final rule amending the appli-
19 cable standards established in paragraphs (3) and
20 (4) if technologically feasible and economically justi-
21 fied.

22 “(B) A final rule issued under subparagraph
23 (A) shall establish efficiency standards at the max-
24 imum level that is technically feasible and economi-
25 cally justified, as provided in subsections (o) and (p)

1 of section 325. The Secretary may also, in such rule-
2 making, amend or discontinue the product exclusions
3 listed in section 340(26)(A) through (P), or amend
4 the lumen maintenance requirements in paragraph
5 (3) if the Secretary determines that such amend-
6 ments are consistent with the purposes of this Act.

7 “(C) If the Secretary issues a final rule under
8 subparagraph (A) establishing amended standards,
9 the final rule shall provide that the amended stand-
10 ards apply to products manufactured on or after
11 January 1, 2020, or one year after the date on
12 which the final amended standard is published,
13 whichever is later.

14 “(h) OUTDOOR HIGH LIGHT OUTPUT LAMPS.—Each
15 outdoor high light output lamp manufactured on or after
16 January 1, 2012, shall have a lighting efficiency of at least
17 45 lumens per watt.”.

18 (3) TEST PROCEDURES.— Section 343(a) of the
19 Energy Policy and Conservation Act (42 U.S.C.
20 6314(a)) is amended by adding at the end the fol-
21 lowing:

22 “(10) OUTDOOR LIGHTING.—

23 “(A) With respect to outdoor luminaires
24 and outdoor high light output lamps, the test
25 procedures shall be based upon the test proce-

1 dures specified in illuminating engineering soci-
2 ety procedures LM-79 as of March 1, 2009,
3 and LM-31, and/or other appropriate consensus
4 test procedures developed by the Illuminating
5 Engineering Society or other appropriate con-
6 sensus standards bodies.

7 “(B) If illuminating engineering society
8 procedure LM—79 is amended, the Secretary
9 shall amend the test procedures established in
10 subparagraph (A) as necessary to be consistent
11 with the amended LM-79 test procedure, unless
12 the Secretary determines, by rule, published in
13 the Federal Register and supported by clear
14 and convincing evidence, that to do so would
15 not meet the requirements for test procedures
16 under paragraph (2).

17 “(C) The Secretary may revise the test
18 procedures for outdoor luminaires or outdoor
19 high light output lamps by rule consistent with
20 paragraph (2), and may incorporate as appro-
21 priate consensus test procedures developed by
22 the Illuminating Engineering Society or other
23 appropriate consensus standards bodies.”.

1 (4) PREEMPTION.— Section 345 of the Energy
2 Policy and Conservation Act (42 U.S.C. 6316) is
3 amended by adding at the end the following:

4 “(i)(1) Except as provided in paragraph (2), section
5 327 shall apply to outdoor luminaires to the same extent
6 and in the same manner as the section applies under part
7 B.

8 “(2) Any State standard that is adopted on or before
9 January 1, 2015, pursuant to a statutory requirement to
10 adopt efficiency standards for reducing outdoor lighting
11 energy use enacted prior to January 31, 2008, shall not
12 be preempted.”.

13 (5) ENERGY EFFICIENCY STANDARDS FOR CER-
14 TAIN LUMINAIRES.—Not later than 1 year after the
15 date of enactment of this Act, the Secretary of En-
16 ergy shall, in consultation with the National Elec-
17 trical Manufacturers Association, collect data for
18 United States sales of luminaires described in sec-
19 tion 340(26)(H) and (M) of the Energy Policy and
20 Conservation Act, to determine the historical growth
21 rate. If the Secretary finds that the growth in mar-
22 ket share of such luminaires exceeds twice the year
23 to year rate of the average of the previous three
24 years, then the Secretary shall within 12 months ini-
25 tiate a rulemaking to determine if such exclusion

1 should be eliminated, if substitute products exist
2 that perform more efficiently and fulfill the perform-
3 ance functions of these luminaires.

4 (b) PORTABLE LIGHTING.—

5 (1) PORTABLE LIGHT FIXTURES.—

6 (A) DEFINITIONS.—Section 321 of the En-
7 ergy Policy and Conservation Act (42 U.S.C.
8 6291) is amended by adding at the end the fol-
9 lowing:

10 “(67) ART WORK LIGHT FIXTURE.—The term
11 ‘art work light fixture’ means a light fixture de-
12 signed only to be mounted directly to an art work
13 and for the purpose of illuminating that art work.

14 “(68) LED LIGHT ENGINE.—The term ‘LED
15 light engine’ or ‘LED light engine with integral heat
16 sink’ means a subsystem of an LED light fixture
17 that—

18 “(A) includes 1 or more LED components,
19 including—

20 “(i) an LED driver power source with
21 electrical and mechanical interfaces; and

22 “(ii) an integral heat sink to provide
23 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 (nn);

10 (ii) in subsection (nn)(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 171(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 three
6 years after publication of the final rule. Such rule-
7 making shall consider incandescent and non-
8 incandescent technologies. Such rulemaking shall
9 consider a new metric other than lumens-per-watt
10 based on the photometric distribution of light from
11 such lamps.”.

12 **SEC. 212. OTHER APPLIANCE EFFICIENCY STANDARDS.**

13 (a) STANDARDS FOR WATER DISPENSERS, HOT
14 FOOD HOLDING CABINETS, AND PORTABLE ELECTRIC
15 SPAS.—

16 (1) DEFINITIONS.—Section 321 of the Energy
17 Policy and Conservation Act (42 U.S.C. 6291), as
18 amended by section 211 of this Act, is further
19 amended by adding at the end the following:

20 “(75) The term ‘water dispenser’ means a fac-
21 tory-made assembly that mechanically cools and
22 heats potable water and that dispenses the cooled or
23 heated water by integral or remote means.

24 “(76) The term ‘bottle-type water dispenser’
25 means a drinking water dispenser designed for dis-

1 pensing both hot and cold water that uses a remov-
2 able bottle or container as the source of potable
3 water.

4 “(77) The term ‘commercial hot food holding
5 cabinet’ means a heated, fully-enclosed compartment
6 with one or more solid or glass doors that is de-
7 signed to maintain the temperature of hot food that
8 has been cooked in a separate appliance. Such term
9 does not include heated glass merchandizing cabi-
10 nets, drawer warmers, commercial hot food holding
11 cabinets with interior volumes of less than 8 cubic
12 feet, or cook-and-hold appliances.

13 “(78) The term ‘portable electric spa’ means a
14 factory-built electric spa or hot tub, supplied with
15 equipment for heating and circulating water.”.

16 (2) **COVERAGE.**—Section 322(a) of the Energy
17 Policy and Conservation Act (42 U.S.C. 6292(a)), as
18 amended by section 211(b)(1)(B) of this Act, is fur-
19 ther amended by inserting after paragraph (20) the
20 following new paragraphs:

21 “(21) Bottle type water dispensers.

22 “(22) Commercial hot food holding cabinets.

23 “(23) Portable electric spas.”.

24 (3) **TEST PROCEDURES.**—Section 323(b) of the
25 Energy Policy and Conservation Act (42 U.S.C.

1 6293(b)), as amended by section 211(b)(1)(C) of
2 this Act, is further amended by adding at the end
3 the following:

4 “(20) BOTTLE TYPE WATER DISPENSERS.—
5 Test procedures for bottle type water dispensers
6 shall be based on ‘Energy Star Program Require-
7 ments for Bottled Water Coolers version 1.1’ pub-
8 lished by the Environmental Protection Agency.
9 Units with an integral, automatic timer shall not be
10 tested using section 4D, ‘Timer Usage,’ of the test
11 criteria.

12 “(21) COMMERCIAL HOT FOOD HOLDING CABI-
13 NETS.—Test procedures for commercial hot food
14 holding cabinets shall be based on the test proce-
15 dures described in ANSI/ASTM F2140–01 (Test for
16 idle energy rate-dry test). Interior volume shall be
17 based on the method shown in the Environmental
18 Protection Agency’s ‘Energy Star Program Require-
19 ments for Commercial Hot Food Holding Cabinets’
20 as in effect on August 15, 2003.

21 “(22) PORTABLE ELECTRIC SPAS.—Test proce-
22 dures for portable electric spas shall be based on the
23 test method for portable electric spas contained in
24 section 1604, title 20, California Code of Regula-
25 tions as amended on December 3, 2008. When the

1 American National Standards Institute publishes a
2 test procedure for portable electric spas, the Sec-
3 retary shall revise the Department of Energy's pro-
4 cedure.”.

5 (4) STANDARDS.—Section 325 of the Energy
6 Policy and Conservation Act (42 U.S.C. 6295), as
7 amended by section 211 of this Act, is further
8 amended by adding after subsection (jj) the fol-
9 lowing:

10 “(kk) BOTTLE TYPE WATER DISPENSERS.—Effec-
11 tive January 1, 2012, bottle-type water dispensers de-
12 signed for dispensing both hot and cold water shall not
13 have standby energy consumption greater than 1.2 kilo-
14 watt-hours per day.

15 “(ll) COMMERCIAL HOT FOOD HOLDING CABI-
16 NETS.—Effective January 1, 2012, commercial hot food
17 holding cabinets with interior volumes of 8 cubic feet or
18 greater shall have a maximum idle energy rate of 40 watts
19 per cubic foot of interior volume.

20 “(mm) PORTABLE ELECTRIC SPAS.—Effective Janu-
21 ary 1, 2012, portable electric spas shall not have a normal-
22 ized standby power greater than $5(V^{2/3})$ Watts where
23 V =the fill volume in gallons.

24 The Secretary of Energy shall consider revisions to the
25 standards in subsections (kk), (ll), and (mm) in accord-

1 ance with subsection (o) and publish a final rule no later
2 than January 1, 2013 establishing such revised standards,
3 or make a finding that no revisions are technically feasible
4 and economically justified. Any such revised standards
5 shall take effect January 1, 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 section, Appendix H to Subpart B of
15 Part 430 of the United States Code of Federal Reg-
16 ulations, ‘Uniform Test Method for Measuring the
17 Energy Consumption of Television Sets’, is repealed.

18 “(B) No later than 12 months after enactment
19 of this paragraph the Secretary shall publish in the
20 Federal Register a final rule prescribing a new test
21 method for televisions.”.

22 (d) CRITERIA FOR PRESCRIBING NEW OR AMENDED
23 STANDARDS.—(1) Section 325(o)(2)(B)(i) of the Energy
24 Policy and Conservation Act (42 U.S.C. 6295(o)(2)(B)(i))
25 is amended as follows:

1 (A) By striking “and” at the end of subclause
2 (VI).

3 (B) By and inserting the following new sub-
4 clauses after subclause (VI):

5 “(VII) the estimated value of the carbon dioxide
6 and other emission reductions that will be achieved
7 by virtue of the higher energy efficiency of the cov-
8 ered products resulting from the imposition of the
9 standard;

10 “(VIII) the estimated impact of standards for a
11 particular product on average consumer energy
12 prices;

13 “(IX) the increased energy efficiency that may
14 be attributable to the installation of Smart Grid
15 technologies or capabilities in the covered products,
16 if applicable in the determination of the Secretary;

17 “(X) the availability in the United States or in
18 other nations of examples or prototypes of covered
19 products that achieve significantly higher efficiency
20 standards for energy or for water; and”.

21 (C) By redesignating subclause (VII) as sub-
22 clause (XI).

23 (2) Section 325(o)(2)(B)(iii) of such Act is amended
24 as follows:

25 (A) By striking “three” and inserting “5”.

1 (B) By inserting after the first sentence the fol-
2 lowing “For products with an average expected use-
3 ful life of less than 5 years, such rebuttable pre-
4 sumption shall be determined utilizing 75 percent of
5 the product’s average expected useful life as a multi-
6 plier instead of 5.”.

7 (C) By striking the last sentence and inserting
8 the following: “Such a presumption may be rebutted
9 only if the Secretary finds, based on clear, con-
10 vincing, and reliable evidence, that—

11 “(I) such standard level would cause serious
12 and unavoidable hardship to the average consumer
13 of the product, or to manufacturers supplying a sig-
14 nificant portion of the market for the product, that
15 substantially outweighs the standard level’s benefits;

16 “(II) the standard and implementing regula-
17 tions cannot be designed to avoid or mitigate the
18 hardship identified under subparagraph (I), through
19 the adoption of regional standards consistent with
20 paragraph (6) of this subsection, or other reasonable
21 means consistent with this chapter;

22 “(III) the same or substantially similar hard-
23 ship would not occur under a standard adopted in
24 the absence of the presumption, but that otherwise
25 meets the requirements of this section; and

1 “(IV) the hardship cannot be avoided or miti-
2 gated pursuant the procedures specified in section
3 504 of the Department of Energy Organization Act
4 (42 U.S.C. 7194).

5 A determination by the Secretary that the criteria trig-
6 gering such presumption are not met, or that the criterion
7 for rebutting the presumption are met shall not be taken
8 into consideration in the Secretary’s determination of
9 whether a standard is economically justified.”.

10 (e) OBTAINING APPLIANCE INFORMATION FROM
11 MANUFACTURERS.—Section 326(d) of the Energy Policy
12 and Conservation Act (42 U.S.C. 6295(d)) is amended to
13 read as follows:

14 “(d) INFORMATION REQUIREMENTS.—(1) For pur-
15 poses of carrying out this part, the Secretary shall publish
16 proposed regulations not later than one year after the date
17 of enactment of the American Clean Energy and Security
18 Act of 2009, and after receiving public comment, final reg-
19 ulations not later than 18 months from such date of enact-
20 ment under this part or other provision of law adminis-
21 tered by the Secretary, which shall require each manufac-
22 turer of a covered product to submit information or re-
23 ports to the Secretary on an annual basis in a form adopt-
24 ed by the Secretary. Such reports shall include informa-
25 tion or data with respect to—

1 “(A) the manufacturers’ compliance with all re-
2 quirements applicable pursuant to this part;

3 “(B) the economic impact of any proposed en-
4 ergy conservation standard;

5 “(C) the manufacturers’ annual shipments of
6 each class or category of covered products, orga-
7 nized, to the maximum extent practicable, by—

8 “(i) energy efficiency, energy use, and, if
9 applicable, water use;

10 “(ii) the presence or absence of such effi-
11 ciency related or energy consuming operational
12 characteristics or components as the Secretary
13 determines are relevant for the purposes of car-
14 rying out this part; and

15 “(iii) the State or regional location of sale,
16 for covered products for which the Secretary
17 may adopt regional standards; and

18 “(D) such other categories of information as
19 the Secretary deems relevant to carry out this part,
20 including such other information as may be nec-
21 essary to establish and revise test procedures, label-
22 ing rules, and energy conservation standards and to
23 insure compliance with the requirements of this
24 part.

1 “(2) In adopting regulations under this subsection,
2 the Secretary shall consider existing public sources of in-
3 formation, including nationally recognized certification
4 programs of trade associations.

5 “(3) The Secretary shall exercise authority under this
6 section in a manner designed to minimize unnecessary
7 burdens on manufacturers of covered products.

8 “(4) To the extent that they do not conflict with the
9 duties of the Secretary in carrying out this part, the provi-
10 sions of section 11(d) of the Energy Supply and Environ-
11 mental Coordination Act of 1974 (15 U.S.C. 796(d)) shall
12 apply with respect to information obtained under this sub-
13 section to the same extent and in the same manner as
14 they apply with respect to other energy information ob-
15 tained under such section.”.

16 (f) STATE WAIVER.—Section 327(c) of the Energy
17 Policy and Conservation Act (42 U.S.C. 6297(c)), as
18 amended by section 171(a)(19) of this Act, is further
19 amended by adding at the end the following:

20 “(12) is a regulation concerning standards for
21 hot food holding cabinets, drinking water dispensers
22 and portable electric spas adopted by the California
23 Energy Commission on or before January 1, 2013.”.

1 (g) WAIVER OF FEDERAL PREEMPTION.—Paragraph
2 (1) of section 327(d) of the Energy Policy and Conserva-
3 tion Act (42 U.S.C. 6297(d)) is amended as follows:

4 (1) In subparagraph (A) by striking “State reg-
5 ulation” each place it appears and inserting “State
6 statute or regulation”.

7 (2) In subparagraph (B) by adding at the end
8 the following new sentence: “In making such a find-
9 ing, the Secretary may not reject a petition for fail-
10 ure of the petitioning State or river basin commis-
11 sion to produce confidential information maintained
12 by any manufacturer or distributor, or group or as-
13 sociation of manufacturers or distributors, and
14 which the petitioning party does not have the legal
15 right to obtain.”.

16 (3) In clause (ii) of subparagraph (C) by strik-
17 ing “costs” each place it appears and inserting “es-
18 timated costs”.

19 (4) In subparagraph (C) by striking “within the
20 context of the State’s energy plan and forecast,
21 and,”.

22 (h) INCLUSION OF CARBON OUTPUT ON APPLIANCE
23 “ENERGYGUIDE” LABELS.—(1) Section 324(a)(2) of the
24 Energy Policy and Conservation Act (42 U.S.C.

1 6294(a)(2)) is amended by adding the following at the
2 end:

3 “(I)(i) Not later than 90 days after the
4 date of enactment of this subparagraph, the
5 Commission shall initiate a rulemaking to im-
6 plement the additional labeling requirements
7 specified in subsection (c)(1)(C) of this section
8 with an effective date for the revised labeling
9 requirement not later than 12 months from
10 issuance of the final rule.

11 “(ii) Not later than 24 months after the
12 date of enactment of this subparagraph, the
13 Commission shall complete the rulemaking initi-
14 ated under clause (i).

15 “(iii) Not later than 90 days after issuance
16 of the final rule as provided in this subpara-
17 graph, the Secretary shall issue calculation
18 methods required to effectuate the labeling re-
19 quirements specified in subsection (c)(1)(C) of
20 this section.”.

21 (2) Section 324(c)(1) of the Energy Policy and
22 Conservation Act (42 U.S.C. 6294(c)(1)) is amend-
23 ed—

24 (A) by striking “and” at the end of sub-
25 paragraph (A);

1 (B) by striking the period at the end of
2 subparagraph (B); and

3 (C) by adding at the end the following new
4 subparagraphs:

5 “(C) for products or groups of products
6 providing a comparable function (including the
7 group of products comprising the heating func-
8 tion of heat pumps and furnaces) among cov-
9 ered products listed in paragraphs (3), (4), (5),
10 (8), (9), (10), and (11) of section 322(a) of this
11 part, and others designated by the Secretary,
12 the estimated total annual atmospheric carbon
13 dioxide emissions (or their equivalent in other
14 greenhouse gases) associated with, or caused
15 by, the product, calculated utilizing—

16 “(i) national average energy use for
17 the product including energy consumed at
18 the point of end use based on test proce-
19 dures developed under section 323 of this
20 part;

21 “(ii) national average energy con-
22 sumed or lost in the production, genera-
23 tion, transportation, storage, and distribu-
24 tion of energy to the point of end use; and

1 “(iii) any direct emissions of green-
2 house gases from the product during nor-
3 mal use;

4 “(D) in determining the national average
5 energy consumption and total annual atmos-
6 pheric carbon dioxide emissions, the Secretary
7 shall utilize Federal Government sources, in-
8 cluding the Energy Information Administration
9 Annual Energy Review, the Environmental Pro-
10 tection Agency eGRID data base, Environ-
11 mental Protection Agency AP-42 Emission
12 Factors as amended, and other sources deter-
13 mined to be appropriate by the Secretary; and

14 “(E) information presenting, for each
15 product (or group of products providing the
16 comparable function) identified in section
17 (c)(1)(C) of this section, the estimated annual
18 carbon dioxide emissions calculated within the
19 range of emissions calculated for all models of
20 the product or group according to its function,
21 including those models consuming fuels and
22 those models not consuming fuels.”.

23 (i) PERMITTING STATES TO SEEK INJUNCTIVE EN-
24 FORCEMENT.—Section 334 of the Energy Policy and Con-

1 servation Act (42 U.S.C. 6304(a)) is amended to read as
2 follows:

3 **“SEC. 334. JURISDICTION AND VENUE.**

4 “(a) JURISDICTION.—The United States district
5 courts shall have jurisdiction to restrain—

6 “(1) any violation of section 332; and

7 “(2) any person from distributing in commerce
8 any covered product which does not comply with an
9 applicable rule under section 324 or 325.

10 “(b) AUTHORITY.—Any action referred to in sub-
11 section (a) shall be brought by the Commission or by the
12 attorney general of a State in the name of the State, ex-
13 cept that—

14 “(1) any such action to restrain any violation of
15 section 332(a)(3) which relates to requirements pre-
16 scribed by the Secretary or any violation of section
17 332(a)(4) which relates to request of the Secretary
18 under section 326(b)(2) shall be brought by the Sec-
19 retary; and

20 “(2) any violation of section 332(a)(5) or
21 332(a)(7) shall be brought by the Secretary or by
22 the attorney general of a State in the name of the
23 State.

24 “(c) VENUE AND SERVICE OF PROCESS.—Any such
25 action may be brought in the United States district court

1 for a district wherein any act, omission, or transaction
2 constituting the violation occurred, or in such court of the
3 district wherein the defendant is found or transacts busi-
4 ness. In any action under this section, process may be
5 served on a defendant in any other district in which the
6 defendant resides or may be found.”.

7 (j) TREATMENT OF APPLIANCES WITHIN BUILDING
8 CODES.—(1) Section 327(f)(3) of the Energy Policy and
9 Conservation Act (42 U.S.C. 6297(f)(3)) is amended by
10 striking subparagraphs (B) through (E) and inserting the
11 following:

12 “(B) The code meets at least one of the
13 following requirements:

14 “(i) The code does not require that
15 the covered product have an energy effi-
16 ciency exceeding—

17 “(I) the applicable energy con-
18 servation standard established in or
19 prescribed under section 325;

20 “(II) the level required by a reg-
21 ulation of that State for which the
22 Secretary has issued a rule granting a
23 waiver under subsection (d) of this
24 section; or

1 “(III) the required level estab-
2 lished in the International Energy
3 Conservation Code or in a standard of
4 the American Society of Heating, Re-
5 frigerating and Air-Conditioning En-
6 gineers, or by the Secretary pursuant
7 to section 304 of the Energy Con-
8 servation and Production Act.

9 “(ii) If the code uses one or more
10 baseline building designs against which all
11 submitted building designs are to be evalu-
12 ated and such baseline building designs
13 contain a covered product subject to an en-
14 ergy conservation standard established in
15 or prescribed under section 325, the base-
16 line building designs are based on an effi-
17 ciency level for such covered product which
18 meets but does not exceed one of the levels
19 specified in clause (i).

20 “(iii) If the code sets forth one or
21 more optional combinations of items which
22 meet the energy consumption or conserva-
23 tion objective, in at least one combination
24 that the State has found to be reasonably
25 achievable using commercially available

1 technologies the efficiency of the covered
2 product meets but does not exceed one of
3 the levels specified in clause (i).

4 “(C) The credit to the energy consumption
5 or conservation objective allowed by the code for
6 installing covered products having energy effi-
7 ciencies exceeding one of the levels specified in
8 subparagraph (B)(i) is on a one-for-one equiva-
9 lent energy use or equivalent energy cost basis,
10 taking into account the typical lifetime of the
11 product.

12 “(D) The energy consumption or conserva-
13 tion objective is specified in terms of an esti-
14 mated total consumption of energy (which may
15 be calculated from energy loss- or gain-based
16 codes) utilizing an equivalent amount of energy
17 (which may be specified in units of energy or its
18 equivalent cost) and equivalent lifetimes.

19 “(E) The estimated energy use of any cov-
20 ered product permitted or required in the code,
21 or used in calculating the objective, is deter-
22 mined using the applicable test procedures pre-
23 scribed under section 323, except that the State
24 may permit the estimated energy use calcula-
25 tion to be adjusted to reflect the conditions of

1 the areas where the code is being applied if
2 such adjustment is based on the use of the ap-
3 plicable test procedures prescribed under sec-
4 tion 323 or other technically accurate docu-
5 mented procedure.”.

6 (2) Section 327(f)(4)(B) of the Energy Policy
7 and Conservation Act (42 U.S.C. 6297(f)(4)(B)) is
8 amended to read as follows:

9 “(B) If a building code requires the instal-
10 lation of covered products with efficiencies ex-
11 ceeding the levels and requirements specified in
12 paragraph (3)(B), such requirement of the
13 building code shall not be applicable unless the
14 Secretary has granted a waiver for such re-
15 quirement under subsection (d) of this sec-
16 tion.”.

17 **SEC. 214. BEST-IN-CLASS APPLIANCES DEPLOYMENT PRO-**
18 **GRAM.**

19 (a) IN GENERAL.—Not later than 1 year after the
20 date of enactment of this Act, the Secretary of Energy,
21 in consultation with the Administrator, shall establish a
22 program to be known as the “Best-in-Class Appliances
23 Deployment Program” to—

24 (1) provide bonus payments to retailers or dis-
25 tributors under subsection (c) for sales of best-in-

1 class high-efficiency household appliance models,
2 high-efficiency installed building equipment, and
3 high-efficiency consumer electronics, with the goal of
4 reducing life-cycle costs for consumers, encouraging
5 innovation, and maximizing energy savings and pub-
6 lic benefit;

7 (2) provide bounties under subsection (d) to re-
8 tailers for the replacement, retirement, and recycling
9 of old, inefficient, and environmentally harmful
10 products; and

11 (3) provide premium awards under subsection
12 (e) to manufacturers for developing and producing
13 new Superefficient Best-in-Class Products.

14 (b) DESIGNATION OF BEST-IN-CLASS PRODUCT
15 MODELS.—

16 (1) IN GENERAL.—The Secretary of Energy
17 shall designate product models of appliances, equip-
18 ment, or electronics as Best-in-Class Product mod-
19 els. The Secretary shall publicly announce the Best-
20 in-Class Product models designated under this sub-
21 section. The Secretary shall define product classes
22 broadly and, except as provided in paragraph (2),
23 shall designate as Best-in-Class Product models no
24 more than the most efficient 10 percent of the com-
25 mercially available product models in a class that

1 demonstrate, as a group, a distinctly greater energy
2 efficiency than the average energy efficiency of that
3 class of appliances, equipment, or electronics. In des-
4 ignating models, the Secretary shall—

5 (A) identify commercially available models
6 in the relevant class of products;

7 (B) identify the subgroup of those models
8 that share the distinctly higher energy-effi-
9 ciency characteristics that warrant designation
10 as best-in-class; and

11 (C) add other models in that class to the
12 list of Best-in-Class Product models as they
13 demonstrate their ability to meet the higher-ef-
14 ficiency characteristics on which the designation
15 was made.

16 (2) PERCENTAGE EXCEPTION.—If there are
17 fewer than 10 product models in a class of products,
18 the Secretary may designate one or more of such
19 models as Best-in-Class Products.

20 (3) REVIEW OF BEST-IN-CLASS STANDARDS.—
21 The Secretary shall review annually the product-spe-
22 cific criteria for designating, and the product models
23 that qualify as, Best-in-Class Products and, after
24 notice and a 30-day comment period, make upwards
25 adjustments in the efficiency criteria as necessary to

1 maintain an appropriate ratio of such product mod-
2 els to the total number of product models in the
3 product class.

4 (c) BONUSES FOR SALES OF BEST-IN-CLASS PROD-
5 UCTS.—

6 (1) IN GENERAL.—The Secretary of Energy
7 shall make bonus payments to retailers or, as pro-
8 vided in paragraph (5)(B), distributors for the sale
9 of Best-in-Class Products.

10 (2) BONUS PROGRAM.—The Secretary shall—

11 (A) publicly announce the availability and
12 amount of the bonus to be paid for each sale
13 of a Best-in-Class Product of a model des-
14 ignated under subsection (b); and

15 (B) make bonus payments in at least that
16 amount for each Best-in-Class Product of that
17 model sold during the 3-year period beginning
18 on the date the model is designated under sub-
19 section (b).

20 (3) UPGRADE OF BEST-IN-CLASS PRODUCT ELI-
21 GIBILITY.—In conducting a review under subsection
22 (b)(3), the Secretary shall—

23 (A) consider designating as a Best-in-Class
24 Product model a Superefficient Best-in-Class

1 Product model that has been designated pursu-
2 ant to subsection (e);

3 (B) announce any change in the bonus
4 payment as necessary to increase the market
5 share of Best-in-Class Product models;

6 (C) list models that will be eligible for bo-
7 nuses in the new amount; and

8 (D) continue paying bonus payments at
9 the original level, for the sale of any models
10 that previously qualified as Best-in-Class Prod-
11 ucts but do not qualify at the new level, for the
12 remainder of the 3-year period announced with
13 the original designation.

14 (4) SIZE OF INDIVIDUAL BONUS PAYMENTS.—

15 (A) The size of each bonus payment under this sub-
16 section shall be the product of—

17 (i) an amount determined by the Sec-
18 retary; and

19 (ii) the difference in energy consump-
20 tion between the Best-in-Class Product
21 and the average product in the product
22 class.

23 (B) The Secretary shall determine the amount
24 under subparagraph (A)(i) for each product type, in
25 consultation with State and utility efficiency pro-

1 gram administrators as well as the Administrator,
2 based on estimates of the amount of bonus payment
3 that would provide significant incentive to increase
4 the market share of Best-in-Class Products.

5 (5) ELIGIBLE BONUS RECIPIENT.—(A) The
6 Secretary shall ensure that not more than 1 bonus
7 payment is provided under this subsection for each
8 Best-in-Class Product.

9 (B) The Secretary may make distributors eligi-
10 ble to receive bonus payments under this subsection
11 for sales that are not to the final end-user, to the
12 extent that the Secretary determines that for a par-
13 ticular product category distributors are well situ-
14 ated to increase sales of Best-in-Class Products.

15 (d) BOUNTIES FOR REPLACEMENT, RETIREMENT,
16 AND RECYCLING OF EXISTING LOW-EFFICIENCY PROD-
17 UCTS.—

18 (1) IN GENERAL.—The Secretary of Energy
19 shall make bounty payments to retailers for the re-
20 placement, retirement, and recycling of older oper-
21 ating low-efficiency products that might otherwise
22 continue in operation.

23 (2) BOUNTIES.—Bounties shall be payable upon
24 documentation that the sale of a Best-in-Class Prod-

1 uct was accompanied by the replacement, retirement,
2 and recycling of—

3 (A) an inefficient but still-functioning
4 product; or

5 (B) a nonfunctioning product containing a
6 refrigerant,

7 by the consumer to whom the Best-in-Class Product
8 was sold.

9 (3) AMOUNT.—

10 (A) FUNCTIONING PRODUCTS.—The boun-
11 ty payment payable under this subsection for a
12 product described in paragraph (2)(A) shall be
13 based on the difference between the estimated
14 energy use of the product replaced and the en-
15 ergy use of an average new product in the prod-
16 uct class, over the estimated remaining lifetime
17 of the product that was replaced.

18 (B) NONFUNCTIONING PRODUCTS CON-
19 TAINING REFRIGERANTS.—The bounty payment
20 payable under this subsection for a product de-
21 scribed in paragraph (2)(B) shall be in the
22 amount that the Secretary of Energy, in con-
23 sultation with the Administrator, determines is
24 sufficient to promote the recycling of such prod-

1 ucts, up to the amount of bounty for a com-
2 parable product described in paragraph (2)(A).

3 (4) RETIREMENT.—The Secretary shall ensure
4 that no product for which a bounty is paid under
5 this subsection is returned to active service, but that
6 it is instead destroyed, and recycled to the extent
7 feasible.

8 (5) RECYCLING APPLIANCES CONTAINING RE-
9 FRIGERANTS.—Exclusively for the purpose of imple-
10 menting the bounty payment program for products
11 containing a refrigerant under this section, the Ad-
12 ministrator shall establish standards for environ-
13 mentally responsible methods of recycling and dis-
14 posal of refrigerant-containing appliances that, at a
15 minimum, meet the requirements set by the Respon-
16 sible Appliance Disposal (RAD) Program for refrig-
17 erant disposal. The Secretary shall ensure that such
18 standards are met before a bounty payment is made
19 under this subsection for a product containing a re-
20 frigerant. Nothing in this section shall be interpreted
21 to alter the requirements of section 608 of the Clean
22 Air Act or to relieve any person from complying with
23 those requirements.

1 (e) PREMIUM AWARDS FOR DEVELOPMENT AND
2 PRODUCTION OF SUPEREFFICIENT BEST-IN-CLASS PROD-
3 UCTS.—

4 (1) IN GENERAL.—(A) The Secretary of Energy
5 shall provide premium awards to manufacturers for
6 the development and production of Superefficient
7 Best-in-Class Products. The Secretary shall set and
8 periodically revise standards for eligibility of prod-
9 ucts for designation as a Superefficient Best-in-
10 Class Product.

11 (B) The Secretary may establish a standard for
12 a Superefficient Best-in-Class Product even if no
13 product meeting that standard exists, if the Sec-
14 retary has reasonable grounds to conclude that a
15 mass-producible product could be made to meet that
16 standard.

17 (C) The Secretary may also establish a Super-
18 efficient Best-in-Class Product standard that is met
19 by one or more existing Best-in-Class Product mod-
20 els, if those product models have distinct energy effi-
21 ciency attributes and performance characteristics
22 that make them significantly better than other prod-
23 uct models qualifying as best-in-class. The Secretary
24 may not designate as Superefficient Best-in-Class
25 Products under this subparagraph models that rep-

1 resent more than 10 percent of the currently quali-
2 fying Best-in-Class Product models.

3 (2) PREMIUM AWARDS.—(A) The premium
4 award payment provided to a manufacturer under
5 this subsection shall be in addition to any bonus
6 payments made under subsection (c).

7 (B) The amount of the premium award paid
8 per unit of Superefficient Best-in-Class Products
9 sold to retailers or distributors shall be the product
10 of—

11 (i) an amount determined by the Sec-
12 retary; and

13 (ii) the difference in energy consumption
14 between the Superefficient Best-in-Class Prod-
15 uct and the average product in the product
16 class.

17 (C) The Secretary shall determine the amount
18 under subparagraph (B)(i) for each product type, in
19 consultation with State and utility efficiency pro-
20 gram administrators as well as the Administrator,
21 based on consideration of the present value to the
22 Nation of the energy (and water or other resources
23 or inputs) saved over the useful life of the product.
24 The Secretary may also take into consideration the

1 methods used to increase sales of qualifying prod-
2 ucts in determining such amount.

3 (D) The Secretary may adjust the value de-
4 scribed in subparagraph (C) upward or downward as
5 appropriate, including based on the effect of the pre-
6 mium awards on the sales of products in different
7 classes that may be affected by the program under
8 this subsection.

9 (E) Premium award payments shall be applied
10 to sales of any Superefficient Best-in-Class Product
11 for the first 3 years after designation as a Supereffi-
12 cient Best-in-Class Product.

13 (3) COORDINATION OF INCENTIVES.—No prod-
14 uct for which Federal tax credit is received under
15 section 45M of the Internal Revenue Code of 1986
16 shall be eligible to receive premium award payments
17 pursuant to this subsection.

18 (f) REPORTING.—The Secretary of Energy shall re-
19 quire, as a condition of receiving a bonus, bounty, or pre-
20 mium award under this section, that a report containing
21 the following documentation be provided:

22 (1) For retailers and distributors, the number
23 of units sold within each product type, and model-
24 specific wholesale purchase prices and retail sale
25 prices, on a monthly basis.

1 (2) For manufacturers, model-specific energy
2 consumption data.

3 (3) For manufacturers, on an immediate basis,
4 information concerning any product design or func-
5 tion changes that affect the energy consumption of
6 the unit.

7 (4) The methods used to increase the sales of
8 qualifying products.

9 (g) MONITORING AND VERIFICATION PROTOCOLS.—
10 The Secretary of Energy shall establish monitoring and
11 verification protocols for energy consumption tests for
12 each product model and for sales of energy-efficient mod-
13 els.

14 (h) DISCLOSURE.—The Secretary of Energy may re-
15 quire that retailers and distributors disclose publicly and
16 to consumers their participation in the program under this
17 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 aggregate
6 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 ganization, or company that sells products directly
3 to end-users; and

4 (3) the term “Superefficient Best-in-Class
5 Product” means a product that—

6 (A) can be mass produced; and

7 (B) achieves the highest level of efficiency
8 that the Secretary of Energy finds can, given
9 the current state of technology, be produced
10 and sold commercially to mass-market con-
11 sumers.

12 (k) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated \$300,000,000 for each
14 of the fiscal years 2010 through 2014 to the Secretary
15 of Energy for purposes of this section, of which not more
16 than 10 percent for any fiscal year may be expended on
17 program administration.

18 **Subtitle C—Transportation**
19 **Efficiency**

20 **SEC. 221. EMISSIONS STANDARDS.**

21 Title VIII of the Clean Air Act, as added by section
22 331 of this Act, is amended by inserting after part A the
23 following new part:

1 **“PART B—MOBILE SOURCES**
2 **“SEC. 821. GREENHOUSE GAS EMISSION STANDARDS FOR**
3 **MOBILE SOURCES.**

4 “(a) MOTOR VEHICLES AND ENGINES.—

5 “(1) Pursuant to section 202(a)(1), by Decem-
6 ber 31, 2010, the Administrator shall promulgate
7 standards applicable to emissions of greenhouse
8 gases from new heavy-duty vehicles and engines, ex-
9 cluding such vehicles covered by the Tier II stand-
10 ards (as established by the Administrator as of the
11 date of enactment of this section). The Adminis-
12 trator may revise these standards from time to time.

13 “(2) Regulations issued under section 202(a)(1)
14 applicable to emissions of greenhouse gases from
15 new heavy-duty vehicles and engines, excluding such
16 vehicles covered by the Tier II standards (as estab-
17 lished by the Administrator as of the date of enact-
18 ment of this section), shall contain standards that
19 achieve the greatest degree of emissions reduction
20 achievable based on the application of technology
21 which the Administrator determines will be available
22 at the time such standards take effect, taking into
23 consideration cost, energy, and safety factors associ-
24 ated with the application of such technology. Any
25 such regulations shall take effect after such period
26 as the Administrator finds necessary to permit the

1 development and application of the requisite tech-
2 nology.

3 “(b) NONROAD VEHICLES AND ENGINES.—

4 “(1) Pursuant to section 213(a)(4), the Admin-
5 istrator shall promulgate standards applicable to
6 emissions of greenhouse gases from new marine ves-
7 sels and locomotives, and from new engines used in
8 marine vessels and locomotives, by December 31,
9 2012. The Administrator shall also promulgate
10 standards applicable to emissions of greenhouse
11 gases for such other classes and categories of
12 nonroad vehicles and engines as the Administrator
13 determines appropriate and in the timeframe the
14 Administrator determines appropriate. The Adminis-
15 trator shall base such determination, among other
16 factors, on the relative contribution of greenhouse
17 gas emissions, and the costs for achieving reduc-
18 tions, from such classes or categories of new
19 nonroad engines and vehicles. The Administrator
20 may revise these standards from time to time.

21 “(2) Standards under section 213(a)(4) applica-
22 ble to emissions of greenhouse gases from new ma-
23 rine vessels and locomotives, and from new engines
24 used in marine vessels and locomotives, shall achieve
25 the greatest degree of emissions reduction achievable

1 based on the application of technology which the Ad-
2 ministrator determines will be available at the time
3 such standards take effect, taking into consideration
4 cost, energy, and safety factors associated with the
5 application of such technology. Any such regulations
6 shall take effect after such period as the Adminis-
7 trator finds necessary to permit the development and
8 application of the requisite technology.

9 “(3) For purposes of this section and standards
10 under section 213(a)(4) applicable to emissions of
11 greenhouse gases, the term ‘nonroad engines and ve-
12 hicles’ shall include non-internal combustion engines
13 and the vehicles these engines power (such as elec-
14 tric engines and electric vehicles), for those non-in-
15 ternal combustion engines and vehicles which would
16 be in the same category and have the same uses as
17 nonroad engines and vehicles that are powered by in-
18 ternal combustion engines.

19 “(c) AIRCRAFT AND AIRCRAFT ENGINES.—

20 “(1) Pursuant to section 231(a), the Adminis-
21 trator shall promulgate standards applicable to emis-
22 sions of greenhouse gases from new aircraft and new
23 engines used in aircraft by December 31, 2012. Not-
24 withstanding any requirement in section 231(a), the
25 Administrator, in consultation with the Adminis-

1 trator of the Federal Aviation Administration, shall
2 also promulgate standards applicable to emissions of
3 greenhouse gases from other classes and categories
4 of aircraft and aircraft engines for such classes and
5 categories as the Administrator determines appro-
6 priate and in the timeframe the Administrator deter-
7 mines appropriate. The Administrator may revise
8 these standards from time to time.

9 “(2) Standards under section 231(a) applicable
10 to emissions of greenhouse gases from new aircraft
11 and new engines used in aircraft, and any later revi-
12 sions or additional standards, shall achieve the
13 greatest degree of emissions reduction achievable
14 based on the application of technology which the Ad-
15 ministrator determines will be available at the time
16 such standards take effect, taking into consideration
17 cost, energy, and safety factors associated with the
18 application of such technology. Any such standards
19 shall take effect after such period as the Adminis-
20 trator finds necessary to permit the development and
21 application of the requisite technology.

22 “(d) AVERAGING, BANKING, AND TRADING OF EMIS-
23 SIONS CREDITS.—In establishing standards applicable to
24 emissions of greenhouse gases pursuant to this section and
25 sections 202(a), 213(a)(4), and 231(a), the Administrator

1 may establish provisions for averaging, banking, and trad-
2 ing of greenhouse gas emissions credits within or across
3 classes or categories of motor vehicles and motor vehicle
4 engines, nonroad vehicles and engines (including marine
5 vessels), and aircraft and aircraft engines, to the extent
6 the Administrator determines appropriate and considering
7 the factors appropriate in setting standards under those
8 sections. Such provisions may include reasonable and ap-
9 propriate provisions concerning generation, banking, trad-
10 ing, duration, and use of credits.

11 “(e) REPORTS.—The Administrator shall, from time
12 to time, submit a report to Congress that projects the
13 amount of greenhouse gas emissions from the transpor-
14 tation sector, including transportation fuels, for the years
15 2030 and 2050, based on the standards adopted under
16 this section.

17 “(f) GREENHOUSE GASES.—Notwithstanding the
18 provisions of section 711, hydrofluorocarbons shall be con-
19 sidered a greenhouse gas for purposes of this section.”.

20 **SEC. 222. GREENHOUSE GAS EMISSIONS REDUCTIONS**
21 **THROUGH TRANSPORTATION EFFICIENCY.**

22 Title VIII of the Clean Air Act, as added by section
23 331 of this Act, is further amended by inserting after part
24 C the following new part:

1 **“PART D—PLANNING REQUIREMENTS**

2 **“SEC. 841. GREENHOUSE GAS EMISSIONS REDUCTIONS**
3 **THROUGH TRANSPORTATION EFFICIENCY.**

4 “(a) IN GENERAL.—Each State shall—

5 “(1) not later than 3 years after the date of en-
6 actment of this section, submit to the Administrator
7 goals for transportation-related greenhouse gas
8 emissions reductions, which goals shall be reasonably
9 commensurate with the targets for overall green-
10 house gas emissions reduction established by this
11 Act; and

12 “(2) as part of each transportation plan or
13 transportation improvement program developed
14 under title 23 or title 49, United States Code, en-
15 sure that a plan to achieve such goals, or an up-
16 dated version of such a plan, is submitted to the Ad-
17 ministrator and to the Secretary of Transportation
18 (in this section referred to as the ‘Secretary’) by
19 each metropolitan planning organization in the State
20 for an area with a population exceeding 200,000.

21 “(b) MODELS AND METHODOLOGIES.—

22 “(1) IN GENERAL.—The Administrator shall
23 promulgate regulations to establish standards for
24 use in developing goals, plans, and strategies under
25 this section and for monitoring progress toward such
26 goals. Such standards shall include—

1 “(A) data collection techniques for assess-
2 ing State and regional transportation-related
3 greenhouse gas emissions;

4 “(B) methodologies for determining trans-
5 portation-related greenhouse gas emissions
6 baselines;

7 “(C) models and methodologies for sce-
8 nario analysis; and

9 “(D) models and methodologies for esti-
10 mating transportation-related greenhouse gas
11 emissions reductions from the strategies consid-
12 ered under this section.

13 Such regulations may approve or improve existing
14 models and methodologies

15 “(2) TIMING.—The Administrator shall—

16 “(A) publish proposed regulations under
17 paragraph (1) not later than 1 year after the
18 date of enactment of this section; and

19 “(B) promulgate final regulations under
20 paragraph (1) not later than 2 years after such
21 date of enactment.

22 “(3) ASSESSMENT.—At least every 6 years
23 after promulgating final regulations under para-
24 graph (1), the Administrator, in coordination with
25 the Secretary, shall assess current and projected

1 progress in reducing transportation-related green-
2 house gas emissions. The assessment shall examine
3 the contributions to emissions reductions attrib-
4 utable to improvements in vehicle efficiency, green-
5 house gas performance of transportation fuels, and
6 increased efficiency in utilizing transportation sys-
7 tems.

8 “(c) GREENHOUSE GAS REDUCTION GOALS.—

9 “(1) CONSULTATION.—Each State shall develop
10 the goals referred to in subsection (a)(1)—

11 “(A) in concurrence with State agencies re-
12 sponsible for air quality and transportation;

13 “(B) in consultation with each metropoli-
14 tan planning organization for an area in the
15 State with a population exceeding 200,000 and
16 applicable local air quality and transportation
17 agencies; and

18 “(C) with public involvement, including
19 public comment periods and meetings.

20 “(2) PERIOD.—The goals referred to in sub-
21 section (a)(1) shall be for 4-, 10-, and 20-year peri-
22 ods.

23 “(3) TARGETS; DESIGNATED YEAR.—The goals
24 referred to in subsection (a)(1) shall establish tar-
25 gets to reduce transportation-related greenhouse gas

1 emissions in the covered area. The targets shall be
2 designed to ensure that the levels of such emissions
3 stabilize and decrease after a designated year. The
4 State shall consider designating 2010 as such des-
5 ignated year.

6 “(4) COVERED AREA.—The goals referred to in
7 subsection (a)(1)—

8 “(A) shall be established on a statewide
9 basis;

10 “(B) shall be established for each metro-
11 politan planning organization in the State for
12 an area with a population exceeding 200,000;
13 and

14 “(C) may be established on a voluntary
15 basis, in accordance with the provisions of this
16 section, for any metropolitan planning organiza-
17 tion not described in subparagraph (B).

18 “(5) REVISED GOALS.—Every 4 years, each
19 State shall update and revise, as appropriate, the
20 goals referred to in subsection (a)(1).

21 “(d) PLANNING.—A plan submitted under subsection
22 (a)(2) shall—

23 “(1) be based upon the models and methodolo-
24 gies established by the Administrator under sub-
25 section (b);

1 “(2) use transportation and land use scenario
2 analysis to address transportation-related green-
3 house gas emissions and economic development im-
4 pacts; and

5 “(3) be developed—

6 “(A) with public involvement, including
7 public comment periods and meetings which
8 provide opportunities for comment from a vari-
9 ety of stakeholders based on age, race, income,
10 and disability;

11 “(B) with regional coordination, including
12 with respect to—

13 “(i) metropolitan planning organiza-
14 tions;

15 “(ii) the localities comprising the met-
16 ropolitan planning organization;

17 “(iii) the State in which the metro-
18 politan planning organization is located;
19 and

20 “(iv) air quality, environmental
21 health, and transportation agencies for the
22 State and region involved; and

23 “(C) in consultation with the State and
24 local housing, public health, economic develop-

1 ment, land use, environment, and public trans-
2 portation agencies.

3 “(e) STRATEGIES.—In developing goals under sub-
4 section (a)(1) and a plan under subsection (a)(2), the
5 State or metropolitan planning organization, as applicable,
6 shall consider transportation and land use planning strate-
7 gies to reduce transportation-related greenhouse gas emis-
8 sions, including the following:

9 “(1) Efforts to increase or improve public
10 transportation, including—

11 “(A) new public transportation systems,
12 including new commuter rail systems;

13 “(B) expansion of existing public transpor-
14 tation systems;

15 “(C) employer-based subsidies;

16 “(D) cleaner locomotive technologies; and

17 “(E) quality of service improvements, in-
18 cluding improved frequency of service.

19 “(2) Updates to zoning and other land use reg-
20 ulations and plans to support development that—

21 “(A) coordinates transportation and land
22 use planning;

23 “(B) focuses future growth close to exist-
24 ing and planned job centers and public facili-
25 ties;

1 “(C) uses existing infrastructure;

2 “(D) promotes walking, bicycling, and pub-
3 lic transportation use; and

4 “(E) mixes land uses such as housing, re-
5 tail, and schools.

6 “(3) Implementation of a policy (referred to as
7 a ‘complete streets policy’) that—

8 “(A) ensures adequate accommodation of
9 all users of transportation systems, including
10 pedestrians, bicyclists, public transportation
11 users, motorists, children, the elderly, and indi-
12 viduals with disabilities; and

13 “(B) adequately addresses the safety and
14 convenience of all users of the transportation
15 system.

16 “(4) Construction of bicycle and pedestrian in-
17 frastructure facilities, including facilities that im-
18 prove the connections with networks that provide ac-
19 cess to human services, employment, schools, and re-
20 tail.

21 “(5) Projects to promote telecommuting, flexi-
22 ble work schedules, or satellite work centers.

23 “(6) Pricing measures, including tolling, con-
24 gestion pricing, and pay-as-you-drive insurance.

1 “(7) Intermodal freight system strategies, in-
2 cluding enhanced rail services, short sea shipping,
3 and other strategies.

4 “(8) Parking policies.

5 “(9) Intercity rail service, including high speed
6 rail.

7 “(10) Travel demand management projects.

8 “(11) Restriction of the use of certain roads, or
9 lanes, by vehicles other than passenger buses and
10 high-occupancy vehicles.

11 “(12) Reduction of vehicle idling, including
12 idling associated with freight management, construc-
13 tion, transportation, and commuter operations.

14 “(13) Policies to encourage the use of retrofit
15 technologies and early replacement of vehicles, en-
16 gines and equipment to reduce transportation-re-
17 lated greenhouse gas emissions from existing mobile
18 sources.

19 “(14) Other projects that the Administrator
20 finds reduce transportation-related greenhouse gas
21 emissions.

22 “(f) PUBLIC AVAILABILITY.—The Administrator
23 shall publish, including by posting on the Environmental
24 Protection Agency’s website—

1 “(1) the goals and plans submitted under sub-
2 section (a); and

3 “(2) for each plan submitted under subsection
4 (a)(2), an analysis of the anticipated effects of the
5 plan on greenhouse gas emissions and oil consump-
6 tion.

7 “(g) CERTIFICATION.—The Administrator, in con-
8 sultation with the Secretary, shall certify a State or metro-
9 politan planning organization greenhouse gas reduction
10 plan submitted under subsection (a)(2) if the plan’s imple-
11 mentation is likely to meet the corresponding greenhouse
12 gas reduction goal referred to in subsection (a)(1). If the
13 Administrator, in consultation with the Secretary, deter-
14 mines that a submitted plan cannot be certified, the State
15 or metropolitan planning organization shall revise and re-
16 submit the plan within 1 year.

17 “(h) ENFORCEMENT.—If the Administrator finds
18 that a State has failed to submit goals under subsection
19 (a)(1), has failed to ensure the submission of a plan under
20 subsection (a)(2), or has failed to submit a revised plan
21 under subsection (g), for any area in the State (irrespec-
22 tive of whether the area is a nonattainment area), the Ad-
23 ministrator shall impose a prohibition in accordance with
24 section 179(b)(1) applicable to the area within 2 years of
25 such a finding. The Administrator may not impose a pro-

1 hibition under the preceding sentence, and no action may
2 be brought by the Administrator or any other entity alleg-
3 ing a violation of this section, based on the content or ade-
4 quacy of a goal or plan submitted under subsection (a)(1)
5 or (a)(2) or failure to achieve the goal submitted under
6 subsection (a)(1).

7 “(i) COMPETITIVE GRANTS.—

8 “(1) GRANTS.—The Administrator, in consulta-
9 tion with the Secretary, may award grants to States
10 or metropolitan planning organizations—

11 “(A) to support activities related to im-
12 proving data collection, modeling, and moni-
13 toring systems to assess transportation-related
14 greenhouse gas emissions and the effects of
15 plans, policies, and strategies referenced in this
16 section;

17 “(B) for the development of goals and
18 plans to be submitted under sections (a)(1) or
19 (a)(2); and

20 “(C) to implement plans certified under
21 subsection (g) or elements thereof, provided
22 that each project thus funded includes a meas-
23 urement and evaluation component that meets
24 the regulations promulgated under subsection
25 (b).

1 “(2) PRIORITY.—In making grants under para-
2 graph (1)(C), the Administrator shall give priority to
3 applicants based upon—

4 “(A) the amount of total greenhouse gas
5 emissions to be reduced as a result of imple-
6 mentation of a certified plan, within the covered
7 area, as determined by methods established
8 under subsection (b); and

9 “(B) the amount of per capita greenhouse
10 gas emissions to be reduced as a result of im-
11 plementation of a certified plan, within the cov-
12 ered area, as determined by methods estab-
13 lished under subsection (b);

14 “(C) the cost effectiveness, in terms of dol-
15 lars per tons of greenhouse gas reductions, to
16 be achieved as a result of the implementation of
17 a certified plan;

18 “(D) the potential for both short- and
19 long-term reductions; and

20 “(E) such other factors as the Adminis-
21 trator determines appropriate.

22 “(3) AUTHORIZATION OF APPROPRIATIONS.—
23 To carry out this subsection, there are authorized to
24 be appropriated such sums as may be necessary.

25 “(j) DEFINITIONS.—In this section:

1 “(1) The term ‘metropolitan planning organiza-
2 tion’ means a metropolitan planning organization, as
3 such term is used in section 176.

4 “(2) The term ‘scenario analysis’ means an
5 analysis that is conducted by identifying different
6 trends and making projections based on those trends
7 to develop a range of scenarios and estimates of how
8 each scenario could improve access to goods and
9 services, including access to employment, education,
10 and health care (especially for elderly and economi-
11 cally disadvantaged communities), and could affect
12 rates of—

13 “(A) vehicle miles traveled;

14 “(B) vehicle hours traveled;

15 “(C) use of mobile source fuel by type, in-
16 cluding electricity; and

17 “(D) transportation-related greenhouse gas
18 emissions.

19 “(k) LAND USE AUTHORITY.—Nothing in this sec-
20 tion may be construed to—

21 “(1) infringe upon the existing authority of
22 State or local governments to plan or control land
23 use; or

24 “(2) provide or transfer authority over land use
25 to any other entity.”.

1 **SEC. 223. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
2 **GRAM.**

3 Part B of title VIII of the Clean Air Act, as added
4 by section 221 of this Act is amended by adding after sec-
5 tion 821 the following section:

6 **“SEC. 822. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
7 **GRAM.**

8 “(a) IN GENERAL.—There is established within the
9 Environmental Protection Agency a SmartWay Transport
10 Program to quantify, demonstrate, and promote the bene-
11 fits of technologies, products, fuels, and operational strate-
12 gies that reduce petroleum consumption, air pollution, and
13 greenhouse gas emissions from the mobile source sector.

14 “(b) GENERAL DUTIES.—Under the program estab-
15 lished under this section, the Administrator shall carry out
16 each of the following:

17 “(1) Development of measurement protocols to
18 evaluate the energy consumption and greenhouse gas
19 impacts from technologies and strategies in the mo-
20 bile source sector, including those for passenger
21 transport and goods movement.

22 “(2) Development of qualifying thresholds for
23 certifying, verifying, or designating energy-efficient,
24 low-greenhouse gas SmartWay technologies and
25 strategies for each mode of passenger transportation
26 and goods movement.

1 “(3) Development of partnership and recogni-
2 tion programs to promote best practices and drive
3 demand for energy-efficient, low-greenhouse gas
4 transportation performance.

5 “(4) Promotion of the availability of, and en-
6 couragement of the adoption of, SmartWay certified
7 or verified technologies and strategies, and publica-
8 tion of the availability of financial incentives, such
9 as assistance from loan programs and other Federal
10 and State incentives.

11 “(c) SMARTWAY TRANSPORT FREIGHT PARTNER-
12 SHIP.—The Administrator shall establish a SmartWay
13 Transport Partnership program with shippers and carriers
14 of goods to promote energy-efficient, low-greenhouse gas
15 transportation. In carrying out such partnership, the Ad-
16 ministrator shall undertake each of the following:

17 “(1) Certification of the energy and greenhouse
18 gas performance of participating freight carriers, in-
19 cluding those operating rail, trucking, marine, and
20 other goods movement operations.

21 “(2) Publication of a comprehensive energy and
22 greenhouse gas performance index of freight modes
23 (including rail, trucking, marine, and other modes of
24 transporting goods) and individual freight companies

1 so that shippers can choose to deliver their goods
2 more efficiently.

3 “(3) Development of tools for—

4 “(A) carriers to calculate their energy and
5 greenhouse gas performance; and

6 “(B) shippers to calculate the energy and
7 greenhouse gas impacts of moving their prod-
8 ucts and to evaluate the relative impacts from
9 transporting their goods by different modes and
10 corporate carriers.

11 “(4) Provision of recognition opportunities for
12 participating shipper and carrier companies dem-
13 onstrating advanced practices and achieving superior
14 levels of greenhouse gas performance.

15 “(d) IMPROVING FREIGHT GREENHOUSE GAS PER-
16 FORMANCE DATABASES.—The Administrator shall, in co-
17 ordination with other appropriate agencies, define and col-
18 lect data on the physical and operational characteristics
19 of the Nation’s truck population, with special emphasis on
20 data related to energy efficiency and greenhouse gas per-
21 formance to inform the performance index published
22 under subsection (c)(2) of this section, and other means
23 of goods transport as necessary, at least every 5 years.

24 “(e) ESTABLISHMENT OF FINANCING PROGRAM.—
25 The Administrator shall establish a SmartWay Financing

1 Program to competitively award funding to eligible entities
2 identified by the Administrator in accordance with the
3 program requirements in subsection (g).

4 “(f) PURPOSE.—Under the SmartWay Financing
5 Program, eligible entities shall—

6 “(1) use funds awarded by the Administrator to
7 provide flexible loan and lease terms that increase
8 approval rates or lower the costs of loans and leases
9 in accordance with guidance developed by the Ad-
10 ministrator; and

11 “(2) make such loans and leases available to
12 public and private entities for the purpose of adopt-
13 ing low-greenhouse gas technologies or strategies for
14 the mobile source sector that are designated by the
15 Administrator.

16 “(g) PROGRAM REQUIREMENTS.—The Administrator
17 shall determine program design elements and require-
18 ments, including—

19 “(1) the type of financial mechanism with
20 which to award funding, in the form of grants or
21 contracts;

22 “(2) the designation of eligible entities to re-
23 ceive funding, including State, tribal, and local gov-
24 ernments, regional organizations comprised of gov-

1 ernmental units, nonprofit organizations, or for-prof-
2 it companies;

3 “(3) criteria for evaluating applications from el-
4 igible entities, including anticipated—

5 “(A) cost-effectiveness of loan or lease pro-
6 gram on a metric-ton-of-greenhouse gas-saved-
7 per-dollar basis;

8 “(B) ability to promote the loan or lease
9 program and associated technologies and strate-
10 gies to the target audience; and

11 “(4) reporting requirements for entities that re-
12 ceive awards, including—

13 “(A) actual cost-effectiveness and green-
14 house gas savings from the loan or lease pro-
15 gram based on a methodology designated by the
16 Administrator;

17 “(B) the total number of applications and
18 number of approved applications; and

19 “(C) terms granted to loan and lease re-
20 cipients compared to prevailing market prac-
21 tices.

22 “(h) AUTHORIZATION OF APPROPRIATIONS.—Such
23 sums as necessary are authorized to be appropriated to
24 the Administrator to carry out this section.”.

1 **SEC. 224. STATE VEHICLE FLEETS.**

2 Section 507(o) of the Energy Policy Act of 1992 (42
3 U.S.C. 13257) is amended by adding the following new
4 paragraph at the end thereof:

5 “(3) The Secretary shall revise the rules under this
6 subsection with respect to the types of alternative fueled
7 vehicles required for compliance with this subsection to en-
8 sure those rules are consistent with any guidance issued
9 pursuant to section 303 of this Act.”.

10 **Subtitle D—Industrial Energy**
11 **Efficiency Programs**

12 **SEC. 241. INDUSTRIAL PLANT ENERGY EFFICIENCY STAND-**
13 **ARDS.**

14 The Secretary of Energy shall continue to support
15 the development of the American National Standards In-
16 stitute (ANSI) voluntary industrial plant energy efficiency
17 certification program, pending International Standards
18 Organization (ISO) consensus standard 50001, and other
19 related ANSI/ISO standards. In addition, the Department
20 shall undertake complementary activities through the De-
21 partment of Energy’s Industry Technologies Program that
22 support the voluntary implementation of such standards
23 by manufacturing firms. There are authorized to be appro-
24 priated to the Secretary such sums as are necessary to
25 carry out these activities. The Secretary shall report to
26 Congress on the status of standards development and

1 plans for further standards development pursuant to this
2 Section by not later than 18 months after the date of en-
3 actment of this Act, and shall prepare a second such re-
4 port 18 months thereafter.

5 **SEC. 242. ELECTRIC AND THERMAL WASTE ENERGY RECOV-**
6 **ERY AWARD PROGRAM.**

7 (a) **ELECTRIC AND THERMAL WASTE ENERGY RE-**
8 **COVERY AWARDS.**—The Secretary of Energy shall estab-
9 lish a program to make monetary awards to the owners
10 and operators of new and existing electric energy genera-
11 tion facilities or thermal energy production facilities using
12 fossil or nuclear fuel, to encourage them to use innovative
13 means of recovering any thermal energy that is a poten-
14 tially useful byproduct of electric power generation or
15 other processes to—

- 16 (1) generate additional electric energy; or
17 (2) make sales of thermal energy not used for
18 electric generation, in the form of steam, hot water,
19 chilled water, or desiccant regeneration, or for other
20 commercially valid purposes.

21 (b) **AMOUNT OF AWARDS.**—

22 (1) **ELIGIBILITY.**—Awards shall be made under
23 subsection (a) only for the use of innovative means
24 that achieve net energy efficiency at the facility con-

1 cerned significantly greater than the current stand-
2 ard technology in use at similar facilities.

3 (2) AMOUNT.—The amount of an award made
4 under subsection (a) shall equal an amount up to
5 the value of 25 percent of the energy projected to be
6 recovered or generated during the first 5 years of
7 operation of the facility using the innovative energy
8 recovery method, or such lesser amount that the
9 Secretary determines to be the minimum amount
10 that can cost-effectively stimulate such innovation.

11 (3) LIMITATION.—No person may receive an
12 award under this section if a grant under the waste
13 energy incentive grant program under section 373 of
14 the Energy Policy and Conservation Act (42 U.S.C.
15 6343) is made for the same energy savings resulting
16 from the same innovative method.

17 (c) REGULATORY STATUS.—The Secretary of Energy
18 shall—

19 (1) assist State regulatory commissions to iden-
20 tify and make changes in State regulatory programs
21 for electric utilities to provide appropriate regulatory
22 status for thermal energy byproduct businesses of
23 regulated electric utilities to encourage those utilities
24 to enter businesses making the sales referred to in
25 subsection (a)(2); and

1 (2) encourage self-regulated utilities to enter
2 businesses making the sales referred to in subsection
3 (a)(2).

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary of En-
6 ergy such sums as are necessary for the purposes of this
7 section.

8 **SEC. 243. CLARIFYING ELECTION OF WASTE HEAT RECOV-**
9 **ERY FINANCIAL INCENTIVES.**

10 Section 373(e) of the Energy Policy and Conservation
11 Act (42 U.S.C. 6343(e)) is amended—

12 (1) by striking “that qualifies for” and insert-
13 ing “who elects to claim”; and

14 (2) by inserting “from that project” after “for
15 waste heat recovery”.

16 **Subtitle E—Improvements in En-**
17 **ergy Savings Performance Con-**
18 **tracting**

19 **SEC. 251. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

20 (a) COMPETITION REQUIREMENTS FOR TASK OR DE-
21 LIVERY ORDERS UNDER ENERGY SAVINGS PERFORM-
22 ANCE CONTRACTS.—

23 (1) COMPETITION REQUIREMENTS.—Subsection
24 (a) of section 801 of the National Energy Conserva-

1 tion Policy Act (42 U.S.C. 8287(a)) is amended by
2 adding at the end the following paragraph:

3 “(3)(A) The head of a Federal agency may
4 issue a task or delivery order under an energy sav-
5 ings performance contract by—

6 “(i) notifying all contractors that have re-
7 ceived an award under such contract that the
8 agency proposes to discuss energy savings per-
9 formance services for some or all of its facili-
10 ties, soliciting an expression of interest in per-
11 forming site surveys or investigations and feasi-
12 bility designs and studies and the submission of
13 qualifications from such contractors, and in-
14 cluding in such notice summary information
15 concerning energy use for any facilities that the
16 agency has specific interest in including in such
17 contract;

18 “(ii) reviewing all expressions of interest
19 and qualifications submitted pursuant to the
20 notice under clause (i);

21 “(iii) selecting two or more contractors
22 (from among those reviewed under clause (ii))
23 to conduct discussions concerning the contrac-
24 tors’ respective qualifications to implement po-
25 tential energy conservation measures, including

1 requesting references demonstrating experience
2 on similar efforts and the resulting energy sav-
3 ings of such similar efforts;

4 “(iv) selecting and authorizing—

5 “(I) more than one contractor (from
6 among those selected under clause (iii)) to
7 conduct site surveys, investigations, feasi-
8 bility designs and studies or similar assess-
9 ments for the energy savings performance
10 contract services (or for discrete portions
11 of such services), for the purpose of allow-
12 ing each such contractor to submit a firm,
13 fixed-price proposal to implement specific
14 energy conservation measures; or

15 “(II) one contractor (from among
16 those selected under clause (iii)) to conduct
17 a site survey, investigation, a feasibility de-
18 sign and study or similar for the purpose
19 of allowing the contractor to submit a
20 firm, fixed-price proposal to implement
21 specific energy conservation measures;

22 “(v) negotiating a task or delivery order
23 for energy savings performance contracting
24 services with the contractor or contractors se-

1 lected under clause (iv) based on the energy
2 conservation measures identified.; and

3 “(vi) issuing a task or delivery order for
4 energy savings performance contracting services
5 to such contractor or contractors.

6 “(B) The issuance of a task or delivery order
7 for energy savings performance contracting services
8 pursuant to subparagraph (A) is deemed to satisfy
9 the task and delivery order competition requirements
10 in section 2304c(d) of title 10, United States Code,
11 and section 303J(d) of the Federal Property and
12 Administrative Services Act of 1949 (41 U.S.C.
13 253j(d)).

14 “(C) The Secretary may issue guidance as nec-
15 essary to agencies issuing task or delivery orders
16 pursuant to subparagraph (A).”.

17 (2) EFFECTIVE DATE.—The amendment made
18 by paragraph (1) is inapplicable to task or delivery
19 orders issued before the date of enactment of this
20 section.

21 (b) INCLUSION OF THERMAL RENEWABLE EN-
22 ERGY.—Section 203 of the Energy Policy Act of 2005 (42
23 U.S.C. 15852) is amended—

24 (1) in subsection (a), by striking “electric”; and

1 (2) in subsection (b)(2), by inserting “or ther-
2 mal” after “means electric”.

3 (c) CREDIT FOR RENEWABLE ENERGY PRODUCED
4 AND USED ON SITE.—Subsection (c) of section 203 of the
5 Energy Policy Act of 2005 (42 U.S.C. 15852) is amended
6 to read as follows:

7 “(c) CALCULATION.—Renewable energy produced at
8 a Federal facility, on Federal lands, or on Indian lands
9 (as defined in title XXVI of the Energy Policy Act of 1992
10 (25 U.S.C. 3501 et seq.)), shall be calculated separately
11 from renewable energy consumed at a Federal facility, and
12 each may be used to comply with the consumption require-
13 ment under subsection (a).”.

14 (d) FINANCING FLEXIBILITY.—Section 801(a)(2)(F)
15 of the National Energy Conservation Policy Act (42
16 U.S.C. 8287(a)(2)(F)), as so redesignated by subsection
17 (b)(1) of this section, is amended by striking “In” and
18 inserting “Notwithstanding any other provision of law,
19 in”.

20 **Subtitle F—Public Institutions**

21 **SEC. 261. PUBLIC INSTITUTIONS.**

22 Section 399A of the Energy Policy and Conservation
23 Act (42 U.S.C. 6371h–1) is amended—

24 (1) in subsection (a)(5), by striking “or a des-
25 ignee” and inserting “a not-for-profit hospital or

1 not-for-profit inpatient health care facility, or a des-
2 ignated agent”;

3 (2) in subsection (c)(1), by striking subpara-
4 graph (C);

5 (3) in subsection (f)(3)(A), by striking
6 “\$1,000,000” and inserting “\$2,500,000”; and

7 (4) in subsection (i)(1), by striking
8 “\$250,000,000 for each of fiscal years 2009 through
9 2013” and inserting “\$250,000,000 for each of fis-
10 cal years 2010 through 2015”.

11 **SEC. 262. COMMUNITY ENERGY EFFICIENCY FLEXIBILITY.**

12 Section 545(b)(3) of the Energy Independence and
13 Security Act of 2007 (42 U.S.C. 17155(b)(3)) is amend-
14 ed—

15 (1) by striking “Indian tribe may use” and all
16 that follows through “for administrative expenses”
17 and inserting “Indian tribe may use for administra-
18 tive expenses”;

19 (2) by striking subparagraphs (B) and (C);

20 (3) by redesignating the remaining clauses (i)
21 and (ii) as subparagraphs (A) and (B), respectively
22 and adjusting the margin of those subparagraphs ac-
23 cordingly; and

24 (4) by striking the semicolon at the end and in-
25 serting a period.

1 **SEC. 263. SMALL COMMUNITY JOINT PARTICIPATION.**

2 (a) Section 541(3)(A) of the Energy Independence
3 and Security Act of 2007 is amended in clause (i) by
4 changing the word “and” to “or” at the end of subclause
5 (II), in subclause (ii)(II) by striking the period at the end
6 of and inserting a semicolon and the word “or”, and by
7 inserting the following new clause (iii):

8 “(iii) a group of adjacent, contiguous,
9 or geographically proximate units of local
10 government that reach agreement to act
11 jointly for purposes of this section and that
12 represent a combined population of not
13 less than 35,000.”.

14 (b) Section 541(3)(B) of the Energy Independence
15 and Security Act of 2007 is amended in subclause (ii)(II)
16 by striking the period at the end of and inserting a semi-
17 colon and the word “or”, and by inserting the following
18 new clause (iii):

19 “(iii) a group of adjacent, contiguous,
20 or geographically proximate units of local
21 government that reach agreement to act
22 jointly for purposes of this section and that
23 represent a combined population of not
24 less than 50,000.”.

1 **SEC. 264. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
2 **PROGRAM.**

3 (a) IN GENERAL.—The Secretary of Energy is au-
4 thorized to make grants to private, non-profit, mission-
5 driven community development organizations including
6 community development corporations and community de-
7 velopment financial institutions to provide financing to
8 businesses and projects that improve energy efficiency;
9 identify and develop alternative, renewable, and distrib-
10 uted energy supplies; provide technical assistance and pro-
11 mote job and business opportunities for low-income resi-
12 dents; and increase energy conservation in low income
13 rural and urban communities.

14 (b) GRANTS.—The purpose of such grants is to in-
15 crease the flow of capital and benefits to low income com-
16 munities, minority-owned and woman-owned businesses
17 and entrepreneurs and other projects and activities located
18 in low income communities in order to reduce environ-
19 mental degradation, foster energy conservation and effi-
20 ciency and create job and business opportunities for local
21 residents. The Secretary may make grants on a competi-
22 tive basis for—

23 (1) investments that develop alternative, renew-
24 able, and distributed energy supplies;

1 (2) capitalizing loan funds that lend to energy
2 efficiency projects and energy conservation pro-
3 grams;

4 (3) technical assistance to plan, develop and
5 manage an energy efficiency financing program; and

6 (4) technical and financial assistance to assist
7 small-scale businesses and private entities develop
8 new renewable and distributed sources of power or
9 combined heat and power generation.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
11 purposes of this section there is authorized to be appro-
12 priated \$50,000,000 for each of the fiscal years 2010
13 through 2015.

14 **TITLE III—REDUCING GLOBAL**
15 **WARMING POLLUTION**

16 **SEC. 301. SHORT TITLE.**

17 This title, and sections 112, 116, 121, 221, 222, and
18 223 of this Act, may be cited as the “Safe Climate Act”.

19 **Subtitle A—Reducing Global**
20 **Warming Pollution**

21 **SEC. 311. REDUCING GLOBAL WARMING POLLUTION.**

22 The Clean Air Act (42 U.S.C. and following) is
23 amended by adding after title VI the following new title:

1 **“TITLE VII—GLOBAL WARMING**
2 **POLLUTION REDUCTION PRO-**
3 **GRAM**

4 **“PART A—GLOBAL WARMING POLLUTION**
5 **REDUCTION GOALS AND TARGETS**

6 **“SEC. 701. FINDINGS AND PURPOSE.**

7 “(a) FINDINGS.—The Congress finds as follows:

8 “(1) Global warming poses a significant threat
9 to the national security, economy, public health and
10 welfare, and environment of the United States, as
11 well as of other nations.

12 “(2) Reviews of scientific studies, including by
13 the Intergovernmental Panel on Climate Change and
14 the National Academy of Sciences, demonstrate that
15 global warming is the result of the combined anthro-
16 pogenic greenhouse gas emissions from numerous
17 sources of all types and sizes. Each increment of
18 emission, when combined with other emissions,
19 causes or contributes materially to the acceleration
20 and extent of global warming and its adverse effects
21 for the lifetime of such gas in the atmosphere. Ac-
22 cordingly, controlling emissions in small as well as
23 large amounts is essential to prevent, slow the pace
24 of, reduce the threats from, and mitigate global
25 warming and its adverse effects.

1 “(3) Because they induce global warming,
2 greenhouse gas emissions cause or contribute to in-
3 juries to persons in the United States, including—

4 “(A) adverse health effects such as disease
5 and loss of life;

6 “(B) displacement of human populations;

7 “(C) damage to property and other inter-
8 ests related to ocean levels, acidification, and
9 ice changes;

10 “(D) severe weather and seasonal changes;

11 “(E) disruption, costs, and losses to busi-
12 ness, trade, employment, farms, subsistence,
13 aesthetic enjoyment of the environment, recre-
14 ation, culture, and tourism;

15 “(F) damage to plants, forests, lands, and
16 waters;

17 “(G) harm to wildlife and habitat;

18 “(H) scarcity of water and the decreased
19 abundance of other natural resources;

20 “(I) worsening of tropospheric air pollu-
21 tion;

22 “(J) substantial threats of similar damage;
23 and

24 “(K) other harm.

1 “(4) That many of these effects and risks of fu-
2 ture effects of global warming are widely shared
3 does not minimize the adverse effects individual per-
4 sons have suffered, will suffer, and are at risk of
5 suffering because of global warming.

6 “(5) That some of the adverse and potentially
7 catastrophic effects of global warming are at risk of
8 occurring and not a certainty does not negate the
9 harm persons suffer from actions that increase the
10 likelihood, extent, and severity of such future im-
11 pacts.

12 “(6) Nations of the world look to the United
13 States for leadership in addressing the threat of and
14 harm from global warming. Full implementation of
15 the Safe Climate Act is critical to engage other na-
16 tions in an international effort to mitigate the threat
17 of and harm from global warming.

18 “(7) Global warming and its adverse effects are
19 occurring and are likely to continue and increase in
20 magnitude, and to do so at a greater and more
21 harmful rate, unless the Safe Climate Act is fully
22 implemented and enforced in an expeditious manner.

23 “(b) PURPOSE.—It is the general purpose of the Safe
24 Climate Act to help prevent, reduce the pace of, mitigate,

1 and remedy global warming and its adverse effects. To ful-
2 fill such purpose, it is necessary to—

3 “(1) require the timely fulfillment of all govern-
4 mental acts and duties, both substantive and proce-
5 dural, and the prompt compliance of covered entities
6 with the requirements of the Safe Climate Act;

7 “(2) establish and maintain an effective, trans-
8 parent, and fair market for emission allowances and
9 preserve the integrity of the cap on emissions and of
10 offset credits;

11 “(3) advance the production and deployment of
12 clean energy and energy efficiency technologies; and

13 “(4) ensure effective enforcement of the Safe
14 Climate Act by citizens, States, Indian tribes, and
15 all levels of government because each violation of the
16 Safe Climate Act is likely to result in an additional
17 increment of greenhouse gas emission and will slow
18 the pace of implementation of the Safe Climate Act
19 and delay the achievement of the goals set forth in
20 section 702, and cause or contribute to global warm-
21 ing and its adverse effects.

22 **“SEC. 702. ECONOMY-WIDE REDUCTION GOALS.**

23 “The goals of the Safe Climate Act are to reduce
24 steadily the quantity of United States greenhouse gas
25 emissions such that—

1 “(1) in 2012, the quantity of United States
2 greenhouse gas emissions does not exceed 97 percent
3 of the quantity of United States greenhouse gas
4 emissions in 2005;

5 “(2) in 2020, the quantity of United States
6 greenhouse gas emissions does not exceed 80 percent
7 of the quantity of United States greenhouse gas
8 emissions in 2005;

9 “(3) in 2030, the quantity of United States
10 greenhouse gas emissions does not exceed 58 percent
11 of the quantity of United States greenhouse gas
12 emissions in 2005; and

13 “(4) in 2050, the quantity of United States
14 greenhouse gas emissions does not exceed 17 percent
15 of the quantity of United States greenhouse gas
16 emissions in 2005.

17 **“SEC. 703. REDUCTION TARGETS FOR SPECIFIED SOURCES.**

18 “(a) IN GENERAL.—The regulations issued under
19 section 721 shall cap and reduce annually the greenhouse
20 gas emissions of capped sources each calendar year begin-
21 ning in 2012 such that—

22 “(1) in 2012, the quantity of greenhouse gas
23 emissions from capped sources does not exceed 97
24 percent of the quantity of greenhouse gas emissions
25 from such sources in 2005;

1 “(2) in 2020, the quantity of greenhouse gas
2 emissions from capped sources does not exceed 83
3 percent of the quantity of greenhouse gas emissions
4 from such sources in 2005;

5 “(3) in 2030, the quantity of greenhouse gas
6 emissions from capped sources does not exceed 58
7 percent of the quantity of greenhouse gas emissions
8 from such sources in 2005; and

9 “(4) in 2050, the quantity of greenhouse gas
10 emissions from capped sources does not exceed 17
11 percent of the quantity of greenhouse gas emissions
12 from such sources in 2005.

13 “(b) DEFINITION.—For purposes of this section, the
14 term ‘greenhouse gas emissions from such sources in
15 2005’ means emissions to which section 722 would have
16 applied if the requirements of this title for the specified
17 year had been in effect for 2005.

18 **“SEC. 704. SUPPLEMENTAL POLLUTION REDUCTIONS.**

19 “For the purposes of decreasing the likelihood of cat-
20 astrophic climate change, preserving tropical forests,
21 building capacity to generate offset credits, and facili-
22 tating international action on global warming, the Admin-
23 istrator shall set aside the percentage specified in section
24 781 of the quantity of emission allowances established
25 under section 721(a) for each year, to be used to achieve

1 a reduction of greenhouse gas emissions from deforest-
2 ation in developing countries in accordance with part E.
3 In 2020, activities supported under part E shall provide
4 greenhouse gas reductions in an amount equal to an addi-
5 tional 10 percentage points of reductions from United
6 States greenhouse gas emissions in 2005. The Adminis-
7 trator shall distribute these allowances with respect to ac-
8 tivities in countries that enter into and implement agree-
9 ments or arrangements relating to reduced deforestation
10 as described in section 754(a)(2).

11 **“SEC. 705. REVIEW AND PROGRAM RECOMMENDATIONS.**

12 “(a) IN GENERAL.—The Administrator shall, in con-
13 sultation with appropriate Federal agencies, submit to
14 Congress a report not later than July 1, 2013, and every
15 4 years thereafter, that includes—

16 “(1) an analysis of key findings based on the
17 latest scientific information and data relevant to
18 global climate change;

19 “(2) an analysis of capabilities to monitor and
20 verify greenhouse gas reductions on a worldwide
21 basis, including for the United States, as required
22 under the Safe Climate Act; and

23 “(3) an analysis of the status of worldwide
24 greenhouse gas reduction efforts, including imple-
25 mentation of the Safe Climate Act and other poli-

1 cies, both domestic and international, for reducing
2 greenhouse gas emissions, preventing dangerous at-
3 mospheric concentrations of greenhouse gases, pre-
4 venting significant irreversible consequences of cli-
5 mate change, and reducing vulnerability to the im-
6 pacts of climate change.

7 “(b) EXCEPTION.—Paragraph (3) of subsection (a)
8 shall not apply to the first report submitted under such
9 subsection.

10 “(c) LATEST SCIENTIFIC INFORMATION.—The anal-
11 ysis required under subsection (a)(1) shall—

12 “(1) address existing scientific information and
13 reports, considering, to the greatest extent possible,
14 the most recent assessment report of the Intergov-
15 ernmental Panel on Climate Change, reports by the
16 United States Global Change Research Program, the
17 Natural Resources Climate Change Adaptation
18 Panel established under section 475 of the American
19 Clean Energy and Security Act of 2009, and Fed-
20 eral agencies, and the European Union’s global tem-
21 perature data assessment; and

22 “(2) review trends and projections for—

23 “(A) global and country-specific annual
24 emissions of greenhouse gases, and cumulative

1 greenhouse gas emissions produced between
2 1850 and the present, including—

3 “(i) global cumulative emissions of an-
4 thropogenic greenhouse gases;

5 “(ii) global annual emissions of an-
6 thropogenic greenhouse gases; and

7 “(iii) by country, annual total, annual
8 per capita, and cumulative anthropogenic
9 emissions of greenhouse gases for the top
10 50 emitting nations;

11 “(B) significant changes, both globally and
12 by region, in annual net non-anthropogenic
13 greenhouse gas emissions from natural sources,
14 including permafrost, forests, or oceans;

15 “(C) global atmospheric concentrations of
16 greenhouse gases, expressed in annual con-
17 centration units as well as carbon dioxide
18 equivalents based on 100-year global warming
19 potentials;

20 “(D) major climate forcing factors, such as
21 aerosols;

22 “(E) global average temperature, expressed
23 as seasonal and annual averages in land, ocean,
24 and land-plus-ocean averages; and

25 “(F) sea level rise;

1 “(3) assess the current and potential impacts of
2 global climate change on—

3 “(A) human populations, including impacts
4 on public health, economic livelihoods, subsist-
5 ence, human infrastructure, and displacement
6 or permanent relocation due to flooding, severe
7 weather, extended drought, erosion, or other
8 ecosystem changes;

9 “(B) freshwater systems, including water
10 resources for human consumption and agri-
11 culture and natural and managed ecosystems,
12 flood and drought risks, and relative humidity;

13 “(C) the carbon cycle, including impacts
14 related to the thawing of permafrost, the fre-
15 quency and intensity of wildfire, and terrestrial
16 and ocean carbon sinks;

17 “(D) ecosystems and animal and plant
18 populations, including impacts on species abun-
19 dance, phenology, and distribution;

20 “(E) oceans and ocean ecosystems, includ-
21 ing effects on sea level, ocean acidity, ocean
22 temperatures, coral reefs, ocean circulation,
23 fisheries, and other indicators of ocean eco-
24 system health;

1 “(F) the cryosphere, including effects on
2 ice sheet mass balance, mountain glacier mass
3 balance, and sea-ice extent and volume;

4 “(G) changes in the intensity, frequency,
5 or distribution of severe weather events, includ-
6 ing precipitation, tropical cyclones, tornadoes
7 and severe heat waves;

8 “(H) agriculture and forest systems; and

9 “(I) any other indicators the Administrator
10 deems appropriate;

11 “(4) summarize any significant socio-economic
12 impacts of climate change in the United States, in-
13 cluding the territories of the United States, drawing
14 on work by Federal agencies and the academic lit-
15 erature, including impacts on—

16 “(A) public health;

17 “(B) economic livelihoods and subsistence;

18 “(C) displacement or permanent relocation
19 due to flooding, severe weather, extended
20 drought, or other ecosystem changes;

21 “(D) human infrastructure, including
22 coastal infrastructure vulnerability to extreme
23 events and sea level rise, river floodplain infra-
24 structure, and sewer and water management
25 systems;

1 “(E) agriculture and forests, including ef-
2 fects on potential growing season, distribution,
3 and yield;

4 “(F) water resources for human consump-
5 tion, agriculture and natural and managed eco-
6 systems, flood and drought risks and relative
7 humidity;

8 “(G) energy supply and use; and

9 “(H) transportation;

10 “(5) in assessing risks and impacts, use a risk
11 management framework, including both qualitative
12 and quantitative measures, to assess the observed
13 and projected impacts of current and future climate
14 change, accounting for—

15 “(A) both monetized and non-monetized
16 losses;

17 “(B) potential nonlinear, abrupt, or essen-
18 tially irreversible changes in the climate system;

19 “(C) potential nonlinear increases in the
20 cost of impacts;

21 “(D) potential low-probability, high impact
22 events; and

23 “(E) whether impacts are transitory or es-
24 sentially permanent;

1 “(6) based on the findings of the Administrator
2 under this section, as well as assessments produced
3 by the Intergovernmental Panel on Climate Change,
4 the United States Global Change Research program,
5 and other relevant scientific entities—

6 “(A) describe increased risks to natural
7 systems and society that would result from an
8 increase in global average temperature 3.6 de-
9 grees Fahrenheit (2 degrees Celsius) above the
10 pre-industrial average or an increase in atmos-
11 pheric greenhouse gas concentrations above 450
12 parts per million carbon dioxide equivalent; and

13 “(B) identify and assess—

14 “(i) significant residual risks not
15 avoided by the thresholds described in sub-
16 paragraph (A);

17 “(ii) alternative thresholds or targets
18 that may more effectively limit the risks
19 identified pursuant to clause (i); and

20 “(iii) thresholds above those described
21 in subparagraph (A) which significantly in-
22 crease the risk of certain impacts or render
23 them essentially permanent.

24 “(d) STATUS OF MONITORING AND VERIFICATION
25 CAPABILITIES TO EVALUATE GREENHOUSE GAS REDUC-

1 TION EFFORTS.—The analysis required under subsection
2 (a)(2) shall evaluate the capabilities of the monitoring, re-
3 porting, and verification systems used to quantify progress
4 in achieving reductions in greenhouse gas emissions both
5 globally and in the United States (as described in section
6 702), including—

7 “(1) quantification of emissions and emission
8 reductions by entities participating in the cap and
9 trade program under this title;

10 “(2) quantification of emissions and emission
11 reductions by entities participating in the offset pro-
12 gram under this title;

13 “(3) quantification of emission and emissions
14 reductions by entities regulated by performance
15 standards;

16 “(4) quantification of aggregate net emissions
17 and emissions reductions by the United States; and

18 “(5) quantification of global changes in net
19 emissions and in sources and sinks of greenhouse
20 gases.

21 “(e) STATUS OF GREENHOUSE GAS REDUCTION EF-
22 FORTS.—The analysis required under subsection (a)(3)
23 shall address—

24 “(1) whether the programs under Safe Climate
25 Act and other Federal statutes are resulting in suffi-

1 cient United States greenhouse gas emissions reduc-
2 tions to meet the emissions reduction goals described
3 in section 702, taking into account the use of off-
4 sets; and

5 “(2) whether United States actions, taking into
6 account international actions, commitments, and
7 trends, and considering the range of plausible emis-
8 sions scenarios, are sufficient to avoid—

9 “(A) atmospheric greenhouse gas con-
10 centrations above 450 parts per million carbon
11 dioxide equivalent;

12 “(B) global average surface temperature
13 3.6 degrees Fahrenheit (2 degrees Celsius)
14 above the pre-industrial average, or such other
15 temperature thresholds as the Administrator
16 deems appropriate; and

17 “(C) other temperature or greenhouse gas
18 thresholds identified pursuant to subsection
19 (c)(6)(B).

20 “(f) RECOMMENDATIONS.—

21 “(1) LATEST SCIENTIFIC INFORMATION.—
22 Based on the analysis described in subsection (a)(1),
23 each report under subsection (a) shall identify ac-
24 tions that could be taken to—

1 “(A) improve the characterization of
2 changes in the earth-climate system and im-
3 pacts of global climate change;

4 “(B) better inform decision making and
5 actions related to global climate change;

6 “(C) mitigate risks to natural and social
7 systems; and

8 “(D) design policies to better account for
9 climate risks.

10 “(2) MONITORING, REPORTING AND
11 VERIFICATION.—Based on the analysis described in
12 subsection (a)(2), each report under subsection (a)
13 shall identify key gaps in measurement, reporting,
14 and verification capabilities and make recommenda-
15 tions to improve the accuracy and reliability of those
16 capabilities.

17 “(3) STATUS OF GREENHOUSE GAS REDUCTION
18 EFFORTS.—Based on the analysis described in sub-
19 section (a)(3), taking into account international ac-
20 tions, commitments, and trends, and considering the
21 range of plausible emissions scenarios, each report
22 under subsection (a) shall identify—

23 “(A) the quantity of additional reductions
24 required to meet the emissions reduction goals
25 in section 702;

1 “(B) the quantity of additional reductions
2 in global greenhouse gas emissions needed to
3 avoid the concentration and temperature
4 thresholds identified in subsection (e); and

5 “(C) possible strategies and approaches for
6 achieving additional reductions.

7 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to carry out this section
9 such sums as may be necessary.

10 **“SEC. 706. NATIONAL ACADEMY REVIEW.**

11 “(a) IN GENERAL.—Not later than 1 year after the
12 date of enactment of this title, the Administrator shall
13 offer to enter into a contract with the National Academy
14 of Sciences (in this section referred to as the ‘Academy’)
15 under which the Academy shall, not later than July 1,
16 2014, and every 4 years thereafter, submit to Congress
17 and the Administrator a report that includes—

18 “(1) a review of the most recent report and rec-
19 ommendations issued under section 705;

20 “(2) an analysis of technologies to achieve re-
21 ductions in greenhouse gas emissions.

22 “(b) FAILURE TO ISSUE A REPORT.—In the event
23 that the Administrator has not issued all or part of the
24 most recent report required under section 705, the Acad-

1 emy shall conduct its own review and analysis of the re-
2 quired information.

3 “(c) TECHNOLOGICAL INFORMATION.—The analysis
4 required under subsection (a)(2) shall—

5 “(1) review existing technological information
6 and reports, including the most recent reports by the
7 Department of Energy, the United States Global
8 Change Research Program, the Intergovernmental
9 Panel on Climate Change, and the International En-
10 ergy Agency and any other relevant information on
11 technologies or practices that reduce or limit green-
12 house gas emissions;

13 “(2) include the participation of technical ex-
14 perts from relevant private industry sectors;

15 “(3) review the current and future projected de-
16 ployment of technologies and practices in the United
17 States that reduce or limit greenhouse gas emis-
18 sions, including—

19 “(A) technologies for capture and seques-
20 tration of greenhouse gases;

21 “(B) technologies to improve energy effi-
22 ciency;

23 “(C) low- or zero-greenhouse gas emitting
24 energy technologies;

1 “(D) low- or zero-greenhouse gas emitting
2 fuels;

3 “(E) biological sequestration practices and
4 technologies; and

5 “(F) any other technologies the Academy
6 deems relevant; and

7 “(4) review and compare the emissions reduc-
8 tion potential, commercial viability, market penetra-
9 tion, investment trends, and deployment of the tech-
10 nologies described in paragraph (3), including—

11 “(A) the need for additional research and
12 development, including publicly funded research
13 and development;

14 “(B) the extent of commercial deployment,
15 including, where appropriate, a comparison to
16 the cost and level of deployment of conventional
17 fossil fuel-fired energy technologies and devices;
18 and

19 “(C) an evaluation of any substantial tech-
20 nological, legal, or market-based barriers to
21 commercial deployment.

22 “(d) RECOMMENDATIONS.—

23 “(1) LATEST SCIENTIFIC INFORMATION.—
24 Based on the review described in subsection (a)(1),

1 the Academy shall identify actions that could be
2 taken to—

3 “(A) improve the characterization of
4 changes in the earth-climate system and im-
5 pacts of global climate change;

6 “(B) better inform decision making and
7 actions related to global climate change;

8 “(C) mitigate risks to natural and social
9 systems;

10 “(D) design policies to better account for
11 climate risks; and

12 “(E) improve the accuracy and reliability
13 of capabilities to monitor, report and verify
14 greenhouse gas emissions reduction efforts.

15 “(2) TECHNOLOGICAL INFORMATION.—Based
16 on the analysis described in subsection (a)(2), the
17 Academy shall identify—

18 “(A) additional emissions reductions that
19 may be possible as a result of technologies de-
20 scribed in the analysis;

21 “(B) barriers to the deployment of such
22 technologies; and

23 “(C) actions that could be taken to speed
24 deployment of such technologies.

1 “(3) STATUS OF GREENHOUSE GAS REDUCTION
2 EFFORTS.—Based on the review described in sub-
3 section (a)(1), the Academy shall identify—

4 “(A) the quantity of additional reductions
5 required to meet the emissions reduction goals
6 described in section 702; and

7 “(B) the quantity of additional reductions
8 in global greenhouse gas emissions needed to
9 avoid the concentration and temperature
10 thresholds described in section 705(c)(6)(A) or
11 identified pursuant to section 705(c)(6)(B).

12 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to carry out this section
14 such sums as may be necessary.

15 **“SEC. 707. PRESIDENTIAL RESPONSE AND RECOMMENDA-**
16 **TIONS.**

17 “Not later than July 1, 2015, and every 4 years
18 thereafter—

19 “(1) the President shall direct relevant Federal
20 agencies to use existing statutory authority to take
21 appropriate actions identified in the reports sub-
22 mitted under sections 704 and 705 and to address
23 any shortfalls identified in such report; and

24 “(2) in the event that the National Academy of
25 Sciences has concluded, in the most recent report

1 submitted under section 705, that the United States
2 will not achieve the necessary domestic greenhouse
3 gas emissions reductions, or that global actions will
4 not maintain safe global average surface tempera-
5 ture and atmospheric greenhouse gas concentration
6 thresholds, the President shall submit to Congress a
7 plan identifying domestic and international actions
8 that will achieve necessary additional greenhouse gas
9 reductions, including any recommendations for legis-
10 lative action.

11 **“PART B—DESIGNATION AND REGISTRATION OF**
12 **GREENHOUSE GASES**

13 **“SEC. 711. DESIGNATION OF GREENHOUSE GASES.**

14 “(a) GREENHOUSE GASES.—For purposes of this
15 title, the following are greenhouse gases:

16 “(1) Carbon dioxide.

17 “(2) Methane.

18 “(3) Nitrous oxide.

19 “(4) Sulfur hexafluoride.

20 “(5) Hydrofluorocarbons from a chemical man-
21 ufacturing process at an industrial stationary
22 source.

23 “(6) Any perfluorocarbon.

24 “(7) Nitrogen trifluoride.

1 “(8) Any other anthropogenic gas designated as
2 a greenhouse gas by the Administrator under this
3 section.

4 “(b) DETERMINATION ON ADMINISTRATOR’S INITIA-
5 TIVE.—The Administrator shall, by rule—

6 “(1) determine whether 1 metric ton of another
7 anthropogenic gas makes the same or greater con-
8 tribution to global warming over 100 years as 1 met-
9 ric ton of carbon dioxide;

10 “(2) determine the carbon dioxide equivalent
11 value for each gas with respect to which the Admin-
12 istrator makes an affirmative determination under
13 paragraph (1);

14 “(3) for each gas with respect to which the Ad-
15 ministrator makes an affirmative determination
16 under paragraph (1) and that is used as a substitute
17 for a class I or class II substance under title VI, de-
18 termine the extent to which to regulate that gas
19 under section 619 and specify appropriate compli-
20 ance obligations under section 619;

21 “(4) designate as a greenhouse gas for purposes
22 of this title each gas for which the Administrator
23 makes an affirmative determination under para-
24 graph (1), to the extent that it is not regulated
25 under section 619; and

1 “(5) specify the appropriate compliance obliga-
2 tions under this title for each gas designated as a
3 greenhouse gas under paragraph (4).

4 “(c) PETITIONS TO DESIGNATE A GREENHOUSE
5 GAS.—

6 “(1) IN GENERAL.—Any person may petition
7 the Administrator to designate as a greenhouse gas
8 any anthropogenic gas 1 metric ton of which makes
9 the same or greater contribution to global warming
10 over 100 years as 1 metric ton of carbon dioxide.

11 “(2) CONTENTS OF PETITION.—The petitioner
12 shall provide sufficient data, as specified by rule by
13 the Administrator, to demonstrate that the gas is
14 likely to be a greenhouse gas and is likely to be pro-
15 duced, imported, used, or emitted in the United
16 States. To the extent practicable, the petitioner shall
17 also identify producers, importers, distributors,
18 users, and emitters of the gas in the United States.

19 “(3) REVIEW AND ACTION BY THE ADMINIS-
20 TRATOR.—Not later than 90 days after receipt of a
21 petition under paragraph (2), the Administrator
22 shall determine whether the petition is complete and
23 notify the petitioner and the public of the decision.

24 “(4) ADDITIONAL INFORMATION.—The Admin-
25 istrator may require producers, importers, distribu-

1 tors, users, or emitters of the gas to provide infor-
2 mation on the contribution of the gas to global
3 warming over 100 years compared to carbon dioxide.

4 “(5) TREATMENT OF PETITION.—For any sub-
5 stance used as a substitute for a class I or class II
6 substance under title VI, the Administrator may
7 elect to treat a petition under this subsection as a
8 petition to list the substance as a class II, group II
9 substance under section 619, and may require the
10 petition to be amended to address listing criteria
11 promulgated under that section.

12 “(6) DETERMINATION.—Not later than 2 years
13 after receipt of a complete petition, the Adminis-
14 trator shall, after notice and an opportunity for com-
15 ment—

16 “(A) issue and publish in the Federal Reg-
17 ister—

18 “(i) a determination that 1 metric ton
19 of the gas does not make a contribution to
20 global warming over 100 years that is
21 equal to or greater than that made by 1
22 metric ton of carbon dioxide; and

23 “(ii) an explanation of the decision; or

24 “(B) determine that 1 metric ton of the
25 gas makes a contribution to global warming

1 over 100 years that is equal to or greater than
2 that made by 1 metric ton of carbon dioxide,
3 and take the actions described in subsection (b)
4 with respect to such gas.

5 “(7) GROUNDS FOR DENIAL.—The Adminis-
6 trator may not deny a petition under this subsection
7 solely on the basis of inadequate Environmental Pro-
8 tection Agency resources or time for review.

9 “(d) SCIENCE ADVISORY BOARD CONSULTATION.—
10 The Administrator shall consult with the Science Advisory
11 Board prior to making a determination under subsection
12 (b)(1), (c)(6), or (e)(2)(B).

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 that is equal to or greater than that made
7 by 1 metric ton of carbon dioxide; or

8 “(iii) the person manufacturing or im-
9 porting the gas for distribution into inter-
10 state commerce, or emitting the gas, has
11 submitted to the Administrator, at least 90
12 days before the start of such manufacture,
13 introduction into commerce, or emission, a
14 notice of such person’s manufacture, intro-
15 duction into commerce, or emission of such
16 gas, and the Administrator has not deter-
17 mined that notice or a substantially similar
18 notice is incomplete.

19 “(B) ALTERNATIVE COMPLIANCE.—For a
20 gas that is a substitute for a class I or class II
21 substance under title VI and either has been
22 listed as acceptable for use under section 612
23 or is currently subject to evaluation under sec-
24 tion 612, the Administrator may accept the no-
25 tice and information provided pursuant to that

1 section as fulfilling the obligation under clause
2 (iii) of subparagraph (A).

3 “(2) REVIEW AND ACTION BY THE ADMINIS-
4 TRATOR.—

5 “(A) COMPLETENESS.—Not later than 90
6 days after receipt of notice under paragraph
7 (1)(A)(iii) or (B), the Administrator shall deter-
8 mine whether the notice is complete.

9 “(B) DETERMINATION.— If the Adminis-
10 trator determines that the notice is complete,
11 the Administrator shall, after notice and an op-
12 portunity for comment, not later than 12
13 months after receipt of the notice—

14 “(i) issue and publish in the Federal
15 Register a determination that 1 metric ton
16 of the gas does not make a contribution to
17 global warming over 100 years that is
18 equal to or greater than that made by 1
19 metric ton of carbon dioxide and an expla-
20 nation of the decision; or

21 “(ii) determine that 1 metric ton of
22 the gas makes a contribution to global
23 warming over 100 years that is equal to or
24 greater than that made by 1 metric ton of
25 carbon dioxide, and take the actions de-

1 scribed in subsection (b) with respect to
2 such gas.

3 “(f) REGULATIONS.—Not later than one year after
4 the date of enactment of this title, the Administrator shall
5 promulgate regulations to carry out this section. Such reg-
6 ulations shall include—

7 “(1) requirements for the contents of a petition
8 submitted under subsection (c);

9 “(2) requirements for the contents of a notice
10 required under subsection (e); and

11 “(3) methods and standards for evaluating the
12 carbon dioxide equivalent value of a gas.

13 “(g) GASES REGULATED UNDER TITLE VI.—The
14 Administrator shall not designate a gas as a greenhouse
15 gas under this section to the extent that the gas is regu-
16 lated under title VI.

17 “(h) SAVINGS CLAUSE.—Nothing in this section shall
18 be interpreted to relieve any person from complying with
19 the requirements of section 612.

20 **“SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF**
21 **GREENHOUSE GASES.**

22 “(a) MEASURE OF QUANTITY OF GREENHOUSE
23 GASES.—Any provision of this title or title VIII that refers
24 to a quantity or percentage of a quantity of greenhouse

1 gases shall mean the quantity or percentage of the green-
 2 house gases expressed in carbon dioxide equivalents.

3 “(b) INITIAL VALUE.—Except as provided by the Ad-
 4 ministrator under this section or section 711—

5 “(1) the carbon dioxide equivalent value of
 6 greenhouse gases for purposes of this Act shall be as
 7 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
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

19 “(B) publish in the Federal Register the
20 results of that review and any revisions.

21 “(2) A revised determination published in the
22 Federal Register under paragraph (1)(B) shall take
23 effect for greenhouse gas emissions starting on Jan-
24 uary 1 of the first calendar year starting at least 9

1 months after the date on which the revised deter-
2 mination was published.

3 “(3) The Administrator may decrease the fre-
4 quency of review and revision under paragraph (1)
5 if the Administrator determines that such decrease
6 is appropriate in order to synchronize such review
7 and revision with any similar review process carried
8 out pursuant to the United Nations Framework
9 Convention on Climate Change, done at New York
10 on May 9, 1992, or to an agreement negotiated
11 under that convention, except that in no event shall
12 the Administrator carry out such review and revision
13 any less frequently than every 10 years.

14 “(d) METHODOLOGY.—In setting carbon dioxide
15 equivalent values, for purposes of this section or section
16 711, the Administrator shall take into account publica-
17 tions by the Intergovernmental Panel on Climate Change
18 or a successor organization under the auspices of the
19 United Nations Environmental Programme and the World
20 Meteorological Organization.

21 **“SEC. 713. GREENHOUSE GAS REGISTRY.**

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

23 “(1) CLIMATE REGISTRY.—The term ‘Climate
24 Registry’ means the greenhouse gas emissions reg-
25 istry jointly established and managed by more than

1 40 States and Indian tribes in 2007 to collect high-
2 quality greenhouse gas emission data from facilities,
3 corporations, and other organizations to support var-
4 ious greenhouse gas emission reporting and reduc-
5 tion policies for the member States and Indian
6 tribes.

7 “(2) REPORTING ENTITY.—The term ‘reporting
8 entity’ means—

9 “(A) a covered entity;

10 “(B) an entity that—

11 “(i) would be a covered entity if it had
12 emitted, produced, imported, manufac-
13 tured, or delivered in 2008 or any subse-
14 quent year more than the applicable
15 threshold level in the definition of covered
16 entity in paragraph (13) of section 700;
17 and

18 “(ii) has emitted, produced, imported,
19 manufactured, or delivered in 2008 or any
20 subsequent year more than the applicable
21 threshold level in the definition of covered
22 entity in paragraph (13) of section 700,
23 provided that the figure of 25,000 tons of
24 carbon dioxide equivalent is read instead
25 as 10,000 tons of carbon dioxide equivalent

1 and the figure of 460,000,000 cubic feet is
2 read instead as 184,000,000 cubic feet;

3 “(C) any other entity that emits a green-
4 house gas, or produces, imports, manufactures,
5 or delivers material whose use results or may
6 result in greenhouse gas emissions if the Ad-
7 ministrator determines that reporting under
8 this section by such entity will help achieve the
9 purposes of this title or title VIII;

10 “(D) any vehicle fleet with emissions of
11 more than 25,000 tons of carbon dioxide equiv-
12 alent on an annual basis, if the Administrator
13 determines that the inclusion of such fleet will
14 help achieve the purposes of this title or title
15 VIII; or

16 “(E) any entity that delivers electricity to
17 an energy-intensive facility in an industrial sec-
18 tor that meets the energy or greenhouse gas in-
19 tensity criteria in section 764(b)(2)(A)(i).

20 “(b) REGULATIONS.—

21 “(1) IN GENERAL.—Not later than 6 months
22 after the date of enactment of this title, the Admin-
23 istrator shall issue regulations establishing a Federal
24 greenhouse gas registry. Such regulations shall—

1 “(A) require reporting entities to submit to
2 the Administrator data on—

3 “(i) greenhouse gas emissions in the
4 United States;

5 “(ii) the production and manufacture
6 in the United States, importation into the
7 United States, and, at the discretion of the
8 Administrator, exportation from the
9 United States, of fuels and industrial gases
10 the uses of which result or may result in
11 greenhouse gas emissions;

12 “(iii) deliveries in the United States of
13 natural gas, and any other gas meeting the
14 specifications for commingling with natural
15 gas for purposes of delivery, the combus-
16 tion of which result or may result in green-
17 house gas emissions; and

18 “(iv) the capture and sequestration of
19 greenhouse gases;

20 “(B) require covered entities and, where
21 appropriate, other reporting entities to submit
22 to the Administrator data sufficient to ensure
23 compliance with or implementation of the re-
24 quirements of this title;

1 “(C) require reporting of electricity deliv-
2 ered to industrial sources in energy-intensive in-
3 dustries;

4 “(D) ensure the completeness, consistency,
5 transparency, accuracy, precision, and reliability
6 of such data;

7 “(E) take into account the best practices
8 from the most recent Federal, State, tribal, and
9 international protocols for the measurement, ac-
10 counting, reporting, and verification of green-
11 house gas emissions, including protocols from
12 the Climate Registry and other mandatory
13 State or multistate authorized programs;

14 “(F) take into account the latest scientific
15 research;

16 “(G) require that, for covered entities with
17 respect to greenhouse gases to which section
18 722 applies, and, to the extent determined to be
19 appropriate by the Administrator, for covered
20 entities with respect to other greenhouse gases
21 and for other reporting entities, submitted data
22 are based on—

23 “(i) continuous monitoring systems
24 for fuel flow or emissions, such as contin-
25 uous emission monitoring systems;

1 “(ii) alternative systems that are dem-
2 onstrated as providing data with the same
3 precision, reliability, accessibility, and
4 timeliness, or, to the extent the Adminis-
5 trator determines is appropriate for report-
6 ing small amounts of emissions, the same
7 precision, reliability, and accessibility and
8 similar timeliness, as data provided by con-
9 tinuous monitoring systems for fuel flow or
10 emissions; or

11 “(iii) alternative methodologies that
12 are demonstrated to provide data with pre-
13 cision, reliability, accessibility, and timeli-
14 ness, or, to the extent the Administrator
15 determines is appropriate for reporting
16 small amounts of emissions, precision, reli-
17 ability, and accessibility, as similar as is
18 technically feasible to that of data gen-
19 erally provided by continuous monitoring
20 systems for fuel flow or emissions, if the
21 Administrator determines that, with re-
22 spect to a reporting entity, there is no con-
23 tinuous monitoring system or alternative
24 system described in clause (i) or (ii) that
25 is technically feasible;

1 “(H) require that the Administrator, in de-
2 termining the extent to which the requirement
3 to use systems or methodologies in accordance
4 with subparagraph (G) is appropriate for re-
5 porting entities other than covered entities or
6 for greenhouse gases to which section 722 does
7 not apply, consider the cost of using such sys-
8 tems and methodologies, and of using other sys-
9 tems and methodologies that are available and
10 suitable, for quantifying the emissions involved
11 in light of the purposes of this title, including
12 the goal of collecting consistent entity-wide
13 data;

14 “(I) include methods for minimizing double
15 reporting and avoiding irreconcilable double re-
16 porting of greenhouse gas emissions;

17 “(J) establish measurement protocols for
18 carbon capture and sequestration systems, tak-
19 ing into consideration the regulations promul-
20 gated under section 813;

21 “(K) require that reporting entities provide
22 the data required under this paragraph in re-
23 ports submitted electronically to the Adminis-
24 trator, in such form and containing such infor-

1 mation as may be required by the Adminis-
2 trator;

3 “(L) include requirements for keeping
4 records supporting or related to, and protocols
5 for auditing, submitted data;

6 “(M) establish consistent policies for calcu-
7 lating carbon content and greenhouse gas emis-
8 sions for each type of fossil fuel with respect to
9 which reporting is required;

10 “(N) subsequent to implementation of poli-
11 cies developed under subparagraph (M), provide
12 for immediate dissemination, to States, Indian
13 tribes, and on the Internet, of all data reported
14 under this section as soon as practicable after
15 electronic audit by the Administrator and any
16 resulting correction of data, except that data
17 shall not be disseminated under this subpara-
18 graph if—

19 “(i) its nondissemination is vital to
20 the national security of the United States,
21 as determined by the President; or

22 “(ii) it is confidential business infor-
23 mation that cannot be derived from infor-
24 mation that is otherwise publicly available
25 and that would cause significant calculable

1 competitive harm if published, except
2 that—

3 “(I) data relating to greenhouse
4 gas emissions, including any upstream
5 or verification data from reporting en-
6 tities, shall not be considered to be
7 confidential business information; and

8 “(II) data that is confidential
9 business information shall be provided
10 to a State or Indian tribe within
11 whose jurisdiction the reporting entity
12 is located, if the Administrator deter-
13 mines that such State or Indian tribe
14 has in effect protections for confiden-
15 tial business information that are
16 equivalent to protections applicable to
17 the Federal Government;

18 “(O) prescribe methods by which the Ad-
19 ministrator shall, in cases in which satisfactory
20 data are not submitted to the Administrator for
21 any period of time, estimate emission, produc-
22 tion, importation, manufacture, or delivery lev-
23 els—

24 “(i) for covered entities with respect
25 to greenhouse gas emissions, production,

1 importation, manufacture, or delivery regu-
2 lated under this title to ensure that emis-
3 sions, production, importation, manufac-
4 ture, or deliveries are not underreported,
5 and to create a strong incentive for meet-
6 ing data monitoring and reporting require-
7 ments—

8 “(I) with a conservative estimate
9 of the highest emission, production,
10 importation, manufacture, or delivery
11 levels that may have occurred during
12 the period for which data are missing;
13 or

14 “(II) to the extent the Adminis-
15 trator considers appropriate, with an
16 estimate of such levels assuming the
17 unit is emitting, producing, importing,
18 manufacturing, or delivering at a
19 maximum potential level during the
20 period, in order to ensure that such
21 levels are not underreported and to
22 create a strong incentive for meeting
23 data monitoring and reporting re-
24 quirements; and

1 “(ii) for covered entities with respect
2 to greenhouse gas emissions to which sec-
3 tion 722 does not apply and for other re-
4 porting entities, with a reasonable estimate
5 of the emission, production, importation,
6 manufacture, or delivery levels that may
7 have occurred during the period for which
8 data are missing;

9 “(P) require the designation of a des-
10 ignated representative for each reporting entity;

11 “(Q) require an appropriate certification,
12 by the designated representative for the report-
13 ing entity, of accurate and complete accounting
14 of greenhouse gas emissions, as determined by
15 the Administrator; and

16 “(R) include requirements for other data
17 necessary for accurate and complete accounting
18 of greenhouse gas emissions, as determined by
19 the Administrator, including data for quality
20 assurance of monitoring systems, monitors and
21 other measurement devices, and other data
22 needed to verify reported emissions, production,
23 importation, manufacture, or delivery.

24 “(2) TIMING.—

1 “(A) CALENDAR YEARS 2007 THROUGH
2 2010.—For a base period of calendar years
3 2007 through 2010, each reporting entity shall
4 submit annual data required under this section
5 to the Administrator not later than March 31,
6 2011. The Administrator may waive or modify
7 reporting requirements for calendar years 2007
8 through 2010 for categories of reporting enti-
9 ties to the extent that the Administrator deter-
10 mines that the reporting entities did not keep
11 data or records necessary to meet reporting re-
12 quirements. The Administrator may, in addition
13 to or in lieu of such requirements, collect infor-
14 mation on energy consumption and production.

15 “(B) SUBSEQUENT CALENDAR YEARS.—
16 For calendar year 2011 and each subsequent
17 calendar year, each reporting entity shall sub-
18 mit quarterly data required under this section
19 to the Administrator not later than 60 days
20 after the end of the applicable quarter, except
21 when the data is already being reported to the
22 Administrator on an earlier timeframe for an-
23 other program.

24 “(3) WAIVER OF REPORTING REQUIREMENTS.—
25 The Administrator may waive reporting require-

1 ments under this section for specific entities to the
2 extent that the Administrator determines that suffi-
3 cient and equally or more reliable verified and timely
4 data are available to the Administrator and the pub-
5 lic on the Internet under other mandatory statutory
6 requirements.

7 “(4) ALTERNATIVE THRESHOLD.—The Admin-
8 istrator may, by rule, establish applicability thresh-
9 olds for reporting under this section using alter-
10 native metrics and levels, provided that such metrics
11 and levels are easier to administer and cover the
12 same size and type of sources as the threshold de-
13 fined in this section.

14 “(c) INTERRELATIONSHIP WITH OTHER SYSTEMS.—
15 In developing the regulations issued under subsection (b),
16 the Administrator shall take into account the work done
17 by the Climate Registry and other mandatory State or
18 multistate programs. Such regulations shall include an ex-
19 planation of any major differences in approach between
20 the system established under the regulations and such reg-
21 istries and programs.

22 **“PART C—PROGRAM RULES**

23 **“SEC. 721. EMISSION ALLOWANCES.**

24 “(a) IN GENERAL.—The Administrator shall estab-
25 lish a separate quantity of emission allowances for each

1 calendar year starting in 2012, in the amounts prescribed
2 under subsection (e).

3 “(b) IDENTIFICATION NUMBERS.—The Adminis-
4 trator shall assign to each emission allowance established
5 under subsection (a) a unique identification number that
6 includes the vintage year for that emission allowance.

7 “(c) LEGAL STATUS OF EMISSION ALLOWANCES.—

8 “(1) IN GENERAL.—An allowance established
9 by the Administrator under this title does not con-
10 stitute a property right.

11 “(2) TERMINATION OR LIMITATION.—Nothing
12 in this Act or any other provision of law shall be
13 construed to limit or alter the authority of the
14 United States, including the Administrator acting
15 pursuant to statutory authority, to terminate or
16 limit allowances or offset credits.

17 “(3) OTHER PROVISIONS UNAFFECTED.—Ex-
18 cept as otherwise specified in this Act, nothing in
19 this Act relating to allowances or offset credits es-
20 tablished or issued under this title shall affect the
21 application of any other provision of law to a covered
22 entity, or the responsibility for a covered entity to
23 comply with any such provision of law.

24 “(d) SAVINGS PROVISION.—Nothing in this part shall
25 be construed as requiring a change of any kind in any

1 State law regulating electric utility rates and charges, or
 2 as affecting any State law regarding such State regula-
 3 tion, or as limiting State regulation (including any
 4 prudence review) under such a State law. Nothing in this
 5 part shall be construed as modifying the Federal Power
 6 Act or as affecting the authority of the Federal Energy
 7 Regulatory Commission under that Act. Nothing in this
 8 part shall be construed to interfere with or impair any pro-
 9 gram for competitive bidding for power supply in a State
 10 in which such program is established.

11 “(e) ALLOWANCES FOR EACH CALENDAR YEAR.—

12 “(1) IN GENERAL.—Except as provided in para-
 13 graph (2), the number of emission allowances estab-
 14 lished by the Administrator under subsection (a) for
 15 each calendar year shall be as provided in the fol-
 16 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

“Calendar year	Emission allowances (in mil- lions)
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
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

“Calendar year	Emission allowances (in mil- lions)
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—

8 “(i) United States greenhouse gas
9 emissions in 2005 were other than 7,206
10 million metric tons carbon dioxide equiva-
11 lent;

12 “(ii) if the requirements of this title
13 for 2012 had been in effect in 2005, sec-
14 tion 722 would have required emission al-
15 lowances to be held for other than 66.2
16 percent of United States greenhouse gas
17 emissions in 2005;

18 “(iii) if the requirements of this title
19 for 2014 had been in effect in 2005, sec-
20 tion 722 would have required emission al-

1 lowances to be held for other than 75.7
2 percent of United States greenhouse gas
3 emissions in 2005; or

4 “(iv) if the requirements of this title
5 for 2016 had been in effect in 2005, sec-
6 tion 722 would have required emission al-
7 lowances to be held for other than 84.5
8 percent United States greenhouse gas
9 emissions in 2005.

10 “(B) ADJUSTMENT FORMULA.—

11 “(i) IN GENERAL.—If the Adminis-
12 trator adjusts under this paragraph the
13 number of emission allowances established
14 pursuant to paragraph (1), the number of
15 emission allowances the Administrator es-
16 tablishes for any given calendar year shall
17 equal the product of—

18 “(I) United States greenhouse
19 gas emissions in 2005, expressed in
20 tons of carbon dioxide equivalent;

21 “(II) the percent of United
22 States greenhouse gas emissions in
23 2005, expressed in tons of carbon di-
24 oxide equivalent, that would have been
25 subject to section 722 if the require-

1 ments of this title for the given cal-
2 endar year had been in effect in 2005;
3 and

4 “(III) the percentage set forth
5 for that calendar year in section
6 703(a), or determined under clause
7 (ii) of this subparagraph.

8 “(ii) TARGETS.—In applying the por-
9 tion of the formula in clause (i)(III) of this
10 subparagraph, for calendar years for which
11 a percentage is not listed in section 703(a),
12 the Administrator shall use a uniform an-
13 nual decline in the amount of emissions be-
14 tween the years that are specified.

15 “(iii) CARBON DIOXIDE EQUIVALENT
16 VALUE.—If the Administrator adjusts
17 under this paragraph the number of emis-
18 sion allowances established pursuant to
19 paragraph (1), the Administrator shall use
20 the carbon dioxide equivalent values estab-
21 lished pursuant to section 712.

22 “(iv) LIMITATION ON ADJUSTMENT
23 TIMING.—Once a calendar year has start-
24 ed, the Administrator may not adjust the

1 number of emission allowances to be estab-
2 lished for that calendar year.

3 “(C) LIMITATION ON ADJUSTMENT AU-
4 THORITY.—The Administrator may adjust
5 under this paragraph the number of emission
6 allowances to be established pursuant to para-
7 graph (1) only once.

8 “(f) COMPENSATORY ALLOWANCE.—

9 “(1) IN GENERAL.—The regulations promul-
10 gated under subsection (g) shall provide for the es-
11 tablishment and distribution of compensatory allow-
12 ances for—

13 “(A) the destruction, in 2012 or later, of
14 fluorinated gases that are greenhouse gases if—

15 “(i) allowances or offset credits were
16 retired for their production or importation;
17 and

18 “(ii) such gases are not required to be
19 destroyed under any other provision of law;

20 “(B) the nonemissive use, in 2012 or later,
21 of petroleum-based or coal-based liquid or gas-
22 eous fuel, petroleum coke, natural gas liquid, or
23 natural gas as a feedstock, if allowances or off-
24 set credits were retired for the greenhouse

1 gases that would have been emitted from their
2 combustion; and

3 “(C) the conversionary use, in 2012 or
4 later, of fluorinated gases in a manufacturing
5 process, including semiconductor research or
6 manufacturing, if allowances or offset credits
7 were retired for the production or importation
8 of such gas.

9 “(2) ESTABLISHMENT AND DISTRIBUTION.—

10 “(A) IN GENERAL.—Not later than 90
11 days after the end of each calendar year, the
12 Administrator shall establish and distribute to
13 the entity taking the actions described in sub-
14 paragraph (A), (B), or (C) of paragraph (1) a
15 quantity of compensatory allowances equivalent
16 to the number of tons of carbon dioxide equiva-
17 lent of avoided emissions achieved through such
18 actions. In establishing the quantity of compen-
19 satory allowances, the Administrator shall take
20 into account the carbon dioxide equivalent value
21 of any greenhouse gas resulting from such ac-
22 tion.

23 “(B) SOURCE OF ALLOWANCES.—Compen-
24 satory allowances established under this sub-

1 section shall not be emission allowances estab-
2 lished under subsection (a).

3 “(C) IDENTIFICATION NUMBERS.—The
4 Administrator shall assign to each compen-
5 satory allowance established under subpara-
6 graph (A) a unique identification number.

7 “(3) DEFINITIONS.—For purposes of this sub-
8 section—

9 “(A) the term ‘destruction’ means the con-
10 version of a greenhouse gas by thermal, chem-
11 ical, or other means to another gas or set of
12 gases with little or no carbon dioxide equivalent
13 value;

14 “(B) the term ‘nonemissive use’ means the
15 use of fossil fuel as a feedstock in an industrial
16 or manufacturing process to the extent that
17 greenhouse gases are not emitted from such
18 process, and to the extent that the products of
19 such process are not intended for use as, or to
20 be contained in, a fuel; and

21 “(C) the term ‘conversionary use’ means
22 the conversion during research or manufac-
23 turing of a fluorinated gas into another green-
24 house gas or set of gases with a lower carbon
25 dioxide equivalent value.

1 “(4) FEEDSTOCK EMISSIONS STUDY.—

2 “(A) The Administrator may conduct a
3 study to determine the extent to which petro-
4 leum-based or coal-based liquid or gaseous fuel,
5 petroleum coke, natural gas liquid, or natural
6 gas are used as feedstocks in manufacturing
7 processes to produce products and the green-
8 house gas emissions resulting from such uses.

9 “(B) If as a result of such a study, the Ad-
10 ministrator determines that the use of such
11 products by noncovered sources results in sub-
12 stantial emissions of greenhouse gases or their
13 precursors and that such emissions have not
14 been adequately addressed under other require-
15 ments of this Act, the Administrator may, after
16 notice and comment rulemaking, promulgate a
17 regulation reducing compensatory allowances
18 commensurately if doing so will not result in
19 leakage.

20 “(h) REGULATIONS.—Not later than 24 months after
21 the date of enactment of this title, the Administrator shall
22 promulgate regulations to carry out the provisions of this
23 title.

1 **“SEC. 722. PROHIBITION OF EXCESS EMISSIONS.**

2 “(a) PROHIBITION.—Except as provided in sub-
3 section (c), effective January 1, 2012, each covered entity
4 is prohibited from emitting greenhouse gases, and having
5 attributable greenhouse gas emissions, in combination, in
6 excess of its allowable emissions level. A covered entity’s
7 allowable emissions level for each calendar year is the
8 number of emission allowances (or credits or other allow-
9 ances as provided in subsection (d)) it holds as of 12:01
10 a.m. on April 1 (or a later date established by the Admin-
11 istrator under subsection (j)) of the following calendar
12 year.

13 “(b) METHODS OF DEMONSTRATING COMPLIANCE.—
14 Except as otherwise provided in this section, the owner
15 or operator of a covered entity shall not be considered to
16 be in compliance with the prohibition in subsection (a) un-
17 less, as of 12:01 a.m. on April 1 (or a later date estab-
18 lished by the Administrator under subsection (j)) of each
19 calendar year starting in 2013, the owner or operator
20 holds a quantity of emission allowances (or credits or other
21 allowances as provided in subsection (d)) at least as great
22 as the quantity calculated as follows:

23 “(1) ELECTRICITY SOURCES.—For a covered
24 entity described in section 700(13)(A), 1 emission
25 allowance for each ton of carbon dioxide equivalent
26 of greenhouse gas that such covered entity emitted

1 in the previous calendar year, excluding emissions
2 resulting from the combustion of—

3 “(A) petroleum-based or coal-based liquid
4 fuel;

5 “(B) natural gas liquid;

6 “(C) renewable biomass or gas derived
7 from renewable biomass; or

8 “(D) petroleum coke or gas derived from
9 petroleum coke.

10 “(2) FUEL PRODUCERS AND IMPORTERS.—For
11 a covered entity described in section 700(13)(B), 1
12 emission allowance for each ton of carbon dioxide
13 equivalent of greenhouse gas that would be emitted
14 from the combustion of any petroleum-based or coal-
15 based liquid fuel, petroleum coke, or natural gas liq-
16 uid, produced or imported by such covered entity
17 during the previous calendar year for sale or dis-
18 tribution in interstate commerce, assuming no cap-
19 ture and sequestration of any greenhouse gas emis-
20 sions.

21 “(3) INDUSTRIAL GAS PRODUCERS AND IM-
22 PORTERS.—For a covered entity described in section
23 700(13)(C), 1 emission allowance for each ton of
24 carbon dioxide equivalent of fossil fuel-based carbon
25 dioxide, nitrous oxide, or any other fluorinated gas

1 that is a greenhouse gas (except for nitrogen
2 trifluoride), or any combination thereof, produced or
3 imported by such covered entity during the previous
4 calendar year for sale or distribution in interstate
5 commerce or released as fugitive emissions in the
6 production of fluorinated gas.

7 “(4) NITROGEN TRIFLUORIDE SOURCES.—For
8 a covered entity described in section 700(13)(D), 1
9 emission allowance for each ton of carbon dioxide
10 equivalent of nitrogen trifluoride that such covered
11 entity emitted in the previous calendar year.

12 “(5) GEOLOGICAL SEQUESTRATION SITES.—For
13 a covered entity described in section 700(13)(E), 1
14 emission allowance for each ton of carbon dioxide
15 equivalent of greenhouse gas that such covered enti-
16 ty emitted in the previous calendar year.

17 “(6) INDUSTRIAL STATIONARY SOURCES.—For
18 a covered entity described in section 700(13)(F),
19 (G), or (H), 1 emission allowance for each ton of
20 carbon dioxide equivalent of greenhouse gas that
21 such covered entity emitted in the previous calendar
22 year, excluding emissions resulting from—

23 “(A) the combustion of petroleum-based or
24 coal-based liquid fuel;

25 “(B) the combustion of natural gas liquid;

1 “(C) the combustion of renewable biomass
2 or gas derived from renewable biomass;

3 “(D) the combustion of petroleum coke or
4 gas derived from petroleum coke; or

5 “(E) the use of any fluorinated gas that is
6 a greenhouse gas purchased for use at that cov-
7 ered entity, except for nitrogen trifluoride.

8 “(7) INDUSTRIAL FOSSIL FUEL-FIRED COMBUS-
9 TION DEVICES.—For a covered entity described in
10 section 700(13)(I), 1 emission allowance for each
11 ton of carbon dioxide equivalent of greenhouse gas
12 that the devices emitted in the previous calendar
13 year, excluding emissions resulting from the combus-
14 tion of—

15 “(A) petroleum-based or coal-based liquid
16 fuel;

17 “(B) natural gas liquid;

18 “(C) renewable biomass or gas derived
19 from renewable biomass; or

20 “(D) petroleum coke or gas derived from
21 petroleum coke.

22 “(8) NATURAL GAS LOCAL DISTRIBUTION COM-
23 PANIES.—For a covered entity described in section
24 700(13)(J), 1 emission allowance for each ton of
25 carbon dioxide equivalent of greenhouse gas that

1 would be emitted from the combustion of the natural
2 gas, and any other gas meeting the specifications for
3 commingling with natural gas for purposes of deliv-
4 ery, that such entity delivered during the previous
5 calendar year to customers that are not covered enti-
6 ties, assuming no capture and sequestration of that
7 greenhouse gas.

8 “(9) ALGAE-BASED FUELS.—Where carbon di-
9 oxide (or another greenhouse gas) is used as an
10 input in the production of algae-based fuels, the Ad-
11 ministrator shall ensure that allowances are required
12 to be held either for the carbon dioxide used to grow
13 the algae or for the carbon dioxide emitted from
14 combustion of the fuel produced from such algae,
15 but not for both.

16 “(10) FUGITIVE EMISSIONS.—The greenhouse
17 gas emissions to which paragraphs (1), (4), (6), and
18 (7) apply shall not include fugitive emissions of
19 greenhouse gas, except to the extent the Adminis-
20 trator determines that data on the carbon dioxide
21 equivalent value of greenhouse gas in the fugitive
22 emissions can be provided with sufficient precision,
23 reliability, accessibility, and timeliness to ensure the
24 integrity of emission allowances, the allowance track-
25 ing system, and the cap on emissions.

1 “(11) EXPORT EXEMPTION.—This section shall
2 not apply to any petroleum-based or coal-based liq-
3 uid fuel, petroleum coke, natural gas liquid, fossil
4 fuel-based carbon dioxide, nitrous oxide, or
5 fluorinated gas that is exported for sale or use.

6 “(12) NATURAL GAS LIQUIDS.—Notwith-
7 standing subsection (a), if the owner or operator of
8 a covered entity described in section 700(13)(B)
9 that produces natural gas liquids does not take own-
10 ership of the liquids, and is not responsible for the
11 distribution or use of the liquids in commerce, the
12 owner of the liquids shall be responsible for compli-
13 ance with this section, section 723, and other rel-
14 evant sections of this title with respect to such liq-
15 uids. In the regulations promulgated under section
16 721, the Administrator shall include such provisions
17 with respect to such liquids as the Administrator de-
18 termines are appropriate to determine and ensure
19 compliance, and to penalize noncompliance. In such
20 a case, the owner of the covered entity shall provide
21 to the Administrator, in a manner to be determined
22 by the Administrator, information regarding the
23 quantity and ownership of liquids produced at the
24 covered entity.

1 “(13) APPLICATION OF MULTIPLE PARA-
2 GRAPHS.—For a covered entity to which more than
3 1 of paragraphs (1) through (8) apply, all applicable
4 paragraphs shall apply, except that not more than 1
5 emission allowance shall be required for the same
6 emission.

7 “(c) PHASE-IN OF PROHIBITION.—

8 “(1) INDUSTRIAL STATIONARY SOURCES.—The
9 prohibition under subsection (a) shall first apply to
10 a covered entity described in section 700(13)(D),
11 (F), (G), (H), or (I), with respect to emissions oc-
12 curring during calendar year 2014.

13 “(2) NATURAL GAS LOCAL DISTRIBUTION COM-
14 PANIES.—The prohibition under subsection (a) shall
15 first apply to a covered entity described in section
16 700(13)(J) with respect to deliveries occurring dur-
17 ing calendar year 2016.

18 “(d) ADDITIONAL METHODS.—In addition to using
19 the method of compliance described in subsection (b), a
20 covered entity may do the following:

21 “(1) OFFSET CREDITS.—

22 “(A) IN GENERAL.—Covered entities col-
23 lectively may, in accordance with this para-
24 graph, use offset credits to demonstrate compli-
25 ance for up to a maximum of 2 billion tons of

1 greenhouse gas emissions annually. The ability
2 to demonstrate compliance with offset credits
3 shall be divided pro rata among covered entities
4 by allowing each covered entity to satisfy a per-
5 centage of the number of allowances required to
6 be held under subsection (b) to demonstrate
7 compliance by holding 1 domestic offset credit
8 or 1.25 international offset credits in lieu of an
9 emission allowance, except as provided in sub-
10 paragraph (D).

11 “(B) APPLICABLE PERCENTAGE.—The
12 percentage referred to in subparagraph (A) for
13 a given calendar year shall be determined by di-
14 viding 2 billion by the sum of 2 billion plus the
15 number of emission allowances established
16 under section 721(a) for the previous year, and
17 multiplying that number by 100. Not more than
18 one half of the applicable percentage under this
19 paragraph may be used by holding domestic off-
20 set credits, and not more than one half of the
21 applicable percentage under this paragraph may
22 be used by holding international offset credits,
23 except as provided in subparagraph (C).

24 “(C) MODIFIED PERCENTAGES.—If the
25 Administrator determines that domestic offset

1 credits available for use in demonstrating com-
2 pliance in any calendar year at domestic offset
3 prices generally equal to or less than allowance
4 prices, are likely to offset less than 0.9 billion
5 tons of greenhouse gas emissions (measured in
6 tons of carbon dioxide equivalents), the Admin-
7 istrator shall increase the percent of emissions
8 that can be offset through the use of inter-
9 national offset credits (and decrease the percent
10 of emissions that can be allowed through the
11 use of domestic offset credits by the same
12 amount) to reflect the amount that 1.0 billion
13 exceeds the number of domestic offset credits
14 the Administrator determines is available for
15 that year, up to a maximum of 0.5 billion tons
16 of greenhouse gas emissions.

17 “(D) INTERNATIONAL OFFSET CREDITS.—
18 Notwithstanding subparagraph (A), to dem-
19 onstrate compliance prior to calendar year
20 2018, a covered entity may use 1 international
21 offset credit in lieu of an emission allowance up
22 to the amount permitted under this paragraph.

23 “(E) PRESIDENT’S RECOMMENDATION.—
24 The President may make a recommendation to
25 Congress as to whether the number 2 billion

1 specified in subparagraphs (A) and (B) should
2 be increased or decreased.

3 “(2) INTERNATIONAL EMISSION ALLOW-
4 ANCES.—To demonstrate compliance, a covered enti-
5 ty may hold an international emission allowance in
6 lieu of an emission allowance, except as modified
7 under section 728(d).

8 “(3) COMPENSATORY ALLOWANCES.—To dem-
9 onstrate compliance, a covered entity may hold a
10 compensatory allowance obtained under section
11 721(f) in lieu of an emission allowance.

12 “(e) RETIREMENT OF ALLOWANCES AND CREDITS.—
13 As soon as practicable after a deadline established for cov-
14 ered entities to demonstrate compliance with this title, the
15 Administrator shall retire the quantity of allowances or
16 credits required to be held under this title.

17 “(f) ALTERNATIVE METRICS.—For categories of cov-
18 ered entities described in subparagraph (B), (C), (D), (G),
19 (H), or (I) of section 700(13), the Administrator may, by
20 rule, establish an applicability threshold for inclusion
21 under those subparagraphs using an alternative metric
22 and level, provided that such metric and level are easier
23 to administer and cover the same size and type of sources
24 as the threshold defined in such subparagraphs.

1 “(g) THRESHOLD REVIEW.—For each category of
2 covered entities described in subparagraph (B), (C), (D),
3 (G), (H), or (I) of section 700(13), the Administrator
4 shall, in 2020 and once every 8 years thereafter, review
5 the carbon dioxide equivalent emission thresholds that are
6 used to define covered entities. After consideration of—

7 “(1) emissions from covered entities in each
8 such category, and from other entities of the same
9 type that emit less than the threshold amount for
10 the category (including emission sources that com-
11 mence operation after the date of enactment of this
12 title that are not covered entities); and

13 “(2) whether greater greenhouse gas emission
14 reductions can be cost-effectively achieved by low-
15 ering the applicable threshold,

16 the Administrator may by rule lower such threshold to not
17 less than 10,000 tons of carbon dioxide equivalent emis-
18 sions. In determining the cost effectiveness of potential re-
19 ductions from lowering the threshold for covered entities,
20 the Administrator shall consider alternative regulatory
21 greenhouse gas programs, including setting standards
22 under other titles of this Act.

23 “(h) DESIGNATED REPRESENTATIVES.—The regula-
24 tions promulgated under section 721(g) shall require that
25 each covered entity, and each entity holding allowances or

1 credits or receiving allowances or credits from the Admin-
2 istrator under this title, select a designated representative.

3 “(i) EDUCATION AND OUTREACH.—

4 “(1) IN GENERAL.—The Administrator shall es-
5 tablish and carry out a program of education and
6 outreach to assist covered entities, especially entities
7 having little experience with environmental regu-
8 latory requirements similar or comparable to those
9 under this title, in preparing to meet the compliance
10 obligations of this title. Such program shall include
11 education with respect to using markets to effec-
12 tively achieve such compliance.

13 “(2) FAILURE TO RECEIVE INFORMATION.—A
14 failure to receive information or assistance under
15 this subsection may not be used as a defense against
16 an allegation of any violation of this title.

17 “(j) ADJUSTMENT OF DEADLINE.—The Adminis-
18 trator may, by rule, establish a deadline for demonstrating
19 compliance, for a calendar year, later than the date pro-
20 vided in subsection (a), as necessary to ensure the avail-
21 ability of emissions data, but in no event shall the deadline
22 be later than June 1.

23 “(k) NOTICE REQUIREMENT FOR COVERED ENTI-
24 TIES RECEIVING NATURAL GAS FROM NATURAL GAS
25 LOCAL DISTRIBUTION COMPANIES.—The owner or oper-

1 ator of a covered entity that takes delivery of natural gas
2 from a natural gas local distribution company shall, not
3 later than September 1 of each calendar year, notify such
4 natural gas local distribution company in writing that
5 such entity will qualify as a covered entity under this title
6 for that calendar year.

7 “(1) COMPLIANCE OBLIGATION.—For purposes of
8 this title, the year of a compliance obligation is the year
9 in which compliance is determined, not the year in which
10 the greenhouse gas emissions occur or the covered entity
11 has attributable greenhouse gas emissions.

12 **“SEC. 723. PENALTY FOR NONCOMPLIANCE.**

13 “(a) ENFORCEMENT.—A violation of any prohibition
14 of, requirement of, or regulation promulgated pursuant to
15 this title shall be a violation of this Act. It shall be a viola-
16 tion of this Act for a covered entity to emit greenhouse
17 gases, and have attributable greenhouse gas emissions, in
18 combination, in excess of its allowable emissions level as
19 provided in section 722(a). Each ton of carbon dioxide
20 equivalent for which a covered entity fails to demonstrate
21 compliance under section 722(b) shall be a separate viola-
22 tion.

23 “(b) EXCESS EMISSIONS PENALTY.—

24 “(1) IN GENERAL.—The owner or operator of
25 any covered entity that fails for any year to comply,

1 on the deadline described in section 722(a) or (j),
2 shall be liable for payment to the Administrator of
3 an excess emissions penalty in the amount described
4 in paragraph (2).

5 “(2) AMOUNT.—The amount of an excess emis-
6 sions penalty required to be paid under paragraph
7 (1) shall be equal to the product obtained by multi-
8 plying—

9 “(A) the tons of carbon dioxide equivalent
10 of greenhouse gas emissions or attributable
11 greenhouse gas emissions for which the owner
12 or operator of a covered entity failed to comply
13 under section 722(b) on the deadline; by

14 “(B) twice the fair market value of emis-
15 sion allowances established for emissions occur-
16 ring in the calendar year for which the emission
17 allowances were due.

18 “(3) TIMING.—An excess emissions penalty re-
19 quired under this subsection shall be immediately
20 due and payable to the Administrator, without de-
21 mand, in accordance with regulations promulgated
22 by the Administrator, which shall be issued not later
23 than 2 years after the date of enactment of this
24 title.

1 “(4) NO EFFECT ON LIABILITY.—An excess
2 emissions penalty due and payable by the owners or
3 operators of a covered entity under this subsection
4 shall not diminish the liability of the owners or oper-
5 ators for any fine, penalty, or assessment against
6 the owners or operators for the same violation under
7 any other provision of this Act or any other law.

8 “(c) EXCESS EMISSIONS ALLOWANCES.—The owner
9 or operator of a covered entity that fails for any year to
10 comply on the deadline described in section 722(a) or (j)
11 shall be liable to offset the covered entity’s excess com-
12 bination of greenhouse gases emitted and attributable
13 greenhouse gas emissions by an equal quantity of emission
14 allowances during the following calendar year, or such
15 longer period as the Administrator may prescribe. During
16 the year in which the covered entity failed to comply, or
17 any year thereafter, the Administrator may deduct the
18 emission allowances required under this subsection to off-
19 set the covered entity’s excess actual or attributable emis-
20 sions.

21 **“SEC. 724. TRADING.**

22 “(a) PERMITTED TRANSACTIONS.—Except as other-
23 wise provided in this title, the lawful holder of an emission
24 allowance, compensatory allowance, or offset credit may,
25 without restriction, sell, exchange, transfer, hold for com-

1 pliance in accordance with section 722, or request that the
2 Administrator retire the emission allowance or offset cred-
3 it.

4 “(b) NO RESTRICTION ON TRANSACTIONS.—The
5 privilege of purchasing, holding, selling, exchanging,
6 transferring, and requesting retirement of emission allow-
7 ances, compensatory allowances, or offset credits shall not
8 be restricted to the owners and operators of covered enti-
9 ties, except as otherwise provided in this title.

10 “(c) EFFECTIVENESS OF ALLOWANCE TRANS-
11 FERS.—No transfer of an allowance or offset credit shall
12 be effective for purposes of this title until a certification
13 of the transfer, signed by the designated representative of
14 the transferor, is received and recorded by the Adminis-
15 trator in accordance with regulations promulgated under
16 section 721(g).

17 “(d) ALLOWANCE TRACKING SYSTEM.—The regula-
18 tions promulgated under section 721(g) shall include a
19 system for issuing, recording, holding, and tracking allow-
20 ances and offset credits that shall specify all necessary
21 procedures and requirements for an orderly and competi-
22 tive functioning of the allowance and offset credit markets.
23 Such regulations shall provide for appropriate publication
24 of the information in the system 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 or
13 credit established or issued by the Administrator
14 under this title, or expiration of the ability to use an
15 international emission allowance to comply with sec-
16 tion 722, is necessary to ensure the authenticity and
17 integrity of allowances or credits or the allowance
18 tracking system.

19 “(2) **GENERAL RULE.**—An allowance or credit
20 established or issued by the Administrator under
21 this title shall not expire unless—

22 “(A) it is retired by the Administrator as
23 required under this title; or

24 “(B) it is determined to expire or to have
25 expired by a specific date by the Administrator

1 in accordance with regulations promulgated
2 under paragraph (1).

3 “(3) INTERNATIONAL EMISSION ALLOW-
4 ANCES.—The ability to use an international emission
5 allowance to comply with section 722 shall not ex-
6 pire unless—

7 “(A) the allowance is retired by the Ad-
8 ministrator as required by this title; or

9 “(B) the ability to use such allowance to
10 meet such compliance obligation requirements is
11 determined to expire or to have expired by a
12 specific date by the Administrator in accord-
13 ance with regulations promulgated under para-
14 graph (1).

15 “(c) BORROWING FUTURE VINTAGE YEAR ALLOW-
16 ANCES.—

17 “(1) BORROWING WITHOUT INTEREST.—In ad-
18 dition to the uses described in subsection (a), an
19 emission allowance may be used to comply with sec-
20 tion 722(a) or section 723 for emissions, production,
21 importation, manufacture, or deliveries in the cal-
22 endar year immediately preceding the vintage year
23 for the allowance.

24 “(2) BORROWING WITH INTEREST.—

1 “(A) IN GENERAL.—A covered entity may
2 demonstrate compliance under subsection (b) in
3 a specific calendar year for up to 15 percent of
4 its emissions by holding emission allowances
5 with a vintage year 1 to 5 years later than that
6 calendar year.

7 “(B) LIMITATIONS.—An emission allow-
8 ance borrowed pursuant to this paragraph shall
9 be an emission allowance that is established by
10 the Administrator for a specific future calendar
11 year under section 721(a) and that is held by
12 the borrower.

13 “(C) PREPAYMENT OF INTEREST.—For
14 each emission allowance that an owner or oper-
15 ator of a covered entity borrows pursuant to
16 this paragraph, such owner or operator shall, at
17 the time it borrows the allowance, hold for re-
18 tirement by the Administrator a quantity of
19 emission allowances that is equal to the product
20 obtained by multiplying—

21 “(i) 0.08; by

22 “(ii) the number of years between the
23 calendar year in which the allowance is
24 being used to satisfy a compliance obliga-
25 tion and the vintage year of the allowance.

1 **“SEC. 726. STRATEGIC RESERVE.**

2 “(a) STRATEGIC RESERVE AUCTIONS.—

3 “(1) IN GENERAL.—Once each quarter of each
4 calendar year for which allowances are established
5 under section 721(a), the Administrator shall auc-
6 tion strategic reserve allowances.

7 “(2) RESTRICTION TO COVERED ENTITIES.—In
8 each auction conducted under paragraph (1), only
9 covered entities that the Administrator expects will
10 be required to comply with section 722 in the fol-
11 lowing calendar year shall be eligible to make pur-
12 chases.

13 “(b) POOL OF EMISSION ALLOWANCES FOR STRA-
14 TEGIC RESERVE AUCTIONS.—

15 “(1) FILLING THE STRATEGIC RESERVE INI-
16 TIALY.—

17 “(A) IN GENERAL.—The Administrator
18 shall, not later than 2 years after the date of
19 enactment of this title, establish a strategic re-
20 serve account, and shall place in that account
21 an amount of emission allowances established
22 under section 721(a) for each calendar year
23 from 2012 through 2050 in the amounts speci-
24 fied in subparagraph (B) of this paragraph.

25 “(B) AMOUNT.—The amount referred to in
26 subparagraph (A) shall be—

1 “(i) for each of calendar years 2012
2 through 2019, 1 percent of the quantity of
3 emission allowances established for that
4 year pursuant to section 721(e)(1);

5 “(ii) for each of calendar years 2020
6 through 2029, 2 percent of the quantity of
7 emission allowances established for that
8 year pursuant to section 721(e)(1); and

9 “(iii) for each of calendar years 2030
10 through 2050, 3 percent of the quantity of
11 emission allowances established for that
12 year pursuant to section 721(e)(1).

13 “(C) EFFECT ON OTHER PROVISIONS.—
14 Any provision in this title (except for subpara-
15 graph (B) of this paragraph) that refers to a
16 quantity or percentage of the emission allow-
17 ances established for a calendar year under sec-
18 tion 721(a) shall be considered to refer to the
19 amount of emission allowances as determined
20 pursuant to section 721(e), less any emission
21 allowances established for that year that are
22 placed in the strategic reserve account under
23 this paragraph.

24 “(2) SUPPLEMENTING THE STRATEGIC RE-
25 SERVE.—The Administrator shall also—

1 “(A) at the end of each calendar year,
2 transfer to the strategic reserve account each
3 emission allowance that was offered for sale but
4 not sold at any auction conducted under section
5 791; and

6 “(B) transfer emission allowances estab-
7 lished under subsection (g) from auction pro-
8 ceeds, and deposit them into the strategic re-
9 serve, to the extent necessary to maintain the
10 reserve at its original size.

11 “(c) MINIMUM STRATEGIC RESERVE AUCTION
12 PRICE.—

13 “(1) IN GENERAL.—At each strategic reserve
14 auction, the Administrator shall offer emission al-
15 lowances for sale beginning at a minimum price per
16 emission allowance, which shall be known as the
17 ‘minimum strategic reserve auction price’.

18 “(2) INITIAL MINIMUM STRATEGIC RESERVE
19 AUCTION PRICES.—The minimum strategic reserve
20 auction price shall be \$28 (in constant 2009 dollars)
21 for the strategic reserve auctions held in 2012. For
22 the strategic reserve auctions held in 2013 and
23 2014, the minimum strategic reserve auction price
24 shall be the strategic reserve auction price for the
25 previous year increased by 5 percent plus the rate of

1 inflation (as measured by the Consumer Price Index
2 for All Urban Consumers).

3 “(3) MINIMUM STRATEGIC RESERVE AUCTION
4 PRICE IN SUBSEQUENT YEARS.—For each strategic
5 reserve auction held in 2015 and each year there-
6 after, the minimum strategic reserve auction price
7 shall be 60 percent above a rolling 36-month average
8 of the daily closing price for that year’s emission al-
9 lowance vintage as reported on registered carbon
10 trading facilities, calculated using constant dollars.

11 “(d) QUANTITY OF EMISSION ALLOWANCES RE-
12 LEASED FROM THE STRATEGIC RESERVE.—

13 “(1) INITIAL LIMITS.—For each of calendar
14 years 2012 through 2016, the annual limit on the
15 number of emission allowances from the strategic re-
16 serve account that may be auctioned is an amount
17 equal to 5 percent of the emission allowances estab-
18 lished for that calendar year under section 721(a).
19 This limit does not apply to international offset
20 credits sold on consignment pursuant to subsection
21 (h).

22 “(2) LIMITS IN SUBSEQUENT YEARS.—For cal-
23 endar year 2017 and each year thereafter, the an-
24 nual limit on the number of emission allowances
25 from the strategic reserve account that may be auc-

1 tioned is an amount equal to 10 percent of the emis-
2 sion allowances established for that calendar year
3 under section 721(a). This limit does not apply to
4 international offset credits sold on consignment pur-
5 suant to subsection (h).

6 “(3) ALLOCATION OF LIMITATION.—One-fourth
7 of each year’s annual strategic reserve auction limit
8 under this subsection shall be made available for
9 auction in each quarter. Any allowances from the
10 strategic reserve account that are made available for
11 sale in a quarterly auction and not sold shall be
12 rolled over and added to the quantity available for
13 sale in the following quarter, except that allowances
14 not sold at auction in the fourth quarter of a year
15 shall not be rolled over to the following calendar
16 year’s auctions, but shall be returned to the stra-
17 tegic reserve account.

18 “(e) PURCHASE LIMIT.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2) or (3), the annual number of emission al-
21 lowances that a covered entity may purchase at the
22 strategic reserve auctions in each calendar year shall
23 not exceed 20 percent of the covered entity’s emis-
24 sions during the most recent year for which allow-
25 ances or credits were retired under section 722.

1 “(2) 2012 LIMIT.—For calendar year 2012, the
2 maximum aggregate number of emission allowances
3 that a covered entity may purchase from that year’s
4 strategic reserve auctions shall be 20 percent of the
5 covered entity’s greenhouse gas emissions that the
6 covered entity reported to the registry established
7 under section 713 for 2011 and that would be sub-
8 ject to section 722(a) if occurring in later calendar
9 years.

10 “(3) NEW ENTRANTS.—The Administrator
11 shall, by regulation, establish a separate purchase
12 limit applicable to entities that expect to become a
13 covered entity in the year of the auction, permitting
14 them to purchase emission allowances at the stra-
15 tegic reserve auctions in their first calendar year of
16 operation in an amount of at least 20 percent of
17 their expected combined emissions and attributable
18 greenhouse gas emissions for that year.

19 “(f) DELEGATION OR CONTRACT.—Pursuant to regu-
20 lations under this section, the Administrator may, by dele-
21 gation or contract, provide for the conduct of strategic re-
22 serve auctions under the Administrator’s supervision by
23 other departments or agencies of the Federal Government
24 or by nongovernmental agencies, groups, or organizations.

25 “(g) USE OF AUCTION PROCEEDS.—

1 “(1) DEPOSIT IN STRATEGIC RESERVE FUND.—
2 The proceeds from strategic reserve auctions shall be
3 placed in the Strategic Reserve Fund established
4 under section 793(1), and shall be available without
5 further appropriation or fiscal year limitation for the
6 purposes described in this subsection.

7 “(2) INTERNATIONAL OFFSET CREDITS FOR RE-
8 DUCED DEFORESTATION.—The Administrator shall
9 use the proceeds from each strategic reserve auction
10 to purchase international offset credits issued for re-
11 duced deforestation activities pursuant to section
12 743(e). The Administrator shall retire those inter-
13 national offset credits and establish a number of
14 emission allowances equal to 80 percent of the num-
15 ber of international offset credits so retired. Emis-
16 sion allowances established under this paragraph
17 shall be in addition to those established under sec-
18 tion 721(a).

19 “(3) EMISSION ALLOWANCES.—The Adminis-
20 trator shall deposit emission allowances established
21 under paragraph (2) in the strategic reserve, except
22 that, with respect to any such emission allowances in
23 excess of the amount necessary to fill the strategic
24 reserve to its original size, the Administrator shall—

1 “(A) except as provided in subparagraph
2 (B), assign a vintage year to the emission al-
3 lowance, which shall be no earlier than the year
4 in which the allowance is established under
5 paragraph (2) and shall treat such allowances
6 as ones that are not designated for distribution
7 or auction for purposes of section 782(q) and
8 (r); and

9 “(B) to the extent any such allowances
10 cannot be assigned a vintage year because of
11 the limitation in paragraph (4), retire the allow-
12 ances.

13 “(4) LIMITATION.—In no case may the Admin-
14 istrator assign under paragraph (3)(A) more emis-
15 sion allowances to a vintage year than the number
16 of emission allowances from that vintage year that
17 were placed in the strategic reserve account under
18 subsection (b)(1).

19 “(h) AVAILABILITY OF INTERNATIONAL OFFSET
20 CREDITS FOR AUCTION.—

21 “(1) IN GENERAL.—The regulations promul-
22 gated under section 721(g) shall allow any entity
23 holding international offset credits from reduced de-
24 forestation issued under section 743(e) to request
25 that the Administrator include such offset credits in

1 an upcoming strategic reserve auction. The regula-
2 tions shall provide that—

3 “(A) such international offset credits will
4 be used to fill bid orders only after the supply
5 of strategic reserve allowances available for sale
6 at that auction has been depleted;

7 “(B) international offset credits may be
8 sold at a strategic reserve auction under this
9 subsection only if the Administrator determines
10 that it is highly likely that covered entities will,
11 to cover emissions occurring in the year the
12 auction is held, use offset credits to dem-
13 onstrate compliance under section 722 for emis-
14 sions equal to or greater than 80 percent of 2
15 billion tons of carbon dioxide equivalent;

16 “(C) upon sale of such international offset
17 credits, the Administrator shall retire those
18 international offset credits, and establish and
19 provide to the purchasers a number of emission
20 allowances equal to 80 percent of the number of
21 international offset credits so retired, which al-
22 lowances shall be in addition to those estab-
23 lished under section 721(a); and

24 “(D) for international offset credits sold
25 pursuant to this subsection, the proceeds for

1 the entity that offered the international offset
2 credits for sale shall be the lesser of—

3 “(i) the average daily closing price for
4 international offset credits sold on reg-
5 istered exchanges (or if such price is un-
6 available, the average price as determined
7 by the Administrator) during the six
8 months prior to the strategic reserve auc-
9 tion at which they were auctioned, with the
10 remaining funds collected upon the sale of
11 the international offset credits deposited in
12 the Treasury; and

13 “(ii) the amount received for the
14 international offset credits at the auction.

15 “(2) PROCEEDS.—For international offset cred-
16 its sold pursuant to this subsection, notwithstanding
17 section 3302 of title 31, United States Code, or any
18 other provision of law, within 90 days of receipt, the
19 United States shall transfer the proceeds from the
20 auction, as defined in paragraph (1)(D), to the enti-
21 ty that offered the international offset credits for
22 sale. No funds transferred from a purchaser to a
23 seller of international offset credits under this para-
24 graph shall be held by any officer or employee of the

1 United States or treated for any purpose as public
2 monies.

3 “(3) PRICING.—When the Administrator acts
4 under this subsection as the agent of an entity in
5 possession of international offset credits, the Admin-
6 istrator is not obligated to obtain the highest price
7 possible for the international offset credits, and in-
8 stead shall auction such international offset credits
9 in the same manner and pursuant to the same rules
10 (except as modified in paragraph (1)) as set forth
11 for auctioning strategic reserve allowances. Entities
12 requesting that such international offset credits be
13 offered for sale at a strategic reserve auction may
14 not set a minimum reserve price for their inter-
15 national offset credits that is different than the min-
16 imum strategic reserve auction price set pursuant to
17 subsection (c).

18 “(i) INITIAL REGULATIONS.—Not later than 24
19 months after the date of enactment of this title, the Ad-
20 ministrator shall promulgate regulations, in consultation
21 with other appropriate agencies, governing the auction of
22 allowances under this section. Such regulations shall in-
23 clude the following requirements:

24 “(1) FREQUENCY; FIRST AUCTION.—Auctions
25 shall be held four times per year at regular intervals,

1 with the first auction to be held no later than March
2 31, 2012.

3 “(2) AUCTION FORMAT.—Auctions shall follow
4 a single-round, sealed-bid, uniform price format.

5 “(3) PARTICIPATION; FINANCIAL ASSURANCE.—
6 Auctions shall be open to any covered entity eligible
7 to purchase emission allowances at the auction
8 under subsection (a)(2), except that the Adminis-
9 trator may establish financial assurance require-
10 ments to ensure that auction participants can and
11 will perform on their bids.

12 “(4) DISCLOSURE OF BENEFICIAL OWNER-
13 SHIP.—Each bidder in an auction shall be required
14 to disclose the person or entity sponsoring or bene-
15 fitting from the bidder’s participation in the auction
16 if such person or entity is, in whole or in part, other
17 than the bidder.

18 “(5) PURCHASE LIMITS.—No person may, di-
19 rectly or in concert with another participant, pur-
20 chase more than 20 percent of the allowances of-
21 fered for sale at any quarterly auction.

22 “(6) PUBLICATION OF INFORMATION.—After
23 the auction, the Administrator shall, in a timely
24 fashion, publish the identities of winning bidders,

1 the quantity of allowances obtained by each winning
2 bidder, and the auction clearing price.

3 “(7) OTHER REQUIREMENTS.—The Adminis-
4 trator may include in the regulations such other re-
5 quirements or provisions as the Administrator, in
6 consultation with other agencies as appropriate, con-
7 siders appropriate to promote effective, efficient,
8 transparent, and fair administration of auctions
9 under this section.

10 “(j) REVISION OF REGULATIONS.—The Adminis-
11 trator may, at any time, in consultation with other agen-
12 cies as appropriate, revise the initial regulations promul-
13 gated under subsection (i). Such revised regulations need
14 not meet the requirements identified in subsection (i) if
15 the Administrator determines that an alternative auction
16 design would be more effective, taking into account factors
17 including costs of administration, transparency, fairness,
18 and risks of collusion or manipulation. In determining
19 whether and how to revise the initial regulations under
20 this subsection, the Administrator shall not consider maxi-
21 mization of revenues to the Federal Government.

22 **“SEC. 727. PERMITS.**

23 “(a) PERMIT PROGRAM.—For stationary sources
24 subject to title V of this Act, that are covered entities,
25 the provisions of this title shall be implemented by permits

1 issued to such covered entities (and enforced) in accord-
2 ance with the provisions of title V, as modified by this
3 title. Any such permit issued by the Administrator, or by
4 a State with an approved permit program, shall require
5 the owner or operator of a covered entity to hold emission
6 allowances or offset credits at least equal to the total an-
7 nual amount of carbon dioxide equivalents for its com-
8 bined emissions and attributable greenhouse gas emissions
9 to which section 722 applies. No such permit shall be
10 issued that is inconsistent with the requirements of this
11 title, and title V as applicable. Nothing in this section re-
12 garding compliance plans or in title V shall be construed
13 as affecting allowances or offset credits. Submission of a
14 statement by the owner or operator, or the designated rep-
15 resentative of the owners and operators, of a covered enti-
16 ty that the owners and operators will hold emission allow-
17 ances or offset credits for the entity's combined emissions
18 and attributable greenhouse gas emissions to which sec-
19 tion 722 applies shall be deemed to meet the proposed and
20 approved planning requirements of title V. Recordation by
21 the Administrator of transfers of emission allowances shall
22 amend automatically all applicable proposed or approved
23 permit applications, compliance plans, and permits.

24 “(b) MULTIPLE OWNERS.—No permit shall be issued
25 under this section and no allowances or offset credits shall

1 be disbursed under this title to a covered entity or any
2 other person until the designated representative of the
3 owners or operators has filed a certificate of representa-
4 tion with regard to matters under this title, including the
5 holding and distribution of emission allowances and the
6 proceeds of transactions involving emission allowances.
7 Where there are multiple holders of a legal or equitable
8 title to, or a leasehold interest in, such a covered entity
9 or other entity or where a utility or industrial customer
10 purchases power under a long-term power purchase con-
11 tract from an independent power production facility that
12 is a covered entity, the certificate shall state—

13 “(1) that emission allowances and the proceeds
14 of transactions involving emission allowances will be
15 deemed to be held or distributed in proportion to
16 each holder’s legal, equitable, leasehold, or contrac-
17 tual reservation or entitlement; or

18 “(2) if such multiple holders have expressly pro-
19 vided for a different distribution of emission allow-
20 ances by contract, that emission allowances and the
21 proceeds of transactions involving emission allow-
22 ances will be deemed to be held or distributed in ac-
23 cordance with the contract.

24 A passive lessor, or a person who has an equitable interest
25 through such lessor, whose rental payments are not based,

1 either directly or indirectly, upon the revenues or income
2 from the covered entity or other entity shall not be deemed
3 to be a holder of a legal, equitable, leasehold, or contrac-
4 tual interest for the purpose of holding or distributing
5 emission allowances as provided in this subsection, during
6 either the term of such leasehold or thereafter, unless ex-
7 pressly provided for in the leasehold agreement. Except
8 as otherwise provided in this subsection, where all legal
9 or equitable title to or interest in a covered entity, or other
10 entity, is held by a single person, the certificate shall state
11 that all emission allowances received by the entity are
12 deemed to be held for that person.

13 “(c) PROHIBITION.—It shall be unlawful for any per-
14 son to operate any stationary source subject to the re-
15 quirements of this section except in compliance with the
16 terms and requirements of a permit issued by the Admin-
17 istrator or a State with an approved permit program in
18 accordance with this section. For purposes of this sub-
19 section, compliance, as provided in section 504(f), with a
20 permit issued under title V which complies with this title
21 for covered entities shall be deemed compliance with this
22 subsection as well as section 502(a).

23 “(d) RELIABILITY.—Nothing in this section or title
24 V shall be construed as requiring termination of oper-
25 ations of a stationary source that is a covered entity for

1 failure to have an approved permit, or compliance plan,
2 that is consistent with the requirements in the second and
3 fifth sentences of subsection (a) concerning the holding
4 of emission allowances, compensatory allowances, inter-
5 national emission allowances, or offset allowances, except
6 that any such covered entity may be subject to the applica-
7 ble enforcement provision of section 113.

8 “(e) REGULATIONS.—The Administrator shall pro-
9 mulgate regulations to implement this section. To provide
10 for permits required under this section, each State in
11 which one or more stationary sources and that are covered
12 entities are located shall submit, in accordance with this
13 section and title V, revised permit programs for approval.

14 **“SEC. 728. INTERNATIONAL EMISSION ALLOWANCES.**

15 “(a) QUALIFYING PROGRAMS.—The Administrator,
16 in consultation with the Secretary of State, may by rule
17 designate an international climate change program as a
18 qualifying international program if—

19 “(1) the program is run by a national or supra-
20 national foreign government, and imposes a manda-
21 tory absolute tonnage limit on greenhouse gas emis-
22 sions from 1 or more foreign countries, or from 1 or
23 more economic sectors in such a country or coun-
24 tries; and

1 “(2) the program is at least as stringent as the
2 program established by this title, including provi-
3 sions to ensure at least comparable monitoring, com-
4 pliance, enforcement, quality of offsets, and restric-
5 tions on the use of offsets.

6 “(b) DISQUALIFIED ALLOWANCES.—An international
7 emission allowance may not be held under section
8 722(d)(2) if it is in the nature of an offset instrument
9 or allowance awarded based on the achievement of green-
10 house gas emission reductions or avoidance, or greenhouse
11 gas sequestration, that are not subject to the mandatory
12 absolute tonnage limits referred to in subsection (a)(1).

13 “(c) RETIREMENT.—

14 “(1) ENTITY CERTIFICATION.—The owner or
15 operator of an entity that holds an international
16 emission allowance under section 722(d)(2) shall
17 certify to the Administrator that such international
18 emission allowance has not previously been used to
19 comply with any foreign, international, or domestic
20 greenhouse gas regulatory program.

21 “(2) RETIREMENT.—

22 “(A) FOREIGN AND INTERNATIONAL REG-
23 ULATORY ENTITIES.—The Administrator, in
24 consultation with the Secretary of State, shall
25 seek, by whatever means appropriate, including

1 agreements and technical cooperation on allow-
2 ance tracking, to ensure that any relevant for-
3 eign, international, and domestic regulatory en-
4 tities—

5 “(i) are notified of the use, for pur-
6 poses of compliance with this title, of any
7 international emission allowance; and

8 “(ii) provide for the disqualification of
9 such international emission allowance for
10 any subsequent use under the relevant for-
11 eign, international, or domestic greenhouse
12 gas regulatory program, regardless of
13 whether such use is a sale, exchange, or
14 submission to satisfy a compliance obliga-
15 tion.

16 “(B) DISQUALIFICATION FROM FURTHER
17 USE.—The Administrator shall ensure that,
18 once an international emission allowance has
19 been disqualified or otherwise used for purposes
20 of compliance with this title, such allowance
21 shall be disqualified from any further use under
22 this title.

23 “(d) USE LIMITATIONS.—The Administrator may, by
24 rule, modify the percentage applicable to international

1 emission allowances under section 722(d)(2), consistent
2 with the purposes of the Safe Climate Act.

3 **“PART D—OFFSETS**

4 **“SEC. 731. OFFSETS INTEGRITY ADVISORY BOARD.**

5 “(a) ESTABLISHMENT.—Not later than 30 days after
6 the date of enactment of this title, the Administrator shall
7 establish an independent Offsets Integrity Advisory
8 Board. The Advisory Board shall make recommendations
9 to the Administrator for use in promulgating and revising
10 regulations under this part and part E, and for ensuring
11 the overall environmental integrity of the programs estab-
12 lished pursuant to those regulations.

13 “(b) MEMBERSHIP.—The Advisory Board shall be
14 comprised of at least nine members. Each member shall
15 be qualified by education, training, and experience to
16 evaluate scientific and technical information on matters
17 referred to the Board under this section. The Adminis-
18 trator shall appoint Advisory Board members, including
19 a chair and vice-chair of the Advisory Board. Terms shall
20 be 3 years in length, except for initial terms, which may
21 be up to 5 years in length to allow staggering. Members
22 may be reappointed only once for an additional 3-year
23 term, and such second term may follow directly after a
24 first term.

1 “(c) ACTIVITIES.—The Advisory Board established
2 pursuant to subsection (a) shall—

3 “(1) provide recommendations, not later than
4 90 days after the Advisory Board’s establishment
5 and periodically thereafter, to the Administrator re-
6 garding offset project types that should be consid-
7 ered for eligibility under section 733, taking into
8 consideration relevant scientific and other issues, in-
9 cluding—

10 “(A) the availability of a representative
11 data set for use in developing the activity base-
12 line;

13 “(B) the potential for accurate quantifica-
14 tion of greenhouse gas reduction, avoidance, or
15 sequestration for an offset project type;

16 “(C) the potential level of scientific and
17 measurement uncertainty associated with an
18 offset project type; and

19 “(D) any beneficial or adverse environ-
20 mental, public health, welfare, social, economic,
21 or energy effects associated with an offset
22 project type;

23 “(2) make available to the Administrator its ad-
24 vice and comments on offset methodologies that
25 should be considered under regulations promulgated

1 pursuant to section 734(a) and (b), including meth-
2 odologies to address the issues of additionality, ac-
3 tivity baselines, measurement, leakage, uncertainty,
4 permanence, and environmental integrity;

5 “(3) make available the Administrator, and
6 other relevant Federal agencies, its advice and com-
7 ments regarding scientific, technical, and methodo-
8 logical issues specific to the issuance of international
9 offset credits under section 743;

10 “(4) make available to the Administrator, and
11 other relevant Federal agencies, its advice and com-
12 ments regarding scientific, technical, and methodo-
13 logical issues associated with the implementation of
14 part E;

15 “(5) make available to the Administrator its ad-
16 vice and comments on areas in which further knowl-
17 edge is required to appraise the adequacy of exist-
18 ing, revised, or proposed methodologies for use
19 under this part and part E, and describe the re-
20 search efforts necessary to provide the required in-
21 formation; and

22 “(6) make available to the Administrator its ad-
23 vice and comments on other ways to improve or
24 safeguard the environmental integrity of programs
25 established under this part and part E.

1 “(d) SCIENTIFIC REVIEW OF OFFSET AND DEFOR-
2 ESTATION REDUCTION PROGRAMS.—Not later than Janu-
3 ary 1, 2017, and at five-year intervals thereafter, the Ad-
4 visory Board shall submit to the Administrator and make
5 available to the public an analysis of relevant scientific and
6 technical information related to this part and part E. The
7 Advisory Board shall review approved and potential meth-
8 odologies, scientific studies, offset project monitoring, off-
9 set project verification reports, and audits related to this
10 part and part E, and evaluate the net emissions effects
11 of implemented offset projects. The Advisory Board shall
12 recommend changes to offset methodologies, protocols, or
13 project types, or to the overall offset program under this
14 part, to ensure that offset credits issued by the Adminis-
15 trator do not compromise the integrity of the annual emis-
16 sion reductions established under section 703, and to
17 avoid or minimize adverse effects to human health or the
18 environment.

19 **“SEC. 732. ESTABLISHMENT OF OFFSETS PROGRAM.**

20 “(a) REGULATIONS.—Not later than 2 years after
21 the date of enactment of this title, the Administrator, in
22 consultation with appropriate Federal agencies and taking
23 into consideration the recommendations of the Advisory
24 Board, shall promulgate regulations establishing a pro-
25 gram for the issuance of offset credits in accordance with

1 the requirements of this part. The Administrator shall pe-
2 riodically revise these regulations as necessary to meet the
3 requirements of this part.

4 “(b) REQUIREMENTS.—The regulations described in
5 subsection (a) shall—

6 “(1) authorize the issuance of offset credits
7 with respect to qualifying offset projects that result
8 in reductions or avoidance of greenhouse gas emis-
9 sions, or sequestration of greenhouse gases;

10 “(2) ensure that such offset credits represent
11 verifiable and additional greenhouse gas emission re-
12 ductions or avoidance, or increases in sequestration;

13 “(3) ensure that offset credits issued for se-
14 questration offset projects are only issued for green-
15 house gas reductions that are permanent;

16 “(4) provide for the implementation of the re-
17 quirements of this part; and

18 “(5) include as reductions in greenhouse gases
19 reductions achieved through the destruction of meth-
20 ane and its conversion to carbon dioxide.

21 “(c) COORDINATION TO MINIMIZE NEGATIVE EF-
22 FECTS.—In promulgating and implementing regulations
23 under this part, the Administrator shall act (including by
24 rejecting projects, if necessary) to avoid or minimize, to
25 the maximum extent practicable, adverse effects on human

1 health or the environment resulting from the implementa-
2 tion of offset projects under this part.

3 “(d) OFFSET REGISTRY.—The Administrator shall
4 establish within the allowance tracking system established
5 under section 724(d) an Offset Registry for qualifying off-
6 set projects and offset credits issued with respect thereto
7 under this part.

8 “(e) LEGAL STATUS OF OFFSET CREDIT.—An offset
9 credit does not constitute a property right.

10 “(f) FEES.—The Administrator shall assess fees pay-
11 able by offset project developer in an amount necessary
12 to cover the administrative costs to the Environmental
13 Protection Agency of carrying out the activities under this
14 part. Amounts collected for such fees shall be available
15 to the Administrator for carrying out the activities under
16 this part to the extent provided in advance in appropria-
17 tions Acts.

18 **“SEC. 733. ELIGIBLE PROJECT TYPES.**

19 “(a) LIST OF ELIGIBLE PROJECT TYPES.—

20 “(1) IN GENERAL.—As part of the regulations
21 promulgated under section 732(a), the Adminis-
22 trator shall establish, and may periodically revise, a
23 list of types of projects eligible to generate offset
24 credits, including international offset credits, under
25 this part.

1 “(2) ADVISORY BOARD RECOMMENDATIONS.—

2 In determining the eligibility of project types, the
3 Administrator shall take into consideration the rec-
4 ommendations of the Advisory Board. If a list estab-
5 lished under this section differs from the rec-
6 ommendations of the Advisory Board, the regula-
7 tions promulgated under section 732(a) shall include
8 a justification for the discrepancy.

9 “(3) INITIAL DETERMINATION.—The Adminis-
10 trator shall establish the initial eligibility list under
11 paragraph (1) not later than one year after the date
12 of enactment of this title. The Administrator shall
13 add additional project types to the list not later than
14 2 years after the date of enactment of this title. In
15 determining the initial list, the Administrator shall
16 give priority to consideration of offset project types
17 that are recommended by the Advisory Board and
18 for which there are well developed methodologies
19 that the Administrator determines would meet the
20 criteria of section 734, with such modifications as
21 the Administrator deems appropriate. In issuing
22 methodologies pursuant to section 734, the Adminis-
23 trator shall give priority to methodologies for offset
24 types included on the initial eligibility list.

25 “(b) MODIFICATION OF LIST.—The Administrator—

1 “(1) may at any time, by rule, add a project
2 type to the list established under subsection (a) if
3 the Administrator, in consultation with appropriate
4 Federal agencies and taking into consideration the
5 recommendations of the Advisory Board, determines
6 that the project type can generate additional reduc-
7 tions or avoidance of greenhouse gas emissions, or
8 sequestration of greenhouse gases, subject to the re-
9 quirements of this part;

10 “(2) may at any time, by rule, determine that
11 a project type on the list does not meet the require-
12 ments of this part, and remove a project type from
13 the list established under subsection (a), in consulta-
14 tion with appropriate Federal agencies and taking
15 into consideration any recommendations of the Advi-
16 sory Board; and

17 “(3) shall consider adding to or removing from
18 the list established under subsection (a), at a min-
19 imum, project types proposed to the Adminis-
20 trator—

21 “(A) by petition pursuant to subsection
22 (c); or

23 “(B) by the Advisory Board.

24 “(c) PETITION PROCESS.—Any person may petition
25 the Administrator to modify the list established under sub-

1 section (a) by adding or removing a project type pursuant
2 to subsection (b). Any such petition shall include a show-
3 ing by the petitioner that there is adequate data to estab-
4 lish that the project type does or does not meet the re-
5 quirements of this part. Not later than 12 months after
6 receipt of such a petition, the Administrator shall either
7 grant or deny the petition and publish a written expla-
8 nation of the reasons for the Administrator's decision. The
9 Administrator may not deny a petition under this sub-
10 section on the basis of inadequate Environmental Protec-
11 tion Agency resources or time for review.

12 **“SEC. 734. REQUIREMENTS FOR OFFSET PROJECTS.**

13 “(a) **METHODOLOGIES.**—As part of the regulations
14 promulgated under section 732(a), the Administrator shall
15 establish, for each type of offset project listed as eligible
16 under section 733, the following:

17 “(1) **ADDITIONALITY.**—A standardized method-
18 ology for determining the additionality of greenhouse
19 gas emission reductions or avoidance, or greenhouse
20 gas sequestration, achieved by an offset project of
21 that type. Such methodology shall ensure, at a min-
22 imum, that any greenhouse gas emission reduction
23 or avoidance, or any greenhouse gas sequestration, is
24 considered additional only to the extent that it re-
25 sults from activities that—

1 “(A) are not required by or undertaken to
2 comply with any law, including any regulation
3 or consent order;

4 “(B) were not commenced prior to Janu-
5 ary 1, 2009, except for offset project activities
6 that commenced after January 1, 2001, and
7 were registered as of the date of enactment of
8 this title under an offset program with respect
9 to which the Administrator has made an affirm-
10 ative determination under section 740(a)(2);

11 “(C) are not receiving support under part
12 E of this title or title IV, subtitle D of the
13 American Clean Energy and Security Act of
14 2009; and

15 “(D) exceed the activity baseline estab-
16 lished under paragraph (2).

17 “(2) **ACTIVITY BASELINES.**—A standardized
18 methodology for establishing activity baselines for
19 offset projects of that type. The Administrator shall
20 set activity baselines to reflect a conservative esti-
21 mate of business-as-usual performance or practices
22 for the relevant type of activity such that the base-
23 line provides an adequate margin of safety to ensure
24 the environmental integrity of offsets calculated in
25 reference to such baseline.

1 “(3) QUANTIFICATION METHODS.—A standard-
2 ized methodology for determining the extent to
3 which greenhouse gas emission reductions or avoid-
4 ance, or greenhouse gas sequestration, achieved by
5 an offset project of that type exceed a relevant activ-
6 ity baseline, including protocols for monitoring and
7 accounting for uncertainty.

8 “(4) LEAKAGE.—A standardized methodology
9 for accounting for and mitigating potential leakage,
10 if any, from an offset project of that type, taking
11 uncertainty into account.

12 “(b) ACCOUNTING FOR REVERSALS.—

13 “(1) IN GENERAL.—For each type of sequestra-
14 tion project listed under section 733, the Adminis-
15 trator shall establish requirements to account for
16 and address reversals, including—

17 “(A) a requirement to report any reversal
18 with respect to an offset project for which offset
19 credits have been issued under this part;

20 “(B) provisions to require emission allow-
21 ances to be held in amounts to fully compensate
22 for greenhouse gas emissions attributable to re-
23 versals, and to assign responsibility for holding
24 such emission allowances; and

1 “(C) any other provisions the Adminis-
2 trator determines necessary to account for and
3 address reversals.

4 “(2) MECHANISMS.—The Administrator shall
5 prescribe mechanisms to ensure that any sequestra-
6 tion with respect to which an offset credit is issued
7 under this part results in a permanent net increase
8 in sequestration, and that full account is taken of
9 any actual or potential reversal of such sequestra-
10 tion, with an adequate margin of safety. The Admin-
11 istrator shall prescribe at least one of the following
12 mechanisms to meet the requirements of this para-
13 graph:

14 “(A) An offsets reserve, pursuant to para-
15 graph (3).

16 “(B) Insurance that provides for purchase
17 and provision to the Administrator for retire-
18 ment of an amount of offset credits or emission
19 allowances equal in number to the tons of car-
20 bon dioxide equivalents of greenhouse gas emis-
21 sions released due to reversal.

22 “(C) Another mechanism that the Admin-
23 istrator determines satisfies the requirements of
24 this part.

25 “(3) OFFSETS RESERVE.—

1 “(A) IN GENERAL.—An offsets reserve re-
2 ferred to in paragraph (2)(A) is a program
3 under which, before issuance of offset credits
4 under this part, the Administrator shall sub-
5 tract and reserve from the quantity to be issued
6 a quantity of offset credits based on the risk of
7 reversal. The Administrator shall—

8 “(i) hold these reserved offset credits
9 in the offsets reserve; and

10 “(ii) register the holding of the re-
11 served offset credits in the Offset Registry
12 established under section 732(d).

13 “(B) PROJECT REVERSAL.—

14 “(i) IN GENERAL.—If a reversal has
15 occurred with respect an offset project for
16 which offset credits are reserved under this
17 paragraph, the Administrator shall remove
18 offset credits from the offsets reserve and
19 cancel them to fully account for the tons of
20 carbon dioxide equivalent that are no
21 longer sequestered.

22 “(ii) INTENTIONAL REVERSALS.—If
23 the Administrator determines that a rever-
24 sal was intentional, the offset project devel-
25 oper for the relevant offset project shall

1 place into the offsets reserve a quantity of
2 offset credits, or combination of offset
3 credits and emission allowances, equal in
4 number to the number of reserve offset
5 credits that were canceled due to the rever-
6 sal pursuant to clause (i).

7 “(iii) UNINTENTIONAL REVERSALS.—
8 If the Administrator determines that a re-
9 versal was unintentional, the offset project
10 developer for the relevant offset project
11 shall place into the offsets reserve a quan-
12 tity of offset credits, or combination of off-
13 set credits and emission allowances, equal
14 in number to half the number of offset
15 credits that were reserved for that offset
16 project, or half the number of reserve off-
17 set credits that were canceled due to the
18 reversal pursuant to clause (i), whichever
19 is less.

20 “(C) USE OF RESERVED OFFSET CRED-
21 ITS.—Offset credits placed into the offsets re-
22 serve under this paragraph may not be used to
23 comply with section 722.

24 “(c) CREDITING PERIODS.—

1 “(1) IN GENERAL.—For each offset project
2 type, the Administrator shall specify a crediting pe-
3 riod, and establish provisions for petitions for new
4 crediting periods, in accordance with this subsection.

5 “(2) DURATION.—The crediting period shall be
6 no less than 5 and no greater than 10 years for any
7 project type other than those involving sequestra-
8 tion.

9 “(3) ELIGIBILITY.—An offset project shall be
10 eligible to generate offset credits under this part
11 only during the project’s crediting period. During
12 such crediting period, the project shall remain eligi-
13 ble to generate offset credits, subject to the meth-
14 odologies and project type eligibility list that applied
15 as of the date of project approval under section 735,
16 except as provided in paragraph (4) of this sub-
17 section.

18 “(4) PETITION FOR NEW CREDITING PERIOD.—
19 An offset project developer may petition for a new
20 crediting period to commence after termination of a
21 crediting period, subject to the methodologies and
22 project type eligibility list in effect at the time when
23 such petition is submitted. A petition may not be
24 submitted under this paragraph more than 18
25 months before the end of the pending crediting pe-

1 riod. The Administrator may limit the number of
2 new crediting periods available for projects of par-
3 ticular project types.

4 “(d) ENVIRONMENTAL INTEGRITY.—In establishing
5 the requirements under this section, the Administrator
6 shall apply conservative assumptions or methods to maxi-
7 mize the certainty that the environmental integrity of the
8 cap established under section 703 is not compromised.

9 “(e) PRE-EXISTING METHODOLOGIES.—In promul-
10 gating requirements under this section, the Administrator
11 shall give due consideration to methodologies for offset
12 projects existing as of the date of enactment of this title.

13 “(f) ADDED PROJECT TYPES.—The Administrator
14 shall establish methodologies described in subsection (a),
15 and, as applicable, requirements and mechanisms for re-
16 versals as described in subsection (b), for any project type
17 that is added to the list pursuant to section 733.

18 **“SEC. 735. APPROVAL OF OFFSET PROJECTS.**

19 “(a) APPROVAL PETITION.—An offset project devel-
20 oper shall submit an offset project approval petition pro-
21 viding such information as the Administrator requires to
22 determine whether the offset project is eligible for issuance
23 of offset credits under rules promulgated pursuant to this
24 part.

1 “(b) TIMING.—An approval petition shall be sub-
2 mitted to the Administrator under subsection (a) no later
3 than the time at which an offset project’s first verification
4 report is submitted under section 736.

5 “(c) APPROVAL PETITION REQUIREMENTS.—As part
6 of the regulations promulgated under section 732, the Ad-
7 ministrator shall include provisions for, and shall specify,
8 the required components of an offset project approval peti-
9 tion required under subsection (a), which shall include—

10 “(1) designation of an offset project developer;
11 and

12 “(2) any other information that the Adminis-
13 trator considers to be necessary to achieve the pur-
14 poses of this part.

15 “(d) APPROVAL AND NOTIFICATION.—Not later than
16 90 days after receiving a complete approval petition under
17 subsection (a), the Administrator shall approve or deny
18 the petition in writing and, if the petition is denied, pro-
19 vide the reasons for denial. After an offset project is ap-
20 proved, the offset project developer shall not be required
21 to resubmit an approval petition during the offset project’s
22 crediting period, except as provided in section 734(c)(4).

23 “(e) APPEAL.—The Administrator shall establish
24 procedures for appeal and review of determinations made
25 under subsection (d).

1 “(f) VOLUNTARY PREAPPROVAL REVIEW.—The Ad-
2 ministrators may establish a voluntary preapproval review
3 procedure, to allow an offset project developer to request
4 the Administrator to conduct a preliminary eligibility re-
5 view for an offset project. Findings of such reviews shall
6 not be binding upon the Administrator. The voluntary
7 preapproval review procedure—

8 “(1) shall require the offset project developer to
9 submit such basic project information as the Admin-
10 istrator requires to provide a meaningful review; and

11 “(2) shall require a response from the Adminis-
12 trator not later than 6 weeks after receiving a re-
13 quest for review under this subsection.

14 **“SEC. 736. VERIFICATION OF OFFSET PROJECTS.**

15 “(a) IN GENERAL.—As part of the regulations pro-
16 mulgated under section 732(a), the Administrator shall es-
17 tablish requirements, including protocols, for verification
18 of the quantity of greenhouse gas emission reductions or
19 avoidance, or sequestration of greenhouse gases, resulting
20 from an offset project. The regulations shall require that
21 an offset project developer shall submit a report, prepared
22 by a third-party verifier accredited under subsection (d),
23 providing such information as the Administrator requires
24 to determine the quantity of greenhouse gas emission re-

1 ductions or avoidance, or sequestration of greenhouse gas,
2 resulting from the offset project.

3 “(b) SCHEDULE.—The Administrator shall prescribe
4 a schedule for the submission of verification reports under
5 subsection (a).

6 “(c) VERIFICATION REPORT REQUIREMENTS.—The
7 Administrator shall specify the required components of a
8 verification report required under subsection (a), which
9 shall include—

10 “(1) the name and contact information for a
11 designated representative for the offset project devel-
12 oper;

13 “(2) the quantity of greenhouse gas reduced,
14 avoided, or sequestered;

15 “(3) the methodologies applicable to the project
16 pursuant to section 734;

17 “(4) a certification that the project meets the
18 applicable requirements;

19 “(5) a certification establishing that the conflict
20 of interest requirements in the regulations promul-
21 gated under subsection (d)(1) have been complied
22 with; and

23 “(6) any other information that the Adminis-
24 trator considers to be necessary to achieve the pur-
25 poses of this part.

1 “(d) VERIFIER ACCREDITATION.—

2 “(1) IN GENERAL.—As part of the regulations
3 promulgated under section 732(a), the Adminis-
4 trator shall establish a process and requirements for
5 periodic accreditation of third-party verifiers to en-
6 sure that such verifiers are professionally qualified
7 and have no conflicts of interest.

8 “(2) STANDARDS.—

9 “(A) AMERICAN NATIONAL STANDARDS IN-
10 STITUTE ACCREDITATION.—The Administrator
11 may accredit, or accept for purposes of accredi-
12 tation under this subsection, verifiers accredited
13 under the American National Standards Insti-
14 tute (ANSI) accreditation program in accord-
15 ance with ISO 14065. The Administrator shall
16 accredit, or accept for accreditation, verifiers
17 under this subparagraph only if the Adminis-
18 trator finds that the American National Stand-
19 ards Institute accreditation program provides
20 sufficient assurance that the requirements of
21 this part will be met.

22 “(B) EPA ACCREDITATION.—As part of
23 the regulations promulgated under section
24 732(a), the Administrator may establish accred-
25 itation standards for verifiers under this sub-

1 section, and may establish related training and
2 testing programs and requirements.

3 “(3) PUBLIC ACCESSIBILITY.—Each verifier
4 meeting the requirements for accreditation in ac-
5 cordance with this subsection shall be listed in a
6 publicly accessible database, which shall be main-
7 tained and updated by the Administrator.

8 **“SEC. 737. ISSUANCE OF OFFSET CREDITS.**

9 “(a) DETERMINATION AND NOTIFICATION.—Not
10 later than 90 days after receiving a complete verification
11 report under section 736, the Administrator shall—

12 “(1) make the report publicly available;

13 “(2) make a determination of the quantity of
14 greenhouse gas emissions reduced or avoided, or
15 greenhouse gases sequestered, resulting from an off-
16 set project approved under section 735; and

17 “(3) notify the offset project developer in writ-
18 ing of such determination.

19 “(b) ISSUANCE OF OFFSET CREDITS.—The Adminis-
20 trator shall issue one offset credit to an offset project de-
21 veloper for each ton of carbon dioxide equivalent that the
22 Administrator has determined has been reduced, avoided,
23 or sequestered during the period covered by a verification
24 report submitted in accordance with section 736, only if—

1 “(1) the Administrator has approved the offset
2 project pursuant to section 735; and

3 “(2) the relevant emissions reduction, avoid-
4 ance, or sequestration has already occurred, during
5 the offset project’s crediting period.

6 “(c) APPEAL.—The Administrator shall establish
7 procedures for appeal and review of determinations made
8 under subsection (a).

9 “(d) TIMING.—Offset credits meeting the criteria es-
10 tablished in subsection (b) shall be issued not later than
11 2 weeks following the verification determination made by
12 the Administrator under subsection (a).

13 “(e) REGISTRATION.—The Administrator shall as-
14 sign a unique serial number to and register each offset
15 credit to be issued in the Offset Registry established under
16 section 732(d).

17 **“SEC. 738. AUDITS.**

18 “(a) IN GENERAL.—The Administrator shall, on an
19 ongoing basis, conduct random audits of offset projects,
20 offset credits, and practices of third-party verifiers. In
21 each year, the Administrator shall conduct audits, at min-
22 imum, for a representative sample of project types and
23 geographic areas.

24 “(b) DELEGATION.—The Administrator may delegate
25 to a State or tribal government the responsibility for con-

1 ducting audits under this section if the Administrator
2 finds that the program proposed by the State or tribal
3 government provides assurances equivalent to those pro-
4 vided by the auditing program of the Administrator, and
5 that the integrity of the offset program under this part
6 will be maintained. Nothing in this subsection shall pre-
7 vent the Administrator from conducting any audit the Ad-
8 ministrator considers necessary and appropriate.

9 **“SEC. 739. PROGRAM REVIEW AND REVISION.**

10 “At least once every 5 years, the Administrator shall
11 review and, based on new or updated information and tak-
12 ing into consideration the recommendations of the Advi-
13 sory Board, update and revise—

14 “(1) the list of eligible project types established
15 under section 733;

16 “(2) the methodologies established, including
17 specific activity baselines, under section 734(a);

18 “(3) the reversal requirements and mechanisms
19 established or prescribed under section 734(b);

20 “(4) measures to improve the accountability of
21 the offsets program; and

22 “(5) any other requirements established under
23 this part to ensure the environmental integrity and
24 effective operation of this part.

1 **“SEC. 740. EARLY OFFSET SUPPLY.**

2 “(a) PROJECTS REGISTERED UNDER OTHER GOV-
3 ERNMENT-RECOGNIZED PROGRAMS.—Except as provided
4 in subsection (b) or (c), the Administrator shall issue one
5 offset credit for each ton of carbon dioxide equivalent
6 emissions reduced, avoided, or sequestered—

7 “(1) under an offset project that was started
8 after January 1, 2001;

9 “(2) for which a credit was issued under any
10 regulatory or voluntary greenhouse gas emission off-
11 set program that the Administrator determines—

12 “(A) was established under State or tribal
13 law or regulation prior to January 1, 2009, or
14 has been approved by the Administrator pursu-
15 ant to subsection (e);

16 “(B) has developed offset project type
17 standards, methodologies, and protocols
18 through a public consultation process or a peer
19 review process;

20 “(C) has made available to the public
21 standards, methodologies, and protocols that re-
22 quire that credited emission reductions, avoid-
23 ance, or sequestration are permanent, addi-
24 tional, verifiable, and enforceable;

25 “(D) requires that all emission reductions,
26 avoidance, or sequestration be verified by a

1 State regulatory agency or an accredited third-
2 party independent verification body;

3 “(E) requires that all credits issued are
4 registered in a publicly accessible registry, with
5 individual serial numbers assigned for each ton
6 of carbon dioxide equivalent emission reduc-
7 tions, avoidance, or sequestration; and

8 “(F) ensures that no credits are issued for
9 activities for which the entity administering the
10 program, or a program administrator or rep-
11 resentative, has funded, solicited, or served as a
12 fund administrator for the development of, the
13 project or activity that caused the emission re-
14 duction, avoidance, or sequestration; and

15 “(3) for which the credit described in para-
16 graph (2) is transferred to the Administrator.

17 “(b) INELIGIBLE CREDITS.—Subsection (a) shall not
18 apply to offset credits that have expired or have been re-
19 tired, canceled, or used for compliance under a program
20 established under State or tribal law or regulation.

21 “(c) LIMITATION.—Notwithstanding subsection
22 (a)(1), offset credits shall be issued under this section—

23 “(1) only for reductions or avoidance of green-
24 house gas emissions, or sequestration of greenhouse
25 gases, that occur after January 1, 2009; and

1 “(2) only until the date that is 3 years after the
2 date of enactment of this title, or the date that regu-
3 lations promulgated under section 732(a) take ef-
4 fect, whichever occurs sooner.

5 “(d) RETIREMENT OF CREDITS.—The Administrator
6 shall seek to ensure that offset credits described in sub-
7 section (a)(2) are retired for purposes of use under a pro-
8 gram described in subsection (b).

9 “(e) OTHER PROGRAMS.—(1) Offset programs that
10 either—

11 “(A) were not established under State or tribal
12 law; or

13 “(B) were not established prior to January 1,
14 2009,

15 but that otherwise meet all of the criteria of sub-
16 section (a)(2) may apply to the Administrator to be
17 approved under this subsection as an eligible pro-
18 gram for early offset credits under this section.

19 “(2) The Administrator shall approve any such pro-
20 gram that the Administrator determines has criteria and
21 methodologies of at least equal stringency to the criteria
22 and methodologies of the programs established under
23 State or tribal law that the Administrator determines meet
24 the criteria of subsection (a)(2). The Administrator may
25 approve types of offsets under any such program that are

1 subject to criteria and methodologies of at least equal
2 stringency to the criteria and methodologies for such types
3 of offsets applied under the programs established under
4 State or tribal law that the Administrator determines meet
5 the criteria of subsection (a)(2). The Administrator shall
6 make a determination on any application received under
7 this section by no later than 180 days from the date of
8 receipt of the application.

9 **“SEC. 741. ENVIRONMENTAL CONSIDERATIONS.**

10 “If the Administrator lists forestry projects as eligible
11 offset project types under section 733, the Administrator,
12 in consultation with appropriate Federal agencies, shall
13 promulgate regulations for the selection and use of species
14 in forestry and other relevant land management-related
15 offset projects—

16 “(1) to ensure that native species are given pri-
17 mary consideration in such projects;

18 “(2) to enhance biological diversity in such
19 projects;

20 “(3) to prohibit the use of federally designated
21 or State-designated noxious weeds;

22 “(4) to prohibit the use of a species listed by
23 a regional or State invasive plant authority within
24 the applicable region or State; and

1 “(5) in accordance with widely accepted, envi-
2 ronmentally sustainable forestry practices.

3 **“SEC. 742. TRADING.**

4 “Section 724 shall apply to the trading of offset cred-
5 its.

6 **“SEC. 743. INTERNATIONAL OFFSET CREDITS.**

7 “(a) IN GENERAL.—The Administrator, in consulta-
8 tion with the Secretary of State and the Administrator
9 of the United States Agency for International Develop-
10 ment, may issue, in accordance with this section, inter-
11 national offset credits based on activities that reduce or
12 avoid greenhouse gas emissions, or increase sequestration
13 of greenhouse gases, in a developing country. Such credits
14 may be issued for projects pursuant to the requirements
15 of this part or as provided in subsection (c), (d), or (e).

16 “(b) ISSUANCE.—

17 “(1) REGULATIONS.—Not later than 2 years
18 after the date of enactment of this title, the Admin-
19 istrator, in consultation with the Secretary of State,
20 the Administrator of the United States Agency for
21 International Development, and any other appro-
22 priate Federal agency, and taking into consideration
23 the recommendations of the Advisory Board, shall
24 promulgate regulations for implementing this sec-
25 tion. Except as otherwise provided in this section,

1 the issuance of international offset credits under this
2 section shall be subject to the requirements of this
3 part.

4 “(2) REQUIREMENTS FOR INTERNATIONAL
5 OFFSET CREDITS.—The Administrator may issue
6 international offset credits only if—

7 “(A) the United States is a party to a bi-
8 lateral or multilateral agreement or arrange-
9 ment that includes the country in which the
10 project or measure achieving the relevant green-
11 house gas emission reduction or avoidance, or
12 greenhouse gas sequestration, has occurred;

13 “(B) such country is a developing country;
14 and

15 “(C) such agreement or arrangement—

16 “(i) ensures that all of the require-
17 ments of this part apply to the issuance of
18 international offset credits under this sec-
19 tion; and

20 “(ii) provides for the appropriate dis-
21 tribution of international offset credits
22 issued.

23 “(c) SECTOR-BASED CREDITS.—

24 “(1) IN GENERAL.—In order to minimize the
25 potential for leakage and to encourage countries to

1 take nationally appropriate mitigation actions to re-
2 duce or avoid greenhouse gas emissions, or sequester
3 greenhouse gases, the Administrator, in consultation
4 with the Secretary of State and the Administrator of
5 the United States Agency for International Develop-
6 ment, shall—

7 “(A) identify sectors of specific countries
8 with respect to which the issuance of inter-
9 national offset credits on a sectoral basis is ap-
10 propriate; and

11 “(B) issue international offset credits for
12 such sectors only on a sectoral basis.

13 “(2) IDENTIFICATION OF SECTORS.—

14 “(A) GENERAL RULE.—For purposes of
15 paragraph (1)(A), a sectoral basis shall be ap-
16 propriate for activities—

17 “(i) in countries that have compara-
18 tively high greenhouse gas emissions, or
19 comparatively greater levels of economic
20 development; and

21 “(ii) that, if located in the United
22 States, would be within a sector subject to
23 the compliance obligation under section
24 722.

1 “(B) FACTORS.—In determining the sec-
2 tors and countries for which international offset
3 credits should be awarded only on a sectoral
4 basis, the Administrator, in consultation with
5 the Secretary of State and the Administrator of
6 the United States Agency for International De-
7 velopment, shall consider the following factors:

8 “(i) The country’s gross domestic
9 product.

10 “(ii) The country’s total greenhouse
11 gas emissions.

12 “(iii) Whether the comparable sector
13 of the United States economy is covered by
14 the compliance obligation under section
15 722.

16 “(iv) The heterogeneity or homo-
17 geneity of sources within the relevant sec-
18 tor.

19 “(v) Whether the relevant sector pro-
20 vides products or services that are sold in
21 internationally competitive markets.

22 “(vi) The risk of leakage if inter-
23 national offset credits were issued on a
24 project-level basis, instead of on a sectoral

1 basis, for activities within the relevant sec-
2 tor.

3 “(vii) The capability of accurately
4 measuring, monitoring, reporting, and
5 verifying the performance of sources across
6 the relevant sector.

7 “(viii) Such other factors as the Ad-
8 ministrator, in consultation with the Sec-
9 retary of State and the Administrator of
10 the United States Agency for International
11 Development, determines are appropriate
12 to—

13 “(I) ensure the integrity of the
14 United States greenhouse gas emis-
15 sions cap established under section
16 703; and

17 “(II) encourage countries to take
18 nationally appropriate mitigation ac-
19 tions to reduce or avoid greenhouse
20 gas emissions, or sequester green-
21 house gases.

22 “(3) SECTORAL BASIS.—

23 “(A) DEFINITION.—In this subsection, the
24 term ‘sectoral basis’ means the issuance of
25 international offset credits only for the quantity

1 of sector-wide reductions or avoidance of green-
2 house gas emissions, or sector-wide increases in
3 sequestration of greenhouse gases, achieved
4 across the relevant sector of the economy rel-
5 ative to a baseline level of performance estab-
6 lished in an agreement or arrangement de-
7 scribed in subsection (b)(2)(A) for the sector.

8 “(B) BASELINE.—The baseline for a sec-
9 tor shall be established at levels of greenhouse
10 gas emissions lower than would occur under a
11 business-as-usual scenario taking into account
12 relevant domestic or international policies or in-
13 centives to reduce greenhouse gas emissions,
14 among other factors, and additionality and per-
15 formance shall be determined on the basis of
16 such baseline.

17 “(d) CREDITS ISSUED BY AN INTERNATIONAL
18 BODY.—

19 “(1) IN GENERAL.—The Administrator, in con-
20 sultation with the Secretary of State, may issue
21 international offset credits in exchange for instru-
22 ments in the nature of offset credits that are issued
23 by an international body established pursuant to the
24 United Nations Framework Convention on Climate
25 Change, to a protocol to such Convention, or to a

1 treaty that succeeds such Convention. The Adminis-
2 trator may issue international offset credits under
3 this subsection only if, in addition to the require-
4 ments of subsection (b), the Administrator has de-
5 termined that the international body that issued the
6 instruments has implemented substantive and proce-
7 dural requirements for the relevant project type that
8 provide equal or greater assurance of the integrity of
9 such instruments as is provided by the requirements
10 of this part.

11 “(2) RETIREMENT.—The Administrator, in
12 consultation with the Secretary of State, shall seek,
13 by whatever means appropriate, including agree-
14 ments, arrangements, or technical cooperation with
15 the international issuing body described in para-
16 graph (1), to ensure that such body—

17 “(A) is notified of the Administrator’s
18 issuance, under this subsection, of an inter-
19 national offset credit in exchange for an instru-
20 ment issued by such international body; and

21 “(B) provides, to the extent feasible, for
22 the disqualification of the instrument issued by
23 such international body for subsequent use
24 under any relevant foreign or international
25 greenhouse gas regulatory program, regardless

1 of whether such use is a sale, exchange, or sub-
2 mission to satisfy a compliance obligation.

3 “(e) OFFSETS FROM REDUCED DEFORESTATION.—

4 “(1) REQUIREMENTS.—The Administrator, in
5 accordance with the regulations promulgated under
6 subsection (b)(1) and an agreement or arrangement
7 described in subsection (b)(2)(A), shall issue inter-
8 national offset credits for greenhouse gas emission
9 reductions achieved through activities to reduce de-
10 forestation only if, in addition to the requirements of
11 subsection (b)—

12 “(A) the activity occurs in—

13 “(i) a country listed by the Adminis-
14 trator pursuant to paragraph (2);

15 “(ii) a state or province listed by the
16 Administrator pursuant to paragraph (5);

17 or

18 “(iii) a country listed by the Adminis-
19 trator pursuant to paragraph (6);

20 “(B) except as provided in paragraph (5)

21 or (6), the quantity of the international offset
22 credits is determined by comparing the national
23 emissions from deforestation relative to a na-
24 tional deforestation baseline for that country es-
25 tablished, in accordance with an agreement or

1 arrangement described in subsection (b)(2)(A),
2 pursuant to paragraph (4);

3 “(C) the reduction in emissions from de-
4 forestation has occurred before the issuance of
5 the international offset credit and, taking into
6 consideration relevant international standards,
7 has been demonstrated using ground-based in-
8 ventories, remote sensing technology, and other
9 methodologies to ensure that all relevant carbon
10 stocks are accounted;

11 “(D) the Administrator has made appro-
12 priate adjustments, such as discounting for any
13 additional uncertainty, to account for cir-
14 cumstances specific to the country, including its
15 technical capacity described in paragraph
16 (2)(A);

17 “(E) the activity is designed, carried out,
18 and managed—

19 “(i) in accordance with widely accept-
20 ed, environmentally sustainable forest
21 management practices;

22 “(ii) to promote or restore native for-
23 est species and ecosystems where prac-
24 ticable, and to avoid the introduction of
25 invasive nonnative species;

1 “(iii) in a manner that gives due re-
2 gard to the rights and interests of local
3 communities, indigenous peoples, forest-de-
4 pendent communities, and vulnerable social
5 groups;

6 “(iv) with consultations with, and full
7 participation of local communities, indige-
8 nous peoples, and forest-dependent com-
9 munities, in affected areas, as partners
10 and primary stakeholders, prior to and
11 during the design, planning, implementa-
12 tion, and monitoring and evaluation of ac-
13 tivities; and

14 “(v) with equitable sharing of profits
15 and benefits derived from offset credits
16 with local communities, indigenous peoples,
17 and forest-dependent communities; and

18 “(F) the reduction otherwise satisfies and
19 is consistent with any relevant requirements es-
20 tablished by an agreement reached under the
21 auspices of the United Nations Framework
22 Convention on Climate Change.

23 “(2) ELIGIBLE COUNTRIES.—The Adminis-
24 trator, in consultation with the Secretary of State
25 and the Administrator of the United States Agency

1 for International Development, and in accordance
2 with an agreement or arrangement described in sub-
3 section (b)(2)(A), shall establish, and periodically re-
4 view and update, a list of the developing countries
5 that have the capacity to participate in deforestation
6 reduction activities at a national level, including—

7 “(A) the technical capacity to monitor,
8 measure, report, and verify forest carbon fluxes
9 for all significant sources of greenhouse gas
10 emissions from deforestation with an acceptable
11 level of uncertainty, as determined taking into
12 account relevant internationally accepted meth-
13 odologies, such as those established by the
14 Intergovernmental Panel on Climate Change;

15 “(B) the institutional capacity to reduce
16 emissions from deforestation, including strong
17 forest governance and mechanisms to equitably
18 distribute deforestation resources for local ac-
19 tions; and

20 “(C) a land use or forest sector strategic
21 plan that—

22 “(i) assesses national and local drivers
23 of deforestation and forest degradation and
24 identifies reforms to national policies need-
25 ed to address them;

1 “(ii) estimates the country’s emissions
2 from deforestation and forest degradation;

3 “(iii) identifies improvements in data
4 collection, monitoring, and institutional ca-
5 pacity necessary to implement a national
6 deforestation reduction program; and

7 “(iv) establishes a timeline for imple-
8 menting the program and transitioning to
9 low-emissions development.

10 “(3) PROTECTION OF INTERESTS.—With re-
11 spect to an agreement or arrangement described in
12 subsection (b)(2)(A) with a country that addresses
13 international offset credits under this subsection, the
14 Administrator, in consultation with the Secretary of
15 State and the Administrator of the United States
16 Agency for International Development, shall seek to
17 ensure the establishment and enforcement by such
18 country of legal regimes, processes, standards, and
19 safeguards that—

20 “(A) give due regard to the rights and in-
21 terests of local communities, indigenous peoples,
22 forest-dependent communities, and vulnerable
23 social groups;

24 “(B) promote consultations with, and full
25 participation of, forest-dependent communities

1 and indigenous peoples in affected areas, as
2 partners and primary stakeholders, prior to and
3 during the design, planning, implementation,
4 and monitoring and evaluation of activities; and

5 “(C) encourage equitable sharing of profits
6 and benefits derived from international offset
7 credits with local communities, indigenous peo-
8 ples, and forest-dependent communities,.

9 “(4) NATIONAL DEFORESTATION BASELINE.—A
10 national deforestation baseline established under this
11 subsection shall—

12 “(A) be national in scope;

13 “(B) be consistent with nationally appro-
14 priate mitigation commitments or actions with
15 respect to deforestation, taking into consider-
16 ation the average annual historical deforestation
17 rates of the country during a period of at least
18 5 years, the applicable drivers of deforestation,
19 and other factors to ensure additionality;

20 “(C) establish a trajectory that would re-
21 sult in zero net deforestation by not later than
22 20 years after the national deforestation base-
23 line has been established;

24 “(D) be adjusted over time to take account
25 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).

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, and periodically review
14 and update, a list of states or provinces in de-
15 veloping countries where—

16 “(i) the developing country is not in-
17 cluded on the list of countries established
18 pursuant to paragraph (6)(A);

19 “(ii) the state or province by itself is
20 a major emitter of greenhouse gases from
21 tropical deforestation on a scale commen-
22 surate to the emissions of other countries;
23 and

24 “(iii) the state or province meets the
25 eligibility criteria in paragraphs (2) and

1 (3) for the geographic area under its juris-
2 diction.

3 “(B) ACTIVITIES.—The Administrator may
4 issue international offset credits for greenhouse
5 gas emission reductions achieved through activi-
6 ties to reduce deforestation at a state or provin-
7 cial level that meet the requirements of this sec-
8 tion. Such credits shall be determined by com-
9 paring the emissions from deforestation within
10 that state or province relative to the state or
11 province deforestation baseline for that state or
12 province established, in accordance with an
13 agreement or arrangement described in sub-
14 section (b)(2)(A), pursuant to subparagraph
15 (C) of this paragraph.

16 “(C) STATE-LEVEL OR PROVINCE-LEVEL
17 DEFORESTATION BASELINE.—A state-level or
18 province-level deforestation baseline shall—

19 “(i) be consistent with any existing
20 nationally appropriate mitigation commit-
21 ments or actions for the country in which
22 the activity is occurring, taking into con-
23 sideration the average annual historical de-
24 forestation rates of the state or province
25 during a period of at least 5 years, rel-

1 evant drivers of deforestation, and other
2 factors to ensure additionality;

3 “(ii) establish a trajectory that would
4 result in zero net deforestation by not later
5 than 20 years after the state-level or prov-
6 ince-level deforestation baseline has been
7 established; and

8 “(iii) be designed to account for all
9 significant sources of greenhouse gas emis-
10 sions from deforestation in the state or
11 province and adjusted to fully account for
12 emissions leakage outside the state or
13 province.

14 “(D) PHASE OUT.—Beginning 5 years
15 after the first calendar year for which a covered
16 entity must demonstrate compliance with sec-
17 tion 722(a), the Administrator shall issue no
18 further international offset credits for eligible
19 state-level or province-level activities to reduce
20 deforestation pursuant to this paragraph.

21 “(6) PROJECTS AND PROGRAMS TO REDUCE
22 DEFORESTATION.—

23 “(A) ELIGIBLE COUNTRIES.—The Admin-
24 istrator, in consultation with the Secretary of
25 State and the Administrator of the United

1 States Agency for International Development,
2 shall establish, and periodically review and up-
3 date, a list of developing countries that—

4 “(i) the Administrator determines,
5 based on recent, credible, and reliable
6 emissions data, account for less than 1
7 percent of global greenhouse gas emissions
8 and less than 3 percent of global forest-
9 sector and land use change greenhouse gas
10 emissions; and

11 “(ii) have, or in the determination of
12 the Administrator are making a good faith
13 effort to develop, a land use or forest sec-
14 tor strategic plan that meets the criteria
15 described in paragraph (2)(C).

16 “(B) ACTIVITIES.—The Administrator may
17 issue international offset credits for greenhouse
18 gas emission reductions achieved through
19 project or program level activities to reduce de-
20 forestation in countries listed under subpara-
21 graph (A) that meet the requirements of this
22 section. The quantity of international offset
23 credits shall be determined by comparing the
24 project-level or program-level emissions from
25 deforestation to a deforestation baseline for

1 such project or program established pursuant to
2 subparagraph (C).

3 “(C) PROJECT-LEVEL OR PROGRAM-LEVEL
4 BASELINE.—

5 “(i) A project-level or program-level
6 deforestation baseline shall—

7 “(I) be consistent with any exist-
8 ing nationally appropriate mitigation
9 commitments or actions for the coun-
10 try in which the project or program is
11 occurring, taking into consideration
12 the average annual historical deforest-
13 ation rates in the project or program
14 boundary during a period of at least
15 5 years, applicable drivers of deforest-
16 ation, and other factors to ensure
17 additionality;

18 “(II) be designed to account for
19 all significant sources of greenhouse
20 gas emissions from deforestation in
21 the project or program boundary; and

22 “(III) be adjusted to fully ac-
23 count for emissions leakage outside
24 the project or program boundary.

1 “(D) PHASE OUT.—(i) Beginning 5 years
2 after the first calendar year for which a covered
3 entity must demonstrate compliance with sec-
4 tion 722(a), the Administrator shall issue no
5 further international offset credits for project-
6 level or program-level activities as described in
7 this paragraph, except as provided in clause
8 (ii).

9 “(ii) The Administrator may extend the
10 phase out deadline for the issuance of inter-
11 national offset credits under this section by up
12 to 8 years with respect to eligible activities tak-
13 ing place in a least developed nation, which is
14 a foreign country that the United Nations has
15 identified as among the least developed of devel-
16 oping countries at the time that the Adminis-
17 trator determines to provide an extension, pro-
18 vided that the Administrator, in consultation
19 with the Secretary of State and the Adminis-
20 trator of the United States Agency for Inter-
21 national Development, determines the nation—

22 “(I) lacks sufficient capacity to adopt
23 and implement effective programs to
24 achieve reductions in deforestation meas-
25 ured against national baselines;

1 “(II) is receiving support under part
2 E to develop such capacity; and

3 “(III) has developed and is working to
4 implement a credible national strategy or
5 plan to reduce deforestation.

6 “(7) DEFORESTATION.—In implementing this
7 subsection, the Administrator, taking into consider-
8 ation the recommendations of the Advisory Board,
9 may include forest degradation, or soil carbon losses
10 associated with forested wetlands or peatlands, with-
11 in the meaning of deforestation.

12 “(f) MODIFICATION OF REQUIREMENTS.—In promul-
13 gating regulations under subsection (b)(1) with respect to
14 the issuance of international offset credits under sub-
15 section (c), (d), or (e), the Administrator, in consultation
16 with the Secretary of State and the Administrator of the
17 United States Agency for International Development, may
18 modify or omit a requirement of this part (excluding the
19 requirements of this section) if the Administrator deter-
20 mines that the application of that requirement to such
21 subsection is not feasible. In modifying or omitting such
22 a requirement on the basis of infeasibility, the Adminis-
23 trator, in consultation with the Secretary of State and the
24 Administrator of the United States Agency for Inter-
25 national Development, shall ensure, with an adequate

1 margin of safety, the integrity of international offset cred-
2 its issued under this section and of the greenhouse gas
3 emissions cap established pursuant to section 703.

4 “(g) AVOIDING DOUBLE COUNTING.—The Adminis-
5 trator, in consultation with the Secretary of State, shall
6 seek, by whatever means appropriate, including agree-
7 ments, arrangements, or technical cooperation, to ensure
8 that activities on the basis of which international offset
9 credits are issued under this section are not used for com-
10 pliance with an obligation to reduce or avoid greenhouse
11 gas emissions, or increase greenhouse gas sequestration,
12 under a foreign or international regulatory system. In ad-
13 dition, no international offset credits shall be issued for
14 emission reductions from activities with respect to which
15 emission allowances were allocated under section 781 for
16 distribution under part E.

17 “(h) LIMITATION.—The Administrator shall not issue
18 international offset credits generated by projects based on
19 the destruction of hydrofluorocarbons.

20 **“PART E—SUPPLEMENTAL EMISSIONS**

21 **REDUCTIONS FROM REDUCED DEFORESTATION**

22 **“SEC. 751. DEFINITIONS.**

23 “In this part:

24 “(1) LEAKAGE PREVENTION ACTIVITIES.—The
25 term ‘leakage prevention activities’ means activities

1 in developing countries that are directed at pre-
2 serving existing forest carbon stocks, including for-
3 ested wetlands and peatlands, that might, absent
4 such activities, be lost through leakage.

5 “(2) NATIONAL DEFORESTATION REDUCTION
6 ACTIVITIES.—The term ‘national deforestation re-
7 duction activities’ means activities in developing
8 countries that reduce a quantity of greenhouse gas
9 emissions from deforestation that is calculated by
10 measuring actual emissions against a national defor-
11 estation baseline established pursuant to section
12 754(d)(1) and (2).

13 “(3) SUBNATIONAL DEFORESTATION REDUC-
14 TION ACTIVITIES.—The term ‘subnational deforest-
15 ation reduction activities’ means activities in devel-
16 oping countries that reduce a quantity of greenhouse
17 gas emissions from deforestation that are calculated
18 by measuring actual emissions using an appropriate
19 baseline established by the Administrator that is less
20 than national in scope.

21 “(4) SUPPLEMENTAL EMISSIONS REDUC-
22 TIONS.—The term ‘supplemental emissions reduc-
23 tions’ means greenhouse gas emissions reductions
24 achieved from reduced or avoided deforestation
25 under this part.

1 “(5) USAID.—The term ‘USAID’ means the
2 United States Agency for International Develop-
3 ment.

4 **“SEC. 752. FINDINGS.**

5 “Congress finds that—

6 “(1) as part of a global effort to mitigate cli-
7 mate change, it is in the national interest of the
8 United States to assist developing countries to re-
9 duce and ultimately halt emissions from deforest-
10 ation;

11 “(2) deforestation is one of the largest sources
12 of greenhouse gas emissions in developing countries,
13 amounting to roughly 20 percent of overall emissions
14 globally;

15 “(3) recent scientific analysis shows that it will
16 be substantially more difficult to limit the increase
17 in global temperatures to less than 2 degrees centi-
18 grade above preindustrial levels without reducing
19 and ultimately halting net emissions from deforest-
20 ation;

21 “(4) reducing emissions from deforestation is
22 highly cost-effective, compared to many other
23 sources of emissions reductions;

24 “(5) in addition to contributing significantly to
25 worldwide efforts to address global warming, this as-

1 sistance will generate significant environmental and
2 social cobenefits, including protection of biodiversity,
3 ecosystem services, and forest-related livelihoods;
4 and

5 “(6) Under the Bali Action Plan, developed
6 country parties to the United Nations Framework
7 Convention on Climate Change, including the United
8 States, committed to ‘enhanced action on the provi-
9 sion of financial resources and investment to support
10 action on mitigation and adaptation and technology
11 cooperation,’ including, inter alia, consideration of
12 improved access to adequate, predictable, and sus-
13 tainable financial resources and financial and tech-
14 nical support, and the provision of new and addi-
15 tional resources, including official and concessional
16 funding for developing country parties.

17 **“SEC. 753. SUPPLEMENTAL EMISSIONS REDUCTIONS**
18 **THROUGH REDUCED DEFORESTATION.**

19 “(a) REGULATIONS.—Not later than 2 years after
20 the date of enactment of this title, the Administrator, in
21 consultation with the Administrator of USAID and any
22 other appropriate agencies, shall promulgate regulations
23 establishing a program to use emission allowances set
24 aside for this purpose under section 781 to achieve the
25 reduction of greenhouse gas emissions from deforestation

1 in developing countries in accordance with the require-
2 ments of this part.

3 “(b) OBJECTIVES.—The objectives of the program es-
4 tablished under this section shall be to—

5 “(1) achieve supplemental emissions reductions
6 of at least 720,000,000 tons of carbon dioxide equiv-
7 alent in 2020, a cumulative amount of at least
8 6,000,000,000 tons of carbon dioxide equivalent by
9 December 31, 2025, and additional supplemental
10 emissions reductions in subsequent years;

11 “(2) build capacity to reduce deforestation in
12 developing countries experiencing deforestation, in-
13 cluding preparing developing countries to participate
14 in international markets for international offset
15 credits for reduced emissions from deforestation; and

16 “(3) preserve existing forest carbon stocks in
17 countries where such forest carbon may be vulner-
18 able to international leakage, particularly in devel-
19 oping countries with largely intact native forests.

20 **“SEC. 754. REQUIREMENTS FOR INTERNATIONAL DEFOR-
21 ESTATION REDUCTION PROGRAM.**

22 “(a) ELIGIBLE COUNTRIES.—The Administrator
23 may support activities under this part only with respect
24 to a developing country that—

1 “(1) the Administrator, in consultation with the
2 Administrator of USAID, determines is experiencing
3 deforestation or forest degradation or has standing
4 forest carbon stocks that may be at risk of deforest-
5 ation or degradation; and

6 “(2) has entered into a bilateral or multilateral
7 agreement or arrangement with the United States
8 establishing the conditions of its participation in the
9 program established under this part, which shall in-
10 clude an agreement to meet the standards estab-
11 lished under subsection (d) for the activities to
12 which those standards apply.

13 “(b) ACTIVITIES.—(1) Subject to the requirements of
14 this part, the Administrator, in consultation with the Ad-
15 ministrator of USAID, may support activities to achieve
16 the objectives identified in section 753(b), including—

17 “(A) national deforestation reduction ac-
18 tivities;

19 “(B) subnational deforestation reduction
20 activities, including pilot activities that reduce
21 greenhouse gas emissions but are subject to sig-
22 nificant uncertainty;

23 “(C) activities to measure, monitor, and
24 verify deforestation, avoided deforestation, and
25 deforestation rates;

1 “(D) leakage prevention activities;

2 “(E) development of measurement, moni-
3 toring, and verification capacities to enable a
4 country to quantify supplemental emissions re-
5 ductions and to generate for sale offset credits
6 from reduced or avoided deforestation;

7 “(F) development of governance structures
8 to reduce deforestation and illegal logging;

9 “(G) enforcement of requirements for re-
10 duced deforestation or forest conservation;

11 “(H) efforts to combat illegal logging and
12 increase enforcement cooperation;

13 “(I) providing incentives for policy reforms
14 to achieve the objectives identified in section
15 753(b); and

16 “(J) monitoring and evaluation of the re-
17 sults of the activities conducted under this sec-
18 tion.

19 “(2) ACTIVITIES SELECTED BY USAID.—

20 “(A) The Administrator of USAID, in con-
21 sultation with the Administrator, may select for
22 support and implementation pursuant to sub-
23 section (c) any of the activities described in
24 paragraph (1), consistent with this part and the
25 regulations promulgated under subsection (d),

1 and subject to the requirement to achieve the
2 objectives listed in section 753(b)(1).

3 “(B) With respect to the activities listed in
4 subparagraphs (D) through (J) of paragraph
5 (1), the Administrator of USAID, in consulta-
6 tion with the Administrator, shall have primary
7 but not exclusive responsibility for selecting the
8 activities to be supported and implemented.

9 “(3) INTERAGENCY COORDINATION.—The Ad-
10 ministrator and the Administrator of USAID shall
11 jointly develop and biennially update a strategic plan
12 for meeting the objectives listed in section 753(b)
13 and shall execute a memorandum of understanding
14 delineating the agencies’ respective roles in imple-
15 menting this part.

16 “(c) MECHANISMS.—

17 “(1) IN GENERAL.—The Administrator may
18 support activities to achieve the objectives identified
19 in section 753(b) by—

20 “(A) developing and implementing pro-
21 grams and projects that achieve such objectives;
22 and

23 “(B) distributing emission allowances to a
24 country that is eligible under subsection (a), to
25 any private or public group (including inter-

1 national organizations), or to an international
2 fund established by an international agreement
3 to which the United States is a party, to carry
4 out activities to achieve such objectives.

5 “(2) USAID ACTIVITIES.—With respect to ac-
6 tivities selected and implemented by the Adminis-
7 trator of USAID pursuant to (b)(2), the Adminis-
8 trator shall distribute emission allowances as pro-
9 vided in subparagraph (1) based upon the direction
10 of the Administrator of USAID, subject to the avail-
11 ability of allowances for such activities.

12 “(3) IMPLEMENTATION THROUGH INTER-
13 NATIONAL ORGANIZATIONS.—If support is distrib-
14 uted through an international organization, the
15 agency responsible for selecting activities in accord-
16 ance with subparagraph (b)(1) or (2), in consulta-
17 tion with the Secretary of State, shall ensure the es-
18 tablishment and implementation of adequate mecha-
19 nisms to apply and enforce the eligibility require-
20 ments and other requirements of this section.

21 “(4) ROLE OF THE SECRETARY OF STATE.—
22 The Administrator may not distribute emission al-
23 lowances to the government of another country or to
24 an international organization or international fund

1 unless the Secretary of State has concurred with
2 such distribution.

3 “(d) STANDARDS.—The Administrator, in consulta-
4 tion with the Administrator of USAID, shall promulgate
5 standards to ensure that supplemental emissions reduc-
6 tions achieved through supported activities are additional,
7 measurable, verifiable, permanent, monitored, and account
8 for leakage and uncertainty. In addition, such standards
9 shall—

10 “(1) require the establishment of a national de-
11 forestation baseline for each country with national
12 deforestation reduction activities that is used to ac-
13 count for reductions achieved from such activities;

14 “(2) provide that a national deforestation base-
15 line established under paragraph (1) shall—

16 “(A) be national in scope;

17 “(B) be consistent with nationally appro-
18 priate mitigation commitments or actions with
19 respect to deforestation, taking into consider-
20 ation the average annual historical deforestation
21 rates of the country during a period of at least
22 5 years and other factors to ensure
23 additionality;

24 “(C) establish a trajectory that would re-
25 sult in zero net deforestation by not later than

1 20 years from the date the baseline is estab-
2 lished;

3 “(D) be adjusted over time to take account
4 of changing national circumstances;

5 “(E) be designed to account for all signifi-
6 cant sources of greenhouse gas emissions from
7 deforestation in the country; and

8 “(F) be consistent with the national defor-
9 estation baseline, if any, established for such
10 country under section 743(e)(4);

11 “(3) with respect to support provided pursuant
12 to subsection (b)(1)(A) or (B), require supplemental
13 emissions reductions to be achieved and verified
14 prior to compensation through the distribution of
15 emission allowances under this part;

16 “(4) with respect to accounting for subnational
17 deforestation reduction activities that lack the stand-
18 ardized or precise measurement and monitoring
19 techniques needed for a full accounting of changes
20 in emissions or baselines, or are subject to other
21 sources of uncertainty, apply a conservative discount
22 factor to reflect the uncertainty regarding the levels
23 of reductions achieved;

24 “(5) ensure that activities under this part shall
25 be designed, carried out, and managed—

1 “(A) in accordance with widely accepted,
2 environmentally sustainable forestry practices;

3 “(B) to promote native species and con-
4 servation or restoration of native forests, if
5 practicable, and to avoid the introduction of
6 invasive nonnative species;

7 “(C) in a manner that gives due regard to
8 the rights and interests of local communities,
9 indigenous peoples, forest-dependent commu-
10 nities, and vulnerable social groups;

11 “(D) with consultations with, and full par-
12 ticipation of, local communities, indigenous peo-
13 ples, and forest-dependent communities in af-
14 fected areas, as partners and primary stake-
15 holders, prior to and during the design, plan-
16 ning, implementation, and monitoring and eval-
17 uation of activities; and

18 “(E) with equitable sharing of profits and
19 benefits derived from the activities with local
20 communities, indigenous peoples, and forest-de-
21 pendent communities; and

22 “(6) with respect to support for all activities
23 under this part, seek to ensure the establishment
24 and enforcement by the recipient country of legal re-
25 gimes, standards, processes, and safeguards that—

1 “(A) give due regard to the rights and in-
2 terests of local communities, indigenous peoples,
3 forest-dependent communities, and vulnerable
4 social groups;

5 “(B) promote consultations with local com-
6 munities and indigenous peoples and forest-de-
7 pendent communities in affected areas, as part-
8 ners and primary stakeholders, prior to and
9 during the design, planning, implementation,
10 monitoring, and evaluation of activities under
11 this part; and

12 “(C) encourage equitable sharing of profits
13 and benefits from incentives for emissions re-
14 ductions or leakage prevention with local com-
15 munities, indigenous peoples, and forest-de-
16 pendent communities.

17 “(e) EXPANSION OF SCOPE.—The Administrator, in
18 consultation with the Administrator of USAID, may de-
19 cide, taking into account any advice from the Advisory
20 Board, to expand, where appropriate, the scope of activi-
21 ties under this part to include—

22 “(1) reduced emissions from forest degradation;
23 or

1 “(2) reduced soil carbon-derived emissions asso-
2 ciated with deforestation and degradation of forested
3 wetlands and peatlands.

4 “(f) ACCOUNTING.—The Administrator shall estab-
5 lish a publicly accessible registry of the supplemental emis-
6 sions reductions achieved through support provided under
7 this part each year, after appropriately discounting for un-
8 certainty and other relevant factors as required by the
9 standards established under subsection (d).

10 “(g) TRANSITION TO NATIONAL REDUCTIONS.—Be-
11 ginning 5 years after the date that a country entered into
12 the agreement or arrangement required under subsection
13 (a)(2), the Administrator shall provide no further com-
14 pensation through emission allowances to that country
15 under this part for any subnational deforestation reduc-
16 tion activities, except that the Administrator may extend
17 this period by an additional 5 years if the Administrator,
18 in consultation with the Administrator of USAID, deter-
19 mines that—

20 “(1) the country is making substantial progress
21 towards adopting and implementing a program to
22 achieve reductions in deforestation measured against
23 a national baseline;

24 “(2) the greenhouse gas emissions reductions
25 achieved are not resulting in significant leakage; and

1 “(3) the greenhouse gas emissions reductions
2 achieved are being appropriately discounted to ac-
3 count for any leakage that is occurring.

4 The limitation under this subsection shall not apply to
5 support for activities to further the objectives listed in sec-
6 tion 753(b)(2) or (3).

7 “(h) COORDINATION WITH U.S. FOREIGN ASSIST-
8 ANCE.—Subject to the Direction of the President, the Ad-
9 ministrator and the Administrator of USAID shall, to the
10 extent practicable and consistent with the objectives of
11 this program, seek to align activities under this section
12 with broader development, poverty alleviation, or natural
13 resource management objectives and initiatives in the re-
14 cipient country.

15 “(i) SUPPORT AS SUPPLEMENT.—The provision of
16 support for activities under this part shall be used to sup-
17 plement, and not to supplant, any other Federal, State,
18 or local support available to carry out such qualifying ac-
19 tivities under this part.

20 **“SEC. 755. REPORTS AND REVIEWS.**

21 “(a) REPORTS.—Not later than January 1, 2014,
22 and annually thereafter, the Administrator and the Ad-
23 ministrator of USAID shall submit to the Committee on
24 Energy and Commerce and the Committee on Foreign Af-
25 fairs of the House of Representatives, and the Committee

1 on Environment and Public Works and the Committee on
2 Foreign Relations of the Senate, and make available to
3 the public, a report on the support provided under this
4 part during the prior fiscal year. The report shall in-
5 clude—

6 “(1) a statement of the quantity of supple-
7 mental emissions reductions for which compensation
8 in the form of emission allowances was provided
9 under this part during the prior fiscal year, as reg-
10 istered by the Administrator under section 754(f);
11 and

12 “(2) a description of the national and sub-
13 national deforestation reduction activities, capacity-
14 building activities, and leakage prevention activities
15 supported under this part, including a statement of
16 the quantity of emission allowances distributed to
17 each recipient for each activity during the prior fis-
18 cal year, and a description of what was accomplished
19 through each of the activities.

20 “(b) **REVIEWS.**—Not later than 4 years after the date
21 of enactment of this title and every 5 years thereafter,
22 the Administrator and the Administrator of USAID and
23 taking into consideration any evaluation by or rec-
24 ommendations from the Advisory Board established under
25 section 731, shall conduct a review of the activities under-

1 taken pursuant to this part and make any appropriate
2 changes in the program established under this part based
3 on the findings of the review. The review shall include the
4 effects of the activities on—

5 “(1) total documented carbon stocks of each
6 country that directly or indirectly received support
7 under this part compared with such country’s na-
8 tional deforestation baseline established under sec-
9 tion 754(d)(1);

10 “(2) the number of countries with the capacity
11 to generate for sale instruments in the nature of off-
12 set credits from forest-related activities, and the
13 amount of such activities;

14 “(3) forest governance in each country that di-
15 rectly or indirectly received support under this part;

16 “(4) indigenous and forest-dependent peoples
17 residing in areas affected by such activities;

18 “(5) biodiversity and ecosystem services within
19 forested areas associated with the activities;

20 “(6) international leakage; and

21 “(7) any program or mechanism established
22 under the United Nations Framework Convention on
23 Climate Change related to greenhouse gas emissions
24 from deforestation.

1 **“SEC. 756. LEGAL EFFECT OF PART.**

2 “(1) IN GENERAL.—Nothing in this part super-
3 sedes, limits, or otherwise affects any restriction im-
4 posed by Federal law (including regulations) on any
5 interaction between an entity located in the United
6 States and an entity located in a foreign country.

7 “(2) ROLE OF THE SECRETARY OF STATE.—
8 Nothing in this part shall be construed as affecting
9 the role of the Secretary of State or the responsibil-
10 ities of the Secretary under section 622 (c) of the
11 Foreign Assistance Act of 1961.”.

12 **SEC. 312. DEFINITIONS.**

13 Title VII of the Clean Air Act, as added by section
14 311 of this Act, is amended by inserting before part A
15 the following new section:

16 **“SEC. 700. DEFINITIONS.**

17 “In this title:

18 “(1) ADDITIONAL.—The term ‘additional’,
19 when used with respect to reductions or avoidance of
20 greenhouse gas emissions, or to sequestration of
21 greenhouse gases, means reductions, avoidance, or
22 sequestration that result in a lower level of net
23 greenhouse gas emissions or atmospheric concentra-
24 tions than would occur in the absence of an offset
25 project.

1 “(2) ADDITIONALITY.—The term ‘additionality’
2 means the extent to which reductions or avoidance
3 of greenhouse gas emissions, or sequestration of
4 greenhouse gases, are additional.

5 “(3) ADVISORY BOARD.—The term ‘Advisory
6 Board’ means the Offsets Integrity Advisory Board
7 established under section 731.

8 “(4) AFFILIATED.—The term ‘affiliated’—

9 “(A) when used in relation to an entity
10 means owned or controlled by, or under com-
11 mon ownership or control with, another entity,
12 as determined by the Administrator; and

13 “(B) when used in relation to a natural
14 gas local distribution company, means owned or
15 controlled by, or under common ownership or
16 control with, another natural gas local distribu-
17 tion company, as determined by the Adminis-
18 trator.

19 “(5) ALLOWANCE.—The term ‘allowance’
20 means a limited authorization to emit, or have at-
21 tributable greenhouse gas emissions in an amount
22 of, 1 ton of carbon dioxide equivalent of a green-
23 house gas in accordance with this title; it includes an
24 emission allowance, a compensatory allowance, or an
25 international emission allowance.

1 “(6) ATTRIBUTABLE GREENHOUSE GAS EMIS-
2 SIONS.—The term ‘attributable greenhouse gas emis-
3 sions’ means—

4 “(A) for a covered entity that is a fuel pro-
5 ducer or importer described in section
6 700(13)(B), greenhouse gases that would be
7 emitted 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 for sale or distribution in
11 interstate commerce, assuming no capture and
12 sequestration of any greenhouse gas emissions;

13 “(B) for a covered entity that is an indus-
14 trial gas producer or importer described in sec-
15 tion 700(13)(C), the tons of carbon dioxide
16 equivalent of fossil fuel-based carbon dioxide,
17 nitrous oxide, any fluorinated gas, other than
18 nitrogen trifluoride, that is a greenhouse gas, or
19 any combination thereof—

20 “(i) produced or imported by such
21 covered entity during the previous calendar
22 year for sale or distribution in interstate
23 commerce; or

24 “(ii) released as fugitive emissions in
25 the production of fluorinated gas; and

1 “(C) for a natural gas local distribution
2 company described in section 700(13)(J),
3 greenhouse gases that would be emitted from
4 the combustion of the natural gas, and any
5 other gas meeting the specifications for com-
6 mingling with natural gas for purposes of deliv-
7 ery, that such entity delivered during the pre-
8 vious calendar year to customers that are not
9 covered entities, assuming no capture and se-
10 questration of that 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 more than 25,000

1 tons of carbon dioxide equivalent, as determined
2 by 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 more than 25,000 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(b) or (c); or

19 “(vi) any combination of greenhouse
20 gases described in clauses (i) through (vi).

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 to customers that are not
7 covered entities.

8 “(14) CREDITING PERIOD.—The term ‘crediting
9 period’ means the period with respect to which an
10 offset project is eligible to earn offset credits under
11 part D, as determined under section 734(c).

12 “(15) DESIGNATED REPRESENTATIVE.—The
13 term ‘designated representative’ means, with respect
14 to a covered entity, a reporting entity, an offset
15 project developer, or any other entity receiving or
16 holding allowances or offset credits under this title,
17 an individual authorized, through a certificate of
18 representation submitted to the Administrator by
19 the owners and operators or similar entity official, to
20 represent the owners and operators or similar entity
21 official in all matters pertaining to this title (includ-
22 ing the holding, transfer, or disposition of allowances
23 or offset credits), and to make all submissions to the
24 Administrator under this title.

1 “(16) DEVELOPING COUNTRY.—The term ‘de-
2 veloping 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 “(17) DOMESTIC OFFSET CREDIT.—The term
8 ‘domestic offset credit’ means an offset credit issued
9 under part D, other than an international offset
10 credit.

11 “(18) ELECTRICITY SOURCE.—The term ‘elec-
12 tricity source’ means a stationary source that in-
13 cludes one or more utility units.

14 “(19) EMISSION.—The term ‘emission’ means
15 the release of a greenhouse gas into the ambient air.
16 Such term does not include gases that are captured
17 and sequestered, except to the extent that they are
18 later released into the atmosphere, in which case
19 compliance must be demonstrated pursuant to sec-
20 tion 722(b)(5).

21 “(20) EMISSION ALLOWANCE.—The term ‘emis-
22 sion allowance’ means an allowance established
23 under section 721(a) or section 726(g)(2) or
24 (h)(1)(C).

1 “(21) FAIR MARKET VALUE.—The term ‘fair
2 market value’ means the average daily closing price
3 on registered exchanges or, if such a price is un-
4 available, the average price as determined by the Ad-
5 ministrator, during a specified time period, of an
6 emission allowance.

7 “(22) FEDERAL LAND.—The term ‘Federal
8 land’ means land that is owned by the United
9 States, other than land held in trust for an Indian
10 or Indian tribe.

11 “(23) FOSSIL FUEL.—The term ‘fossil fuel’
12 means natural gas, petroleum, or coal, or any form
13 of solid, liquid, or gaseous fuel derived from such
14 material, including consumer products that are de-
15 rived from such materials and are combusted.

16 “(24) FOSSIL FUEL-FIRED.—The term ‘fossil
17 fuel-fired’ means powered by combustion of fossil
18 fuel, alone or in combination with any other fuel, re-
19 gardless of the percentage of fossil fuel consumed.

20 “(25) FUGITIVE EMISSIONS.—The term ‘fugi-
21 tive emissions’ means emissions from leaks, valves,
22 joints, or other small openings in pipes, ducts, or
23 other equipment, or from vents.

24 “(26) GEOLOGIC SEQUESTRATION; GEOLOGI-
25 CALLY SEQUESTERED.—The terms ‘geologic seques-

1 tration’ and ‘geologically sequestered’ mean the se-
2 questration of greenhouse gases in subsurface geo-
3 logic formations for purposes of permanent storage.

4 “(27) GEOLOGIC SEQUESTRATION SITE.—The
5 term ‘geologic sequestration site’ means a site where
6 carbon dioxide is geologically sequestered.

7 “(28) GREENHOUSE GAS.—The term ‘green-
8 house gas’ means any gas described in section
9 711(a) or designated under section 711(b), (c), or
10 (e), except to the extent that it is regulated under
11 title VI.

12 “(29) HIGH CONSERVATION PRIORITY LAND.—
13 The term ‘high conservation priority land’ means
14 land that is not Federal land and is—

15 “(A) globally or State ranked as critically
16 imperiled or imperiled under a State Natural
17 Heritage Program; or

18 “(B) old-growth or late-successional forest,
19 as identified by the office of the State Forester
20 or relevant State agency with regulatory juris-
21 diction over forestry activities.

22 “(30) HOLD.—The term ‘hold’ means, with re-
23 spect to an allowance or offset credit, to have in the
24 appropriate account in the allowance tracking sys-

1 tem, or submit to the Administrator for recording in
2 such account.

3 “(31) INDUSTRIAL SOURCE.—The term ‘indus-
4 trial source’ means any stationary source that—

5 “(A) is not an electricity source; and

6 “(B) is in—

7 “(i) the manufacturing sector (as de-
8 fined in North American Industrial Classi-
9 fication System codes 31, 32, and 33); or

10 “(ii) the natural gas processing or
11 natural gas pipeline transportation sector
12 (as defined in North American Industrial
13 Classification System codes 211112 or
14 486210).

15 “(32) INTERNATIONAL EMISSION ALLOW-
16 ANCE.—The term ‘international emission allowance’
17 means a tradable authorization to emit 1 ton of car-
18 bon dioxide equivalent of greenhouse gas that is
19 issued by a national or supranational foreign govern-
20 ment pursuant to a qualifying international program
21 designated by the Administrator pursuant to section
22 728(a).

23 “(33) INTERNATIONAL OFFSET CREDIT.—The
24 term ‘international offset credit’ means an offset

1 credit issued by the Administrator under section
2 743.

3 “(34) LEAKAGE.—The term ‘leakage’ means a
4 significant increase in greenhouse gas emissions, or
5 significant decrease in sequestration, which is caused
6 by an offset project and occurs outside the bound-
7 aries of the offset project.

8 “(35) MINERAL SEQUESTRATION.—The term
9 ‘mineral sequestration’ means sequestration of car-
10 bon dioxide from the atmosphere by capturing car-
11 bon dioxide into a permanent mineral, such as the
12 aqueous precipitation of carbonate minerals that re-
13 sults in the storage of carbon dioxide in a mineral
14 form.

15 “(36) NATURAL GAS LIQUID.—The term ‘nat-
16 ural gas liquid’ means ethane, butane, isobutane,
17 natural gasoline, and propane which is ready for
18 commercial sale or use.

19 “(37) NATURAL GAS LOCAL DISTRIBUTION
20 COMPANY.—The term ‘natural gas local distribution
21 company’ has the meaning given the term ‘local dis-
22 tribution company’ in section 2(17) of the Natural
23 Gas Policy Act of 1978 (15 U.S.C. 3301(17)).

24 “(38) OFFSET CREDIT.—The term ‘offset cred-
25 it’ means a credit issued under part D.

1 “(39) 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
5 issued under part D.

6 “(40) 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 “(41) PETROLEUM.—The term ‘petroleum’ in-
12 cludes crude oil, tar sands, oil shale, and heavy oils.

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

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

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

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

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

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

7 “(E) Algae;

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

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

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

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

25 “(I) prior to January 1, 2009; or

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

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

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

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

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

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

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

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

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

23 “(43) RETIRE.—The term ‘retire’, with respect
24 to an allowance or offset credit established or issued
25 under this title, means to disqualify such allowance

1 or offset credit for any subsequent use under this
2 title, regardless of whether the use is a sale, ex-
3 change, or submission of the allowance or offset
4 credit to satisfy a compliance obligation.

5 “(44) REVERSAL.—The term ‘reversal’ means
6 an intentional or unintentional loss of sequestered
7 greenhouse gases to the atmosphere.

8 “(45) SEQUESTERED AND SEQUESTRATION.—
9 The terms ‘sequestered’ and ‘sequestration’ mean
10 the separation, isolation, or removal of greenhouse
11 gases from the atmosphere, as determined by the
12 Administrator. The terms include biological, geo-
13 logic, and mineral sequestration, but do not include
14 ocean fertilization techniques.

15 “(46) STATIONARY SOURCE.—The term ‘sta-
16 tionary source’ means any integrated operation com-
17 prising any plant, building, structure, or stationary
18 equipment, including support buildings and equip-
19 ment, that is located within one or more contiguous
20 or adjacent properties, is under common control of
21 the same person or persons, and emits or may emit
22 a greenhouse gas.

23 “(47) STRATEGIC RESERVE ALLOWANCE.—The
24 term ‘strategic reserve allowance’ means an emission
25 allowance reserved for, transferred to, or deposited

1 in the strategic reserve, or established, under section
2 726.

3 “(48) UNCAPPED EMISSIONS.—The term ‘un-
4 capped emissions’ means emissions of greenhouse
5 gases emitted after December 31, 2011, that are not
6 capped emissions.

7 “(49) UNITED STATES GREENHOUSE GAS EMIS-
8 SIONS.—The term ‘United States greenhouse gas
9 emissions’ means the total quantity of annual green-
10 house gas emissions from the United States, as cal-
11 culated by the Administrator and reported to the
12 United Nations Framework Convention on Climate
13 Change Secretariat.

14 “(50) UTILITY UNIT.—The term ‘utility unit’
15 means a combustion device that, on January 1,
16 2009, or any date thereafter, is fossil fuel-fired and
17 serves a generator that produces electricity for sale,
18 unless such combustion device, during the 12-month
19 period starting the later of January 1, 2009, or the
20 commencement of commercial operation and each
21 calendar year starting after such later date—

22 “(A) is part of an integrated cycle system
23 that cogenerates steam and electricity during
24 normal operation and that supplies one-third or

1 less of its potential electric output capacity and
2 25 MW or less of electrical output for sale; or

3 “(B) combusts materials of which more
4 than 95 percent is municipal solid waste on a
5 heat input basis.

6 “(51) VINTAGE YEAR.—The term ‘vintage year’
7 means the calendar year for which an emission al-
8 lowance is established under section 721(a) or which
9 is assigned to an emission allowance under section
10 726(g)(3)(A), except that the vintage year for a
11 strategic reserve allowance shall be the year in which
12 such allowance is purchased at auction.”.

13 **Subtitle B—Disposition of**
14 **Allowances**

15 **SEC. 321. DISPOSITION OF ALLOWANCES FOR GLOBAL**
16 **WARMING POLLUTION REDUCTION PRO-**
17 **GRAM.**

18 Title VII of the Clean Air Act, as added by section
19 311 of this Act, is amended by adding at the end the fol-
20 lowing part:

21 **“PART H—DISPOSITION OF ALLOWANCES**

22 **“SEC. 781. ALLOCATION OF ALLOWANCES FOR SUPPLE-**
23 **MENTAL REDUCTIONS.**

24 “(a) IN GENERAL.—The Administrator shall allocate
25 for each vintage year the following percentage of the emis-

1 sion allowances established under section 721(a), for dis-
2 tribution in accordance with part E:

3 “(1) For vintage years 2012 through 2025, 5
4 percent.

5 “(2) For vintage years 2026 through 2030, 3
6 percent.

7 “(3) For vintage years 2031 through 2050, 2
8 percent.

9 “(b) ADJUSTMENT.—The Administrator shall modify
10 the percentages set forth in subsection (a) as necessary
11 to ensure the achievement of the annual supplemental
12 emission reduction objective for 2020, and the cumulative
13 reduction objective through 2025, set forth in section
14 753(b)(1).

15 “(c) CARRYOVER.—If the Administrator has not dis-
16 tributed all of the allowances allocated pursuant to this
17 section for a given vintage year by the end of that year,
18 the Administrator shall—

19 “(1) auction the remaining emission allowances
20 under section 791 not later than March 31 of the
21 year following that vintage year; and

22 “(2) increase the allocation for the vintage year
23 after the vintage year for which emission allowances
24 were undistributed by the amount of undistributed
25 emission allowances.

1 **“SEC. 782. ALLOCATION OF EMISSION ALLOWANCES.**

2 “(a) ELECTRICITY CONSUMERS.—The Administrator
3 shall allocate emission allowances for the benefit of elec-
4 tricity consumers, to be distributed in accordance with sec-
5 tion 783 in the following amounts:

6 “(1) For vintage years 2012 and 2013, 43.75
7 percent of the emission allowances established for
8 each year under section 721(a).

9 “(2) For vintage years 2014 and 2015, 38.89
10 percent of the emission allowances established for
11 each year under section 721(a).

12 “(3) For vintage years 2016 through 2025,
13 35.00 percent of the emission allowances established
14 for each year under section 721(a).

15 “(4) For vintage year 2026, 28 percent of the
16 emission allowances established for each year under
17 section 721(a).

18 “(5) For vintage year 2027, 21 percent of the
19 emission allowances established for each year under
20 section 721(a).

21 “(6) For vintage year 2028, 14 percent of the
22 emission allowances established for each year under
23 section 721(a).

24 “(7) For vintage year 2029, 7 percent of the
25 emission allowances established for each year under
26 section 721(a).

1 “(b) NATURAL GAS CONSUMERS.—The Adminis-
2 trator shall allocate emission allowances for the benefit of
3 natural gas consumers to be distributed in accordance
4 with section 784 in the following amounts:

5 “(1) For vintage years 2016 through 2025, 9
6 percent of the emission allowances established for
7 each year under section 721(a).

8 “(2) For vintage year 2026, 7.2 percent of the
9 emission allowances established for each year under
10 section 721(a).

11 “(3) For vintage year 2027, 5.4 percent of the
12 emission allowances established for each year under
13 section 721(a).

14 “(4) For vintage year 2028, 3.6 percent of the
15 emission allowances established for each year under
16 section 721(a).

17 “(5) For vintage year 2029, 1.8 percent of the
18 emission allowances established for each year under
19 section 721(a).

20 “(c) HOME HEATING OIL AND PROPANE CON-
21 SUMERS.—The Administrator shall allocate emission al-
22 lowances for the benefit of home heating oil and propane
23 consumers to be distributed in accordance with section
24 785 in the following amounts:

1 “(1) For vintage years 2012 and 2013, 1.875
2 percent of the emission allowances established for
3 each year under section 721(a).

4 “(2) For vintage years 2014 and 2015, 1.67
5 percent of the emission allowances established for
6 each year under section 721(a).

7 “(3) For vintage years 2016 through 2025, 1.5
8 percent of the emission allowances established for
9 each year under section 721(a).

10 “(4) For vintage year 2026, 1.2 percent of the
11 emission allowances established for each year under
12 section 721(a).

13 “(5) For vintage year 2027, 0.9 percent of the
14 emission allowances established for each year under
15 section 721(a).

16 “(6) For vintage year 2028, 0.6 percent of the
17 emission allowances established for each year under
18 section 721(a).

19 “(7) For vintage year 2029, 0.3 percent of the
20 emission allowances established for each year under
21 section 721(a).

22 “(d) LOW INCOME CONSUMERS.—For each vintage
23 year starting in 2012, the Administrator shall auction pur-
24 suant to section 791 15 percent of the emission allowances
25 established for each year under section 721(a), with the

1 proceeds used for the benefit of low income consumers to
2 fund the program set forth in subtitle C of title IV of
3 American Clean Energy and Security Act of 2009.

4 “(e) TRADE-VULNERABLE INDUSTRIES.—The Ad-
5 ministrator shall allocate emission allowances to energy-
6 intensive, trade-exposed entities, to be distributed in ac-
7 cordance with section 765, in the following amounts:

8 “(1) For vintage years 2012 and 2013, up to
9 2.0 percent of the emission allowances established
10 for each year under section 721(a).

11 “(2) For vintage year 2014, up to 15 percent
12 of the emission allowances established for that year
13 under section 721(a).

14 “(3) For vintage years 2015 through 2025, the
15 maximum number of allowances that shall be dis-
16 tributed shall decline by the same amount that the
17 annual reduction target set forth in section 703 de-
18 clines, as calculated by multiplying the maximum
19 number of allowances which can be allocated under
20 (2) by the ratio between—

21 “(A) the percentage reduction from 2005
22 levels required for covered emissions in that
23 year; and

24 “(B) The percentage reduction from 2005
25 levels required for covered emissions in 2014.

1 “(4) For vintage years 2026 through 2050, the
2 maximum number of allowances that shall be dis-
3 tributed shall decline by the same amount that the
4 annual reduction target set forth in section 703 de-
5 clines, as calculated by multiplying the maximum
6 number of allowances which can be allocated under
7 (2) by—

8 “(A) a factor, which shall be 90 percent in
9 2026 and decline 10 percentage points a year
10 until it reaches zero, or the highest factor set
11 by the President under section 767(c)(3)(A),
12 that shall not exceed 100 percent; and

13 “(B) the ratio between the percentage re-
14 duction from 2005 levels required for covered
15 emissions in that year; and

16 “(C) The percentage reduction from 2005
17 levels required for covered emissions in 2014.

18 “(f) DEPLOYMENT OF CARBON CAPTURE AND SE-
19 QUESTRATION TECHNOLOGY.—

20 “(1) ANNUAL ALLOCATION.—The Adminis-
21 trator shall allocate emission allowances for the de-
22 ployment of carbon capture and sequestration tech-
23 nology to be distributed in accordance with section
24 786 in the following amounts:

1 “(A) For vintage years 2014 through
2 2017, 2 percent of the emission allowances es-
3 tablished for each year under section 721(a).

4 “(B) For vintage years 2018 through
5 2050, 5 percent of the emission allowances es-
6 tablished for each year under section 721(a).

7 “(2) CARRYOVER.—If the Administrator has
8 not distributed all of the allowances allocated pursu-
9 ant to this subsection for a given vintage year by the
10 end of that year, the Administrator shall—

11 “(A) auction those emission allowances
12 under section 791 not later than March 31 of
13 the year following that vintage year; and

14 “(B) increase the allocation under this
15 subsection for the vintage year after the vintage
16 year for which emission allowances were
17 undisbursed by the amount of undisbursed
18 emission allowances, but only to the extent that
19 allowances for that later year are to be auc-
20 tioned.

21 “(g) INVESTMENT IN ENERGY EFFICIENCY AND RE-
22 NEWABLE ENERGY.—The Administrator shall allocate
23 emission allowances to invest in energy efficiency and re-
24 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 the vintage year
20 2022 through 2025 allowances are distributed,
21 3.55 percent of emission allowances established
22 under section 721(a) for the vintage year four
23 years greater shall also be distributed (which
24 shall be in addition to the emission allowances
25 in subparagraph (E)).

1 “(2) To be distributed in accordance with sec-
2 tion 201 of the American Clean Energy and Security
3 Act of 2009, for each vintage year from 2012
4 through 2050, 0.5 percent of emission allowances es-
5 tablished under section 721(a).

6 “(h) CLEAN ENERGY INNOVATION CENTERS.—For
7 each vintage year from 2012 through 2050, the Adminis-
8 trator shall allocate for Clean Energy Innovation Centers,
9 1.5 percent of emission allowances established under sec-
10 tion 721(a), to be distributed in accordance with section
11 171 of the American Clean Energy and Security Act of
12 2009.

13 “(i) INVESTMENT IN CLEAN VEHICLE TECH-
14 NOLOGY.—The Administrator shall allocate emission al-
15 lowances to invest in the development and deployment of
16 clean vehicles, to be distributed in accordance with section
17 124 of the American Clean Energy and Security Act of
18 2009 in the following amounts:

19 “(1) For vintage years 2012 through 2017, 3
20 percent of the emission allowances established for
21 each year under section 721(a).

22 “(2) For vintage years 2018 through 2025, 1
23 percent of the emission allowances established for
24 each year under section 721(a).

1 “(j) DOMESTIC FUEL PRODUCTION.—For vintage
2 years 2014 through 2026, the Administrator shall allocate
3 2.0 percent of the emission allowances established under
4 section 721(a) to domestic refiners, to be distributed in
5 accordance with section 787.

6 “(k) INVESTMENT IN WORKERS.—The Administrator
7 shall auction pursuant to section 791 emission allowances
8 for workers in the following amounts and shall report to
9 the Secretary of Labor the amount of proceeds from the
10 sale of these allowances:

11 “(1) For vintage years 2012 through 2021, 0.5
12 percent of the emission allowances established for
13 each year under section 721(a).

14 “(2) For vintage years 2022 through 2050, 1.0
15 percent of the emission allowances established for
16 each year under section 721(a).

17 “(l) DOMESTIC ADAPTATION.—The Administrator
18 shall allocate emission allowances for domestic adaptation
19 as follows:

20 “(1) To be distributed in accordance with sec-
21 tion 453 of the American Clean Energy and Security
22 Act in the following amounts:

23 “(A) For vintage years 2012 through
24 2021, 0.9 percent of the emission allowances es-
25 tablished for each year under section 721(a).

1 “(B) For vintage years 2022 through
2 2026, 1.9 percent of the emission allowances es-
3 tablished for each year under section 721(a).

4 “(C) For vintage years 2027 through
5 2050, 3.9 percent of the emission allowances es-
6 tablished for each year under section 721(a).

7 “(2) For vintage year 2012 and thereafter, the
8 Administrator shall auction, pursuant to section
9 791, 0.1 percent of the emission allowances estab-
10 lished for each year under section 721(a), and shall
11 deposit the proceeds in the Climate Change Health
12 Protection and Promotion Fund established by sec-
13 tion 467 of the American Clean Energy and Security
14 Act.

15 “(m) WILDLIFE AND NATURAL RESOURCE ADAPTA-
16 TION.—The Administrator shall auction pursuant to sec-
17 tion 791 emission allowances for domestic wildlife and nat-
18 ural resource adaptation in the amounts listed in para-
19 graphs (1) through (3) and shall deposit the proceeds from
20 the sale of these allowances in the Natural Resources Cli-
21 mate Change Adaptation Fund established pursuant to
22 section 480(a) of the American Clean Energy and Security
23 Act.

1 “(1) For vintage years 2012 through 2021, 1.0
2 percent of the emission allowances established for
3 each year under section 721(a).

4 “(2) For vintage years 2022 through 2026, 2.0
5 percent of the emission allowances established for
6 each year under section 721(a).

7 “(3) For vintage years 2027 through 2050, 4.0
8 percent of the emission allowances established for
9 each year under section 721(a).

10 “(n) INTERNATIONAL ADAPTATION.—The Adminis-
11 trator shall allocate emission allowances for international
12 adaptation to be distributed in accordance with part 2 of
13 subtitle E of title IV of the American Clean Energy and
14 Security Act in the following amounts:

15 “(1) For vintage years 2012 through 2021, 1.0
16 percent of the emission allowances established for
17 each year under section 721(a).

18 “(2) For vintage years 2022 through 2026, 2.0
19 percent of the emission allowances established for
20 each year under section 721(a).

21 “(3) For vintage years 2027 through 2050, 4.0
22 percent of the emission allowances established for
23 each year under section 721(a).

24 “(o) INTERNATIONAL CLEAN TECHNOLOGY DEPLOY-
25 MENT.—The Administrator shall allocate emission allow-

1 ances for international clean technology deployment for
2 distribution in accordance with subtitle D of title IV of
3 the American Clean Energy and Security Act in the fol-
4 lowing amounts:

5 “(1) For vintage years 2012 through 2021, 1.0
6 percent of the emission allowances established for
7 each year under section 721(a).

8 “(2) For vintage years 2022 through 2026, 2.0
9 percent of the emission allowances established for
10 each year under section 721(a).

11 “(3) For vintage years 2027 through 2050, 4.0
12 percent of the emission allowances established for
13 each year under section 721(a).

14 “(p) RELEASE OF FUTURE ALLOWANCES.—The Ad-
15 ministrators shall make future year allowances available by
16 auctioning allowances, pursuant to section 791, in the fol-
17 lowing amounts:

18 “(1) In each of calendar years 2014 through
19 2019, a string of 0.65 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 “(2) In each of calendar years 2020 through
24 2025, a string of 0.55 billion allowances with vintage
25 years 12 to 17 years after the year of the auction,

1 with an equal number of allowances from each vin-
2 tage year in the string.

3 “(3) In each of calendar years 2026 through
4 2030, a string of 0.3 billion allowances with vintage
5 years 12 to 17 years after the year of the auction,
6 with an equal number of allowances from each vin-
7 tage year in the string.

8 “(q) DEFICIT REDUCTION.—

9 “(1) For each of vintage years 2012 through
10 2025, any allowances not designated for distribution
11 or auction pursuant to section 781, subsections (a)
12 through (o) of this section, or section 790 shall be
13 auctioned by the Administrator pursuant to section
14 791 and the proceeds shall be deposited into the
15 Treasury.

16 “(2) Unless otherwise specified, any allowances
17 allocated pursuant to subsections (a) through (o)
18 and not distributed by March 31 of the calendar
19 year following the allowance’s vintage year, shall be
20 auctioned by the Administrator and the proceeds
21 shall be deposited into the Treasury.

22 “(3) For auctions conducted through calendar
23 year 2020 pursuant to subsection (p), the auction
24 proceeds shall be deposited into the Treasury.

25 “(r) CLIMATE CHANGE CONSUMER REFUND.—

1 “(1) For each of vintage years 2026 through
2 2050, the Administrator shall auction the following
3 allowances established under section 721(a) and de-
4 posit the proceeds into the Climate Change Con-
5 sumer Refund Account:

6 “(A) Any allowances not designated for
7 distribution or auction pursuant to section 781,
8 subsections (a) through (p) of this section, or
9 section 790.

10 “(B) Unless otherwise specified, any allow-
11 ances allocated pursuant to subsections (a)
12 through (o) and not distributed by March 31 of
13 the calendar year following the allowance’s vin-
14 tage year.

15 “(2) For auctions conducted pursuant to sub-
16 section (p) in calendar years 2021 and thereafter,
17 the Administrator shall place the proceeds from the
18 sales of the these allowances into the Climate
19 Change Consumer Refund Account. Funds deposited
20 into the Climate Change Consumer Refund Account
21 shall be used as specified in section 789 and shall
22 be available for expenditure, without further appro-
23 priation or fiscal year limitation.

24 **“SEC. 783. ELECTRICITY CONSUMERS.**

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

1 “(1) ELECTRICITY LOCAL DISTRIBUTION COM-
2 PANY.—The term ‘electricity local distribution com-
3 pany’ means an electric utility—

4 “(A) that has a legal, regulatory, or con-
5 tractual obligation to deliver electricity directly
6 to retail consumers in the United States, re-
7 gardless of whether that entity or another enti-
8 ty sells the electricity as a commodity to those
9 retail consumers; and

10 “(B) the retail rates of which, except in
11 the case of a registered electric cooperative, are
12 regulated by a State regulatory authority, regu-
13 latory commission, municipality, public utility,
14 or by an Indian tribe pursuant to tribal law.

15 “(2) LONG-TERM CONTRACT GENERATOR.—The
16 term ‘long-term contract generator’ means a quali-
17 fying small power production facility or a qualifying
18 cogeneration facility (within the meaning of section
19 3(17)(C) or 3(18)(B) of the Federal Power Act), or
20 a new independent power production facility (within
21 the meaning of section 416(a)(2) of this Act, except
22 that subparagraph (C) of such definition shall not
23 apply for purposes of this paragraph), that is—

24 “(A) a covered entity;

1 “(B) as of the commencement of operation,
2 a facility consisting of one or more utility units
3 with total installed net output capacity (in
4 MWe) of no more than 130 percent of the fa-
5 cility’s total planned net output capacity (in
6 MWe);

7 “(C) as of the date of enactment of this
8 title, a facility with a power sales agreement ex-
9 ecuted before January 1, 2007, that governs
10 the facility’s electricity sales and provides for
11 sales at a price (whether a fixed price or a price
12 formula) for electricity that does not allow for
13 recovery of the costs of compliance with the lim-
14 itation on greenhouse gas emissions under this
15 title; and

16 “(B) not a merchant coal generator.

17 “(3) MERCHANT COAL GENERATOR.—The term
18 ‘merchant coal generator’ means an electric genera-
19 tion facility that—

20 “(A) is a covered entity;

21 “(B) derives at least 85 percent of its heat
22 input from coal, petroleum coke, or any com-
23 bination of these 2 fuels;

24 “(C) is not owned by a Federal, State, or
25 regional agency or power authority; and

1 “(D) generates electricity for sale to oth-
2 ers, provided that such sales are not subject
3 to—

4 “(i) retail rate regulation by a State
5 public utility commission; or

6 “(ii) self-regulation of rates by a local
7 government, State agency, or electric coop-
8 erative

9 “(4) STATE REGULATORY AUTHORITY.—The
10 term ‘State regulatory authority’ has the meaning
11 given that term in section 3(17) of the Public Utility
12 Regulatory Policies Act of 1978 (16 U.S.C.
13 2602(17)).

14 “(b) ELECTRICITY LOCAL DISTRIBUTION COMPA-
15 NIES.—

16 “(1) ALLOCATION.—Not later than June 30 of
17 2011 and each calendar year thereafter through
18 2028, the Administrator shall distribute to electricity
19 local distribution companies the quantity of emission
20 allowances allocated for the electricity sector for the
21 following vintage year pursuant to section 782(a),
22 provided that the Administrator shall first subtract
23 from such quantity and distribute or reserve for dis-
24 tribution the quantity of emission allowances for the

1 relevant vintage year that are required for distribu-
2 tion under subsections (c) and (d) of this section.

3 “(2) DISTRIBUTION OF ALLOWANCES BASED ON
4 EMISSIONS.—

5 “(A) IN GENERAL.—For each vintage year,
6 50 percent of the emission allowances available
7 for distribution under paragraph (1) shall be
8 distributed by the Administrator among indi-
9 vidual electricity local distribution companies
10 ratably based on the annual average carbon di-
11 oxide emissions attributable to generation of
12 electricity delivered at retail by each such com-
13 pany during the base period determined under
14 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) any 3 consecutive calendar
9 years between 2009 through 2012, in-
10 clusive, or, for local distribution com-
11 panies with new units that are not
12 fully operational before 2012, solely
13 calendar year 2012, provided that
14 such company selects a period from
15 among these options and timely in-
16 forms the Administrator of such selec-
17 tion.

18 “(C) DETERMINATION OF EMISSIONS.—As
19 part of the regulations promulgated pursuant to
20 subsection (e), the Administrator, after con-
21 sultation with the Energy Information Adminis-
22 tration, shall determine the average amount of
23 carbon dioxide emissions attributable to genera-
24 tion of electricity delivered at retail by each
25 electricity local distribution company for each of

1 the years 1999 through 2009 or the most re-
2 cent calendar year for which appropriate data
3 are available, taking into account entities' elec-
4 tricity generation, electricity purchases, and
5 electricity sales. Not later than March 31,
6 2013, the Administrator, after consultation
7 with the Energy Information Administration,
8 shall update such determination to include
9 emissions for any additional calendar years
10 through 2012. Such determinations shall be as
11 precise as practicable, taking into account the
12 nature of data currently available and the na-
13 ture of markets and regulation in effect in var-
14 ious regions of the country. The following re-
15 quirements shall apply to such determinations:

16 “(i) The Administrator shall deter-
17 mine the amount of fossil fuel-based elec-
18 tricity delivered at retail by each electricity
19 local distribution company, and shall use
20 appropriate emission factors to calculate
21 carbon dioxide emissions associated with
22 the generation of such electricity.

23 “(ii) Where it is not practical to de-
24 termine the precise fuel mix for the elec-
25 tricity delivered at retail by an individual

1 electricity local distribution company, the
2 Administrator may use the best available
3 data, including average data on a regional
4 basis with reference to Regional Trans-
5 mission Organizations or regional entities
6 (as that term is defined in section
7 215(a)(7) of the Federal Power Act (16
8 U.S.C. 824o(a)(7)), to estimate fuel mix
9 and emissions. Different methodologies
10 may be applied in different regions if ap-
11 propriate to obtain the most accurate esti-
12 mate.

13 “(3) DISTRIBUTION OF ALLOWANCES BASED ON
14 DELIVERIES.—

15 “(A) INITIAL ALLOCATION FORMULA.—Ex-
16 cept as provided in subparagraph (B), for each
17 vintage year, the Administrator shall distribute
18 50 percent of the emission allowances allocated
19 under paragraph (1) of this subsection among
20 individual electricity local distribution compa-
21 nies ratably based on each electricity local dis-
22 tribution company’s annual average retail elec-
23 tricity deliveries for 2006 through 2008, unless
24 the owner or operator of the company selects 3
25 other consecutive years between 1999 and

1 2008, inclusive, and timely notifies the Admin-
2 istrator of its selection.

3 “(B) UPDATING.—Prior to distributing
4 2015 vintage emission allowances under this
5 subparagraph and at 3-year intervals there-
6 after, the Administrator shall update the dis-
7 tribution formula under this subparagraph to
8 reflect changes in each electricity local distribu-
9 tion company’s service territory since the most
10 recent formula was established. For each suc-
11 cessive 3-year period, the Administrator shall
12 distribute allowances ratably among individual
13 electricity local distribution companies based on
14 the product of—

15 “(i) each electricity local distribution
16 company’s average annual deliveries per
17 customer during calendar years 2006
18 through 2008, or during the 3 alternative
19 consecutive years selected by such company
20 under subparagraph (A); and

21 “(ii) the number of customers of such
22 electricity local distribution company in the
23 most recent year in which the formula is
24 updated under this clause.

25 “(4) USE OF ALLOWANCES.—

1 “(A) RATEPAYER BENEFIT.—Emission al-
2 lowances distributed to an electricity local dis-
3 tribution company under this subsection shall
4 be used exclusively for the benefit of retail rate-
5 payers of such electricity local distribution com-
6 pany and may not be used to support electricity
7 sales or deliveries to entities or persons other
8 than such ratepayers.

9 “(B) RATEPAYER CLASSES.—In using
10 emission allowances distributed under this sec-
11 tion for the benefit of ratepayers, an electricity
12 local distribution company shall ensure that
13 ratepayer benefits are distributed—

14 “(i) among ratepayer classes ratably
15 based on electricity deliveries to each class;
16 and

17 “(ii) equitably among individual rate-
18 payers within each ratepayer class, includ-
19 ing entities that receive emission allow-
20 ances pursuant to part F.

21 “(C) LIMITATION.—An electricity local dis-
22 tribution company shall not use the value of
23 emission allowances distributed under this sub-
24 section to provide to any ratepayer a rebate
25 that is based solely on the quantity of electricity

1 delivered to such ratepayer. To the extent an
2 electricity local distribution company uses the
3 value of emission allowances distributed under
4 this subsection to provide rebates, it shall, to
5 the maximum extent practicable, provide such
6 rebates with regard to the fixed portion of rate-
7 payers' bills or as a fixed credit or rebate on
8 electricity bills.

9 “(D) GUIDELINES.—As part of the regula-
10 tions promulgated under subsection (e), the Ad-
11 ministrator shall prescribe specific guidelines
12 for the implementation of the requirements of
13 this paragraph.

14 “(5) REGULATORY PROCEEDINGS.—

15 “(A) REQUIREMENT.—No electricity local
16 distribution company shall be eligible to receive
17 emission allowances under this subsection un-
18 less the State regulatory authority with author-
19 ity over such company, or the entity with au-
20 thority to regulate retail electricity rates of an
21 electricity local distribution company not regu-
22 lated by a State regulatory authority, has—

23 “(i) promulgated a regulation or com-
24 pleted a rate proceeding (or the equivalent,
25 in the case of a ratemaking entity other

1 than a State regulatory authority) that
2 provides for the full implementation of the
3 requirements of paragraph (4) of this sub-
4 section; and

5 “(ii) made available to the Adminis-
6 trator and the public a report describing,
7 in adequate detail, the manner in which
8 the requirements of paragraph (4) will be
9 implemented.

10 “(B) UPDATING.—The Administrator shall
11 require, as a condition of continued receipt of
12 emission allowances under this subsection by an
13 electricity local distribution company, that a
14 new regulation be promulgated or rate pro-
15 ceeding be completed, and a new report be
16 made available to the Administrator and the
17 public, pursuant to subparagraph (A), not less
18 frequently than every 5 years.

19 “(6) PLANS AND REPORTING.—

20 “(A) REGULATIONS.—As part of the regu-
21 lations promulgated under subsection (e), the
22 Administrator shall prescribe requirements gov-
23 erning plans and reports to be submitted in ac-
24 cordance with this paragraph.

1 “(B) PLANS.—Not later than April 30 of
2 2011 and every 5 years thereafter through
3 2026, each electricity local distribution com-
4 pany shall submit to the Administrator a plan,
5 approved by the State regulatory authority or
6 other entity charged with regulating the retail
7 rates of such company, describing such com-
8 pany’s plans for the disposition of the value of
9 emission allowances to be received pursuant to
10 this subsection, in accordance with the require-
11 ments of this subsection.

12 “(C) REPORTS.—Not later than June 30
13 of 2013 and each calendar year thereafter
14 through 2031, each electricity local distribution
15 company shall submit a report to the Adminis-
16 trator, and to the relevant State regulatory au-
17 thority or other entity charged with regulating
18 the retail electricity rates of such company, de-
19 scribing the disposition of the value of any
20 emission allowances received by such company
21 in the prior calendar year pursuant to this sub-
22 section, including—

23 “(i) a description of sales, transfer,
24 exchange, or use by the company for com-

1 compliance with obligations under this title, of
2 any such emission allowances;

3 “(ii) the monetary value received by
4 the company, whether in money or in some
5 other form, from the sale, transfer, or ex-
6 change of emission allowances received by
7 the company under this subsection;

8 “(iii) the manner in which the com-
9 pany’s disposition of emission allowances
10 received under this subsection complies
11 with the requirements of this subsection,
12 including each of the requirements of para-
13 graph (4); and

14 “(iv) such other information as the
15 Administrator may require pursuant to
16 subparagraph (A).

17 “(D) PUBLICATION.—The Administrator
18 shall make available to the public all plans and
19 reports submitted under this subsection, includ-
20 ing by publishing such plans and reports on the
21 Internet.

22 “(7) AUDITS.—Each year, the Administrator
23 shall audit a representative sample of electricity local
24 distribution companies to ensure compliance with the
25 requirements of this subsection. In selecting compa-

1 nies for audit, the Administrator shall take into ac-
2 count any credible evidence of noncompliance with
3 such requirements. The Administrator shall make
4 available to the public a report describing the results
5 of each such audit, including by publishing such re-
6 port on the Internet.

7 “(8) ENFORCEMENT.—A violation of any re-
8 quirement of this subsection shall be a violation of
9 this Act. Each emission allowance the value of which
10 is used in violation of the requirements of this sub-
11 section shall be a separate violation.

12 “(c) MERCHANT COAL GENERATORS.—

13 “(1) QUALIFYING EMISSIONS.—The qualifying
14 emissions for a merchant coal generator for a given
15 calendar year shall be the product of the number of
16 megawatt hours of electricity generated by such gen-
17 erator in such calendar year and the average carbon
18 dioxide emissions per megawatt hour generated by
19 such generator during calendar years 2006 through
20 2008, provided that the number of megawatt hours
21 in a given calendar year for purposes of such cal-
22 culation shall be reduced in proportion to the portion
23 of such generator’s carbon dioxide emissions that are
24 either—

1 “(A) captured and sequestered in such cal-
2 endar year; or

3 “(B) attributable to the combustion or gas-
4 ification of renewable biomass, such that the
5 generator is not required to hold emission al-
6 lowances for such emissions.

7 “(2) PHASE-DOWN SCHEDULE.—The Adminis-
8 trator shall identify an annual phase-down factor,
9 applicable to distributions to merchant coal genera-
10 tors for each of vintage years 2012 through 2029,
11 that corresponds to the overall decline in the amount
12 of emission allowances to be allocated to the elec-
13 tricity sector in such years pursuant to section
14 782(a). Such factor shall—

15 “(A) for vintage year 2012, be equal to
16 1.0;

17 “(B) for each of vintage years 2013
18 through 2029, correspond to the quotient of—

19 “(i) the quantity of emission allow-
20 ances allocated to the electricity sector
21 under section 782(a) for such vintage year;
22 divided by

23 “(ii) the quantity of emission allow-
24 ances allocated to the electricity sector

1 under section 782(a) for vintage year
2 2012.

3 “(3) DISTRIBUTION OF EMISSION ALLOW-
4 ANCES.—Not later than March 1 of 2013 and each
5 calendar year through 2030, the Administrator shall
6 distribute emission allowances of the preceding vin-
7 tage year to the owner or operator of each merchant
8 coal generator equal to the product of—

9 “(A) 0.5;

10 “(B) the qualifying emissions for such
11 merchant coal generator for the preceding year,
12 as determined under paragraph (1); and

13 “(C) the phase-down factor for the pre-
14 ceding calendar year, as identified under para-
15 graph (2).

16 “(4) ADJUSTMENT.—

17 “(A) STUDY.—Not later than July 1,
18 2014, the Administrator, in consultation with
19 the Federal Energy Regulatory Commission,
20 shall complete a study to determine whether the
21 allocation formula under paragraph (3) is re-
22 sulting in, or is likely to result in, windfall prof-
23 its to merchant coal generators or substantially
24 disparate treatment of merchant coal genera-
25 tors operating in different markets or regions.

1 “(B) REGULATION.—If the Administrator,
2 in consultation with the Federal Energy Regu-
3 latory Commission, makes an affirmative find-
4 ing of windfall profits or disparate treatment
5 under subparagraph (A), the Administrator
6 shall, not later than 18 months after the com-
7 pletion of the study described in subparagraph
8 (A), promulgate regulations providing for the
9 adjustment of the allocation formula under
10 paragraph (3) to mitigate, to the extent prac-
11 ticable, such windfall profits, if any, and such
12 disparate treatment, if any.

13 “(5) LIMITATION ON ALLOWANCES.—Notwith-
14 standing paragraph (3) or (4), for any vintage year
15 the Administrator shall distribute under this sub-
16 section no more than 10 percent of the total quan-
17 tity of emission allowances available for such vintage
18 year for distribution to the electricity sector under
19 section 782(a). If the quantity of emission allow-
20 ances that would otherwise be distributed pursuant
21 to paragraph (3) or (4) for any vintage year would
22 exceed such limit, the Administrator shall distribute
23 10 percent of the total emission allowances available
24 for distribution under section 782(a) for such vin-
25 tage year ratably among merchant coal generators

1 based on the applicable formula under paragraph (3)
2 or (4).

3 “(d) GENERATORS WITH LONG-TERM POWER PUR-
4 CHASE AGREEMENTS.—

5 “(1) RESERVED ALLOWANCES.—Notwith-
6 standing subsections (b) and (c) of this section, the
7 Administrator shall withhold from distribution to
8 electricity local distribution companies a number of
9 emission allowances equal to 105 percent of the
10 emission allowances the Administrator anticipates
11 will be distributed to long-term contract generators
12 under this subsection. If not required to distribute
13 all of these reserved allowances under this sub-
14 section, the Administrator shall distribute any re-
15 maining emission allowances to the electricity local
16 distribution companies in accordance with subsection
17 (b).

18 “(2) DISTRIBUTION.—Not later than March 1
19 of 2013 and each calendar year through 2030, the
20 Administrator shall distribute to the owner or oper-
21 ator of each long-term contract generator the num-
22 ber of emission allowances of the preceding vintage
23 year that are equal to the number of tons of carbon
24 dioxide emitted as a result of a qualifying long-term

1 power purchase agreement referred to in subsection
2 (a)(2)(C).

3 “(3) DURATION.—A long-term contract gener-
4 ator shall cease to be eligible to receive allocations
5 under this subsection upon the earliest of the fol-
6 lowing dates:

7 “(A) The date when the facility no longer
8 qualifies as a qualifying small power production
9 facility or a qualifying cogeneration facility
10 (within the meaning of section 3(17)(C) or
11 3(18)(B) of the Federal Power Act), or a new
12 independent power production facility (within
13 the meaning of section 416(a)(2) of this Act,
14 except that subparagraph (C) of such definition
15 shall not apply for purposes of this clause).

16 “(B) The date when the facility no longer
17 meets the total installed net output capacity cri-
18 terion required to be met as of the commence-
19 ment of operation in subsection (a)(2)(B).

20 “(C) The date when the power purchase
21 agreement referred to in subsection (a)(2)(C)—

22 “(i) expires;

23 “(ii) is terminated; or

24 “(iii) is amended in any way that
25 changes the location of the facility, the

1 price (whether a fixed price or price for-
2 mula) for electricity sold under such agree-
3 ment, the quantity of electricity sold under
4 the agreement, or the expiration or termi-
5 nation date of the agreement.

6 “(4) ELIGIBILITY.—To be eligible to receive al-
7 lowance distributions under this subsection, the
8 owner or operator of a long-term contract generator
9 shall submit each of the following in writing to the
10 Administrator within 180 days after the date of en-
11 actment of this title, and not later than September
12 30 of each vintage year for which such generator
13 wishes to receive emission allowances:

14 “(A) A certificate of representation de-
15 scribed in section 700(15).

16 “(B) An identification of each owner and
17 each operator of the facility.

18 “(C) An identification of the units at the
19 facility and the location of the facility.

20 “(D) A written certification by the des-
21 ignated representative that the facility meets all
22 the requirements of the definition of a long-
23 term contract generator.

1 “(E) The expiration date of the power pur-
2 chase agreement referred to in subsection
3 (a)(2)(C).

4 “(F) A copy of the power purchase agree-
5 ment referred to in subsection (a)(2)(C).

6 “(5) NOTIFICATION.—Not later than 30 days
7 after a facility loses, in accordance with paragraph
8 (3), its eligibility for emission allowances distributed
9 pursuant to this subsection, the designated rep-
10 resentative of such facility shall notify the Adminis-
11 trator in writing when, and on what basis, the facil-
12 ity lost its eligibility to receive emission allowances.

13 “(e) REGULATIONS.—Not later than 2 years after the
14 date of enactment of this title, the Administrator, in con-
15 sultation with the Federal Energy Regulatory Commis-
16 sion, shall promulgate regulations to implement the re-
17 quirements of this section.

18 **“SEC. 784. NATURAL GAS CONSUMERS.**

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

20 “(1) NATURAL GAS LOCAL DISTRIBUTION COM-
21 PANY.—The term ‘natural gas local distribution
22 company’ means a natural gas local distribution
23 company that is a covered entity.

24 “(2) COST-EFFECTIVE.—The term ‘cost-effec-
25 tive’, with respect to an energy efficiency program,

1 means that the program meets the Total Resource
2 Cost Test, which requires that the net present value
3 of economic benefits over the life of the program, in-
4 cluding avoided supply and delivery costs and de-
5 ferred or avoided investments, is greater than the
6 net present value of the economic costs over the life
7 of the program, including program costs and incre-
8 mental costs borne by the energy consumer.

9 “(b) ALLOCATION.—Not later than June 30 of 2015
10 and each calendar year thereafter through 2028, the Ad-
11 ministrator shall distribute to natural gas local distribu-
12 tion companies the quantity of emission allowances allo-
13 cated for the following vintage year pursuant to section
14 782(b). Such allowances shall be distributed among local
15 natural gas distribution companies based on the following
16 formula:

17 “(1) INITIAL FORMULA.—Except as provided in
18 paragraph (2), for each vintage year, the Adminis-
19 trator shall distribute emission allowances among
20 natural gas local distribution companies ratably
21 based on each such company’s annual average retail
22 natural gas deliveries for 2006 through 2008, unless
23 the owner or operator of the company selects 3 other
24 consecutive years between 1999 and 2008, inclusive,
25 and timely notifies the Administrator of its selection.

1 “(2) UPDATING.—Prior to distributing 2019
2 vintage emission allowances and at 3-year intervals
3 thereafter, the Administrator shall update the dis-
4 tribution formula under this subsection to reflect
5 changes in each natural gas local distribution com-
6 pany’s service territory since the most recent for-
7 mula was established. For each successive 3-year pe-
8 riod, the Administrator shall distribute allowances
9 ratably among natural gas local distribution compa-
10 nies based on the product of—

11 “(A) each natural gas local distribution
12 company’s average annual natural gas deliveries
13 per customer during calendar years 2006
14 through 2008, or during the 3 alternative con-
15 secutive years selected by such company under
16 paragraph (1); and

17 “(B) the number of customers of such nat-
18 ural gas local distribution company in the most
19 recent year in which the formula is updated
20 under this paragraph.

21 “(c) USE OF ALLOWANCES.—

22 “(1) RATEPAYER BENEFIT.—Emission allow-
23 ances distributed to a natural gas local distribution
24 company under this section shall be used exclusively
25 for the benefit of retail ratepayers of such natural

1 gas local distribution company and may not be used
2 to support natural gas sales or deliveries to entities
3 or persons other than such ratepayers.

4 “(2) RATEPAYER CLASSES.—In using emission
5 allowances distributed under this section for the ben-
6 efit of ratepayers, a natural gas local distribution
7 company shall ensure that ratepayer benefits are
8 distributed—

9 “(A) among ratepayer classes ratably
10 based on natural gas deliveries to each class;
11 and

12 “(B) equitably among individual ratepayers
13 within each ratepayer class.

14 “(3) LIMITATION.—A natural gas local dis-
15 tribution company shall not use the value of emis-
16 sion allowances distributed under this section to pro-
17 vide to any ratepayer a rebate that is based solely
18 on the quantity of natural gas delivered to such
19 ratepayer. To the extent a natural gas local distribu-
20 tion company uses the value of emission allowances
21 distributed under this section to provide rebates, it
22 shall, to the maximum extent practicable, provide
23 such rebates with regard to the fixed portion of rate-
24 payers’ bills or as a fixed creditor rebate on natural
25 gas bills.

1 “(4) ENERGY EFFICIENCY PROGRAMS.—The
2 value of no less than one third of the emission allow-
3 ances distributed to natural gas local distribution
4 companies pursuant to this section in any calendar
5 year shall be used for cost-effective energy efficiency
6 programs for natural gas consumers. Such programs
7 must be authorized and overseen by the State regu-
8 latory authority, or by the entity with regulatory au-
9 thority over retail natural gas rates in the case of
10 a natural gas local distribution company that is not
11 regulated by a State regulatory authority.

12 “(5) GUIDELINES.—As part of the regulations
13 promulgated under subsection (h), the Administrator
14 shall prescribe specific guidelines for the implemen-
15 tation of the requirements of this subsection.

16 “(d) REGULATORY PROCEEDINGS.—

17 “(1) REQUIREMENT.—No natural gas local dis-
18 tribution company shall be eligible to receive emis-
19 sion allowances under this section unless the State
20 regulatory authority with authority over such com-
21 pany, or the entity with authority to regulate retail
22 rates of a natural gas local distribution company not
23 regulated by a State regulatory authority, has—

24 “(A) promulgated a regulation or com-
25 pleted a rate proceeding (or the equivalent, in

1 the case of a ratemaking entity other than a
2 State regulatory authority) that provides for
3 the full implementation of the requirements of
4 subsection (c); and

5 “(B) made available to the Administrator
6 and the public a report describing, in adequate
7 detail, the manner in which the requirements of
8 subsection (c) will be implemented.

9 “(2) UPDATING.—The Administrator shall re-
10 quire, as a condition of continued receipt of emission
11 allowances under this section, that a new regulation
12 be promulgated or rate proceeding be completed, and
13 a new report be made available to the Administrator
14 and the public, pursuant to paragraph (1), not less
15 frequently than every 5 years.

16 “(e) PLANS AND REPORTING.—

17 “(1) REGULATIONS.—As part of the regulations
18 promulgated under subsection (h), the Administrator
19 shall prescribe requirements governing plans and re-
20 ports to be submitted in accordance with this sub-
21 section.

22 “(2) PLANS.—Not later than April 30 of 2015
23 and every 5 years thereafter through 2025, each
24 natural gas local distribution company shall submit
25 to the Administrator a plan, approved by the State

1 regulatory authority or other entity charged with
2 regulating the retail rates of such company, describ-
3 ing such company's plans for the disposition of the
4 value of emission allowances to be received pursuant
5 to this section, in accordance with the requirements
6 of this section.

7 “(3) REPORTS.—Not later than June 30 of
8 2017 and each calendar year thereafter through
9 2031, each natural gas local distribution company
10 shall submit a report to the Administrator, approved
11 by the relevant State regulatory authority or other
12 entity charged with regulating the retail natural gas
13 rates of such company, describing the disposition of
14 the value of any emission allowances received by
15 such company in the prior calendar year pursuant to
16 this subsection, including—

17 “(A) a description of sales, transfer, ex-
18 change, or use by the company for compliance
19 with obligations under this title, of any such
20 emission allowances;

21 “(B) the monetary value received by the
22 company, whether in money or in some other
23 form, from the sale, transfer, or exchange of
24 emission allowances received by the company
25 under this section;

1 “(C) the manner in which the company’s
2 disposition of emission allowances received
3 under this subsection complies with the require-
4 ments of this section, including each of the re-
5 quirements of subsection (c);

6 “(D) the cost-effectiveness of, and energy
7 savings achieved by, energy efficiency programs
8 supported through such emission allowances;
9 and

10 “(E) such other information as the Admin-
11 istrator may require pursuant to paragraph (1).

12 “(4) PUBLICATION.—The Administrator shall
13 make available to the public all plans and reports
14 submitted by natural gas local distribution compa-
15 nies under this subsection, including by publishing
16 such plans and reports on the Internet.

17 “(f) AUDITS.—Each year, the Administrator shall
18 audit a representative sample of natural gas local distribu-
19 tion companies to ensure compliance with the require-
20 ments of this section. In selecting companies for audit, the
21 Administrator shall take into account any credible evi-
22 dence of noncompliance with such requirements. The Ad-
23 ministrator shall make available to the public a report de-
24 scribing the results of each such audit, including by pub-
25 lishing such report on the Internet.

1 “(g) ENFORCEMENT.—A violation of any require-
2 ment of this section shall be a violation of this Act. Each
3 emission allowance the value of which is used in violation
4 of the requirements of this section shall be a separate vio-
5 lation.

6 “(h) REGULATIONS.—Not later than January 1,
7 2014, the Administrator, in consultation with the Federal
8 Energy Regulatory Commission, shall promulgate regula-
9 tions to implement the requirements of this section.

10 **“SEC. 785. HOME HEATING OIL AND PROPANE CONSUMERS.**

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

12 “(1) CARBON CONTENT.—The term ‘carbon
13 content’ means the amount of carbon dioxide that
14 would be emitted as a result of the combustion of a
15 fuel.

16 “(2) COST-EFFECTIVE.—The term ‘cost-effec-
17 tive’ has the meaning given that term in section
18 784(a)(2).

19 “(b) ALLOCATION.—Not later than September 30 of
20 each of calendar years 2012 through 2029, the Adminis-
21 trator shall distribute among the States, in accordance
22 with this section, the quantity of emission allowances allo-
23 cated pursuant to section 782(c).

24 “(c) DISTRIBUTION AMONG STATES.—The Adminis-
25 trator shall distribute emission allowances among the

1 States under this section each year ratably based on the
2 ratio of—

3 “(1) the carbon content of home heating oil and
4 propane sold to consumers within each State in the
5 preceding year for residential or commercial uses; to

6 “(2) the carbon content of home heating oil and
7 propane sold to consumers within the United States
8 in the preceding year for residential or commercial
9 uses.

10 “(d) USE OF ALLOWANCES.—

11 “(1) IN GENERAL.—States shall use emission
12 allowances distributed under this section exclusively
13 for the benefit of consumers of home heating oil or
14 propane for residential or commercial purposes.
15 Such proceeds shall be used exclusively for—

16 “(A) cost-effective energy efficiency pro-
17 grams for consumers that use home heating oil
18 or propane for residential or commercial pur-
19 poses; or

20 “(B) rebates or other direct financial as-
21 sistance programs for consumers of home heat-
22 ing oil or propane used for residential or com-
23 mercial purposes.

1 “(2) ADMINISTRATION AND DELIVERY MECHA-
2 NISMS.—In administering programs supported by
3 this section, States shall—

4 “(A) use no less than 50 percent of the
5 value of emission allowances received under this
6 section for cost-effective energy efficiency pro-
7 grams to reduce consumers’ overall fuel costs;

8 “(B) to the extent practicable, deliver con-
9 sumer support under this section through exist-
10 ing energy efficiency and consumer energy as-
11 sistance programs or delivery mechanisms, in-
12 cluding, where appropriate, programs or mecha-
13 nisms administered by parties other than the
14 State; and

15 “(C) seek to coordinate the administration
16 and delivery of energy efficiency and consumer
17 energy assistance programs supported under
18 this section, with one another and with existing
19 programs for various fuel types, so as to deliver
20 comprehensive, fuel-blind, coordinated programs
21 to consumers.

22 “(e) REPORTING.—Each State receiving emission al-
23 lowances under this section shall submit to the Adminis-
24 trator, within 12 months of each receipt of such allow-

1 ances, a report, in accordance with such requirements as
2 the Administrator may prescribe, that—

3 “(1) describes the State’s use of emission allow-
4 ances distributed under this section, including a de-
5 scription of the energy efficiency and consumer as-
6 sistance programs supported with such allowances;

7 “(2) demonstrates the cost-effectiveness of, and
8 the energy savings achieved by, energy efficiency
9 programs supported under this section; and

10 “(3) includes a report prepared by an inde-
11 pendent third party, in accordance with such regula-
12 tions as the Administrator may promulgate, evalu-
13 ating the performance of the energy efficiency and
14 consumer assistance programs supported under this
15 section.

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

1 States ratably in accordance with the formula in sub-
2 section (c).

3 **“SEC. 787. ALLOCATIONS TO REFINERIES.**

4 “(a) PURPOSE.—To provide emission allowance re-
5 bates to petroleum refiners in the United States in a man-
6 ner that promotes energy efficiency and a reduction in
7 greenhouse gas emissions at such facilities.

8 “(b) DEFINITIONS.—In this section:

9 “(1) EMISSIONS.—The term ‘emissions’ means
10 the greenhouse gas emissions in the calendar year
11 preceding the calendar year in which emission allow-
12 ances are being distributed. The term includes direct
13 emissions from fuel combustion, process emissions,
14 and indirect emissions from the generation of elec-
15 tricity used to produce the output of the petroleum
16 refinery or sector.

17 “(2) INTENSITY.—The term ‘intensity’ means
18 tons of carbon dioxide equivalent emissions per unit
19 of output in a given year.

20 “(3) INTENSITY FACTOR.—The term ‘intensity
21 factor’ means the intensity of the petroleum refining
22 sector divided by the intensity for an individual pe-
23 troleum refinery.

24 “(4) OUTPUT.—The term ‘output’ means the
25 average annual number of gallons of refined fuel

1 produced in the three calendar years preceding the
2 calendar year in which emission allowances are being
3 distributed.

4 “(5) PETROLEUM REFINERY.—The term ‘petro-
5 leum refinery’ means a facility classified under
6 324110 of the North American Industrial Classifica-
7 tion System of 2002.

8 “(6) PRODUCTION FACTOR.—The term ‘produc-
9 tion factor’ means the output of an individual petro-
10 leum refinery divided by the output of the petroleum
11 refining sector.

12 “(c) IN GENERAL.—For each vintage year between
13 2014 and 2026, the Administrator shall distribute allow-
14 ances pursuant to this section to owners and operators of
15 petroleum refineries in the United States.

16 “(d) DISTRIBUTION SCHEDULE.—The Administrator
17 shall distribute emission allowances of each vintage year
18 no later than October 31 of the preceding calendar year.

19 “(e) CALCULATION OF EMISSION ALLOWANCE RE-
20 BATES.—

21 “(1) For each petroleum refinery, the Adminis-
22 trator shall calculate an individual allocation factor
23 for each vintage year, based upon the product of the
24 intensity factor for such refinery multiplied by the
25 production factor for such refinery.

1 “(2) The Administrator shall also calculate a
2 total allocation factor for each vintage year, based
3 upon the sum of all of the individual allocation fac-
4 tors.

5 “(3) The Administrator shall calculate the
6 number of emission allowances to be provided to
7 each petroleum refinery in each vintage year by di-
8 viding the individual allocation factor for such refin-
9 ery by the total allocation factor, then multiplying
10 the result by the number of emission allowances allo-
11 cated to the program under this section for that vin-
12 tage year.

13 “(f) DATA SOURCES.—

14 “(1) The Administrator shall use data from the
15 greenhouse gas registry, established under section
16 713, where it is available.

17 “(2) The Administrator shall determine, by
18 rule, the methodology by which to calculate indirect
19 emissions for a refinery. The Administrator shall
20 also determine, by rule, the methodology by which to
21 take into account the value of allowances provided at
22 no cost to local distribution companies that is passed
23 through to a refinery. Each person selling electricity
24 to the owner or operator of a petroleum refinery
25 shall provide the owner or operator and the Adminis-

1 trator, on an annual basis, such data as the Admin-
2 istrator determines is necessary to implement this
3 section.

4 **“SEC. 788. [SECTION RESERVED].**

5 **“SEC. 789. CLIMATE CHANGE REBATES.**

6 “(a) REBATE.—Not later than October 31 of each
7 calendar year, the President, or such Federal agency or
8 department as the President may designate, shall dis-
9 tribute the funds in the Consumer Climate Change Rebate
10 Fund on a per capita basis to each household in the
11 United States.

12 “(b) LIMITATIONS.—The President, or such Federal
13 agency or department as the President may designate,
14 shall establish procedures to ensure that individuals who
15 are not—

16 “(1) citizens or nationals of the United States;

17 or

18 “(2) immigrants lawfully residing in the United
19 States,

20 are excluded for the purpose of calculating and distrib-
21 uting rebates under this section.

22 **“SEC. 790. EXCHANGE FOR STATE-ISSUED ALLOWANCES.**

23 “(a) IN GENERAL.—Not later than one year after the
24 date of enactment of this title, the Administrator shall
25 issue regulations allowing any person in the United States

1 to exchange greenhouse gas emission allowances issued be-
2 fore December 31, 2011, by the State of California or for
3 the Regional Greenhouse Gas Initiative, or the Western
4 Climate Initiative (in this section referred to as ‘State al-
5 lowances’) for emission allowances established by the Ad-
6 ministrator under section 721(a).

7 “(b) REGULATIONS.—Regulations issued under sub-
8 section (a) shall—

9 “(1) provide that a person exchanging State al-
10 lowances under this section receive emission allow-
11 ances established under section 721(a) in the
12 amount that is sufficient to compensate for the cost
13 of obtaining and holding such State allowances;

14 “(2) establish a deadline by which persons must
15 exchange the State allowances; and

16 “(3) provide that the Federal emission allow-
17 ances disbursed pursuant to this section shall be de-
18 ducted from the allowances to be auctioned pursuant
19 to section 782(b).

20 “(c) COST OF OBTAINING STATE ALLOWANCE.—For
21 purposes of this section, the cost of obtaining a State al-
22 lowance shall be the average auction price, for emission
23 allowances issued in the year in which the State allowance
24 was issued, under the program under which the State al-
25 lowance was issued.

1 **“SEC. 791. AUCTION PROCEDURES.**

2 “(a) IN GENERAL.—To the extent that auctions of
3 emission allowances by the Administrator are authorized
4 by this part, such auctions shall be carried out pursuant
5 to this section and the regulations established hereunder.

6 “(b) INITIAL REGULATIONS.—Not later than 12
7 months after the date of enactment of this title, the Ad-
8 ministrator, in consultation with other agencies, as appro-
9 priate, shall promulgate regulations governing the auction
10 of allowances under this section. Such regulations shall in-
11 clude the following requirements:

12 “(1) FREQUENCY; FIRST AUCTION.—Auctions
13 shall be held four times per year at regular intervals,
14 with the first auction to be held no later than March
15 31, 2011.

16 “(2) AUCTION SCHEDULE; CURRENT AND FU-
17 TURE VINTAGES.—The Administrator shall, at each
18 quarterly auction under this section, offer for sale
19 both a portion of the allowances with the same vin-
20 tage year as the year in which the auction is being
21 conducted and a portion of the allowances with vin-
22 tage years from future years. The preceding sen-
23 tence shall not apply to auctions held before 2012,
24 during which period, by necessity, the Administrator
25 shall auction only allowances with a vintage year
26 that is later than the year in which the auction is

1 held. Beginning with the first auction and at each
2 quarterly auction held thereafter, the Administrator
3 may offer for sale allowances with vintage years of
4 up to four years after the year in which the auction
5 is being conducted, except as provided in section
6 782(p).

7 “(3) AUCTION FORMAT.—Auctions shall follow
8 a single-round, sealed-bid, uniform price format.

9 “(4) PARTICIPATION; FINANCIAL ASSURANCE.—
10 Auctions shall be open to any person, except that
11 the Administrator may establish financial assurance
12 requirements to ensure that auction participants can
13 and will perform on their bids.

14 “(5) DISCLOSURE OF BENEFICIAL OWNER-
15 SHIP.—Each bidder in the auction shall be required
16 to disclose the person or entity sponsoring or bene-
17 fitting from the bidder’s participation in the auction
18 if such person or entity is, in whole or in part, other
19 than the bidder.

20 “(6) PURCHASE LIMITS.—No person may, di-
21 rectly or in concert with another participant, pur-
22 chase more than 5 percent of the allowances offered
23 for sale at any quarterly auction.

24 “(7) PUBLICATION OF INFORMATION.—After
25 the auction, the Administrator shall, in a timely

1 fashion, publish the identities of winning bidders,
2 the quantity of allowances obtained by each winning
3 bidder, and the auction clearing price.

4 “(8) OTHER REQUIREMENTS.—The Adminis-
5 trator may include in the regulations such other re-
6 quirements or provisions as the Administrator, in
7 consultation with other agencies, as appropriate,
8 considers appropriate to promote effective, efficient,
9 transparent, and fair administration of auctions
10 under this section.

11 “(c) REVISION OF REGULATIONS.—The Adminis-
12 trator may, in consultation with other agencies, as appro-
13 priate, at any time, revise the initial regulations promul-
14 gated under subsection (b). Such revised regulations need
15 not meet the requirements identified in subsection (b) if
16 the Administrator determines that an alternative auction
17 design would be more effective, taking into account factors
18 including costs of administration, transparency, fairness,
19 and risks of collusion or manipulation. In determining
20 whether and how to revise the initial regulations under
21 this subsection, the Administrator shall not consider maxi-
22 mization of revenues to the Federal Government.

23 “(d) RESERVE AUCTION PRICE.—The minimum re-
24 serve auction price shall be \$10 (in constant 2009 dollars)
25 for auctions occurring in 2012. The minimum reserve

1 price for auctions occurring in years after 2012 shall be
2 the minimum reserve auction price for the previous year
3 increased by 5 percent plus the rate of inflation (as meas-
4 ured by the Consumer Price Index for all urban con-
5 sumers).

6 “(e) DELEGATION OR CONTRACT.—Pursuant to reg-
7 ulations under this section, the Administrator may by del-
8 egation or contract provide for the conduct of auctions
9 under the Administrator’s supervision by other depart-
10 ments or agencies of the Federal Government or by non-
11 governmental agencies, groups, or organizations.

12 **“SEC. 792. AUCTIONING ALLOWANCES FOR OTHER ENTI-**
13 **TIES.**

14 “(a) CONSIGNMENT.—Any entity holding emission al-
15 lowances or compensatory allowances may request that the
16 Administrator auction, pursuant to section 791, the allow-
17 ances on consignment.

18 “(b) PRICING.—When the Administrator acts under
19 this section as the agent of an entity in possession of emis-
20 sion allowances, the Administrator is not obligated to ob-
21 tain the highest price possible for the emission allowances,
22 and instead shall auction consignment allowances in the
23 same manner and pursuant to the same rules as auctions
24 of other allowances under section 791. The Administrator
25 may permit the entity offering the allowance for sale to

1 condition the sale of its allowances pursuant to this section
2 on a minimum reserve price that is different than the re-
3 serve auction price set pursuant to section 791(d).

4 “(c) PROCEEDS.—For emission allowances and com-
5 pensatory allowances auctioned pursuant to this section,
6 notwithstanding section 3302 of title 31, United States
7 Code, or any other provision of law, within 90 days of re-
8 ceipt, the United States shall transfer the proceeds from
9 the auction to the entity which held the allowances auc-
10 tioned. No funds transferred from a purchaser to a seller
11 of emission allowances or compensatory allowances under
12 this subsection shall be held by any officer or employee
13 of the United States or treated for any purpose as public
14 monies.

15 “(d) REGULATIONS.—The Administrator shall issue
16 regulations within 24 months after the date of enactment
17 of this title to implement this section.

18 **“SEC. 793. ESTABLISHMENT OF FUNDS.**

19 “There is established in the Treasury of the United
20 States the following funds:

21 “(1) The Strategic Reserve Fund.

22 “(2) The Climate Change Consumer Refund
23 Fund.”.

1 **Subtitle C—Additional Greenhouse**
2 **Gas Standards**

3 **SEC. 331. GREENHOUSE GAS STANDARDS.**

4 The Clean Air Act (42 U.S.C. 7401 and following),
5 as amended by subtitles A and B of this title, is further
6 amended by adding the following new title after title VII:

7 **“TITLE VIII—ADDITIONAL**
8 **GREENHOUSE GAS STANDARDS**

9 **“SEC. 801. DEFINITIONS.**

10 “For purposes of this title, terms that are defined
11 in title VII, except for the term ‘stationary source’, shall
12 have the meaning given those terms in title VII.

13 **“PART A—STATIONARY SOURCE STANDARDS**

14 **“SEC. 811. STANDARDS OF PERFORMANCE.**

15 “(a) UNCAPPED STATIONARY SOURCES.—

16 “(1) INVENTORY OF SOURCE CATEGORIES.—(A)

17 Within 12 months after the date of enactment of
18 this title, the Administrator shall publish under sec-
19 tion 111(b)(1)(A) an inventory of categories of sta-
20 tionary sources that consist of those categories that
21 contain sources that individually had uncapped
22 greenhouse gas emissions greater than 10,000 tons
23 of carbon dioxide equivalent and that, in the aggre-
24 gate, were responsible for emitting at least 20 per-

1 cent annually of the uncapped greenhouse gas emis-
2 sions.

3 “(B) The Administrator shall include in the in-
4 ventory under this paragraph each source category
5 that is responsible for at least 10 percent of the un-
6 capped methane emissions in 2005. Notwithstanding
7 any other provision, the inventory required by this
8 section shall not include sources of enteric fermenta-
9 tion. The list under this paragraph shall include in-
10 dustrial sources, the emissions from which, when
11 added to the capped emissions from industrial
12 sources, constitute at least 95 percent of the green-
13 house gas emissions of the industrial sector.

14 “(C) For purposes of this subsection, emissions
15 shall be calculated using tons of carbon dioxide
16 equivalents. In promulgating the inventory required
17 by this paragraph and the schedule required under
18 by paragraph (2)(C), the Administrator shall use the
19 most current emissions data available at the time of
20 promulgation, except as provided in subparagraph
21 (B).

22 “(D) Notwithstanding any other provisions, the
23 Administrator may list under 111(b) any source cat-
24 egory identified in the inventory required by this
25 subsection without making a finding that the source

1 category causes or contributes significantly to, air
2 pollution with may be reasonably anticipated to en-
3 danger public health or welfare.

4 “(2) STANDARDS AND SCHEDULE.— (A) For
5 each category identified as provided in paragraph
6 (1), the Administrator shall promulgate standards of
7 performance under section 111 for the uncapped
8 emissions of greenhouse gases from stationary
9 sources in that category and shall promulgate cor-
10 responding regulations under section 111(d).

11 “(B) The Administrator shall promulgate
12 standards as required by this subsection for sta-
13 tionary sources in categories identified as provided
14 in paragraph (1) as expeditiously as practicable, as-
15 suring that—

16 “(i) standards for identified source cat-
17 egories that, combined, emitted 80 percent or
18 more of the greenhouse gas emissions of the
19 identified source categories shall be promul-
20 gated not later than 3 years after the date of
21 enactment of this title and shall include stand-
22 ards for natural gas extraction; and

23 “(ii) for all other identified source cat-
24 egories—

1 “(I) standards for not less than an
2 additional 25 percent of the identified cat-
3 egories shall be promulgated not later than
4 5 years after the date of enactment of this
5 title;

6 “(II) standards for not less than an
7 additional 25 percent of the identified cat-
8 egories shall be promulgated not later than
9 7 years after the date of enactment of this
10 title; and

11 “(III) standards for all the identified
12 categories shall be promulgated not later
13 than 10 years after the date of enactment
14 of this title.

15 “(C) Not later than 24 months after the date
16 of enactment of this title and after notice and oppor-
17 tunity for comment, the Administrator shall publish
18 a schedule establishing a date for the promulgation
19 of standards for each category of sources identified
20 pursuant to paragraph (1). The date for each cat-
21 egory shall be consistent with the requirements of
22 subparagraph (B). The determination of priorities
23 for the promulgation of standards pursuant to this
24 paragraph is not a rulemaking and shall not be sub-
25 ject to judicial review, except that failure to promul-

1 gate any standard pursuant to the schedule estab-
2 lished by this paragraph shall be subject to review
3 under section 304(a)(2).

4 “(D) Notwithstanding section 307, no action of
5 the Administrator listing a source category under
6 paragraph (1) shall be a final agency action subject
7 to judicial review, except that any such action may
8 be reviewed under section 307 when the Adminis-
9 trator issues performance standards for such cat-
10 egory.

11 “(b) CAPPED SOURCES.—No standard of perform-
12 ance shall be established under section 111 for capped
13 greenhouse gas emissions from a capped source unless the
14 Administrator determines that such standards are appro-
15 priate because of effects that do not include climate
16 change effects. In promulgating a standard of perform-
17 ance under section 111 for the emission from capped
18 sources of any air pollutant that is not a greenhouse gas,
19 the Administrator shall treat the emission of any green-
20 house gas by those entities as a nonair quality public
21 health and environmental impact within the meaning of
22 section 111(a)(1).

23 “(c) PERFORMANCE STANDARDS.— For purposes of
24 setting a performance standard for source categories iden-
25 tified pursuant to subsection (a)—

1 “(1) The Administrator shall take into account
2 the goal of reducing total United States greenhouse
3 gas emissions as set forth in section 702.

4 “(2) The Administrator may promulgate a de-
5 sign, equipment, work practice, or operational stand-
6 ard, or any combination thereof, under section 111
7 in lieu of a standard of performance under that sec-
8 tion without regard to any determination of feasi-
9 bility that would otherwise be required under section
10 111(h).

11 “(3) Notwithstanding any other provision, in
12 setting the level of each standard required by this
13 section, the Administrator shall take into account
14 projections of allowance prices, such that the mar-
15 ginal cost of compliance (expressed as dollars per
16 ton of carbon dioxide equivalent reduced) imposed by
17 the standard would not, in the judgement of the Ad-
18 ministrator, be expected to exceed the Administra-
19 tor’s projected allowance prices over the time period
20 spanning from the date of initial compliance to the
21 date that the next revisions of the standard would
22 come into effect pursuant to the schedule under sec-
23 tion 111(b)(1)(B).

24 “(d) DEFINITIONS.—In this section, the terms ‘un-
25 capped greenhouse gas emissions’ and ‘uncapped methane

1 emissions’ mean those greenhouse gas or methane emis-
2 sions, respectively, to which section 722 would not have
3 applied if the requirements of this title had been in effect
4 for the same year as the emissions data upon which the
5 list is based.

6 “(e) STUDY OF THE EFFECTS OF PERFORMANCE
7 STANDARDS.—

8 “(1) STUDY.—The Administrator shall conduct
9 a study of the impacts of performance standards re-
10 quired under this section, which shall evaluate the
11 effect of such standards on the

12 “(A) costs of achieving compliance with the
13 economy-wide reduction goals specified in sec-
14 tion 702 and the reduction targets specified in
15 section 703;

16 “(B) available supply of offset credits; and

17 “(C) ability to achieve the economy-wide
18 reduction goals specified in section 702 and any
19 other benefits of such standards.

20 “(2) REPORT.—The Administrator shall submit
21 to the House Energy and Commerce Committee a
22 report that describes the results of the study not
23 later than 18 months after the publication of the
24 standards required under subsection (a)(2)(B)(i).

1 **“PART C—EXEMPTIONS FROM OTHER PROGRAMS**

2 **“SEC. 831. CRITERIA POLLUTANTS.**

3 “As of the date of the enactment of the Safe Climate
4 Act, no greenhouse gas may be added to the list under
5 section 108(a) on the basis of its effect on global climate
6 change.

7 **“SEC. 832. INTERNATIONAL AIR POLLUTION.**

8 “Section 115 shall not apply to an air pollutant with
9 respect to that pollutant’s contribution to global warming.

10 **“SEC. 833. HAZARDOUS AIR POLLUTANTS.**

11 “No greenhouse gas may be added to the list of haz-
12 ardous air pollutants under section 112 unless such green-
13 house gas meets the listing criteria of section 112(b) inde-
14 pendent of its effects on global climate change.

15 **“SEC. 834. NEW SOURCE REVIEW.**

16 “The provisions of part C of title I shall not apply
17 to a major emitting facility that is initially permitted or
18 modified after January 1, 2009, on the basis of its emis-
19 sions of any greenhouse gas.

20 **“SEC. 835. TITLE V PERMITS.**

21 “Notwithstanding any provision of title III or V, no
22 stationary source shall be required to apply for, or operate
23 pursuant to, a permit under title V, solely because the
24 source emits any greenhouse gases that are regulated sole-
25 ly because of their effect on global climate change.”.

1 **SEC. 332. HFC REGULATION.**

2 (a) IN GENERAL.—Title VI of the Clean Air Act (42
3 U.S.C. 7671 et seq.) (relating to stratospheric ozone pro-
4 tection) is amended by adding at the end the following:

5 **“SEC. 619. HYDROFLUOROCARBONS (HFCs).**

6 “(a) TREATMENT AS CLASS II, GROUP II SUB-
7 STANCES.—Except as otherwise provided in this section,
8 hydrofluorocarbons shall be treated as class II substances
9 for purposes of applying the provisions of this title. The
10 Administrator shall establish two groups of class II sub-
11 stances. Class II, group I substances shall include all
12 hydrochlorofluorocarbons (HCFCs) listed pursuant to sec-
13 tion 602(b). Class II, group II substances shall include
14 each of the following:

15 “(1) Hydrofluorocarbon-23 (HFC-23).

16 “(2) Hydrofluorocarbon-32 (HFC-32).

17 “(3) Hydrofluorocarbon-41 (HFC-41).

18 “(4) Hydrofluorocarbon-125 (HFC-125).

19 “(5) Hydrofluorocarbon-134 (HFC-134).

20 “(6) Hydrofluorocarbon-134a (HFC-134a).

21 “(7) Hydrofluorocarbon-143 (HFC-143).

22 “(8) Hydrofluorocarbon-143a (HFC-143a).

23 “(9) Hydrofluorocarbon-152 (HFC-152).

24 “(10) Hydrofluorocarbon-152a (HFC-152a).

25 “(11) Hydrofluorocarbon-227ea (HFC-227ea).

26 “(12) Hydrofluorocarbon-236cb (HFC-236cb).

1 “(13) Hydrofluorocarbon-236ea (HFC-236ea).

2 “(14) Hydrofluorocarbon-236fa (HFC-236fa).

3 “(15) Hydrofluorocarbon-245ca (HFC-245ca).

4 “(16) Hydrofluorocarbon-245fa (HFC-245fa).

5 “(17) Hydrofluorocarbon-365mfc (HFC-
6 365mfc).

7 “(18) Hydrofluorocarbon-43-10mee (HFC-43-
8 10mee).

9 “(19) Hydrofluoroolefin-1234yf (HFO-1234yf).

10 “(20) Hydrofluoroolefin-1234ze (HFO-1234ze).

11 Not later than 6 months after the date of enactment of
12 this title, the Administrator shall publish an initial list of
13 class II, group II substances, which shall include the sub-
14 stances listed in this subsection. The Administrator may
15 add to the list of class II, group II substances any other
16 substance used as a substitute for a class I or II substance
17 if the Administrator determines that 1 metric ton of the
18 gas makes the same or greater contribution to global
19 warming over 100 years as 1 metric ton of carbon dioxide.
20 Within 24 months after the date of enactment of this sec-
21 tion, the Administrator shall amend the regulations under
22 this title (including the regulations referred to in sections
23 603, 608, 609, 610, 611, 612, and 613) to apply to class
24 II, group II substances.

1 “(b) CONSUMPTION AND PRODUCTION OF CLASS II,
2 GROUP II SUBSTANCES.—

3 “(1) IN GENERAL.—

4 “(A) CONSUMPTION PHASE DOWN.—In the
5 case of class II, group II substances, in lieu of
6 applying section 605 and the regulations there-
7 under, the Administrator shall promulgate reg-
8 ulations phasing down the consumption of class
9 II, group II substances in the United States,
10 and the importation of products containing any
11 class II, group II substance, in accordance with
12 this subsection within 18 months after the date
13 of enactment of this section. Effective January
14 1, 2012, it shall be unlawful for any person to
15 produce any class II, group II substance, im-
16 port any class II, group II substance, or import
17 any product containing any class II, group II
18 substance without holding one consumption al-
19 lowance or one destruction offset credit for each
20 carbon dioxide equivalent ton of the class II,
21 group II substance. Any person who exports a
22 class II, group II substance for which a con-
23 sumption allowance was retired may receive a
24 refund of that allowance from the Adminis-
25 trator following the export.

1 “(B) PRODUCTION.—If the United States
2 becomes a party or otherwise adheres to a mul-
3 tilateral agreement, including any amendment
4 to the Montreal Protocol on Substances That
5 Deplete the Ozone Layer, that restricts the pro-
6 duction of class II, group II substances, the Ad-
7 ministrator shall promulgate regulations estab-
8 lishing a baseline for the production of class II,
9 group II substances in the United States and
10 phasing down the production of class II, group
11 II substances in the United States, in accord-
12 ance with such multilateral agreement and sub-
13 ject to the same exceptions and other provisions
14 as are applicable to the phase down of con-
15 sumption of class II, group II substances under
16 this section (except that the Administrator shall
17 not require a person who obtains production al-
18 lowances from the Administrator to make pay-
19 ment for such allowances if the person is mak-
20 ing payment for a corresponding quantity of
21 consumption allowances of the same vintage
22 year). Upon the effective date of such regula-
23 tions, it shall be unlawful for any person to
24 produce any class II, group II substance with-
25 out holding one consumption allowance and one

1 production allowance, or one destruction offset
 2 credit, for each carbon dioxide equivalent ton of
 3 the class II, group II substance.

4 “(C) INTEGRITY OF CAP.—To maintain
 5 the integrity of the class II, group II cap, the
 6 Administrator may, through rulemaking, limit
 7 the percentage of each person’s compliance obli-
 8 gation that may be met through the use of de-
 9 struction offset credits or banked allowances.

10 “(D) COUNTING OF VIOLATIONS.—Each
 11 emission allowance not held as required by this
 12 section shall be a separate violation of this sec-
 13 tion.

14 “(2) SCHEDULE.—Pursuant to the regulations
 15 promulgated pursuant to paragraph (1), the number
 16 of class II, group II consumption allowances estab-
 17 lished by the Administrator for each calendar year
 18 beginning in 2012 shall be the following percentage
 19 of the baseline, as established by the Administrator
 20 pursuant to paragraph (3):

“Calendar Year	Percent of Baseline
2012	90
2013	87.5
2014	85
2015	82.5

“Calendar Year	Percent of Baseline
2016	80
2017	77.5
2018	75
2019	71
2020	67
2021	63
2022	59
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 tons of carbon dioxide
6 equivalents, of—

1 “(i) the annual average consumption of all
2 class II substances in calendar years 2004,
3 2005, and 2006; plus

4 “(ii) the annual average quantity of all
5 class II substances contained in imported prod-
6 ucts in calendar years 2004, 2005, and 2006.

7 “(B) Notwithstanding subparagraph (A), if the
8 Administrator determines that the baseline is higher
9 than 370 million metric tons of carbon dioxide
10 equivalents, then the Administrator shall establish
11 the baseline at 370 million metric tons of carbon di-
12 oxide equivalents.

13 “(C) Notwithstanding subparagraph (A), if the
14 Administrator determines that the baseline is lower
15 than 280 million metric tons of carbon dioxide
16 equivalents, then the Administrator shall establish
17 the baseline at 280 million metric tons of carbon di-
18 oxide equivalents.

19 “(4) DISTRIBUTION OF ALLOWANCES.—

20 “(A) IN GENERAL.—Pursuant to the regu-
21 lations promulgated under paragraph (1), for
22 each calendar year beginning in 2012, the Ad-
23 ministrators shall sell consumption allowances in
24 accordance with this paragraph.

1 “(B) ESTABLISHMENT OF POOLS.—The
 2 Administrator shall establish two allowance
 3 pools. Eighty percent of the consumption allow-
 4 ances available for a calendar year shall be
 5 placed in the producer-importer pool, and 20
 6 percent of the consumption allowances available
 7 for a calendar year shall be placed in the sec-
 8 ondary pool.

9 “(C) PRODUCER-IMPORTER POOL.—

10 “(i) AUCTION.—(I) For each calendar
 11 year, the Administrator shall offer for sale
 12 at auction the following percentage of the
 13 consumption allowances in the producer-
 14 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

15 “(II) Any person who produced or im-
 16 ported any class II substance during cal-

1 endar year 2004, 2005, or 2006 may par-
2 ticipate in the auction. No other persons
3 may participate in the auction unless per-
4 mitted to do so pursuant to subclause
5 (III).

6 “(III) Not later than three years after
7 the date of the initial auction and from
8 time to time thereafter, the Administrator
9 shall determine through rulemaking wheth-
10 er any persons who did not produce or im-
11 port a class II substance during calendar
12 year 2004, 2005, or 2006 will be permitted
13 to participate in future auctions. The Ad-
14 ministrator shall base this determination
15 on the duration, consistency, and scale of
16 such person’s purchases of consumption al-
17 lowances in the secondary pool under sub-
18 paragraph (D), as well as economic or
19 technical hardship and other factors
20 deemed relevant by the Administrator.

21 “(IV) The Administrator shall set a
22 minimum bid per consumption allowance of
23 the following:

24 “(aa) For vintage year 2012,
25 \$1.00.

1 “(bb) For vintage year 2013,
2 \$1.20.

3 “(cc) For vintage year 2014,
4 \$1.40.

5 “(dd) For vintage year 2015,
6 \$1.60.

7 “(ee) For vintage year 2016,
8 \$1.80.

9 “(ff) For vintage year 2017,
10 \$2.00.

11 “(gg) For vintage year 2018 and
12 thereafter, \$2.00 adjusted for infla-
13 tion after vintage year 2017 based
14 upon the producer price index as pub-
15 lished by the Department of Com-
16 merce.

17 “(ii) NON-AUCTION SALE.—(I) For
18 each calendar year, as soon as practicable
19 after auction, the Administrator shall offer
20 for sale the remaining consumption allow-
21 ances in the producer-importer pool at the
22 following prices:

23 “(aa) A fee of \$1.00 per vintage
24 year 2012 allowance.

1 “(bb) A fee of \$1.20 per vintage
2 year 2013 allowance.

3 “(cc) A fee of \$1.40 per vintage
4 year 2014 allowance.

5 “(dd) For each vintage year
6 2015 allowance, a fee equal to the av-
7 erage of \$1.10 and the auction clear-
8 ing price for vintage year 2014 allow-
9 ances.

10 “(ee) For each vintage year 2016
11 allowance, a fee equal to the average
12 of \$1.30 and the auction clearing
13 price for vintage year 2015 allow-
14 ances.

15 “(ff) For each vintage year 2017
16 allowance, a fee equal to the average
17 of \$1.40 and the auction clearing
18 price for vintage year 2016 allow-
19 ances.

20 “(gg) For each allowance of vin-
21 tage year 2018 and subsequent vin-
22 tage years, a fee equal to the auction
23 clearing price for that vintage year.

24 “(II) The Administrator shall offer to
25 sell the remaining consumption allowances

1 in the producer-importer pool to producers
2 of class II, group II substances and im-
3 porters of class II, group II substances in
4 proportion to their relative allocation
5 share.

6 “(III) Such allocation share for such
7 sale shall be determined by the Adminis-
8 trator using such producer’s or importer’s
9 annual average data on class II substances
10 from calendar years 2004, 2005, and
11 2006, on a carbon dioxide equivalent basis,
12 and—

13 “(aa) shall be based on a pro-
14 ducer’s production, plus importation,
15 plus acquisitions and purchases from
16 persons who produced class II sub-
17 stances in the United States during
18 calendar years 2004, 2005, or 2006,
19 less exportation, less transfers and
20 sales to persons who produced class II
21 substances in the United States dur-
22 ing calendar years 2004, 2005, or
23 2006; and

24 “(bb) for an importer of class II
25 substances that did not produce in the

1 United States any class II substance
2 during calendar years 2004, 2005,
3 and 2006, shall be based on the im-
4 porter's importation less exportation.

5 For purposes of item (aa), the Adminis-
6 trator shall account for 100 percent of
7 class II, group II substances and 60 per-
8 cent of class II, group I substances. For
9 purposes of item (bb), the Administrator
10 shall account for 100 percent of class II,
11 group II substances and 100 percent of
12 class II, group I substances.

13 “(IV) Any consumption allowances
14 made available for nonauction sale to a
15 specific producer or importer of class II,
16 group II substances but not purchased by
17 the specific producer or importer shall be
18 made available for sale to any producer or
19 importer of class II substances during cal-
20 endar years 2004, 2005, and 2006. If de-
21 mand for such consumption allowances ex-
22 ceeds supply of such consumption allow-
23 ances, the Administrator shall develop and
24 utilize criteria for the sale of such con-
25 sumption allowances that may include pro

1 rata shares, historic production and impor-
2 tation, economic or technical hardship, or
3 other factors deemed relevant by the Ad-
4 ministrator. If the supply of such con-
5 sumption allowances exceeds demand, the
6 Administrator may offer such consumption
7 allowances for sale in the secondary pool as
8 set forth in subparagraph (D).

9 “(D) SECONDARY POOL.—(i) For each cal-
10 endar year, as soon as practicable after the auc-
11 tion required in subparagraph (C), the Adminis-
12 trator shall offer for sale the consumption al-
13 lowances in the secondary pool at the prices
14 listed in subparagraph (C)(ii).

15 “(ii) The Administrator shall accept appli-
16 cations for purchase of secondary pool con-
17 sumption allowances from—

18 “(I) importers of products containing
19 class II, group II substances;

20 “(II) persons who purchased any class
21 II, group II substance directly from a pro-
22 ducer or importer of class II, group II sub-
23 stances for use in a product containing a
24 class II, group II substance, a manufac-
25 turing process, or a reclamation process;

1 “(III) persons who did not produce or
2 import a class II substance during cal-
3 endar year 2004, 2005, or 2006, but who
4 the Administrator determines have subse-
5 quently taken significant steps to produce
6 or import a substantial quantity of any
7 class II, group II substance; and

8 “(IV) persons who produced or im-
9 ported any class II substance during cal-
10 endar year 2004, 2005, or 2006.

11 “(iii) If the supply of consumption allow-
12 ances in the secondary pool equals or exceeds
13 the demand for consumption allowances in the
14 secondary pool as presented in the applications
15 for purchase, the Administrator shall sell the
16 consumption allowances in the secondary pool
17 to the applicants in the amounts requested in
18 the applications for purchase. Any consumption
19 allowances in the secondary pool not purchased
20 in a calendar year may be rolled over and added
21 to the quantity available in the secondary pool
22 in the following year.

23 “(iv) If the demand for consumption allow-
24 ances in the secondary pool as presented in the
25 applications for purchase exceeds the supply of

1 consumption allowances in the secondary pool,
2 the Administrator shall sell the consumption al-
3 lowances as follows:

4 “(I) The Administrator shall first sell
5 the consumption allowances in the sec-
6 ondary pool to any importers of products
7 containing class II, group II substances in
8 the amounts requested in their applications
9 for purchase. If the demand for such con-
10 sumption allowances exceeds supply of
11 such consumption allowances, the Adminis-
12 trator shall develop and utilize criteria for
13 the sale of such consumption allowances
14 among importers of products containing
15 class II, group II substances that may in-
16 clude pro rata shares, historic importation,
17 economic or technical hardship, or other
18 factors deemed relevant by the Adminis-
19 trator.

20 “(II) The Administrator shall next
21 sell any remaining consumption allowances
22 to persons identified in subclauses (II) and
23 (III) of clause (ii) in the amounts re-
24 quested in their applications for purchase.
25 If the demand for such consumption allow-

1 ances exceeds remaining supply of such
2 consumption allowances, the Administrator
3 shall develop and utilize criteria for the
4 sale of such consumption allowances
5 among subclauses (II) and (III) applicants
6 that may include pro rata shares, historic
7 use, economic or technical hardship, or
8 other factors deemed relevant by the Ad-
9 ministrato

10 “(III) The Administrator shall then
11 sell any remaining consumption allowances
12 to persons who produced or imported any
13 class II substance during calendar year
14 2004, 2005, or 2006 in the amounts re-
15 quested in their applications for purchase.
16 If demand for such consumption allow-
17 ances exceeds remaining supply of such
18 consumption allowances, the Administrator
19 shall develop and utilize criteria for the
20 sale of such consumption allowances that
21 may include pro rata shares, historic pro-
22 duction and importation, economic or tech-
23 nical hardship, or other factors deemed rel-
24 evant by the Administrator.

1 “(IV) Each person who purchases
2 consumption allowances in a non-auction
3 sale under this subparagraph shall be re-
4 quired to disclose the person or entity
5 sponsoring or benefitting from the pur-
6 chases if such person or entity is, in whole
7 or in part, other than the purchaser or the
8 purchaser’s employer.

9 “(E) DISCRETION TO WITHHOLD ALLOW-
10 ANCES.—Nothing in this paragraph prevents
11 the Administrator from exercising discretion to
12 withhold and retire consumption allowances
13 that would otherwise be available for auction or
14 nonauction sale. Not later than 18 months after
15 the date of enactment of this section, the Ad-
16 ministrator shall promulgate regulations estab-
17 lishing criteria for withholding and retiring con-
18 sumption allowances.

19 “(5) BANKING.—A consumption allowance or
20 destruction offset credit may be used to meet the
21 compliance obligation requirements of paragraph (1)
22 in—

23 “(A) the vintage year for the allowance or
24 destruction offset credit; or

1 “(B) any calendar year subsequent to the
2 vintage year for the allowance or destruction
3 offset credit.

4 “(6) AUCTIONS.—

5 “(A) INITIAL REGULATIONS.—Not later
6 than 18 months after the date of enactment of
7 this section, the Administrator shall promulgate
8 regulations governing the auction of allowances
9 under this section. Such regulations shall in-
10 clude the following requirements:

11 “(i) FREQUENCY; FIRST AUCTION.—
12 Auctions shall be held one time per year at
13 regular intervals, with the first auction to
14 be held no later than October 31, 2011.

15 “(ii) AUCTION FORMAT.—Auctions
16 shall follow a single-round, sealed-bid, uni-
17 form price format.

18 “(iii) FINANCIAL ASSURANCE.—The
19 Administrator may establish financial as-
20 surance requirements to ensure that auc-
21 tion participants can and will perform on
22 their bids.

23 “(iv) DISCLOSURE OF BENEFICIAL
24 OWNERSHIP.—Each bidder in the auction
25 shall be required to disclose the person or

1 entity sponsoring or benefitting from the
2 bidder's participation in the auction if such
3 person or entity is, in whole or in part,
4 other than the bidder or the bidder's em-
5 ployer.

6 “(v) PUBLICATION OF INFORMA-
7 TION.—After the auction, the Adminis-
8 trator shall, in a timely fashion, publish
9 the number of bidders, number of winning
10 bidders, the quantity of allowances sold,
11 and the auction clearing price.

12 “(vi) BIDDING LIMITS IN 2012.—In
13 the vintage year 2012 auction, no auction
14 participant may, directly or in concert with
15 another participant, bid for or purchase
16 more allowances offered for sale at the
17 auction than the greater of—

18 “(I) the number of allowances
19 which, when added to the number of
20 allowances available for purchase by
21 the participant in the producer-im-
22 porter pool non-auction sale, would
23 equal the participant's annual average
24 consumption of class II, group II sub-

1 stances in calendar years 2004, 2005,
2 and 2006; or

3 “(II) the number of allowances
4 equal to the product of—

5 “(aa) 1.20 multiplied by the
6 participant’s allocation share of
7 the producer-importer pool non-
8 auction sale as determined under
9 paragraph (4)(C)(ii); and

10 “(bb) the number of vintage
11 year 2012 allowances offered at
12 auction.

13 “(vii) BIDDING LIMITS IN 2013.—In
14 the vintage year 2013 auction, no auction
15 participant may, directly or in concert with
16 another participant, bid for or purchase
17 more allowances offered for sale at the
18 auction than the product of—

19 “(I) 1.15 multiplied by the ratio
20 of the total number of vintage year
21 2012 allowances purchased by the
22 participant from the auction and from
23 the producer-importer pool non-auc-
24 tion sale to the total number of vin-

1 tage year 2012 allowances in the pro-
2 ducer-importer pool; and

3 “(II) the number of vintage year
4 2013 allowances offered at auction.

5 “(viii) BIDDING LIMITS IN SUBSE-
6 QUENT YEARS.—In the auctions for vin-
7 tage year 2014 and subsequent vintage
8 years, no auction participant may, directly
9 or in concert with another participant, bid
10 for or purchase more allowances offered
11 for sale at the auction than the product
12 of—

13 “(I) 1.15 multiplied by the ratio
14 of the highest number of allowances
15 held by the participant in any of the
16 three prior vintage years to meet its
17 compliance obligation under para-
18 graph (1) to the total number of al-
19 lowances in the producer-importer
20 pool for such vintage year; and

21 “(II) the number of allowances
22 offered at auction for that vintage
23 year.

24 “(ix) OTHER REQUIREMENTS.—The
25 Administrator may include in the regula-

1 tions such other requirements or provisions
2 as the Administrator considers necessary
3 to promote effective, efficient, transparent,
4 and fair administration of auctions under
5 this section.

6 “(B) REVISION OF REGULATIONS.—The
7 Administrator may, at any time, revise the ini-
8 tial regulations promulgated under subpara-
9 graph (A) based on the Administrator’s experi-
10 ence in administering allowance auctions. Such
11 revised regulations need not meet the require-
12 ments identified in subparagraph (A) if the Ad-
13 ministrator determines that an alternative auc-
14 tion design would be more effective, taking into
15 account factors including costs of administra-
16 tion, transparency, fairness, and risks of collu-
17 sion or manipulation. In determining whether
18 and how to revise the initial regulations under
19 this paragraph, the Administrator shall not con-
20 sider maximization of revenues to the Federal
21 Government.

22 “(C) DELEGATION OR CONTRACT.—Pursu-
23 ant to regulations under this section, the Ad-
24 ministrator may, by delegation or contract, pro-
25 vide for the conduct of auctions under the Ad-

1 administrator's supervision by other departments
2 or agencies of the Federal Government or by
3 nongovernmental agencies, groups, or organiza-
4 tions.

5 “(7) PAYMENTS FOR ALLOWANCES.—

6 “(A) INITIAL REGULATIONS.—Not later
7 than 18 months after the date of enactment of
8 this section, the Administrator shall promulgate
9 regulations governing the payment for allow-
10 ances purchased in auction and non-auction
11 sales under this section. Such regulations shall
12 include the requirement that, in the event that
13 full payment for purchased allowances is not
14 made on the date of purchase, equal payments
15 shall be made one time per calendar quarter
16 with all payments for allowances of a vintage
17 year made by the end of that vintage year.

18 “(B) REVISION OF REGULATIONS.— The
19 Administrator may, at any time, revise the ini-
20 tial regulations promulgated under subpara-
21 graph (A) based on the Administrator's experi-
22 ence in administering collection of payments.
23 Such revised regulations need not meet the re-
24 quirements identified in subparagraph (A) if
25 the Administrator determines that an alter-

1 native payment structure or frequency would be
2 more effective, taking into account factors in-
3 cluding cost of administration, transparency,
4 and fairness. In determining whether and how
5 to revise the initial regulations under this para-
6 graph, the Administrator shall not consider
7 maximization of revenues to the Federal Gov-
8 ernment.

9 “(C) PENALTIES FOR NON-PAYMENT.—
10 Failure to pay for purchased allowances in ac-
11 cordance with the regulations promulgated pur-
12 suant to this paragraph shall be a violation of
13 the requirements of subsection (b). Section
14 113(c)(3) shall apply in the case of any person
15 who knowingly fails to pay for purchased allow-
16 ances in accordance with the regulations pro-
17 mulgated pursuant to this paragraph

18 “(8) IMPORTED PRODUCTS.—If the United
19 States becomes a party or otherwise adheres to a
20 multilateral agreement, including any amendment to
21 the Montreal Protocol on Substances That Deplete
22 the Ozone Layer, which restricts the production and
23 consumption of class II, group II substances—

24 “(A) as of the date on which such agree-
25 ment or amendment enters into force, it shall

1 no longer be unlawful for any person to import
2 from a party to such agreement or amendment
3 any product containing any class II, group II
4 substance whose production and consumption
5 are regulated by such agreement or amendment
6 without holding one consumption allowance or
7 one destruction offset credit for each carbon di-
8 oxide equivalent ton of the class II, group II
9 substance;

10 “(B) the Administrator shall promulgate
11 regulations within 12 months of the date the
12 United States becomes a party or otherwise ad-
13 heres to such agreement or amendment, or the
14 date on which such agreement or amendment
15 enters into force, whichever is later, to establish
16 a new baseline for purposes of paragraph (2),
17 which new baseline shall be the original baseline
18 less the carbon dioxide equivalent of the annual
19 average quantity of any class II substances reg-
20 ulated by such agreement or amendment con-
21 tained in products imported from parties to
22 such agreement or amendment in calendar
23 years 2004, 2005, and 2006;

24 “(C) as of the date on which such agree-
25 ment or amendment enters into force, no per-

1 son importing any product containing any class
2 II, group II substance may, directly or in con-
3 cert with another person, purchase any con-
4 sumption allowances for sale by the Adminis-
5 trator for the importation of products from a
6 party to such agreement or amendment that
7 contain any class II, group II substance re-
8 stricted by such agreement or amendment; and

9 “(D) the Administrator may adjust the
10 two allowance pools established in paragraph
11 (4) such that up to 90 percent of the consump-
12 tion allowances available for a calendar year are
13 placed in the producer-importer pool with the
14 remaining consumption allowances placed in the
15 secondary pool.

16 “(9) OFFSETS.—

17 “(A) CHLOROFLUOROCARBON DESTRUC-
18 TION.—Within 18 months after the date of en-
19 actment of this section, the Administrator shall
20 promulgate regulations to provide for the
21 issuance of offset credits for the destruction, in
22 the calendar year 2012 or later, of
23 chlorofluorocarbons in the United States. The
24 Administrator shall establish and distribute to
25 the destroying entity a quantity of destruction

1 offset credits equal to 0.8 times the number of
2 tons of carbon dioxide equivalents of reduction
3 achieved through the destruction. No destruc-
4 tion offset credits shall be established for the
5 destruction of a class II, group II substance.

6 “(B) DEFINITION.—For purposes of this
7 paragraph, the term ‘destruction’ means the
8 conversion of a substance by thermal, chemical,
9 or other means to another substance with little
10 or no carbon dioxide equivalent value and no
11 ozone depletion potential.

12 “(C) REGULATIONS.—The regulations pro-
13 mulgated under this paragraph shall include
14 standards and protocols for project eligibility,
15 certification of destroyers, monitoring, tracking,
16 destruction efficiency, quantification of project
17 and baseline emissions and carbon dioxide
18 equivalent value, and verification. The Adminis-
19 trator shall ensure that destruction offset cred-
20 its represent real and verifiable destruction of
21 chlorofluorocarbons or other class I or class II,
22 group I, substances authorized under subpara-
23 graph (D).

24 “(D) OTHER SUBSTANCES.—The Adminis-
25 trator may promulgate regulations to add to the

1 list of class I and class II, group I, substances
2 that may be destroyed for destruction offset
3 credits, taking into account a candidate sub-
4 stance's carbon dioxide equivalent value, ozone
5 depletion potential, prevalence in banks in the
6 United States, and emission rates, as well as
7 the need for additional cost containment under
8 the class II, group II cap and the integrity of
9 the class II, group II cap. The Administrator
10 shall not add a class I or class II, group I sub-
11 stance to the list if the consumption of the sub-
12 stance has not been completely phased-out
13 internationally (except for essential use exemp-
14 tions or other similar exemptions) pursuant to
15 the Montreal Protocol.

16 “(E) EXTENSION OF OFFSETS.—(i) At any
17 time after the Administrator promulgates regu-
18 lations pursuant to subparagraph (A), the Ad-
19 ministrator may add the types of destruction
20 projects authorized to receive destruction offset
21 credits under this paragraph to the list of types
22 of projects eligible for offset credits under sec-
23 tion 733. Nothing in this paragraph shall affect
24 the issuance of offset credits under section 740.

1 “(ii) The Administrator shall not make the
2 addition under clause (i) unless the Adminis-
3 trator finds that insufficient destruction is oc-
4 curring or is projected to occur under this para-
5 graph and that the addition would increase de-
6 struction.

7 “(iii) In no event shall more than one de-
8 struction offset credit be issued under title VII
9 and this section for the destruction of the same
10 quantity of a substance.

11 “(10) LEGAL STATUS OF ALLOWANCES AND
12 CREDITS.—None of the following constitutes a prop-
13 erty right:

14 “(A) A production or consumption allow-
15 ance.

16 “(B) A destruction offset credit.

17 “(c) DEADLINES FOR COMPLIANCE.—Notwith-
18 standing the deadlines specified for class II substances in
19 sections 608, 609, 610, 612, and 613 that occur prior to
20 January 1, 2009, the deadline for promulgating regula-
21 tions under those sections for class II, group II substances
22 shall be January 1, 2012.

23 “(d) EXCEPTIONS FOR ESSENTIAL USES.—Notwith-
24 standing any phase down of production and consumption
25 required by this section, to the extent consistent with any

1 applicable multilateral agreement to which the United
2 States is a party or otherwise adheres, the Administrator
3 may provide the following exceptions for essential uses:

4 “(1) MEDICAL DEVICES.—The Administrator,
5 after notice and opportunity for public comment,
6 and in consultation with the Commissioner of the
7 Food and Drug Administration, may provide an ex-
8 ception for the production and consumption of class
9 II, group II substances solely for use in medical de-
10 vices.

11 “(2) AVIATION SAFETY.—The Administrator,
12 after notice and opportunity for public comment,
13 may authorize the production and consumption of
14 limited quantities of class II, group II substances
15 solely for the purposes of aviation safety if the Ad-
16 ministrator of the Federal Aviation Administration,
17 in consultation with the Administrator, determines
18 that no safe and effective substitute has been devel-
19 oped and that such authorization is necessary for
20 aviation safety purposes.

21 “(e) DEVELOPING COUNTRIES.—Notwithstanding
22 any phase down of production required by this section, the
23 Administrator, after notice and opportunity for public
24 comment, may authorize the production of limited quan-
25 tities of class II, group II substances in excess of the

1 amounts otherwise allowable under this section solely for
2 export to, and use in, developing countries. Any produc-
3 tion authorized under this subsection shall be solely for
4 purposes of satisfying the basic domestic needs of such
5 countries as provided in applicable international agree-
6 ments, if any, to which the United States is a party or
7 otherwise adheres.

8 “(f) NATIONAL SECURITY; FIRE SUPPRESSION,
9 ETC.—The provisions of subsection (f) and paragraphs (1)
10 and (2) of subsection (g) of section 604 shall apply to any
11 consumption and production phase down of class II, group
12 II substances in the same manner and to the same extent,
13 consistent with any applicable international agreement to
14 which the United States is a party or otherwise adheres,
15 as such provisions apply to the substances specified in
16 such subsection.

17 “(g) ACCELERATED SCHEDULE.—In lieu of section
18 606, the provisions of paragraphs (1), (2), and (3) of this
19 subsection shall apply in the case of class II, group II sub-
20 stances.

21 “(1) IN GENERAL.—The Administrator shall
22 promulgate initial regulations not later than 18
23 months after the date of enactment of this section,
24 and revised regulations any time thereafter, which
25 establish a schedule for phasing down the consump-

1 tion (and, if the condition in subsection (b)(1)(B) is
2 met, the production) of class II, group II substances
3 that is more stringent than the schedule set forth in
4 this section if, based on the availability of sub-
5 stitutes, the Administrator determines that such
6 more stringent schedule is practicable, taking into
7 account technological achievability, safety, and other
8 factors the Administrator deems relevant, or if the
9 Montreal Protocol, or any applicable international
10 agreement to which the United States is a party or
11 otherwise adheres, is modified or established to in-
12 clude a schedule or other requirements to control or
13 reduce production, consumption, or use of any class
14 II, group II substance more rapidly than the appli-
15 cable schedule under this section.

16 “(2) PETITION.—Any person may submit a pe-
17 tition to promulgate regulations under this sub-
18 section in the same manner and subject to the same
19 procedures as are provided in section 606(b).

20 “(3) INCONSISTENCY.— If the Administrator
21 determines that the provisions of this section regard-
22 ing banking, allowance rollover, or destruction offset
23 credits create a significant potential for inconsis-
24 tency with the requirements of any applicable inter-
25 national agreement to which the United States is a

1 party or otherwise adheres, the Administrator may
2 promulgate regulations restricting the availability of
3 banking, allowance rollover, or destruction offset
4 credits to the extent necessary to avoid such incon-
5 sistency.

6 “(h) EXCHANGE.—Section 607 shall not apply in the
7 case of class II, group II substances. Production and con-
8 sumption allowances for class II, group II substances may
9 be freely exchanged or sold but may not be converted into
10 allowances for class II, group I substances.

11 “(i) LABELING.—(1) In applying section 611 to prod-
12 ucts containing or manufactured with class II, group II
13 substances, in lieu of the words ‘destroying ozone in the
14 upper atmosphere’ on labels required under section 611
15 there shall be substituted the words ‘contributing to global
16 warming’.

17 “(2) The Administrator may, through rulemaking,
18 exempt from the requirements of section 611 products
19 containing or manufactured with class II, group II sub-
20 stances determined to have little or no carbon dioxide
21 equivalent value compared to other substances used in
22 similar products.

23 “(j) NONESSENTIAL PRODUCTS.—For the purposes
24 of section 610, class II, group II substances shall be regu-
25 lated under section 610(b), except that in applying section

1 610(b) the word ‘hydrofluorocarbon’ shall be substituted
2 for the word ‘chlorofluorocarbon’ and the term ‘class II,
3 group II’ shall be substituted for the term ‘class I’. Class
4 II, group II substances shall not be subject to the provi-
5 sions of section 610(d).

6 “(k) INTERNATIONAL TRANSFERS.—In the case of
7 class II, group II substances, in lieu of sections 616(a)
8 and 616(b), this subsection shall apply. To the extent con-
9 sistent with any applicable international agreement to
10 which the United States is a party or otherwise adheres,
11 including any amendment to the Montreal Protocol, the
12 United States may engage in transfers with other parties
13 to such agreement or amendment under the following con-
14 ditions:

15 “(1) The United States may transfer produc-
16 tion allowances to another party to such agreement
17 or amendment if, at the time of the transfer, the
18 Administrator establishes revised production limits
19 for the United States accounting for the transfer in
20 accordance with regulations promulgated pursuant
21 to this subsection.

22 “(2) The United States may acquire production
23 allowances from another party to such agreement or
24 amendment if, at the time of the transfer, the Ad-
25 ministrator finds that the other party has revised its

1 domestic production limits in the same manner as
2 provided with respect to transfers by the United
3 States in the regulations promulgated pursuant to
4 this subsection.

5 “(1) RELATIONSHIP TO OTHER LAWS.—

6 “(1) STATE LAWS.—For purposes of section
7 116, the requirements of this section for class II,
8 group II substances shall be treated as requirements
9 for the control and abatement of air pollution.

10 “(2) INTERNATIONAL AGREEMENTS.—Section
11 614 shall apply to the provisions of this section con-
12 cerning class II, group II substances, except that for
13 the words ‘Montreal Protocol’ there shall be sub-
14 stituted the words ‘Montreal Protocol, or any appli-
15 cable international agreement to which the United
16 States is a party or otherwise adheres that restricts
17 the production or consumption of class II, group II
18 substances,’ and for the words ‘Article 4 of the Mon-
19 treal Protocol’ there shall be substituted ‘any provi-
20 sion of such international agreement regarding trade
21 with non-parties’.

22 “(3) FEDERAL FACILITIES.—For purposes of
23 section 118, the requirements of this section for
24 class II, group II substances and corresponding
25 State, interstate, and local requirements, administra-

1 tive authority, and process and sanctions shall be
2 treated as requirements for the control and abate-
3 ment of air pollution within the meaning of section
4 118.

5 “(m) CARBON DIOXIDE EQUIVALENT VALUE.—(1)

6 In lieu of section 602(e), the provisions of this subsection
7 shall apply in the case of class II, group II substances.
8 Simultaneously with establishing the list of class II, group
9 II substances, and simultaneously with any addition to
10 that list, the Administrator shall publish the carbon diox-
11 ide equivalent value of each listed class II, group II sub-
12 stance, based on a determination of the number of metric
13 tons of carbon dioxide that makes the same contribution
14 to global warming over 100 years as 1 metric ton of each
15 class II, group II substance.

16 “(2) Not later than February 1, 2017, and not less
17 than every 5 years thereafter, the Administrator shall—

18 “(A) review, and if appropriate, revise the car-
19 bon dioxide equivalent values established for class II,
20 group II substances based on a determination of the
21 number of metric tons of carbon dioxide that makes
22 the same contributions to global warming over 100
23 years as 1 metric ton of each class II, group II sub-
24 stance; and

1 “(B) publish in the Federal Register the results
2 of that review and any revisions.

3 “(3) A revised determination published in the Federal
4 Register under paragraph (2)(B) shall take effect for pro-
5 duction of class II, group II substances, consumption of
6 class II, group II substances, and importation of products
7 containing class II, group II substances starting on Janu-
8 ary 1 of the first calendar year starting at least 9 months
9 after the date on which the revised determination was pub-
10 lished.

11 “(4) The Administrator may decrease the frequency
12 of review and revision under paragraph (2) if the Adminis-
13 trator determines that such decrease is appropriate in
14 order to synchronize such review and revisions with any
15 similar review process carried out pursuant to the United
16 Nations Framework Convention on Climate Change, an
17 agreement negotiated under that convention, The Vienna
18 Convention for the Protection of the Ozone Layer, or an
19 agreement negotiated under that convention, except that
20 in no event shall the Administrator carry out such review
21 and revision any less frequently than every 10 years.

22 “(n) REPORTING REQUIREMENTS.—In lieu of sub-
23 sections (b) and (c) of section 603, paragraphs (1) and
24 (2) of this subsection shall apply in the case of class II,
25 group II substances:

1 “(1) IN GENERAL.—On a quarterly basis, or
2 such other basis (not less than annually) as deter-
3 mined by the Administrator, each person who pro-
4 duced, imported, or exported a class II, group II
5 substance, or who imported a product containing a
6 class II, group II substance, shall file a report with
7 the Administrator setting forth the carbon dioxide
8 equivalent amount of the substance that such person
9 produced, imported, or exported, as well as the
10 amount that was contained in products imported by
11 that person, during the preceding reporting period.
12 Each such report shall be signed and attested by a
13 responsible officer. If all other reporting is complete,
14 no such report shall be required from a person after
15 April 1 of the calendar year after such person per-
16 manently ceases production, importation, and expor-
17 tation of the substance, as well as importation of
18 products containing the substance, and so notifies
19 the Administrator in writing. If the United States
20 becomes a party or otherwise adheres to a multilat-
21 eral agreement, including any amendment to the
22 Montreal Protocol on Substances That Deplete the
23 Ozone Layer, that restricts the production and con-
24 sumption of class II, group II substances, then, if all
25 other reporting is complete, no such report shall be

1 required from a person with respect to importation
2 from parties to such agreement or amendment of
3 products containing any class II, group II substance
4 restricted by such agreement or amendment, after
5 April 1 of the calendar year following the year dur-
6 ing which such agreement or amendment enters into
7 force.

8 “(2) BASELINE REPORTS FOR CLASS II, GROUP
9 II SUBSTANCES.—

10 “(A) IN GENERAL.—Unless such informa-
11 tion has been previously reported to the Admin-
12 istrator, on the date on which the first report
13 under paragraph (1) of this subsection is re-
14 quired to be filed, each person who produced,
15 imported, or exported a class II, group II sub-
16 stance, or who imported a product containing a
17 class II substance, (other than a substance
18 added to the list of class II, group II substances
19 after the publication of the initial list of such
20 substances under this section), shall file a re-
21 port with the Administrator setting forth the
22 amount of such substance that such person pro-
23 duced, imported, exported, or that was con-
24 tained in products imported by that person,

1 during each of calendar years 2004, 2005, and
2 2006.

3 “(B) PRODUCERS.—In reporting under
4 subparagraph (A), each person who produced in
5 the United States a class II substance during
6 calendar years 2004, 2005, or 2006 shall—

7 “(i) report all acquisitions or pur-
8 chases of class II substances during each
9 of calendar years 2004, 2005, and 2006
10 from all other persons who produced in the
11 United States a class II substance during
12 calendar years 2004, 2005, or 2006, and
13 supply evidence of such acquisitions and
14 purchases as deemed necessary by the Ad-
15 ministrator; and

16 “(ii) report all transfers or sales of
17 class II substances during each of calendar
18 years 2004, 2005, and 2006 to all other
19 persons who produced in the United States
20 a class II substance during calendar years
21 2004, 2005, or 2006, and supply evidence
22 of such transfers and sales as deemed nec-
23 essary by the Administrator.

24 “(C) ADDED SUBSTANCES.—In the case of
25 a substance added to the list of class II, group

1 II substances after publication of the initial list
2 of such substances under this section, each per-
3 son who produced, imported, exported, or im-
4 ported products containing such substance in
5 calendar year 2004, 2005, or 2006 shall file a
6 report with the Administrator within 180 days
7 after the date on which such substance is added
8 to the list, setting forth the amount of the sub-
9 stance that such person produced, imported,
10 and exported, as well as the amount that was
11 contained in products imported by that person,
12 in calendar years 2004, 2005, and 2006.

13 “(o) STRATOSPHERIC OZONE AND CLIMATE PROTEC-
14 TION FUND.—

15 “(1) IN GENERAL.—There is established in the
16 Treasury of the United States a Stratospheric Ozone
17 and Climate Protection Fund.

18 “(2) DEPOSITS.—The Administrator shall de-
19 posit all proceeds from the auction and non-auction
20 sale of allowances under this section into the Strato-
21 spheric Ozone and Climate Protection Fund.

22 “(3) USE.—Amounts deposited into the Strato-
23 spheric Ozone and Climate Protection Fund shall be
24 available, subject to appropriations, exclusively for
25 the following purposes:

1 “(A) RECOVERY, RECYCLING, AND REC-
2 LAMATION.—The Administrator may utilize
3 funds to establish a program to incentivize the
4 recovery, recycling, and reclamation of any
5 Class II substances in order to reduce emissions
6 of such substances.

7 “(B) MULTILATERAL FUND.—If the
8 United States becomes a party or otherwise ad-
9 heres to a multilateral agreement, including any
10 amendment to the Montreal Protocol on Sub-
11 stances That Deplete the Ozone Layer, which
12 restricts the production and consumption of
13 class II, group II substances, the Administrator
14 may utilize funds to meet any related contribu-
15 tion obligation of the United States to the Mul-
16 tilateral Fund for the Implementation of the
17 Montreal Protocol or similar multilateral fund
18 established under such multilateral agreement.

19 “(C) BEST-IN-CLASS APPLIANCES DEPLOY-
20 MENT PROGRAM.—The Secretary of Energy is
21 authorized to utilize funds to carry out the pur-
22 poses of section 214 of the American Clean En-
23 ergy and Security Act of 2009.

24 “(D) LOW GLOBAL WARMING PRODUCT
25 TRANSITION ASSISTANCE PROGRAM.—

1 “(i) IN GENERAL.—The Adminis-
2 trator, in consultation with the Secretary
3 of Energy, may utilize funds in fiscal years
4 2012 through 2022 to establish a program
5 to provide financial assistance to manufac-
6 turers of products containing class II,
7 group II substances to facilitate the transi-
8 tion to products that contain or utilize al-
9 ternative substances with no or low carbon
10 dioxide equivalent value and no ozone de-
11 pletion potential.

12 “(ii) DEFINITION.—In this subpara-
13 graph, the term ‘products’ means refrig-
14 erators, freezers, dehumidifiers, air condi-
15 tioners, foam insulation, technical aerosols,
16 fire protection systems, and semiconduc-
17 tors.

18 “(iii) FINANCIAL ASSISTANCE.—The
19 Administrator may provide financial assist-
20 ance to manufacturers pursuant to clause
21 (i) for—

22 “(I) the design and configuration
23 of new products that use alternative
24 substances with no or low carbon di-

1 oxide equivalent value and no ozone
2 depletion potential; and

3 “(II) the redesign and retooling
4 of facilities for the manufacture of
5 products in the United States that use
6 alternative substances with no or low
7 carbon dioxide equivalent value and
8 no ozone depletion potential.

9 “(iv) REPORTS.—For any fiscal year
10 during which the Administrator provides
11 financial assistance pursuant to this sub-
12 paragraph, the Administrator shall submit
13 a report to the Congress within 3 months
14 of the end of such fiscal year detailing the
15 amounts, recipients, specific purposes, and
16 results of the financial assistance pro-
17 vided.”

18 (b) TABLE OF CONTENTS.—The table of contents of
19 title VI of the Clean Air Act (42 U.S.C. 7671 et seq.)
20 is amended by adding the following new item at the end
21 thereof:

“Sec. 619. Hydrofluorocarbons (HFCs).”.

22 (c) FIRE SUPPRESSION AGENTS.—Section 605(a) of
23 the Clean Air Act (42 U.S.C. 7671(a)) is amended—

24 (1) by striking “or” at the end of paragraph
25 (2);

1 (2) by striking the period at the end of para-
2 graph (3) and inserting “; or”; and

3 (3) by adding the following new paragraph after
4 paragraph (3):

5 “(4) is listed as acceptable for use as a fire sup-
6 pression agent for nonresidential applications in ac-
7 cordance with section 612(c).”.

8 (d) MOTOR VEHICLE AIR CONDITIONERS.—

9 (1) Section 609(e) of the Clean Air Act (42
10 U.S.C. 7671h(e)) is amended by inserting “, group
11 I” after each reference to “class II”.

12 (2) Section 609 of the Clean Air Act (42 U.S.C.
13 7671h) is amended by adding the following new sub-
14 section after subsection (e):

15 “(f) CLASS II, GROUP II SUBSTANCES.—

16 “(1) REPAIR.—The Administrator may promul-
17 gate regulations establishing requirements for repair
18 of motor vehicle air conditioners prior to adding a
19 class II, group II substance.

20 “(2) SMALL CONTAINERS.—(A) The Adminis-
21 trator may promulgate regulations establishing serv-
22 icing practices and procedures for recovery of class
23 II, group II substances from containers which con-
24 tain less than 20 pounds of such class II, group II
25 substances.

1 “(B) Not later than 18 months after enactment
2 of this subsection, the Administrator shall either
3 promulgate regulations requiring that containers
4 which contain less than 20 pounds of a class II,
5 group II substance be equipped with a device or
6 technology that limits refrigerant emissions and
7 leaks from the container and limits refrigerant emis-
8 sions and leaks during the transfer of refrigerant
9 from the container to the motor vehicle air condi-
10 tioner or issue a determination that such require-
11 ments are not necessary or appropriate.

12 “(C) Not later than 18 months after enactment
13 of this subsection, the Administrator shall promul-
14 gate regulations establishing requirements for con-
15 sumer education materials on best practices associ-
16 ated with the use of containers which contain less
17 than 20 pounds of a class II, group II substance and
18 prohibiting the sale or distribution, or offer for sale
19 or distribution, of any class II, group II substance
20 in any container which contains less than 20 pounds
21 of such class II, group II substance, unless con-
22 sumer education materials consistent with such re-
23 quirements are displayed and available at point-of-
24 sale locations, provided to the consumer, or included
25 in or on the packaging of the container which con-

1 tain less than 20 pounds of a class II, group II sub-
2 stance.

3 “(D) The Administrator may, through rule-
4 making, extend the requirements established under
5 this paragraph to containers which contain 30
6 pounds or less of a class II, group II substance if
7 the Administrator determines that such action would
8 produce significant environmental benefits

9 “(3) RESTRICTION OF SALES.—Effective Janu-
10 ary 1, 2014, no person may sell or distribute or offer
11 to sell or distribute or otherwise introduce into inter-
12 state commerce any motor vehicle air conditioner re-
13 frigerant in any size container unless the substance
14 has been found acceptable for use in a motor vehicle
15 air conditioner under section 612.”.

16 (e) SAFE ALTERNATIVES POLICY.—Section 612(e) of
17 the Clean Air Act (42 U.S.C. 7671k(e)) is amended by
18 inserting “or class II” after each reference to “class I”.

19 **SEC. 333. BLACK CARBON.**

20 (a) DEFINITION.—As used in this section, the term
21 “black carbon” means primary light absorbing aerosols,
22 as defined by the Administrator, based on the best avail-
23 able science.

24 (b) BLACK CARBON ABATEMENT REPORT.—Not
25 later than one year after the date of enactment of this

1 section, the Administrator shall, in consultation with other
2 appropriate Federal agencies, submit to Congress a report
3 regarding black carbon emissions. The report shall include
4 the following:

5 (1) A summary of the current information and
6 research that identifies—

7 (A) an inventory of the major sources of
8 black carbon emissions in the United States
9 and throughout the world, including—

10 (i) an estimate of the quantity of cur-
11 rent and projected future emissions; and

12 (ii) the net climate forcing of the
13 emissions from such sources, including
14 consideration of co-emissions of other pol-
15 lutants;

16 (B) effective and cost-effective control
17 technologies, operations, and strategies for ad-
18 ditional domestic and international black carbon
19 emissions reductions, such as diesel retrofit
20 technologies on existing on-road, non-road, and
21 stationary engines and programs to address res-
22 idential cookstoves, and forest and agriculture-
23 based burning;

24 (C) potential metrics and approaches for
25 quantifying the climatic effects of black carbon

1 emissions, including its radiative forcing and
2 warming effects, that may be used to compare
3 the climate benefits of different mitigation
4 strategies, including an assessment of the un-
5 certainty in such metrics and approaches; and

6 (D) the public health and environmental
7 benefits associated with additional controls for
8 black carbon emissions.

9 (2) Recommendations regarding—

10 (A) development of additional emissions
11 monitoring techniques and capabilities, mod-
12 eling, and other black carbon-related areas of
13 study;

14 (B) areas of focus for additional study of
15 technologies, operations, and strategies with the
16 greatest potential to reduce emissions of black
17 carbon and associated public health, economic,
18 and environmental impacts associated with
19 these emissions; and

20 (C) actions, in addition to those identified
21 by the Administrator under section 851 of the
22 Clean Air Act (as amended by subsection (c)),
23 the Federal Government may take to encourage
24 or require reductions in black carbon emissions.

1 (c) BLACK CARBON MITIGATION.—Title VIII of the
2 Clean Air Act, as added by section 331 of this Act, and
3 amended by section 222 of this Act, is further amended
4 by adding after part D the following new part:

5 **“PART E—BLACK CARBON**

6 **“SEC. 851. BLACK CARBON.**

7 “(a) DOMESTIC BLACK CARBON MITIGATION.—Not
8 later than 18 months after the date of enactment of this
9 section, the Administrator, taking into consideration the
10 public health and environmental impacts of black carbon
11 emissions, including the effects on global and regional
12 warming, the Arctic, and other snow and ice-covered sur-
13 faces, shall propose regulations under the existing authori-
14 ties of this Act to reduce emissions of black carbon or pro-
15 pose a finding that existing regulations promulgated pur-
16 suant to this Act adequately regulate black carbon emis-
17 sions. Not later than two years after the date of enactment
18 of this section, the Administrator shall promulgate final
19 regulations under the existing authorities of this Act or
20 finalize the proposed finding.

21 “(b) INTERNATIONAL BLACK CARBON MITIGA-
22 TION.—

23 “(1) REPORT.—Not later than one year after
24 the date of enactment of this section, the Adminis-
25 trator, in coordination with the Secretary of State

1 and other appropriate Federal agencies, shall trans-
2 mit a report to Congress on the amount, type, and
3 direction of all present United States financial, tech-
4 nical, and related assistance to foreign countries to
5 reduce, mitigate, and otherwise abate black carbon
6 emissions.

7 “(2) OTHER OPPORTUNITIES.—The report re-
8 quired under paragraph (1) shall also identify oppor-
9 tunities and recommendations, including action
10 under existing authorities, to achieve significant
11 black carbon emission reductions in foreign countries
12 through technical assistance or other approaches
13 to—

14 “(A) promote sustainable solutions to
15 bring clean, efficient, safe, and affordable
16 stoves, fuels, or both stoves and fuels to resi-
17 dents of developing countries that are reliant on
18 solid fuels such as wood, dung, charcoal, coal,
19 or crop residues for home cooking and heating,
20 so as to help reduce the public health, environ-
21 mental, and economic impacts of black carbon
22 emissions from these sources by—

23 “(i) identifying key regions for large-
24 scale demonstration efforts, and key part-
25 ners in each such region; and

1 “(ii) developing for each such region a
2 large-scale implementation strategy with a
3 goal of collectively reaching 20,000,000
4 homes over 5 years with interventions that
5 will—

6 “(I) increase stove efficiency by
7 over 50 percent (or such other goal as
8 determined by the Administrator);

9 “(II) reduce emissions of black
10 carbon by over 60 percent (or such
11 other goal as determined by the Ad-
12 ministrator); and

13 “(III) reduce the incidence of se-
14 vere pneumonia in children under 5
15 years old by over 30 percent (or such
16 other goal as determined by the Ad-
17 ministrator);

18 “(B) make technological improvements to
19 diesel engines and provide greater access to
20 fuels that emit less or no black carbon;

21 “(C) reduce unnecessary agricultural or
22 other biomass burning where feasible alter-
23 natives exist;

1 “(D) reduce unnecessary fossil fuel burn-
2 ing that produces black carbon where feasible
3 alternatives exist;

4 “(E) reduce other sources of black carbon
5 emissions; and

6 “(F) improve capacity to achieve greater
7 compliance with existing laws to address black
8 carbon emissions.”.

9 (d) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as are nec-
11 essary to carry out this section.

12 **SEC. 334. STATES.**

13 Section 116 of the Clean Air Act (42 U.S.C. 7416)
14 is amended by adding the following at the end thereof:
15 “For the purposes of this section, the phrases ‘standard
16 or limitation respecting emissions of air pollutants’ and
17 ‘requirements respecting control or abatement of air pollu-
18 tion’ shall include any provision to: cap greenhouse gas
19 emissions, require surrender to the State or a political
20 subdivision thereof of emission allowances or offset credits
21 established or issued under this Act, and require the use
22 of such allowances or credits as a means of demonstrating
23 compliance with requirements established by a State or
24 political subdivision thereof.”.

1 **SEC. 335. STATE PROGRAMS.**

2 Title VIII of the Clean Air Act, as added by section
3 331 of this Act and amended by several sections of this
4 Act, is further amended by adding after part E (as added
5 by section 333 of this Act) the following new part:

6 **“PART F—MISCELLANEOUS**

7 **“SEC. 861. STATE PROGRAMS.**

8 “Notwithstanding section 116, no State or political
9 subdivision thereof shall implement or enforce a cap and
10 trade program that covers any capped emissions emitted
11 during the years 2012 through 2017. For purposes of this
12 section, the term ‘cap and trade program’ means a system
13 of greenhouse gas regulation under which a State or polit-
14 ical subdivision issues a limited number of tradable instru-
15 ments in the nature of emission allowances and requires
16 that sources within its jurisdiction surrender such
17 tradeable instruments for each unit of greenhouse gases
18 emitted during a compliance period. For purposes of this
19 section, a ‘cap-and-trade program’ does not include a tar-
20 get or limit on greenhouse gas emissions adopted by a
21 State or political subdivision that is implemented other
22 than through the issuance and surrender of a limited num-
23 ber of tradable instruments in the nature of emission al-
24 lowances, nor does it include any other standard, limit,
25 regulation, or program to reduce greenhouse gas emissions
26 that is not implemented through the issuance and sur-

1 render of a limited number of tradeable instruments in
2 the nature of emission allowances. For purposes of this
3 section, the term ‘cap and trade program’ does not in-
4 clude, among other things, fleet-wide motor vehicle emis-
5 sion requirements that allow greater emissions with in-
6 creased vehicle production, or requirements that fuels, or
7 other products, meet an average pollution emission rate
8 or lifecycle greenhouse gas standard.

9 **“SEC. 862. GRANTS FOR SUPPORT OF AIR POLLUTION CON-**
10 **TROL PROGRAMS.**

11 “The Administrator is authorized to make grants to
12 air pollution control agencies pursuant to section 105 for
13 purposes of assisting in the implementation of programs
14 to address global warming established under the Safe Cli-
15 mate Act.”.

16 **SEC. 336. ENFORCEMENT.**

17 (a) REMAND.—Section 307(b) of the Clean Air Act
18 (42 U.S.C. 7607(b)) is amended by adding the following
19 new paragraph at the end thereof:

20 “(3) If the court determines that any action of
21 the Administrator is arbitrary, capricious, or other-
22 wise unlawful, the court may remand such action,
23 without vacatur, if vacatur would impair or delay
24 protection of the environment or public health or

1 otherwise undermine the timely achievement of the
2 purposes of this Act.”.

3 (b) PETITION FOR RECONSIDERATION.—Section
4 307(d)(7)(B) of the Clean Air Act (42 U.S.C.
5 7607(d)(7)(B)) is amended as follows:

6 (1) By inserting after the second sentence “If
7 a petition for reconsideration is filed, the Adminis-
8 trator shall take final action on such petition, in-
9 cluding promulgation of final action either revising
10 or determining not to revise the action for which re-
11 consideration is sought, within 150 days after the
12 petition is received by the Administrator or the peti-
13 tion shall be deemed denied for the purpose of judi-
14 cial review.”.

15 (2) By amending the third sentence to read as
16 follows: “Such person may seek judicial review of
17 such denial, or of any other final action, by the Ad-
18 ministrator, in response to a petition for reconsider-
19 ation, in the United States court of appeals for the
20 appropriate circuit (as provided in subsection (b)).”.

21 **SEC. 337. CONFORMING AMENDMENTS.**

22 (a) FEDERAL ENFORCEMENT.—Section 113 of the
23 Clean Air Act (42 U.S.C. 7413) is amended as follows:

24 (1) In subsection (a)(3), by striking “or title
25 VI,” and inserting “title VI, title VII, or title VIII”.

1 (2) In subsection (b), by striking “or a major
2 stationary source” and inserting “a major stationary
3 source, or a covered EGU under title VIII,” in the
4 material preceding paragraph (1).

5 (3) In paragraph (2), by striking “or title VI”
6 and inserting “title VI, title VII, or title VIII”.

7 (4) In subsection (c)—

8 (A) in the first sentence of paragraph (1),
9 by striking “or title VI (relating to strato-
10 spheric ozone control),” and inserting “title VI,
11 title VII, or title VIII,”; and

12 (B) in the first sentence of paragraph (3),
13 by striking “or VI” and inserting “VI, VII, or
14 VIII”.

15 (5) In subsection (d)(1)(B), by striking “or VI”
16 and inserting “VI, VII, or VIII”.

17 (6) In subsection (f), in the first sentence, by
18 striking “or VI” and inserting “VI, VII, or VIII”.

19 (b) RETENTION OF STATE AUTHORITY.—Section
20 116 of the Clean Air Act (42 U.S.C. 7416) is amended
21 as follows:

22 (1) By striking “and 233” and inserting “233”.

23 (2) By striking “of moving sources)” and in-
24 serting “of moving sources), and 861 (preempting

1 certain State greenhouse gas programs for a limited
2 time)”).

3 (c) INSPECTIONS, MONITORING, AND ENTRY.—Sec-
4 tion 114(a) of the Clean Air Act (42 U.S.C. 7414(a)) is
5 amended by striking “section 112,” and all that follows
6 through “(ii)” and inserting the following: “section 112,
7 or any regulation of greenhouse gas emissions under title
8 VII or VIII, (ii)”.

9 (d) ENFORCEMENT.—Subsection (f) of section 304 of
10 the Clean Air Act (42 U.S.C. 7604(f)) is amended as fol-
11 lows:

12 (1) By striking “; or” at the end of paragraph
13 (3) thereof and inserting a comma.

14 (2) By striking the period at the end of para-
15 graph (4) thereof and inserting “, or”.

16 (3) By adding the following after paragraph (4)
17 thereof:

18 “(5) any requirement of title VII or VIII.”.

19 (e) ADMINISTRATIVE PROCEEDINGS AND JUDICIAL
20 REVIEW.—Section 307 of the Clean Air Act (42 U.S.C.
21 7607) is amended as follows:

22 (1) In subsection (a), by striking “, or section
23 306” and inserting “section 306, or title VII or
24 VIII”.

25 (2) In subsection (b)(1)—

1 (A) by striking “,” and inserting “,” in
2 each place such punctuation appears; and

3 (B) by striking “section 120,” in the first
4 sentence and inserting “section 120, any final
5 action under title VII or VIII,”.

6 (3) In subsection (d)(1) by amending subpara-
7 graph (S) to read as follows:

8 “(S) the promulgation or revision of any
9 regulation under title VII or VIII,”.

10 **Subtitle D—Carbon Market**
11 **Assurance**

12 **SEC. 341. CARBON MARKET ASSURANCE.**

13 The Federal Power Act (16 U.S.C. 791a and fol-
14 lowing) is amended by adding at the end the following:

15 **“PART IV—CARBON MARKET ASSURANCE**

16 **“SEC. 401. OVERSIGHT AND ASSURANCE OF CARBON MAR-**
17 **KETS.**

18 “(a) DEFINITIONS.—In this section:

19 “(1) CONTRACT OF SALE.—The term ‘contract
20 of sale’ includes sales, agreements of sale, and
21 agreements to sell.

22 “(2) COVERED ENTITY.—The term ‘covered en-
23 tity’ shall have the meaning given in section 700 of
24 the Clean Air Act.

1 “(3) FUTURE DELIVERY.—The term ‘future de-
2 livery’ does not include any sale of any cash com-
3 modity for deferred shipment or delivery.

4 “(4) OFFSET CREATION CONTRACT.—The term
5 ‘offset creation contract’ mean a written agreement
6 for the origination and development of an offset
7 project, and the related issuance of offset credits,
8 pursuant to title VII of the Clean Air Act.

9 “(5) REGULATED ALLOWANCE.—The term ‘reg-
10 ulated allowance’ means any emission allowance,
11 compensatory allowance, offset credit, or Federal re-
12 newable electricity credit established or issued under
13 the American Clean Energy and Security Act of
14 2009.

15 “(6) REGULATED ALLOWANCE DERIVATIVE.—
16 The term ‘regulated allowance derivative’ means an
17 instrument that is, or includes, an instrument—

18 “(A) which—

19 “(i) is of the character of, or is com-
20 monly known to the trade as, a ‘put op-
21 tion’, ‘call option’, ‘privilege’, ‘indemnity’,
22 ‘advance guaranty’, ‘decline guaranty’, or
23 ‘swap agreement’; or

1 “(ii) is a contract of sale for future
2 delivery other than an offset creation con-
3 tract; and

4 “(B) the value of which, in whole or in
5 part, is expressly linked to the price of a regu-
6 lated allowance or another regulated allowance
7 derivative.

8 “(7) REGULATED INSTRUMENT.—The term
9 ‘regulated instrument’ means a regulated allowance
10 or a regulated allowance derivative.

11 “(b) REGULATED ALLOWANCE MARKET.—

12 “(1) AUTHORITY.—The Commission shall pro-
13 mulgate regulations for the establishment, operation,
14 and oversight of markets for regulated allowances
15 not later than 18 months after the date of the enact-
16 ment of this section, and from time to time there-
17 after as may be appropriate.

18 “(2) REGULATIONS.—The regulations promul-
19 gated pursuant to paragraph (1) shall—

20 “(A) provide for effective and comprehen-
21 sive market oversight;

22 “(B) prohibit fraud, market manipulation
23 (including an entity’s fraudulent or manipula-
24 tive conduct with respect to regulated allowance
25 derivatives that benefits the entity in regulated

1 allowance markets), and excess speculation, and
2 provide measures to limit unreasonable fluctua-
3 tion in the prices of regulated allowances;

4 “(C) facilitate compliance with title VII of
5 the Clean Air Act by covered entities;

6 “(D) ensure market transparency and rec-
7 ordkeeping deemed necessary and appropriate
8 by the Commission to provide for efficient price
9 discovery; prevention of fraud, market manipu-
10 lation, and excess speculation; and compliance
11 with title VII of the Clean Air Act and section
12 610 of the Public Utility Regulatory Policies
13 Act;

14 “(E) as necessary, ensure that position
15 limitations for individual market participants
16 are established with respect to each class of
17 regulated allowances;

18 “(F) as necessary, ensure that margin re-
19 quirements are established for each class of reg-
20 ulated allowances;

21 “(G) provide for the formation and oper-
22 ation of a fair, orderly and liquid national mar-
23 ket system that allows for the best execution in
24 the trading of regulated allowances;

1 “(H) limit or eliminate counterparty risks,
2 market power concentration risks, and other
3 risks associated with over-the-counter trading;
4 and

5 “(I) establish standards for qualification
6 as, and operation of, trading facilities for regu-
7 lated allowances;

8 “(J) establish standards for qualification
9 as, and operation of, clearing organizations for
10 trading facilities for regulated allowances; and

11 “(K) include such other requirements as
12 necessary to preserve market integrity and fa-
13 cilitate compliance with title VII of the Clean
14 Air Act and section 610 of the Public Utility
15 Regulatory Policies Act and the regulations pro-
16 mulgated under such title and such section.

17 “(3) ENFORCEMENT.—

18 “(A) IN GENERAL.—If the Commission de-
19 termines, after notice and an opportunity for a
20 hearing on the record, that any entity has vio-
21 lated any rule or order issued by the Commis-
22 sion under this subsection, the Commission may
23 issue an order—

24 “(i) prohibiting the entity from trad-
25 ing on a trading facility for regulated al-

1 lowances registered with the Commission,
2 and requiring all such facilities to refuse
3 the entity all privileges for such period as
4 may be specified in the order;

5 “(ii) if the entity is registered with
6 the Commission in any capacity, sus-
7 pending for a period of not more than 6
8 months, or revoking, the registration of the
9 entity;

10 “(iii) assessing the entity a civil pen-
11 alty of not more than \$1,000,000 per day
12 per violation for as long as the violation
13 continues (and in determining the amount
14 of a civil penalty, the Commission shall
15 take into account the nature and serious-
16 ness of the violation and the efforts to
17 remedy the violation); and

18 “(iv) requiring disgorgement of unjust
19 profits, restitution to entities harmed by
20 the violation as determined by the Com-
21 mission, or both.

22 “(B) AUTHORITY TO SUSPEND OR REVOKE
23 REGISTRATION.—The Commission may suspend
24 for a period of not more than 6 months, or re-
25 voke, the registration of a trading facility for

1 regulated allowances or of a clearing organiza-
2 tion registered by the Commission if, after no-
3 tice and opportunity for a hearing on the
4 record, the Commission finds that—

5 “(i) the entity violated any rule or
6 order issued by the Commission under this
7 subsection; or

8 “(ii) a director, officer, employee, or
9 agent of the entity has violated any rule or
10 order issued by the Commission under this
11 subsection.

12 “(C) CEASE AND DESIST PROCEEDINGS.—

13 “(i) IN GENERAL.—If the Commission
14 determines that any entity may be vio-
15 lating, may have violated, or may be about
16 to violate any provision of this part, or any
17 regulation promulgated by, or any restric-
18 tion, condition, or order made or imposed
19 by, the Commission under this part, and if
20 the Commission finds that the alleged vio-
21 lation or threatened violation, or the con-
22 tinuation of the violation, is likely to result
23 in significant harm to covered entities or
24 market participants, or significant harm to
25 the public interest, the Commission may

1 issue a temporary order requiring the enti-
2 ty—

3 “(I) to cease and desist from the
4 violation or threatened violation;

5 “(II) to take such action as is
6 necessary to prevent the violation or
7 threatened violation; and

8 “(III) to prevent, as the Commis-
9 sion determines to be appropriate—

10 “(aa) significant harm to
11 covered entities or market par-
12 ticipants;

13 “(bb) significant harm to
14 the public interest; and

15 “(cc) frustration of the abil-
16 ity of the Commission to conduct
17 the proceedings or to redress the
18 violation at the conclusion of the
19 proceedings.

20 “(ii) TIMING OF ENTRY.—An order
21 issued under clause (i) shall be entered
22 only after notice and opportunity for a
23 hearing, unless the Commission determines
24 that notice and hearing before entry would

1 be impracticable or contrary to the public
2 interest.

3 “(iii) EFFECTIVE DATE.—A tem-
4 porary order issued under clause (i)
5 shall—

6 “(I) become effective upon serv-
7 ice upon the entity; and

8 “(II) unless set aside, limited, or
9 suspended by the Commission or a
10 court of competent jurisdiction, re-
11 main effective and enforceable pend-
12 ing the completion of the proceedings.

13 “(D) PROCEEDINGS REGARDING DISSIPATION OR CONVERSION OF ASSETS.—

14
15 “(i) IN GENERAL.—In a proceeding
16 involving an alleged violation of a regula-
17 tion or order promulgated or issued by the
18 Commission, if the Commission determines
19 that the alleged violation or related cir-
20 cumstances are likely to result in signifi-
21 cant dissipation or conversion of assets,
22 the Commission may issue a temporary
23 order requiring the respondent to take
24 such action as is necessary to prevent the
25 dissipation or conversion of assets.

1 “(ii) TIMING OF ENTRY.—An order
2 issued under clause (i) shall be entered
3 only after notice and opportunity for a
4 hearing, unless the Commission determines
5 that notice and hearing before entry would
6 be impracticable or contrary to the public
7 interest.

8 “(iii) EFFECTIVE DATE.—A tem-
9 porary order issued under clause (i)
10 shall—

11 “(I) become effective upon serv-
12 ice upon the respondent; and

13 “(II) unless set aside, limited, or
14 suspended by the Commission or a
15 court of competent jurisdiction, re-
16 main effective and enforceable pend-
17 ing the completion of the proceedings.

18 “(E) REVIEW OF TEMPORARY ORDERS.—

19 “(i) APPLICATION FOR REVIEW.—At
20 any time after a respondent has been
21 served with a temporary cease-and-desist
22 order pursuant to subparagraph (C) or
23 order regarding the dissipation or conver-
24 sion of assets pursuant to subparagraph
25 (D), the respondent may apply to the Com-

1 mission to have the order set aside, lim-
2 ited, or suspended.

3 “(ii) NO PRIOR HEARING.—If a re-
4 spondent has been served with a temporary
5 order entered without a prior hearing of
6 the Commission—

7 “(I) the respondent may, not
8 later than 10 days after the date on
9 which the order was served, request a
10 hearing on the application; and

11 “(II) the Commission shall hold a
12 hearing and render a decision on the
13 application at the earliest practicable
14 time.

15 “(iii) JUDICIAL REVIEW.—

16 “(I) IN GENERAL.—An entity
17 shall not be required to submit a re-
18 quest for rehearing of a temporary
19 order before seeking judicial review in
20 accordance with this subparagraph.

21 “(II) TIMING OF REVIEW.—Not
22 later than 10 days after the date on
23 which a respondent is served with a
24 temporary cease-and-desist order en-
25 tered with a prior hearing of the Com-

1 mission, or 10 days after the date on
2 which the Commission renders a deci-
3 sion on an application and hearing
4 under clause (i) with respect to any
5 temporary order entered without such
6 a prior hearing—

7 “(aa) the respondent may
8 obtain a review of the order in a
9 United States circuit court hav-
10 ing jurisdiction over the circuit in
11 which the respondent resides or
12 has a principal place of business,
13 or in the United States Court of
14 Appeals for the District of Co-
15 lumbia Circuit, for an order set-
16 ting aside, limiting, or sus-
17 pending the effectiveness or en-
18 forcement of the order; and

19 “(bb) the court shall have
20 jurisdiction to enter such an
21 order.

22 “(III) NO PRIOR HEARING.—A
23 respondent served with a temporary
24 order entered without a prior hearing
25 of the Commission may not apply to

1 the applicable court described in sub-
2 clause (II) except after a hearing and
3 decision by the Commission on the ap-
4 plication of the respondent under
5 clauses (i) and (ii).

6 “(iv) PROCEDURES.—Section 222 and
7 Part III shall apply to—

8 “(I) an application for review of
9 an order under clause (i); and

10 “(II) an order subject to review
11 under clause (iii).

12 “(v) NO AUTOMATIC STAY OF TEM-
13 PORARY ORDER.—The commencement of
14 proceedings under clause (iii) shall not, un-
15 less specifically ordered by the court, oper-
16 ate as a stay of the order of the Commis-
17 sion.

18 “(F) ACTIONS TO COLLECT CIVIL PEN-
19 ALTIES.—If any person fails to pay a civil pen-
20 alty assessed under this subsection after an
21 order assessing the penalty has become final
22 and unappealable, the Commission shall bring
23 an action to recover the amount of the penalty
24 in any appropriate United States district court.
25 In any such action, the validity or appropriate-

1 ness of the final assessment order or judgment
2 shall not be subject to review.

3 “(4) TRANSACTION FEES.—

4 “(A) IN GENERAL.—The Commission
5 shall, in accordance with this paragraph, estab-
6 lish and collect transaction fees designed to re-
7 cover the costs to the Federal Government of
8 the supervision and regulation of regulated al-
9 lowance markets and market participants, in-
10 cluding related costs for enforcement activities,
11 policy and rulemaking activities, administration,
12 legal services, and international regulatory ac-
13 tivities.

14 “(B) INITIAL FEE RATE.—Each trading
15 facility on or through which regulated allow-
16 ances are transacted shall pay to the Commis-
17 sion a fee at a rate of not more than \$15 per
18 \$1,000,000 of the aggregate dollar amount of
19 sales of regulated allowances transacted
20 through the facility.

21 “(C) ANNUAL ADJUSTMENT OF FEE
22 RATE.—The Commission shall, on an annual
23 basis—

24 “(i) assess the rate at which fees are
25 to be collected as necessary to meet the

1 cost recovery requirement in subparagraph
2 (A); and

3 “(ii) consistent with subparagraph
4 (B), adjust the rate as necessary in order
5 to meet the requirement.

6 “(D) REPORT ON ADEQUACY OF FEES IN
7 RECOVERING COSTS.—The Commission, shall,
8 on an annual basis, report to the Committee on
9 Energy and Commerce of the House of Rep-
10 resentatives and the Committee on Energy and
11 Natural Resources of the Senate on the ade-
12 quacy of the transaction fees in providing fund-
13 ing for the Commission to regulate the regu-
14 lated allowance markets.

15 “(5) JUDICIAL REVIEW.—Judicial review of ac-
16 tions taken by the Commission under this subsection
17 shall be pursuant to part III.

18 “(6) INFORMATION-SHARING.—Within 6
19 months after a Federal agency with jurisdiction over
20 regulated allowance derivatives is delegated author-
21 ity pursuant to subsection (c)(1), the agency shall
22 enter into a memorandum of understanding with the
23 Commission relating to information sharing, which
24 shall include provisions ensuring that information re-
25 quests to markets within the respective jurisdiction

1 of the agency are properly coordinated to facilitate,
2 among other things, effective information-sharing
3 while minimizing duplicative information requests,
4 and provisions regarding the treatment of propri-
5 etary information.

6 “(7) ADDITIONAL EMPLOYEES REPORT AND AP-
7 POINTMENT.—Within 18 months after the date of
8 the enactment of this section, the Commission shall
9 submit to the President, the Committee on Energy
10 and Commerce of the House of Representatives, and
11 the Committee on Energy and Natural Resources of
12 the Senate, a report that contains recommendations
13 as to how many additional employees would be nec-
14 essary to provide robust oversight and enforcement
15 of the regulations promulgated under this sub-
16 section. As soon as practicable after the completion
17 of the report, subject to appropriations, the Commis-
18 sion shall appoint the recommended number of addi-
19 tional employees for such purposes.

20 “(c) DELEGATION OF AUTHORITY BY THE PRESI-
21 DENT.—

22 “(1) DELEGATION.—The President, taking into
23 consideration the recommendations of the inter-
24 agency working group established in subsection (d),
25 shall delegate to members of the working group and

1 the heads of other appropriate Federal agencies the
2 authority to promulgate regulations for the estab-
3 lishment, operation, and oversight of all markets for
4 regulated allowance derivatives.

5 “(2) REGULATIONS.—The regulations promul-
6 gated pursuant to paragraph (1) shall—

7 “(A) provide for effective and comprehen-
8 sive market oversight;

9 “(B) prohibit fraud, market manipulation,
10 and excess speculation, and provide measures to
11 limit unreasonable fluctuation in the prices of
12 regulated allowance derivatives;

13 “(C) facilitate compliance with title VII of
14 the Clean Air Act by covered entities;

15 “(D) ensure market transparency and rec-
16 ordkeeping necessary to provide for efficient
17 price discovery; prevention of fraud, market ma-
18 nipulation, and excess speculation; and compli-
19 ance with title VII of the Clean Air Act and
20 section 610 of the Public Utility Regulatory
21 Policies Act;

22 “(E) ensure that position limitations for
23 individual market participants are established
24 with respect to each regulated allowance deriva-
25 tive and aggregate position limitations for indi-

1 vidual market participants are established with
2 respect to all regulated allowance derivative
3 markets;

4 “(F) ensure that margin requirements are
5 established for each regulated allowance deriva-
6 tive;

7 “(G) provide for the formation and oper-
8 ation of a market system that allows for best
9 execution in the trading of regulated allowance
10 derivatives;

11 “(H) to the extent the regulations deviate
12 from the rule set forth in paragraph (4)(B),
13 limit or eliminate counterparty risks, market
14 power concentration risks, and other risks asso-
15 ciated with over-the-counter trading, and pro-
16 mulgate reporting and market transparency
17 rules for large traders;

18 “(I) ensure that market participants do
19 not evade position limits or otherwise under-
20 mine the integrity and effectiveness of the regu-
21 lations promulgated under subparagraph (C)
22 through participation in markets not subject to
23 the position limits and regulations;

1 “(J) establish standards, as necessary, for
2 qualification as, and operation of, trading facili-
3 ties for regulated allowance derivatives;

4 “(K) establish standards, as necessary, for
5 qualification as, and operation of, clearing orga-
6 nizations for trading facilities for regulated al-
7 lowance derivatives;

8 “(L) provide boards of trade designated as
9 contract markets under the Commodity Ex-
10 change Act, and market participants, with an
11 adequate transition period for compliance with
12 any new regulatory requirements established
13 under this paragraph;

14 “(M) determine whether and to what ex-
15 tent offset creation contracts, to the extent in-
16 corporating regulated allowance derivatives,
17 should be governed by the same regulations
18 that apply to other regulated allowance deriva-
19 tives; and

20 “(N) include such other requirements as
21 necessary to preserve market integrity and fa-
22 cilitate compliance with title VII of the Clean
23 Air Act and section 610 of the Public Utility
24 Regulatory Policies Act and the regulations pro-
25 mulgated under such title and such section.

1 “(3) DEADLINE.—The agencies authorized to
2 promulgate regulations for the establishment, oper-
3 ation, and oversight of markets for regulated allow-
4 ance derivatives pursuant to paragraph (1) shall
5 promulgate such regulations not later than 18
6 months after the date of enactment of this section,
7 and from time to time thereafter as may be appro-
8 priate.

9 “(4) DEFAULT RULES.—

10 “(A) An individual market participant, di-
11 rectly or in concert with another participant,
12 shall not control more than 10 percent of the
13 open interest in any regulated allowance deriva-
14 tive.

15 “(B) All contracts for the purchase or sale
16 of any regulated allowance derivative shall be
17 executed on or through a board of trade des-
18 ignated as a contract market under the Com-
19 modity Exchange Act.

20 “(C) To the extent that regulations pro-
21 mulgated under this subsection provide dif-
22 ferent rules with respect to the matters de-
23 scribed in subparagraph (A) or (B), the regula-
24 tions shall supersede subparagraph (A) or (B),
25 as the case may be.

1 “(d) WORKING GROUP.—

2 “(1) ESTABLISHMENT.—Not later than 30 days
3 after the date of the enactment of this section, the
4 President shall establish an interagency working
5 group on carbon market oversight, which shall in-
6 clude the Administrator of the Environmental Pro-
7 tection Agency and representatives of other relevant
8 agencies, to make recommendations to the President
9 regarding proposed regulations for the establish-
10 ment, operation, and oversight of markets for regu-
11 lated allowance derivatives.

12 “(2) REPORT.—Not later than 180 days after
13 the date of the enactment of this section, and bienni-
14 ally thereafter, the interagency working group shall
15 submit a written report to the President and Con-
16 gress that includes its recommendations to the
17 President regarding proposed regulations for the es-
18 tablishment, operation, and oversight of markets for
19 regulated allowance derivatives and any rec-
20 ommendations to Congress for statutory changes
21 needed to ensure the establishment, operation, and
22 oversight of transparent, fair, stable, and efficient
23 markets for regulated allowance derivatives.

24 “(e) ENFORCEMENT OF REGULATIONS.—Each Fed-
25 eral agency that promulgates under subsection (c) a regu-

1 lation of conduct with respect to a regulated allowance de-
2 rivative shall have the same authority to enforce compli-
3 ance with the regulation as the Commodity Futures Trad-
4 ing Commission has to enforce compliance with any regu-
5 lation of similar conduct with respect to a contract, agree-
6 ment, or transaction over which the Commodity Futures
7 Trading Commission has jurisdiction, except that any en-
8 forcement by the Federal Energy Regulatory Commission
9 shall be pursuant to section 222 and Part III.

10 “(f) PROHIBITION ON PRICE OR MARKET MANIPULA-
11 TION, FRAUD, AND FALSE OR MISLEADING STATEMENTS
12 OR REPORTS.—(1) It shall be a felony punishable by a
13 fine of not more than \$25,000,000 (or \$5,000,000 in the
14 case of a person who is an individual) or imprisonment
15 for not more than 20 years, or both, together with the
16 costs of prosecution for any person, directly or indirectly—

17 “(A) in connection with a transaction involving
18 a regulated instrument, to knowingly—

19 “(i) use any manipulative or deceptive de-
20 vice or contrivance in violation of regulations
21 promulgated pursuant to this section;

22 “(ii) corner or attempt to corner the regu-
23 lated instrument; or

24 “(iii) cheat or defraud, or attempt to cheat
25 or defraud, any other person;

1 “(B) to knowingly deliver or cause to be deliv-
2 ered a false, misleading, or inaccurate report con-
3 cerning information or conditions that affect or tend
4 to affect the price of a regulated instrument;

5 “(C) to knowingly make, or cause to be made,
6 in an application, report, or document required to be
7 filed under any regulation promulgated pursuant to
8 this section, a statement which is false or misleading
9 with respect to a material fact, or to omit any mate-
10 rial fact required to be stated therein or necessary
11 to make the statements therein not misleading; or

12 “(D) to knowingly falsify, conceal, or cover up
13 by any trick, scheme, or artifice a material fact,
14 make any false, fictitious, or fraudulent statements
15 or representations, or make or use any false writing
16 or document that contains a false, fictitious, or
17 fraudulent statement or entry, to an entity on or
18 through which transactions in regulated instruments
19 occur, or are settled or cleared, acting in furtherance
20 of its official duties under this section or regulations
21 promulgated under this section.

22 “(2) If a person is found guilty of a felony established
23 in paragraph (1), the person may be prohibited from hold-
24 ing or trading regulated instruments for a period of not
25 more than 5 years pursuant to the regulations promul-

1 gated under this section, except that, if the person is a
2 covered entity, the person shall be allowed to hold suffi-
3 cient regulated allowances to meet its compliance obliga-
4 tions.

5 “(g) RELATION TO STATE LAW.—Nothing in this
6 section shall preclude, diminish or qualify any authority
7 of a State or political subdivision thereof to adopt or en-
8 force any unfair competition, antitrust, consumer protec-
9 tion, securities, commodities or any other law or regula-
10 tion, except that no such State law or regulation may re-
11 lieve any person of any requirement otherwise applicable
12 under this section.

13 “(h) MARKET REPORTS.—

14 “(1) COLLECTION AND ANALYSIS OF INFORMA-
15 TION.—The Commission, in conjunction with the
16 Federal agency with jurisdiction over regulated al-
17 lowance derivatives pursuant to subsection (c)(1),
18 shall, on a continuous basis, collect and analyze the
19 following information on the functioning of the mar-
20 kets for regulated instruments established under this
21 part:

22 “(A) The status of, and trends in, the
23 markets, including prices, trading volumes,
24 transaction types, and trading channels and
25 mechanisms.

1 “(B) Spikes, collapses, and volatility in
2 prices of regulated instruments, and the causes
3 therefor.

4 “(C) The relationship between the market
5 for regulated allowances and allowance deriva-
6 tives, and the spot and futures markets for en-
7 ergy commodities, including electricity.

8 “(D) Evidence of fraud or manipulation in
9 any such market, the effects on any such mar-
10 ket of any such fraud or manipulation (or
11 threat of fraud or manipulation) that the Com-
12 mission, in conjunction with the Federal agen-
13 cy, has identified, and the effectiveness of cor-
14 rective measures undertaken by the Commis-
15 sion, in conjunction with the Federal agency, to
16 address the fraud, manipulation, or threat.

17 “(E) The economic effects of the markets,
18 including to macro- and micro-economic effects
19 of unexpected significant increases and de-
20 creases in the price of regulated instruments.

21 “(F) Any changes in the roles, activities,
22 or strategies of various market participants.

23 “(G) Regional, industrial, and consumer
24 responses to the markets, and energy invest-
25 ment responses to the markets.

1 “(H) Any other issue related to the mar-
2 kets that the Commission, in conjunction with
3 the entities, deems appropriate.

4 “(2) ANNUAL REPORTS TO THE CONGRESS.—
5 Not later than 1 month after the end of each cal-
6 endar year, the Commission, in conjunction with the
7 Federal agency, shall submit to the President, the
8 Committee on Energy and Commerce of the House
9 of Representatives, and the Committee on Energy
10 and Natural Resources of the Senate, and make
11 available to the public, a report on the matters de-
12 scribed in paragraph (1) with respect to the year, in-
13 cluding recommendations for any administrative or
14 statutory measures the Commission, in conjunction
15 with the Federal agency, considers necessary to ad-
16 dress any threats to the transparency, fairness, or
17 integrity of the markets in regulated instruments.”.

18 **Subtitle E—Additional Market**

19 **Assurance**

20 **SEC. 351. REGULATION OF CERTAIN TRANSACTIONS IN DE-**
21 **RIVATIVES INVOLVING ENERGY COMMOD-**
22 **ITIES.**

23 (a) ENERGY COMMODITY DEFINED.—Section 1a of
24 the Commodity Exchange Act (7 U.S.C. 1a) is amended—

1 (1) in paragraph (14), by inserting “, an energy
2 commodity,” after “excluded commodity”;

3 (2) by redesignating paragraphs (13) through
4 (21) and paragraphs (22) through (34) as para-
5 graphs (14) through (22) and paragraphs (24)
6 through (36), respectively;

7 (3) by inserting after paragraph (12) the fol-
8 lowing:

9 “(13) ENERGY COMMODITY.—The term ‘energy
10 commodity’ means—

11 “(A) coal;

12 “(B) crude oil, gasoline, diesel fuel, jet
13 fuel, heating oil, and propane;

14 “(C) electricity (excluding financial trans-
15 mission rights which are subject to regulation
16 and oversight by the Federal Energy Regu-
17 latory Commission);

18 “(D) natural gas; and

19 “(E) any other substance (other than an
20 excluded commodity, a metal, or an agricultural
21 commodity) that is used as a source of energy,
22 as the Commission, in its discretion, deems ap-
23 propriate.”; and

1 (4) by inserting after paragraph (22) (as so re-
2 designated by paragraph (2) of this subsection) the
3 following:

4 “(23) INCLUDED ENERGY TRANSACTION.—The
5 term ‘included energy transaction’ means a contract,
6 agreement, or transaction in an energy commodity
7 for future delivery that provides for a delivery point
8 of the energy commodity in the United States or a
9 territory or possession of the United States, or that
10 is offered or transacted on or through a computer
11 terminal located in the United States.”.

12 (b) EXTENSION OF REGULATORY AUTHORITY TO
13 SWAPS INVOLVING ENERGY TRANSACTIONS.—Section
14 2(g) of such Act (7 U.S.C. 2(g)) is amended by inserting
15 “or an energy commodity” after “agricultural com-
16 modity”.

17 (c) ELIMINATION OF EXEMPTION FOR OVER-THE-
18 COUNTER SWAPS INVOLVING ENERGY COMMODITIES.—
19 Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended
20 by inserting “(other than an energy commodity)” after
21 “exempt commodity”.

22 (d) EXTENSION OF REGULATORY AUTHORITY TO IN-
23 CLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS
24 OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amend-
25 ed—

1 (1) in subsection (a), by inserting “, and which
2 is not an included energy transaction” after “terri-
3 tories or possessions” the 2nd place it appears; and

4 (2) in subsection (b), by adding at the end the
5 following: “The preceding sentence shall not apply
6 with respect to included energy transactions.”.

7 (e) LIMITATION OF GENERAL EXEMPTIVE AUTHOR-
8 ITY OF THE CFTC WITH RESPECT TO INCLUDED EN-
9 ERGY TRANSACTIONS.—

10 (1) IN GENERAL.—Section 4(c) of such Act (7
11 U.S.C. 6(c)) is amended by adding at the end the
12 following:

13 “(6) The Commission may not exempt any in-
14 cluded energy transaction from the requirements of
15 subsection (a), unless the Commission provides 60
16 days advance notice to the Congress and the Posi-
17 tion Limit Energy Advisory Group and solicits pub-
18 lic comment about the exemption request and any
19 proposed Commission action.”.

20 (2) NULLIFICATION OF NO-ACTION LETTER EX-
21 EMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE
22 TO INCLUDED ENERGY TRANSACTIONS.—Beginning
23 180 days after the date of the enactment of this Act,
24 any exemption provided by the Commodity Futures
25 Trading Commission that has allowed included en-

1 energy transactions (as defined in section 1a(13) of
2 the Commodity Exchange Act) to be conducted with-
3 out regard to the requirements of section 4(a) of
4 such Act shall be null and void.

5 (f) REQUIREMENT TO ESTABLISH UNIFORM SPECU-
6 LATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.—

7 (1) IN GENERAL.—Section 4a(a) of such Act (7
8 U.S.C. 6a(a)) is amended—

9 (A) by inserting “(1)” after “(a)”;

10 (B) by inserting after the 2nd sentence the
11 following: “With respect to energy transactions,
12 the Commission shall fix limits on the aggre-
13 gate number of positions which may be held by
14 any person for each month across all markets
15 subject to the jurisdiction of the Commission.”;

16 (C) in the 4th sentence by inserting “, con-
17 sistent with the 3rd sentence,” after “Commis-
18 sion”; and

19 (D) by adding after and below the end the
20 following:

21 “(2)(A) Not later than 60 days after the date of the
22 enactment of this paragraph, the Commission shall con-
23 vene a Position Limit Energy Advisory Group consisting
24 of representatives from—

1 “(i) 7 predominantly commercial short hedgers
2 of the actual energy commodity for future delivery;

3 “(ii) 7 predominantly commercial long hedgers
4 of the actual energy commodity for future delivery;

5 “(iii) 4 non-commercial participants in markets
6 for energy commodities for future delivery; and

7 “(iv) each designated contract market or de-
8 rivatives transaction execution facility upon which a
9 contract in the energy commodity for future delivery
10 is traded, and each electronic trading facility that
11 has a significant price discovery contract in the en-
12 ergy commodity.

13 “(B) Not later than 60 days after the date on which
14 the advisory group is convened under subparagraph (A),
15 and annually thereafter, the advisory group shall submit
16 to the Commission advisory recommendations regarding
17 the position limits to be established in paragraph (1).

18 “(C) The Commission shall have exclusive authority
19 to grant exemptions for bona fide hedging transactions
20 and positions from position limits imposed under this Act
21 on energy transactions.”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) SIGNIFICANT PRICE DISCOVERY CON-
24 TRACTS.—Section 2(h)(7) of such Act (7 U.S.C.
25 2(h)(7)) is amended—

1 (i) in subparagraph (A)—

2 (I) by inserting “of this para-
3 graph and section 4a(a)” after “(B)
4 through (D)”;

5 (II) by inserting “of this para-
6 graph” before the period; and

7 (ii) in subparagraph (C)(ii)(IV)—

8 (I) in the heading, by striking
9 “LIMITATIONS OR”; and

10 (II) by striking “position limita-
11 tions or”.

12 (B) CONTRACTS TRADED ON OR THROUGH
13 DESIGNATED CONTRACT MARKETS.—Section
14 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is
15 amended—

16 (i) in the heading by striking “LIMI-
17 TATIONS OR”; and

18 (ii) by striking “position limitations
19 or”.

20 (C) CONTRACTS TRADED ON OR THROUGH
21 DERIVATIVES TRANSACTION EXECUTION FACILI-
22 TIES.—Section 5a(d)(4) of such Act (7 U.S.C.
23 7a(d)(4)) is amended—

24 (i) in the heading by striking “LIMI-
25 TATIONS OR”; and

1 (ii) by striking “position limits or”.

2 (g) ELIMINATION OF THE SWAPS LOOPHOLE.—Sec-
3 tion 4a(c) of such Act (7 U.S.C. 6a(c)) is amended—

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

5 (2) by adding after and below the end the fol-
6 lowing:

7 “(2) For the purposes of contracts of sale for future
8 delivery and options on such contracts or commodities, the
9 Commission shall define what constitutes a bona fide
10 hedging transaction or position as a transaction or posi-
11 tion that—

12 “(A)(i) represents a substitute for transactions
13 made or to be made or positions taken or to be
14 taken at a later time in a physical marketing chan-
15 nel;

16 “(ii) is economically appropriate to the reduc-
17 tion of risks in the conduct and management of a
18 commercial enterprise; and

19 “(iii) arises from the potential change in the
20 value of—

21 “(I) assets that a person owns, produces,
22 manufactures, processes, or merchandises or
23 anticipates owning, producing, manufacturing,
24 processing, or merchandising;

1 “(II) liabilities that a person owns or an-
2 ticipates incurring; or

3 “(III) services that a person provides, pur-
4 chases, or anticipates providing or purchasing;
5 or

6 “(B) reduces risks attendant to a position re-
7 sulting from a transaction that—

8 “(i) was executed pursuant to subsection
9 (d), (g), (h)(1), or (h)(2) of section 2, or an ex-
10 emption issued by the Commission by rule, reg-
11 ulation or order; and

12 “(ii) was executed opposite a counterparty
13 for which the transaction would qualify as a
14 bona fide hedging transaction pursuant to para-
15 graph (2)(A) of this subsection.”.

16 (h) DETAILED REPORTING AND DISAGGREGATION OF
17 MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is
18 amended by adding at the end the following:

19 “(e) DETAILED REPORTING AND DISAGGREGATION
20 OF MARKET DATA.—

21 “(1) INDEX TRADERS AND SWAP DEALERS RE-
22 PORTING.—The Commission shall issue a proposed
23 rule defining and classifying index traders and swap
24 dealers (as those terms are defined by the Commis-
25 sion) for purposes of data reporting requirements

1 and setting routine detailed reporting requirements
2 for any positions of such entities in contracts traded
3 on designated contract markets, over-the-counter
4 markets, derivatives transaction execution facilities,
5 foreign boards of trade subject to section 4(f), and
6 electronic trading facilities with respect to signifi-
7 cant price discovery contracts not later than 120
8 days after the date of the enactment of this sub-
9 section, and issue a final rule within 180 days after
10 such date of enactment.

11 “(2) DISAGGREGATION OF INDEX FUNDS AND
12 OTHER DATA IN MARKETS.—Subject to section 8
13 and beginning within 60 days of the issuance of the
14 final rule required by paragraph (1), the Commis-
15 sion shall disaggregate and make public weekly—

16 “(A) the number of positions and total no-
17 tional value of index funds and other passive,
18 long-only and short-only positions (as defined
19 by the Commission) in all markets to the extent
20 such information is available; and

21 “(B) data on speculative positions relative
22 to bona fide physical hedgers in those markets
23 to the extent such information is available.

24 “(3) DISCLOSURE OF IDENTITY OF HOLDERS
25 OF POSITIONS IN INDEXES IN EXCESS OF POSITION

1 LIMITS.—The Commission shall include in its weekly
2 Commitment of Trader reports the identity of each
3 person who holds a position in an index in excess of
4 a limit imposed under section 4i.”.

5 (i) AUTHORITY TO SET LIMITS TO PREVENT EXCES-
6 SIVE SPECULATION IN INDEXES.—

7 (1) IN GENERAL.—Section 4a of such Act (7
8 U.S.C. 6a) is amended by adding at the end the fol-
9 lowing:

10 “(f) The provisions of this section shall apply to the
11 amounts of trading which may be done or positions which
12 may be held by any person under contracts of sale of an
13 index for future delivery on or subject to the rules of any
14 contract market, derivatives transaction execution facility,
15 or over-the-counter market, or on an electronic trading fa-
16 cility with respect to a significant price discovery contract,
17 in the same manner in which this section applies to con-
18 tracts of sale of a commodity for future delivery.”.

19 (2) REGULATIONS.—The Commodity Futures
20 Trading Commission shall issue regulations under
21 section 4a(f) of the Commodity Exchange Act within
22 180 days after the date of the enactment of this Act.

1 **SEC. 352. NO EFFECT ON AUTHORITY OF THE FEDERAL EN-**
2 **ERGY REGULATORY COMMISSION.**

3 Section 2 of the Commodity Exchange Act (7 U.S.C.
4 2) is amended by adding at the end the following:

5 “(j) NO EFFECT ON FERC AUTHORITY.—This Act
6 shall not be interpreted to affect the jurisdiction of the
7 Federal Energy Regulatory Commission with respect to
8 the authority of the Federal Energy Regulatory Commis-
9 sion under the Federal Power Act (16 U.S.C. 791a et
10 seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or
11 other law to obtain information, carry out enforcement ac-
12 tions, or otherwise carry out the responsibilities of the
13 Federal Energy Regulatory Commission.”.

14 **SEC. 353. INSPECTOR GENERAL OF THE COMMODITY FU-**
15 **TURES TRADING COMMISSION.**

16 (a) ELEVATION OF OFFICE.—

17 (1) INCLUSION OF CFTC IN DEFINITION OF ES-
18 TABLISHMENT.—

19 (A) Section 11(1) of the Inspector General
20 Act of 1978 (5 U.S.C. App.) is amended by
21 striking “or the Federal Cochairpersons of the
22 Commissions established under section 15301
23 of title 40, United States Code;” and inserting
24 “the Federal Cochairpersons of the Commis-
25 sions established under section 15301 of title

1 40, United States Code; or the Chairman of the
2 Commodity Futures Trading Commission;”.

3 (B) Section 11(2) of the Inspector General
4 Act of 1978 (5 U.S.C. App.) is amended by
5 striking “or the Commissions established under
6 section 15301 of title 40, United States Code,”
7 and inserting “the Commissions established
8 under section 15301 of title 40, United States
9 Code, or the Commodity Futures Trading Com-
10 mission,”.

11 (2) EXCLUSION OF CFTC FROM DEFINITION OF
12 DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2)
13 of the Inspector General Act of 1978 (5 U.S.C.
14 App.) is amended by striking “the Commodity Fu-
15 tures Trading Commission,”.

16 (b) EFFECTIVE DATE; TRANSITION RULE.—

17 (1) EFFECTIVE DATE.—The amendments made
18 by this section shall take effect 30 days after the
19 date of the enactment of this Act.

20 (2) TRANSITION RULE.—An individual serving
21 as Inspector General of the Commodity Futures
22 Trading Commission on the effective date of this
23 section pursuant to an appointment made under sec-
24 tion 8G of the Inspector General Act of 1978 (5
25 U.S.C. App.)—

1 (A) may continue so serving until the
2 President makes an appointment under section
3 3(a) of such Act consistent with the amend-
4 ments made by this section; and

5 (B) shall, while serving under subpara-
6 graph (A), remain subject to the provisions of
7 section 8G of such Act which apply with respect
8 to the Commodity Futures Trading Commis-
9 sion.

10 **SEC. 354. SETTLEMENT AND CLEARING THROUGH REG-**
11 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
12 **TIONS.**

13 (a) IN GENERAL.—

14 (1) APPLICATION TO EXCLUDED DERIVATIVE
15 TRANSACTIONS.—

16 (A) Section 2(d)(1) of the Commodity Ex-
17 change Act (7 U.S.C. 2(d)(1)) is amended—

18 (i) by striking “and” at the end of
19 subparagraph (A);

20 (ii) by striking the period at the end
21 of subparagraph (B) and inserting “and”;
22 and

23 (iii) by adding at the end the fol-
24 lowing:

1 “(C) except as provided in section 4(f), the
2 agreement, contract, or transaction is settled
3 and cleared through a derivatives clearing orga-
4 nization registered with the Commission.”.

5 (B) Section 2(d)(2) of such Act (7 U.S.C.
6 2(d)(2)) is amended—

7 (i) by striking “and” at the end of
8 subparagraph (B);

9 (ii) by striking the period at the end
10 of subparagraph (C) and inserting “; and”;
11 and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(D) except as provided in section 4(f), the
15 agreement, contract, or transaction is settled
16 and cleared through a derivatives clearing orga-
17 nization registered with the Commission.”.

18 (2) APPLICATION TO CERTAIN SWAP TRANS-
19 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))
20 is amended—

21 (A) by striking “and” at the end of para-
22 graph (2);

23 (B) by striking the period at the end of
24 paragraph (3) and inserting “; and”; and

25 (C) by adding at the end the following:

1 “(4) except as provided in section 4(f), settled
2 and cleared through a derivatives clearing organiza-
3 tion registered with the Commission.”.

4 (3) APPLICATION TO CERTAIN TRANSACTIONS
5 IN EXEMPT COMMODITIES.—

6 (A) Section 2(h)(1) of such Act (7 U.S.C.
7 2(h)(1)) is amended—

8 (i) by striking “and” at the end of
9 subparagraph (A);

10 (ii) by striking the period at the end
11 of subparagraph (B) and inserting “;
12 and”; and

13 (iii) by adding at the end the fol-
14 lowing:

15 “(C) except as provided in section 4(f), is
16 settled and cleared through a derivatives clear-
17 ing organization registered with the Commis-
18 sion.”.

19 (B) Section 2(h)(3) of such Act (7 U.S.C.
20 2(h)(3)) is amended—

21 (i) by striking “and” at the end of
22 subparagraph (A);

23 (ii) by striking the period at the end
24 of subparagraph (B) and inserting “;
25 and”; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(C) except as provided in section 4(f), set-
4 tled and cleared through a derivatives clearing
5 organization registered with the Commission.”.

6 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-
7 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is
8 amended by inserting “the agreement, contract, or
9 transaction, except as provided in section 4(h), will
10 be settled and cleared through a derivatives clearing
11 organization registered with the Commission and”
12 before “the Commission determines”.

13 (5) CONFORMING AMENDMENT RELATING TO
14 SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Sec-
15 tion 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is
16 amended by striking the heading for the subpara-
17 graph and all that follows through “As part of” and
18 inserting the following:

19 “(D) REVIEW OF IMPLEMENTATION.—As
20 part of”.

21 (b) ALTERNATIVES TO CLEARING THROUGH DES-
22 IGNATED CLEARING ORGANIZATIONS.—Section 4 of such
23 Act (7 U.S.C. 6), as amended by section 351(h) of this
24 Act, is amended by adding at the end the following:

1 “(f) ALTERNATIVES TO CLEARING THROUGH DES-
2 IGNATED CLEARING ORGANIZATIONS.—

3 “(1) SETTLEMENT AND CLEARING THROUGH
4 CERTAIN OTHER REGULATED ENTITIES.—An agree-
5 ment, contract, or transaction, or class thereof, re-
6 lating to an excluded commodity, that would other-
7 wise be required to be settled and cleared by section
8 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or
9 2(h)(3)(C) of this Act, or subsection (c)(1) of this
10 section may be settled and cleared through an entity
11 listed in subsections (a) or (b) of section 409 of the
12 Federal Deposit Insurance Corporation Improvement
13 Act of 1991.

14 “(2) WAIVER OF CLEARING REQUIREMENT.—

15 “(A) The Commission, in its discretion,
16 may exempt an agreement, contract, or trans-
17 action, or class thereof, that would otherwise be
18 required by section 2(d)(1)(C), 2(d)(2)(D),
19 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act,
20 or subsection (c)(1) of this section to be settled
21 and cleared through a derivatives clearing orga-
22 nization registered with the Commission from
23 such requirement.

24 “(B) In granting exemptions pursuant to
25 subparagraph (A), the Commission shall consult

1 with the Securities and Exchange Commission
2 and the Board of Governors of the Federal Re-
3 serve System regarding exemptions that relate
4 to excluded commodities or entities for which
5 the Securities Exchange Commission or the
6 Board of Governors of the Federal Reserve Sys-
7 tem serve as the primary regulator.

8 “(C) Before granting an exemption pursu-
9 ant to subparagraph (A), the Commission shall
10 find that the agreement, contract, or trans-
11 action, or class thereof—

12 “(i) is highly customized as to its ma-
13 terial terms and conditions;

14 “(ii) is transacted infrequently;

15 “(iii) does not serve a significant
16 price-discovery function in the market-
17 place; and

18 “(iv) is being entered into by parties
19 who can demonstrate the financial integ-
20 rity of the agreement, contract, or trans-
21 action and their own financial integrity, as
22 such terms and standards are determined
23 by the Commission. The standards may in-
24 clude, with respect to any federally regu-
25 lated financial entity for which net capital

1 requirements are imposed, a net capital re-
2 quirement associated with any agreement,
3 contract, or transaction subject to an ex-
4 emption from the clearing requirement
5 that is higher than the net capital require-
6 ment that would be associated with such a
7 transaction were it cleared

8 “(D) Any agreement, contract, or trans-
9 action, or class thereof, which is exempted pur-
10 suant to subparagraph (A) shall be reported to
11 the Commission in a manner designated by the
12 Commission, or to such other entity the Com-
13 mission deems appropriate.

14 “(E) The Commission, the Securities and
15 Exchange Commission and the Board of Gov-
16 ernors of the Federal Reserve System shall
17 enter into a memorandum of understanding by
18 which the information reported to the Commis-
19 sion pursuant to subparagraph (D) with regard
20 to excluded commodities or entities for which
21 the Securities Exchange Commission or the
22 Board of Governors of the Federal Reserve Sys-
23 tem serve as the primary regulator may be pro-
24 vided to the other agencies.

1 “(g) SPOT AND FORWARD EXCLUSION.—The settle-
2 ment and clearing requirements of section 2(d)(1)(C),
3 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(e)(1)
4 shall not apply to an agreement, contract, or transaction
5 of any cash commodity for immediate or deferred ship-
6 ment or delivery, as defined by the Commission.”.

7 (c) ADDITIONAL REQUIREMENTS APPLICABLE TO
8 APPLICANTS FOR REGISTRATION AS A DERIVATIVE
9 CLEARING ORGANIZATION.—Section 5b(c)(2) of such Act
10 (7 U.S.C. 7a-1(c)(2)) is amended by adding at the end
11 the following:

12 “(O) DISCLOSURE OF GENERAL INFORMA-
13 TION.—The applicant shall disclose publicly and
14 to the Commission information concerning—

15 “(i) the terms and conditions of con-
16 tracts, agreements, and transactions
17 cleared and settled by the applicant;

18 “(ii) the conventions, mechanisms,
19 and practices applicable to the contracts,
20 agreements, and transactions;

21 “(iii) the margin-setting methodology
22 and the size and composition of the finan-
23 cial resource package of the applicant; and

1 “(iv) other information relevant to
2 participation in the settlement and clearing
3 activities of the applicant.

4 “(P) DAILY PUBLICATION OF TRADING IN-
5 FORMATION.—The applicant shall make public
6 daily information on settlement prices, volume,
7 and open interest for contracts settled or
8 cleared pursuant to the requirements of
9 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),
10 2(h)(3)(C) or 4(c)(1) of this Act by the appli-
11 cant if the Commission determines that the
12 contracts perform a significant price discovery
13 function for transactions in the cash market for
14 the commodity underlying the contracts.

15 “(Q) FITNESS STANDARDS.—The applicant
16 shall establish and enforce appropriate fitness
17 standards for directors, members of any dis-
18 ciplinary committee, and members of the appli-
19 cant, and any other persons with direct access
20 to the settlement or clearing activities of the
21 applicant, including any parties affiliated with
22 any of the persons described in this subpara-
23 graph.”.

24 (d) AMENDMENTS.—

1 (1) Section 409 of the Federal Deposit Insur-
2 ance Corporation Improvement Act of 1991 (12
3 U.S.C. 4422) is amended by adding at the end the
4 following:

5 “(c) CLEARING REQUIREMENT.—A multilateral
6 clearing organization described in subsections (a) or (b)
7 of this section shall comply with requirements similar to
8 the requirements of sections 5b and 5c or the Commodity
9 Exchange Act.”.

10 (2) Section 407 of the Legal Certainty for
11 Bank Products Act of 2000 (7 U.S.C. 27e) is
12 amended by inserting “and the settlement and clear-
13 ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),
14 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such
15 Act” after “the clearing of covered swap agree-
16 ments”.

17 (e) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect 150 days after the date of
19 the enactment of this Act.

20 (f) TRANSITION RULE.—Any agreement, contract, or
21 transaction entered into before the date of the enactment
22 of this Act or within 150 days after such date of enact-
23 ment, in reliance on subsection (d), (g), (h)(1), or (h)(3)
24 of section 2 of the Commodity Exchange Act or any other
25 exemption issued by the Commission Futures Trading

1 Commission by rule, regulation, or order shall, within 90
2 days after such date of enactment, unless settled and
3 cleared through an entity registered with the Commission
4 as a derivatives clearing organization or another clearing
5 entity pursuant to section 4(f) of such Act, be reported
6 to the Commission in a manner designated by the Com-
7 mission, or to such other entity as the Commission deems
8 appropriate.

9 **SEC. 355. LIMITATION ON ELIGIBILITY TO PURCHASE A**
10 **CREDIT DEFAULT SWAP.**

11 (a) IN GENERAL.—Section 4c of the Commodity Ex-
12 change Act (7 U.S.C. 6c) is amended by adding at the
13 end the following:

14 “(h) LIMITATION ON ELIGIBILITY TO PURCHASE A
15 CREDIT DEFAULT SWAP.—It shall be unlawful for any
16 person to enter into a credit default swap unless the per-
17 son—

18 “(1) owns a credit instrument which is insured
19 by the credit default swap;

20 “(2) would experience financial loss if an event
21 that is the subject of the credit default swap occurs
22 with respect to the credit instrument; and

23 “(3) meets such minimum capital adequacy
24 standards as may be established by the Commission,
25 in consultation with the Board of Governors of the

1 Federal Reserve System, or such more stringent
2 minimum capital adequacy standards as may be es-
3 tablished by or under the law of any State in which
4 the swap is originated or entered into, or in which
5 possession of the contract involved takes place.”.

6 (b) ELIMINATION OF PREEMPTION OF STATE
7 BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT
8 SWAPS.—Section 12(e)(2)(B) of such Act (7 U.S.C.
9 16(e)(2)(B)) is amended by inserting “(other than a credit
10 default swap in which the purchaser of the swap would
11 not experience financial loss if an event that is the subject
12 of the swap occurred)” before “that is excluded”.

13 (c) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-
14 tion 1a of such Act (7 U.S.C. 1a), as amended by section
15 351(a) of this Act, is amended by adding at the end the
16 following:

17 “(37) CREDIT DEFAULT SWAP.—the term ‘cred-
18 it default swap’ means a contract which insures a
19 party to the contract against the risk that an entity
20 may experience a loss of value as a result of an
21 event specified in the contract, such as a default or
22 credit downgrade. A credit default swap that is trad-
23 ed on or cleared by a registered entity shall be ex-
24 cluded from the definition of a security as defined in
25 this Act and in section 2(a)(1) of the Securities Act

1 of 1933 or section 3(a)(10) of the Securities Ex-
2 change Act of 1934, except it shall be deemed a se-
3 curity solely for purpose of enforcing prohibitions
4 against insider trading in sections 10 and 16 of the
5 Securities Exchange Act of 1934.”.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall be effective for credit default swaps (as
8 defined in section 1a(37) of the Commodity Exchange Act)
9 entered into after 60 days after the date of the enactment
10 of this section.

11 **SEC. 356. TRANSACTION FEES.**

12 (a) IN GENERAL.—Section 12 of the Commodity Ex-
13 change Act (7 U.S.C. 16) is amended by redesignating
14 subsections (e), (f), and (g) as subsections (f), (g), and
15 (h), respectively, and inserting after subsection (d) the fol-
16 lowing:

17 “(e) CLEARING FEES.—

18 “(1) IN GENERAL.—The Commission shall, in
19 accordance with this subsection, charge and collect
20 from each registered clearing organization, and each
21 such organization shall pay to the Commission,
22 transaction fees at a rate calculated to recover the
23 costs to the Federal Government of the supervision
24 and regulation of futures markets, except those di-
25 rectly related to enforcement.

1 “(2) FEES ASSESSED PER SIDE OF CLEARED
2 CONTRACTS.—

3 “(A) IN GENERAL.—The Commission shall
4 determine the fee rate referred to in paragraph
5 (1), and shall apply the fee rate per side of any
6 transaction cleared.

7 “(B) AUTHORITY TO DELEGATE.— The
8 Commission may determine the procedures by
9 which the fee rate is to be applied on the trans-
10 actions subject to the fee, or delegate the au-
11 thority to make the determination to any appro-
12 priate derivatives clearing organization.

13 “(3) EXEMPTIONS.—The Commission may not
14 impose a fee under paragraph (1) on—

15 “(A) a class of contracts or transactions if
16 the Commission finds that it is in the public in-
17 terest to exempt the class from the fee; or

18 “(B) a contract or transaction cleared by
19 a registered derivatives clearing organization
20 that is—

21 “(i) subject to fees under section 31
22 of the Securities Exchange Act of 1934; or

23 “(ii) a security as defined in the Secu-
24 rities Act of 1933 or the Securities Ex-
25 change Act of 1934.

1 “(4) DATES FOR PAYMENT OF FEES.—The fees
2 imposed under paragraph (1) shall be paid on or be-
3 fore—

4 “(A) March 15 of each year, with respect
5 to transactions occurring on or after the pre-
6 ceding September 1 and on or before the pre-
7 ceding December 31; and

8 “(B) September 15 of each year, with re-
9 spect to transactions occurring on or after the
10 preceding January 1 and on or before the pre-
11 ceding August 31.

12 “(5) ANNUAL ADJUSTMENT OF FEE RATES.—

13 “(A) IN GENERAL.—Not later than April
14 30 of each fiscal year , the Commission shall,
15 by order, adjust each fee rate determined under
16 paragraph (2) for the fiscal year to a uniform
17 adjusted rate that, when applied to the esti-
18 mated aggregate number of cleared sides of
19 transactions for the fiscal year, is reasonably
20 likely to produce aggregate fee receipts under
21 this subsection for the fiscal year equal to the
22 target offsetting receipt amount for the fiscal
23 year.

24 “(B) DEFINITIONS.—In subparagraph (A):

1 “(i) ESTIMATED AGGREGATE NUMBER
2 OF CLEARED SIDES OF TRANSACTIONS.—
3 The term ‘estimated aggregate number of
4 cleared sides of transactions’ means, with
5 respect to a fiscal year, the aggregate
6 number of cleared sides of transactions to
7 be cleared by registered derivatives clear-
8 ing organizations during the fiscal year, as
9 estimated by the Commission, after con-
10 sultation with the Office of Management
11 and Budget, using the methodology re-
12 quired for making projections pursuant to
13 section 257 of the Balanced Budget and
14 Emergency Deficit Control Act of 1985.

15 “(ii) TARGET OFFSETTING RECEIPT
16 AMOUNT.—The term ‘target offsetting re-
17 ceipt amount’ means, with respect to a fis-
18 cal year, the total level of Commission
19 budget authority for all non-enforcement
20 activities of the Commission, as contained
21 in the regular appropriations Acts for the
22 fiscal year.

23 “(C) NO JUDICIAL REVIEW.—An adjusted
24 fee rate prescribed under subparagraph (A)
25 shall not be subject to judicial review.

1 “(6) PUBLICATION.—Not later than April 30 of
2 each fiscal year, the Commission shall cause to be
3 published in the Federal Register notices of the fee
4 rates applicable under this subsection for the suc-
5 ceeding fiscal year, and any estimate or projection
6 on which the fee rates are based.

7 “(7) INAPPLICABILITY OF CERTAIN PROCE-
8 DURAL RULES.—Section 553 of title 5, United
9 States Code, shall not apply with respect to any ex-
10 ercise of authority under this subsection.

11 “(8) ESTABLISHMENT OF FUTURES AND OP-
12 TIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF
13 FEES.—There is established in the Treasury of the
14 United States an account which shall be known as
15 the ‘Futures and Options Transaction Fee Account’.
16 All fees collected under this subsection for a fiscal
17 year shall be deposited in the account. Amounts in
18 the account are authorized to be appropriated to
19 fund the expenditures of the Commission.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 subsection (a) shall apply to fiscal years beginning 30 or
22 more days after the date of the enactment of this Act.

23 (c) TRANSITION RULE.—If this section becomes law
24 after March 31 and before September 1 of a fiscal year,
25 then paragraphs (5)(A) and (6) of section 12(e) of the

1 Commodity Exchange Act shall be applied, in the case of
2 the 1st fiscal year beginning after the date of the enact-
3 ment of this Act, by substituting “August 31” for “April
4 30”.

5 **SEC. 357. NO EFFECT ON AUTHORITY OF THE FEDERAL**
6 **TRADE COMMISSION.**

7 Nothing in this subtitle shall be interpreted to affect
8 or diminish the jurisdiction or authority of the Federal
9 Trade Commission with respect to its authorities under
10 the Federal Trade Commission Act (15 U.S.C. 41 et seq.)
11 or the Energy Independence and Security Act of 2007
12 (Public Law 110–140) to obtain information, to carry out
13 enforcement activities or otherwise carry out the respon-
14 sibilities of the Federal Trade Commission.

15 **SEC. 358. REGULATION OF CARBON DERIVATIVES MAR-**
16 **KETS.**

17 (a) **DEFAULT RULE.**—Section 2 of the Commodity
18 Exchange Act (7 U.S.C. 2), as amended by section 352
19 of this Act, is amended by adding at the end the following:

20 “(k) The Commission shall have jurisdiction over the
21 establishment, operations, and oversight of markets for
22 regulated allowance derivatives (as defined in section 401
23 of the Federal Power Act (16 U.S.C. 791a and following),
24 and shall provide for the establishment, operation, and
25 oversight of the markets in accordance with the same reg-

1 ulations that apply under this Act to included energy
2 transactions.”.

3 (b) **PRESIDENTIAL DETERMINATIONS.**—To the ex-
4 tent that the President delegates the authority to promul-
5 gate regulations for the establishment, operation, and
6 oversight of all markets for regulated allowance derivatives
7 to a Federal agency other than the Commodity Futures
8 Trading Commission pursuant to section 401 of the Fed-
9 eral Power Act, such determination shall supersede sub-
10 section (a). To the extent that the President determines
11 that regulations promulgated pursuant to section
12 401(c)(2) of the Federal Power Act would provide for
13 more stringent and effective market oversight, such regu-
14 lations shall supersede subsection (a). Nothing in this sec-
15 tion shall be construed to affect the operation of the de-
16 fault rules established in section 401(c)(4) of the Federal
17 Power Act.

18 **TITLE IV—TRANSITIONING TO A**
19 **CLEAN ENERGY ECONOMY**
20 **Subtitle A—Ensuring Real**
21 **Reductions in Industrial Emissions**
22 **SEC. 401. ENSURING REAL REDUCTIONS IN INDUSTRIAL**
23 **EMISSIONS.**

24 Title VII of the Clean Air Act is amended by insert-
25 ing after part E the following new part:

1 **“PART F—ENSURING REAL REDUCTIONS IN**
2 **INDUSTRIAL EMISSIONS**

3 **“SEC. 761. PURPOSES.**

4 “(a) PURPOSE OF PART.—The purposes of this part
5 are—

6 “(1) to promote a strong global effort to signifi-
7 cantly reduce greenhouse gas emissions, and,
8 through this global effort, stabilize greenhouse gas
9 concentrations in the atmosphere at a level that will
10 prevent dangerous anthropogenic interference with
11 the climate system; and

12 “(2) to prevent an increase in greenhouse gas
13 emissions in countries other than the United States
14 as a result of direct and indirect compliance costs in-
15 curred under this title.

16 “(b) PURPOSES OF SUBPART 1.—The purposes of
17 subpart 1 are additionally—

18 “(1) to rebate the owners and operators of enti-
19 ties in domestic eligible industrial sectors for their
20 greenhouse gas emission costs incurred under this
21 title, but not for costs associated with other related
22 or unrelated market dynamics;

23 “(2) to design such rebates in a way that will
24 prevent carbon leakage while also rewarding innova-
25 tion and facility-level investments in energy effi-
26 ciency performance improvements; and

1 “(3) to eliminate or reduce distribution of emis-
2 sion allowances under this part when such distribu-
3 tion is no longer necessary to prevent carbon leakage
4 from eligible industrial sectors.

5 **“SEC. 762. INTERNATIONAL NEGOTIATIONS.**

6 “(a) FINDING.—Congress finds that the purposes of
7 this part, as set forth in section 761, can be most effec-
8 tively addressed and achieved through agreements nego-
9 tiated between the United States and foreign countries.

10 “(b) STATEMENT OF POLICY.—It is the policy of the
11 United States to work proactively under the United Na-
12 tions Framework Convention on Climate Change, and in
13 other appropriate forums, to establish binding agreements,
14 including sectoral agreements, committing all major
15 greenhouse gas-emitting nations to contribute equitably to
16 the reduction of global greenhouse gas emissions.

17 “(c) NOTIFICATION OF FOREIGN COUNTRIES.—Not
18 later than January 1, 2020, the President shall notify for-
19 eign countries that an International Reserve Allowance
20 Program, as described in subpart 2, may apply to primary
21 products produced in a foreign country by a sector for
22 which the President has made a determination described
23 in section 767(c).

24 **“SEC. 763. DEFINITIONS.**

25 “‘In this part:

1 “(1) CARBON LEAKAGE.—The term ‘carbon
2 leakage’ means any substantial increase (as deter-
3 mined by the Administrator) in greenhouse gas
4 emissions by industrial entities located in other
5 countries if such increase is caused by an incre-
6 mental cost of production increase in the United
7 States resulting from the implementation of this
8 title.

9 “(2) ELIGIBLE INDUSTRIAL SECTOR.—The
10 term ‘eligible industrial sector’ means an industrial
11 sector determined by the Administrator under sec-
12 tion 764(b) to be eligible to receive emission allow-
13 ance rebates under subpart 1.

14 “(3) INDUSTRIAL SECTOR.—The term ‘indus-
15 trial sector’ means any sector that is in the manu-
16 facturing sector (as defined in NAICS codes 31, 32,
17 and 33).

18 “(4) NAICS.—The term ‘NAICS’ means the
19 North American Industrial Classification System of
20 2002.

21 “(5) OUTPUT.—The term ‘output’ means the
22 total tonnage or other standard unit of production
23 (as determined by the Administrator) produced by
24 an entity in an industrial sector. The output of the
25 cement sector is hydraulic cement, and not clinker.

1 “(6) PRIMARY PRODUCT.—The term ‘primary
2 product’ means a product manufactured by an eligi-
3 ble industrial sector that is—

4 “(A) iron, steel, steel mill products (includ-
5 ing pipe and tube), aluminum, cement, glass
6 (including flat, container, and specialty glass
7 and fiberglass), pulp, paper, chemicals, or in-
8 dustrial ceramics; or

9 “(B) any other manufactured product that
10 is sold in bulk for purposes of further manufac-
11 ture or inclusion in a finished product.

12 **“Subpart 1—Emission Allowance Rebate Program**

13 **“SEC. 764. ELIGIBLE INDUSTRIAL SECTORS.**

14 “(a) LIST.—

15 “(1) INITIAL LIST.—Not later than June 30,
16 2011, the Administrator shall publish in the Federal
17 Register a list of eligible industrial sectors pursuant
18 to subsection (b). Such list shall include the amount
19 of the emission allowance rebate per unit of produc-
20 tion that shall be provided to entities in each eligible
21 industrial sector in the following two calendar years
22 pursuant to section 765.

23 “(2) SUBSEQUENT LISTS.—Not later than Feb-
24 ruary 1, 2013, and every four years thereafter, the
25 Administrator shall publish in the Federal Register

1 an 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.—An owner or
12 operator of an entity shall be eligible to receive
13 emission allowance rebates under this subpart if
14 such entity is in an industrial sector that is in-
15 cluded in a six-digit classification of the NAICS
16 that meets the criteria in both clauses (i) and
17 (ii), or the criteria in clause (iii).

18 “(i) ENERGY OR GREENHOUSE GAS
19 INTENSITY.—As determined by the Admin-
20 istrator, the industrial sector had—

21 “(I) an energy intensity of at
22 least 5 percent, calculated by dividing
23 the cost of purchased electricity and
24 fuel costs of the sector by the value of
25 the shipments of the sector, based on

1 data described in subparagraph (E);
2 or

3 “(II) a greenhouse gas intensity
4 of at least 5 percent, calculated by di-
5 viding—

6 “(aa) the number 20 multi-
7 plied by the number of tons of
8 carbon dioxide equivalent green-
9 house gas emissions (including
10 direct emissions from fuel com-
11 bustion, process emissions, and
12 indirect emissions from the gen-
13 eration of electricity used to
14 produce the output of the sector)
15 of the sector based on data de-
16 scribed in subparagraph (E); by

17 “(bb) the value of the ship-
18 ments of the sector, based on
19 data described in subparagraph
20 (E).

21 “(ii) TRADE INTENSITY.—As deter-
22 mined by the Administrator, the industrial
23 sector had a trade intensity of at least 15
24 percent, calculated by dividing the value of
25 the total imports and exports of such sec-

1 tor by the value of the shipments plus the
2 value of imports of such sector, based on
3 data described in subparagraph (E).

4 “(iii) VERY HIGH ENERGY OR GREEN-
5 HOUSE GAS INTENSITY.—As determined by
6 the Administrator, the industrial sector
7 had an energy or greenhouse gas intensity,
8 as calculated under clause (i)(I) or (II), of
9 at least 20 percent.

10 “(B) IRON AND STEEL SECTOR.—For pur-
11 poses of this subpart, in carrying out this sec-
12 tion and section 765, the Administrator shall
13 consider as in different industrial sectors—

14 “(i) entities using integrated iron and
15 steelmaking technologies (including coke
16 ovens, blast furnaces, and other iron-mak-
17 ing technologies); and

18 “(ii) entities using electric arc furnace
19 technologies.

20 “(C) METAL PRODUCTION CLASSIFIED
21 UNDER MORE THAN ONE NAICS CODE.—In car-
22 rying out this section and section 765, the Ad-
23 ministrators shall—

24 “(i) aggregate data for the
25 beneficiation or other processing of iron

1 and copper ores and phosphate with subse-
2 quent steps in the process of metal manu-
3 facturing regardless of the NAICS code
4 under which such activity is classified; and

5 “(ii) aggregate data for the manufac-
6 turing of steel with the manufacturing of
7 steel pipe and tube made from purchased
8 steel in a nonintegrated process.

9 “(D) EXCLUSION.—The petroleum refining
10 sector shall not be an eligible industrial sector.

11 “(E) DATA SOURCES.—

12 “(i) ELECTRICITY AND FUEL COSTS,
13 VALUE OF SHIPMENTS.—The Adminis-
14 trator shall determine electricity and fuel
15 costs and the value of shipments under
16 this subsection from data from the United
17 States Census of Mineral Industries and
18 the United States Census Annual Survey
19 of Manufacturers. The Administrator shall
20 take the average of data from as many of
21 the years of 2004, 2005, and 2006 for
22 which such data are available. If such data
23 are unavailable, the Administrator shall
24 make a determination based upon 2002 or
25 2006 data from the most detailed indus-

1 trial classification level of Energy Informa-
2 tion Agency’s Manufacturing Energy Con-
3 sumption Survey (using 2006 data if it is
4 available) and the 2002 or 2007 Economic
5 Census of the United States (using 2007
6 data if it is available). If data from the
7 Manufacturing Energy Consumption Sur-
8 vey are unavailable for any sector at the
9 six-digit classification level in the NAICS,
10 then the Administrator may extrapolate
11 the information necessary to determine the
12 eligibility of a sector under this paragraph
13 from available Manufacturing Energy Con-
14 sumption Survey data pertaining to a
15 broader industrial category classified in the
16 NAICS. Fuel cost data shall not include
17 the cost of fuel used as feedstock by an in-
18 dustrial sector.

19 “(ii) IMPORTS AND EXPORTS.—The
20 Administrator shall base the value of im-
21 ports and exports under this subsection on
22 United States International Trade Com-
23 mission data. The Administrator shall take
24 the average of data from as many of the

1 years of 2004, 2005, and 2006 for which
2 such data are available.

3 “(iii) PERCENTAGES.—The Adminis-
4 trator shall round the energy intensity,
5 greenhouse gas intensity, and trade inten-
6 sity percentages under subparagraph (A)
7 to the nearest whole number.

8 “(iv) GREENHOUSE GAS EMISSION
9 CALCULATIONS.—When calculating the
10 tons of carbon dioxide equivalent green-
11 house gas emissions for each sector under
12 subparagraph (A)(i)(II)(aa), the Adminis-
13 trator—

14 “(I) shall use the best available
15 data from as many of the years 2004,
16 2005, and 2006 for which such data
17 is available; and

18 “(II) may, to the extent nec-
19 essary with respect to a sector, use
20 economic and engineering models and
21 the best available information on tech-
22 nology performance levels for such
23 sector.

24 “(3) ADMINISTRATIVE DETERMINATION OF AD-
25 DITIONAL ELIGIBLE INDUSTRIAL SECTORS.—

1 “(A) INDIVIDUAL SHOWING PETITION.—

2 “(i) PETITION.—The owner or oper-
3 ator of an entity in an industrial sector
4 may petition the Administrator to des-
5 ignate as eligible industrial sectors under
6 this subpart an entity or a group of enti-
7 ties that—

8 “(I) represent a subsector of a
9 six-digit section of the NAICS code;
10 and

11 “(II) meet the eligibility criteria
12 in both clauses (i) and (ii) of para-
13 graph (2)(A), or the eligibility criteria
14 in clause (iii) of paragraph (2)(A).

15 “(ii) DATA.—In making a determina-
16 tion under this subparagraph, the Admin-
17 istrator shall consider data submitted by
18 the petitioner that is specific to the entity,
19 data solicited by the Administrator from
20 other entities in the subsector, if such
21 other entities exist, and data specified in
22 paragraph (2)(E).

23 “(iii) BASIS OF SUBSECTOR DETER-
24 MINATION.—The Administrator shall de-
25 termine an entity or group of entities to be

1 a subsector of a six-digit section of the
2 NAICS code based only upon the products
3 manufactured and not the industrial proc-
4 ess by which the products are manufac-
5 tured, except that the Administrator may
6 determine an entity or group of entities
7 that manufacture a product from a virgin
8 material to be a separate subsector from
9 another entity or group of entities that
10 manufacture the same product from recy-
11 cled material.

12 “(iv) FINAL ACTION.—The Adminis-
13 trator shall take final action on such peti-
14 tion no later than 6 months after the peti-
15 tion is received by the Administrator.

16 “(B) UPDATED TRADE INTENSITY DATA.—
17 The Administrator shall designate as eligible to
18 receive emission allowance rebates under this
19 subpart an industrial sector that—

20 “(i) met the energy or greenhouse gas
21 intensity criteria in paragraph (2)(A)(i) as
22 of the date of promulgation of the rule
23 under paragraph (1); and

1 “(ii) meets the trade intensity criteria
2 in paragraph (2)(A)(ii), using data from
3 any year after 2006.

4 “(C) USE OF MOST RECENT DATA.—In de-
5 termining whether to designate a sector or sub-
6 sector as an eligible industrial sector under this
7 paragraph, the Administrator shall use the
8 most recent data available from the sources de-
9 scribed in paragraph (2)(E), rather than the
10 data from the years specified in paragraph
11 (2)(E), to determine the trade intensity of such
12 sector or subsector, but only for determining
13 such trade intensity.

14 **“SEC. 765. DISTRIBUTION OF EMISSION ALLOWANCE RE-**
15 **BATES.**

16 “(a) DISTRIBUTION SCHEDULE.—

17 “(1) IN GENERAL.—For each vintage year, the
18 Administrator shall distribute allowances pursuant
19 to this section no later than October 31 of the pre-
20 ceding calendar year. The Administrator shall make
21 such annual distributions to the owners and opera-
22 tors of each entity in an eligible industrial sector in
23 the amount of emission allowances calculated under
24 subsection (b), except that—

1 “(A) for vintage years 2012 and 2013, the
2 distribution for a covered entity shall be the en-
3 tity’s indirect carbon factor as calculated under
4 subsection (b)(3); and

5 “(B) for vintage year 2026 and thereafter,
6 the distribution shall be the amount calculated
7 under subsection (b) multiplied by, except as
8 modified by the President pursuant to section
9 767(c)(3)(A) for a sector—

10 “(i) 90 percent for vintage year 2026;

11 “(ii) 80 percent for vintage year
12 2027;

13 “(iii) 70 percent for vintage year
14 2028;

15 “(iv) 60 percent for vintage year
16 2029;

17 “(v) 50 percent for vintage year 2030;

18 “(vi) 40 percent for vintage year
19 2031;

20 “(vii) 30 percent for vintage year
21 2032;

22 “(viii) 20 percent for vintage year
23 2033;

24 “(ix) 10 percent for vintage year
25 2034; and

1 “(x) 0 percent for vintage year 2035
2 and thereafter.

3 “(2) RESUMPTION OF REDUCTION.—If the
4 President has modified the percentage stated in
5 paragraph (1)(B) under section 767(c)(3)(A), and
6 the President subsequently makes a determination
7 under section 767(b) for an eligible industrial sector
8 that more than 70 percent of global output for that
9 sector is produced or manufactured in countries that
10 have met at least one of the criteria in that sub-
11 section, then the reduction schedule set forth in
12 paragraph (1)(B) of this subsection shall begin in
13 the next vintage year, with the percentage reduction
14 based on the amount of the distribution of emission
15 allowances under this section in the previous year.

16 “(3) NEWLY ELIGIBLE SECTORS.—In addition
17 to receiving a distribution of emission allowances
18 under this section in the first distribution occurring
19 after an industrial sector is designated as eligible
20 under section 764(b)(3), the owner or operator of an
21 entity in that eligible industrial sector may receive a
22 prorated share of any emission allowances made
23 available for distribution under this section that
24 were not distributed for the year in which the peti-

1 tion for eligibility was granted under section
2 764(b)(3)(A).

3 “(b) CALCULATION OF DIRECT AND INDIRECT CAR-
4 BON FACTORS.—

5 “(1) IN GENERAL.—

6 “(A) COVERED ENTITIES.—Except as pro-
7 vided in subsection (a), for covered entities that
8 are in eligible industrial sectors, the amount of
9 emission allowance rebates shall be based on
10 the sum of the covered entity’s direct and indi-
11 rect carbon factors.

12 “(B) OTHER ELIGIBLE ENTITIES.—For
13 entities that are in eligible industrial sectors
14 but are not covered entities, the amount of
15 emission allowance rebates shall be based on
16 the entity’s indirect carbon factor.

17 “(C) NEW ENTITIES.—Not later than 2
18 years after the date of enactment of this title,
19 the Administrator shall issue regulations gov-
20 erning the distribution of emission allowance re-
21 bates for the first and second years of operation
22 of a new entity in an eligible industrial sector.
23 These regulations shall provide for—

1 “(i) the distribution of emission allow-
2 ance rebates to such entities based on com-
3 parable entities in the same sector; and

4 “(ii) an adjustment in the third and
5 fourth years of operation to reconcile the
6 total amount of emission allowance rebates
7 received during the first and second years
8 of operation to the amount the entity
9 would have received during the first and
10 second years of operation had the appro-
11 priate data been available.

12 “(2) DIRECT CARBON FACTOR.—The direct car-
13 bon factor for a covered entity for a vintage year is
14 the product of—

15 “(A) the average output of the covered en-
16 tity for the two years preceding the year of the
17 distribution; and

18 “(B) the most recent calculation of the av-
19 erage direct greenhouse gas emissions (ex-
20 pressed in tons of carbon dioxide equivalent)
21 per unit of output for all covered entities in the
22 sector, as determined by the Administrator
23 under paragraph (4).

24 “(3) INDIRECT CARBON FACTOR.—

1 “(A) IN GENERAL.—The indirect carbon
2 factor for an entity for a vintage year is the
3 product obtained by multiplying the average
4 output of the entity for the two years preceding
5 the years of the distribution by both the elec-
6 tricity emissions intensity factor determined
7 pursuant to subparagraph (B) and the elec-
8 tricity efficiency factor determined pursuant to
9 subparagraph (C) for the year concerned.

10 “(B) ELECTRICITY EMISSIONS INTENSITY
11 FACTOR.—Each person selling electricity to the
12 owner or operator of an entity in any sector
13 designated as an eligible industrial sector under
14 section 764(b) shall provide the owner or oper-
15 ator of the entity and the Administrator, on an
16 annual basis, the electricity emissions intensity
17 factor for the entity. The electricity emissions
18 intensity factor for the entity, expressed in tons
19 of carbon dioxide equivalents per kilowatt hour,
20 is determined by dividing—

21 “(i) the annual sum of the hourly
22 product of—

23 “(I) the electricity purchased by
24 the entity from that person in each

1 hour (expressed in kilowatt hours),
2 multiplied by

3 “(II) the marginal or weighted
4 average tons of carbon dioxide equiva-
5 lent per kilowatt hour that the person
6 selling the electricity charges to the
7 entity, taking into account the entity’s
8 retail rate arrangements, by

9 “(ii) the total kilowatt hours of elec-
10 tricity purchased by the entity from that
11 person during that year.

12 “(C) ELECTRICITY EFFICIENCY FACTOR.—
13 The electricity efficiency factor is the average
14 amount of electricity (in kilowatt hours) used
15 per unit of output for all entities in the relevant
16 sector, as determined by the Administrator
17 based on the best available data, including data
18 provided under paragraph (6).

19 “(D) INDIRECT CARBON FACTOR REDUC-
20 TION.—If an electricity provider received a free
21 allocation of emission allowances pursuant to
22 section 782(a), the Administrator shall adjust
23 the indirect carbon factor to avoid rebates to
24 the eligible entity for costs that the Adminis-
25 trator determines were not incurred by the in-

1 industrial entity because the allowances were free-
2 ly allocated to the eligible entity's electricity
3 provider and used for the benefit of industrial
4 consumers.

5 “(4) GREENHOUSE GAS INTENSITY CALCULA-
6 TIONS.—The Administrator shall calculate the aver-
7 age direct greenhouse gas emissions (expressed in
8 tons of carbon dioxide equivalent) per unit of output
9 for all covered entities in each eligible industrial sec-
10 tor every four years using an average of the two
11 most recent years of the best available data.

12 “(5) ENSURING EFFICIENCY IMPROVEMENTS.—
13 When making greenhouse gas calculations, the Ad-
14 ministrator shall—

15 “(A) limit the average direct greenhouse
16 gas emissions per unit of output, calculated
17 under paragraph (4), for any eligible industrial
18 sector to an amount that is not greater than it
19 was in any previous calculation under this sub-
20 section; and

21 “(B) limit the electricity emissions inten-
22 sity factor, calculated under paragraph (3)(B)
23 and resulting from a change in electricity sup-
24 ply, for any entity to an amount that is not
25 greater than it was during any previous year.

1 “(6) DATA SOURCES.—For the purposes of this
2 subsection—

3 “(A) the Administrator shall use data from
4 the greenhouse gas registry, established under
5 section 713, where it is available; and

6 “(B) each owner or operator of an entity
7 in an eligible industrial sector and each depart-
8 ment, agency, and instrumentality of the
9 United States shall provide the Administrator
10 with such information as the Administrator
11 finds necessary to determine the direct carbon
12 factor and the indirect carbon factor for each
13 entity subject to this section.

14 “(c) TOTAL MAXIMUM DISTRIBUTION.—Notwith-
15 standing subsections (a) and (b), the Administrator shall
16 not distribute more allowances for any vintage year pursu-
17 ant to this section than are allocated for use under this
18 part pursuant to section 782 for that vintage year. For
19 any vintage year for which the total emission allowance
20 rebates calculated pursuant to this section exceed the
21 number of allowances allocated pursuant to section 782,
22 the Administrator shall reduce each entity’s distribution
23 on a pro rata basis so that the total distribution under
24 this section equals the number of allowances allocated
25 under section 782.

1 **“Subpart 2—International Reserve Allowance**
2 **Program**

3 **“SEC. 766. INTERNATIONAL RESERVE ALLOWANCE PRO-**
4 **GRAM.**

5 “(a) ESTABLISHMENT.—

6 “(1) IN GENERAL.—If the President takes an
7 action described in section 767(c)(3)(B) with respect
8 to a sector then, not later than 24 months after that
9 determination, the Administrator shall issue regula-
10 tions—

11 “(A) determining an appropriate price for
12 and offering for sale to United States importers
13 international reserve allowances;

14 “(B) requiring the submission of appro-
15 priate amounts of such allowances in conjunc-
16 tion with the importation into the United States
17 of a primary product produced or manufactured
18 by that sector;

19 “(C) exempting from the requirements of
20 subparagraph (B) primary products produced
21 in—

22 “(i) foreign countries that the United
23 Nations has identified as among the least
24 developed of developing countries; or

25 “(ii) foreign countries that the Presi-
26 dent has determined to be responsible for

1 less than 0.5 percent of total global green-
2 house gas emissions; and

3 “(D) prohibiting the introduction into
4 interstate commerce of a primary product with-
5 out submitting the required number of inter-
6 national reserve allowances in accordance with
7 such regulations, unless the product was pro-
8 duced by a covered entity under this title, or by
9 an entity that is or could be regulated under
10 this title.

11 “(2) PURPOSE OF PROGRAM.—The Adminis-
12 trator shall establish the program under paragraph
13 (1) in a manner that addresses, consistent with
14 international agreements to which the United States
15 is a party, the competitive imbalance in the costs of
16 producing or manufacturing primary products in in-
17 dustrial sectors resulting from the difference be-
18 tween—

19 “(A) the direct and indirect costs of com-
20 plying with this title; and

21 “(B) the direct and indirect costs, if any,
22 of complying in other countries with greenhouse
23 gas regulatory programs, requirements, export
24 tariffs, or other measures adopted or imposed
25 to reduce greenhouse gas emissions.

1 “(3) EMISSION ALLOWANCE REBATES.—The
2 Administrator shall take into account the value of
3 emission allowance rebates distributed under subpart
4 1 when making calculations under paragraph (2).

5 “(4) LIMITATION.—The International Reserve
6 Allowance Program may not begin before January 1,
7 2025.

8 “(b) COVERED ENTITIES.—International reserve al-
9 lowances may not be held by covered entities to comply
10 with section 722.

11 **“Subpart 3—Presidential Determination**

12 **“SEC. 767. PRESIDENTIAL REPORTS AND DETERMINA-**
13 **TIONS.**

14 “(a) REPORT.—Not later than January 1, 2018, the
15 President shall submit a report to Congress on the effec-
16 tiveness of the distribution of emission allowance rebates
17 under subpart 1 in mitigating carbon leakage in industrial
18 sectors. Such report shall also include—

19 “(1) recommendations on how to better achieve
20 the purposes of this part, including an assessment of
21 the feasibility and usefulness of an International Re-
22 serve Allowance Program; and

23 “(2) an assessment of the amount and duration
24 of assistance, including distribution of free allow-
25 ances, being provided to eligible industrial sectors in

1 other developed countries to mitigate costs of com-
2 pliance with domestic greenhouse gas reduction pro-
3 grams in such countries.

4 “(b) PRESIDENTIAL DETERMINATION.—Not later
5 than June 30, 2022, and every four years thereafter, the
6 President, in consultation with the Administrator and
7 other appropriate agencies, shall determine, for each eligi-
8 ble industrial sector, whether more than 70 percent of
9 global output for that sector is produced or manufactured
10 in countries that have met at least one of the following
11 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 greenhouse gas
15 emissions reduction commitment for that country
16 that is at least as stringent as that of the United
17 States.

18 “(2) The country is a party to a multilateral or
19 bilateral emission reduction agreement for that sec-
20 tor to which the United States is a party.

21 “(3) The country has an annual energy or
22 greenhouse gas intensity, as described in section
23 764(b)(2)(A)(i), for the sector that is equal to or
24 less than the energy or greenhouse gas intensity for

1 such sector in the United States in the most recent
2 calendar year for which data are available.

3 “(4) The country has implemented policies, in-
4 cluding sectoral caps, export tariffs, production fees,
5 electricity generation regulations, or greenhouse gas
6 emissions fees, that individually or collectively im-
7 pose an incremental increase on the cost of produc-
8 tion associated with greenhouse gas emissions from
9 the sector that is at least 60 percent of the cost of
10 complying with this title in the United States for
11 such sector, averaged over a two-year period.

12 “(c) EFFECT OF PRESIDENTIAL DETERMINATION.—
13 If the President makes a determination under subsection
14 (b) with respect to an eligible industrial sector that 70
15 percent or less of the global output for the sector is pro-
16 duced or manufactured in countries that have met one or
17 more of the criteria in subsection (b), then the President
18 shall, not later than June 30, 2022, and every four years
19 thereafter—

20 “(1) assess the extent to which the emission al-
21 lowance rebates provided pursuant to subpart 1 have
22 mitigated or addressed, or could mitigate or address,
23 carbon leakage in that sector;

24 “(2) assess the extent to which an International
25 Reserve Allowance Program has mitigated or ad-

1 dressed, or could mitigate or address, carbon leakage
2 in that sector and the feasibility of establishing such
3 a program; and

4 “(3) with respect to that sector—

5 “(A) modify the percentage by which direct
6 and indirect carbon factors will be multiplied
7 under section 765(a)(1)(B);

8 “(B) implement an International Reserve
9 Allowance Program under section 766 for the
10 products of the sector; or

11 “(C) take the actions in both subparagraph
12 (A) and (B).

13 “(d) REPORT TO CONGRESS.—Not later than June
14 30, 2022, and every four years thereafter, the President
15 shall transmit to the Congress a report providing notice
16 of any determination made under subsection (b), explain-
17 ing the reasons for such determination, and identifying the
18 actions taken by the President under subsection (c).

19 “(e) LIMITATION.—The President may only imple-
20 ment an International Reserve Allowance Program for sec-
21 tors producing primary products.

22 “(f) IRON AND STEEL SECTOR.—For the purposes
23 of this subpart, the Administrator shall consider to be in
24 the same industrial sector—

1 “(1) entities using integrated iron and
2 steelmaking technologies (including coke ovens, blast
3 furnaces, and other iron-making technologies); and

4 “(2) entities using electric arc furnace tech-
5 nologies.”.

6 **Subtitle B—Green Jobs and** 7 **Worker Transition**

8 **PART 1—GREEN JOBS**

9 **SEC. 421. CLEAN ENERGY CURRICULUM DEVELOPMENT**

10 **GRANTS.**

11 (a) **AUTHORIZATION.**—The Secretary of Education is
12 authorized to award grants, on a competitive basis, to eli-
13 gible partnerships to develop programs of study (con-
14 taining the information described in section 122(c)(1)(A)
15 of the Carl D. Perkins Career and Technical Education
16 Act of 2006 (20 U.S.C. 2342), that are focused on emerg-
17 ing careers and jobs in renewable energy, energy effi-
18 ciency, and climate change mitigation. The Secretary of
19 Education shall consult with the Secretary of Labor and
20 the Secretary of Energy prior to the issuance of a solicita-
21 tion for grant applications.

22 (b) **ELIGIBLE PARTNERSHIPS.**—For purposes of this
23 section, an eligible partnership shall include—

24 (1) at least 1 local educational agency eligible
25 for funding under section 131 of the Carl D. Per-

1 kins Career and Technical Education Act of 2006
2 (20 U.S.C. 2351) or an area career and technical
3 education school or education service agency de-
4 scribed in such section;

5 (2) at least 1 postsecondary institution eligible
6 for funding under section 132 of such Act (20
7 U.S.C. 2352); and

8 (3) representatives of the community including
9 business, labor organizations, and industry that have
10 experience in clean energy.

11 (c) APPLICATION.—An eligible partnership seeking a
12 grant under this section shall submit an application to the
13 Secretary at such time and in such manner as the Sec-
14 retary may require. Applications shall include—

15 (1) a description of the eligible partners and
16 partnership, the roles and responsibilities of each
17 partner, and a demonstration of each partner's ca-
18 pacity to support the program;

19 (2) a description of the career area or areas
20 within the field of clean energy to be developed, the
21 reason for the choice, and evidence of the labor mar-
22 ket need to prepare students in that area;

23 (3) a description of the new or existing program
24 of study and both secondary and postsecondary com-
25 ponents;

1 (4) a description of the students to be served by
2 the new program of study;

3 (5) a description of how the program of study
4 funded by the grant will be replicable and dissemi-
5 nated to schools outside of the partnership, including
6 urban and rural areas;

7 (6) a description of applied learning that will be
8 incorporated into the program of study and how it
9 will incorporate or reinforce academic learning;

10 (7) a description of how the program of study
11 will be delivered;

12 (8) a description of how the program will pro-
13 vide accessibility to students, especially economically
14 disadvantaged, low performing, and urban and rural
15 students;

16 (9) a description of how the program will ad-
17 dress placement of students in nontraditional fields
18 as described in section 3(20) of the Carl D. Perkins
19 Career and Technical Education Act of 2006 (20
20 U.S.C. 2302(20)); and

21 (10) a description of how the applicant proposes
22 to consult or has consulted with a labor organiza-
23 tion, labor management partnership, apprenticeship
24 program, or joint apprenticeship and training pro-
25 gram that provides education and training in the

1 field of study for which the applicant proposes to de-
2 velop a curriculum.

3 (d) PRIORITY.—The Secretary shall give priority to
4 applications that—

5 (1) use online learning or other innovative
6 means to deliver the program of study to students,
7 educators, and instructors outside of the partner-
8 ship; and

9 (2) focus on low performing students and spe-
10 cial populations as defined in section 3(29) of the
11 Carl D. Perkins Career and Technical Education
12 Act of 2006 (20 U.S.C. 2302(29)).

13 (e) PEER REVIEW.—The Secretary shall convene a
14 peer review process to review applications for grants under
15 this section and to make recommendations regarding the
16 selection of grantees. Members of the peer review com-
17 mittee shall include—

18 (1) educators who have experience imple-
19 menting curricula with comparable purposes; and

20 (2) business and industry experts in clean en-
21 ergy-related fields.

22 (f) USES OF FUNDS.—Grants awarded under this
23 section shall be used for the development, implementation,
24 and dissemination of programs of study (as described in
25 section 122(c)(1)(A) of the Carl D. Perkins Career and

1 Technical Education Act (20 U.S.C. 342(c)(1)(A))) in ca-
2 reer areas related to clean energy, renewable energy, en-
3 ergy efficiency, and climate change mitigation.

4 **SEC. 422. INCREASED FUNDING FOR ENERGY WORKER**
5 **TRAINING PROGRAM.**

6 Section 171(e)(8) of the Workforce Investment Act
7 of 1998 (29 U.S.C. 2916(e)(8)) is amended by striking
8 “\$125,000,000” and inserting “\$150,000,000”.

9 **PART 2—CLIMATE CHANGE WORKER**
10 **ADJUSTMENT ASSISTANCE**

11 **SEC. 425. PETITIONS, ELIGIBILITY REQUIREMENTS, AND**
12 **DETERMINATIONS.**

13 (a) PETITIONS.—

14 (1) FILING.—A petition for certification of eli-
15 gibility to apply for adjustment assistance for a
16 group of workers under this part may be filed by
17 any of the following:

18 (A) The group of workers.

19 (B) The certified or recognized union or
20 other duly authorized representative of such
21 workers.

22 (C) Employers of such workers, one-stop
23 operators or one-stop partners (as defined in
24 section 101 of the Workforce Investment Act of
25 1998 (29 U.S.C. 2801)), including State em-

1 employment security agencies, or the State dis-
2 located worker unit established under title I of
3 such Act, on behalf of such workers.

4 The petition shall be filed simultaneously with the
5 Secretary of Labor and with the Governor of the
6 State in which such workers' employment site is lo-
7 cated.

8 (2) ACTION BY GOVERNORS.—Upon receipt of a
9 petition filed under paragraph (1), the Governor
10 shall—

11 (A) ensure that rapid response activities
12 and appropriate core and intensive services (as
13 described in section 134 of the Workforce In-
14 vestment Act of 1998 (29 U.S.C. 2864)) au-
15 thorized under other Federal laws are made
16 available to the workers covered by the petition
17 to the extent authorized under such laws; and

18 (B) assist the Secretary in the review of
19 the petition by verifying such information and
20 providing such other assistance as the Secretary
21 may request.

22 (3) ACTION BY THE SECRETARY.—Upon receipt
23 of the petition, the Secretary shall promptly publish
24 notice in the Federal Register and on the website of

1 the Department of Labor that the Secretary has re-
2 ceived the petition and initiated an investigation.

3 (4) HEARINGS.—If the petitioner, or any other
4 person found by the Secretary to have a substantial
5 interest in the proceedings, submits not later than
6 10 days after the date of the Secretary's publication
7 under paragraph (3) a request for a hearing, the
8 Secretary shall provide for a public hearing and af-
9 ford such interested persons an opportunity to be
10 present, to produce evidence, and to be heard.

11 (b) ELIGIBILITY.—

12 (1) IN GENERAL.—A group of workers shall be
13 certified by the Secretary as eligible to apply for ad-
14 justment assistance under this part pursuant to a
15 petition filed under subsection (a) if—

16 (A) the group of workers is employed in—

17 (i) energy producing and transforming
18 industries;

19 (ii) industries dependent upon energy
20 industries;

21 (iii) energy-intensive manufacturing
22 industries;

23 (iv) consumer goods manufacturing;

24 or

1 (v) other industries whose employment
2 the Secretary determines has been ad-
3 versely affected by any requirement of title
4 VII of the Clean Air Act;

5 (B) the Secretary determines that a sig-
6 nificant number or proportion of the workers in
7 such workers' employment site have become to-
8 tally or partially separated, or are threatened to
9 become totally or partially separated from em-
10 ployment; and

11 (C) the sales, production, or delivery of
12 goods or services have decreased as a result of
13 any requirement of title VII of the Clean Air
14 Act, including—

15 (i) the shift from reliance upon fossil
16 fuels to other sources of energy, including
17 renewable energy, that results in the clos-
18 ing of a facility or layoff of employees at
19 a facility that mines, produces, processes,
20 or utilizes fossil fuels to generate elec-
21 tricity;

22 (ii) a substantial increase in the cost
23 of energy required for a manufacturing fa-
24 cility to produce items whose prices are
25 competitive in the marketplace, to the ex-

1 tent the cost is not offset by allowance al-
2 location to the facility pursuant to title VII
3 of the Clean Air Act; or

4 (iii) other documented occurrences
5 that the Secretary determines are indica-
6 tors of an adverse impact on an industry
7 described in subparagraph (A) as a result
8 of any requirement of title VII of the
9 Clean Air Act.

10 (2) WORKERS IN PUBLIC AGENCIES.—A group
11 of workers in a public agency shall be certified by
12 the Secretary as eligible to apply for climate change
13 adjustment assistance pursuant to a petition filed if
14 the Secretary determines that a significant number
15 or proportion of the workers in the public agency
16 have become totally or partially separated from em-
17 ployment, or are threatened to become totally or
18 partially separated as a result of any requirement of
19 title VII of the Clean Air Act.

20 (3) ADVERSELY AFFECTED SERVICE WORK-
21 ERS.—A group of workers shall be certified as eligi-
22 ble to apply for climate change adjustment assist-
23 ance pursuant to a petition filed if the Secretary de-
24 termines that—

1 (A) a significant number or proportion of
2 the service workers at an employment site
3 where a group of workers has been certified by
4 the Secretary as eligible to apply for adjustment
5 assistance under this part pursuant to para-
6 graph (1) have become totally or partially sepa-
7 rated from employment, or are threatened to
8 become totally or partially separated; and

9 (B) a loss of business in the firm providing
10 service workers to an employment site is di-
11 rectly attributable to one or more of the docu-
12 mented occurrences listed in paragraph (1)(C).

13 (c) AUTHORITY TO INVESTIGATE AND COLLECT IN-
14 FORMATION.—

15 (1) IN GENERAL.—The Secretary shall, in de-
16 termining whether to certify a group of workers
17 under subsection (d), obtain information the Sec-
18 retary determines to be necessary to make the cer-
19 tification, through questionnaires and in such other
20 manner as the Secretary determines appropriate
21 from—

22 (A) the workers' employer;

23 (B) officials of certified or recognized
24 unions or other duly authorized representatives
25 of the group of workers; or

1 (C) one-stop operators or one-stop partners
2 (as defined in section 101 of the Workforce In-
3 vestment Act of 1998 (29 U.S.C. 2801)); or

4 (2) VERIFICATION OF INFORMATION.—The Sec-
5 retary shall require an employer, union, or one-stop
6 operator or partner to certify all information ob-
7 tained under paragraph (1) from the employer,
8 union, or one-stop operator or partner (as the case
9 may be) on which the Secretary relies in making a
10 determination under subsection (d), unless the Sec-
11 retary has a reasonable basis for determining that
12 such information is accurate and complete without
13 being certified.

14 (3) PROTECTION OF CONFIDENTIAL INFORMA-
15 TION.—The Secretary may not release information
16 obtained under paragraph (1) that the Secretary
17 considers to be confidential business information un-
18 less the employer submitting the confidential busi-
19 ness information had notice, at the time of submis-
20 sion, that the information would be released by the
21 Secretary, or the employer subsequently consents to
22 the release of the information. Nothing in this para-
23 graph shall be construed to prohibit the Secretary
24 from providing such confidential business informa-

1 tion to a court in camera or to another party under
2 a protective order issued by a court.

3 (d) DETERMINATION BY THE SECRETARY OF
4 LABOR.—

5 (1) IN GENERAL.—As soon as possible after the
6 date on which a petition is filed under subsection
7 (a), but in any event not later than 40 days after
8 that date, the Secretary, in consultation with the
9 Secretary of Energy and the Administrator of the
10 Environmental Protection Agency, as necessary,
11 shall determine whether the petitioning group meets
12 the requirements of subsection (b) and shall issue a
13 certification of eligibility to apply for assistance
14 under this part covering workers in any group which
15 meets such requirements. Each certification shall
16 specify the date on which the total or partial separa-
17 tion began or threatened to begin. Upon reaching a
18 determination on a petition, the Secretary shall
19 promptly publish a summary of the determination in
20 the Federal Register and on the website of the De-
21 partment of Labor, together with the Secretary's
22 reasons for making such determination.

23 (2) ONE YEAR LIMITATION.—A certification
24 under this section shall not apply to any worker
25 whose last total or partial separation from the em-

1 employment site before the worker's application under
2 section 426(a) occurred more than 1 year before the
3 date of the petition on which such certification was
4 granted.

5 (3) REVOCATION OF CERTIFICATION.—When-
6 ever the Secretary determines, with respect to any
7 certification of eligibility of the workers of an em-
8 ployment site, that total or partial separations from
9 such site are no longer a result of the factors speci-
10 fied in subsection (b)(1), the Secretary shall termi-
11 nate such certification and promptly have notice of
12 such termination published in the Federal Register
13 and on the website of the Department of Labor, to-
14 gether with the Secretary's reasons for making such
15 determination. Such termination shall apply only
16 with respect to total or partial separations occurring
17 after the termination date specified by the Secretary.

18 (e) INDUSTRY NOTIFICATION OF ASSISTANCE.—
19 Upon receiving a notification of a determination under
20 subsection (d) with respect to a domestic industry the Sec-
21 retary of Labor shall notify the representatives of the do-
22 mestic industry affected by the determination, employers
23 publicly identified by name during the course of the pro-
24 ceeding relating to the determination, and any certified
25 or recognized union or, to the extent practicable, other

1 duly authorized representative of workers employed by
2 such representatives of the domestic industry, of—

3 (1) the adjustment allowances, training, and
4 other benefits available under this part;

5 (2) the manner in which to file a petition and
6 apply for such benefits; and

7 (3) the availability of assistance in filing such
8 petitions;

9 (4) notify the Governor of each State in which
10 one or more employers in such industry are located
11 of the Secretary's determination and the identity of
12 the employers; and

13 (5) upon request, provide any assistance that is
14 necessary to file a petition under subsection (a).

15 (f) BENEFIT INFORMATION TO WORKERS, PRO-
16 VIDERS OF TRAINING.—

17 (1) IN GENERAL.—The Secretary shall provide
18 full information to workers about the adjustment al-
19 lowances, training, and other benefits available
20 under this part and about the petition and applica-
21 tion procedures, and the appropriate filing dates, for
22 such allowances, training and services. The Sec-
23 retary shall provide whatever assistance is necessary
24 to enable groups of workers to prepare petitions or
25 applications for program benefits. The Secretary

1 shall make every effort to insure that cooperating
2 State agencies fully comply with the agreements en-
3 tered into under section 426(a) and shall periodically
4 review such compliance. The Secretary shall inform
5 the State Board for Vocational Education or equiva-
6 lent agency, the one-stop operators or one-stop part-
7 ners (as defined in section 101 of the Workforce In-
8 vestment Act of 1998 (29 U.S.C. 2801), and other
9 public or private agencies, institutions, and employ-
10 ers, as appropriate, of each certification issued
11 under subsection (d) and of projections, if available,
12 of the needs for training under as a result of such
13 certification.

14 (2) NOTICE BY MAIL.—The Secretary shall pro-
15 vide written notice through the mail of the benefits
16 available under this part to each worker whom the
17 Secretary has reason to believe is covered by a cer-
18 tification made under subsection (d)—

19 (A) at the time such certification is made,
20 if the worker was partially or totally separated
21 from the adversely affected employment before
22 such certification, or—

23 (B) at the time of the total or partial sepa-
24 ration of the worker from the adversely affected

1 employment, if subparagraph (A) does not
2 apply.

3 (3) NEWSPAPERS; WEBSITE.—The Secretary
4 shall publish notice of the benefits available under
5 this part to workers covered by each certification
6 made under subsection (d) in newspapers of general
7 circulation in the areas in which such workers reside
8 and shall make such information available on the
9 website of the Department of Labor.

10 **SEC. 426. PROGRAM BENEFITS.**

11 (a) CLIMATE CHANGE ADJUSTMENT ALLOWANCE.—

12 (1) ELIGIBILITY.—Payment of a climate change
13 adjustment allowance shall be made to an adversely
14 affected worker covered by a certification under sec-
15 tion 425(b) who files an application for such allow-
16 ance for any week of unemployment which begins on
17 or after the date of such certification, if the fol-
18 lowing conditions are met:

19 (A) Such worker's total or partial separa-
20 tion before the worker's application under this
21 part occurred—

22 (i) on or after the date, as specified in
23 the certification under which the worker is
24 covered, on which total or partial separa-

1 tion began or threatened to begin in the
2 adversely affected employment;

3 (ii) before the expiration of the 2-year
4 period beginning on the date on which the
5 determination under section 425(d) was
6 made; and

7 (iii) before the termination date, if
8 any, determined pursuant to section
9 425(d)(3).

10 (B) Such worker had, in the 52-week pe-
11 riod ending with the week in which such total
12 or partial separation occurred, at least 26
13 weeks of full-time employment or 1,040 hours
14 of part time employment in adversely affected
15 employment, or, if data with respect to weeks of
16 employment are not available, equivalent
17 amounts of employment computed under regu-
18 lations prescribed by the Secretary. For the
19 purposes of this paragraph, any week in which
20 such worker—

21 (i) is on employer-authorized leave for
22 purposes of vacation, sickness, injury, ma-
23 ternity, or inactive duty or active duty
24 military service for training;

1 (ii) does not work because of a dis-
2 ability that is compensable under a work-
3 men's compensation law or plan of a State
4 or the United States;

5 (iii) had his employment interrupted
6 in order to serve as a full-time representa-
7 tive of a labor organization in such firm; or

8 (iv) is on call-up for purposes of active
9 duty in a reserve status in the Armed
10 Forces of the United States, provided such
11 active duty is "Federal service" as defined
12 in section 8521(a)(1) of title 5, United
13 States Code,

14 shall be treated as a week of employment.

15 (C) Such worker is enrolled in a training
16 program approved by the Secretary under sub-
17 section (b)(2).

18 (2) INELIGIBILITY FOR CERTAIN OTHER BENE-
19 FITS.—An adversely affected worker receiving a pay-
20 ment under this section shall be ineligible to receive
21 any other form of unemployment insurance for the
22 period in which such worker is receiving a climate
23 change adjustment allowance under this section.

24 (3) REVOCATION.—If—

25 (A) the Secretary determines that—

- 1 (i) the adversely affected worker—
2 (I) has failed to begin participa-
3 tion in the training program the en-
4 rollment in which meets the require-
5 ment of paragraph (1)(C); or
6 (II) has ceased to participate in
7 such training program before com-
8 pleting such training program; and
9 (ii) there is no justifiable cause for
10 such failure or cessation; or
11 (B) the certification made with respect to
12 such worker under section 425(d) is revoked
13 under paragraph (3) of such section,
14 no adjustment allowance may be paid to the ad-
15 versely affected worker under this part for the week
16 in which such failure, cessation, or revocation oc-
17 curred, or any succeeding week, until the adversely
18 affected worker begins or resumes participation in a
19 training program approved by the Secretary under
20 section (b)(2).

21 (4) WAIVERS OF TRAINING REQUIREMENTS.—
22 The Secretary may issue a written statement to an
23 adversely affected worker waiving the requirement to
24 be enrolled in training described in subsection (b)(2)
25 if the Secretary determines that it is not feasible or

1 appropriate for the worker, because of 1 or more of
2 the following reasons:

3 (A) RECALL.—The worker has been noti-
4 fied that the worker will be recalled by the em-
5 ployer from which the separation occurred.

6 (B) MARKETABLE SKILLS.—

7 (i) IN GENERAL.—The worker pos-
8 sesses marketable skills for suitable em-
9 ployment (as determined pursuant to an
10 assessment of the worker, which may in-
11 clude the profiling system under section
12 303(j) of the Social Security Act (42
13 U.S.C. 503(j)), carried out in accordance
14 with guidelines issued by the Secretary)
15 and there is a reasonable expectation of
16 employment at equivalent wages in the
17 foreseeable future.

18 (ii) MARKETABLE SKILLS DEFINED.—
19 For purposes of clause (i), the term “mar-
20 ketable skills” may include the possession
21 of a postgraduate degree from an institu-
22 tion of higher education (as defined in sec-
23 tion 102 of the Higher Education Act of
24 1965 (20 U.S.C. 1002)) or an equivalent
25 institution, or the possession of an equiva-

1 lent postgraduate certification in a special-
2 ized field.

3 (C) RETIREMENT.—The worker is within 2
4 years of meeting all requirements for entitle-
5 ment to either—

6 (i) old-age insurance benefits under
7 title II of the Social Security Act (42
8 U.S.C. 401 et seq.) (except for application
9 therefor); or

10 (ii) a private pension sponsored by an
11 employer or labor organization.

12 (D) HEALTH.—The worker is unable to
13 participate in training due to the health of the
14 worker, except that a waiver under this sub-
15 paragraph shall not be construed to exempt a
16 worker from requirements relating to the avail-
17 ability for work, active search for work, or re-
18 fusal to accept work under Federal or State un-
19 employment compensation laws.

20 (E) ENROLLMENT UNAVAILABLE.—The
21 first available enrollment date for the training
22 of the worker is within 60 days after the date
23 of the determination made under this para-
24 graph, or, if later, there are extenuating cir-
25 cumstances for the delay in enrollment, as de-

1 terminated pursuant to guidelines issued by the
2 Secretary.

3 (F) TRAINING NOT AVAILABLE.—Training
4 described in subsection (b)(2) is not reasonably
5 available to the worker from either govern-
6 mental agencies or private sources (which may
7 include area career and technical education
8 schools, as defined in section 3 of the Carl D.
9 Perkins Career and Technical Education Act of
10 2006 (20 U.S.C. 2302), and employers), no
11 training that is suitable for the worker is avail-
12 able at a reasonable cost, or no training funds
13 are available.

14 (5) WEEKLY AMOUNTS.—The climate change
15 adjustment allowance payable to an adversely af-
16 fected worker for a week of unemployment shall be
17 an amount equal to 70 percent of the average weekly
18 wage of such worker, but in no case shall such
19 amount exceed the average weekly wage for all work-
20 ers in the State where the adversely affected worker
21 resides.

22 (6) MAXIMUM DURATION OF BENEFITS.—An el-
23 igible worker may receive a climate change adjust-
24 ment allowance under this subsection for a period of
25 not longer than 156 weeks.

1 (b) EMPLOYMENT SERVICES AND TRAINING.—

2 (1) INFORMATION AND EMPLOYMENT SERV-
3 ICES.—The Secretary shall make available, directly
4 or through agreements with the States under section
5 427(a) to adversely affected workers covered by a
6 certification under section 425(a) the following in-
7 formation and employment services:

8 (A) Comprehensive and specialized assess-
9 ment of skill levels and service needs, including
10 through—

11 (i) diagnostic testing and use of other
12 assessment tools; and

13 (ii) in-depth interviewing and evalua-
14 tion to identify employment barriers and
15 appropriate employment goals.

16 (B) Development of an individual employ-
17 ment plan to identify employment goals and ob-
18 jectives, and appropriate training to achieve
19 those goals and objectives.

20 (C) Information on training available in
21 local and regional areas, information on indi-
22 vidual counseling to determine which training is
23 suitable training, and information on how to
24 apply for such training.

1 (D) Information on training programs and
2 other services provided by a State pursuant to
3 title I of the Workforce Investment Act of 1998
4 and available in local and regional areas, infor-
5 mation on individual counseling to determine
6 which training is suitable training, and informa-
7 tion on how to apply for such training.

8 (E) Information on how to apply for finan-
9 cial aid, including referring workers to edu-
10 cational opportunity centers described in section
11 402F of the Higher Education Act of 1965 (20
12 U.S.C. 1070a–16), where applicable, and noti-
13 fying workers that the workers may request fi-
14 nancial aid administrators at institutions of
15 higher education (as defined in section 102 of
16 such Act (20 U.S.C. 1002)) to use the adminis-
17 trators' discretion under section 479A of such
18 Act (20 U.S.C. 1087tt) to use current year in-
19 come data, rather than preceding year income
20 data, for determining the amount of need of the
21 workers for Federal financial assistance under
22 title IV of such Act (20 U.S.C. 1070 et seq.).

23 (F) Short-term prevocational services, in-
24 cluding development of learning skills, commu-
25 nications skills, interviewing skills, punctuality,

1 personal maintenance skills, and professional
2 conduct to prepare individuals for employment
3 or training.

4 (G) Individual career counseling, including
5 job search and placement counseling, during the
6 period in which the individual is receiving a cli-
7 mate change adjustment allowance or training
8 under this part, and after receiving such train-
9 ing for purposes of job placement.

10 (H) Provision of employment statistics in-
11 formation, including the provision of accurate
12 information relating to local, regional, and na-
13 tional labor market areas, including—

14 (i) job vacancy listings in such labor
15 market areas;

16 (ii) information on jobs skills nec-
17 essary to obtain jobs identified in job va-
18 cancy listings described in subparagraph
19 (A);

20 (iii) information relating to local occu-
21 pations that are in demand and earnings
22 potential of such occupations; and

23 (iv) skills requirements for local occu-
24 pations described in subparagraph (C).

1 (I) Information relating to the availability
2 of supportive services, including services relat-
3 ing to child care, transportation, dependent
4 care, housing assistance, and need-related pay-
5 ments that are necessary to enable an indi-
6 vidual to participate in training.

7 (2) TRAINING.—

8 (A) APPROVAL OF AND PAYMENT FOR
9 TRAINING.—If the Secretary determines, with
10 respect to an adversely affected worker that—

11 (i) there is no suitable employment
12 (which may include technical and profes-
13 sional employment) available for an ad-
14 versely affected worker;

15 (ii) the worker would benefit from ap-
16 propriate training;

17 (iii) there is a reasonable expectation
18 of employment following completion of
19 such training;

20 (iv) training approved by the Sec-
21 retary is reasonably available to the worker
22 from either governmental agencies or pri-
23 vate sources (including area career and
24 technical education schools, as defined in
25 section 3 of the Carl D. Perkins Career

1 and Technical Education Act of 2006, and
2 employers);

3 (v) the worker is qualified to under-
4 take and complete such training; and

5 (vi) such training is suitable for the
6 worker and available at a reasonable cost,
7 the Secretary shall approve such training for
8 the worker. Upon such approval, the worker
9 shall be entitled to have payment of the costs
10 of such training (subject to the limitations im-
11 posed by this section) paid on the worker's be-
12 half by the Secretary directly or through a
13 voucher system.

14 (B) DISTRIBUTION.—The Secretary shall
15 establish procedures for the distribution of the
16 funds to States to carry out the training pro-
17 grams approved under this paragraph, and shall
18 make an initial distribution of the funds made
19 available as soon as practicable after the begin-
20 ning of each fiscal year.

21 (C) ADDITIONAL RULES REGARDING AP-
22 PROVAL OF AND PAYMENT FOR TRAINING.—

23 (i) For purposes of applying subpara-
24 graph (A)(iii), a reasonable expectation of
25 employment does not require that employ-

1 ment opportunities for a worker be avail-
2 able, or offered, immediately upon the
3 completion of training approved under
4 such subparagraph.

5 (ii) If the costs of training an ad-
6 versely affected worker are paid by the
7 Secretary under subparagraph (A), no
8 other payment for such costs may be made
9 under any other provision of Federal law.
10 No payment may be made under subpara-
11 graph (A) of the costs of training an ad-
12 versely affected worker or an adversely af-
13 fected incumbent worker if such costs—

14 (I) have already been paid under
15 any other provision of Federal law; or

16 (II) are reimbursable under any
17 other provision of Federal law and a
18 portion of such costs have already
19 been paid under such other provision
20 of Federal law.

21 The provisions of this clause shall not
22 apply to, or take into account, any funds
23 provided under any other provision of Fed-
24 eral law which are used for any purpose
25 other than the direct payment of the costs

1 incurred in training a particular adversely
2 affected worker, even if such use has the
3 effect of indirectly paying or reducing any
4 portion of the costs involved in training the
5 adversely affected worker.

6 (D) TRAINING PROGRAMS.—The training
7 programs that may be approved under subpara-
8 graph (A) include—

9 (i) employer-based training, includ-
10 ing—

11 (I) on-the-job training if ap-
12 proved by the Secretary under sub-
13 section (c); and

14 (II) joint labor-management ap-
15 prenticeship programs;

16 (ii) any training program provided by
17 a State pursuant to title I of the Work-
18 force Investment Act of 1998;

19 (iii) any training program approved
20 by a private industry council established
21 under section 102 of such Act;

22 (iv) any programs in career and tech-
23 nical education described in section 3(5) of
24 the Carl D. Perkins Career and Technical
25 Education Act of 2006;

1 (v) any program of remedial edu-
2 cation;

3 (vi) any program of prerequisite edu-
4 cation or coursework required to enroll in
5 training that may be approved under this
6 paragraph;

7 (vii) any training program for which
8 all, or any portion, of the costs of training
9 the worker are paid—

10 (I) under any Federal or State
11 program other than this part; or

12 (II) from any source other than
13 this part;

14 (ix) any training program or
15 coursework at an accredited institution of
16 higher education (described in section 102
17 of the Higher Education Act of 1965 (20
18 U.S.C. 1002)), including a training pro-
19 gram or coursework for the purpose of—

20 (I) obtaining a degree or certifi-
21 cation; or

22 (II) completing a degree or cer-
23 tification that the worker had pre-
24 viously begun at an accredited institu-
25 tion of higher education; and

1 (viii) any other training program ap-
2 proved by the Secretary.

3 (3) SUPPLEMENTAL ASSISTANCE.—The Secretary
4 may, as appropriate, authorize supplemental assistance
5 that is necessary to defray reasonable transportation and
6 subsistence expenses for separate maintenance in a case
7 in which training for a worker is provided in a facility that
8 is not within commuting distance of the regular place of
9 residence of the worker.

10 (c) ON-THE-JOB TRAINING REQUIREMENTS.—

11 (1) IN GENERAL.—The Secretary may approve
12 on-the-job training for any adversely affected worker
13 if—

14 (A) the Secretary determines that on-the-
15 job training—

16 (i) can reasonably be expected to lead
17 to suitable employment with the employer
18 offering the on-the-job training;

19 (ii) is compatible with the skills of the
20 worker;

21 (iii) includes a curriculum through
22 which the worker will gain the knowledge
23 or skills to become proficient in the job for
24 which the worker is being trained; and

1 (iv) can be measured by benchmarks
2 that indicate that the worker is gaining
3 such knowledge or skills; and

4 (B) the State determines that the on-the-
5 job training program meets the requirements of
6 clauses (iii) and (iv) of subparagraph (A).

7 (2) MONTHLY PAYMENTS.—The Secretary shall
8 pay the costs of on-the-job training approved under
9 paragraph (1) in monthly installments.

10 (3) CONTRACTS FOR ON-THE-JOB TRAINING.—

11 (A) IN GENERAL.—The Secretary shall en-
12 sure, in entering into a contract with an em-
13 ployer to provide on-the-job training to a work-
14 er under this subsection, that the skill require-
15 ments of the job for which the worker is being
16 trained, the academic and occupational skill
17 level of the worker, and the work experience of
18 the worker are taken into consideration.

19 (B) TERM OF CONTRACT.—Training under
20 any such contract shall be limited to the period
21 of time required for the worker receiving on-
22 the-job training to become proficient in the job
23 for which the worker is being trained, but may
24 not exceed 156 weeks in any case.

1 (4) EXCLUSION OF CERTAIN EMPLOYERS.—The
2 Secretary shall not enter into a contract for on-the-
3 job training with an employer that exhibits a pattern
4 of failing to provide workers receiving on-the-job
5 training from the employer with—

6 (A) continued, long-term employment as
7 regular employees; and

8 (B) wages, benefits, and working condi-
9 tions that are equivalent to the wages, benefits,
10 and working conditions provided to regular em-
11 ployees who have worked a similar period of
12 time and are doing the same type of work as
13 workers receiving on-the-job training from the
14 employer.

15 (d) ADMINISTRATIVE AND EMPLOYMENT SERVICES
16 FUNDING.—

17 (1) ADMINISTRATIVE FUNDING.—In addition to
18 any funds made available to a State to carry out this
19 section ____ for a fiscal year, the State shall receive
20 for the fiscal year a payment in an amount that is
21 equal to 15 percent of the amount of such funds and
22 shall—

23 (A) use not more than $\frac{2}{3}$ of such payment
24 for the administration of the climate change ad-

1 justment assistance for workers program under
2 this part, including for—

3 (i) processing waivers of training re-
4 quirements under subsection (a)(4); and

5 (ii) collecting, validating, and report-
6 ing data required under this part; and

7 (B) use not less than $\frac{1}{3}$ of such payment
8 for information and employment services under
9 subsection (b)(1).

10 (2) EMPLOYMENT SERVICES FUNDING.—

11 (A) IN GENERAL.—In addition to any
12 funds made available to a State to carry out
13 subsection (b)(2) and the payment under para-
14 graph (1) for a fiscal year, the Secretary shall
15 provide to the State for the fiscal year a reason-
16 able payment for the purpose of providing em-
17 ployment and services under subsection (b)(1).

18 (B) VOLUNTARY RETURN OF FUNDS.—A
19 State that receives a payment under subpara-
20 graph (A) may decline or otherwise return such
21 payment to the Secretary.

22 (e) JOB SEARCH ALLOWANCES.—The Secretary of
23 Labor may provide adversely affected workers a one-time
24 job search allowance in accordance with regulations pre-
25 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” includes the District of
23 Columbia and the Commonwealth of Puerto Rico;
24 and the term “United States” when used in the geo-
25 graphical sense includes such Commonwealth.

1 (17) The term “State agency” means the agen-
2 cy of the State which administers the State law.

3 (18) The term “State law” means the unem-
4 ployment insurance law of the State approved by the
5 Secretary of Labor under section 3304 of the Inter-
6 nal Revenue Code of 1954.

7 (19) The terms “total separation” and “totally
8 separated” refer to the layoff or severance of an in-
9 dividual from employment with an employer in which
10 adversely affected employment exists.

11 (20) The term “unemployment insurance”
12 means the unemployment compensation payable to
13 an individual under any State law or Federal unem-
14 ployment compensation law, including chapter 85 of
15 title 5, United States Code, and the Railroad Unem-
16 ployment Insurance Act. The terms “regular com-
17 pensation”, “additional compensation”, and “ex-
18 tended compensation” have the same respective
19 meanings that are given them in section 205(2), (3),
20 and (4) of the Federal-State Extended Unemploy-
21 ment Compensation Act of 1970 (26 U.S.C. 3304
22 note.)

23 (21) The term “week” means a week as defined
24 in the applicable State law.

1 (22) The term “week of unemployment” means
2 a week of total, part-total, or partial unemployment
3 as determined under the applicable State law or
4 Federal unemployment insurance law.

5 (g) SPECIAL RULE WITH RESPECT TO MILITARY
6 SERVICE.—

7 (1) IN GENERAL.—Notwithstanding any other
8 provision of this part, the Secretary may waive any
9 requirement of this part that the Secretary deter-
10 mines is necessary to ensure that an adversely af-
11 fected worker who is a member of a reserve compo-
12 nent of the Armed Forces and serves a period of
13 duty described in paragraph (2) is eligible to receive
14 a climate change adjustment allowance, training,
15 and other benefits under this part in the same man-
16 ner and to the same extent as if the worker had not
17 served the period of duty.

18 (2) PERIOD OF DUTY DESCRIBED.—An ad-
19 versely affected worker serves a period of duty de-
20 scribed in this paragraph if, before completing train-
21 ing under this part, the worker—

22 (A) serves on active duty for a period of
23 more than 30 days under a call or order to ac-
24 tive duty of more than 30 days; or

1 (B) in the case of a member of the Army
2 National Guard of the United States or Air Na-
3 tional Guard of the United States, performs
4 full-time National Guard duty under section
5 502(f) of title 32, United States Code, for 30
6 consecutive days or more when authorized by
7 the President or the Secretary of Defense for
8 the purpose of responding to a national emer-
9 gency declared by the President and supported
10 by Federal funds.

11 (h) FRAUD AND RECOVERY OF OVERPAYMENTS.—

12 (1) RECOVERY OF PAYMENTS TO WHICH AN IN-
13 DIVIDUAL WAS NOT ENTITLED.—If the Secretary or
14 a court of competent jurisdiction determines that
15 any person has received any payment under this
16 part to which the individual was not entitled, such
17 individual shall be liable to repay such amount to
18 the Secretary, as the case may be, except that the
19 Secretary shall waive such repayment if such agency
20 or the Secretary determines that—

21 (A) the payment was made without fault
22 on the part of such individual; and

23 (B) requiring such repayment would cause
24 a financial hardship for the individual (or the
25 individual's household, if applicable) when tak-

1 ing into consideration the income and resources
2 reasonably available to the individual (or house-
3 hold) and other ordinary living expenses of the
4 individual (or household).

5 (2) MEANS OF RECOVERY.—Unless an overpay-
6 ment is otherwise recovered, or waived under para-
7 graph (1), the Secretary shall recover the overpay-
8 ment by deductions from any sums payable to such
9 person under this part, under any Federal unem-
10 ployment compensation law or other Federal law ad-
11 ministered by the Secretary which provides for the
12 payment of assistance or an allowance with respect
13 to unemployment. Any amount recovered under this
14 section shall be returned to the Treasury of the
15 United States.

16 (3) PENALTIES FOR FRAUD.—Any person
17 who—

18 (A) makes a false statement of a material
19 fact knowing it to be false, or knowingly fails
20 to disclose a material fact, for the purpose of
21 obtaining or increasing for that person or for
22 any other person any payment authorized to be
23 furnished under this part, or

24 (B) makes a false statement of a material
25 fact knowing it to be false, or knowingly fails

1 to disclose a material fact, when providing in-
2 formation to the Secretary during an investiga-
3 tion of a petition under section 425(c),
4 shall be imprisoned for not more than one year, or fined
5 under title 18, United States Code, or both, and be ineli-
6 gible for any further payments under this part.

7 (i) REGULATIONS.—The Secretary shall prescribe
8 such regulations as may be necessary to carry out the pro-
9 visions of this part.

10 (j) STUDY ON OLDER WORKERS.—The Secretary
11 shall conduct a study examine the circumstances of older
12 adversely affected workers and the ability of such workers
13 to access their retirement benefits. The Secretary shall
14 transmit a report to Congress not later than 2 years after
15 the date of enactment of this part on the findings of the
16 study and the Secretary's recommendations on how to en-
17 sure that adversely affected workers within 2 years of re-
18 tirement are able to access their retirement benefits.

19 **[(k) SPENDING LIMIT.—**For each fiscal year, the
20 total amount of funds disbursed for the purposes described
21 in section 426 shall not exceed the amount deposited in
22 that fiscal year into the Climate Change Worker Assist-
23 ance Fund established under section **[782(j)]** of the Clean
24 Air Act. The annual spending limit for any succeeding
25 year shall be increased by the difference, if any, between

1 the amount of the prior year's disbursements and the
2 spending limitation for that year. The Secretary shall pro-
3 mulgate rules to ensure that this spending limit is not ex-
4 ceeded. Such rules shall provide that workers who receive
5 any of the benefits described in section 426 receive full
6 benefits, and shall include the establishment of a waiting
7 list for workers in the event that the requests for assist-
8 ance exceed the spending limit.】

9 **Subtitle C—Consumer Assistance**

10 **SEC. 431. ENERGY TAX CREDIT.**

11 Subpart C of part IV of subchapter A of chapter 1
12 of the Internal Revenue Code of 1986 is amended by in-
13 serting after section 36A the following new section:

14 **“SEC. 36B. ENERGY TAX CREDIT.**

15 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
16 gible individual, there shall be allowed as a credit against
17 the tax imposed by this subtitle for the taxable year an
18 amount equal to—

19 “(1) for an eligible individual with applicable
20 income of less than \$6,000, the phase in rate times
21 the applicable income;

22 “(2) for an eligible individual with applicable
23 income that is greater than or equal to \$6,000 and
24 is less than or equal to the phase down amount, the
25 maximum energy tax credit;

1 “(3) for an individual with applicable income
2 that exceeds the phase down amount, an amount
3 equal to—

4 “(A) the maximum energy tax credit
5 minus; or

6 “(B) the difference between the individ-
7 ual’s applicable income and the phase down
8 amount multiplied by .2.

9 “(b) COORDINATION WITH ENERGY REFUND RE-
10 CEIVED THROUGH STATE HUMAN SERVICE AGENCIES.—
11 The amount described in subsection (a) shall be reduced
12 by $\frac{1}{12}$ for each month in which the individual or his or
13 her spouse received a refund under section 432 of the Safe
14 Climate Act.

15 “(1) The Secretary of the Treasury shall pro-
16 mulgate regulations that instruct States on how to
17 inform adult individuals who receive a refund under
18 section 432 of the Safe Climate Act of the number
19 of months he or she received a refund and how such
20 information shall be provided to the Internal Rev-
21 enue Service.

22 “(2) The Secretary of the Treasury shall estab-
23 lish a telephone and online system that allows an in-
24 dividual to inquire about the number of months she
25 or he received such a refund.

1 “(3) In the case of an individual that does not
2 report the number of months a refund was provided
3 under section 432 of the Safe Climate Act or re-
4 corded an incorrect number of months, the Secretary
5 of the Treasury shall adjust the energy tax credit
6 based on the information received from States, pro-
7 vided that the Secretary of the Treasury has made
8 a determination that the information meets a suffi-
9 cient standard for accuracy.

10 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
11 poses of this section—

12 “(1) ELIGIBLE INDIVIDUAL.—

13 “(A) IN GENERAL.—The term ‘eligible in-
14 dividual’ means any individual other than—

15 “(i) any nonresident alien individual;

16 “(ii) any individual with respect to
17 whom a deduction under section 151 is al-
18 lowable to another taxpayer for a taxable
19 year beginning in the calendar year in
20 which the individual’s taxable year begins;
21 and

22 “(iii) an estate or trust.

23 “(B) IDENTIFICATION NUMBER REQUIRE-
24 MENT.—Such term shall not include any indi-
25 vidual who—

1 “(i) in the case of a return that is not
2 a joint return, does not include the social
3 security number of the individual; and

4 “(ii) in the case of joint return, does
5 not include the social security number of
6 at least one of the taxpayers on such re-
7 turn.

8 For purposes of the preceding sentence, the so-
9 cial security number shall not include a TIN
10 issued by the Internal Revenue Service.

11 “(2) APPLICABLE INCOME.—Applicable income
12 means the larger of—

13 “(A) earned income as defined in section
14 32(c)(2), except that such term shall not in-
15 clude net earnings from self-employment which
16 are not taken into account in computing taxable
17 income; and

18 “(B) adjusted gross income.

19 “(3) PHASE IN RATE.—The Secretary of the
20 Treasury shall compute the phase in rates each year
21 for the energy credit for joint returns and for re-
22 turns that are not filed jointly with respect to each
23 relevant number of qualifying individuals such that
24 the phase in rate equals the maximum energy tax
25 credit divided by \$6,000.

1 “(4) MAXIMUM ENERGY TAX CREDIT.—

2 “(A) IN GENERAL.—

3 “(i) The maximum energy tax credit
4 shall vary based on the number of individ-
5 uals in the tax filing unit.

6 “(ii) The maximum energy tax credit
7 for a filing unit of a particular size shall
8 be equal to the average annual reduction in
9 purchasing power for low-income house-
10 holds of that household size, as calculated
11 by the Environmental Protection Agency,
12 that results from the regulation of green-
13 house gas emissions under title VII of the
14 Clean Air Act.

15 “(iii) The Environmental Protection
16 Agency, in consultation with other appro-
17 priate federal agencies, shall calculate the
18 maximum energy tax credit by August 31
19 of each year for the following calendar year
20 using the most recent, reliable data avail-
21 able.

22 “(B) ENERGY TAX CREDIT CALCULA-
23 TION.—

24 “(i) DISTRIBUTION.—For each cal-
25 endar year, the Environmental Protection

1 Agency shall determine pursuant to sub-
2 paragraph (B)(iii) the aggregate reduction
3 in purchasing power among all United
4 States households that results from the
5 regulation of greenhouse gas emissions
6 under title VII of the Clean Air Act and
7 distribute that aggregate reduction in pur-
8 chasing power among all United States
9 households based on—

10 “(I) households’ share of total
11 consumption by all households;

12 “(II) the carbon intensity and
13 covered-emissions intensity of house-
14 holds’ consumption; and

15 “(III) the share of households’
16 carbon and covered-emissions con-
17 sumption that is not financed by Fed-
18 eral benefits subject to a cost of living
19 adjustment that offsets increased car-
20 bon costs.

21 “(ii) MAXIMUM ENERGY TAX CRED-
22 IT.—The maximum energy tax credit shall
23 be equal to the arithmetic mean value of
24 the amount allocated under clause (i) to
25 households of a specified household size in

1 the lowest income quintile. Tax filing units
2 that include 5 or more individuals shall be
3 eligible for the arithmetic mean value of
4 the amount allocated under clause (i) to
5 households that includes 5 or more individ-
6 uals.

7 “(iii) AGGREGATE REDUCTION IN
8 PURCHASING POWER.—For purposes of
9 this section, the aggregate reduction in
10 purchasing power shall be based on the
11 projected total market value of the emis-
12 sions allowances used to demonstrate com-
13 pliance with title VII of the Clean Air Act
14 in that year, adjusted to reflect costs that
15 were not incurred by households as a re-
16 sult of allowances freely allocated pursuant
17 to section [782] of the Clean Air Act, as
18 estimated by the Environmental Protection
19 Agency, and calculated in a way generally
20 recognized as suitable by experts in evalu-
21 ating such purchasing power impacts.

22 “(iv) INCOME QUINTILES.—Income
23 quintiles shall be determined by ranking
24 households according to income adjusted
25 for household size, and shall be constructed

1 so that each quintile contains an equal
2 number of people.

3 “(5) PHASE DOWN AMOUNT.—

4 “(A) In the case of an eligible individual
5 who has no qualifying individuals, the phase
6 down amount shall be—

7 “(i) \$20,000 in the case of an indi-
8 vidual who does not file a joint return; and

9 “(ii) \$25,000 in the case of a joint re-
10 turn.

11 “(B) In the case of an eligible individual
12 who files a joint return and has at least one
13 qualifying individual—

14 “(i) If the eligible individual has one
15 qualifying individual, the lowest income
16 level that exceeds the phaseout amount as
17 defined in section 32(b)(2) at which a mar-
18 ried couple with one qualifying child is in-
19 eligible for the earned income credit for the
20 taxable year.

21 “(ii) If the eligible individual has two
22 qualifying individuals, the lowest income
23 level that exceeds the phaseout amount as
24 defined in section 32(b)(2) at which a mar-
25 ried couple with two qualifying children is

1 ineligible for the earned income credit for
2 the taxable year.

3 “(iii) If the eligible individual claims
4 three or more qualifying individuals, the
5 lowest income level that exceeds the phase-
6 out amount as defined in section 32(b)(2)
7 at which a married couple with three or
8 more qualifying children is ineligible for
9 the earned income credit for the taxable
10 year.

11 “(C) In the case of an eligible individual
12 who does not file a joint return and has at least
13 one individual qualifying individual—

14 “(i) If the eligible individual has one
15 qualifying individual, the lowest income
16 level that exceeds the phaseout amount as
17 defined in section 32(b)(2) at which a sin-
18 gle individual with one qualifying child is
19 ineligible for the earned income credit for
20 the taxable year.

21 “(ii) If the eligible individual has two
22 qualifying individuals, the lowest income
23 level that exceeds the phaseout amount as
24 defined in section 32(b)(2) at which a sin-
25 gle individual with two qualifying children

1 is ineligible for the earned income credit
2 for the taxable year.

3 “(iii) If the eligible individual has
4 three or more qualifying individuals, the
5 lowest income level that exceeds the phase-
6 out amount as defined in section 32(b)(2)
7 at which a single individual with three or
8 more qualifying children is ineligible for
9 the earned income credit for the taxable
10 year.

11 “(6) QUALIFYING INDIVIDUAL.—A qualifying
12 individual is an individual whom the eligible indi-
13 vidual claims as a dependent under section 151, or
14 as a qualifying child for the earned income credit
15 under section 32(c)(3) or the child tax credit under
16 section 24, or both. The term qualifying individual
17 does not include—

18 “(A) someone claimed as a dependent
19 under section 151 if that dependent is claimed
20 as a qualifying child for the earned income tax
21 credit or the child tax credit on a tax form by
22 someone other than the eligible individual; and

23 “(B) the eligible individual and, if a joint
24 return, his or her spouse.

1 “(7) NUMBER OF PEOPLE IN THE TAX FILING
2 UNIT.—The number of people in the tax filing unit
3 shall equal the sum of the number of qualifying indi-
4 viduals plus—

5 “(A) in the case of a joint return, 2; and

6 “(B) in the case of a return that is not
7 filed jointly, 1.

8 “(d) TREATMENT OF POSSESSIONS.—

9 “(1) PAYMENTS TO POSSESSIONS.—

10 “(A) MIRROR CODE POSSESSION.—The
11 Secretary of the Treasury shall pay to each pos-
12 session of the United States with a mirror code
13 tax system amounts equal to the loss to that
14 possession by reason of the amendments made
15 by this section. Such amounts shall be deter-
16 mined by the Secretary of the Treasury based
17 on information provided by the Government of
18 the respective possession.

19 “(B) OTHER POSSESSIONS.—The Sec-
20 retary of the Treasury shall pay to each posses-
21 sion of the United States which does not have
22 a mirror code tax system amounts estimated by
23 the Secretary of the Treasury as being equal to
24 the aggregate benefits that would have been
25 provided to residents of such possession by rea-

1 son of the amendments made by this section if
2 a mirror code tax system had been in effect in
3 such possession. The preceding sentence shall
4 not apply for a given taxable year with respect
5 to any possession of the United States unless
6 such possession has a plan, which has been ap-
7 proved by the Secretary of the Treasury, under
8 which such possession will promptly distribute
9 such payments to residents of such possession.

10 “(2) COORDINATION WITH CREDIT ALLOWED
11 AGAINST UNITED STATES INCOME TAXES.—No cred-
12 it shall be allowed against United States income
13 taxes for any taxable year under this section to any
14 person—

15 “(A) to whom a credit is allowed against
16 taxes imposed by the possession by reason of
17 the amendments made by this section for such
18 taxable year; or

19 “(B) who is eligible for a payment under
20 a plan described in paragraph (1)(B) with re-
21 spect to such taxable year.

22 “(e) AMOUNT OF CREDIT TO BE DETERMINED
23 UNDER TABLES.—The amount of the credit allowed by
24 this section shall be determined under tables prescribed
25 by the Secretary.

1 “(f) INFLATION ADJUSTMENTS.— In the case of any
2 taxable year beginning after 2009, dollar amounts in sub-
3 section (c)(4)(A) shall be increased by an amount equal
4 to such dollar amount, multiplied by the cost-of-living ad-
5 justment determined under section 1(f)(3) of the Internal
6 Revenue Code of 1986.

7 “(g) TREATMENT IN OTHER PROGRAMS.—The en-
8 ergy tax credit provided under this section shall not be
9 considered income or resources for any purpose under any
10 Federal, State, or local laws, including, but not limited
11 to, laws relating to an income tax or public assistance pro-
12 gram (including, but not limited to, health care, cash aid,
13 child care, nutrition programs, and housing assistance),
14 and no participating State or political subdivision thereof
15 shall decrease any assistance otherwise provided an indi-
16 vidual or individuals because of the receipt of an energy
17 tax credit under this Act.”.

18 **SEC. 432. ENERGY REFUND PROGRAM FOR LOW-INCOME**
19 **CONSUMERS.**

20 (a) ENERGY REFUND PROGRAM.—

21 (1) The Administrator of the Environmental
22 Protection Agency, or the agency designated by the
23 Administrator shall formulate and administer the
24 “Energy Refund Program”.

1 (2) At the request of the State agency, eligible
2 low-income households within the State shall receive
3 a monthly cash energy refund equal to the estimated
4 loss in purchasing power resulting from this Act.

5 (b) ELIGIBILITY.—

6 (1) ELIGIBLE HOUSEHOLDS.—Participation in
7 the Energy Refund Program shall be limited to a
8 household that—

9 (A) the State agency determines to be par-
10 ticipating in (i) the Supplemental Nutrition As-
11 sistance Program authorized by the Food and
12 Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);
13 (ii) the Food Distribution Program on Indian
14 Reservations authorized by section 4(b) of such
15 Act (7 U.S.C. 2013(b)); or (iii) the program for
16 nutrition assistance in Puerto Rico or American
17 Samoa under section 19 of the such Act (7
18 U.S.C. 2028);

19 (B) has gross income that does not exceed
20 150 percent of the poverty line; or

21 (C) consists of a single individual or a
22 married couple and (i) receives the subsidy de-
23 scribed in section 1860D–14 of the Social Secu-
24 rity Act (42 U.S.C. 1395w–114); or (ii)(I) par-
25 ticipates in the program under section XVIII of

1 the Social Security Act; and (II) meets the in-
2 come requirements described in section 1860D-
3 14(a)(1) or (a)(2) of such Act (42 U.S.C.
4 1395w-114(a)(1) or (a)(2)).

5 (2) STREAMLINED ELIGIBILITY FOR CERTAIN
6 BENEFICIARIES.—The Administrator, in consulta-
7 tion with the Secretary of Health and Human Serv-
8 ices, the Commissioner of Social Security, the Rail-
9 road Retirement Board, the Secretary of Veterans
10 Affairs, and the State agencies shall develop proce-
11 dures to ensure that low-income beneficiaries of the
12 benefit programs they administer receive the energy
13 refund for which they are eligible.

14 (3) LIMITATION.—Notwithstanding any provi-
15 sion of law, the Administrator shall establish proce-
16 dures to ensure that individuals that qualify for the
17 refund under paragraph (1)(B) and that do not par-
18 ticipate in the Supplemental Nutrition Assistance
19 Program are United States citizens, United States
20 nationals, or individuals lawfully residing in the
21 United States.

22 (4) NATIONAL STANDARDS.—The Adminis-
23 trator shall establish uniform national standards of
24 eligibility in accordance with the provisions of this
25 section. No State agency shall impose any other

1 standard or requirement as a condition of eligibility
2 or refund receipt under the program. Assistance in
3 the Energy Refund Program shall be furnished
4 promptly to all eligible households who make appli-
5 cation for such participation.

6 (c) MONTHLY ENERGY REFUND AMOUNT.—

7 (1) MONTHLY ENERGY REFUND.—The monthly
8 refund under this subsection for households of 1, 2,
9 3, 4, and 5 or more members shall be equal to the
10 maximum energy tax credit amount calculated under
11 section 36B(c)(4) of the Internal Revenue Code of
12 1986 for each household size, divided by 12 and
13 rounded to the nearest whole dollar amount.

14 (2) MONTHLY ELIGIBILITY.—A household shall
15 not be eligible for the refund under this section for
16 months that the household has not established eligi-
17 bility under subsection (b).

18 (d) DELIVERY MECHANISM.—

19 (1) Subject to standards and an implementation
20 schedule set by the Administrator, the energy refund
21 shall be provided in monthly installments via—

22 (A) direct deposit into the eligible house-
23 hold's designated bank account;

24 (B) the State's electronic benefit transfer
25 system; or

1 (C) another Federal or State mechanism,
2 if such a mechanism is approved by the Admin-
3 istrator.

4 (2) Such standards shall include—

5 (A)(i) defining the required level of recipi-
6 ent protection regarding privacy;

7 (ii) guidance on how recipients are offered
8 choices, when relevant, about the delivery mech-
9 anism;

10 (iii) guidance on ease of use and access to
11 the refund, including the prohibition of fees
12 charged to recipients for withdrawals or other
13 services; and

14 (iv) cost-effective protections against im-
15 proper accessing of the energy refund;

16 (B) operating standards that provide for
17 interoperability between States and law enforce-
18 ment monitoring; and

19 (C) other standards, as determined by the
20 Administrator or the Administrator's designee.

21 (e) INFORMATION ABOUT REFUND PROVIDED TO
22 HOUSEHOLDS AND INTERNAL REVENUE SERVICE.—

23 (1) By January 31 of each year, for each adult
24 that was a member of a household that received an
25 energy refund under this section in the State during

1 the prior calendar year, each State shall issue a
2 form that conforms to standards established by the
3 Secretary of the Treasury under section 36B(b) of
4 the Internal Revenue Code of 1986, containing—

5 (A) the name, address, and social security
6 number of the adult household member; and

7 (B) the number of months the individual
8 was a member of a household that received an
9 energy refund under this section.

10 (2) States shall provide this information to the
11 Internal Revenue Service in accordance to standards
12 and regulations set forth by the Secretary of the
13 Treasury.

14 (f) ADMINISTRATION.—

15 (1) IN GENERAL.—The State agency of each
16 participating State shall assume responsibility for
17 the certification of applicant households and for the
18 issuance of refunds and the control and account-
19 ability thereof.

20 (2) PROCEDURES.—Under standards estab-
21 lished by the Administrator, the State agency shall
22 establish procedures governing the administration of
23 the Energy Refund Program that the State agency
24 determines best serve households in the State, in-
25 cluding households with special needs, such as

1 households with elderly or disabled members, house-
2 holds in rural areas, homeless individuals, and
3 households residing on reservations as defined in the
4 Indian Child Welfare Act of 1978 and the Indian Fi-
5 nancing Act of 1974. In carrying out this para-
6 graph, a State agency—

7 (A) shall provide timely, accurate, and fair
8 service to applicants for, and participants in,
9 the Energy Refund Program;

10 (B) shall permit an applicant household to
11 apply to participate in the program at the time
12 that the household first contacts the State
13 agency, and shall consider an application that
14 contains the name, address, and signature of
15 the applicant to be sufficient to constitute an
16 application for participation;

17 (C) shall screen any applicant household
18 for the Supplemental Nutrition Assistance Pro-
19 gram, the State's medical assistance program
20 under section XIX of the Social Security Act,
21 State Childrens Health Insurance Program
22 under section XXI of the Social Security Act,
23 and a State program that provides basic assist-
24 ance under a State program funded under title
25 IV of the Social Security Act or with qualified

1 State expenditures as defined in section
2 409(a)(7) of the Social Security Act for eligi-
3 bility for the Energy Refund Program and, if
4 eligible, shall enroll such applicant household in
5 the Energy Refund Program;

6 (D) shall complete certification of and pro-
7 vide a refund to any eligible household not later
8 than thirty days following its filing of an appli-
9 cation;

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 Administrator shall issue such regula-
6 tions consistent with this section as the Admin-
7 istrator deems necessary or appropriate for the
8 effective and efficient administration of the En-
9 ergy Refund Program and shall promulgate all
10 such regulations in accordance with the proce-
11 dures set forth in section 553 of title 5, United
12 States Code.

13 (B) Without regard to section 553 of title
14 5 of such Code, the Administrator may, during
15 the period beginning with the effective date of
16 this section and ending two years after such
17 date, by rule promulgate as final any proce-
18 dures that are substantially the same as the
19 procedures governing the Supplemental Nutri-
20 tion Assistance Program at 7 C.F.R. 273.2,
21 273.12.273.15.

22 (g) TREATMENT.—The value of the refund provided
23 under this Act shall not be considered income or resources
24 for any purpose under any Federal, State, or local laws,
25 including, but not limited to, laws relating to an income

1 tax, or public assistance programs (including, but not lim-
2 ited to, health care, cash aid, child care, nutrition pro-
3 grams, and housing assistance) and no participating State
4 or political subdivision thereof shall decrease any assist-
5 ance otherwise provided an individual or individuals be-
6 cause of the receipt of a refund under this Act.

7 (h) PROGRAM INTEGRITY.—For purposes of ensuring
8 program integrity and complying with the requirements of
9 the Improper Payment Information Act of 2002, the Ad-
10 ministrator shall—

11 (1) to the maximum extent possible rely on and
12 coordinate with the quality control sample and re-
13 view procedures of section 16(c)(2), (3), (4), and (5)
14 of the Supplemental Nutrition Assistance Program;
15 and

16 (2) develop procedures to monitor the compli-
17 ance with and accuracy of State agencies in pro-
18 viding forms to household members and the Internal
19 Revenue Service under subsection (f).

20 (i) DEFINITIONS.—

21 (1) ADMINISTRATOR.—The term “Adminis-
22 trator” means the Administrator of the Environ-
23 mental Protection Agency or the head of another
24 agency designated by the Administrator.

1 (2) ELECTRONIC BENEFIT TRANSFER SYS-
2 TEM.—The term “electronic benefit transfer system”
3 means a system by which household benefits or re-
4 funds defined under subsection (d) are issued from
5 and stored in a central databank via electronic ben-
6 efit transfer cards.

7 (3) GROSS INCOME.—The term “gross income”
8 means the gross income of a household that is deter-
9 mined in accordance with standards and procedures
10 established under section 5 of the Food and Nutri-
11 tion Act of 2008 (7 U.S.C. 2014) and its imple-
12 menting regulations.

13 (4) HOUSEHOLD.—The term “household”
14 means—

15 (A)(i) except as provided in subparagraph
16 (C), an individual or a group of individuals who
17 are a household under section 3(n) of the Food
18 and Nutrition Act of 2008 (7 U.S.C. 2012(n));
19 and

20 (ii) a single individual or married couple
21 that receive benefits under section 1860D–14 of
22 the Social Security Act (42 U.S.C. 1395w–
23 114).

24 (B) The Administrator shall establish rules
25 for providing the energy refund in an equitable

1 and administratively simple manner to house-
2 holds where the group of individuals who live
3 together includes a combination of members de-
4 scribed in clauses (i) and (ii) of subparagraph
5 (A), or includes additional members not de-
6 scribed in clause (i) or clause (ii) of subpara-
7 graph (A).

8 (C) The Administrator shall establish rules
9 regarding the eligibility and delivery of the en-
10 ergy refund to groups of individuals described
11 in section 3(n)(4) or (5) of the Food and Nutri-
12 tion Act of 2008 (7 U.S.C. 2012(n)).

13 (5) POVERTY LINE.—The term “poverty line”
14 has the meaning given the term in section 673(2) of
15 the Community Services Block Grant Act (42 U.S.C.
16 9902(2)), including any revision required by that
17 section.

18 (6) STATE.—The term “State” means the 50
19 States, the District of Columbia, the Commonwealth
20 of Puerto Rico, American Samoa, the United States
21 Virgin Islands, Guam, and the Commonwealth of the
22 Northern Mariana Islands.

23 (7) STATE AGENCY.—The term “State agency”
24 means an agency of State government, including the
25 local offices thereof, that has responsibility for ad-

1 ministration of the 1 or more federally aided public
2 assistance programs within the State, and in those
3 States where such assistance programs are operated
4 on a decentralized basis, the term shall include the
5 counterpart local agencies administering such pro-
6 grams.

7 (8) OTHER TERMS.—Other terms not defined in
8 this Act shall have the same meaning applied in the
9 Supplemental Nutrition Assistance Program unless
10 the Administrator finds for good cause that applica-
11 tion of a particular definition would be detrimental
12 to the purposes of the Energy Refund Program.

13 (j) AUTHORIZATION OF APPROPRIATIONS.— Such
14 sums as are necessary are hereby appropriated for the En-
15 ergy Refund Program under this section.

16 **Subtitle D—Exporting Clean** 17 **Technology**

18 **SEC. 441. FINDINGS AND PURPOSES.**

19 (a) FINDINGS.—Congress finds the following:

20 (1) Protecting Americans from the impacts of
21 climate change requires global reductions in green-
22 house gas emissions.

23 (2) Although developing countries are histori-
24 cally least responsible for the cumulative greenhouse
25 gas emissions that are causing climate change and

1 continue to have very low per capita greenhouse gas
2 emissions, their overall greenhouse gas emissions are
3 increasing as they seek to grow their economies and
4 reduce energy poverty for their populations.

5 (3) Many developing countries lack the financial
6 and technical resources to adopt clean energy tech-
7 nologies and absent assistance their greenhouse gas
8 emissions will continue to increase.

9 (4) Investments in clean energy technology co-
10 operation can substantially reduce global greenhouse
11 gas emissions while providing developing countries
12 with incentives to adopt policies that will address
13 competitiveness concerns related to regulation of
14 United States greenhouse gas emissions.

15 (5) Investments in clean technology in devel-
16 oping countries will increase demand for clean en-
17 ergy products, open up new markets for United
18 States companies, spur innovation, and lower costs.

19 (6) Under Article 4 of the United Nations
20 Framework Convention on Climate Change, devel-
21 oped country parties, including the United States,
22 committed to “take all practicable steps to promote,
23 facilitate, and finance, as appropriate, the transfer
24 of, or access to, environmentally sound technologies
25 and know-how to other parties, particularly devel-

1 oping country parties, to enable them to implement
2 the provisions of the Convention”.

3 (7) 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 subtitle are—

16 (1) to provide United States assistance and le-
17 verage private resources to encourage widespread
18 implementation, in developing countries, of activities
19 that reduce, sequester, or avoid greenhouse gas
20 emissions; and

21 (2) to provide such assistance in a manner
22 that—

23 (A) encourages such countries to adopt
24 policies and measures, including sector-based
25 and cross-sector policies and measures, that

1 substantially reduce, sequester, or avoid green-
2 house gas emissions; and

3 (B) promotes the successful negotiation of
4 a global agreement to reduce greenhouse gas
5 emissions under the United Nations Framework
6 Convention on Climate Change.

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 from the Inter-
11 national Clean Technology Account.

12 (6) INTERAGENCY GROUP.—The term “inter-
13 agency group” means the group established by the
14 President under section 443 to administer distribu-
15 tions from the International Clean Technology Ac-
16 count.

17 (7) INTERNATIONAL CLEAN TECHNOLOGY AC-
18 COUNT.—The term “International Clean Technology
19 Account” means the account to which the Adminis-
20 trator allocates allowances under section 782(o) of
21 the Clean Air Act.

22 (8) LEAST DEVELOPED COUNTRY.—The term
23 “least developed country” means a foreign country
24 the United Nations has identified as among the least
25 developed of developing countries.

1 (9) QUALIFYING ACTIVITY.—The term “quali-
2 fying activity” means an activity that meets the cri-
3 teria in section 445.

4 (10) QUALIFYING ENTITY.—The term “quali-
5 fying entity” means a national, regional, or local
6 government in, or a nongovernmental organization
7 or private entity located or operating in, an eligible
8 country.

9 **SEC. 443. GOVERNANCE.**

10 (a) OVERSIGHT.—The Secretary of State, or such
11 other Federal agency head as the President may des-
12 ignate, in consultation with the interagency group estab-
13 lished under subsection (b), shall oversee distributions of
14 allowances from the International Clean Technology Ac-
15 count.

16 (b) INTERAGENCY GROUP.—The President shall es-
17 tablish an interagency group to administer the Inter-
18 national Clean Technology Account. The Members of the
19 interagency group shall include—

20 (1) the Secretary of State;

21 (2) the Administrator of the Environmental
22 Protection Agency;

23 (3) the Secretary of Energy;

24 (4) the Secretary of the Treasury;

1 (5) the Administrator of the United States
2 Agency for International Development; and

3 (6) any other head of a Federal agency or execu-
4 tive branch appointee that the President may des-
5 ignate.

6 (c) CHAIRPERSON.—The Secretary of State shall
7 serve as the chairperson of the interagency group.

8 (d) SUPPLEMENT NOT SUPPLANT.—Allowances dis-
9 tributed from the International Clean Technology Account
10 shall be used to supplement, and not to supplant, any
11 other Federal, State, or local resources available to carry
12 out activities that are qualifying activities under this sub-
13 title.

14 **SEC. 444. DETERMINATION OF ELIGIBLE COUNTRIES.**

15 (a) IN GENERAL.—The interagency group shall de-
16 termine a country to be an eligible country for the pur-
17 poses of this subtitle if a country meets the following cri-
18 teria:

19 (1) The country is a developing country that—

20 (A) has entered into an international
21 agreement to which the United States is a
22 party, under which such country agrees to take
23 actions to produce measurable, reportable, and
24 verifiable greenhouse gas emissions mitigation;
25 or

1 (B) is determined by the interagency group
2 to have in force national policies and measures
3 that are capable of producing measurable, re-
4 portable, and verifiable greenhouse gas emis-
5 sions mitigation.

6 (2) The country has developed a nationally ap-
7 propriate mitigation strategy that seeks to achieve
8 substantial reductions, sequestration, or avoidance of
9 greenhouse gas emissions, relative to business-as-
10 usual levels.

11 (3) Subject to subsection (b)(1), such other cri-
12 teria as the President determines will serve the pur-
13 poses of this subtitle or other United States national
14 security, foreign policy, environmental, or economic
15 objectives.

16 (b) EXCEPTIONS.—

17 (1) Subsection (a)(3) applies only to bilateral
18 assistance under section 446(c).

19 (2) The eligibility criteria in this section do not
20 apply in the case of least developed countries receiv-
21 ing assistance under section 445(7) for the purpose
22 of building capacity to meet such eligibility criteria.

23 **SEC. 445. QUALIFYING ACTIVITIES.**

24 Assistance under this subtitle may be provided only
25 to qualifying entities for clean technology activities (in-

1 cluding building relevant technical and institutional capac-
2 ity) that contribute to substantial, measurable, reportable,
3 and verifiable reductions, sequestration, or avoidance of
4 greenhouse gas emissions including—

5 (1) deployment of technologies to capture and
6 sequester carbon dioxide emissions from electric gen-
7 erating units or large industrial sources (except that
8 assistance under this subtitle for such deployment
9 shall be limited to the cost of retrofitting existing fa-
10 cilities with such technologies or the incremental
11 cost of purchasing and installing such technologies
12 at new facilities);

13 (2) deployment of renewable electricity genera-
14 tion from wind, solar, sustainably-produced biomass,
15 geothermal, marine, or hydrokinetic sources;

16 (3) substantial increases in the efficiency of
17 electricity transmission, distribution, and consump-
18 tion;

19 (4) deployment of low- or zero emissions tech-
20 nologies that are facing financial or other barriers to
21 their widespread deployment which could be ad-
22 dressed through support under this subtitle in order
23 to reduce, sequester, or avoid emission;

24 (5) reduction in transportation sector emissions
25 through increased transportation system and vehicle

1 efficiency or use of transportation fuels that have
2 lifecycle greenhouse gas emissions that are substan-
3 tially lower than those attributable to fossil fuel-
4 based alternatives;

5 (6) reduction in black carbon emissions; or

6 (7) capacity building activities, including—

7 (A) developing and implementing meth-
8 odologies and programs for measuring and
9 quantifying greenhouse gas emissions and
10 verifying emissions mitigation;

11 (B) assessing, developing, and imple-
12 menting technology and policy options for
13 greenhouse gas emissions mitigation and avoid-
14 ance of future emissions, including sector and
15 cross-sector mitigation strategies; and

16 (C) providing other forms of technical as-
17 sistance to facilitate the qualification for, and
18 receipt of, assistance under this Act.

19 **SEC. 446. ASSISTANCE.**

20 (a) IN GENERAL.—The Secretary of State, or such
21 other Federal agency head as the President may des-
22 ignate, is authorized to provide assistance, through the
23 distribution of allowances, from the International Clean
24 Technology Account for qualifying activities that take
25 place in eligible countries.

1 (b) DISTRIBUTION OF ALLOWANCES.—

2 (1) IN GENERAL.—The Secretary of State, or
3 such other Federal agency head as the President
4 may designate, after consultation with the inter-
5 agency group, shall distribute allowances from the
6 International Clean Technology Account—

7 (A) in the form of bilateral assistance in
8 accordance with paragraph (4);

9 (B) to multilateral funds or institutions
10 pursuant to the Convention or an agreement
11 negotiated under the Convention; or

12 (C) through some combination of the
13 mechanisms identified in subparagraphs (A)
14 and (B).

15 (2) GLOBAL ENVIRONMENT FACILITY.—For any
16 allowances provided to the Global Environment Fa-
17 cility pursuant to paragraph (1)(B), the President
18 shall designate the Secretary of the Treasury to dis-
19 tribute those allowances to the Global Environment
20 Facility.

21 (3) DISTRIBUTION THROUGH INTERNATIONAL
22 FUND OR INSTITUTION.—If allowances are distrib-
23 uted to a multilateral fund or institution, as author-
24 ized in paragraph (1), the Secretary of State, or
25 such other Federal agency head as the President

1 may designate, shall seek to ensure the establish-
2 ment and implementation of adequate mechanisms
3 to—

4 (A) apply and enforce the criteria for de-
5 termination of eligible countries and qualifying
6 activities under sections 444 and 445, respec-
7 tively; and

8 (B) require public reporting describing the
9 process and methodology for selecting the ulti-
10 mate recipients of assistance and a description
11 of each activity that received assistance, includ-
12 ing the amount of obligations and expenditures
13 for assistance.

14 (4) BILATERAL ASSISTANCE.—

15 (A) IN GENERAL.—Bilateral assistance
16 under paragraph (1) shall be carried out by the
17 Administrator of the United States Agency for
18 International Development, in consultation with
19 the interagency group.

20 (B) LIMITATIONS.—Not more than 15 per-
21 cent of allowances made available to carry out
22 bilateral assistance under this subtitle in any
23 year shall be distributed to support activities in
24 any single country.

1 (C) SELECTION CRITERIA.—Not later than
2 2 years after the date of enactment of this sub-
3 title, the Administrator of the United States
4 Agency for International Development, after
5 consultation with the interagency group, shall
6 develop and publish a set of criteria to be used
7 in evaluating activities within eligible countries
8 for bilateral assistance under this subtitle.

9 (D) CRITERIA REQUIREMENTS.—The cri-
10 teria under subparagraph (C) shall require
11 that—

12 (i) the activity is a qualifying activity;

13 (ii) the activity will be conducted as
14 part of an eligible country's nationally ap-
15 propriate mitigation strategy or as part of
16 an eligible country's actions towards pro-
17 viding a nationally appropriate mitigation
18 strategy to reduce, sequester, or avoid
19 emissions being implemented by the eligi-
20 ble country;

21 (iii) the activity will not have adverse
22 effects on human health, safety, or welfare,
23 the environment, or natural resources;

1 (iv) any technologies deployed through
2 bilateral assistance under this subtitle will
3 be properly implemented and maintained;

4 (v) the activity will not cause any net
5 loss of United States jobs or displacement
6 of United States production;

7 (vi) costs of the activity will be shared
8 by the host country government, private
9 sector parties, or a multinational develop-
10 ment bank, except that this clause does not
11 apply to least developed countries; and

12 (vii) the activity meets such other re-
13 quirements as the interagency group deter-
14 mines appropriate to further the purposes
15 of this subtitle.

16 (E) CRITERIA PREFERENCES.—The cri-
17 teria under subparagraph (C) shall give pref-
18 erence to activities that—

19 (i) promise to achieve large-scale
20 greenhouse gas reductions, sequestration,
21 or avoidance at a national, sectoral or
22 cross-sectoral level;

23 (ii) have the potential to catalyze a
24 shift within the host country towards wide-

1 spread deployment of low- or zero-carbon
2 energy technologies;

3 (iii) build technical and institutional
4 capacity and other activities that are un-
5 likely to be attractive to private sector
6 funding; or

7 (iv) maximize opportunities to lever-
8 age other sources of assistance and cata-
9 lyze private-sector investment.

10 (c) MONITORING, EVALUATION, AND ENFORCE-
11 MENT.—The Secretary of State, or such other Federal
12 agency head as the President may designate, in consulta-
13 tion with the interagency group, shall establish and imple-
14 ment a system to monitor and evaluate the performance
15 of activities receiving assistance under this subtitle. The
16 Secretary of State, or such other Federal agency head as
17 the President may designate, shall have the authority to
18 suspend or terminate assistance in whole or in part for
19 an activity if it is determined that the activity is not oper-
20 ating in compliance with the approved proposal.

21 (d) COORDINATION WITH U.S. FOREIGN ASSIST-
22 ANCE.—Subject to the direction of the President, the Sec-
23 retary of State shall, to the extent practicable, seek to
24 align activities under this section with broader develop-

1 ment, poverty alleviation, or natural resource management
2 objectives and initiatives in the recipient country.

3 (e) ANNUAL REPORTS.—Not later than March 1,
4 2012, and annually thereafter, the President shall submit
5 to the appropriate congressional committees a report on
6 the assistance provided under this subtitle during the prior
7 fiscal year. Such report shall include—

8 (1) a description of the amount and value of al-
9 lowances distributed during the prior fiscal year;

10 (2) a description of each activity that received
11 assistance during the prior fiscal year, and a de-
12 scription of the anticipated and actual outcomes;

13 (3) an assessment of any adverse effects to
14 human health, safety, or welfare, the environment,
15 or natural resources as a result of activities sup-
16 ported under this subtitle;

17 (4) an assessment of the success of the assist-
18 ance provided under this subtitle to improving the
19 technical and institutional capacity to implement
20 substantial emissions reductions; and

21 (5) an estimate of the greenhouse gas emissions
22 reductions, sequestration, or avoidance achieved by
23 assistance provided under this subtitle during the
24 prior fiscal year.

1 **Subtitle E—Adapting to Climate**
2 **Change**

3 **PART 1—DOMESTIC ADAPTATION**

4 **Subpart A—National Climate Change Adaptation**
5 **Program**

6 **SEC. 451. NATIONAL CLIMATE CHANGE ADAPTATION PRO-**
7 **GRAM.**

8 The President shall establish within the United
9 States Global Change Research Program a National Cli-
10 mate Change Adaptation Program for the purpose of in-
11 creasing the overall effectiveness of Federal climate
12 change adaptation efforts.

13 **SEC. 452. CLIMATE SERVICES.**

14 The Secretary of Commerce, acting through the Ad-
15 ministrator of the National Oceanic and Atmospheric Ad-
16 ministration (NOAA), shall establish within NOAA a Na-
17 tional Climate Service to develop climate information,
18 data, forecasts, and warnings at national and regional
19 scales, and to distribute information related to climate im-
20 pacts to State, local, and tribal governments and the pub-
21 lic to facilitate the development and implementation of
22 strategies to reduce society's vulnerability to climate varia-
23 bility and change.

1 **SEC. 453. STATE PROGRAMS TO BUILD RESILIENCE TO CLI-**
2 **MATE CHANGE IMPACTS.**

3 (a) DISTRIBUTION OF ALLOWANCES.—

4 (1) IN GENERAL.—Not later than September
5 30, 2012, and annually thereafter through 2050, the
6 Administrator shall distribute allowances allocated
7 for purposes of this subpart pursuant to section 782
8 of the Clean Air Act ratably among the State gov-
9 ernments based on the product of—

10 (A) each State's population; and

11 (B) each State's allocation factor as deter-
12 mined under paragraph (2).

13 (2) STATE ALLOCATION FACTORS.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), the allocation factor for a
16 State shall be the quotient of—

17 (i) the per capita income of all indi-
18 viduals in the United States, divided by

19 (ii) the per capita income of all indi-
20 viduals in such State.

21 (B) LIMITATION.—If the allocation factor
22 for a State as calculated under subparagraph
23 (A) would exceed 1.2, then the allocation factor
24 for such State shall be 1.2. If the allocation fac-
25 tor for a State as calculated under subpara-

1 graph (A) would be less than 0.8, then the allo-
2 cation factor for such State shall be 0.8.

3 (C) PER CAPITA INCOME.—For purposes
4 of this paragraph, per capita income shall be—
5 (i) determined at 2-year intervals; and
6 (ii) equal to the average of the annual
7 per capita incomes for the most recent pe-
8 riod of 3 consecutive years for which satis-
9 factory data are available from the Depart-
10 ment of Commerce at the time such deter-
11 mination is made.

12 (b) SALE OF ALLOWANCES.—Each State receiving
13 emission allowances under this section shall sell such al-
14 lowances within 1 year of receipt, either directly or
15 through consignment to the Administrator for auction.
16 States shall deposit the proceeds of such sales within the
17 State Energy and Environment Development (SEED)
18 Fund established pursuant to section 131 of the American
19 Clean Energy and Security Act of 2009. Emission allow-
20 ances distributed under this section that are not sold with-
21 in 1 year of receipt by a State shall be returned to the
22 Administrator, who shall distribute such allowances to the
23 remaining States ratably in accordance with the formula
24 in subsection (a).

1 (c) USE OF PROCEEDS.—States shall, in accordance
2 with a State climate adaptation plan approved pursuant
3 to subsection (d), use the proceeds of sales of emission
4 allowances distributed under this section exclusively for
5 the implementation of projects, programs, or measures to
6 build resilience to the impacts of climate change, includ-
7 ing—

8 (1) extreme weather events such as flooding
9 and tropical cyclones;

10 (2) more frequent heavy precipitation events;

11 (3) water scarcity and adverse impacts on water
12 quality;

13 (4) stronger and longer heat waves;

14 (5) more frequent and severe droughts;

15 (6) rises in sea level;

16 (7) ecosystem disruption;

17 (8) increased air pollution; and

18 (9) effects on public health.

19 (d) STATE CLIMATE ADAPTATION PLANS.—

20 (1) IN GENERAL.—Not later than 2 years after
21 the date of enactment of this Act, the Administrator,
22 or such other Federal agency head or heads as the
23 President may designate, shall promulgate regula-
24 tions establishing requirements for submission and
25 approval of State climate adaptation plans under

1 this section. Receipt of emission allowances pursuant
2 to this section shall be contingent on approval of a
3 State climate adaptation plan meeting the require-
4 ments of such guidelines.

5 (2) REQUIREMENTS.—Regulations promulgated
6 under this subsection shall require, at minimum,
7 that—

8 (A) State climate adaptation plans assess
9 and prioritize the State’s vulnerability to a
10 broad range of impacts of climate change, based
11 on the best available science;

12 (B) State climate adaptation plans identify
13 and prioritize specific cost-effective projects,
14 programs, and measures to build resilience to
15 predicted impacts of climate change; and

16 (C) in order to be eligible to receive emis-
17 sion allowances under this section, a State shall
18 submit a revised State climate adaptation plan
19 for approval not less frequently than every 5
20 years.

21 (3) COORDINATION WITH PRIOR PLANNING EF-
22 FORTS.—In promulgating regulations under this
23 subsection, the Administrator, or such other Federal
24 agency head or heads as the President may des-
25 ignate, shall draw upon lessons learned and best

1 practices from preexisting State climate adaptation
2 planning efforts and shall seek to avoid duplication
3 of such efforts.

4 (e) REPORTING.—Each State receiving emission al-
5 lowances under this section shall submit to the Adminis-
6 trator, or such other Federal agency head or heads as the
7 President may designate, within 12 months after each re-
8 ceipt of such allowances and once every 2 years thereafter
9 until the proceeds from the sale of emission allowances
10 received under this section are fully expended, a report
11 that—

12 (1) provides a full accounting for the State's
13 use of proceeds of sales of emission allowances dis-
14 tributed under this section, including a description
15 of the projects, programs, or measures funded
16 through such proceeds; and

17 (2) includes a report prepared by an inde-
18 pendent third party, in accordance with such regula-
19 tions as are promulgated by the Administrator or
20 such other Federal agency head or heads as the
21 President may designate, evaluating the performance
22 of the projects, programs, or measures funded under
23 this section.

24 (f) ENFORCEMENT.—If the Administrator, or such
25 other Federal agency head or heads as the President may

1 designate, determines that a State is not in compliance
2 with this section, the Administrator may withhold a por-
3 tion of the allowances, the value of which is equal to up
4 to twice the value of the allowances that the State failed
5 to use in accordance with the requirements of this section,
6 that such State would otherwise be eligible to receive
7 under this section in 1 or more later years. Allowances
8 withheld pursuant to this subsection shall be distributed
9 among the remaining States ratably in accordance with
10 the formula in subsection (a).

11 **Subpart B—Public Health and Climate Change**

12 **SEC. 461. SENSE OF CONGRESS ON PUBLIC HEALTH AND**
13 **CLIMATE CHANGE.**

14 It is the sense of the Congress that the Federal Gov-
15 ernment, in cooperation with international, State, tribal,
16 and local governments, concerned public and private orga-
17 nizations, and citizens, should use all practicable means
18 and measures—

19 (1) to assist the efforts of public health and
20 health care professionals, first responders, States,
21 tribes, municipalities, and local communities to in-
22 corporate measures to prepare health systems to re-
23 spond to the impacts of climate change;

24 (2) to ensure—

1 (A) that the Nation's health professionals
2 have sufficient information to prepare for and
3 respond to the adverse health impacts of cli-
4 mate change;

5 (B) the utility and value of scientific re-
6 search in advancing understanding of—

7 (i) the health impacts of climate
8 change; and

9 (ii) strategies to prepare for and re-
10 spond to the health impacts of climate
11 change;

12 (C) the identification of communities vul-
13 nerable to the health effects of climate change
14 and the development of strategic response plans
15 to be carried out by health professionals for
16 those communities;

17 (D) the improvement of health status and
18 health equity through efforts to prepare for and
19 respond to climate change; and

20 (E) the inclusion of health policy in the de-
21 velopment of climate change responses;

22 (3) to encourage further research, interdiscipli-
23 nary partnership, and collaboration among stake-
24 holders in order to—

1 (A) understand and monitor the health im-
2 pacts of climate change; and

3 (B) improve public health knowledge and
4 response strategies to climate change;

5 (4) to enhance preparedness activities, and pub-
6 lic health infrastructure, relating to climate change
7 and health;

8 (5) to encourage each and every American to
9 learn about the impacts of climate change on health;
10 and

11 (6) to assist the efforts of developing nations to
12 incorporate measures to prepare health systems to
13 respond to the impacts of climate change.

14 **SEC. 462. RELATIONSHIP TO OTHER LAWS.**

15 Nothing in this subpart in any manner limits the au-
16 thority provided to or responsibility conferred on any Fed-
17 eral department or agency by any provision of any law
18 (including regulations) or authorizes any violation of any
19 provision of any law (including regulations), including any
20 health, energy, environmental, transportation, or any
21 other law or regulation.

22 **SEC. 463. NATIONAL STRATEGIC ACTION PLAN.**

23 (a) REQUIREMENT.—

24 (1) IN GENERAL.—The Secretary of Health and
25 Human Services, within 2 years after the date of the

1 enactment of this Act, on the basis of the best avail-
2 able science, and in consultation pursuant to para-
3 graph (2), shall publish a strategic action plan to as-
4 sist health professionals in preparing for and re-
5 sponding to the impacts of climate change on public
6 health in the United States and other nations, par-
7 ticularly developing nations.

8 (2) CONSULTATION.—In developing or making
9 any revision to the national strategic action plan, the
10 Secretary shall—

11 (A) consult with the Director of the Cen-
12 ters for Disease Control and Prevention, the
13 Administrator of the Environmental Protection
14 Agency, the Director of the National Institutes
15 of Health, the Secretary of Energy, other ap-
16 propriate Federal agencies, Indian tribes, State
17 and local governments, public health organiza-
18 tions, scientists, and other interested stake-
19 holders; and

20 (B) provide opportunity for public input.

21 (b) CONTENTS.—

22 (1) IN GENERAL.—The Secretary, acting
23 through the Director of the Centers for Disease
24 Control and Prevention and other appropriate Fed-
25 eral agencies, shall assist health professionals in pre-

1 paring for and responding effectively and efficiently
2 to the health effects of climate change through
3 measures including—

4 (A) developing, improving, integrating, and
5 maintaining domestic and international disease
6 surveillance systems and monitoring capacity to
7 respond to health-related effects of climate
8 change, including on topics addressing—

9 (i) water, food, and vector borne infec-
10 tious diseases and climate change;

11 (ii) pulmonary effects, including re-
12 sponses to aeroallergens;

13 (iii) cardiovascular effects, including
14 impacts of temperature extremes;

15 (iv) air pollution health effects, includ-
16 ing heightened sensitivity to air pollution;

17 (v) hazardous algal blooms;

18 (vi) mental and behavioral health im-
19 pacts of climate change;

20 (vii) the health of refugees, displaced
21 persons, and vulnerable communities;

22 (viii) the implications for communities
23 vulnerable to health effects of climate
24 change, as well as strategies for responding

1 to climate change within these commu-
2 nities; and

3 (ix) local and community-based health
4 interventions for climate-related health im-
5 pacts;

6 (B) creating tools for predicting and moni-
7 toring the public health effects of climate
8 change on the international, national, regional,
9 State, and local levels, and providing technical
10 support to assist in their implementation;

11 (C) developing public health communica-
12 tions strategies and interventions for extreme
13 weather events and disaster response situations;

14 (D) identifying and prioritizing commu-
15 nities and populations vulnerable to the health
16 effects of climate change, and determining ac-
17 tions and communication strategies that should
18 be taken to inform and protect these commu-
19 nities and populations from the health effects of
20 climate change;

21 (E) developing health communication, pub-
22 lic education, and outreach programs aimed at
23 public health and health care professionals, as
24 well as the general public, to promote prepared-
25 ness and response strategies relating to climate

- 1 change and public health, including the identi-
2 fication of greenhouse gas reduction behaviors
3 that are health-promoting; and
- 4 (F) developing academic and regional cen-
5 ters of excellence devoted to—
- 6 (i) researching relationships between
7 climate change and health;
- 8 (ii) expanding and training the public
9 health workforce to strengthen the capacity
10 of such workforce to respond to and pre-
11 pare for the health effects of climate
12 change;
- 13 (iii) creating and supporting academic
14 fellowships focusing on the health effects
15 of climate change; and
- 16 (iv) training senior health ministry of-
17 ficials from developing nations to strength-
18 en the capacity of such nations to—
- 19 (I) prepare for and respond to
20 the health effects of climate change;
21 and
- 22 (II) build an international net-
23 work of public health professionals
24 with the necessary climate change
25 knowledge base;

1 (G) using techniques, including health im-
2 pact assessments, to assess various climate
3 change public health preparedness and response
4 strategies on international, national, State, re-
5 gional, tribal, and local levels, and make rec-
6 ommendations as to those strategies that best
7 protect the public health;

8 (H)(i) assisting in the development, imple-
9 mentation, and support of State, regional, trib-
10 al, and local preparedness, communication, and
11 response plans (including with respect to the
12 health departments of such entities) to antici-
13 pate and reduce the health threats of climate
14 change; and

15 (ii) pursuing collaborative efforts to de-
16 velop, integrate, and implement such plans;

17 (I) creating a program to advance research
18 as it relates to the effects of climate change on
19 public health across Federal agencies, including
20 research to—

21 (i) identify and assess climate change
22 health effects preparedness and response
23 strategies;

24 (ii) prioritize critical public health in-
25 frastructure projects related to potential

1 climate change impacts that affect public
2 health; and

3 (iii) coordinate preparedness for cli-
4 mate change health impacts, including the
5 development of modeling and forecasting
6 tools;

7 (J) providing technical assistance for the
8 development, implementation, and support of
9 preparedness and response plans to anticipate
10 and reduce the health threats of climate change
11 in developing nations; and

12 (K) carrying out other activities deter-
13 mined appropriate by the Secretary to plan for
14 and respond to the impacts of climate change
15 on public health.

16 (c) REVISION.—The Secretary shall revise the na-
17 tional strategic action plan not later than July 1, 2014,
18 and every 4 years thereafter, to reflect new information
19 collected pursuant to implementation of the national stra-
20 tegic action plan and otherwise, including information
21 on—

22 (1) the status of critical environmental health
23 parameters and related human health impacts;

24 (2) the impacts of climate change on public
25 health; and

1 (3) advances in the development of strategies
2 for preparing for and responding to the impacts of
3 climate change on public health.

4 (d) IMPLEMENTATION.—

5 (1) IMPLEMENTATION THROUGH HHS.—The
6 Secretary shall exercise the Secretary's authority
7 under this subpart and other provisions of Federal
8 law to achieve the goals and measures of the na-
9 tional strategic action plan.

10 (2) OTHER PUBLIC HEALTH PROGRAMS AND
11 INITIATIVES.—The Secretary and Federal officials of
12 other relevant Federal agencies shall administer
13 public health programs and initiatives authorized by
14 provisions of law other than this subpart, subject to
15 the requirements of such statutes, in a manner de-
16 signed to achieve the goals of the national strategic
17 action plan.

18 (3) CDC.—In furtherance of the national stra-
19 tegic action plan, the Secretary, acting through the
20 Director of the Centers for Disease Control and Pre-
21 vention and the head of any other appropriate Fed-
22 eral agency, shall—

23 (A) conduct scientific research to assist
24 health professionals in preparing for and re-

1 sponding to the impacts of climate change on
2 public health; and

3 (B) provide funding for—

4 (i) research on the health effects of
5 climate change; and

6 (ii) preparedness planning on the
7 international, national, State, regional, and
8 local levels to respond to or reduce the bur-
9 den of health effects of climate change;
10 and

11 (C) carry out other activities determined
12 appropriate by the Director or the head of such
13 agency to prepare for and respond to the im-
14 pacts of climate change on public health.

15 **SEC. 464. ADVISORY BOARD.**

16 (a) ESTABLISHMENT.—The Secretary shall establish
17 a permanent science advisory board comprised of not less
18 than 10 and not more than 20 members.

19 (b) APPOINTMENT OF MEMBERS.—The Secretary
20 shall appoint the members of the science advisory board
21 from among individuals—

22 (1) who have expertise in public health and
23 human services, climate change, and other relevant
24 disciplines; and

1 (2) at least 1/2 of whom are recommended by
2 the President of the National Academy of Sciences.

3 (c) FUNCTIONS.—The science advisory board shall—

4 (1) provide scientific and technical advice and
5 recommendations to the Secretary on the domestic
6 and international impacts of climate change on pub-
7 lic health, populations and regions particularly vul-
8 nerable to the effects of climate change, and strate-
9 gies and mechanisms to prepare for and respond to
10 the impacts of climate change on public health; and

11 (2) advise the Secretary regarding the best
12 science available for purposes of issuing the national
13 strategic action plan.

14 **SEC. 465. REPORTS.**

15 (a) NEEDS ASSESSMENT.—

16 (1) IN GENERAL.—The Secretary shall seek to
17 enter into, by not later than 6 months after the date
18 of the enactment of this Act, an agreement with the
19 National Research Council and the Institute of Med-
20 icine to complete a report that—

21 (A) assesses the needs for health profes-
22 sionals to prepare for and respond to climate
23 change impacts on public health; and

24 (B) recommends programs to meet those
25 needs.

1 (2) SUBMISSION.—The agreement under para-
2 graph (1) shall require the completed report to be
3 submitted to the Congress and the Secretary and
4 made publicly available not later than 1 year after
5 the date of the agreement.

6 (b) CLIMATE CHANGE HEALTH PROTECTION AND
7 PROMOTION REPORTS.—

8 (1) IN GENERAL.—The Secretary, in consulta-
9 tion with the advisory board established under sec-
10 tion 464, shall ensure the issuance of reports to aid
11 health professionals in preparing for and responding
12 to the adverse health effects of climate change
13 that—

14 (A) review scientific developments on
15 health impacts of climate change; and

16 (B) recommend changes to the national
17 strategic action plan.

18 (2) SUBMISSION.—The Secretary shall submit
19 the reports required by paragraph (1) to the Con-
20 gress and make such reports publicly available not
21 later than July 1, 2013, and every 4 years there-
22 after.

23 **SEC. 466. DEFINITIONS.**

24 In this subpart:

1 (1) HEALTH IMPACT ASSESSMENT.—The term
2 “health impact assessment” means a combination of
3 procedures, methods, and tools by which a policy,
4 program, or project may be judged as to its potential
5 effects on the health of a population, and the dis-
6 tribution of those effects within the population.

7 (2) NATIONAL STRATEGIC ACTION PLAN.—The
8 term “national strategic action plan” means the
9 plan issued and revised under section 463.

10 (3) SECRETARY.—Unless otherwise specified,
11 the term “Secretary” means the Secretary of Health
12 and Human Services.

13 **SEC. 467. CLIMATE CHANGE HEALTH PROTECTION AND**
14 **PROMOTION FUND.**

15 (a) ESTABLISHMENT OF FUND.—There is hereby es-
16 tablished in the Treasury a separate account that shall
17 be known as the Climate Change Health Protection and
18 Promotion Fund.

19 (b) AVAILABILITY OF AMOUNTS.—All amounts de-
20 posited into the Climate Change Health Protection and
21 Promotion Fund shall be available to the Secretary to
22 carry out this subpart subject to further appropriation.

23 (c) DISTRIBUTION OF FUNDS BY HHS.—In carrying
24 out this subpart, the Secretary may make funds deposited

1 in the Climate Change Health Protection and Promotion

2 Fund available to—

3 (1) other departments, agencies, and offices of

4 the Federal Government;

5 (2) foreign, State, tribal, and local govern-

6 ments; and

7 (3) such other entities as the Secretary deter-

8 mines appropriate.

9 (d) SUPPLEMENT, NOT REPLACE.—It is the intent
10 of Congress that funds made available to carry out this
11 subpart should be used to supplement, and not replace,
12 existing sources of funding for public health.

13 **Subpart C—Natural Resource Adaptation**

14 **SEC. 471. PURPOSES.**

15 The purposes of this subpart are to—

16 (1) establish an integrated Federal program to

17 protect, restore, and conserve the Nation's natural

18 resources in response to the threats of climate

19 change and ocean acidification; and

20 (2) provide financial support and incentives for

21 programs, strategies, and activities that protect, re-

22 store, and conserve the Nation's natural resources in

23 response to the threats of climate change and ocean

24 acidification.

1 **SEC. 472. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
2 **TATION POLICY.**

3 It is the policy of the Federal Government, in co-
4 operation with State and local governments, Indian tribes,
5 and other interested stakeholders to use all practicable
6 means and measures to protect, restore, and conserve nat-
7 ural resources to enable them to become more resilient,
8 adapt to, and withstand the impacts of climate change and
9 ocean acidification.

10 **SEC. 473. DEFINITIONS.**

11 In this subpart:

12 (1) **COASTAL STATE.**—The term “coastal
13 State” has the meaning given the term in section
14 304 of the Coastal Zone Management Act of 1972
15 (16 U.S.C. 1453).

16 (2) **CORRIDORS.**—The term “corridors” means
17 areas that provide connectivity, over different time
18 scales (including seasonal or longer), of habitat or
19 potential habitat and that facilitate the ability of ter-
20 restrial, marine, estuarine, and freshwater fish, wild-
21 life, or plants to move within a landscape as needed
22 for migration, gene flow, or dispersal, or in response
23 to the impacts of climate change and ocean acidifica-
24 tion or other impacts.

25 (3) **ECOLOGICAL PROCESSES.**—The term “eco-
26 logical processes” means biological, chemical, or

1 physical interaction between the biotic and abiotic
2 components of an ecosystem and includes—

- 3 (A) nutrient cycling;
- 4 (B) pollination;
- 5 (C) predator-prey relationships;
- 6 (D) soil formation;
- 7 (E) gene flow;
- 8 (F) disease epizootiology;
- 9 (G) larval dispersal and settlement;
- 10 (H) hydrological cycling;
- 11 (I) decomposition; and
- 12 (J) disturbance regimes such as fire and
13 flooding.

14 (4) HABITAT.—The term “habitat” means the
15 physical, chemical, and biological properties that are
16 used by fish, wildlife, or plants for growth, reproduc-
17 tion, survival, food, water, and cover, on a tract of
18 land, in a body of water, or in an area or region.

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

23 (6) NATURAL RESOURCES.—The term “natural
24 resources” means the terrestrial, freshwater, estua-

1 rine, and marine fish, wildlife, plants, land, water,
2 habitats, and ecosystems of the United States.

3 (7) NATURAL RESOURCES ADAPTATION.—The
4 term “natural resources adaptation” means the pro-
5 tection, restoration, and conservation of natural re-
6 sources to enable them to become more resilient,
7 adapt to, and withstand the impacts of climate
8 change and ocean acidification.

9 (8) RESILIENCE.—Each of the terms “resil-
10 ience” and “resilient” means the ability to resist or
11 recover from disturbance and preserve diversity, pro-
12 ductivity, and sustainability.

13 (9) STATE.—The term “State” means—

14 (A) a State of the United States;

15 (B) the District of Columbia; and

16 (C) the Commonwealth of Puerto Rico,
17 Guam, the United States Virgin Islands, the
18 Northern Mariana Islands, and American
19 Samoa.

20 **SEC. 474. COUNCIL ON ENVIRONMENTAL QUALITY.**

21 The Chair of the Council on Environmental Quality
22 shall—

23 (1) advise the President on implementation and
24 development of—

1 (A) a Natural Resources Climate Change
2 Adaptation Strategy required under section
3 476; and

4 (B) Federal natural resource agency adap-
5 tation plans required under section 478;

6 (2) serve as the Chair of the Natural Resources
7 Climate Change Adaptation Panel established under
8 section 475; and

9 (3) coordinate Federal agency strategies, plans,
10 programs, and activities related to protecting, restor-
11 ing, and maintaining natural resources to become
12 more resilient, adapt to, and withstand the impacts
13 of climate change and ocean acidification.

14 **SEC. 475. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
15 **TATION PANEL.**

16 (a) ESTABLISHMENT.—Not later than 90 days after
17 the date of the enactment of this subpart, the President
18 shall establish a Natural Resources Climate Change Adap-
19 tation Panel, consisting of—

20 (1) the head, or their designee, of each of—

21 (A) the National Oceanic and Atmospheric
22 Administration;

23 (B) the Forest Service;

24 (C) the National Park Service;

1 (D) the United States Fish and Wildlife
2 Service;

3 (E) the Bureau of Land Management;

4 (F) the United States Geological Survey;

5 (G) the Bureau of Reclamation;

6 (H) the Bureau of Indian Affairs;

7 (I) the Environmental Protection Agency;

8 and

9 (J) the Army Corps of Engineers;

10 (2) the Chair of the Council on Environmental
11 Quality; and

12 (3) the heads of such other Federal agencies or
13 departments with jurisdiction over natural resources
14 of the United States, as determined by the Presi-
15 dent.

16 (b) FUNCTIONS.—The Panel shall serve as a forum
17 for interagency consultation on and the coordination of the
18 development and implementation of a national Natural
19 Resources Climate Change Adaptation Strategy required
20 under section 476.

21 (c) CHAIR.—The Chair of the Council on Environ-
22 mental Quality shall serve as the Chair of the Panel.

1 **SEC. 476. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
2 **TATION STRATEGY.**

3 (a) IN GENERAL.—Not later than one year after the
4 date of the enactment of this subpart, the President,
5 through the Natural Resources Climate Change Adapta-
6 tion Panel established under section 475, shall develop a
7 Natural Resources Climate Change Adaptation Strategy
8 to protect, restore, and conserve natural resources to en-
9 able them to become more resilient, adapt to, and with-
10 stand the impacts of climate change and ocean acidifica-
11 tion and to identify opportunities to mitigate those im-
12 pacts.

13 (b) DEVELOPMENT AND REVISION.—In developing
14 and revising the Strategy, the Panel shall—

15 (1) base the strategy on the best available
16 science;

17 (2) develop the strategy in close cooperation
18 with States and Indian tribes;

19 (3) coordinate with other Federal agencies as
20 appropriate;

21 (4) consult with local governments, conservation
22 organizations, scientists, and other interested stake-
23 holders;

24 (5) provide public notice and opportunity for
25 comment; and

1 (6) review and revise the Strategy every 5 years
2 to incorporate new information regarding the im-
3 pacts of climate change and ocean acidification on
4 natural resources and advances in the development
5 of strategies for becoming more resilient and adapt-
6 ing to those impacts.

7 (c) CONTENTS.—The National Resources Adaptation
8 Strategy shall include—

9 (1) an assessment of the vulnerability of nat-
10 ural resources to climate change and ocean acidifica-
11 tion, including the short-term, medium-term, long-
12 term, cumulative, and synergistic impacts;

13 (2) a description of current research, observa-
14 tion, and monitoring activities at the Federal, State,
15 tribal, and local level related to the impacts of cli-
16 mate change and ocean acidification on natural re-
17 sources, as well as identification of research and
18 data needs and priorities;

19 (3) identification of natural resources that are
20 likely to have the greatest need for protection, res-
21 toration, and conservation because of the adverse ef-
22 fects of climate change and ocean acidification;

23 (4) specific protocols for integrating climate
24 change and ocean acidification adaptation strategies
25 and activities into the conservation and management

1 of natural resources by Federal departments and
2 agencies to ensure consistency across agency juris-
3 dictions and resources;

4 (5) specific actions that Federal departments
5 and agencies shall take to protect, conserve, and re-
6 store natural resources to become more resilient,
7 adapt to, and withstand the impacts of climate
8 change and ocean acidification, including a timeline
9 to implement those actions;

10 (6) specific mechanisms for ensuring commu-
11 nication and coordination among Federal depart-
12 ments and agencies, and between Federal depart-
13 ments and agencies and State natural resource agen-
14 cies, United States territories, Indian tribes, private
15 landowners, conservation organizations, and other
16 nations that share jurisdiction over natural resources
17 with the United States;

18 (7) specific actions to develop and implement
19 consistent natural resources inventory and moni-
20 toring protocols through interagency coordination
21 and collaboration; and

22 (8) a process for guiding the development of de-
23 tailed agency- and department-specific adaptation
24 plans required under section 478 to address the im-
25 pacts of climate change and ocean acidification on

1 the natural resources in the jurisdiction of each
2 agency.

3 (d) IMPLEMENTATION.—Consistent with its authori-
4 ties under other laws and with Federal trust responsibil-
5 ities with respect to Indian lands, each Federal depart-
6 ment or agency with representation on the National Re-
7 sources Climate Change Adaptation Panel shall consider
8 the impacts of climate change and ocean acidification and
9 integrate the elements of the strategy into agency plans,
10 environmental reviews, programs, and activities related to
11 the conservation, restoration, and management of natural
12 resources.

13 **SEC. 477. NATURAL RESOURCES ADAPTATION SCIENCE**
14 **AND INFORMATION.**

15 (a) COORDINATION.—Not later than 90 days after
16 the date of the enactment of this subpart, the Secretary
17 of Commerce, acting through the Administrator of the Na-
18 tional Oceanic and Atmospheric Administration, and the
19 Secretary of the Interior, acting through the Director of
20 the United States Geological Survey, shall establish a co-
21 ordinated process for developing and providing science and
22 information needed to assess and address the impacts of
23 climate change and ocean acidification on natural re-
24 sources. The process shall be led by the National Climate
25 Change and Wildlife Science Center established within the

1 United States Geological Survey under subsection (d) and
2 the National Climate Service of the National Oceanic and
3 Atmospheric Administration.

4 (b) FUNCTIONS.—The Secretaries shall ensure that
5 such process avoids duplication and that the National Oce-
6 anic and Atmospheric Administration and the United
7 States Geological Survey shall—

8 (1) provide technical assistance to Federal de-
9 partments and agencies, State and local govern-
10 ments, Indian tribes, and interested private land-
11 owners in their efforts to assess and address the im-
12 pacts of climate change and ocean acidification on
13 natural resources;

14 (2) conduct and sponsor research and provide
15 Federal departments and agencies, State and local
16 governments, Indian tribes, and interested private
17 landowners with research products, decision and
18 monitoring tools and information, to develop strate-
19 gies for assisting natural resources to become more
20 resilient, adapt to, and withstand the impacts of cli-
21 mate change and ocean acidification; and

22 (3) assist Federal departments and agencies in
23 the development of the adaptation plans required
24 under section 478.

1 (c) SURVEY.—Not later than one year after the date
2 of enactment of this subpart and every 5 years thereafter,
3 the Secretary of Commerce and the Secretary of the Inte-
4 rior shall undertake a climate change and ocean acidifica-
5 tion impact survey that—

6 (1) identifies natural resources considered likely
7 to be adversely affected by climate change and ocean
8 acidification;

9 (2) includes baseline monitoring and ongoing
10 trend analysis;

11 (3) uses a stakeholder process to identify and
12 prioritize needed monitoring and research that is of
13 greatest relevance to the ongoing needs of natural
14 resource managers to address the impacts of climate
15 change and ocean acidification; and

16 (4) identifies decision tools necessary to develop
17 strategies for assisting natural resources to become
18 more resilient and adapt to and withstand the im-
19 pacts of climate change and ocean acidification.

20 (d) NATIONAL CLIMATE CHANGE AND WILDLIFE
21 SCIENCE CENTER.—

22 (1) ESTABLISHMENT.—The Secretary of the In-
23 terior shall establish the National Climate Change
24 and Wildlife Science Center within the United States
25 Geological Survey.

1 (2) FUNCTIONS.—The Center shall, in collabo-
2 ration with Federal and State natural resources
3 agencies and departments, Indian tribes, univer-
4 sities, and other partner organizations—

5 (A) assess and synthesize current physical
6 and biological knowledge and prioritize sci-
7 entific gaps in such knowledge in order to fore-
8 cast the ecological impacts of climate change on
9 fish and wildlife at the ecosystem, habitat, com-
10 munity, population, and species levels;

11 (B) develop and improve tools to identify,
12 evaluate, and, where appropriate, link scientific
13 approaches and models for forecasting the im-
14 pacts of climate change and adaptation on fish,
15 wildlife, plants, and their habitats, including
16 monitoring, predictive models, vulnerability
17 analyses, risk assessments, and decision support
18 systems to help managers make informed deci-
19 sions;

20 (C) develop and evaluate tools to adapt-
21 ively manage and monitor the effects of climate
22 change on fish and wildlife at national, regional,
23 and local scales; and

24 (D) develop capacities for sharing stand-
25 ardized data and the synthesis of such data.

1 (e) SCIENCE ADVISORY BOARD.—

2 (1) ESTABLISHMENT.—Not later than 180 days
3 after the date of enactment of this subpart, the Sec-
4 retary of Commerce and the Secretary of the Inte-
5 rior shall establish and appoint the members of a
6 Science Advisory Board, to be comprised of not
7 fewer than 10 and not more than 20 members—

8 (A) who have expertise in fish, wildlife,
9 plant, aquatic, and coastal and marine biology,
10 ecology, climate change, ocean acidification, and
11 other relevant scientific disciplines;

12 (B) who represent a balanced membership
13 among Federal, State, Indian tribes, and local
14 representatives, universities, and conservation
15 organizations; and

16 (C) at least $\frac{1}{2}$ of whom are recommended
17 by the President of the National Academy of
18 Sciences.

19 (2) DUTIES.—The Science Advisory Board
20 shall—

21 (A) advise the Secretaries on the state-of-
22 the-science regarding the impacts of climate
23 change and ocean acidification on natural re-
24 sources and scientific strategies and mecha-
25 nisms for protecting, restoring, and conserving

1 natural resources to enable them to become
2 more resilient, adapt to, and withstand the im-
3 pacts of climate change and ocean acidification;
4 and

5 (B) identify and recommend priorities for
6 ongoing research needs on such issues.

7 (3) COLLABORATION.—The Science Advisory
8 Board shall collaborate with other climate change
9 and ecosystem research entities in other Federal
10 agencies and departments.

11 (4) AVAILABILITY TO THE PUBLIC.—The advice
12 and recommendations of the Science Advisory Board
13 shall be made available to the public.

14 **SEC. 478. FEDERAL NATURAL RESOURCE AGENCY ADAPTA-**
15 **TION PLANS.**

16 (a) DEVELOPMENT.—Not later than 1 year after the
17 date of the development of a Natural Resources Climate
18 Change Adaptation Strategy under section 476, each de-
19 partment or agency that has a representative on the Nat-
20 ural Resources Climate Change Adaptation Panel estab-
21 lished under section 475 shall—

22 (1) complete an adaptation plan for that de-
23 partment or agency, respectively, implementing the
24 Natural Resources Climate Change Adaptation
25 Strategy under section 476 and consistent with the

1 Natural Resources Climate Change Adaptation Pol-
2 icy under section 472, detailing the department's or
3 agency's current and projected efforts to address the
4 potential impacts of climate change and ocean acidi-
5 fication on natural resources within the depart-
6 ment's or agency's jurisdiction and necessary addi-
7 tional actions, including a timeline for implementa-
8 tion of those actions;

9 (2) provide opportunities for review and com-
10 ment on that adaptation plan by the public, includ-
11 ing in the case of a plan by the Bureau of Indian
12 Affairs, review by Indian tribes; and

13 (3) submit such plan to the President for ap-
14 proval.

15 (b) REVIEW BY PRESIDENT AND SUBMISSION TO
16 CONGRESS.—

17 (1) REVIEW BY PRESIDENT.—The President
18 shall—

19 (A) approve an adaptation plan submitted
20 under subsection (a)(3) if the plan meets the
21 requirements of subsection (c) and is consistent
22 with the strategy developed under section 476;

23 (B) decide whether to approve the plan
24 within 60 days after submission; and

1 (C) if the President disapproves a plan, di-
2 rect the department or agency to submit a re-
3 vised plan to the President under subsection
4 (a)(3) within 60 days after such disapproval.

5 (2) SUBMISSION TO CONGRESS.—Not later than
6 30 days after the date of approval of such adapta-
7 tion plan by the President, the department or agen-
8 cy shall submit the approved plan to the Committee
9 on Natural Resources of the House of Representa-
10 tives, the Committee on Energy and Natural Re-
11 sources of the Senate, and the committees of the
12 House of Representatives and the Senate with prin-
13 cipal jurisdiction over the department or agency.

14 (c) REQUIREMENTS.—Each adaptation plan shall—

15 (1) establish programs for assessing the current
16 and future impacts of climate change and ocean
17 acidification on natural resources within the depart-
18 ment's or agency's, respectively, jurisdiction, includ-
19 ing cumulative and synergistic effects, and for iden-
20 tifying and monitoring those natural resources that
21 are likely to be adversely affected and that have
22 need for conservation;

23 (2) identify and prioritize the department's or
24 agency's strategies and specific conservation actions
25 to address the current and future impacts of climate

1 change and ocean acidification on natural resources
2 within the scope of the department's or agency's ju-
3 risdiction and to develop and implement strategies to
4 protect, restore, and conserve such resources to be-
5 come more resilient, adapt to, and better withstand
6 those impacts, including—

7 (A) the protection, restoration, and con-
8 servation of terrestrial, marine, estuarine, and
9 freshwater habitats and ecosystems;

10 (B) the establishment of terrestrial, ma-
11 rine, estuarine, and freshwater habitat linkages
12 and corridors;

13 (C) the restoration and conservation of ec-
14 ological processes;

15 (D) the protection of a broad diversity of
16 native species of fish, wildlife, and plant popu-
17 lations across their range; and

18 (E) the protection of fish, wildlife, and
19 plant health, recognizing that climate can alter
20 the distribution and ecology of parasites, patho-
21 gens, and vectors;

22 (3) describe how the department or agency will
23 integrate such strategies and conservation activities
24 into plans, programs, activities, and actions of the
25 department or agency, related to the conservation

1 and management of natural resources and establish
2 new plans, programs, activities, and actions as nec-
3 essary;

4 (4) establish methods for assessing the effec-
5 tiveness of strategies and conservation actions taken
6 to protect, restore, and conserve natural resources to
7 enable them to become more resilient, adapt to, and
8 withstand the impacts of climate change and ocean
9 acidification, and for updating those strategies and
10 actions to respond to new information and changing
11 conditions;

12 (5) include a description of current and pro-
13 posed mechanisms to enhance cooperation and co-
14 ordination of natural resources adaptation efforts
15 with other Federal agencies, State and local govern-
16 ments, Indian tribes, and nongovernmental stake-
17 holders;

18 (6) include specific written guidance to resource
19 managers to—

20 (A) explain how managers are expected to
21 address the effects of climate change and ocean
22 acidification;

23 (B) identify how managers are to obtain
24 any site-specific information that may be nec-
25 essary; and

1 (C) reflect best practices shared among rel-
2 evant agencies, while also recognizing the
3 unique missions, objectives, and responsibilities
4 of each agency; and

5 (7) identify and assess data and information
6 gaps necessary to develop natural resources adapta-
7 tion plans and strategies.

8 (d) IMPLEMENTATION.—

9 (1) IN GENERAL.—Upon approval by the Presi-
10 dent, each department or agency that serves on the
11 Natural Resources Climate Change Adaptation
12 Panel shall implement its adaptation plan through
13 existing and new plans, policies, programs, activities,
14 and actions to the extent not inconsistent with exist-
15 ing authority.

16 (2) CONSIDERATION OF IMPACTS.—

17 (A) IN GENERAL.—To the maximum ex-
18 tent practicable and consistent with applicable
19 law, every natural resource management deci-
20 sion made by the department or agency shall
21 consider the impacts of climate change and
22 ocean acidification on those natural resources.

23 (B) GUIDANCE.—The Council on Environ-
24 mental Quality shall issue guidance for Federal

1 departments and agencies for considering those
2 impacts.

3 (e) REVISION AND REVIEW.—Not less than every 5
4 years, each adaptation plan under this section shall be re-
5 viewed and revised to incorporate the best available science
6 and other information regarding the impacts of climate
7 change and ocean acidification on natural resources.

8 **SEC. 479. STATE NATURAL RESOURCES ADAPTATION**
9 **PLANS.**

10 (a) REQUIREMENT.—In order to be eligible for funds
11 under section 480, not later than 1 year after the develop-
12 ment of a Natural Resources Climate Change Adaptation
13 Strategy required under section 476 each State shall pre-
14 pare a State natural resources adaptation plan detailing
15 the State's current and projected efforts to address the
16 potential impacts of climate change and ocean acidifica-
17 tion on natural resources and coastal areas within the
18 State's jurisdiction.

19 (b) REVIEW OR APPROVAL.—

20 (1) IN GENERAL.—Each State adaptation plan
21 shall be reviewed and approved or disapproved by
22 the Secretary of the Interior and, as applicable, the
23 Secretary of Commerce. Such approval shall be
24 granted if the plan meets the requirements of sub-
25 section (c) and is consistent with the Natural Re-

1 sources Climate Change Adaptation Strategy re-
2 quired under section 476.

3 (2) APPROVAL OR DISAPPROVAL.—Within 180
4 days after transmittal of such a plan, or a revision
5 to such a plan, the Secretary of the Interior and, as
6 applicable, the Secretary of Commerce shall approve
7 or disapprove the plan by written notice.

8 (3) RESUBMITTAL.—Within 90 days after
9 transmittal of a resubmitted adaptation plan as a re-
10 sult of disapproval under paragraph (3), the Sec-
11 retary of the Interior and, as applicable, the Sec-
12 retary of Commerce, shall approve or disapprove the
13 plan by written notice.

14 (c) CONTENTS.—A State natural resources adapta-
15 tion plan shall—

16 (1) include a strategy for addressing the im-
17 pacts of climate change and ocean acidification on
18 terrestrial, marine, estuarine, and freshwater fish,
19 wildlife, plants, habitats, ecosystems, wildlife health,
20 and ecological processes, that—

21 (A) describes the impacts of climate
22 change and ocean acidification on the diversity
23 and health of the fish, wildlife and plant popu-
24 lations, habitats, ecosystems, and associated ec-
25 ological processes;

1 (B) establishes programs for monitoring
2 the impacts of climate change and ocean acidifi-
3 cation on fish, wildlife, and plant populations,
4 habitats, ecosystems, and associated ecological
5 processes;

6 (C) describes and prioritizes proposed con-
7 servation actions to assist fish, wildlife, plant
8 populations, habitats, ecosystems, and associ-
9 ated ecological processes in becoming more re-
10 siliant, adapting to, and better withstanding
11 those impacts;

12 (D) includes strategies, specific conserva-
13 tion actions, and a time frame for implementing
14 conservation actions for fish, wildlife, and plant
15 populations, habitats, ecosystems, and associ-
16 ated ecological processes;

17 (E) establishes methods for assessing the
18 effectiveness of strategies and conservation ac-
19 tions taken to assist fish, wildlife, and plant
20 populations, habitats, ecosystems, and associ-
21 ated ecological processes in becoming more re-
22 siliant, adapt to, and better withstand the im-
23 pacts of climate changes and ocean acidification
24 and for updating those strategies and actions to

1 respond appropriately to new information or
2 changing conditions;

3 (F) is incorporated into a revision of the
4 State wildlife action plan (also known as the
5 State comprehensive wildlife strategy)—

6 (i) that has been submitted to the
7 United States Fish and Wildlife Service;
8 and

9 (ii) that has been approved by the
10 Service or on which a decision on approval
11 is pending; and

12 (G) is developed—

13 (i) with the participation of the State
14 fish and wildlife agency, the State coastal
15 agency, the State agency responsible for
16 administration of Land and Water Con-
17 servation Fund grants, the State Forest
18 Legacy program coordinator, and other
19 State agencies considered appropriate by
20 the Governor of such State; and

21 (ii) in coordination with the Secretary
22 of the Interior, and where applicable, the
23 Secretary of Commerce and other States
24 that share jurisdiction over natural re-
25 sources with the State; and

1 (2) include, in the case of a coastal State, a
2 strategy for addressing the impacts of climate
3 change and ocean acidification on the coastal zone
4 that—

5 (A) identifies natural resources that are
6 likely to be impacted by climate change and
7 ocean acidification and describes those impacts;

8 (B) identifies and prioritizes continuing re-
9 search and data collection needed to address
10 those impacts including—

11 (i) acquisition of high resolution
12 coastal elevation and nearshore bathymetry
13 data;

14 (ii) historic shoreline position maps,
15 erosion rates, and inventories of shoreline
16 features and structures;

17 (iii) measures and models of relative
18 rates of sea level rise or lake level changes,
19 including effects on flooding, storm surge,
20 inundation, and coastal geological pro-
21 cesses;

22 (iv) habitat loss, including projected
23 losses of coastal wetlands and potentials
24 for inland migration of natural shoreline
25 habitats;

1 (v) ocean and coastal species and eco-
2 system migrations, and changes in species
3 population dynamics;

4 (vi) changes in storm frequency, in-
5 tensity, or rainfall patterns;

6 (vii) saltwater intrusion into coastal
7 rivers and aquifers;

8 (viii) changes in chemical or physical
9 characteristics of marine and estuarine
10 systems;

11 (ix) increased harmful algal blooms;

12 and

13 (x) spread of invasive species;

14 (C) identifies and prioritizes adaptation
15 strategies to protect, restore, and conserve nat-
16 ural resources to enable them to become more
17 resilient, adapt to, and withstand the impacts of
18 climate change and ocean acidification, includ-
19 ing—

20 (i) protection, maintenance, and res-
21 toration of ecologically important coastal
22 lands, coastal and ocean ecosystems, and
23 species biodiversity and the establishment
24 of habitat buffer zones, migration cor-
25 ridors, and climate refugia; and

1 (ii) improved planning, siting policies,
2 and hazard mitigation strategies;

3 (D) establishes programs for the long-term
4 monitoring of the impacts of climate change
5 and ocean acidification on the ocean and coastal
6 zone and to assess and adjust, when necessary,
7 such adaptive management strategies;

8 (E) establishes performance measures for
9 assessing the effectiveness of adaptation strate-
10 gies intended to improve resilience and the abil-
11 ity of natural resources in the coastal zone to
12 adapt to and withstand the impacts of climate
13 change and ocean acidification and of adapta-
14 tion strategies intended to minimize those im-
15 pacts on the coastal zone and to update those
16 strategies to respond to new information or
17 changing conditions; and

18 (F) is developed with the participation of
19 the State coastal agency and other appropriate
20 State agencies and in coordination with the
21 Secretary of Commerce and other appropriate
22 Federal agencies.

23 (d) PUBLIC INPUT.—States shall provide for sollicita-
24 tion and consideration of public and independent scientific
25 input in the development of their plans.

1 (e) COORDINATION WITH OTHER PLANS.—The State
2 plan shall take into consideration research and informa-
3 tion contained in, and coordinate with and integrate the
4 goals and measures identified in, as appropriate, other
5 natural resources conservation strategies, including—

6 (1) the national fish habitat action plan;

7 (2) plans under the North American Wetlands
8 Conservation Act (16 U.S.C. 4401 et seq.);

9 (3) the Federal, State, and local partnership
10 known as “Partners in Flight”;

11 (4) federally approved coastal zone management
12 plans under the Coastal Zone Management Act of
13 1972 (16 U.S.C. 1451 et seq.);

14 (5) federally approved regional fishery manage-
15 ment plans and habitat conservation activities
16 under the Magnuson-Stevens Fishery Conservation
17 and Management Act (16 U.S.C. 1801 et seq.);

18 (6) the national coral reef action plan;

19 (7) recovery plans for threatened species and
20 endangered species under section 4(f) of the Endan-
21 gered Species Act of 1973 (16 U.S.C. 1533(f));

22 (8) habitat conservation plans under section 10
23 of that Act (16 U.S.C. 1539);

24 (9) other Federal, State, and tribal plans for
25 imperiled species;

1 (10) State or tribal hazard mitigation plans;

2 (11) State or tribal water management plans;

3 and

4 (12) other State-based strategies that com-
5 prehensively implement adaptation activities to re-
6 mediate the effects of climate change and ocean
7 acidification on terrestrial, marine, and freshwater
8 fish, wildlife, plants, and other natural resources.

9 (f) UPDATING.—Each State plan shall be updated
10 not less than every 5 years.

11 (g) FUNDING.—

12 (1) IN GENERAL.—Funds allocated to States
13 under section 480 shall be used only for activities
14 that are consistent with a State natural resources
15 adaptation plan that has been approved by the Sec-
16 retaries of Interior and Commerce.

17 (2) FUNDING PRIOR TO THE APPROVAL OF A
18 STATE PLAN.—Until the earlier of the date that is
19 3 years after the date of the enactment of this sub-
20 part or the date on which a State receives approval
21 for the State strategy, a State shall be eligible to re-
22 ceive funding under section 480 for adaptation ac-
23 tivities that are—

24 (A) consistent with the comprehensive
25 wildlife strategy of the State and, where appro-

1 pripate, other natural resources conservation
2 strategies; and

3 (B) in accordance with a workplan devel-
4 oped in coordination with—

5 (i) the Secretary of the Interior; and

6 (ii) the Secretary of Commerce, for
7 any coastal State subject to the condition
8 that coordination with the Secretary of
9 Commerce shall be required only for those
10 portions of the strategy relating to activi-
11 ties affecting the coastal zone.

12 (3) PENDING APPROVAL.—During the period
13 for which approval by the applicable Secretary of a
14 State plan is pending, the State may continue receiv-
15 ing funds under section 480 pursuant to the
16 workplan described in paragraph (2)(B).

17 **SEC. 480. NATURAL RESOURCES CLIMATE CHANGE ADAP-**
18 **TATION FUND.**

19 (a) ESTABLISHMENT OF FUND.—There is hereby es-
20 tablished in the Treasury a separate account that shall
21 be known as the Natural Resources Climate Change Adap-
22 tation Account.

23 (b) AVAILABILITY OF AMOUNTS.—All amounts de-
24 posited into the Natural Resources Climate Change Adap-

1 tation Fund shall be available without further appropria-
2 tion or fiscal year limitation.

3 (c) ALLOCATIONS.—

4 (1) STATES.—38.5 percent of the amounts
5 made available for each fiscal year to carry out this
6 subpart shall be provided to States to carry out nat-
7 ural resources adaptation activities in accordance
8 with State natural resources adaptation plans ap-
9 proved under section 479. Specifically—

10 (A) 32.5 percent shall be available to State
11 wildlife agencies in accordance with the appor-
12 tionment formula established under the second
13 subsection (c) of section 4 of the Pittman-Rob-
14 ertson Wildlife Restoration Act (16 U.S.C.
15 669c), as added by section 902(e) of H.R. 5548
16 as introduced in the 106th Congress and en-
17 acted into law by section 1(a)(2) of Public Law
18 106–553 (114 Stat. 2762A–119); and

19 (B) 6 percent shall be available to State
20 coastal agencies pursuant to the formula estab-
21 lished by the Secretary of Commerce under sec-
22 tion 306(c) of the Coastal Management Act of
23 1972 (16 U.S.C. 1455(c)).

1 (2) DEPARTMENT OF THE INTERIOR.—Of the
2 amounts made available for each fiscal year to carry
3 out this subpart—

4 (A) 17 percent shall be allocated to the
5 Secretary of the Interior for use in funding—

6 (i) natural resources adaptation activi-
7 ties carried out—

8 (I) under endangered species, mi-
9 gratory species, and other fish and
10 wildlife programs administered by the
11 National Park Service, the United
12 States Fish and Wildlife Service, the
13 Bureau of Indian Affairs, and the Bu-
14 reau of Land Management;

15 (II) on wildlife refuges, National
16 Park Service land, and other public
17 land under the jurisdiction of the
18 United States Fish and Wildlife Serv-
19 ice, the Bureau of Land Management,
20 the Bureau of Indian Affairs, or the
21 National Park Service; or

22 (III) within Federal water man-
23 aged by the Bureau of Reclamation
24 and the National Park Service; and

1 (ii) for the implementation of the Na-
2 tional Fish and Wildlife Habitat and Cor-
3 ridors Identification Program pursuant to
4 section 481;

5 (B) 5 percent shall be allocated to the Sec-
6 retary of the Interior for natural resources ad-
7 aptation activities carried out under cooperative
8 grant programs, including—

9 (i) the cooperative endangered species
10 conservation fund authorized under section
11 6 of the Endangered Species Act of 1973
12 (16 U.S.C. 1535);

13 (ii) programs under the North Amer-
14 ican Wetlands Conservation Act (16
15 U.S.C. 4401 et seq.);

16 (iii) the Neotropical Migratory Bird
17 Conservation Fund established by section
18 478(a) of the Neotropical Migratory Bird
19 Conservation Act (16 U.S.C. 6108(a));

20 (iv) the Coastal Program of the
21 United States Fish and Wildlife Service;

22 (v) the National Fish Habitat Action
23 Plan;

24 (vi) the Partners for Fish and Wildlife
25 Program;

1 (vii) the Landowner Incentive Pro-
2 gram;

3 (viii) the Wildlife Without Borders
4 Program of the United States Fish and
5 Wildlife Service; and

6 (ix) the Migratory Species Program
7 and Park Flight Migratory Bird Program
8 of the National Park Service; and

9 (C) 3 percent shall be allocated to the Sec-
10 retary of the Interior to provide financial assist-
11 ance to Indian tribes to carry out natural re-
12 sources adaptation activities through the Tribal
13 Wildlife Grants Program of the United States
14 Fish and Wildlife Service.

15 (3) LAND AND WATER CONSERVATION FUND.—

16 (A) DEPOSITS.—

17 (i) IN GENERAL.—Of the amounts
18 made available for each fiscal year to carry
19 out this subpart, 12 percent shall be de-
20 posited into the Land and Water Conserva-
21 tion Fund established under section 2 of
22 the Land and Water Conservation Fund
23 Act of 1965 (16 U.S.C. 4601–5).

1 (ii) USE OF DEPOSITS.—Deposits into
2 the Land and Water Conservation Fund
3 under this paragraph shall—

4 (I) be supplemental to authoriza-
5 tions provided under section 3 of the
6 Land and Water Conservation Fund
7 Act of 1965 (16 U.S.C. 4601–6),
8 which shall remain available for non-
9 adaptation needs; and

10 (II) be available for expenditure
11 to carry out this subpart without fur-
12 ther appropriation or fiscal year limi-
13 tation.

14 (B) ALLOCATIONS.—Of the amounts de-
15 posited under this paragraph into the Land and
16 Water Conservation Fund—

17 (i) $\frac{1}{6}$ shall be allocated to the Sec-
18 retary of the Interior and made available
19 on a competitive basis to carry out natural
20 resources adaptation activities through the
21 acquisition of land and interests in land
22 under section 6 of the Land and Water
23 Conservation Fund Act of 1965 (16 U.S.C.
24 4601–8)—

1 (I) to States in accordance with
2 their natural resources adaptation
3 plans, and to Indian tribes;

4 (II) notwithstanding section 5 of
5 that Act (16 U.S.C. 4601–7); and

6 (III) in addition to any funds
7 provided pursuant to annual appro-
8 priations Acts, the Energy Policy Act
9 of 2005 (42 U.S.C. 15801 et seq.), or
10 any other authorization for non-
11 adaptation needs;

12 (ii) $\frac{1}{3}$ shall be allocated to the Sec-
13 retary of the Interior to carry out natural
14 resources adaptation activities through the
15 acquisition of lands and interests in land
16 under section 7 of the Land and Water
17 Conservation Fund Act of 1965 (16 U.S.C.
18 4601–9);

19 (iii) $\frac{1}{6}$ shall be allocated to the Sec-
20 retary of Agriculture and made available to
21 the States and Indian tribes to carry out
22 natural resources adaptation activities
23 through the acquisition of land and inter-
24 ests in land under section 7 of the Forest
25 Legacy Program under the Cooperative

1 Forestry Assistance Act of 1978 (16
2 U.S.C. 2103c); and

3 (iv) $\frac{1}{3}$ shall be allocated to the Sec-
4 retary of Agriculture to carry out natural
5 resources adaptation activities through the
6 acquisition of land 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 (C) EXPENDITURE OF FUNDS.—In allo-
11 cating funds under subparagraph (B), the Sec-
12 retary of the Interior and the Secretary of Agri-
13 culture shall take into consideration factors in-
14 cluding—

15 (i) the availability of non-Federal con-
16 tributions from State, local, or private
17 sources;

18 (ii) opportunities to protect fish and
19 wildlife corridors or otherwise to link or
20 consolidate fragmented habitats;

21 (iii) opportunities to reduce the risk of
22 catastrophic wildfires, drought, extreme
23 flooding, or other climate-related events
24 that are harmful to fish and wildlife and
25 people; and

1 (iv) the potential for conservation of
2 species or habitat types at serious risk due
3 to climate change, ocean acidification, and
4 other stressors.

5 (4) FOREST SERVICE.—Of the amounts made
6 available for each fiscal year to carry out this sub-
7 part, 5 percent shall be allocated to the Secretary of
8 Agriculture for use in funding natural resources ad-
9 aptation activities carried out on national forests
10 and national grasslands under the jurisdiction of the
11 Forest Service.

12 (5) DEPARTMENT OF COMMERCE.—Of the
13 amounts made available for each fiscal year to carry
14 out this subpart, 7 percent shall be allocated to the
15 Secretary of Commerce for use in funding natural
16 resources adaptation activities to protect, maintain,
17 and restore coastal, estuarine, and marine resources,
18 habitats, and ecosystems, including such activities
19 carried out under—

20 (A) the coastal and estuarine land con-
21 servation program;

22 (B) the community-based restoration pro-
23 gram;

24 (C) the Coastal Zone Management Act of
25 1972 (16 U.S.C. 1451 et seq.), that are specifi-

1 cally designed to strengthen the ability of coast-
2 al, estuarine, and marine resources, habitats,
3 and ecosystems to adapt to and withstand the
4 impacts of climate change and ocean acidifica-
5 tion;

6 (D) the Open Rivers Initiative;

7 (E) the Magnuson-Stevens Fishery Con-
8 servation and Management Act (16 U.S.C.
9 1801 et seq.);

10 (F) the Marine Mammal Protection Act of
11 1972 (16 U.S.C. 1361 et seq.);

12 (G) the Endangered Species Act of 1973
13 (16 U.S.C. 1531 et seq.);

14 (H) the Marine Protection, Research, and
15 Sanctuaries Act of 1972 (33 U.S.C. 1401 et
16 seq.);

17 (I) the Coral Reef Conservation Act of
18 2000 (16 U.S.C. 6401 et seq.); and

19 (J) the Estuary Restoration Act of 2000
20 (33 U.S.C. 2901 et seq.).

21 (6) ENVIRONMENTAL PROTECTION AGENCY.—

22 Of the amounts made available each fiscal year to
23 carry out this section, 7.5 percent shall be allocated
24 to the Administrator for use in natural resources ad-
25 aptation activities restoring and protecting—

1 (A) large-scale freshwater aquatic eco-
2 systems, such as the Everglades, the Great
3 Lakes, Flathead Lake, the Missouri River, the
4 Mississippi River, the Colorado River, the Sac-
5 ramento-San Joaquin Rivers, the Ohio River,
6 the Columbia-Snake River System, the Apa-
7 lachicola, Chattahoochee, and Flint River Sys-
8 tem, the Connecticut River, and the Yellowstone
9 River;

10 (B) large-scale estuarine ecosystems, such
11 as Chesapeake Bay, Long Island Sound, Puget
12 Sound, the Mississippi River Delta, the San
13 Francisco Bay Delta, Narragansett Bay, and
14 Albemarle-Pamlico Sound; and

15 (C) freshwater and estuarine ecosystems,
16 watersheds, and basins identified as priorities
17 by the Administrator, working in cooperation
18 with other Federal agencies, States, Indian
19 tribes, local governments, scientists, and other
20 conservation partners.

21 (7) CORPS OF ENGINEERS.—Of the amounts
22 made available each fiscal year to carry out this sec-
23 tion, 5 percent shall be available to the Secretary of
24 the Army for use by the Corps of Engineers to carry

1 out natural resources adaptation activities restor-
2 ing—

3 (A) large-scale freshwater aquatic eco-
4 systems, such as the ecosystems described in
5 paragraph (6)(A);

6 (B) large-scale estuarine ecosystems, such
7 as the ecosystems described in paragraph
8 (6)(B);

9 (C) freshwater and estuarine ecosystems,
10 watersheds, and basins identified as priorities
11 by the Corps of Engineers, working in coopera-
12 tion with other Federal agencies, States, Indian
13 tribes, local governments, scientists, and other
14 conservation partners; and

15 (D) habitats and ecosystems through the
16 implementation of estuary habitat restoration
17 projects authorized by the Estuary Restoration
18 Act of 2000 (33 U.S.C. 2901 et seq.), project
19 modifications for improvement of the environ-
20 ment, aquatic restoration and protection
21 projects authorized by section 206 of the Water
22 Resources Development Act of 1996 (33 U.S.C.
23 2330), and other appropriate programs and ac-
24 tivities.

1 (d) USE OF FUNDS BY FEDERAL DEPARTMENTS AND
2 AGENCIES.—Funds allocated to Federal departments and
3 agencies under this section shall only be used for natural
4 resources adaptation activities that are consistent with an
5 adaptation plan developed and approved by the President
6 under section 478.

7 (e) STATE COST SHARING.—Notwithstanding any
8 other provision of law, a State that receives a grant with
9 amounts allocated under this section shall use funds from
10 non-Federal sources to pay 10 percent of the costs of each
11 activity carried out using amounts provided under the
12 grant.

13 **SEC. 481. NATIONAL WILDLIFE HABITAT AND CORRIDORS**
14 **INFORMATION PROGRAM.**

15 (a) ESTABLISHMENT.—Within 6 months of the date
16 of enactment of this subpart, the Secretary of the Interior,
17 in cooperation with the States and Indian tribes, shall es-
18 tablish a National Fish and Wildlife Habitat and Cor-
19 ridors Information Program in accordance with the re-
20 quirements of this section.

21 (b) PURPOSE.—The purpose of this program is to—

22 (1) support States and Indian tribes in the de-
23 velopment of a geographic information system data-
24 base of fish and wildlife habitat and corridors that
25 would inform planning and development decisions

1 within each State, enable each State to model cli-
2 mate impacts and adaptation, and provide geo-
3 graphically specific enhancements of State wildlife
4 action plans;

5 (2) ensure the collaborative development, with
6 the States and Indian tribes, of a comprehensive,
7 national geographic information system database of
8 maps, models, data, surveys, informational products,
9 and other geospatial information regarding fish and
10 wildlife habitat and corridors, that—

11 (A) is based on consistent protocols for
12 sampling and mapping across landscapes that
13 take into account regional differences; and

14 (B) that utilizes—

15 (i) existing and planned State- and
16 tribal-based geographic information system
17 databases; and

18 (ii) existing databases, analytical
19 tools, metadata activities, and other infor-
20 mation products available through the Na-
21 tional Biological Information Infrastruc-
22 ture maintained by the Secretary and non-
23 governmental organizations; and

24 (3) facilitate the use of such databases by Fed-
25 eral, State, local, and tribal decisionmakers to incor-

1 porate qualitative information on fish and wildlife
2 habitat and corridors at the earliest possible stage
3 to—

4 (A) prioritize and target natural resources
5 adaptation strategies and activities;

6 (B) avoid, minimize, and mitigate the im-
7 pacts on fish and wildlife habitat and corridors
8 in siting energy development, water, trans-
9 mission, transportation, and other land use
10 projects;

11 (C) assess the impacts of existing develop-
12 ment on habitats and corridors; and

13 (D) develop management strategies to en-
14 hance the ability of fish, wildlife, and plant spe-
15 cies to migrate or respond to shifting habitats
16 within existing habitats and corridors.

17 (c) HABITAT AND CORRIDORS INFORMATION SYS-
18 TEM.—

19 (1) IN GENERAL.—The Secretary, in coopera-
20 tion with the States and Indian tribes, shall develop
21 a Habitat and Corridors Information System.

22 (2) CONTENTS.—The System shall—

23 (A) include maps, data, and descriptions of
24 fish and wildlife habitat and corridors, that—

1 (i) have been developed by Federal
2 agencies, State wildlife agencies and nat-
3 ural heritage programs, Indian tribes, local
4 governments, nongovernmental organiza-
5 tions, and industry;

6 (ii) meet accepted Geospatial Inter-
7 operability Framework data and metadata
8 protocols and standards;

9 (B) include maps and descriptions of pro-
10 jected shifts in habitats and corridors of fish
11 and wildlife species in response to climate
12 change;

13 (C) assure data quality and make the data,
14 models, and analyses included in the System
15 available at scales useful to decisionmakers—

16 (i) to prioritize and target natural re-
17 sources adaptation strategies and activi-
18 ties;

19 (ii) to assess the impacts of proposed
20 energy development, water, transmission,
21 transportation, and other land use projects
22 and avoid, minimize, and mitigate those
23 impacts on habitats and corridors;

24 (iii) to assess the impacts of existing
25 development on habitats and corridors; and

1 (iv) to develop management strategies
2 to enhance the ability of fish, wildlife, and
3 plant species to migrate or respond to
4 shifting habitats within existing habitats
5 and corridors;

6 (D) establish a process for updating maps
7 and other information as landscapes, habitats,
8 corridors, and wildlife populations change or as
9 other information becomes available;

10 (E) encourage the development of collabo-
11 rative plans by Federal and State agencies and
12 Indian tribes to monitor and evaluate the effi-
13 cacy of the System to meet the needs of deci-
14 sionmakers;

15 (F) identify gaps in habitat and corridor
16 information, mapping, and research that should
17 be addressed to fully understand and assess
18 current data and metadata, and to prioritize re-
19 search and future data collection activities for
20 use in updating the System and provide support
21 for those activities;

22 (G) include mechanisms to support collabo-
23 rative research, mapping, and planning of habi-
24 tats and corridors by Federal and State agen-

1 cies, Indian tribes, and other interested stake-
2 holders;

3 (H) incorporate biological and geospatial
4 data on species and corridors found in energy
5 development and transmission plans, including
6 renewable energy initiatives, transportation, and
7 other land use plans;

8 (I) be based on the best scientific informa-
9 tion available; and

10 (J) identify, prioritize, and describe key
11 parcels of non-Federal land located within the
12 boundaries of units of the National Park Sys-
13 tem, National Wildlife Refuge System, National
14 Forest System, or National Grassland System
15 that are critical to maintenance of wildlife habi-
16 tat and migration corridors.

17 (d) FINANCIAL AND OTHER SUPPORT.—The Sec-
18 retary may provide support to the States and Indian
19 tribes, including financial and technical assistance, for ac-
20 tivities that support the development and implementation
21 of the System.

22 (e) COORDINATION.—The Secretary, in cooperation
23 with the States and Indian tribes, shall make rec-
24 ommendations on how the information developed in the
25 System may be incorporated into existing relevant State

1 and Federal plans affecting fish and wildlife, including
2 land management plans, the State Comprehensive Wildlife
3 Conservation Strategies, and appropriate tribal conserva-
4 tion plans, to ensure that they—

5 (1) prevent unnecessary habitat fragmentation
6 and disruption of corridors;

7 (2) promote the landscape connectivity nec-
8 essary to allow wildlife to move as necessary to meet
9 biological needs, adjust to shifts in habitat, and
10 adapt to climate change; and

11 (3) minimize the impacts of energy, develop-
12 ment, water, transportation, and transmission
13 projects and other activities expected to impact habi-
14 tat and corridors.

15 (f) DEFINITIONS.—In this section:

16 (1) GEOSPATIAL INTEROPERABILITY FRAME-
17 WORK.—The term “Geospatial Interoperability
18 Framework” means the strategy utilized by the Na-
19 tional Biological Information Infrastructure that is
20 based upon accepted standards, specifications, and
21 protocols adopted through the International Stand-
22 ards Organization, the Open Geospatial Consortium,
23 and the Federal Geographic Data Committee, to
24 manage, archive, integrate, analyze, and make acces-
25 sible geospatial and biological data and metadata.

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

3 **SEC. 482. ADDITIONAL PROVISIONS REGARDING INDIAN**
4 **TRIBES.**

5 (a) FEDERAL TRUST RESPONSIBILITY.—Nothing in
6 this subpart is intended to amend, alter, or give priority
7 over the Federal trust responsibility to Indian tribes.

8 (b) EXEMPTION FROM FOIA.—If a Federal depart-
9 ment or agency receives any information related to sacred
10 sites or cultural activities identified by an Indian tribe as
11 confidential, such information shall be exempt from disclo-
12 sure under section 552 of title 5, United States Code, pop-
13 ularly known as the Freedom of Information Act (5 U.S.C.
14 552).

15 (c) APPLICATION OF OTHER LAW.—The Secretary of
16 the Interior may apply the provisions of Public Law 93–
17 638 where appropriate in the implementation of this sub-
18 part.

19 **PART 2—INTERNATIONAL CLIMATE CHANGE**
20 **ADAPTATION PROGRAM**

21 **SEC. 491. FINDINGS AND PURPOSES.**

22 (a) FINDINGS.—Congress finds the following:

23 (1) Global climate change is a potentially sig-
24 nificant national and global security threat multi-
25 plier and is likely to exacerbate competition and con-

1 flict over agricultural, vegetative, marine, and water
2 resources and to result in increased displacement of
3 people, poverty, and hunger within developing coun-
4 tries.

5 (2) The strategic, social, political, economic,
6 cultural, and environmental consequences of global
7 climate change are likely to have disproportionate
8 adverse impacts on developing countries, which have
9 less economic capacity to respond to such impacts.

10 (3) The countries most vulnerable to climate
11 change, due both to greater exposure to harmful im-
12 pacts and to lower capacity to adapt, are developing
13 countries with very low industrial greenhouse gas
14 emissions that have contributed less to climate
15 change than more affluent countries.

16 (4) To a much greater degree than developed
17 countries, developing countries rely on the natural
18 and environmental systems likely to be affected by
19 climate change for sustenance, livelihoods, and eco-
20 nomic growth and stability.

21 (5) Within developing countries there may be
22 varying climate change adaptation and resilience
23 needs among different communities and populations,
24 including impoverished communities, children,
25 women, and indigenous peoples.

1 (6) The consequences of global climate change,
2 including increases in poverty and destabilization of
3 economies and societies, are likely to pose long-term
4 challenges to the national security, foreign policy,
5 and economic interests of the United States.

6 (7) It is in the national security, foreign policy,
7 and economic interests of the United States to rec-
8 ognize, plan for, and mitigate the international stra-
9 tegic, social, political, cultural, environmental,
10 health, and economic effects of climate change and
11 to assist developing countries to increase their resil-
12 ience to those effects.

13 (8) Under Article 4 of the United Nations
14 Framework Convention on Climate Change, devel-
15 oped country parties, including the United States,
16 committed to “assist the developing country parties
17 that are particularly vulnerable to the adverse effects
18 of climate change in meeting costs of adaptation to
19 those adverse effects”.

20 (9) Under the Bali Action Plan, developed
21 country parties to the United Nations Framework
22 Convention on Climate Change, including the United
23 States, committed to “enhanced action on the provi-
24 sion of financial resources and investment to support
25 action on mitigation and adaptation and technology

1 cooperation,” including, inter alia, consideration of
2 “improved access to adequate, predictable, and sus-
3 tainable financial resources and financial and tech-
4 nical support, and the provision of new and addi-
5 tional resources, including official and concessional
6 funding for developing country parties”.

7 (b) PURPOSES.—The purposes of this part are—

8 (1) to provide new and additional assistance
9 from the United States to the most vulnerable devel-
10 oping countries, including the most vulnerable com-
11 munities and populations therein, in order to sup-
12 port the development and implementation of climate
13 change adaptation programs and activities that re-
14 duce the vulnerability and increase the resilience of
15 communities to climate change impacts, including
16 impacts on water availability, agricultural produc-
17 tivity, flood risk, coastal resources, timing of sea-
18 sons, biodiversity, economic livelihoods, health and
19 diseases, and human migration; and

20 (2) to provide such assistance in a manner that
21 protects and promotes the national security, foreign
22 policy, environmental, and economic interests of the
23 United States to the extent such interests may be
24 advanced by minimizing, averting, or increasing re-
25 silience to climate change impacts.

1 **SEC. 492. DEFINITIONS.**

2 In this part:

3 (1) ALLOWANCE.—The term “allowance”
4 means an emission allowance established under sec-
5 tion 721 of the Clean Air Act.

6 (2) APPROPRIATE CONGRESSIONAL COMMIT-
7 TEES.—The term “appropriate congressional com-
8 mittees” means—

9 (A) the Committees on Energy and Com-
10 merce, Financial Services, and Foreign Affairs
11 of the House of Representatives; and

12 (B) the Committees on Environment and
13 Public Works and Foreign Relations of the Sen-
14 ate.

15 (3) DEVELOPING COUNTRY.—The term “devel-
16 oping country” means a country eligible to receive
17 official development assistance according to the in-
18 come guidelines of the Development Assistance Com-
19 mittee of the Organization for Economic Coopera-
20 tion and Development.

21 (4) MOST VULNERABLE DEVELOPING COUN-
22 TRIES.—The term “most vulnerable developing
23 countries” means, as determined by the Adminis-
24 trator of USAID, developing countries that are at
25 risk of substantial adverse impacts of climate change
26 and have limited capacity to respond to such im-

1 pacts, considering the approaches included in any
2 international treaties and agreements.

3 (5) MOST VULNERABLE COMMUNITIES AND
4 POPULATIONS.—The term “most vulnerable commu-
5 nities and populations” means communities and pop-
6 ulations that are at risk of substantial adverse im-
7 pacts of climate change and have limited capacity to
8 respond to such impacts, including impoverished
9 communities, children, women, and indigenous peo-
10 ples.

11 (6) PROGRAM.—The term “Program” means
12 the International Climate Change Adaptation Pro-
13 gram established under section 493.

14 (7) USAID.—The term “USAID” means the
15 United States Agency for International Develop-
16 ment.

17 (8) UNITED NATIONS FRAMEWORK CONVEN-
18 TION ON CLIMATE CHANGE.—The term “United Na-
19 tions Framework Convention on Climate Change” or
20 “Convention” means the United Nations Framework
21 Convention on Climate Change done at New York on
22 May 9, 1992, and entered into force on March 21,
23 1994.

1 **SEC. 493. INTERNATIONAL CLIMATE CHANGE ADAPTATION**
2 **PROGRAM.**

3 (a) ESTABLISHMENT.—The Secretary of State, in
4 consultation with the Administrator of USAID, the Sec-
5 retary of the Treasury, and the Administrator of the Envi-
6 ronmental Protection Agency, shall establish an Inter-
7 national Climate Change Adaptation Program in accord-
8 ance with the requirements of this part.

9 (b) ALLOWANCE ACCOUNT.—Allowances allocated
10 pursuant to section 782(n) of the Clean Air Act shall be
11 available for distribution to carry out the Program estab-
12 lished under subsection (a).

13 (c) SUPPLEMENT NOT SUPPLANT.—Assistance pro-
14 vided under this part shall be used to supplement, and
15 not to supplant, any other Federal, State, or local re-
16 sources available to carry out activities of the type carried
17 out under the Program.

18 **SEC. 494. DISTRIBUTION OF ALLOWANCES.**

19 (a) IN GENERAL.—The Secretary of State, or such
20 other Federal agency head as the President may des-
21 ignate, after consultation with the Secretary of the Treas-
22 ury, the Administrator of USAID, and the Administrator
23 of the Environmental Protection Agency, shall direct the
24 distribution of allowances to carry out the Program—

25 (1) in the form of bilateral assistance pursuant
26 to the requirements under section 495;

1 (2) to multilateral funds or international insti-
2 tutions pursuant to the Convention or an agreement
3 negotiated under the Convention; or

4 (3) through a combination of the mechanisms
5 identified under paragraphs (1) and (2).

6 (b) LIMITATION.—

7 (1) CONDITIONAL DISTRIBUTION TO MULTILAT-
8 ERAL FUNDS OR INTERNATIONAL INSTITUTIONS.—

9 In any fiscal year, the Secretary of State, or such
10 other Federal agency head as the President may
11 designate, in consultation with the Administrator of
12 USAID, the Secretary of the Treasury, and the Ad-
13 ministrator of the Environmental Protection Agency,
14 shall distribute at least 40 percent and up to 60 per-
15 cent of the allowances available to carry out the Pro-
16 gram to one or more multilateral funds or inter-
17 national institutions that meet the requirements of
18 paragraph (2), if any such fund or institution exists,
19 and shall annually certify in a report to the appro-
20 priate congressional committees that any multilat-
21 eral fund or international institution receiving allow-
22 ances under this section meets the requirements of
23 paragraph (2) or that no multilateral fund or inter-
24 national institution that meets the requirements of
25 paragraph (2) exists, as the case may be. The Sec-

1 retary of State shall notify the appropriate congres-
2 sional committees not less than 15 days prior to any
3 transfer of allowances to a multilateral fund or
4 international institution pursuant to this section.

5 (2) MULTILATERAL FUND OR INTERNATIONAL
6 INSTITUTION ELIGIBILITY.—A multilateral fund or
7 international institution is eligible to receive allow-
8 ances available to carry out the Program—

9 (A) if—

10 (i) such fund or institution is estab-
11 lished pursuant to—

12 (I) the Convention; or

13 (II) an agreement negotiated
14 under the Convention; or

15 (ii) the allowances are directed to one
16 or more multilateral development banks or
17 international development institutions, pur-
18 suant to an agreement negotiated under
19 such Convention; and

20 (B) if such fund or institution—

21 (i) specifies the terms and conditions
22 under which the United States is to pro-
23 vide allowances to the fund or institution,
24 and under which the fund or institution is
25 to provide assistance to recipient countries;

1 (ii) ensures that assistance from the
2 United States to the fund or institution
3 and the principal and income of the fund
4 or institution are disbursed only for pur-
5 poses that are consistent with those de-
6 scribed in section 491(b)(1);

7 (iii) requires a regular meeting of a
8 governing body of the fund or institution
9 that includes representation from countries
10 among the most vulnerable developing
11 countries and provides public access;

12 (iv) requires that local communities
13 and indigenous peoples in areas where any
14 activities or programs are planned are en-
15 gaged through adequate disclosure of in-
16 formation, public participation, and con-
17 sultation; and

18 (v) prepares and makes public an an-
19 nual report that—

20 (I) describes the process and
21 methodology for selecting the recipi-
22 ents of assistance from the fund or in-
23 stitution, including assessments of
24 vulnerability;

1 (II) describes specific programs
2 and activities supported by the fund
3 or institution and the extent to which
4 the assistance is addressing the adap-
5 tation needs of the most vulnerable
6 developing countries, and the most
7 vulnerable communities and popu-
8 lations therein;

9 (III) describes the performance
10 goals for assistance authorized under
11 the fund or institution and expresses
12 such goals in an objective and quan-
13 tifiable form, to the extent practicable;

14 (IV) describes the performance
15 indicators to be used in measuring or
16 assessing the achievement of the per-
17 formance goals described in subclause
18 (III);

19 (V) provides a basis for rec-
20 ommendations for adjustments to as-
21 sistance authorized under this part to
22 enhance the impact of such assist-
23 ance; and

24 (VI) describes the participation
25 of other nations and international or-

1 organizations in supporting and gov-
2 erning the fund or institution.

3 (c) OVERSIGHT.—

4 (1) DISTRIBUTION TO MULTILATERAL FUNDS
5 OR INTERNATIONAL INSTITUTIONS.—The Secretary
6 of State, or such other Federal agency head as the
7 President may designate, in consultation with the
8 Administrator of USAID, shall oversee the distribu-
9 tion of allowances available to carry out the Pro-
10 gram to a multilateral fund or international institu-
11 tion under subsection (b).

12 (2) BILATERAL ASSISTANCE.—The Adminis-
13 trator of USAID, in consultation with the Secretary
14 of State, shall oversee the distribution of allowances
15 available to carry out the Program for bilateral as-
16 sistance under section 495.

17 **SEC. 495. BILATERAL ASSISTANCE.**

18 (a) ACTIVITIES AND FOREIGN AID.—

19 (1) IN GENERAL.—In order to achieve the pur-
20 poses of this part, the Administrator of USAID may
21 carry out programs and activities and distribute al-
22 lowances to any private or public group (including
23 international organizations and faith-based organiza-
24 tions), association, or other entity engaged in peace-
25 ful activities to—

1 (A) provide assistance to the most vulner-
2 able developing countries for—

3 (i) the development of national or re-
4 gional climate change adaptation plans, in-
5 cluding a systematic assessment of socio-
6 economic vulnerabilities in order to identify
7 the most vulnerable communities and pop-
8 ulations;

9 (ii) associated national policies; and

10 (iii) planning, financing, and execu-
11 tion of adaptation programs and activities;

12 (B) support investments, capacity-building
13 activities, and other assistance, to reduce vul-
14 nerability and promote community-level resil-
15 ience related to climate change and its impacts
16 in the most vulnerable developing countries, in-
17 cluding impacts on water availability, agricul-
18 tural productivity, flood risk, coastal resources,
19 timing of seasons, biodiversity, economic liveli-
20 hoods, health, human migration, or other social,
21 economic, political, cultural, or environmental
22 matters;

23 (C) support climate change adaptation re-
24 search in or for the most vulnerable developing
25 countries;

1 (D) reduce vulnerability and provide in-
2 creased resilience to climate change for local
3 communities and livelihoods in the most vulner-
4 able developing countries by encouraging—

5 (i) the protection and rehabilitation of
6 natural systems;

7 (ii) the enhancement and diversifica-
8 tion of agricultural, fishery, and other live-
9 lihoods; and

10 (iii) the reduction of disaster risks;

11 (E) support the deployment of technologies
12 to help the most vulnerable developing countries
13 respond to the destabilizing impacts of climate
14 change and encourage the identification and
15 adoption of appropriate renewable and efficient
16 energy technologies that are beneficial in in-
17 creasing community-level resilience to the im-
18 pacts of global climate change in those coun-
19 tries; and

20 (F) encourage the engagement of local
21 communities through disclosure of information,
22 consultation, and the communities' informed
23 participation relating to the development of
24 plans, programs, and activities to increase com-

1 munity-level resilience to climate change im-
2 pacts.

3 (2) LIMITATIONS.—Not more than 10 percent
4 of the allowances made available to carry out bilat-
5 eral assistance under this part in any year shall be
6 distributed to support activities in any single coun-
7 try.

8 (3) PRIORITIZING ASSISTANCE.—In providing
9 assistance under this section, the Administrator of
10 USAID shall give priority to countries, including the
11 most vulnerable communities and populations there-
12 in, that are most vulnerable to the adverse impacts
13 of climate change, determined by the likelihood and
14 severity of such impacts and the country's capacity
15 to adapt to such impacts.

16 (b) COMMUNITY ENGAGEMENT.—

17 (1) IN GENERAL.—The Administrator of
18 USAID shall ensure that local communities, includ-
19 ing the most vulnerable communities and popu-
20 lations therein, in areas where any programs or ac-
21 tivities are carried out pursuant to this section are
22 engaged in, through disclosure of information, public
23 participation, and consultation, the design, imple-
24 mentation, monitoring, and evaluation of such pro-
25 grams and activities.

1 (2) CONSULTATION AND DISCLOSURE.—For
2 each country receiving assistance under this section,
3 the Administrator of USAID shall establish a proc-
4 ess for consultation with, and disclosure of informa-
5 tion to, local, national, and international stake-
6 holders regarding any programs and activities car-
7 ried out pursuant to this section.

8 (c) COORDINATION.—

9 (1) ALIGNMENT OF ACTIVITIES.—Subject to the
10 direction of the President and the Secretary of
11 State, the Administrator of USAID shall, to the ex-
12 tent practicable, seek to align activities under this
13 section with broader development, poverty allevi-
14 ation, or natural resource management objectives
15 and initiatives in the recipient country.

16 (2) COORDINATION OF ACTIVITIES.—The Ad-
17 ministrator of USAID shall ensure that there is co-
18 ordination among the activities under this section,
19 subtitle D of this title, and part E of title VII of the
20 Clean Air Act, in order to maximize the effectiveness
21 of United States assistance to developing countries.

22 (d) REPORTING.—

23 (1) INITIAL REPORT.—Not later than 180 days
24 after the date of enactment of this part, the Admin-
25 istrator of USAID, in consultation with the Sec-

1 retary of State, shall submit to the President and
2 the appropriate congressional committees an initial
3 report that—

4 (A) based on the most recent information
5 available from reliable public sources or knowl-
6 edge obtained by USAID on a reliable basis, as
7 determined by the Administrator of USAID,
8 identifies the developing countries, including the
9 most vulnerable communities and populations
10 therein, that are most vulnerable to climate
11 change impacts and in which assistance may
12 have the greatest and most sustainable benefit
13 in reducing vulnerability to climate change; and

14 (B) describes the process and methodology
15 for selecting the recipients of assistance under
16 subsection (a)(1).

17 (2) ANNUAL REPORTS.—Not later than 18
18 months after the date on which the initial report is
19 submitted pursuant to paragraph (1), and annually
20 thereafter, the Administrator of USAID, in consulta-
21 tion with the Secretary of State, shall submit to the
22 President and the appropriate congressional commit-
23 tees a report that—

24 (A) describes the extent to which global cli-
25 mate change, through its potential negative im-

1 pacts on sensitive populations and natural re-
2 sources in the most vulnerable developing coun-
3 tries, may threaten, cause, or exacerbate polit-
4 ical, economic, environmental, cultural, or social
5 instability or international conflict in those re-
6 gions;

7 (B) describes the ramifications of any po-
8 tentially destabilizing impacts climate change
9 may have on the national security, foreign pol-
10 icy, and economic interests of the United
11 States, including—

12 (i) the creation of environmental mi-
13 grants and internally displaced peoples;

14 (ii) international or internal armed
15 conflicts over water, food, land, or other
16 resources;

17 (iii) loss of agricultural and other live-
18 lihoods, cultural stability, and other causes
19 of increased poverty and economic desta-
20 bilization;

21 (iv) decline in availability of resources
22 needed for survival, including water;

23 (v) increased impact of natural disas-
24 ters (including droughts, flooding, and
25 other severe weather events);

1 (vi) increased prevalence or virulence
2 of climate-related diseases; and

3 (vii) intensified urban migration;

4 (C) describes how allowances available
5 under this section were distributed during the
6 previous fiscal year to enhance the national se-
7 curity, foreign policy, and economic interests of
8 the United States and assist in avoiding the
9 economically, politically, environmentally, cul-
10 turally, and socially destabilizing impacts of cli-
11 mate change in most vulnerable developing
12 countries;

13 (D) identifies and recommends the devel-
14 oping countries, including the most vulnerable
15 communities and populations therein, that are
16 most vulnerable to climate change impacts and
17 in which assistance may have the greatest and
18 most sustainable benefit in reducing vulner-
19 ability to climate change, including in the form
20 of deploying technologies, investments, capacity-
21 building activities, and other types of assistance
22 for adaptation to climate change impacts and
23 approaches to reduce greenhouse gases in ways
24 that may also provide community-level resilience
25 to climate change impacts; and

1 (E) describes cooperation undertaken with
2 other nations and international organizations to
3 carry out this part.

4 (e) MONITORING AND EVALUATION.—

5 (1) IN GENERAL.—The Administrator of
6 USAID shall establish and implement a system to
7 monitor and evaluate the effectiveness and efficiency
8 of assistance provided under this section in order to
9 maximize the long-term sustainable development im-
10 pact of such assistance, including the extent to
11 which such assistance is meeting the purposes of
12 this part and addressing the adaptation needs of de-
13 veloping countries.

14 (2) REQUIREMENTS.—In carrying out para-
15 graph (1), the Administrator of USAID shall—

16 (A) in consultation with national govern-
17 ments in recipient countries, establish perform-
18 ance goals for assistance authorized under this
19 section and express such goals in an objective
20 and quantifiable form, to the extent practicable;

21 (B) establish performance indicators to be
22 used in measuring or assessing the achievement
23 of the performance goals described in subpara-
24 graph (A), including an evaluation of—

1 (i) the extent to which assistance
2 under this section provided for disclosure
3 of information to, consultation with, and
4 informed participation by local commu-
5 nities;

6 (ii) the extent to which local commu-
7 nities participated in the design, implemen-
8 tation, and evaluation of programs and ac-
9 tivities implemented pursuant to this sec-
10 tion; and

11 (iii) the impacts of such participation
12 on the goals and objectives of the pro-
13 grams and activities implemented under
14 this section;

15 (C) provide a basis for recommendations
16 for adjustments to assistance authorized under
17 this section to enhance the impact of such as-
18 sistance; and

19 (D) include, in the annual report to the
20 appropriate congressional committees and other
21 relevant agencies required under subsection
22 (d)(2), findings resulting from the monitoring
23 and evaluation of programs and activities under
24 this section.

