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revised

AMENDMENT TO H.R. 3221
OFFERED BY MS. GIFFORDS OF ARIZONA

In subtitle D of title IV, before section 4301, insert the following:

1 **PART 1—RESEARCH AND ADVANCEMENT**

In section 4302, strike “subtitle” and insert “part”.

At the end of subtitle D of title IV, add the following new part:

2 **PART 2—DEVELOPMENT AND USE OF SOLAR**
3 **ENERGY PRODUCTS**

4 **SEC. 4311. DEFINITIONS.**

5 For purposes of this part:

6 (1) The term “Board” means the Solar Energy
7 Industries Research and Promotion Board estab-
8 lished under section 4312(b)(1).

9 (2) The term “Committee” means the Solar
10 Energy Research and Promotion Operating Com-
11 mittee established under section 4312(b)(4).

12 (3) The term “Department” means the Depart-
13 ment of Energy.

1 (4) The term “importer” means any person
2 who imports solar energy products from outside the
3 United States.

4 (5) The term “order” means a solar energy
5 product research and promotion order issued under
6 section 4312.

7 (6) The term “promotion” means any action to
8 advance the image and desirability of solar energy
9 products with the express intent of improving the
10 competitive position and stimulating sales of solar
11 energy products in the marketplace.

12 (7) The term “Secretary” means the Secretary
13 of Energy.

14 (8) The term “solar energy products” means
15 solar water heating components and systems and
16 photovoltaic components and systems.

17 **SEC. 4312. SOLAR RESEARCH AND INFORMATION PRO-**
18 **GRAM.**

19 (a) ISSUANCE OF ORDERS.—

20 (1) PROPOSED ORDER.—Not later than 30 days
21 after receipt of a proposal for a solar energy product
22 research and promotion order, the Secretary shall
23 publish such proposed order and give due notice and
24 opportunity for public comment on such proposed
25 order. Such proposal may be submitted by any orga-

1 nization meeting the requirements for certification
2 under section 4313 or any interested person, includ-
3 ing the Secretary.

4 (2) FINAL ORDER.—After notice and oppor-
5 tunity for public comment are given, as provided for
6 in paragraph (1), the Secretary shall issue a solar
7 energy product research and promotion order. The
8 order shall become effective not later than 120 days
9 after publication of the proposed order.

10 (b) REQUIRED TERMS IN ORDERS.—An order issued
11 under subsection (a) shall contain the following terms and
12 conditions:

13 (1) The order shall provide for the establish-
14 ment and selection of a Solar Energy Industries Re-
15 search and Promotion Board. In addition to non-
16 permanent members of the Board, there shall be two
17 permanent members of the Board, a representative
18 chosen by the Secretary and a representative chosen
19 by one of the organizations certified under section
20 4313. Nonpermanent members of the Board shall be
21 solar energy products producers and importers ap-
22 pointed by the Secretary from—

23 (A) nominations submitted by eligible or-
24 ganizations certified under section 4313; and

1 (B) nominations submitted by importers
2 under such procedures as the Secretary deter-
3 mines appropriate.

4 The Secretary shall ensure adequate representation
5 of all geographic regions of the United States on the
6 Board.

7 (2) The order shall define the powers and du-
8 ties of the Board, which shall be exercised at an an-
9 nual meeting, and shall include only the following
10 powers:

11 (A) To administer the order in accordance
12 with its terms and provisions.

13 (B) To make rules and regulations to ef-
14 fectuate the terms and provisions of the order.

15 (C) To elect members of the Board to
16 serve on the Committee.

17 (D) To approve or disapprove budgets sub-
18 mitted by the Committee.

19 (E) To receive, investigate, and report to
20 the Secretary complaints of violations of the
21 order.

22 (F) To recommend to the Secretary
23 amendments to the order. In addition, the order
24 shall determine the circumstances under which
25 special meetings of the Board may be held.

1 (3) The order shall provide that the term of ap-
2 pointment for nonpermanent members of the Board
3 shall be 3 years with no nonpermanent member serv-
4 ing more than 2 consecutive terms, except that ini-
5 tial appointments shall be proportionately for 1-year,
6 2-year, and 3-year terms; and that Board members
7 shall serve without compensation, but shall be reim-
8 bursed for their reasonable expenses incurred in per-
9 forming their duties as members of the Board.

10 (4)(A) The order shall provide that the Board
11 shall elect from its membership 10 members to serve
12 on the Solar Energy Research and Promotion Oper-
13 ating Committee.

14 (B) The Committee shall develop plans or
15 projects of research, information, and promotion
16 which shall be paid for with assessments collected by
17 the Board. In developing plans or projects, the Com-
18 mittee shall, to the extent practicable, ensure that
19 all segments of the solar industry receive fair treat-
20 ment under this part based upon contributions made
21 under paragraph (8).

22 (C) The Committee shall be responsible for de-
23 veloping and submitting to the Board, for its ap-
24 proval, budgets on a fiscal year basis of its antici-
25 pated expenses and disbursements, including prob-

1 able costs of research, promotion, and information
2 projects. The Board shall approve or disapprove
3 such budgets and, if approved, shall submit such
4 budget to the Secretary for the Secretary's approval.

5 (D) The total costs of collection of assessments
6 and administrative staff incurred by the Board dur-
7 ing any fiscal year shall not exceed 5 percent of the
8 projected total assessments to be collected by the
9 Board for such fiscal year. The Board shall use, to
10 the extent possible, the resources, staffs, and facili-
11 ties of existing organizations.

12 (5) The order shall provide that terms of ap-
13 pointment to the Committee shall be 1 year, and
14 that no person may serve on the Committee for
15 more than 6 consecutive terms. Committee members
16 shall serve without compensation, but shall be reim-
17 bursed for their reasonable expenses incurred in per-
18 forming their duties as members of the Committee.
19 The Committee may utilize the resources, staffs, and
20 facilities of the Board and industry organizations.
21 An employee of an industry organization may not re-
22 ceive compensation for work performed for the Com-
23 mittee, but shall be reimbursed from assessments
24 collected by the Board for reasonable expenses in-
25 curred in performing such work.

1 (6) The order shall provide that, to ensure co-
2 ordination and efficient use of funds, the Committee
3 shall enter into contracts or agreements for imple-
4 menting and carrying out the activities authorized
5 by this part with established national nonprofit in-
6 dustry-governed organizations to implement pro-
7 grams of research, promotion, and information. In
8 any fiscal year, the total assessments available for
9 spending for this program (including administrative
10 expenses under paragraph (4)(D)) shall not exceed
11 50 percent of the projected total assessments for
12 that year. Any such contract or agreement shall pro-
13 vide that—

14 (A) the person entering the contract or
15 agreement shall develop and submit to the
16 Committee a plan or project together with a
17 budget or budgets that shows estimated costs to
18 be incurred for the plan or project;

19 (B) the plan or project shall become effec-
20 tive on the approval of the Secretary; and

21 (C) the person entering the contract or
22 agreement shall keep accurate records of all of
23 its transactions, account for funds received and
24 expended, and make periodic reports to the
25 Committee of activities conducted, and such

1 other reports as the Secretary, the Board, or
2 the Committee may require.

3 (7) The order shall require the Board and the
4 Committee to—

5 (A) maintain such books and records,
6 which shall be available to the Secretary for in-
7 spection and audit, as the Secretary may pre-
8 scribe;

9 (B) prepare and submit to the Secretary,
10 from time to time, such reports as the Sec-
11 retary may prescribe; and

12 (C) account for the receipt and disburse-
13 ment of all funds entrusted to them.

14 (8)(A) The order shall provide that each manu-
15 facturer of a solar energy product shall collect an as-
16 sessment and pay the assessment to the Board.

17 (B) The order also shall provide that each im-
18 porter of solar energy products shall pay an assess-
19 ment, in the manner prescribed by the order, to the
20 Board.

21 (C) The assessments shall be used for payment
22 of the costs of plans and projects, as provided for in
23 paragraph (4), and expenses in administering the
24 order, including more administrative costs incurred
25 by the Secretary after the order has been promul-

1 gated under this part, and to establish a reasonable
2 reserve. The rate of assessment prescribed by the
3 order shall be determined by the Secretary in con-
4 sultation with the Solar Energy Industry Associa-
5 tion.

6 (9) The order shall provide that the Board,
7 with the approval of the Secretary, may invest,
8 pending disbursement, funds collected through as-
9 sessments only in obligations of the United States or
10 any agency thereof, in any interest-bearing account
11 or certificate of deposit of a bank that is a member
12 of the Federal Reserve System, or in obligations
13 fully guaranteed as to principal and interest by the
14 United States.

15 (10) The order shall prohibit any funds col-
16 lected by the Board under the order from being used
17 in any manner for the purpose of influencing govern-
18 mental action or policy, with the exception of recom-
19 mending amendments to the order.

20 (11)(A) The order shall require that each man-
21 ufacturer or importer making payment to the Board
22 maintain and make available for inspection such
23 books and records as may be required by the order
24 and file reports at the time, in the manner, and hav-
25 ing the content prescribed by the order. Such infor-

1 mation shall be made available to the Secretary as
2 is appropriate to the administration or enforcement
3 of this part. All information so obtained shall be
4 kept confidential by all officers and employees of the
5 Department, and only such information so obtained
6 as the Secretary deems relevant may be disclosed by
7 them and then only in a suit or administrative hear-
8 ing brought at the request of the Secretary, or to
9 which the Secretary or any officer of the United
10 States is a party, and involving the order. Nothing
11 in this paragraph may be deemed to prohibit—

12 (i) the issuance of general statements,
13 based on the reports, of the number of entities
14 subject to the order or statistical data collected
15 therefrom, which statements do not identify the
16 information furnished by an person; or

17 (ii) the publication, by direction of the Sec-
18 retary, of the name of any person violating the
19 order, together with a statement of the par-
20 ticular provisions of the order violated by the
21 person.

22 (B) No information obtained under the author-
23 ity of this part may be made available to any agency
24 or officer of the United States for any purpose other
25 than the implementation of this part and any inves-

1 tigtatory or enforcement act necessary for the imple-
2 mentation of this part. Any person violating the pro-
3 visions of this paragraph shall be subject to a fine
4 of not more than \$1,000, or to imprisonment for not
5 more than one year, or both, and if an officer or em-
6 ployee of the Board or the Department, shall be re-
7 moved from office.

8 (12) The order shall contain terms and condi-
9 tions, not inconsistent with the provisions of this
10 part, as necessary to effectuate the provisions of the
11 order.

12 **SEC. 4313. CERTIFICATION OF ORGANIZATIONS TO NOMI-**
13 **NATE.**

14 (a) **ELIGIBILITY.**—The eligibility of any national, re-
15 gional, or State organization to represent manufacturers
16 and to participate in the making of nominations under sec-
17 tion 4312(b) shall be certified by the Secretary. The Sec-
18 retary shall certify any organization that the Secretary de-
19 termines meets the eligibility criteria established under
20 subsection (b), and such determination as to eligibility
21 shall be final.

22 (b) **CRITERIA.**—An organization may be certified as
23 described in subsection (a) if such organization meets all
24 of the following eligibility criteria:

1 (1) The organization represents a majority of
2 manufacturers of solar energy products in the Na-
3 tion.

4 (2) The organization has a history of stability
5 and permanency.

6 (3) A primary purpose of the organization is to
7 promote the economic welfare of the solar energy
8 products industry.

9 (c) BASIS FOR CERTIFICATION.—Certification of an
10 organization shall be based upon a factual report sub-
11 mitted by the organization.

12 **SEC. 4314. REFERENDUM.**

13 (a) INITIAL REFERENDUM.—For the purpose of de-
14 termining whether the initial order shall be continued, not
15 later than 48 months after the issuance of the order (or
16 any earlier date recommended by the Board), the Sec-
17 retary shall conduct a referendum among persons who
18 have been manufacturers or importers of solar energy
19 products during a representative period, as determined by
20 the Secretary. The order shall be continued only if the
21 Secretary determines that it has been approved by not less
22 than a majority of the manufacturers voting in the ref-
23 erendum who, during a representative period as deter-
24 mined by the Secretary, have been engaged in the manu-
25 facturing of solar energy products. If continuation of the

1 order is not approved by a majority voting in the ref-
2 erendum, the Secretary shall terminate the collection of
3 assessments under the order within 6 months after the
4 Secretary determines that continuation of the order is not
5 favored by a majority voting in the referendum, and shall
6 terminate the order in an orderly manner as soon as prac-
7 ticable after such determination.

8 (b) **SUBSEQUENT REFERENDA.**—After the initial ref-
9 erendum, the Secretary may conduct a referendum on the
10 request of a representative group comprising 25 percent
11 or more of the number of manufacturers of solar energy
12 products to determine whether manufacturers favor the
13 termination or suspension of the order. The Secretary
14 shall suspend or terminate collection of assessments under
15 the order within 6 months after the Secretary determines
16 that suspension or termination of the order is favored by
17 a majority of the manufacturers voting in the referendum
18 who, during a representative period as determined by the
19 Secretary, have been engaged in the manufacture of solar
20 energy products, and shall terminate or suspend the order
21 in an orderly manner as soon as practicable after such
22 determination.

23 (c) **PROCEDURES.**—The Department shall be reim-
24 bursed from assessments collected by the Board for any
25 expenses incurred by the Department in connection with

1 conducting any referendum under this section, except for
2 the salaries of Government employees. Any referendum
3 conducted under this section shall be conducted on a date
4 established by the Secretary, whereby manufacturers shall
5 certify that they were engaged in the production of solar
6 energy products during the representative period and, on
7 the same day, shall be provided an opportunity to vote
8 in the referendum.

9 **SEC. 4315. REFUNDS.**

10 (a) IN GENERAL.—During the period prior to the ap-
11 proval of the continuation of an order pursuant to the ref-
12 erendum required under section 4314(a), subject to sub-
13 section (f) of this section, the Board shall—

14 (1) establish an escrow account to be used for
15 assessment refunds;

16 (2) place funds in such account in accordance
17 with subsection (b); and

18 (3) refund assessments to persons in accord-
19 ance with this section.

20 (b) AMOUNTS PLACED IN ACCOUNT.—Subject to sub-
21 section (f), the Board shall place in such account, from
22 assessments collected under section 4312 during the pe-
23 riod referred to in subsection (a), an amount equal to the
24 product obtained by multiplying the total amount of as-

1 assessments collected under section 4312 during such period
2 by 15 percent.

3 (c) FULL REFUND ELECTION.—Subject to sub-
4 sections (d), (e), and (f) and notwithstanding any other
5 provision of this part, any manufacturer or importer shall
6 have the right to demand and receive from the Board a
7 one-time refund of all assessments collected under section
8 4312 from such manufacturer or importer during the pe-
9 riod referred to in subsection (a) if such manufacturer or
10 importer—

11 (1) is responsible for paying such assessment;

12 and

13 (2) does not support the program established
14 under this part.

15 (d) PROCEDURE.—Such demand shall be made in ac-
16 cordance with regulations, on a form, and within a time
17 period prescribed by the Board.

18 (e) PROOF.—Such refund shall be made on submis-
19 sion of proof satisfactory to the Board that the manufac-
20 turer or importer—

21 (1) paid the assessment for which refund is
22 sought; and

23 (2) did not collect such assessment from an-
24 other manufacturer or importer.

1 (f) DISTRIBUTION.—If the amount in the escrow ac-
2 count required to be established by subsection (a) is not
3 sufficient to refund the total amount of assessments de-
4 manded by all eligible persons under this section, and the
5 continuation of an order is approved pursuant to the ref-
6 erendum required under section 4314(b), the Board
7 shall—

8 (1) continue to place in such account, from as-
9 sssments collected under section 4312, the amount
10 required under subsection (b), until such time as the
11 Board is able to comply with paragraph (2); and

12 (2) provide to all eligible persons the total
13 amount of assessments demanded by all eligible per-
14 sons under this section.

15 If the continuation of an order is not approved pursuant
16 to the referendum required under section 4314(b), the
17 Board shall prorate the amount of such refunds among
18 all eligible persons who demand such refund.

19 **SEC. 4316. ENFORCEMENT.**

20 (a) IN GENERAL.—If the Secretary believes that the
21 administration and enforcement of this part or an order
22 would be adequately served by such procedure, following
23 an opportunity for an administrative hearing on the
24 record, the Secretary may—

1 (1) issue an order to restrain or prevent a per-
2 son from violating an order; and

3 (2) assess a civil penalty of not more than
4 \$25,000 for violation of such order.

5 (b) **JURISDICTION.**—The district courts of the United
6 States are vested with jurisdiction specifically to enforce,
7 and to prevent and restrain a person from violating, an
8 order or regulation made or issued under this part.

9 (c) **ATTORNEY GENERAL.**—A civil action authorized
10 to be brought under this section shall be referred to the
11 Attorney General for appropriate action.

12 **SEC. 4317. INVESTIGATIONS.**

13 The Secretary may make such investigations as the
14 Secretary deems necessary for the effective administration
15 of this part or to determine whether any person subject
16 to this part has engaged or is about to engage in any act
17 that constitutes or will constitute a violation of this part,
18 the order, or any rule or regulation issued under this part.

19 **SEC. 4318. ADMINISTRATIVE PROVISION.**

20 The provisions of this part applicable to the order
21 shall be applicable to amendments to the order.

Amend the table of contents accordingly.