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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. WAXMAN (for himself and Mr. MARKEY of Massachusetts) introduced the following bill; which was referred to the Committee on _____

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents for 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.
"Sec. 610. 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. 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.

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.
"Sec. 216A. 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. 304. 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. 334. Jurisdiction and venue.
Sec. 214. Best-in-Class Appliances Deployment Program.
Sec. 215. Purpose of Energy Star.

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.
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"Sec. 728. International emission allowances.

"PART D—OFFSETS

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"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.
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Sec. 312. Definitions.
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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.
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"Sec. 786-788. [SECTIONS 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. Hazardous air pollutants.
"Sec. 833. New source review.
"Sec. 834. Title V permits.
"Sec. 835. Existing proceedings.
Sec. 332. HFC Regulation.
"Sec. 619. Hydrofluorocarbons (HFCs).
Sec. 333. Black carbon.

"PART E—BLACK CARBON

"Sec. 851. Black carbon.
Sec. 334. States.
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"Sec. 861. State programs.
Sec. 336. Enforcement.
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Subtitle D—Carbon Market Assurance

Sec. 341. Carbon market assurance.

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TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY

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"SUBPART 1—EMISSION ALLOWANCE REBATE PROGRAM

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"SUBPART 2—INTERNATIONAL RESERVE ALLOWANCE PROGRAM

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"Sec. 767. Presidential reports and determinations.
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"PART G—PETROLEUM REFINERIES

"Sec. 771. Allocations to petroleum refineries.

Subtitle B—Green Jobs and Worker Transition

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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.

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PART 2—INTERNATIONAL CLIMATE CHANGE ADAPTATION PROGRAM

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Sec. 492. Definitions.
Sec. 493. International Climate Change Adaptation Program.
Sec. 494. Distribution of allowances.
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1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

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

6 (2) STATE.—The term "State" has the mean-
7 ing given that term in section 700 of the Clean Air
8 Act, as added by section 312 of this Act.

9 TITLE I—CLEAN ENERGY

10 Subtitle A—Combined Efficiency
11 and Renewable Electricity
12 Standard

13 **SEC. 101. COMBINED EFFICIENCY AND RENEWABLE ELEC-**
14 **TRICITY STANDARD.**

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

18 **"SEC. 610. COMBINED EFFICIENCY AND RENEWABLE ELEC-**
19 **TRICITY STANDARD.**

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

21 "(1) CHP SAVINGS.—The term 'CHP savings'
22 means—

1 "(A) CHP system savings from a combined
2 heat and power system that commences oper-
3 ation after the date of enactment of this sec-
4 tion; and
5 "(B) the increase in CHP system savings
6 from, at any time after the date of the enact-
7 ment of this section, upgrading, replacing, ex-
8 panding, or increasing the utilization of a com-
9 bined heat and power system that commenced
10 operation on or before the date of enactment of
11 this section.
12 "(2) CHP SYSTEM SAVINGS.—The term 'CHP
13 system savings' means the electric output, and the
14 electricity saved due to the mechanical output, of a
15 combined heat and power system, adjusted to reflect
16 any increase in fuel consumption by that system as
17 compared to the fuel that would have been required
18 to produce an equivalent useful thermal energy out-
19 put in a separate thermal-only system.
20 "(3) COMBINED HEAT AND POWER SYSTEM.—
21 The term 'combined heat and power system' means
22 a system that uses the same energy source both for
23 the generation of electrical or mechanical power and
24 the production of steam or another form of useful
25 thermal energy, provided that—

1 "(A) the system meets such requirements
2 relating to efficiency and other operating char-
3 acteristics as the Commission may promulgate
4 by regulation; and
5 "(B) the net sales of electricity by the fa-
6 cility to customers not consuming the thermal
7 output from that facility will not exceed 50 per-
8 cent of total annual electric generation by the
9 facility.
10 "(4) CUSTOMER FACILITY SAVINGS.—The term
11 'customer facility savings' means a reduction in end-
12 use electricity consumption (including recycled en-
13 ergy savings) at a facility of an end-use consumer of
14 electricity served by a retail electric supplier, as
15 compared to—
16 "(A) in the case of a new facility, con-
17 sumption at a reference facility of average effi-
18 ciency;
19 "(B) in the case of an existing facility,
20 consumption at such facility during a base pe-
21 riod, except as provided in subparagraphs (C)
22 and (D);
23 "(C) in the case of new equipment that re-
24 places existing equipment with remaining useful
25 life, the projected consumption of the existing

1 equipment for the remaining useful life of such
2 equipment, and thereafter, consumption of new
3 equipment of average efficiency of the same
4 equipment type; and
5 "(D) in the case of new equipment that re-
6 places existing equipment at the end of the use-
7 ful life of the existing equipment, consumption
8 by new equipment of average efficiency of the
9 same equipment type.
10 "(5) DISTRIBUTED RENEWABLE GENERATION
11 FACILITY.—The term 'distributed renewable genera-
12 tion facility' means a facility that—
13 "(A) generates renewable electricity;
14 "(B) primarily serves 1 or more electricity
15 consumers at or near the facility site; and
16 "(C) is no larger than 2 megawatts in ca-
17 pacity.
18 "(6) ELECTRICITY SAVINGS.—The term 'elec-
19 tricity savings' means reductions in electricity con-
20 sumption, relative to business-as-usual projections,
21 achieved through measures implemented after the
22 date of enactment of this section, limited to—
23 "(A) customer facility savings of elec-
24 tricity, adjusted to reflect any associated in-
25 crease in fuel consumption at the facility;

1 "(B) reductions in distribution system
2 losses of electricity achieved by a retail elec-
3 tricity distributor, as compared to losses attrib-
4 utable to new or replacement distribution sys-
5 tem equipment of average efficiency;
6 "(C) CHP savings; and
7 "(D) fuel cell savings.
8 "(7) FEDERAL LAND.—The term 'Federal land'
9 means land owned by the United States, other than
10 land held in trust for an Indian or Indian tribe.
11 "(8) FEDERAL RENEWABLE ELECTRICITY
12 CREDIT.—The term 'Federal renewable electricity
13 credit' means a credit, representing one megawatt
14 hour of renewable electricity, issued pursuant to sub-
15 section (e).
16 "(9) FUEL CELL.—The term 'fuel cell' means a
17 device that directly converts the chemical energy of
18 a fuel and an oxidant into electricity by electro-
19 chemical processes occurring at separate electrodes
20 in the device.
21 "(10) FUEL CELL SAVINGS.—The term 'fuel
22 cell savings' means the electricity saved by a fuel cell
23 that is installed after the date of enactment of this
24 section, or by upgrading a fuel cell that commenced
25 operation on or before the date of enactment of this

1 section, as a result of the greater efficiency with
2 which the fuel cell transforms fuel into electricity as
3 compared with sources of electricity delivered
4 through the grid, provided that—
5 "(A) the fuel cell meets such requirements
6 relating to efficiency and other operating char-
7 acteristics as the Commission may promulgate
8 by regulation; and
9 "(B) the net sales of electricity from the
10 fuel cell to third parties that do not receive
11 thermal service from the fuel cell do not exceed
12 50 percent of the total annual electricity gen-
13 eration by the fuel cell.
14 "(11) HIGH CONSERVATION PRIORITY LAND.—
15 The term 'high conservation priority land' means
16 land that is not Federal land and is—
17 "(A) globally or State ranked as critically
18 imperiled or imperiled under a State Natural
19 Heritage Program; or
20 "(B) old-growth or late-successional forest,
21 as defined by the office of the relevant State
22 Forester or relevant State agency with regu-
23 latory jurisdiction over forestry activities.

1 "(12) OTHER QUALIFYING ENERGY RE-
2 SOURCE.—The term 'other qualifying energy re-
3 source' means any of the following:
4 "(A) Landfill gas.
5 "(B) Wastewater treatment gas.
6 "(C) Coal mine methane used to generate
7 electricity at or near the mine mouth.
8 "(D) Qualified waste-to-energy.
9 "(13) QUALIFIED HYDROPOWER.—The term
10 'qualified hydropower' means—
11 "(A) energy produced from increased effi-
12 ciency achieved, or additions of capacity made,
13 on or after January 1, 1992, at a hydroelectric
14 facility that was placed in service before that
15 date and does not include additional energy
16 generated as a result of operational changes not
17 directly associated with efficiency improvements
18 or capacity additions; or
19 "(B) energy produced from generating ca-
20 pacity added to a dam on or after January 1,
21 1992, provided that the Commission certifies
22 that—
23 "(i) the dam was placed in service be-
24 fore the date of the enactment of this sec-
25 tion and was operated for flood control,

1 navigation, or water supply purposes and
2 was not producing hydroelectric power
3 prior to the addition of such capacity;
4 "(ii) the hydroelectric project installed
5 on the dam is licensed (or is exempt from
6 licensing) by the Commission and is in
7 compliance with the terms and conditions
8 of the license or exemption, and with other
9 applicable legal requirements for the pro-
10 tection of environmental quality, including
11 applicable fish passage requirements; and
12 "(iii) the hydroelectric project in-
13 stalled on the dam is operated so that the
14 water surface elevation at any given loca-
15 tion and time that would have occurred in
16 the absence of the hydroelectric project is
17 maintained, subject to any license or ex-
18 emption requirements that require changes
19 in water surface elevation for the purpose
20 of improving the environmental quality of
21 the affected waterway.
22 "(14) QUALIFIED WASTE-TO-ENERGY.—The
23 term 'qualified waste-to-energy' means energy from
24 the combustion of municipal solid waste or construc-
25 tion, demolition, or disaster debris, or from the gas-

1 ification or pyrolization of such waste or debris and
2 the combustion of the resulting gas at the same fa-
3 cility, provided that—
4 "(A) such term shall include only the en-
5 ergy derived from the non-fossil biogenic por-
6 tion of such waste or debris;
7 "(B) the Commission determines, with the
8 concurrence of the Administrator of the Envi-
9 ronmental Protection Agency, that the total
10 lifecycle greenhouse gas emissions attributable
11 to the generation of electricity from such waste
12 or debris are lower than those attributable to
13 the likely alternative method of disposing of
14 such waste or debris; and
15 "(C) the owner or operator of the facility
16 generating electricity from such energy provides
17 to the Commission, on an annual basis—
18 "(i) a certification that the facility is
19 in compliance with all applicable State and
20 Federal environmental permits;
21 "(ii) in the case of a facility that com-
22 menced operation before the date of the
23 enactment of this section, a certification
24 that the facility meets emissions standards
25 promulgated under sections 112 or 129 of

1 the Clean Air Act (42 U.S.C. 7412 or
2 7429) that apply as of the date of the en-
3 actment of this section to new facilities
4 within the relevant source category; and
5 "(iii) in the case of the combustion,
6 pyrolization, or gasification of municipal
7 solid waste, a certification that each local
8 government unit from which such waste
9 originates operates, participates in the op-
10 eration of, contracts for, or otherwise pro-
11 vides for, recycling services for its resi-
12 dents.
13 "(15) RECYCLED ENERGY SAVINGS.—The term
14 'recycled energy savings' means a reduction in elec-
15 tricity consumption that results from a modification
16 of an industrial or commercial system that com-
17 menced operation before the date of enactment of
18 this section, in order to recapture electrical, mechan-
19 ical, or thermal energy that would otherwise be
20 wasted.
21 "(16) RENEWABLE BIOMASS.—The term 're-
22 newable biomass' means any of the following:
23 "(A) Plant material, including waste mate-
24 rial, harvested or collected from actively man-
25 aged agricultural land that was in cultivation,

1 cleared, or fallow and nonforested on the date
2 of enactment of this section;
3 "(B) Plant material, including waste mate-
4 rial, harvested or collected from pastureland
5 that was nonforested on such date of enact-
6 ment;
7 "(C) Nonhazardous vegetative matter de-
8 rived from waste, including separated yard
9 waste, landscape right-of-way trimmings, con-
10 struction and demolition debris or food waste
11 (but not municipal solid waste, recyclable waste
12 paper, painted, treated or pressurized wood, or
13 wood contaminated with plastic or metals);
14 "(D) Animal waste or animal byproducts,
15 including products of animal waste digesters;
16 "(E) Algae;
17 "(F) Trees, brush, slash, residues, or any
18 other vegetative matter removed from within
19 600 feet of any building, campground, or route
20 designated for evacuation by a public official
21 with responsibility for emergency preparedness,
22 or from within 300 feet of a paved road, electric
23 transmission line, utility tower, or water supply
24 line;

1 "(G) Residues from or byproducts of
2 milled logs;
3 "(H) Any of the following removed from
4 forested land that is not Federal and is not
5 high conservation priority land:
6 "(i) Trees, brush, slash, residues,
7 interplanted energy crops, or any other
8 vegetative matter removed from an actively
9 managed tree plantation established—
10 "(I) prior to the date of enact-
11 ment of this section; or
12 "(II) on land that, as of the date
13 of enactment of this section, was cul-
14 tivated or fallow and non-forested.
15 "(ii) Trees, logging residue, thinnings,
16 cull trees, pulpwood, and brush removed
17 from naturally-regenerated forests or other
18 non-plantation forests, including for the
19 purposes of hazardous fuel reduction or
20 preventative treatment for reducing or con-
21 taining insect or disease infestation.
22 "(iii) Logging residue, thinnings, cull
23 trees, pulpwood, brush and species that are
24 non-native and noxious, from stands that
25 were planted and managed after the date

1 of enactment of this section to restore or
2 maintain native forest types.
3 "(iv) Dead or severely damaged trees
4 removed within 5 years of fire, blowdown,
5 or other natural disaster, and badly in-
6 fested trees;
7 "(I) Materials, pre-commercial thinnings,
8 or removed invasive species from National For-
9 est System land and public lands (as defined in
10 section 103 of the Federal Land Policy and
11 Management Act of 1976 (43 U.S.C. 1702)),
12 including those that are byproducts of preven-
13 tive treatments (such as trees, wood, brush,
14 thinnings, chips, and slash), that are removed
15 as part of a federally recognized timber sale, or
16 that are removed to reduce hazardous fuels, to
17 reduce or contain disease or insect infestation,
18 or to restore ecosystem health, and that are—
19 "(i) not from components of the Na-
20 tional Wilderness Preservation System,
21 Wilderness Study Areas, Inventoried
22 Roadless Areas, old growth or mature for-
23 est stands, components of the National
24 Landscape Conservation System, National
25 Monuments, National Conservation Areas,

1 Designated Primitive Areas, or Wild and
2 Scenic Rivers corridors;
3 "(ii) harvested in environmentally sus-
4 tainable quantities, as determined by the
5 appropriate Federal land manager; and
6 "(iii) harvested in accordance with
7 Federal and State law and applicable land
8 management plans.
9 "(17) RENEWABLE ELECTRICITY.—The term
10 'renewable electricity' means electricity generated
11 (including by means of a fuel cell) from a renewable
12 energy resource or other qualifying energy resources.
13 "(18) RENEWABLE ENERGY RESOURCE.—The
14 term 'renewable energy resource' means each of the
15 following:
16 "(A) Wind energy.
17 "(B) Solar energy.
18 "(C) Geothermal energy.
19 "(D) Renewable biomass.
20 "(E) Biogas derived exclusively from re-
21 newable biomass.
22 "(F) Biofuels derived exclusively from re-
23 newable biomass.
24 "(G) Qualified hydropower.

1 "(H) Marine and hydrokinetic renewable
2 energy, as that term is defined in section 632
3 of the Energy Independence and Security Act
4 of 2007 (42 U.S.C. 17211).
5 "(19) RETAIL ELECTRIC SUPPLIER.—
6 "(A) IN GENERAL.—The term 'retail elec-
7 tric supplier' means, for any given year, an
8 electric utility that sold not less than 4,000,000
9 megawatt hours of electric energy to electric
10 consumers for purposes other than resale dur-
11 ing the preceding calendar year.
12 "(B) INCLUSIONS AND LIMITATIONS.—For
13 purposes of determining whether an electric
14 utility qualifies as a retail electric supplier
15 under subparagraph (A)—
16 "(i) the sales of any affiliate of an
17 electric utility to electric consumers, other
18 than sales to the affiliate's lessees or ten-
19 ants, for purposes other than resale shall
20 be considered to be sales of such electric
21 utility; and
22 "(ii) sales by any electric utility to an
23 affiliate, lessee, or tenant of such electric
24 utility shall not be treated as sales to elec-
25 tric consumers.

1 "(C) AFFILIATE.—For purposes of this
2 paragraph, the term 'affiliate' when used in re-
3 lation to a person, means another person that
4 directly or indirectly owns or controls, is owned
5 or controlled by, or is under common ownership
6 or control with, such person, as determined
7 under regulations promulgated by the Commis-
8 sion.
9 "(20) RETAIL ELECTRIC SUPPLIER'S BASE
10 AMOUNT.—The term 'retail electric supplier's base
11 amount' means the total amount of electric energy
12 sold by the retail electric supplier, expressed in
13 megawatt hours, to electric customers for purposes
14 other than resale during the relevant calendar year,
15 excluding—
16 "(A) electricity generated by a hydro-
17 electric facility that is not qualified hydropower;
18 "(B) electricity generated by a nuclear
19 generating unit placed in service after the date
20 of enactment of this section; and
21 "(C) the proportion of electricity generated
22 by a fossil-fueled generating unit that is equal
23 to the proportion of greenhouse gases produced
24 by such unit that are captured and geologically
25 sequestered.

1 "(21) RETIRE AND RETIREMENT.—The terms
2 'retire' and 'retirement' with respect to a Federal re-
3 newable electricity credit, means to disqualify such
4 credit for any subsequent use under this section, re-
5 gardless of whether the use is a sale, transfer, ex-
6 change, or submission in satisfaction of a compliance
7 obligation.
8 "(22) THIRD-PARTY EFFICIENCY PROVIDER.—
9 The term 'third-party efficiency provider' means any
10 retailer, building owner, energy service company, fi-
11 nancial institution or other commercial, industrial or
12 nonprofit entity that is capable of providing elec-
13 tricity savings in accordance with the requirements
14 of this section.
15 "(23) TOTAL ANNUAL ELECTRICITY SAVINGS.—
16 The term 'total annual electricity savings' means
17 electricity savings during a specified calendar year
18 from measures that were placed into service since
19 date of the enactment of this section, taking into ac-
20 count verified measure lifetimes or verified annual
21 savings attrition rates, as determined in accordance
22 with such regulations as the Commission may pro-
23 mulgate and measured in megawatt hours.
24 "(b) ANNUAL COMPLIANCE OBLIGATION.—

1 "(1) IN GENERAL.—For each of calendar years
2 2012 through 2039, not later than March 31 of the
3 following calendar year, each retail electric supplier
4 shall submit to the Commission an amount of Fed-
5 eral renewable electricity credits and demonstrated
6 total annual electricity savings that, in the aggre-
7 gate, is equal to such retail electric supplier's annual
8 combined target as set forth in subsection (d), ex-
9 cept as otherwise provided in subsection (g).
10 "(2) DEMONSTRATION OF SAVINGS.—For pur-
11 poses of this subsection, submission of demonstrated
12 total annual electricity savings means submission of
13 a report that demonstrates, in accordance with the
14 requirements of subsection (f), the total annual elec-
15 tricity savings achieved by the retail electricity sup-
16 plier within the relevant compliance year.
17 "(3) RENEWABLE ELECTRICITY CREDITS POR-
18 TION.—Except as provided in paragraph (4), each
19 retail electric supplier must submit Federal renew-
20 able electricity credits equal to at least three quar-
21 ters of the retail electric supplier's annual combined
22 target.
23 "(4) STATE PETITION.—
24 "(A) IN GENERAL.—Upon written request
25 from the Governor of any State (including, for

1 purposes of this paragraph, the Mayor of the
2 District of Columbia), the Commission shall in-
3 crease, to not more than two fifths, the propor-
4 tion of the annual combined targets of retail
5 electric suppliers located within such State that
6 may be met through submission of dem-
7 onstrated total annual electricity savings, pro-
8 vided that such increase shall be effective only
9 with regard to the portion of a retail electric
10 supplier's annual combined target that is attrib-
11 utable to electricity sales within such State.

12 "(B) CONTENTS.—A Governor's request
13 under this paragraph shall include an expla-
14 nation of the Governor's rationale for deter-
15 mining, after consultation with the relevant
16 State regulatory authority and other retail elec-
17 tricity ratemaking authorities within the State,
18 to make such request. The request shall specify
19 the maximum proportion of annual combined
20 targets (not more than two fifths) that can be
21 met through demonstrated total annual elec-
22 tricity savings, and the period for which such
23 proportion shall be effective.

24 "(C) REVISION.—The Governor of any
25 State may, after consultation with the relevant

State regulatory authority and other retail electricity ratemaking authorities within the State, submit a written request for revocation or revision of a previous request submitted under this paragraph. The Commission shall grant such request, provided that—

"(i) any revocation or revision shall not apply to the combined annual target for any year that is any earlier than 2 calendar years after the calendar year in which such request is submitted, so as to provide retail electric suppliers with adequate notice of such change; and

"(ii) any revision shall meet the requirements of subparagraph (A).

"(c) ESTABLISHMENT OF PROGRAM.—Not later than 1 year after the date of enactment of this section, the Commission shall promulgate regulations to implement and enforce the requirements of this section. In promulgating such regulations, the Commission shall, to the extent practicable—

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

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

"(3) cooperate with the States to facilitate coordination between State and Federal renewable electricity and energy efficiency programs and to minimize administrative burdens and costs to retail electric suppliers.

"(d) ANNUAL COMPLIANCE REQUIREMENT.—

"(1) ANNUAL COMBINED TARGETS.—For each of calendar years 2012 through 2039, a retail electric supplier's annual combined target shall be the product of—

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

"(B) the retail electric supplier's base amount for such year.

"(2) REQUIRED ANNUAL PERCENTAGE.—For each of calendar years 2012 through 2039, the required 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

"Calendar year	Required annual percentage
2020	20.0
2021 through 2039	20.0

1 "(e) FEDERAL RENEWABLE ELECTRICITY CRED-
2 ITS.—
3 "(1) IN GENERAL.—The regulations promul-
4 gated under this section shall include provisions gov-
5 erning the issuance, tracking, and verification of
6 Federal renewable electricity credits. Except as pro-
7 vided in paragraphs (2), (3), and (4) of this sub-
8 section, the Commission shall issue to each gener-
9 ator of renewable electricity, 1 Federal renewable
10 electricity credit for each megawatt hour of renew-
11 able electricity generated by such generator after
12 December 31, 2011. The Commission shall assign a
13 unique serial number to each Federal renewable
14 electricity credit.
15 "(2) GENERATION FROM CERTAIN STATE RE-
16 NEWABLE ELECTRICITY PROGRAMS.—Where renew-
17 able electricity is generated with the support of pay-
18 ments from a retail electric supplier pursuant to a
19 State renewable electricity program (whether
20 through State alternative compliance payments or
21 through payments to a State renewable electricity
22 procurement fund or entity), the Commission shall
23 issue Federal renewable electricity credits to such re-

1 tail electric supplier for the proportion of the rel-
2 evant renewable electricity generation that is attrib-
3 utable to the retail electric supplier's payments, as
4 determined pursuant to regulations issued by the
5 Commission. For any remaining portion of the rel-
6 evant renewable electricity generation, the Commis-
7 sion shall issue Federal renewable electricity credits
8 to the generator, as provided in paragraph (1), ex-
9 cept that in no event shall more than 1 Federal re-
10 newable electricity credit be issued for the same
11 megawatt hour of electricity. In determining how
12 Federal renewable electricity credits will be appor-
13 tioned among retail electric suppliers and generators
14 in such circumstances, the Commission shall con-
15 sider information and guidance furnished by the rel-
16 evant State or States.

17 "(3) CERTAIN POWER SALES CONTRACTS.—
18 When a generator has sold renewable electricity to
19 a retail electric supplier under a contract for power
20 from a facility placed in service before the date of
21 enactment of this section, and the contract does not
22 provide for the determination of ownership of the
23 Federal renewable electricity credits associated with
24 such generation, the Commission shall issue such

1 Federal renewable electricity credits to the retail
2 electric supplier for the duration of the contract.
3 "(4) CREDIT MULTIPLIER FOR DISTRIBUTED
4 RENEWABLE GENERATION.—
5 "(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the Commission shall issue 3
7 Federal renewable electricity credits for each
8 megawatt hour of renewable electricity gen-
9 erated by a distributed renewable generation fa-
10 cility.
11 "(B) ADJUSTMENT.—Except as provided
12 in subparagraph (C), not later than January 1,
13 2014, and not less frequently than every 4
14 years thereafter, the Commission shall review
15 the effect of this paragraph and shall, as nec-
16 essary, reduce the number of Federal renewable
17 electricity credits per megawatt hour issued
18 under this paragraph for any given energy
19 source or technology, but not below 1, to ensure
20 that such number is no higher than the Com-
21 mission determines is necessary to make dis-
22 tributed renewable generation facilities using
23 such source or technology cost competitive with
24 other sources of renewable electricity genera-
25 tion.

1 "(C) FACILITIES PLACED IN SERVICE
2 AFTER ENACTMENT.—For any distributed re-
3 newable generation facility placed in service
4 after the date of enactment of this section, sub-
5 paragraph (B) shall not apply for the first 10
6 years after the date on which the facility is
7 placed in service. For each year during such 10-
8 year period, the Commission shall issue to the
9 facility the same number of Federal renewable
10 electricity credits per megawatt hour as are
11 issued to that facility in the year in which such
12 facility is placed in service. After such 10-year
13 period, the Commission shall issue Federal re-
14 newable energy credits to the facility in accord-
15 ance with the current multiplier as determined
16 pursuant to subparagraph (B).
17 "(5) CREDITS BASED ON QUALIFIED HYDRO-
18 POWER.—For purposes of this subsection, the num-
19 ber of Federal renewable electricity credits issued for
20 qualified hydropower shall be calculated—
21 "(A) based solely on the increase in aver-
22 age annual generation directly resulting from
23 the efficiency improvements or capacity addi-
24 tions described in subsection (a)(13)(A); and

1 "(B) using the same water flow informa-
2 tion used to determine a historic average an-
3 nual generation baseline for the hydroelectric
4 facility, as certified by the Commission.
5 "(6) GENERATION FROM MIXED RENEWABLE
6 AND NONRENEWABLE RESOURCES.—If electricity is
7 generated using both a renewable energy resource or
8 other qualifying energy resource and an energy
9 source that is not a renewable energy resource or
10 other qualifying energy resource (as, for example, in
11 the case of co-firing of renewable biomass and fossil
12 fuel), the Commission shall issue Federal renewable
13 electricity credits based son the proportion of the
14 electricity that is attributable to the renewable en-
15 ergy resource or other qualifying energy resource.
16 "(7) PROHIBITION AGAINST DOUBLE-COUNT-
17 ING.—Except as provided in paragraph (4) of this
18 subsection, the Commission shall ensure that no
19 more than 1 Federal renewable electricity credit will
20 be issued for any megawatt hour of renewable elec-
21 tricity and that no Federal renewable electricity
22 credit will be used more than once for compliance
23 with this section.
24 "(8) TRADING.—The lawful holder of a Federal
25 renewable electricity credit may sell, exchange,

1 transfer, submit for compliance in accordance with
2 subsection (b), or submit such credit for retirement
3 by the Commission.

4 "(9) BANKING.—A Federal renewable elec-
5 tricity credit may be submitted in satisfaction of the
6 compliance obligation set forth in subsection (b) for
7 the compliance year in which the credit was issued
8 or for any subsequent compliance year.

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

14 "(f) ELECTRICITY SAVINGS.—

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

23 "(A) specify the types of energy efficiency
24 and energy conservation measures that can be
25 counted;

1 "(B) require that energy consumption esti-
2 mates for customer facilities or portions of fa-
3 cilities in the applicable base and current years
4 be adjusted, as appropriate, to account for
5 changes in weather, level of production, and
6 building area;
7 "(C) account for the useful life of meas-
8 ures;
9 "(D) include deemed savings values for
10 specific, commonly used measures;
11 "(E) allow for savings from a program to
12 be estimated based on extrapolation from a rep-
13 resentative sample of participating customers;
14 "(F) include procedures for counting CHP
15 savings, recycled energy savings, and fuel cell
16 savings;
17 "(G) avoid double-counting of savings used
18 for compliance with this section, including sav-
19 ings that are transferred pursuant to paragraph
20 (3);
21 "(H) ensure that, except as provided in
22 subparagraph (J), the retail electric supplier
23 claiming the savings played a significant role in
24 achieving the savings (including through the ac-

1 tivities of a designated agent of the supplier or
2 through the purchase of transferred savings);
3 "(I) include savings from programs admin-
4 istered by a retail electric supplier (or a retail
5 electricity distributor that is not a retail electric
6 supplier) that are funded by State, Federal, or
7 other sources; and
8 "(J) in any State in which the State regu-
9 latory authority has designated 1 or more enti-
10 ties to administer electric ratepayer-funded effi-
11 ciency programs approved by such State regu-
12 latory authority, provide that electricity savings
13 achieved through such programs shall be dis-
14 tributed equitably among retail electric sup-
15 pliers in accord with the direction of the rel-
16 evant State regulatory authority.
17 "(2) STANDARDS FOR THIRD-PARTY
18 VERIFICATION OF SAVINGS.—The regulations pro-
19 mulgated under this section shall establish proce-
20 dures and standards requiring third-party
21 verification of all reported electricity savings, includ-
22 ing requirements for accreditation of third-party
23 verifiers to ensure that such verifiers are profes-
24 sionally qualified and have no conflicts of interest.
25 "(3) TRANSFERS OF SAVINGS.—

1 "(A) BILATERAL CONTRACTS FOR SAVINGS
2 TRANSFERS.—Subject to the limitations of this
3 paragraph, a retail electric supplier may use
4 electricity savings transferred, pursuant to a bi-
5 lateral contract, from another retail electric
6 supplier, an owner of an electric distribution fa-
7 cility that is not a retail electric supplier, a
8 State, or a third-party efficiency provider to
9 meet the applicable compliance obligation under
10 subsection (b).
11 "(B) REQUIREMENTS.—Electricity savings
12 transferred and used for compliance pursuant
13 to this paragraph shall be—
14 "(i) measured and verified in accord-
15 ance with the procedures specified under
16 this subsection;
17 "(ii) reported in accordance with
18 paragraph (4) of this subsection; and
19 "(iii) achieved within the same State
20 as is served by the retail electric supplier.
21 "(C) REGULATORY APPROVAL.—Nothing
22 in this paragraph shall limit or affect the au-
23 thority of a State regulatory authority to re-
24 quire a retail electric supplier that is regulated
25 by such authority to obtain such authority's au-

1 thorization or approval of a contract for trans-
2 fer of savings under this paragraph.
3 "(4) REPORTING SAVINGS.—
4 "(A) REQUIREMENTS.—The regulations
5 promulgated under this section shall establish
6 requirements governing the submission of re-
7 ports to demonstrate, in accord with the proto-
8 cols and standards for measurement and third-
9 party verification established under this sub-
10 section, the total annual electricity savings
11 achieved by a retail electric supplier within the
12 relevant year.
13 "(B) REVIEW AND APPROVAL.—The Com-
14 mission shall review each report submitted to
15 the Commission by a retail electric supplier and
16 shall exclude any electricity savings that have
17 not been adequately demonstrated in accord-
18 ance with the requirements of this subsection.
19 "(5) STATE ADMINISTRATION.—
20 "(A) DELEGATION OF AUTHORITY.—Upon
21 receipt of an application from the Governor of
22 a State (including, for purposes of this sub-
23 section, the Mayor of the District of Columbia),
24 the Commission may delegate to the State the
25 authority to review and verify reported elec-

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

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

23 "(C) REVIEW OF STATE IMPLEMENTA-
24 TION.—The Commission shall periodically re-
25 view State implementation of delegated author-

1 ity under this paragraph to ensure conformance
2 with the requirements of this section. The Com-
3 mission may, at any time, revoke the delegation
4 of authority under this section upon a finding
5 that the State is not implementing its delegated
6 responsibilities in conformity with this para-
7 graph. As a condition of maintaining its dele-
8 gated authority under this paragraph, the Com-
9 mission may require a State to submit a revised
10 application under subparagraph (A) if the Com-
11 mission has—
12 "(i) promulgated new or substantially
13 revised measurement and verification pro-
14 cedures and standards under this sub-
15 section; or
16 "(ii) otherwise substantially revised
17 the program established under this section.
18 "(g) ALTERNATIVE COMPLIANCE PAYMENTS.—
19 "(1) IN GENERAL.—A retail electric supplier
20 may satisfy the requirements of subsection (b) in
21 whole or in part by submitting in accord with this
22 subsection, in lieu of each Federal renewable elec-
23 tricity credit or megawatt hour of demonstrated
24 total annual electricity savings that would otherwise
25 be due, a payment equal to $25, adjusted for infla-

1 tion on January 1 of each year following calendar
2 year 2009, in accord with such regulations as the
3 Commission may promulgate.
4 "(2) PAYMENT TO STATE FUNDS.—Payments
5 made under this subsection shall be made directly to
6 the State in which the retail electric supplier is lo-
7 cated, provided that such payments are deposited di-
8 rectly into a fund within the State's treasury for use
9 pursuant to paragraph (3).
10 "(3) STATE USE OF FUNDS.—States receiving
11 payments under this subsection shall use such funds
12 exclusively for the purposes of—
13 "(A) deploying technologies that generate
14 electricity from renewable energy resources; or
15 "(B) cost-effective energy efficiency meas-
16 ures and programs.
17 "(4) REPORTING.—Any State that receives a
18 payment under this subsection shall, within 12
19 months of receipt of such payment, provide a report
20 to the Commission giving a full accounting of the
21 use of such payments, including a detailed descrip-
22 tion of the activities funded thereby.
23 "(h) INFORMATION COLLECTION.—The Commission
24 may require any retail electric supplier, renewable elec-
25 tricity generator, or such other entities as the Commission

1 deems appropriate, to provide any information the Com-
2 mission determines appropriate to carry out this section.
3 Failure to submit such information or submission of false
4 or misleading information under this subsection shall be
5 a violation of this section.

6 "(i) ENFORCEMENT AND JUDICIAL REVIEW.—

7 "(1) FAILURE TO SUBMIT CREDITS OR DEM-
8 ONSTRATE SAVINGS.—If any person fails to comply
9 with the requirements of subsection (b) or (g), such
10 person shall be liable to pay to the Commission a
11 civil penalty equal to the product of—

12 "(A) double the alternative compliance
13 payment calculated under subsection (g)(1),
14 and

15 "(B) the aggregate quantity of Federal re-
16 newable electricity credits, total annual elec-
17 tricity savings, or equivalent alternative compli-
18 ance payments that the person failed to submit
19 in violation of the requirements of subsections
20 (b) and (g).

21 "(2) ENFORCEMENT.—The Secretary shall as-
22 sess a civil penalty under paragraph (1) in accord-
23 ance with the procedures described in section 31(d)
24 of the Federal Power Act (16 U.S.C. 823b(d)).

1 "(3) VIOLATION OF REQUIREMENT OF REGULA-
2 TIONS OR ORDERS.—Any person who violates, or
3 fails or refuses to comply with, any requirement of
4 a regulation promulgated or order issued under this
5 section shall be subject to a civil penalty under sec-
6 tion 316A(b) of the Federal Power Act. Such pen-
7 alty shall be assessed by the Commission in the
8 same manner as in the case of a violation referred
9 to in section 316A(b) of such Act.
10 "(j) JUDICIAL REVIEW.—Any person aggrieved by a
11 final action taken by the Commission under this section,
12 other than the assessment of a civil penalty under sub-
13 section (i), may use the procedures for review described
14 in section 313 of the Federal Power Act (16 U.S.C. 825l).
15 For purposes of this paragraph, references to an order in
16 section 313 of such Act shall be deemed to refer also to
17 all other final actions of the Commission under this section
18 other than the assessment of a civil penalty under sub-
19 section (i).
20 "(k) SAVINGS PROVISIONS.—Nothing in this section
21 shall—
22 "(1) diminish or qualify any authority of a
23 State or political subdivision of a State to—
24 "(A) adopt or enforce any law or regula-
25 tion respecting renewable electricity or energy

1 efficiency, including any law or regulation es-
2 tablishing requirements more stringent than
3 those established by this section, provided that
4 no such law or regulation may relieve any per-
5 son of any requirement otherwise applicable
6 under this section; or
7 "(B) regulate the acquisition and disposi-
8 tion of Federal renewable electricity credits by
9 retail electric suppliers within the jurisdiction of
10 such State or political subdivision, including the
11 authority to require such retail electric supplier
12 to acquire and submit to the Secretary for re-
13 tirement Federal renewable electricity credits in
14 excess of those submitted under this section; or
15 "(2) affect the application of, or the responsi-
16 bility for compliance with, any other provision of law
17 or regulation, including environmental and licensing
18 requirements.
19 "(l) SUNSET.—This section expires on December 31,
20 2040.".
21 (b) CONFORMING AMENDMENT.—The table of con-
22 tents set forth in section 1(b) of the Public Utility Regu-
23 latory Policies Act of 1978 (16 U.S.C. 2601 and following)
24 is amended by inserting after the item relating to section
25 609 the following:

"Sec. 610. Combined efficiency and renewable electricity standard.".

Subtitle B—Carbon Capture and Sequestration

SEC. 111. NATIONAL STRATEGY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the heads of such other relevant Federal agencies as the President may designate, shall submit to Congress a report setting forth a unified and comprehensive strategy to address the key legal, regulatory and other barriers to the commercial-scale deployment of carbon capture and sequestration.

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

(1) identify those regulatory, legal, and other gaps and barriers that could be addressed by a Federal agency using existing statutory authority, those, if any, that require Federal legislation, and those that would be best addressed at the State or regional level;

(2) identify regulatory implementation challenges, including those related to approval of State programs and delegation of authority for permitting; and

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

4 **SEC. 112. REGULATIONS FOR GEOLOGIC SEQUESTRATION**
5 **SITES.**

6 (a) COORDINATED CERTIFICATION AND PERMITTING
7 PROCESS.—Title VIII of the Clean Air Act, as added by
8 section 331 of this Act, is amended by adding after section
9 812 (as added by section 116 of this Act) the following:

10 **"SEC. 813. GEOLOGIC SEQUESTRATION SITES.**

11 "(a) COORDINATED PROCESS.—The Administrator
12 shall establish a coordinated approach to certifying and
13 permitting geologic sequestration, taking into consider-
14 ation all relevant statutory authorities. In establishing
15 such approach, the Administrator shall—

16 "(1) take into account, and reduce redundancy
17 with, the requirements of section 1421 of the Safe
18 Drinking Water Act (42 U.S.C. 300h), as amended
19 by section 112(b) of the American Clean Energy and
20 Security Act of 2009, including the rulemaking for
21 geologic sequestration wells described at 73 Fed.
22 Reg. 43491-541 (July 25, 2008); and

23 "(2) to the extent practicable, reduce the bur-
24 den on certified entities and implementing authori-
25 ties.

1 "(b) REGULATIONS.—Not later than 2 years after
2 the date of enactment of this title, the Administrator shall
3 promulgate regulations to protect human health and the
4 environment by minimizing the risk of escape to the at-
5 mosphere of carbon dioxide injected for purposes of geo-
6 logic sequestration.
7 "(c) REQUIREMENTS.—The regulations under sub-
8 section (b) shall include—
9 "(1) a process to obtain certification for geo-
10 logic sequestration under this section; and
11 "(2) requirements for—
12 "(A) monitoring, record keeping, and re-
13 porting for emissions associated with injection
14 into, and escape from, geologic sequestration
15 sites, taking into account any requirements or
16 protocols developed under section 713;
17 "(B) public participation in the certifi-
18 cation process that maximizes transparency;
19 "(C) the sharing of data between States,
20 Indian tribes, and the Environmental Protec-
21 tion Agency; and
22 "(D) other elements or safeguards nec-
23 essary to achieve the purpose set forth in sub-
24 section (b).

1 "(d) REPORT.—Not later than 2 years after the pro-
2 mulgation of regulations under subsection (b), and at 3-
3 year intervals thereafter, the Administrator shall deliver
4 to the Committee on Energy and Commerce of the House
5 of Representatives and the Committee on Environment
6 and Public Works of the Senate a report on geologic se-
7 questration in the United States, and, to the extent rel-
8 evant, other countries in North America. Such report shall
9 include—
10 "(1) data regarding injection, emissions to the
11 atmosphere, if any, and performance of active and
12 closed geologic sequestration sites, including those
13 where enhanced hydrocarbon recovery operations
14 occur;
15 "(2) an evaluation of the performance of rel-
16 evant Federal environmental regulations and pro-
17 grams in ensuring environmentally protective geo-
18 logic sequestration practices;
19 "(3) recommendations on how such programs
20 and regulations should be improved or made more
21 effective; and
22 "(4) other relevant information.".
23 (b) SAFE DRINKING WATER ACT STANDARDS.—Sec-
24 tion 1421 of the Safe Drinking Water Act (42 U.S.C.

1 300h) is amended by inserting after subsection (d) the fol-
2 lowing:
3 "(e) CARBON DIOXIDE GEOLOGIC SEQUESTRATION
4 WELLS.—
5 "(1) IN GENERAL.—Not later than 1 year after
6 the date of enactment of this subsection, the Admin-
7 istrator shall promulgate regulations under sub-
8 section (a) for carbon dioxide geologic sequestration
9 wells.
10 "(2) FINANCIAL RESPONSIBILITY.—The regula-
11 tions referred to in paragraph (1) shall include re-
12 quirements for maintaining evidence of financial re-
13 sponsibility, including financial responsibility for
14 emergency and remedial response, well plugging, site
15 closure, and post-injection site care. Financial re-
16 sponsibility may be established for carbon dioxide
17 geologic sequestration wells in accordance with regu-
18 lations promulgated by the Administrator by any
19 one, or any combination, of the following: insurance,
20 guarantee, trust, standby trust, surety bond, letter
21 of credit, qualification as a self-insurer, or any other
22 method satisfactory to the Administrator.".
23 **SEC. 113. STUDIES AND REPORTS.**
24 (a) STUDY OF LEGAL FRAMEWORK FOR GEOLOGIC
25 SEQUESTRATION SITES.—

1 (1) ESTABLISHMENT OF TASK FORCE.—As
2 soon as practicable, but not later than 6 months
3 after the date of enactment of this Act, the Adminis-
4 trator of the Environmental Protection Agency shall
5 establish a task force to be composed of an equal
6 number of subject matter experts, nongovernmental
7 organizations with expertise in environmental policy,
8 academic experts with expertise in environmental
9 law, State officials with environmental expertise,
10 representatives of State Attorneys General, and
11 members of the private sector, to conduct a study
12 of—
13 (A) existing Federal environmental stat-
14 utes, State environmental statutes, and State
15 common law that apply to geologic sequestra-
16 tion sites for carbon dioxide, including the abil-
17 ity of such laws to serve as risk management
18 tools;
19 (B) the existing statutory framework, in-
20 cluding Federal and State laws, that apply to
21 harm and damage to the environment or public
22 health at closed sites where carbon dioxide in-
23 jection has been used for enhanced hydrocarbon
24 recovery;

1 (C) the statutory framework, environ-
2 mental health and safety considerations, imple-
3 mentation issues, and financial implications of
4 potential models for Federal, State, or private
5 sector assumption of liabilities and financial re-
6 sponsibilities with respect to closed geologic se-
7 questration sites;
8 (D) private sector mechanisms, including
9 insurance and bonding, that may be available to
10 manage environmental, health and safety risk
11 from closed geologic sequestration sites; and
12 (E) the subsurface mineral rights, water
13 rights, or property rights issues associated with
14 geologic sequestration of carbon dioxide.
15 (2) REPORT.—Not later than 18 months after
16 the date of enactment of this Act, the task force es-
17 tablished under paragraph (1) shall submit to Con-
18 gress a report describing the results of the study
19 conducted under that paragraph including any con-
20 sensus recommendations of the task force.
21 (b) ENVIRONMENTAL STATUTES.—
22 (1) STUDY.—The Administrator of the Envi-
23 ronmental Protection Agency shall conduct a study
24 examining how, and under what circumstances, the
25 environmental statutes for which the Environmental

1 Protection Agency has responsibility would apply to
2 carbon dioxide injection and geologic sequestration
3 activities.

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

8 **SEC. 114. CARBON CAPTURE AND SEQUESTRATION DEM-**
9 **ONSTRATION AND EARLY DEPLOYMENT PRO-**
10 **GRAM.**

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

12 (1) SECRETARY.—The term "Secretary" means
13 the Secretary of Energy.

14 (2) DISTRIBUTION UTILITY.—The term "dis-
15 tribution utility" means an entity that distributes
16 electricity directly to retail consumers under a legal,
17 regulatory, or contractual obligation to do so.

18 (3) ELECTRIC UTILITY.—The term "electric
19 utility" has the meaning provided by section 3(22)
20 of the Federal Power Act (16 U.S.C. 796(22)).

21 (4) FOSSIL FUEL-BASED ELECTRICITY.—The
22 term "fossil fuel-based electricity" means electricity
23 that is produced from the combustion of fossil fuels.

1 (5) FOSSIL FUEL.—The term "fossil fuel"
2 means coal, petroleum, natural gas or any derivative
3 of coal, petroleum, or natural gas.
4 (6) CORPORATION.—The term "Corporation"
5 means the Carbon Storage Research Corporation es-
6 tablished in accordance with this section.
7 (7) QUALIFIED INDUSTRY ORGANIZATION.—The
8 term "qualified industry organization" means the
9 Edison Electric Institute, the American Public
10 Power Association, the National Rural Electric Co-
11 operative Association, a successor organization of
12 such organizations, or a group of owners or opera-
13 tors of distribution utilities delivering fossil fuel-
14 based electricity who collectively represent at least
15 20 percent of the volume of fossil fuel-based elec-
16 tricity delivered by distribution utilities to consumers
17 in the United States.
18 (8) RETAIL CONSUMER.—The term "retail con-
19 sumer" means an end-user of electricity.
20 (b) CARBON STORAGE RESEARCH CORPORATION.—
21 (1) ESTABLISHMENT.—
22 (A) REFERENDUM.—Qualified industry or-
23 ganizations may conduct, at their own expense,
24 a referendum among the owners or operators of
25 distribution utilities delivering fossil fuel-based

1 electricity for the creation of a Carbon Storage
2 Research Corporation. Such referendum shall
3 be conducted by an independent auditing firm
4 agreed to by the qualified industry organiza-
5 tions. Voting rights in such referendum shall be
6 based on the quantity of fossil fuel-based elec-
7 tricity delivered to consumers in the previous
8 calendar year or other representative period as
9 determined by the Secretary pursuant to sub-
10 section (f). Upon approval of those persons rep-
11 resenting two-thirds of the total quantity of fos-
12 sil fuel-based electricity delivered to retail con-
13 sumers, the Corporation shall be established un-
14 less opposed by the State regulatory authorities
15 pursuant to subparagraph (B). All distribution
16 utilities voting in the referendum shall certify to
17 the independent auditing firm the quantity of
18 fossil fuel-based electricity represented by their
19 vote.
20 (B) STATE REGULATORY AUTHORITIES.—
21 Upon its own motion or the petition of a quali-
22 fied industry organization, each State regu-
23 latory authority shall consider its support or op-
24 position to the creation of the Corporation
25 under subparagraph (A). State regulatory au-

1 thorities may notify the independent auditing
2 firm referred to in subparagraph (A) of their
3 views on the creation of the Corporation within
4 180 days after the date of enactment of this
5 Act. If 40 percent or more of the State regu-
6 latory authorities submit to the independent au-
7 diting firm written notices of opposition, the
8 Corporation shall not be established notwith-
9 standing the approval of the qualified industry
10 organizations as provided in subparagraph (A).
11 (2) TERMINATION.—The Corporation shall be
12 authorized to collect assessments and conduct oper-
13 ations pursuant to this section for a 10-year period
14 from the date 6 months after the date of enactment
15 of this Act. After such 10-year period, the Corpora-
16 tion is no longer authorized to collect assessments
17 and shall be dissolved on the date 15 years after
18 such date of enactment, unless the period is ex-
19 tended by an Act of Congress.
20 (3) GOVERNANCE.—The Corporation shall oper-
21 ate as a division or affiliate of the Electric Power
22 Research Institute (referred to in this section as
23 "EPRI") and be managed by a Board of not more
24 than 15 voting members responsible for its oper-
25 ations, including compliance with this section. EPRI,

1 in consultation with the Edison Electric Institute,
2 the American Public Power Association and the Na-
3 tional Rural Electric Cooperative Association shall
4 appoint the Board members under clauses (i), (ii),
5 and (iii) of subparagraph (A) from among can-
6 didates recommended by those organizations. At
7 least a majority of the Board members appointed by
8 EPRI shall be representatives of distribution utilities
9 subject to assessments under subsection (d).
10 (A) MEMBERS.—The Board shall include
11 at least one representative of each of the fol-
12 lowing:
13 (i) Investor-owned utilities.
14 (ii) Utilities owned by a State agency
15 or a municipality.
16 (iii) Rural electric cooperatives.
17 (iv) Fossil fuel producers.
18 (v) Non-profit environmental organi-
19 zations.
20 (vi) Independent generators or whole-
21 sale power providers.
22 (vii) Consumer groups.
23 (B) NONVOTING MEMBERS.—The Board
24 shall also include as additional non-voting Mem-
25 bers the Secretary of Energy or his designee

1 and 2 representatives of State regulatory au-
2 thorities as defined in section 3(17) of the Pub-
3 lic Utility Regulatory Policies Act of 1978 (16
4 U.S.C. 2602(17)), each designated by the Na-
5 tional Association of State Regulatory Utility
6 Commissioners from States that are not within
7 the same transmission interconnection.
8 (4) COMPENSATION.—Corporation Board mem-
9 bers shall receive no compensation for their services,
10 nor shall Corporation Board members be reimbursed
11 for expenses relating to their service.
12 (5) TERMS.—Corporation Board members shall
13 serve terms of 4 years and may serve not more than
14 2 full consecutive terms. Members filling unexpired
15 terms may serve not more than a total of 8 consecu-
16 tive years. Former members of the Corporation
17 Board may be reappointed to the Corporation Board
18 if they have not been members for a period of 2
19 years. Initial appointments to the Corporation Board
20 shall be for terms of 1, 2, 3, and 4 years, staggered
21 to provide for the selection of 3 members each year.
22 (6) STATUS OF CORPORATION.—The Corpora-
23 tion shall not be considered to be an agency, depart-
24 ment, or instrumentality of the United States, and
25 no officer or director or employee of the Corporation

1 shall be considered to be an officer or employee of
2 the United States Government, for purposes of title
3 5 or title 31 of the United States Code, or for any
4 other purpose, and no funds of the Corporation shall
5 be treated as public money for purposes of chapter
6 33 of title 31, United States Code, or for any other
7 purpose.

8 (c) FUNCTIONS AND ADMINISTRATION OF THE COR-
9 PORATION.—

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

22 (2) PURPOSE.—The purposes of the grants,
23 contracts, and assistance under this subsection shall
24 be to support commercial-scale demonstrations of
25 carbon capture or storage technology projects capa-

1 ble of advancing the technologies to commercial
2 readiness. Such projects should encompass a range
3 of different coal and other fossil fuel varieties, be
4 geographically diverse, involve diverse storage media,
5 and employ capture or storage, or capture and con-
6 version, technologies potentially suitable either for
7 new or for retrofit applications. The Corporation
8 shall seek, to the extent feasible, to support at least
9 5 commercial-scale demonstration projects inte-
10 grating carbon capture and sequestration or conver-
11 sion technologies.

12 (3) ELIGIBLE ENTITIES.—Entities eligible for
13 grants, contracts or assistance under this subsection
14 may include distribution utilities, electric utilities
15 and other private entities, academic institutions, na-
16 tional laboratories, Federal research agencies, State
17 research agencies, non-profit organizations, or con-
18 sortiums of 2 or more entities. Pilot-scale and simi-
19 lar small-scale projects are not eligible for support
20 by the Corporation. Owners or developers of projects
21 supported by the Corporation shall, where appro-
22 priate, share in the costs of such projects.

23 (4) GRANTS FOR EARLY MOVERS.—Fifty per-
24 cent of the funds raised under this section shall be
25 provided in the form of grants to electric utilities

1 that had, prior to the award of any grant under this
2 section, committed resources to deploy a large scale
3 electricity generation unit with integrated carbon
4 capture and sequestration or conversion applied to a
5 substantial portion of the unit's carbon dioxide emis-
6 sions. Grant funds shall be provided to defray costs
7 incurred by such electricity utilities for at least 5
8 such electricity generation units.

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

1 award grants, contracts and assistance competi-
2 tively, on the basis of merit, after the establishment
3 of procedures that provide for scientific peer review
4 by the Technical Advisory Committee. The Board
5 shall give preference to applications that reflect the
6 best overall value and prospect for achieving the
7 purposes of the section, such as those which dem-
8 onstrate an integrated approach for capture and
9 storage or capture and conversion technologies. The
10 Board members shall not participate in making
11 grants or awards to entities with whom they are af-
12 filiated.

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

23 (7) INTELLECTUAL PROPERTY.—The Board
24 shall establish policies regarding the ownership of in-
25 tellectual property developed as a result of Corpora-

1 tion grants and other forms of technology support.
2 Such policies shall encourage individual ingenuity
3 and invention.

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

10 (9) PROGRAMS AND BUDGET.—Before August 1
11 each year, the Corporation, after consulting with the
12 Technical Advisory Committee and the Secretary
13 and the Director of the Department's National En-
14 ergy Technology Laboratory and other interested
15 parties to obtain advice and recommendations, shall
16 publish for public review and comment its proposed
17 plans, programs, project selection criteria, and
18 projects to be funded by the Corporation for the
19 next calendar year. The Corporation shall also pub-
20 lish for public review and comment a budget plan for
21 the next calendar year, including the probable costs
22 of all programs, projects, and contracts and a rec-
23 ommended rate of assessment sufficient to cover
24 such costs. The Secretary may recommend program
25 and activities the Secretary considers appropriate.

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

1 (11) PUBLIC ACCESS.—The Corporation
2 Board's meetings shall be open to the public and
3 shall occur after at least 30 days advance public no-
4 tice. Meetings of the Board of Directors may be
5 closed to the public where the agenda of such meet-
6 ings includes only confidential matters pertaining to
7 project selection, the award of grants or contracts,
8 personnel matter, or the receipt of legal advice. The
9 minutes of all meetings of the Corporation shall be
10 made available to and readily accessible by the pub-
11 lic.
12 (12) ANNUAL REPORT.—Each year the Cor-
13 poration shall prepare and make publicly available a
14 report which includes an identification and descrip-
15 tion of all programs and projects undertaken by the
16 Corporation during the previous year. The report
17 shall also detail the allocation or planned allocation
18 of Corporation resources for each such program and
19 project. The Corporation shall provide its annual re-
20 port to the Congress, the Secretary, each State regu-
21 latory authority, and upon request to the public. The
22 Secretary shall, not less than 60 days after receiving
23 such report, provide to the President and Congress
24 a report assessing the progress of the Corporation in
25 meeting the objectives of this section.

1 (d) ASSESSMENTS.—

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

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

19 (2) INVESTMENT OF FUNDS.—Pending dis-
20 bursement pursuant to a program, plan, or project,
21 the Corporation may invest funds collected through
22 assessments under this subsection, and any other

1 funds received by the Corporation, only in obliga-
2 tions of the United States or any agency thereof, in
3 general obligations of any State or any political sub-
4 division thereof, in any interest-bearing account or
5 certificate of deposit of a bank that is a member of
6 the Federal Reserve System, or in obligations fully
7 guaranteed as to principal and interest by the
8 United States.

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

20 (e) ERCOT.—

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

1 (i) levied directly on qualified scheduling
2 entities, or their successor entities;
3 (ii) charged consistent with other charges
4 imposed on qualified scheduling entities as a fee
5 on energy used by the load-serving entities; and
6 (iii) collected and remitted by ERCOT to
7 the Corporation in the amounts and in the
8 same manner as set forth in subsection (d).
9 (B) The assessment amounts referred to in sub-
10 paragraph (A) shall be—
11 (i) determined by the amount and types of
12 fossil fuel-based electricity delivered directly to
13 all retail customers in the prior calendar year
14 beginning with the year ending immediately
15 prior to the period described in subsection
16 (b)(1); and
17 (ii) take into account the number of renew-
18 able energy credits retired by the load-serving
19 entities represented by a qualified scheduling
20 entity within the prior calendar year.
21 (2) ADMINISTRATION EXPENSES.—Up to 1 per-
22 cent of the funds collected in any fiscal year by
23 ERCOT under the provisions of this subsection may
24 be used for the administrative expenses incurred in

1 the determination, collection and remittance of the
2 assessments to the Corporation.
3 (3) AUDIT.—ERCOT shall provide a copy of its
4 annual audit pertaining to the administration of the
5 provisions of this subsection to the Corporation.
6 (4) DEFINITIONS.—For the purposes of this
7 subsection:
8 (A) The term "ERCOT" means the Elec-
9 tric Reliability Council of Texas.
10 (B) The term "load-serving entities" has
11 the meaning adopted by ERCOT Protocols and
12 in effect on the date of enactment of this Act.
13 (C) The term "qualified scheduling enti-
14 ties" has the meaning adopted by ERCOT Pro-
15 tocols and in effect on the date of enactment of
16 this Act.
17 (D) The term "renewable energy credit"
18 has the meaning as promulgated and adopted
19 by the Public Utility Commission of Texas pur-
20 suant to section 39.904(b) of the Public Utility
21 Regulatory Act of 1999, and in effect on the
22 date of enactment of this Act.
23 (f) DETERMINATION OF FOSSIL FUEL-BASED ELEC-
24 TRICITY DELIVERIES.—
25 (1) FINDINGS.—The Congress finds that:

1 (A) The assessments under subsection (d)
2 are to be collected based on the amount of fossil
3 fuel-based electricity delivered by each distribu-
4 tion utility.
5 (B) Since many distribution utilities pur-
6 chase all or part of their retail consumer's elec-
7 tricity needs from other entities, it may not be
8 practical to determine the precise fuel mix for
9 the power sold by each individual distribution
10 utility.
11 (C) It may be necessary to use average
12 data, often on a regional basis with reference to
13 Regional Transmission Organization ("RTO")
14 or NERC regions, to make the determinations
15 necessary for making assessments.
16 (2) DOE PROPOSED RULE.—The Secretary,
17 acting in close consultation with the Energy Infor-
18 mation Administration, shall issue for notice and
19 comment a proposed rule to determine the level of
20 fossil fuel electricity delivered to retail customers by
21 each distribution utility in the United States during
22 the most recent calendar year or other period deter-
23 mined to be most appropriate. Such proposed rule
24 shall balance the need to be efficient, reasonably pre-
25 cise, and timely, taking into account the nature and

1 cost of data currently available and the nature of
2 markets and regulation in effect in various regions
3 of the country. Different methodologies may be ap-
4 plied in different regions if appropriate to obtain the
5 best balance of such factors.

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

21 (4) ANNUAL DETERMINATIONS.—Pursuant to
22 the final rule issued under paragraph (3), the Sec-
23 retary shall make annual determinations of the
24 amounts and types for each such utility and publish
25 such determinations in the Federal Register. Such

1 determinations shall be used to conduct the ref-
2 erendum under subsection (b) and by the Corpora-
3 tion in applying any assessment under this sub-
4 section.

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

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

1 (h) MIDCOURSE REVIEW.—Not later than 5 years
2 following establishment of the Corporation, the Comp-
3 troller General of the United States shall prepare an anal-
4 ysis, and report to Congress, assessing the Corporation's
5 activities, including project selection and methods of dis-
6 bursement of assessed fees, impacts on the prospects for
7 commercialization of carbon capture and storage tech-
8 nologies, adequacy of funding, and administration of
9 funds. The report shall also make such recommendations
10 as may be appropriate in each of these areas. The Cor-
11 poration shall reimburse the Government Accountability
12 Office for the costs associated with performing this mid-
13 course review.
14 (i) RECOVERY OF COSTS.—
15 (1) IN GENERAL.—A distribution utility whose
16 transmission, delivery, or sales of electric energy are
17 subject to any form of rate regulation shall not be
18 denied the opportunity to recover the full amount of
19 the prudently incurred costs associated with com-
20 plying with this section, consistent with applicable
21 State or Federal law.
22 (2) RATEPAYER REBATES.—Regulatory authori-
23 ties that approve cost recovery pursuant to para-
24 graph (1) may order rebates to ratepayers to the ex-
25 tent that distribution utilities are reimbursed

1 undedicated or unassigned balances pursuant to sub-
2 section (d)(3).
3 (j) TECHNICAL ADVISORY COMMITTEE.—
4 (1) ESTABLISHMENT.—There is established an
5 advisory committee, to be known as the "Technical
6 Advisory Committee".
7 (2) MEMBERSHIP.—The Technical Advisory
8 Committee shall be comprised of not less than 7
9 members appointed by the Board from among aca-
10 demic institutions, national laboratories, independent
11 research institutions, and other qualified institu-
12 tions. No member of the Committee shall be affili-
13 ated with EPRI or with any organization having
14 members serving on the Board. At least one member
15 of the Committee shall be appointed from among of-
16 ficers or employees of the Department of Energy
17 recommended to the Board by the Secretary of En-
18 ergy.
19 (3) CHAIRPERSON AND VICE CHAIRPERSON.—
20 The Board shall designate one member of the Tech-
21 nical Advisory Committee to serve as Chairperson of
22 the Committee and one to serve as Vice Chairperson
23 of the Committee.
24 (4) COMPENSATION.—The Board shall provide
25 compensation to members of the Technical Advisory

1 Committee for travel and other incidental expenses
2 and such other compensation as the Board deter-
3 mines to be necessary.

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

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

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

24 (6) PUBLIC AVAILABILITY.—All reports, evalua-
25 tions, and other materials of the Technical Advisory

1 Committee shall be made available to the public by
2 the Board, without charge, at time of receipt by the
3 Board.

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

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

16 **SEC. 115. COMMERCIAL DEPLOYMENT OF CARBON CAP-**
17 **TURE AND SEQUESTRATION TECHNOLOGIES.**

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

1 (b) ELIGIBILITY CRITERIA.—To be eligible to receive
2 emission allowances under this section, the owner of a
3 project must—
4 (1) implement carbon capture and sequestration
5 technology—
6 (A) at an electric generating unit that—
7 (i) has a nameplate capacity of 200
8 megawatts or more;
9 (ii) derives at least 50 percent of its
10 annual fuel input from coal, petroleum
11 coke, or any combination of these 2 fuels;
12 and
13 (iii) upon implementation of capture
14 and sequestration technology, will capture
15 and permanently sequester at least 50 per-
16 cent of the carbon dioxide, measured on an
17 annual basis, that would be emitted by the
18 unit absent capture and sequestration
19 technology; or
20 (B) at an industrial source that—
21 (i) injects for sequestration not less
22 than 50,000 tons per year of carbon diox-
23 ide;
24 (ii) upon implementation, will capture
25 and permanently sequester at least 50 per-

1 cent of the carbon dioxide produced by the
2 source, measured on an annual basis, that
3 would be emitted in the absence of capture
4 and sequestration technology; and
5 (iii) does not produce a liquid trans-
6 portation fuel from a solid fossil-based
7 feedstock;
8 (2) permanently sequester carbon dioxide at a
9 site that meets all applicable permitting and certifi-
10 cation requirements for geologic sequestration, or,
11 pursuant to such requirements as the Administrator
12 may prescribe by regulation, convert captured car-
13 bon dioxide to a stable form that will safely and per-
14 manently sequester such carbon dioxide;
15 (3) meet all other applicable State and Federal
16 permitting requirements; and
17 (4) be located in the United States.
18 (c) PHASE I DISTRIBUTION TO ELECTRIC GENER-
19 ATING UNITS.—
20 (1) APPLICATION.—This subsection shall apply
21 only to projects at the first 6 gigawatts of electric
22 generating units, measured in cumulative generating
23 capacity of such units.
24 (2) DISTRIBUTION.—The Administrator shall
25 distribute emission allowances allocated under sec-

1 tion 782(a)(f) to each eligible project at an electric
2 generating unit in a quantity equal to the quotient
3 obtained by dividing—
4 (A) the product obtained by multiplying—
5 (i) the number of metric tons of car-
6 bon dioxide emissions avoided through cap-
7 ture and sequestration of emissions by the
8 project, as determined pursuant to such
9 methodology as the Administrator shall
10 prescribe by regulation; and
11 (ii) a bonus allowance value, pursuant
12 to paragraph (3); by
13 (B) the average fair market value of an
14 emission allowance during the preceding year.
15 (3) BONUS ALLOWANCE VALUES.—
16 (A) For a generating unit achieving the
17 capture and sequestration of 85 percent or
18 more of the carbon dioxide that otherwise would
19 be emitted by such unit, the bonus allowance
20 value shall be $90.
21 (B) The Administrator shall by regulation
22 establish a bonus allowance value for each rate
23 of lower capture and sequestration achieved by
24 a generating unit, from a minimum of $50 per
25 ton for a 50 percent rate and varying directly

with increasing rates of capture and sequestration up to $90 per ton for an 85 percent rate.

(C) For a generating unit that achieves the capture and sequestration of at least 50 percent of the carbon dioxide that otherwise would be emitted by such unit by not later than January 1, 2017, the otherwise applicable bonus allowance value under this paragraph shall be increased by $10, provided that the owner of such unit notifies the Administrator of its intent to achieve such rate of capture and sequestration by not later than January 1, 2012.

(D) For a carbon capture and sequestration project sequestering in a geological formation for purposes of enhanced hydrocarbon recovery, the Administrator shall, by regulation, reduce the applicable bonus allowance value under this paragraph to reflect the lower net cost of the project when compared to sequestration into geological formations solely for purposes of sequestration.

(E) All monetary values in this section shall be adjusted for inflation.

(d) PHASE II DISTRIBUTION TO ELECTRIC GENERATING UNITS.—

1 (1) APPLICATION.—This subsection shall apply
2 only to the distribution of emission allowances to
3 carbon capture and sequestration projects at electric
4 generating units after the capacity threshold identi-
5 fied in subsection (c)(1) is reached.
6 (2) REGULATIONS.—Not later than 2 years
7 prior to the date on which the capacity threshold
8 identified in subsection (c)(1) is projected to be
9 reached, the Administrator shall promulgate regula-
10 tions to govern the distribution of emission allow-
11 ances to eligible projects under this subsection.
12 (3) REVERSE AUCTIONS.—
13 (A) IN GENERAL.—Except as provided in
14 paragraph (4), the regulations promulgated
15 under paragraph (2) shall provide for the dis-
16 tribution of emission allowances to eligible
17 projects under this subsection through reverse
18 auctions, which shall be held no less frequently
19 than once each calendar year. The Adminis-
20 trator may establish a separate auction for each
21 of no more than 5 different project categories,
22 defined on the basis of coal type, capture tech-
23 nology, geological formation type, new unit
24 versus retrofit application, such other factors as
25 the Administrator may prescribe, or any com-

1 bination thereof. The Administrator may estab-
2 lish appropriate minimum rates of capture and
3 sequestration in implementing this paragraph.
4 (B) AUCTION PROCESS.—At each reverse
5 auction—
6 (i) the Administrator shall solicit bids
7 from eligible entities;
8 (ii) eligible entities participating in
9 the auction shall submit a bid including
10 the desired level of carbon dioxide seques-
11 tration incentive per ton and the estimated
12 quantity of carbon dioxide that the project
13 will permanently sequester over 10 years;
14 and
15 (iii) the Administrator shall select
16 bids, within each auction, for the seques-
17 tration amount submitted, beginning with
18 the eligible entity submitting the bid for
19 the lowest level of sequestration incentive
20 on a per ton basis and meeting such other
21 requirements as the Administrator may
22 specify, until the amount of funds available
23 for the reverse auction is committed.
24 (C) FORM OF DISTRIBUTION.—The Ad-
25 ministrator shall provide deployment incentives

1 to eligible entities selected through a reverse
2 auction under this paragraph pursuant to a for-
3 mula equivalent to that described in subsection
4 (c)(2), except that the incentive level that is bid
5 by the entity shall be substituted for the bonus
6 allowance value.
7 (4) ALTERNATIVE DISTRIBUTION METHOD.—
8 (A) IN GENERAL.—If the Administrator
9 determines that reverse auctions would not pro-
10 vide for efficient and cost-effective commercial
11 deployment of carbon capture and sequestration
12 technologies, the Administrator may instead,
13 through regulations promulgated under para-
14 graph (2) or (5), prescribe a schedule for the
15 award of bonus allowances to eligible projects
16 under this subsection, in accord with the re-
17 quirements of this paragraph.
18 (B) MULTIPLE TRANCHES.—The Adminis-
19 trator shall divide emission allowances available
20 for distribution to eligible projects into a series
21 of tranches, each supporting the deployment of
22 a specified quantity of cumulative electric gen-
23 erating capacity utilizing carbon capture and
24 sequestration technology, each of which shall
25 not be greater than 6 gigawatts.

1 (C) METHOD OF DISTRIBUTION.—The Ad-
2 ministrator shall distribute emission allowances
3 within each tranche, on a first-come, first-
4 served basis—
5 (i) based on the date of full-scale op-
6 eration of capture and sequestration tech-
7 nology; and
8 (ii) pursuant to a formula, similar to
9 that set forth in subsection (c)(2) (except
10 that the Administrator shall prescribe
11 bonus allowance values different than those
12 set forth in subsection (c)(2)), establishing
13 the number of allowances to be distributed
14 per ton of carbon dioxide permanently se-
15 questered by the project.
16 (D) REQUIREMENTS.—For each tranche
17 established pursuant to subparagraph (A), the
18 Administrator shall establish a schedule for dis-
19 tributing emission allowances that—
20 (i) is based on a sliding scale that
21 provides higher bonus allowance values for
22 projects achieving higher rates of capture
23 and sequestration;
24 (ii) for each capture and sequestration
25 rate, establishes a bonus allowance value

1 that is lower than that established for such
2 rate in the previous tranche (or, in the
3 case of the first tranche, than that estab-
4 lished for such rate under subsection
5 (c)(1)); and
6 (iii) may establish different bonus al-
7 lowance levels for no more than 5 different
8 project categories, defined by coal type,
9 capture technology, geological formation
10 type, new unit versus retrofit application,
11 such other factors as the Administrator
12 may prescribe, or any combination thereof.
13 (E) CRITERIA FOR ESTABLISHING BONUS
14 ALLOWANCE VALUES.—In setting bonus allow-
15 ance values under this paragraph, the Adminis-
16 trator shall seek to cover no more than the rea-
17 sonable incremental capital and operating costs
18 of a project that are attributable to implemen-
19 tation of carbon capture, transportation, and
20 sequestration technologies, taking into ac-
21 count—
22 (i) the reduced cost of compliance
23 with section 722 of this Act;
24 (ii) the reduced cost associated with
25 sequestering in a geological formation for

1 purposes of enhanced hydrocarbon recovery
2 when compared to sequestration into geo-
3 logical formations solely for purposes of se-
4 questration;
5 (iii) the relevant factors defining the
6 project category; and
7 (iv) such other factors as the Admin-
8 istrator determines are appropriate.
9 (5) REVISION OF REGULATIONS.—The Adminis-
10 trator shall review, and as appropriate revise, the
11 applicable regulations under this subsection no less
12 frequently than every 8 years.
13 (e) LIMITS FOR CERTAIN ELECTRIC GENERATING
14 UNITS.—
15 (1) DEFINITIONS.—For purposes of this sub-
16 section, the terms "covered EGU" and "initially per-
17 mitted" shall have the meaning given those terms in
18 section 812 of this Act.
19 (2) COVERED EGUS INITIALLY PERMITTED
20 FROM 2009 THROUGH 2015.—For a covered EGU
21 that is initially permitted on or after January 1,
22 2009, and before January 1, 2015, the Adminis-
23 trator shall reduce the quantity of emission allow-
24 ances that such covered EGU would otherwise be eli-

1 gible to receive under this section by the product
2 of—
3 (A) 20 percent; and
4 (B) the number of years between—
5 (i) the earlier of January 1, 2020, or
6 the date that is 5 years after the com-
7 mencement of operation of such covered
8 EGU; and
9 (ii) the first year that such covered
10 EGU achieves (and thereafter maintains)
11 the capture and permanent sequestration
12 of at least 50 percent of the carbon diox-
13 ide, measured on an annual basis, that
14 such covered EGU would emit in the ab-
15 sence of carbon capture and sequestration
16 technology.
17 (3) COVERED EGUS INITIALLY PERMITTED
18 FROM 2015 THROUGH 2020.—A covered EGU that is
19 initially permitted on or after January 1, 2015, and
20 before January 1, 2020, shall be ineligible to receive
21 emission allowances pursuant to this section if such
22 unit, upon commencement of operations or there-
23 after, does not achieve and maintain the capture and
24 permanent sequestration of at least 50 percent of
25 the carbon dioxide, measured on an annual basis,

1 that such covered EGU would emit in the absence
2 of capture and sequestration technology.
3 (f) INDUSTRIAL SOURCES.—
4 (1) ALLOWANCES.—The Administrator may
5 distribute not more than 15 percent of the allow-
6 ances allocated under section 782(a)(f) for any vin-
7 tage year to eligible industrial sources to support the
8 commercial-scale deployment of carbon capture and
9 sequestration technologies at such sources.
10 (2) DISTRIBUTION.—The Administrator shall,
11 by regulation, prescribe requirements for the dis-
12 tribution of emission allowances to industrial sources
13 under this subsection, based on a bonus allowance
14 formula that awards allowances to qualifying
15 projects on the basis of tons of carbon dioxide cap-
16 tured and permanently sequestered. The Adminis-
17 trator may provide for the distribution of emission
18 allowances pursuant to—
19 (A) a reverse auction method, similar to
20 that described under subsection (d)(3), includ-
21 ing the use of separate auctions for different
22 project categories; or
23 (B) an incentive schedule, similar to that
24 described under subsection (d)(4), which shall
25 ensure that incentives are set so as to satisfy

1 the requirement described in subsection
2 (d)(4)(E).
3 (3) REVISION OF REGULATIONS.—The Adminis-
4 trator shall review, and as appropriate revise, the
5 applicable regulations under this subsection no less
6 frequently than every 8 years.
7 (g) LIMITATIONS.—A qualifying project may receive
8 annual emission allowances under this section only for the
9 first 10 years of operation. No greater than 72 gigawatts
10 of total cumulative generating capacity (including indus-
11 trial applications, measured by such equivalent metric as
12 the Administrator may designate) may receive emission al-
13 lowances under this section. Upon reaching the limit de-
14 scribed in the preceding sentence, the Administrator shall
15 auction, pursuant to section 791, any emission allowances
16 that are allocated for carbon capture and sequestration de-
17 ployment under section 782(a)(f) and are not yet obligated
18 under this section.
19 (h) EXHAUSTION OF ACCOUNT AND ANNUAL ROLL-
20 OVER OF SURPLUS ALLOWANCES.—
21 (1) In distributing bonus allowances under this
22 subsection, the Administrator shall ensure that
23 qualifying projects receiving allowances receive dis-
24 tributions for 10 years.

1 (2) If the Administrator determines that the al-
2 lowances allocated under section 782(a)(f) with a
3 vintage year that matches the year of distribution
4 will 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). In determining compliance with this sub-
10 section, the Administrator shall assume an energy penalty
11 of the carbon dioxide capture system of no greater than
12 15 percent.
13 "(2) A covered EGU that is initially permitted after
14 January 1, 2009, and before January 1, 2020, shall, by
15 the applicable compliance date established under this
16 paragraph, shall achieve an emission limit that is a 50
17 percent reduction in emissions of the carbon dioxide pro-
18 duced by the unit, as measured on an annual basis. In
19 determining compliance with this subsection, the Adminis-
20 trator shall assume an energy penalty of the carbon diox-
21 ide capture system of no greater than 15 percent. Compli-
22 ance with the requirement set forth in this paragraph shall
23 be required by the earliest of the following:
24 "(A) Four years after the date the Adminis-
25 trator issues a determination that there are in com-

1 mercial operation in the United States electric gen-
2 erating units equipped with carbon capture and se-
3 questration technology that, in the aggregate—
4 "(i) have a total of at least 4 gigawatts of
5 nameplate generating capacity of which—
6 "(I) at least 3 gigawatts must be elec-
7 tric generating units; and
8 "(II) up to 1 gigawatt may be indus-
9 trial applications, for which capture and
10 sequestration of 3 million tons of carbon
11 dioxide per year on an aggregate
12 annualized basis shall be considered equiv-
13 alent to 1 gigawatt;
14 "(ii) include at least 2 electric generating
15 units, each with a nameplate generating capac-
16 ity of 250 megawatts or greater, that inject car-
17 bon dioxide into geologic formations other than
18 oil and gas fields; and
19 "(iii) are capturing and sequestering in the
20 aggregate at least 12 million tons of carbon di-
21 oxide per year, calculated on an aggregate
22 annualized basis.
23 "(B) January 1, 2025.
24 "(3) If the deadline for compliance with paragraph
25 (2) is January 1, 2025, the Administrator may extend the

1 deadline for compliance by a covered EGU by up to 18
2 months if the Administrator makes a determination, based
3 on a showing by the owner or operator of the unit, that
4 it will be technically infeasible for the unit to meet the
5 standard by the deadline. The owner or operator must
6 submit a request for such an extension by no later than
7 January 1, 2022, and the Administrator shall provide for
8 public notice and comment on the extension request.

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

21 **Subtitle C—Clean Transportation**

22 **SEC. 121. ELECTRIC VEHICLE INFRASTRUCTURE.**

23 (a) AMENDMENT OF PURPA.—Section 111(d) of the
24 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
25 2621(d)) is amended by adding at the end the following:

1 "(20) PLUG-IN ELECTRIC DRIVE VEHICLE IN-
2 FRASTRUCTURE.—
3 "(A) UTILITY PLAN FOR INFRASTRUC-
4 TURE.—Each electric utility shall develop a
5 plan to support the use of plug-in electric drive
6 vehicles, including heavy-duty hybrid electric ve-
7 hicles. The plan may provide for deployment of
8 electrical charging stations in public or private
9 locations, including street parking, parking ga-
10 rages, parking lots, homes, gas stations, and
11 highway rest stops. Any such plan may also in-
12 clude—
13 "(i) battery exchange, fast charging
14 infrastructure and other services;
15 "(ii) triggers for infrastructure de-
16 ployment based upon market penetration
17 of plug-in electric drive vehicles; and
18 "(iii) such other elements as the State
19 determines necessary to support plug-in
20 electric drive vehicles.
21 Each plan under this paragraph shall provide
22 for the deployment of the charging infrastruc-
23 ture or other infrastructure necessary to ade-
24 quately support the use of plug-in electric drive
25 vehicles.

1 "(B) SUPPORT REQUIREMENTS.—Each
2 State regulatory authority (in the case of each
3 electric utility for which it has ratemaking au-
4 thority) and each utility (in the case of a non-
5 regulated utility) shall—
6 "(i) require that charging infrastruc-
7 ture deployed is interoperable with prod-
8 ucts of all auto manufacturers to the ex-
9 tent possible; and
10 "(ii) consider adopting minimum re-
11 quirements for deployment of electrical
12 charging infrastructure and other appro-
13 priate requirements necessary to support
14 the use of plug-in electric drive vehicles.
15 "(C) COST RECOVERY.—Each State regu-
16 latory authority (in the case of each electric
17 utility for which it has ratemaking authority)
18 and each utility (in the case of a nonregulated
19 utility) shall consider whether, and to what ex-
20 tent, to allow cost recovery for plans and imple-
21 mentation of plans.
22 "(D) SMART GRID INTEGRATION.—The
23 State regulatory authority (in the case of each
24 electric utility for which it has ratemaking au-
25 thority) and each utility (in the case of a non-

1 regulated utility) shall, in accordance with regu-
2 lations issued by the Federal Energy Regu-
3 latory Commission pursuant to section 1305(d)
4 of the Energy Independence and Security Act
5 of 2007—
6 "(i) establish any appropriate proto-
7 cols and standards for integrating plug-in
8 electric drive vehicles into an electrical dis-
9 tribution system, including Smart Grid
10 systems and devices as described in title
11 XIII of the Energy Independence and Se-
12 curity Act of 2007;
13 "(ii) include, to the extent feasible,
14 the ability for each plug-in electric drive
15 vehicle to be identified individually and to
16 be associated with its owner's electric util-
17 ity account, regardless of the location that
18 the vehicle is plugged in, for purposes of
19 appropriate billing for any electricity re-
20 quired to charge the vehicle's batteries as
21 well as any crediting for electricity pro-
22 vided to the electric utility from the vehi-
23 cle's batteries; and
24 "(iii) review the determination made
25 in response to section 1252 of the Energy

1 Policy Act of 2005 in light of this section,
2 including whether time-of-use pricing
3 should be employed to enable the use of
4 plug-in electric drive vehicles to contribute
5 to meeting peak-load and ancillary service
6 power needs.".
7 (b) COMPLIANCE.—
8 (1) TIME LIMITATIONS.—Section 112(b) of the
9 Public Utility Regulatory Policies Act of 1978 (16
10 U.S.C. 2622(b)) is amended by adding the following
11 at the end thereof:
12 "(7)(A) Not later than 3 years after the date
13 of enactment of this paragraph, each State regu-
14 latory authority (with respect to each electric utility
15 for which it has ratemaking authority) and each
16 nonregulated utility shall commence the consider-
17 ation referred to in section 111, or set a hearing
18 date for consideration, with respect to the standard
19 established by paragraph (20) of section 111(d).
20 "(B) Not later than 4 years after the date of
21 enactment of the this paragraph, each State regu-
22 latory authority (with respect to each electric utility
23 for which it has ratemaking authority), and each
24 nonregulated electric utility, shall complete the con-
25 sideration, and shall make the determination, re-

1 ferred to in section 111 with respect to the standard
2 established by paragraph (20) of section 111(d).".
3 (2) FAILURE TO COMPLY.—Section 112(c) of
4 the Public Utility Regulatory Policies Act of 1978
5 (16 U.S.C. 2622(c)) is amended by adding the fol-
6 lowing at the end: "In the case of the standards es-
7 tablished by paragraph (20) of section 111(d), the
8 reference contained in this subsection to the date of
9 enactment of this Act shall be deemed to be a ref-
10 erence to the date of enactment of such paragraph.".
11 (3) PRIOR STATE ACTIONS.—Section 112(d) of
12 the Public Utility Regulatory Policies Act of 1978
13 (16 U.S.C. 2622(d)) is amended by striking "(19)"
14 and inserting "(20)" before "of section 111(d)".

15 **SEC. 122. LARGE-SCALE VEHICLE ELECTRIFICATION PRO-**
16 **GRAM.**

17 (a) DEPLOYMENT PROGRAM.—The Secretary of En-
18 ergy shall establish a program to deploy and integrate
19 plug-in electric drive vehicles into the electricity grid in
20 multiple regions. In carrying out the program, the Sec-
21 retary may provide financial assistance described under
22 subsection (d), consistent with the goals under subsection
23 (b). The Secretary shall select regions based upon applica-
24 tions for assistance received pursuant to subsection (c).

1 (b) GOALS.—The goals of the program established
2 pursuant to subsection (a) shall be—
3 (1) to demonstrate the viability of a vehicle-
4 based transportation system that is not overly de-
5 pendent on petroleum as a fuel and contributes to
6 lower carbon emissions than a system based on con-
7 ventional vehicles;
8 (2) to facilitate the integration of advanced ve-
9 hicle technologies into electricity distribution areas
10 to improve system performance and reliability;
11 (3) to demonstrate the potential benefits of co-
12 ordinated investments in vehicle electrification on
13 personal mobility and a regional grid;
14 (4) to demonstrate protocols and standards that
15 facilitate vehicle integration into the grid; and
16 (5) to investigate differences in each region and
17 regulatory environment regarding best practices in
18 implementing vehicle electrification.
19 (c) APPLICATIONS.—Any State, Indian tribe, or local
20 government (or group of State, Indian tribe, or local gov-
21 ernments) may apply to the Secretary of Energy for finan-
22 cial assistance in furthering the regional deployment and
23 integration into the electricity grid of plug-in electric drive
24 vehicles. Such applications may be jointly sponsored by
25 electric utilities, automobile manufacturers, technology

1 providers, car sharing companies or organizations, or
2 other persons or entities.
3 (d) USE OF FUNDS.—Pursuant to applications re-
4 ceived under subsection (c), the Secretary may make fi-
5 nancial assistance available to any applicant or joint spon-
6 sor of the application to be used for any of the following:
7 (1) Assisting persons located in the regional de-
8 ployment area, including fleet owners, in the pur-
9 chase of new plug-in electric drive vehicles by offset-
10 ting in whole or in part the incremental cost of such
11 vehicles above the cost of comparable conventionally
12 fueled vehicles.
13 (2) Supporting the use of plug-in electric drive
14 vehicles by funding projects for the deployment of
15 any of the following:
16 (A) Electrical charging infrastructure for
17 plug-in electric drive vehicles, including battery
18 exchange, fast charging infrastructure, and
19 other services, in public or private locations, in-
20 cluding street parking, parking garages, park-
21 ing lots, homes, gas stations, and highway rest
22 stops.
23 (B) Smart Grid equipment and infrastruc-
24 ture, as described in title XIII of the Energy
25 Independence and Security Act of 2007, to fa-

1 cilitate the charging and integration of plug-in
2 electric drive vehicles.
3 (3) Such other projects as the Secretary deter-
4 mines appropriate to support the large-scale deploy-
5 ment of plug-in electric drive vehicles in regional de-
6 ployment areas.
7 (e) PROGRAM REQUIREMENTS.—The Secretary, in
8 consultation with the Administrator and the Secretary of
9 Transportation, shall determine design elements and re-
10 quirements of the program established pursuant to sub-
11 section (a), including—
12 (1) the type of financial mechanism with which
13 to provide financial assistance;
14 (2) criteria for evaluating applications sub-
15 mitted under subsection (c), including the antici-
16 pated ability to promote deployment and market
17 penetration of vehicles that are less dependent on
18 petroleum as fuel source; and
19 (3) reporting requirements for entities that re-
20 ceive financial assistance under this section, includ-
21 ing a comprehensive set of performance data charac-
22 terizing the results of the deployment program.
23 (f) INFORMATION CLEARINGHOUSE.—The Secretary
24 shall, as part of the program established pursuant to sub-
25 section (a), collect and make available to the public infor-

1 mation regarding the cost, performance, and other tech-
2 nical data regarding the deployment and integration of
3 plug-in electric drive vehicles.

4 (g) AUTHORIZATION.—There are authorized to be ap-
5 propriated to carry out this section such sums as may be
6 necessary.

7 **SEC. 123. PLUG-IN ELECTRIC DRIVE VEHICLE MANUFAC-**
8 **TURING.**

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

16 (b) FINANCIAL ASSISTANCE.—The Secretary of En-
17 ergy may provide financial assistance to an automobile
18 manufacturer under the program established pursuant to
19 subsection (a) for—

20 (1) the reconstruction or retooling of facilities
21 for the manufacture of plug-in electric drive vehicles
22 that are developed and produced in the United
23 States; and

24 (2) if appropriate, the purchase of domestically
25 produced vehicle batteries to be used in the manu-

1 facture of vehicles manufactured pursuant to para-
2 graph (1).
3 (c) REQUIREMENTS.—The Secretary may provide fi-
4 nancial assistance under subsection (b) to an automobile
5 manufacturer if—
6 (1) in the case of a reconstruction or retooling
7 described under subsection (b)(1), without financial
8 assistance the automobile manufacturer is not able
9 to reasonably finance the reconstruction or retooling
10 of a facility; or
11 (2) in the case of battery purchases described
12 under subsection (b)(2), without financial assistance,
13 the automobile manufacturer is not able to reason-
14 ably finance the purchase of such batteries.
15 (d) COORDINATION WITH REGIONAL DEPLOY-
16 MENT.—The Secretary may provide financial assistance
17 under subsection (b) in conjunction with the award of fi-
18 nancial assistance under the large scale vehicle electrifica-
19 tion program established pursuant to section 122 of this
20 Act.
21 (e) PROGRAM REQUIREMENTS.—The Secretary shall
22 determine design elements and requirements of the pro-
23 gram established pursuant to subsection (a), including—
24 (1) the type of financial mechanism with which
25 to provide financial assistance;

1 (2) criteria, in addition to the criteria described
2 under subsection (f), 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 (f) 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 (g) REPORTS.—The Secretary shall annually submit
14 to Congress a report on the program established pursuant
15 to this section.
16 (h) 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 al-
17 lowances allocated pursuant to section 782(i) of the Clean
18 Air Act not later than October 31 of 2012 and each cal-
19 endar 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 al-
24 lowances allocated pursuant to section 【782(i)】 to

1 applicants, joint sponsors and automobile manufac-
2 turers pursuant to sections 122 and 123 of this Act.
3 (2) ANNUAL AMOUNT.—In each of the years
4 2012 through 2017, one-quarter of the portion of
5 the allowances allocated pursuant to section 782(i)
6 of the Clean Air Act shall be available to carry out
7 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 allowances under this subsection, the Secretary
14 shall give preference to applications under section
15 122(c) that are jointly sponsored by one or more
16 automobile manufacturers.
17 (4) MULTI-YEAR COMMITMENTS.—The Admin-
18 istrator shall commit to providing allowances to an
19 applicant, joint sponsor or automobile manufacturer
20 for up to five consecutive years if—
21 (A) an application under section 122 or
22 123 of this Act requests a multiyear 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 allowances will be available for a
6 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 multiyear commit-
13 ment.
14 (5) INSUFFICIENT APPLICATIONS.—If, in any
15 year, allowances available under paragraph (2) can-
16 not be provided because of insufficient numbers of
17 submitted applications that meet the criteria for
18 support established by the Secretary of Energy
19 under sections 122 or 123 of this Act, the remaining
20 allowances shall be distributed according to sub-
21 section (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 allowances allocated pursuant to section 782(i) of

1 the Clean Air Act that are not provided under sub-
2 section (c) to automobile manufacturers and compo-
3 nent suppliers to pay not more than 30 percent of
4 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 allowances under this subsection during the years
16 2012 through 2017, the Secretary shall give pref-
17 erence to applications for projects that save the
18 maximum number of gallons per vehicle.

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 create a State Energy and Envi-
11 ronment 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.—Except as required pur-
17 suant to subparagraph (B), a State shall de-
18 posit into its SEED Account all allowances re-
19 ceived from the Administrator for renewable en-
20 ergy and energy efficiency purposes, pursuant
21 to this Act.
22 (B) A State may create a financial account
23 associated with its SEED Account to deposit,
24 retain, and manage any proceeds of any sale of
25 any allowance provided pursuant to this Act

1 pending expenditure or disbursement of those
2 proceeds for purposes permitted under this sec-
3 tion. The funds in such an account shall not be
4 commingled with other funds not derived from
5 the sale of allowances provided to the State;
6 however, loans made by the State from such
7 funds pursuant to paragraph (2)(C)(i) may be
8 repaid into such a financial account, including
9 any interest charged.
10 (2) WITHDRAWALS.—
11 (A) IN GENERAL.—All allowances distrib-
12 uted or withdrawn from SEED Accounts, in-
13 cluding the proceeds of any sale or such allow-
14 ances, shall support renewable energy and en-
15 ergy efficiency programs authorized or approved
16 by the Federal Government.
17 (B) DEDICATED ALLOWANCES.—Allow-
18 ances deposited in a SEED Account that are
19 required by law to be used for specific purposes
20 for a specified period shall be used according to
21 those requirements during that period.
22 (C) UNDEDICATED ALLOWANCES.—To the
23 extent that allowances deposited in a SEED
24 Account are not required by law to be used for
25 specific purposes for a specified period as de-

1 scribed in subparagraph (B), such allowances or
2 the proceeds of their sale may be used for any
3 of the following purposes:
4 (i) LOANS.—Loans of allowances, or
5 the proceeds from the sale of allowances,
6 may be provided, interest on commercial
7 loans may be subsidized at an interest rate
8 as low as zero, and other credit support
9 may be provided to support programs au-
10 thorized to use SEED Account allowance
11 value or any other renewable energy or en-
12 ergy efficiency purpose authorized or ap-
13 proved by the Federal Government.
14 (ii) GRANTS.—Grants of allowances or
15 the proceeds of their sale may be provided
16 to support programs authorized to use
17 SEED Account allowance value or any
18 other renewable energy or energy efficiency
19 purpose authorized or approved by the
20 Federal Government.
21 (iii) OTHER FORMS OF SUPPORT.—Al-
22 lowances or the proceeds of the sale of al-
23 lowances may be provided for other forms
24 of support for programs authorized to use
25 SEED Account allowance value or any

1 other renewable energy or energy efficiency
2 purpose authorized or approved by the
3 Federal Government.
4 (iv) ADMINISTRATIVE COSTS.—Except
5 to the extent provided in Federal law au-
6 thorizing or allocating allowances deposited
7 in a SEED Account, not more than 5 per-
8 cent of the allowance value in a SEED Ac-
9 count in any year may be used to cover ad-
10 ministrative expenses of the SEED Ac-
11 count.
12 (D) SUBACCOUNTS.—A State may create
13 and maintain subaccounts for local governments
14 that request such subaccounts to hold allow-
15 ances distributed to local governments for re-
16 newable energy or energy efficiency programs
17 authorized or approved by the Federal Govern-
18 ment.
19 (E) INTENDED USE PLANS.—
20 (i) IN GENERAL.—After providing for
21 public review and comment, each State ad-
22 ministering a SEED Account shall annu-
23 ally prepare a plan that identifies the in-
24 tended uses of the allowances or proceeds

1 from the sale of allowances in its SEED
2 Account.
3 (ii) CONTENTS.—An intended use
4 plan shall include—
5 (I) a list of the projects or pro-
6 grams for which withdrawals from the
7 SEED Account are intended in the
8 next fiscal year that begins after the
9 date of the plan, including a descrip-
10 tion of each project;
11 (II) the relationship of each of
12 the projects or programs to an identi-
13 fied Federal purpose authorized by
14 this Act, or any other Federal statute;
15 (III) the expected terms of use of
16 allowance value to provide assistance;
17 (IV) the criteria and methods es-
18 tablished for the distribution of allow-
19 ances or allowance value;
20 (V) a description of the equiva-
21 lent financial value and status of the
22 SEED Account; and
23 (VI) a statement of the mid-term
24 and long-term goals of the State for
25 use of its SEED Account.

1 (3) ACCOUNTABILITY AND TRANSPARENCY.—

2 (A) CONTROLS AND PROCEDURES.—Any
3 State that has established a SEED Account
4 shall establish fiscal controls and recordkeeping
5 and accounting procedures for the SEED Ac-
6 count sufficient to ensure proper accounting
7 during appropriate accounting periods for de-
8 posits into the SEED Account, withdrawals
9 from the SEED Account, and SEED Account
10 balances, including any subaccounts or related
11 financial accounts. Such controls and proce-
12 dures shall conform to generally accepted gov-
13 ernment accounting principles. Any State that
14 has established a SEED Account shall retain
15 records for a period of at least 5 years.

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

23 (C) STATE REPORT.—Each State admin-
24 istering a SEED Account shall make publicly
25 available and submit to the Secretary a report

1 every 2 years on its activities related to its
2 SEED Account.
3 (D) PUBLIC INFORMATION.—Any—
4 (i) controls and procedures established
5 under subparagraph (A); and
6 (ii) information obtained through au-
7 dits conducted under subparagraph (B),
8 except to the extent that it would be pro-
9 tected from disclosure, if it were informa-
10 tion held by the Federal Government,
11 under section 552(b) of title 5, United
12 States Code,
13 shall be made publicly available.
14 (E) OTHER PROTECTIONS.—The Adminis-
15 trator shall require such additional procedures
16 and protections as are necessary to ensure that
17 any State that has established a SEED Ac-
18 count will operate the SEED Account in an ac-
19 countable and transparent manner.
20 (f) REQUIREMENTS FOR ELIGIBILITY.—A State's eli-
21 gibility to receive allowances in its SEED Account shall
22 depend on that State's compliance with the requirements
23 of this Act (and the amendments made by this Act).
24 (g) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Administrator

1 such sums as may be necessary for SEED Account oper-
2 ations.

3 **SEC. 132. SUPPORT OF STATE RENEWABLE ENERGY AND**
4 **ENERGY EFFICIENCY PROGRAMS.**

5 (a) DEFINITIONS.—For purposes of this section:
6 (1) COST-EFFECTIVE.—The term "cost-effec-
7 tive", with respect to an energy efficiency program,
8 means that the program meets the Total Resource
9 Cost Test, which requires that the net present value
10 of economic benefits over the life of the program or
11 measure, including avoided supply and delivery costs
12 and deferred or avoided investments, is greater than
13 the net present value of the economic costs over the
14 life of the program, including program costs and in-
15 cremental costs borne by the energy consumer.
16 (2) RENEWABLE ENERGY RESOURCE.—The
17 term "renewable energy resource" shall have the
18 meaning given that term in section 610 of the Public
19 Utility Regulatory Policies Act of 1978 (as added by
20 section 101 of this Act).
21 (3) STATE.—The term "State" shall have the
22 meaning given that term in section 302(d) of the
23 Clean Air Act (42 U.S.C. 7602(d)).
24 (b) DISTRIBUTION AMONG STATES.—The Adminis-
25 trator shall, in accordance with this section, distribute

1 emission allowances allocated pursuant to section
2 782(g)(1) not later than September 30, 2012, and each
3 calendar year thereafter through 2050. The Administrator
4 shall distribute the emission allowances to States for re-
5 newable energy and energy efficiency programs to be de-
6 posited in and administered through the State Energy and
7 Environment Development (SEED) Accounts established
8 pursuant to section 131 of the American Clean Energy
9 and Security Act of 2009. The Administrator shall dis-
10 tribute allowances among the States under this section
11 each year in accordance with the following formula:
12 (1) One third of the allowances shall be divided
13 equally among the States.
14 (2) One third of the allowances shall be distrib-
15 uted ratably among the States based on the popu-
16 lation of each State, as contained in the most recent
17 reliable census data available from the Bureau of the
18 Census, Department of Commerce, for all States at
19 the time the Administrator calculates the formula
20 for distribution.
21 (3) One third of the allowances for shall be dis-
22 tributed ratably among the States on the basis of
23 the energy consumption of each State as contained
24 in the most recent State Energy Data Report avail-
25 able from the Energy Information Administration

1 (or such alternative reliable source as the Adminis-
2 trator may designate).
3 (c) USES.—The allowances distributed to each State
4 pursuant to this section shall be used exclusively for the
5 purposes listed in this subsection, as set forth below:
6 (1) Not less than 12.5 percent shall be distrib-
7 uted by the State to units of local government within
8 such State to be used exclusively to support the en-
9 ergy efficiency and renewable energy purposes listed
10 in paragraphs (2) and (3).
11 (2) Not less than 20 percent shall be used ex-
12 clusively for the following energy efficiency pur-
13 poses—
14 (A) implementation and enforcement of
15 building codes adopted in compliance with sec-
16 tion 201 of the American Clean Energy and Se-
17 curity Act of 2009;
18 (B) implementation of the Retrofit for En-
19 ergy and Environmental Performance (REEP)
20 program established pursuant to section 202 of
21 the American Clean Energy and Security Act of
22 2009;
23 (C) implementation of the energy efficient
24 manufactured homes program established pur-

1 suant to section 203 of the American Clean En-
2 ergy and Security Act of 2009;
3 (D) implementation of the building energy
4 performance labeling program established pur-
5 suant to section 204 of the American Clean En-
6 ergy and Security Act of 2009;
7 (E) enabling the development of a Smart
8 Grid (as described in section 1301 of the En-
9 ergy Independence and Security Act of 2007
10 (42 U.S.C. 17381)), including integration of re-
11 newable energy resources and distributed gen-
12 eration, demand response, demand side man-
13 agement, and systems analysis;
14 (F) transportation planning pursuant to
15 section 841; and
16 (G) other cost-effective energy efficiency
17 programs for end-use consumers of electricity,
18 natural gas, home heating oil, or propane, in-
19 cluding, where appropriate, programs or mecha-
20 nisms administered by local governments and
21 entities other than the State.
22 (3) 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; and
11 (B) deployment of technologies to generate
12 electricity from renewable energy sources.
13 (4) The remaining 47.5 percent shall be used
14 exclusively for any of the purposes described in sub-
15 paragraphs (A) through (F) of paragraph (2) and in
16 paragraph (3).
17 (d) REPORTING.—Each State receiving emission al-
18 lowances under this section shall include in its biennial
19 reports required under section 131 of the American Clean
20 Energy and Security Act of 2009, in accordance with such
21 requirements as the Administrator may prescribe—
22 (1) a list of entities receiving allowances or al-
23 lowance value under this section;
24 (2) the amount and nature of allowances or al-
25 lowance value received by each recipient;

(3) the specific purposes for which such allowances or allowance value was conveyed;

(4) the amount of energy savings, emission reductions, renewable energy deployment, or new or retooled manufacturing capacity resulting from such allowances or allowance value; and

(5) an assessment of the cost-effectiveness of any energy efficiency program supported under subsection (c)(2)(G).

(e) ENFORCEMENT.—If the Administrator determines that a State is not in compliance with this section, the Administrator may withhold a portion of the allowances, the value of which is equal to up to twice the value of the allowances that the State failed to use in accordance with the requirements of this section, that such State would otherwise be eligible to receive under this section in later years. Allowances withheld pursuant to this subsection shall be distributed among the remaining States in accordance with the requirements of subsection (b).

Subtitle E—Smart Grid Advancement

SEC. 141. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

1 (2) The term "applicable baseline" means the
2 average of the highest three annual peak demands a
3 load-serving entity has experienced during the 5
4 years immediately prior to the date of enactment of
5 this Act.
6 (3) The term"Commission" means Federal En-
7 ergy Regulatory Commission.
8 (4) The term "load-serving entity" means an
9 entity that provides electricity directly to retail con-
10 sumers with the responsibility to assure power qual-
11 ity and reliability, including such entities that are
12 investor-owned, publicly owned, owned by rural elec-
13 tric cooperatives, or other entities.
14 (5) The term "peak demand" means the high-
15 est point of electricity demand, net of any distrib-
16 uted electricity generation or storage from sources
17 on the load-serving entity's customers' premises,
18 during any hour on the system of a load serving en-
19 tity during a calendar year, expressed in Megawatts
20 (MW), or more than one such high point as a func-
21 tion of seasonal demand changes.
22 (6) The term "peak demand reduction" means
23 the reduction in annual peak demand as compared
24 to a previous baseline year or period, expressed in
25 Megawatts (MW), whether accomplished by dimin-

1 ishing the end-use requirements for electricity or by
2 use of locally stored or generated electricity to meet
3 those requirements from distributed resources on the
4 load-serving entity's customers' premises and with-
5 out use of high-voltage transmission.

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

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

15 (9) The term "Secretary" means the Secretary
16 of Energy.

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

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

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

1 all products that are reviewed by the Department of En-
2 ergy and the Environmental Protection Agency, respec-
3 tively, for potential designation as Energy Star products.
4 (b) ANALYSIS.—(1) Within 2 years after the date of
5 enactment of this Act, the Secretary and the Adminis-
6 trator shall each prepare an analysis of the potential en-
7 ergy savings, greenhouse gas emission reductions, and
8 electricity cost savings that could accrue for each of the
9 products identified by the assessment in subsection (a) in
10 the following optimal circumstances:
11 (A) The products possessed Smart Grid capa-
12 bility and interoperability that is tested and proven
13 reliable.
14 (B) The products were utilized in an electricity
15 utility service area which had Smart Grid capability
16 and offered customers rate or program incentives to
17 use the products.
18 (C) The utility's rates reflected national average
19 costs, including average peak and valley seasonal
20 and daily electricity costs.
21 (D) Consumers using such products took full
22 advantage of such capability.
23 (E) The utility avoided incremental investments
24 and rate increases related to such savings.

1 (2) The analysis under paragraph (1) shall be consid-
2 ered the "best case" Smart Grid analysis. On the basis
3 of such an analysis for each product, the Secretary and
4 the Administrator shall determine whether the installation
5 of Smart Grid capability for such a product would be cost
6 effective. For purposes of this paragraph, the term "cost
7 effective" means that the cumulative savings from using
8 the product under the best case Smart Grid circumstances
9 for a period of one-half of the product's expected useful
10 life will be greater than the incremental cost of the Smart
11 Grid features included in the product.
12 (3) To the extent that including Smart Grid capa-
13 bility in any products analyzed under paragraph (2) is
14 found to be cost effective in the best case, the Secretary
15 and the Administrator shall, not later than 3 years after
16 the date of enactment of this Act take each of the fol-
17 lowing actions:
18 (A) Inform the manufacturer of such product of
19 such finding of cost effectiveness.
20 (B) Assess the potential contributions the devel-
21 opment and use of products with Smart Grid tech-
22 nologies bring to reducing peak demand and pro-
23 moting grid stability.
24 (C) Assess the potential national energy savings
25 and electricity cost savings that could be realized if

1 Smart Grid potential were installed in the relevant
2 products reviewed by the Energy Star program.
3 (D) Assess and identify options for providing
4 consumers information on products with Smart Grid
5 capabilities, including the necessary conditions for
6 cost-effective savings.
7 (E) Submit a report to Congress summarizing
8 the results of the assessment for each class of prod-
9 ucts, and presenting the potential energy and green-
10 house gas savings that could result if Smart Grid
11 capability were installed and utilized on such prod-
12 ucts

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

15 Section 324(a)(2) of the Energy Policy and Conserva-
16 tion Act (42 U.S.C. 6294(a)(2)) is amended by adding the
17 following at the end:
18 "(J)(i) Not later than 3 years after the
19 date of enactment of this subparagraph, the
20 Federal Trade Commission shall initiate a rule-
21 making to consider making a special note in a
22 prominent manner on any ENERGY GUIDE
23 label for any product actually including Smart
24 Grid capability that—

1 "(I) Smart Grid capability is a fea-
2 ture of that product;
3 "(II) the use and value of that feature
4 depended on the Smart Grid capability of
5 the utility system in which the product was
6 installed and the active utilization of that
7 feature by the customer; and
8 "(III) on a utility system with Smart
9 Grid capability, the use of the product's
10 Smart Grid capability could reduce the
11 customer's cost of the product's annual op-
12 eration by an estimated dollar amount
13 range representing the result of incre-
14 mental energy and electricity cost savings
15 that would result from the customer taking
16 full advantage of such Smart Grid capa-
17 bility.
18 "(ii) Not later than 3 years after the date
19 of enactment of this subparagraph, the Com-
20 mission shall complete the rulemaking initiated
21 under clause (i).".
22 **SEC. 144. SMART GRID PEAK DEMAND REDUCTION GOALS.**
23 (a) GOALS.—Not later than one year after the date
24 of enactment of this Act, load-serving entities, or, at their
25 option, States with respect to load-serving entities that

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

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

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

19 (3) The Secretary, in consultation with the Commis-
20 sion, the Administrator, and the National Electric Reli-
21 ability Corporation, shall develop a system and rules for
22 measurement and verification of demand reductions.

23 (c) PEAK DEMAND REDUCTION GOALS.—(1) Peak
24 demand reduction goals may be established for an indi-
25 vidual load-serving entity, or, at the determination of a

1 State or regional entity, by that State or regional entity
2 for a larger region that shares a common system peak de-
3 mand and for which peak demand reduction measures
4 would offer regional benefit.

5 (2) A State or regional entity establishing peak de-
6 mand reduction goals shall cooperate, as necessary and
7 appropriate, with the Commission, the Secretary, State
8 regulatory commissions, State energy offices, the National
9 Electric Reliability Corporation, and other relevant au-
10 thorities.

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

17 (4) The applicable peak demand reduction goals shall
18 provide that—

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

23 (B) load-serving entities will reduce or mitigate
24 peak demand by a minimum percentage greater

1 amount from the applicable baseline to a lower peak
2 demand during calendar year 2015; and
3 (C) the minimum percentage reductions estab-
4 lished as peak demand reduction goals shall be the
5 maximum reductions that are realistically achievable
6 with an aggressive effort to deploy Smart Grid and
7 peak demand reduction technologies and methods,
8 including but not limited to those listed in sub-
9 section (d).
10 (d) PLAN.—Each load-serving entity shall prepare a
11 peak demand reduction plan that demonstrates its ability
12 to meet each applicable goal by any or a combination of
13 the following options:
14 (1) Direct reduction in megawatts of peak de-
15 mand through energy efficiency measures with reli-
16 able and continued application during peak demand
17 periods.
18 (2) Demonstration that an amount of
19 megawatts equal to a stated portion of the applicable
20 goal is contractually committed to be available for
21 peak reduction through one or more of the following:
22 (A) Megawatts enrolled in demand re-
23 sponse programs.
24 (B) Megawatts subject to the ability of a
25 load-serving entity to call on demand response

1 programs, smart appliances, smart electricity
2 storage devices, distributed generation resources
3 on the entity's customers' premises, or other
4 measures directly capable of actively,
5 controllably, reliably, and dynamically reducing
6 peak demand ("dynamic peak management con-
7 trol").
8 (C) Megawatts available from distributed
9 dynamic electricity storage under agreement
10 with the owner of that storage.
11 (D) Megawatts committed from
12 dispatchable distributed generation dem-
13 onstrated to be reliable under peak period con-
14 ditions and in compliance with air quality regu-
15 lations.
16 (E) Megawatts available from smart appli-
17 ances and equipment with Smart Grid capa-
18 bility available for direct control by the utility
19 through agreement with the customer owning
20 the appliances or equipment.
21 (F) Megawatts from a demonstrated and
22 assured minimum of distributed solar electric
23 generation capacity in instances where peak pe-
24 riod and peak demand conditions are directly

1 related to solar radiation and accompanying
2 heat.
3 (3) If any of the methods listed in subpara-
4 graph (C), (D), or (E) of paragraph (2) are relied
5 upon to meet its peak demand reduction goals, the
6 load-serving entity must demonstrate this capability
7 by operating a test during the applicable calendar
8 year.
9 (4) Nothing in this section shall require the
10 publication in peak demand reduction goals or in
11 any peak demand reduction plan of any information
12 that is confidential for competitive or other reasons
13 or that identifies individual customers.
14 (e) EXISTING AUTHORITY AND REQUIREMENTS.—
15 Nothing in this section diminishes or supersedes any au-
16 thority of a State or political subdivision of a State to
17 adopt or enforce any law or regulation respecting peak de-
18 mand management, demand response, distributed storage,
19 use of distributed generation, or the regulation of load-
20 serving entities. The Commission, in consultation with
21 States having such peak management, demand response
22 and distributed storage programs, shall to the maximum
23 extent practicable, facilitate coordination between the Fed-
24 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 [_____] of this Act. To
12 the extent that a State provides allowances to local
13 governments 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 propriate 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)''; and

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)"; and
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 Lifetime	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 Lifetime	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 serting "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 redesig-
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) EFFECTIVE DATE.—This section and the amend-
4 ments made by this section take effect as if included in
5 the Energy Independence and Security Act of 2007 (Pub-
6 lic Law 110–140; 121 Stat. 1492).

7 **SEC. 162. TECHNICAL CORRECTIONS TO ENERGY POLICY**
8 **ACT OF 2005.**

9 (a) TITLE I—ENERGY EFFICIENCY.—Section
10 325(g)(8)(C)(ii) of the Energy Policy and Conservation
11 Act (42 U.S.C. 6295(g)(8)(C)(ii)) (as added by section
12 135(c)(2)(B) of the Energy Policy Act of 2005) is amend-
13 ed by striking "20°F" and inserting "−20°F".
14 (b) EFFECTIVE DATE.—This section and the amend-
15 ments made by this section take effect as if included in
16 the Energy Policy Act of 2005 (Public Law 109–58; 119
17 Stat. 594).

18 **Subtitle H—Clean Energy**
19 **Innovation Centers**

20 **SEC. 171. CLEAN ENERGY INNOVATION CENTERS.**

21 (a) PURPOSE.—The Secretary shall carry out a pro-
22 gram to establish Clean Energy Innovation Centers to en-
23 hance the Nation's economic, environmental, and energy
24 security by promoting commercial deployment of clean, in-
25 digenous energy alternatives to oil and other fossil fuels,

1 reducing greenhouse gas emissions, and ensuring that the
2 United States maintains a technological lead in developing
3 and deploying state-of-the-art energy technologies. To
4 achieve these purposes the program shall—
5 (1) leverage the expertise and resources of the
6 university and private research communities, indus-
7 try, venture capital, national laboratories, and other
8 participants in energy innovation to support cross-
9 disciplinary research and development in areas not
10 being served by the private sector in order to develop
11 and transfer innovative clean energy technologies
12 into the marketplace;
13 (2) expand the knowledge base and human cap-
14 ital necessary to transition to a low-carbon economy;
15 and
16 (3) promote regional economic development by
17 cultivating clusters of clean energy technology firms,
18 private research organizations, suppliers, and other
19 complementary groups and businesses.
20 (b) DEFINITIONS.—For purposes of this section:
21 (1) ALLOWANCE.—The term ''allowance''
22 means an emission allowance under section 721 of
23 the Clean Air Act.

1 (2) CENTER.—The term "Center" means a
2 Clean Energy Innovation Center established in ac-
3 cordance with this section.
4 (3) CLEAN ENERGY TECHNOLOGY.—The term
5 "clean energy technology" means a technology
6 that—
7 (A) produces energy from solar, wind, geo-
8 thermal, biomass, tidal, wave, ocean, and other
9 renewable energy resources (as such term is de-
10 fined in section 610 of the Public Utility Regu-
11 latory Policies Act of 1978);
12 (B) more efficiently transmits, distributes,
13 or stores energy;
14 (C) enhances energy efficiency for build-
15 ings and industry, including combined heat and
16 power;
17 (D) enables the development of a Smart
18 Grid (as described in section 1301 of the En-
19 ergy Independence and Security Act of 2007
20 (42 U.S.C. 17381)), including integration of re-
21 newable energy resources and distributed gen-
22 eration, demand response, demand side man-
23 agement, and systems analysis;

1 (E) produces an advanced or sustainable
2 material with energy or energy efficiency appli-
3 cations;
4 (F) enhances water security through im-
5 proved water management, conservation, dis-
6 tribution, and end use applications; or
7 (G) improves energy efficiency for trans-
8 portation, including electric vehicles.
9 (4) CLUSTER.—The term "cluster" means a
10 concentration of firms directly involved in the re-
11 search, development, finance, and commercialization
12 of clean energy technologies whose geographic prox-
13 imity facilitates utilization and sharing of skilled
14 human resources, infrastructure, research facilities,
15 educational and training institutions, venture cap-
16 ital, and input suppliers.
17 (5) PROJECT.—The term "project" means an
18 activity with respect to which a Center provides sup-
19 port under subsection (e).
20 (6) QUALIFYING ENTITY.—The term "quali-
21 fying entity" means each of the following:
22 (A) A research university.
23 (B) A State institution with a focus on the
24 advancement of clean energy technologies.

1 (C) A nongovernmental organization with
2 research or commercialization expertise in clean
3 energy technology development.
4 (7) SECRETARY.—The term "Secretary" means
5 the Secretary of Energy.
6 (8) TECHNOLOGY FOCUS.—The term "tech-
7 nology focus" means the unique technology area in
8 which a Center will specialize, and may include solar
9 electricity, fuels from solar energy, batteries and en-
10 ergy storage, electricity grid systems and devices, en-
11 ergy efficient building systems and design, advanced
12 materials, modeling and simulation, and other clean
13 energy technology areas designated by the Secretary.
14 (9) TRANSLATIONAL RESEARCH.—The term
15 "translational research" means clean energy tech-
16 nology research to coordinate basic or applied re-
17 search with technical and commercial applications to
18 enable promising discoveries or inventions to attract
19 investment sufficient for market penetration and dif-
20 fusion.
21 (c) ROLE OF THE SECRETARY.—The Secretary
22 shall—
23 (1) have ultimate responsibility for, and over-
24 sight of, all aspects of the program under this sec-
25 tion;

1 (2) provide for the distribution of allowances to
2 consortia for the establishment of 8 Centers pursu-
3 ant to this section, with each Center designated a
4 unique technology focus area;
5 (3) coordinate the innovation activities of Cen-
6 ters with those occurring through other Department
7 of Energy entities, including the National Labora-
8 tories, the Advanced Research Projects Agency—En-
9 ergy, and Energy Frontier Research Centers, and
10 within industry, and to avoid duplication of research,
11 by annually—
12 (A) issuing guidance regarding national
13 energy research and development priorities and
14 strategic objectives; and
15 (B) convening a conference of staff of the
16 Department of Energy and representatives from
17 such other entities to share research results,
18 program plans, and opportunities for collabora-
19 tion.
20 (d) CONSORTIUM.—A consortium shall be eligible to
21 receive allowances to support the establishment of a Cen-
22 ter under this section if—
23 (1) it is composed of—

1 (A) 2 research universities with a com-
2 bined annual research budget of $500,000,000;
3 and
4 (B) no fewer than 1 additional qualifying
5 entity;
6 (2) its members have established a binding
7 agreement that documents—
8 (A) the structure of the partnership agree-
9 ment;
10 (B) the governance and management
11 structure to enable cost-effective implementa-
12 tion of the program;
13 (C) an intellectual property management
14 policy;
15 (D) conflicts of interest policy consistent
16 with subsection (e)(4);
17 (E) an accounting structure that meets the
18 requirements of the Department and can be au-
19 dited under subsection (f)(3); and
20 (F) has an Advisory Board consistent with
21 subsection (e)(3);
22 (3) it receives financial contributions from
23 States, consortium participants, or other non-Fed-
24 eral sources, to be used pursuant to subsection
25 (e)(2);

1 (4) it is part of an existing cluster or dem-
2 onstrates high potential to develop a new cluster;
3 and
4 (5) it operates as a nonprofit organization.
5 (e) CLEAN ENERGY INNOVATION CENTERS.—
6 (1) ROLE.—Centers shall provide support to ac-
7 tivities leading to commercial deployment of clean
8 energy technologies pursuant to the purposes of this
9 section through issuance of awards to projects man-
10 aged by qualifying entities and other entities meet-
11 ing the Center's project criteria, including national
12 laboratories. Each Center shall—
13 (A) develop and publish for public review
14 and comment proposed plans, programs, and
15 project selection criteria;
16 (B) submit an annual report to the Sec-
17 retary summarizing the Center's activities, or-
18 ganizational expenditures, and Board members,
19 which shall include a certification of compliance
20 with conflict of interest policies and a descrip-
21 tion of each project in the research portfolio;
22 (C) establish policies—
23 (i) regarding intellectual property de-
24 veloped as a result of Center awards and
25 other forms of technology support that en-

1 courage individual ingenuity and invention
2 while speeding knowledge transfer and fa-
3 cilitating the establishment of rapid com-
4 mercialization pathways;
5 (ii) to prevent resources provided to
6 the Center from being used to displace pri-
7 vate sector investment likely to otherwise
8 occur, including investment from private
9 sector entities which are members of the
10 consortium;
11 (iii) to facilitate the participation of
12 private investment firms or other private
13 entities that invest in clean energy tech-
14 nologies to perform due diligence on award
15 proposals, to participate in the award re-
16 view process, and to provide guidance to
17 projects supported by the Center; and
18 (iv) to facilitate the participation of
19 entrepreneurs with a demonstrated history
20 of commercializing clean energy tech-
21 nologies;
22 (D) oversee project solicitations, review
23 proposed projects, and select projects for
24 awards; and
25 (E) monitor project implementation.

1 (2) USE AND DISTRIBUTION OF AWARDS BY
2 CENTERS.—A Center shall allocate awards and other
3 support for—
4 (A) clean energy technology projects con-
5 ducting translational research and related ac-
6 tivities, at least 40 percent of which shall be
7 utilized for projects related to the Center's tech-
8 nology focus; and
9 (B) administrative expenses, which may
10 constitute no more than 10 percent of the
11 award.
12 (3) ADVISORY BOARDS.—
13 (A) IN GENERAL.—Each Center shall es-
14 tablish an Advisory Board whose members shall
15 have extensive and relevant scientific, technical,
16 industry, financial, or research management ex-
17 pertise. The Advisory Board shall review the
18 Center's proposed plans, programs, project se-
19 lection criteria, and projects and shall ensure
20 that projects selected for awards meet the con-
21 flict of interest policies of the Center. Advisory
22 Board members other than those representing
23 consortium members shall serve for no more
24 than three years and must comply with conflict
25 of interest provisions.

1 (B) MEMBERS.—Each Advisory Board
2 shall consist of—
3 (i) 5 members selected by the consor-
4 tium's research universities;
5 (ii) 2 members selected by the consor-
6 tium's other qualifying entities; and
7 (iii) 2 members selected at large by
8 other Board members to represent the en-
9 trepreneur and venture capital commu-
10 nities.
11 Individuals appointed under clause (iii) shall
12 not be State or Federal employees or affiliated
13 with the consortium's qualified entities.
14 (C) NONVOTING MEMBERS.—The Board
15 shall also include 1 nonvoting member ap-
16 pointed by the Secretary.
17 (D) COMPENSATION.—Members of an Ad-
18 visory Board may receive reimbursement for
19 travel expenses and a reasonable stipend.
20 (4) CONFLICT OF INTEREST.—
21 (A) PROCEDURES.—Centers shall establish
22 procedures to ensure that employees or con-
23 sortia designees for Center activities who are in
24 decisionmaking capacities shall—

1 (i) disclose any financial interests in,
2 or financial relationships with, applicants
3 for or recipients of awards under para-
4 graph (1), including those of his or her
5 spouse or minor child, unless such relation-
6 ships or interests would be considered to
7 be remote or inconsequential; and
8 (ii) recuse himself or herself from any
9 funding decision for projects in which he
10 or she has a personal financial interest.
11 (B) DISQUALIFICATION AND REVOCA-
12 TION.—The Secretary may disqualify an appli-
13 cation or revoke allowances distributed to the
14 Center or awards provided under paragraph
15 (1), if cognizant officials of the Center fail to
16 comply with procedures required under sub-
17 paragraph (A).
18 (f) DISTRIBUTION OF ALLOWANCES TO CLEAN EN-
19 ERGY INNOVATION CENTERS.—
20 (1) SELECTION AND SCHEDULE.—Allowances to
21 support the establishment of a Center shall be dis-
22 tributed through a competitive process. Not later
23 than 120 days after the date of enactment of this
24 Act, the Secretary shall solicit proposals from eligi-
25 ble consortia to establish Centers, which shall be

1 submitted not later than 180 days after the date of
2 enactment of this Act. The Secretary shall select the
3 program consortia not later than 270 days after the
4 date of enactment of this Act pursuant to subsection
5 (d). The Secretary shall award 3 grants for the es-
6 tablishment of 3 Centers of Excellence to be located
7 on the campus of 1890 Land Grant Institution (as
8 defined in section 2 of the Agricultural Research,
9 Extension, and Education Reform Act of 1998 (7
10 U.S.C. 7061)).

11 (2) TERM AND USE OF ALLOWANCES.—Allow-
12 ances distributed to Centers shall be used to provide
13 awards pursuant to subsection (e)(1). The amount
14 of allowances distributed to support the establish-
15 ment of a Center under this section shall not be less
16 than 10 and not more than 30 percent of the allow-
17 ances allocated under section 782(h) of the Clean
18 Air Act, each year for a 6 year period. Centers shall
19 be eligible to compete for additional allowance dis-
20 tribution after the expiration of the initial period.
21 Centers shall establish award periods for individual
22 awards. The transfer of allowances to a Center shall
23 occur at the start of each calendar year.

24 (3) AUDIT.—Each Center shall conduct an an-
25 nual audit to determine the extent to which allow-

ances distributed to the Center, and awards under subsection (e) have been utilized in a manner consistent with this section. The auditor shall transmit a report of the results of the audit to the Secretary and to the Government Accountability Office. The Secretary shall include such report in the annual report to Congress, along with a plan to remedy any deficiencies cited in the report. The Government Accountability Office may review such audits as appropriate and shall have full access to the books, records, and personnel of the Center to ensure that allowances distributed to the Center, and awards made under subsection (e), have been utilized in a manner consistent with this section.

Subtitle I—Marine Spatial Planning

SEC. 181. STUDY OF OCEAN RENEWABLE ENERGY AND TRANSMISSION PLANNING AND SITING.

(a) DEFINITIONS.—In this section:

(1) MARINE SPATIAL PLAN.—The term "marine spatial plan" means the analysis and allocation of ocean space for various uses to achieve ecological, economic, and social objectives, based on the principle of ecosystem-based management.

1 (2) MARINE SPATIAL PLANNING.—The term
2 "marine spatial planning" means the process of de-
3 veloping a marine spatial plan.
4 (3) ECOSYSTEM-BASED MANAGEMENT.—The
5 term "ecosystem-based management" means a man-
6 agement approach that ensures the future ecological
7 and economic sustainability of natural resources
8 by—
9 (A) accounting for all ecosystem inter-
10 actions and direct, indirect, and cumulative im-
11 pacts of human activities on the ecosystem;
12 (B) emphasizing protection of ecosystem
13 structure, functions, patterns, and processes;
14 and
15 (C) maintaining ecosystems in a healthy
16 and resilient condition.
17 (4) OFFSHORE RENEWABLE ENERGY.—The
18 term "offshore renewable energy" means energy
19 generated from offshore wind or offshore
20 hydrokinetic (wave, tidal, ocean current, and tidal-
21 current) energy technologies.
22 (5) OFFSHORE RENEWABLE ENERGY FACIL-
23 ITY.—The term "offhsore renewable energy facility"
24 means a facility that generates offshore renewable

1 energy or any offshore transmission line associated
2 with such facility.
3 (b) STUDY.—
4 (1) IN GENERAL.—As soon as practicable after
5 the date of enactment of this section, the Federal
6 Energy Regulatory Commission, the Secretary of the
7 Interior, and the National Oceanic and Atmospheric
8 Administration, in consultation with the Council on
9 Environmental Quality and, as appropriate, coastal
10 States, regional organizations of coastal States, and
11 relevant nongovernmental organizations, shall jointly
12 conduct a study of the potential for marine spatial
13 planning to facilitate the development of offshore re-
14 newable energy facilities in a manner that protects
15 and maintains coastal and marine ecosystem health.
16 (2) REQUIREMENTS.—The study under para-
17 graph (1) shall include—
18 (A) identification of the steps involved in
19 regional marine spatial planning for the siting
20 of offshore renewable energy facilities;
21 (B) a recommended approach for the de-
22 velopment of regional marine spatial plans for
23 the siting of offshore renewable energy facilities
24 that provides for—

1 (i) the participation of relevant Fed-
2 eral agencies and State governments;
3 (ii) coordination, to the maximum ex-
4 tent practicable, with any marine spatial
5 planning undertaken by States;
6 (iii) public input; and
7 (iv) the periodic revision of such plans
8 as necessary to account for significant new
9 information and ensure achievement of
10 plan objectives;
11 (C) identification of required elements of
12 such regional marine spatial plans, including
13 rules that Federal agencies shall apply to appli-
14 cations for any authorizations required under
15 existing Federal law to construct or operate off-
16 shore renewable energy facilities within areas
17 covered by such plans;
18 (D) an assessment of the adequacy of ex-
19 isting data, including baseline environmental
20 data, to support such marine spatial planning
21 and identification of gaps in such data and the
22 studies needed to fill such gaps;
23 (E) an assessment of the resources re-
24 quired to carry out such marine spatial plan-
25 ning;

1 (F) recommended mechanisms for the for-
2 mal adoption and implementation of regional
3 marine spatial plans for the development of off-
4 shore renewable energy facilities by relevant
5 Federal agencies;
6 (G) identification of any additional author-
7 ity relevant Federal agencies would need to
8 adopt and implement regional marine spatial
9 plans for the development of offshore renewable
10 energy facilities; and
11 (H) such other recommendations as appro-
12 priate.
13 (3) REPORT.—Not later than 6 months after
14 the date of enactment of this section, the Federal
15 Energy Regulatory Commission, the Secretary of the
16 Interior, and the National Oceanic and Atmospheric
17 Administration shall jointly publish the findings and
18 recommendations of the study conducted pursuant
19 to this subsection and shall accept public comment
20 for at least 30 days after such publication. Following
21 consideration of any public comments, and not later
22 than 8 months after the date of enactment of this
23 section, the Federal Energy Regulatory Commission,
24 the Secretary of the Interior, and the National Oce-
25 anic and Atmospheric Administration shall jointly

1 submit to Congress and the Council on Environ-
2 mental Quality the findings and recommendations of
3 the study conducted pursuant to this subsection.
4 (c) ASSESSMENT OF REPORT.—
5 (1) IN GENERAL.—Not later than 4 months
6 after the date of submission of the report required
7 under subsection (b)(3), the Council on Environ-
8 mental Quality shall assess the recommendations of
9 such report, issue a written determination as to
10 whether the recommended approach to marine spa-
11 tial planning should be implemented, and transmit
12 such written determination to the relevant Federal
13 agencies and Congress.
14 (2) COORDINATION FOR RECOMMENDED AP-
15 PROACH.—If the Council on Environmental Quality
16 determines that the recommended approach to ma-
17 rine spatial planning should be implemented, the rel-
18 evant Federal agencies shall implement such ap-
19 proach no later than 18 months after the written de-
20 termination required by paragraph (1), and the
21 Council on Environmental Quality shall coordinate
22 such implementation. At the time of the written de-
23 termination required by paragraph (1), the Council
24 on Environmental Quality shall notify Congress if

1 the relevant Federal agencies lack authority to carry
2 out any aspect of the recommended approach.
3 (3) ALTERNATIVE APPROACH.—If the Council
4 on Environmental Quality determines that the rec-
5 ommended approach to marine spatial planning
6 should not be implemented, the Council on Environ-
7 mental Quality shall formulate an alternative ap-
8 proach and submit such alternative approach to the
9 relevant Federal agencies and Congress at the time
10 of the written determination required by paragraph
11 (1).
12 (d) RELATIONSHIP TO EXISTING LAW.—Nothing in
13 this section shall affect or be construed to affect any law,
14 regulation, or memoranda of understanding governing the
15 development of offshore renewable energy facilities in ef-
16 fect prior to the implementation of the recommended or
17 alternative approach pursuant to subsection (c).
18 (e) AUTHORIZATION.—There are authorized to be ap-
19 propriated such sums as may be necessary to carry out
20 this section.

TITLE II—ENERGY EFFICIENCY

Subtitle A—Building Energy Efficiency Programs

SEC. 201. GREATER ENERGY EFFICIENCY IN BUILDING CODES.

Section 304 of the Energy Conservation and Production Act (42 U.S.C. 6833) is amended to read as follows:

"SEC. 304. GREATER ENERGY EFFICIENCY IN BUILDING CODES.

"(a) ENERGY EFFICIENCY TARGETS.—

"(1) IN GENERAL.—Except as provided in paragraph (2) or (3), the national building code energy efficiency target for the national average percentage improvement of a building's energy performance when built to a code meeting the target shall be—

"(A) effective on the date of enactment of the American Clean Energy and Security Act of 2009, 30 percent reduction in energy use relative to a comparable building constructed in compliance with the baseline code;

"(B) effective January 1, 2014, for residential buildings, and January 1, 2015, for commercial buildings, 50 percent reduction in energy use relative to the baseline code; and

1 "(C) effective January 1, 2017, for resi-
2 dential buildings, and January 1, 2018, for
3 commercial buildings, and every 3 years there-
4 after, respectively, through January 1, 2029,
5 and January 1, 2030, 5 percent additional re-
6 duction in energy use relative to the baseline
7 code.

8 "(2) CONSENSUS-BASED CODES.—If on any ef-
9 fective date specified in paragraph (1)(A), (B), or
10 (C) a successor code to the baseline codes provides
11 for greater reduction in energy use than is required
12 under paragraph (1), the overall percentage reduc-
13 tion in energy use provided by that successor code
14 shall be the national building code energy efficiency
15 target.

16 "(3) TARGETS ESTABLISHED BY SECRETARY.—
17 The Secretary may by rule establish a national
18 building code energy efficiency target for residential
19 or commercial buildings achieving greater reductions
20 in energy use than the targets prescribed in para-
21 graph (1) or (2) if the Secretary determines that
22 such greater reductions in energy use can be
23 achieved with a code that is life cycle cost-justified
24 and technically feasible. The Secretary may by rule
25 establish a national building code energy efficiency

1 target for residential or commercial buildings achiev-
2 ing a reduction in energy use that is greater than
3 zero but less than the targets prescribed in para-
4 graph (1) or (2) if the Secretary determines that
5 such lesser target is the maximum reduction in en-
6 ergy use that can be achieved through a code that
7 is life cycle cost-justified and technically feasible.

8 "(4) ADDITIONAL REDUCTIONS IN ENERGY
9 USE.—Effective on January 1, 2033, and once every
10 3 years thereafter, the Secretary shall determine,
11 after notice and opportunity for comment, whether
12 further energy efficiency building code improvements
13 for residential or commercial buildings, respectively,
14 are life cycle cost-justified and technically feasible,
15 and shall establish updated national building code
16 energy efficiency targets that meet such criteria.

17 "(5) ZERO-NET-ENERGY BUILDINGS.—In set-
18 ting targets under this subsection, the Secretary
19 shall consider ways to support the deployment of
20 distributed renewable energy technology, and shall
21 seek to achieve the goal of zero-net-energy commer-
22 cial buildings established in section 422 of the En-
23 ergy Independence and Security Act of 2007 (42
24 U.S.C. 17082).

1 "(6) BASELINE CODE.—For purposes of this
2 section, the term 'baseline code' means—
3 "(A) for residential buildings, the 2006
4 International Energy Conservation Code
5 (IECC) published by the International Code
6 Council; and
7 "(B) for commercial buildings, the code
8 published in ASHRAE Standard 90.1-2004.
9 "(7) CONSULTATION.—In establishing the tar-
10 gets required by this section, the Secretary shall
11 consult with the Director of the National Institute of
12 Standards and Technology.
13 "(b) NATIONAL ENERGY EFFICIENCY BUILDING
14 CODES.—
15 "(1) REQUIREMENT.—
16 "(A) IN GENERAL.—There shall be estab-
17 lished national energy efficiency building codes
18 under this subsection, for residential and com-
19 mercial buildings, sufficient to meet each of the
20 national building code energy efficiency targets
21 established under subsection (a), not later than
22 the date that is one year after the deadline for
23 establishment of each such target.
24 "(B) EXISTING CODE.—If the Secretary
25 finds prior to the date one year after the dead-

1 line for establishing a target that one or more
2 energy efficiency building codes published by a
3 recognized consensus-based code development
4 organization meet or exceed the established tar-
5 get, the Secretary shall select the code that
6 meets the target with the highest efficiency in
7 the most cost-effective manner, and such code
8 shall be the national energy efficiency building
9 code.

10 "(C) REQUIREMENT TO ESTABLISH
11 CODE.— If the Secretary does not make a find-
12 ing under subparagraph (B), the national en-
13 ergy efficiency building code shall be established
14 by rule by the Secretary under paragraph (2).
15 "(2) ESTABLISHMENT BY SECRETARY.—

16 "(A) PROCEDURE.—In order to establish a
17 national energy efficiency building code as re-
18 quired under paragraph (1)(C), the Secretary
19 shall—

20 "(i) not later than six months prior to
21 the effective date for each target, review
22 existing and proposed codes published or
23 under review by recognized consensus-
24 based code development organizations;

1 "(ii) determine the percentage of en-
2 ergy efficiency improvements that are or
3 would be achieved in such published or
4 proposed code versions relative to the tar-
5 get;
6 "(iii) propose improvements to such
7 published or proposed code versions suffi-
8 cient to meet or exceed the target; and
9 "(iv) unless a finding is made under
10 paragraph (1)(B) with respect to a code
11 published by a recognized consensus-based
12 code development organization, adopt a
13 code that meets or exceeds the relevant na-
14 tional building code energy efficiency tar-
15 get by not later than one year after the ef-
16 fective date of such target.
17 "(B) CALCULATIONS.—Each code estab-
18 lished by the Secretary under this paragraph
19 shall be set at the maximum level the Secretary
20 determines is life cycle cost-justified and tech-
21 nically feasible, in accordance with the fol-
22 lowing:
23 "(i) SAVINGS CALCULATIONS.—Cal-
24 culations of energy savings shall take into
25 account the typical lifetimes of different

1 products, measures, and system configura-
2 tions.
3 "(ii) COST-EFFECTIVENESS CALCULA-
4 TIONS.—Calculations of life cycle cost-ef-
5 fectiveness shall be based on life cycle cost
6 methods and procedures under section 544
7 of the National Energy Conservation Pol-
8 icy Act (42 U.S.C. 8254), but shall incor-
9 porate to the extent feasible externalities
10 such as impacts on climate change and on
11 peak energy demand that are not already
12 incorporated in assumed energy costs.
13 "(C) CONSIDERATIONS.—In developing a
14 national energy efficiency building code under
15 this paragraph, the Secretary shall consider—
16 "(i) for residential codes—
17 "(I) residential building stand-
18 ards published or proposed by
19 ASHRAE;
20 "(II) residential building codes
21 published or proposed in the Inter-
22 national Energy Conservation Code
23 (IECC);
24 "(III) data from the Residential
25 Energy Services Network (RESNET)

1 on compliance measures utilized by
2 consumers to qualify for the residen-
3 tial energy efficiency tax credits estab-
4 lished under the Energy Policy Act of
5 2005;
6 "(IV) data and information from
7 the Department of Energy's Building
8 America Program;
9 "(V) data and information from
10 the Energy Star New Homes pro-
11 gram;
12 "(VI) data and information from
13 the New Building Institute and simi-
14 lar organizations; and
15 "(VII) standards for practices
16 and materials to achieve cool roofs in
17 residential buildings, taking into con-
18 sideration reduced air conditioning en-
19 ergy use as a function of cool roofs,
20 the potential reduction in global
21 warming from increased solar reflec-
22 tance from buildings, and cool roofs
23 criteria in State and local building
24 codes and in national and local vol-
25 untary programs; and

1 "(ii) for commercial codes—

2 "(I) commercial building stand-
3 ards proposed by ASHRAE;

4 "(II) commercial building codes
5 proposed in the International Energy
6 Conservation Code (IECC);

7 "(III) the Core Performance Cri-
8 teria published by the New Buildings
9 Institute;

10 "(IV) data and information de-
11 veloped by the Director of the Com-
12 mercial High-Performance Green
13 Building Office of the Department of
14 Energy and any public-private part-
15 nerships established under that Office;

16 "(V) data and information from
17 the Energy Star for Buildings pro-
18 gram;

19 "(VI) data and information from
20 the New Building Institute,
21 RESNET, and similar organizations;
22 and

23 "(VII) standards for practices
24 and materials to achieve cool roofs in
25 commercial buildings, taking into con-

1 sideration reduced air conditioning en-
2 ergy use as a function of cool roofs,
3 the potential reduction in global
4 warming from increased solar reflec-
5 tance from buildings, and cool roofs
6 criteria in State and local building
7 codes and in national and local vol-
8 untary programs.

9 "(D) CONSULTATION.—In establishing any
10 national energy efficiency building code re-
11 quired by this section, the Secretary shall con-
12 sult with the Director of the National Institute
13 of Standards and Technology.

14 "(3) CONSENSUS STANDARD ASSISTANCE.—(A)
15 To support the development of consensus standards
16 that may provide the basis for national energy effi-
17 ciency building codes, minimize duplication of effort,
18 encourage progress through consensus, and facilitate
19 the development of greater building efficiency, the
20 Secretary shall provide assistance to recognized con-
21 sensus-based code development organizations to de-
22 velop, and where the relevant code has been adopted
23 as the national code, disseminate consensus based
24 energy efficiency building codes as provided in this
25 paragraph.

1 "(B) Upon a finding by the Secretary that a
2 code developed by such an organization meets a tar-
3 get established under subsection (a), the Secretary
4 shall—
5 "(i) send notice of the Secretary's finding
6 to all duly authorized or appointed State and
7 local code agencies; and
8 "(ii) provide sufficient support to such an
9 organization to make the code available on the
10 Internet, or to accomplish distribution of such
11 code to all such State and local code agencies
12 at no cost to the State and local code agencies.
13 "(C) The Secretary may contract with such an
14 organization and with other organizations with ex-
15 pertise on codes to provide training for State and
16 local code officials and building inspectors in the im-
17 plementation and enforcement of such code.
18 "(D) The Secretary may provide grants and
19 other support to such an organization to—
20 "(i) develop appropriate refinements to
21 such code; and
22 "(ii) support analysis of options for im-
23 provements in the code to meet the next sched-
24 uled target.

1 "(4) CODE DEVELOPED BY SECRETARY.—If the
2 Secretary establishes a national energy efficiency
3 building code under paragraph (2), the Secretary
4 shall—
5 "(A) to the extent that such code is based
6 on a prior code developed by a recognized con-
7 sensus-based code development organization,
8 negotiate and provide appropriate compensation
9 to such organization for the use of the code ma-
10 terials that remain in the code established by
11 the Secretary; and
12 "(B) disseminate the national energy effi-
13 ciency building codes to State and local code of-
14 ficials, and support training and provide guid-
15 ance and technical assistance to such officials
16 as appropriate.
17 "(c) STATE ADOPTION OF ENERGY EFFICIENCY
18 BUILDING CODES.—
19 "(1) REQUIREMENT.—Not later than 1 year
20 after a national energy efficiency building code for
21 residential or commercial buildings is established or
22 revised under subsection (b), each State—
23 "(A) shall—
24 "(i) review and update the provisions
25 of its building code regarding energy effi-

1 ciency to meet or exceed the target met in
2 the new national code, to achieve equiva-
3 lent or greater energy savings;
4 "(ii) document, where local govern-
5 ments establish building codes, that local
6 governments representing not less than 80
7 percent of the State's urban population
8 have adopted the new national code, or
9 have adopted local codes that meet or ex-
10 ceed the target met in the new national
11 code to achieve equivalent or greater en-
12 ergy savings; or
13 "(iii) adopt the new national code;
14 and
15 "(B) shall provide a certification to the
16 Secretary demonstrating that energy efficiency
17 building code provisions that apply throughout
18 the State meet or exceed the target met by the
19 new national code, to achieve equivalent or
20 greater energy savings.
21 "(2) CONFIRMATION.—
22 "(A) REQUIREMENT.—Not later than 90
23 days after a State certification is provided
24 under paragraph (1)(B), the Secretary shall de-
25 termine whether the State's energy efficiency

1 building code provisions meet the requirements
2 of this subsection.
3 "(B) ACCEPTANCE BY SECRETARY.—If the
4 Secretary determines under subparagraph (A)
5 that the State's energy efficiency building code
6 or codes meet the requirements of this sub-
7 section, the Secretary shall accept the certifi-
8 cation.
9 "(C) DEFICIENCY NOTICE.—If the Sec-
10 retary determines under subparagraph (A) that
11 the State's building code or codes do not meet
12 the requirements of this subsection, the Sec-
13 retary shall identify the deficiency in meeting
14 the national building code energy efficiency tar-
15 get, and, to the extent possible, indicate areas
16 where further improvement in the State's code
17 provisions would allow the deficiency to be
18 eliminated.
19 "(D) REVISION OF CODE AND RECERTIFI-
20 CATION.—A State may revise its code or codes
21 and submit a recertification under paragraph
22 (1)(B) to the Secretary at any time.
23 "(3) COMPLIANT CODE.—For the purposes of
24 meeting the target described in subsection (a)(1)(A)
25 for residential buildings, a State that adopts the

1 code represented in California's Title 24-2009 by the
2 date two years after the date of enactment of the
3 American Clean Energy and Security Act of 2009
4 shall be considered to have met the requirements of
5 this subsection for the applicable period.
6 "(d) APPLICATION OF NATIONAL CODE TO STATE
7 AND LOCAL JURISDICTIONS.—
8 "(1) IN GENERAL.—Upon the expiration of 1
9 year after a national energy efficiency building code
10 is established under subsection (b), in any jurisdic-
11 tion where the State has not had a certification re-
12 lating to that code accepted by the Secretary under
13 subsection (c)(2)(B), and the local government has
14 not had a certification relating to that code accepted
15 by the Secretary under subsection (e)(6)(B), the na-
16 tional code shall become the applicable energy effi-
17 ciency building code for such jurisdiction.
18 "(2) STATE LEGISLATIVE ADOPTION.—In a
19 State in which the relevant building energy code is
20 adopted legislatively, the deadline in paragraph (1)
21 shall not be earlier than 1 year after the first day
22 that the legislature meets following establishment of
23 a national energy efficiency building code.
24 "(3) VIOLATIONS.—It shall be a violation of
25 this section for an owner or builder of a building to

1 knowingly occupy, permit occupancy of, or convey
2 the building if the building is subject to the require-
3 ments of—
4 "(A) a State energy efficiency building
5 code with respect to which a certification has
6 been accepted by the Secretary under sub-
7 section (c)(2)(B);
8 "(B) a local energy efficiency building code
9 with respect to which a certification has been
10 accepted by the Secretary under subsection
11 (e)(6)(B); or
12 "(C) a national energy efficiency building
13 code adopted under subsection (c)(1)(A)(i) or
14 made applicable under paragraph (1) of this
15 subsection,
16 if the building was constructed out of compliance
17 with such code.
18 "(e) STATE ENFORCEMENT OF ENERGY EFFICIENCY
19 BUILDING CODES.—
20 "(1) IN GENERAL.—Each State, or where appli-
21 cable under State law each local government, shall
22 implement and enforce applicable State or local
23 codes with respect to which a certification was ac-
24 cepted by the Secretary under subsection (c)(2)(B)
25 or paragraph (6)(B) of this subsection, or the na-

1 tional energy efficiency building codes, as provided
2 in this subsection.
3 "(2) STATE CERTIFICATION.—Not later than 2
4 years after the date of a certification under sub-
5 section (c)(1) or the establishment of a national en-
6 ergy efficiency building code under subsection (b),
7 each State shall certify that it has—
8 "(A) achieved compliance with—
9 "(i) State codes, or, as provided under
10 State law, local codes, with respect to
11 which a certification was accepted by the
12 Secretary under subsection (c)(2)(B); or
13 "(ii) the national energy efficiency
14 building code, as applicable; or
15 "(B) for any certification submitted within
16 7 years after the date of enactment of the
17 American Clean Energy and Security Act of
18 2009, made significant progress toward achiev-
19 ing such compliance.
20 "(3) ACHIEVING COMPLIANCE.—A State shall
21 be considered to achieve compliance with a code de-
22 scribed in paragraph (2)(A) if at least 90 percent of
23 new and substantially renovated building space in
24 that State in the preceding year upon inspection
25 meets the requirements of the code. A certification

1 under paragraph (2) shall include documentation of
2 the rate of compliance based on—
3 "(A) independent inspections of a random
4 sample of the new and substantially renovated
5 buildings covered by the code in the preceding
6 year; or
7 "(B) an alternative method that yields an
8 accurate measure of compliance as determined
9 by the Secretary.
10 "(4) SIGNIFICANT PROGRESS.—A State shall be
11 considered to have made significant progress toward
12 achieving compliance with a code described in para-
13 graph (2)(A) if—
14 "(A) the State has developed a plan, in-
15 cluding for hiring enforcement staff, providing
16 training, providing manuals and checklists, and
17 instituting enforcement programs, designed to
18 achieve full compliance within 5 years after the
19 date of the adoption of the code;
20 "(B) the State is taking significant, timely,
21 and measurable action to implement that plan;
22 "(C) the State has not reduced its expendi-
23 tures for code enforcement; and
24 "(D) at least 50 percent of new and sub-
25 stantially renovated building space in the State

1 in the preceding year upon inspection meets the
2 requirements of the code.
3 "(5) SECRETARY'S DETERMINATION.—Not later
4 than 90 days after a State certification under para-
5 graph (2), the Secretary shall determine whether the
6 State has demonstrated that it has complied with
7 the requirements of this subsection, including accu-
8 rate measurement of compliance, or that it has made
9 significant progress toward compliance. If such de-
10 termination is positive, the Secretary shall accept
11 the certification. If the determination is negative,
12 the Secretary shall identify the areas of deficiency.
13 "(6) OUT OF COMPLIANCE.—
14 "(A) IN GENERAL.—Any State for which
15 the Secretary has not accepted a certification
16 under paragraph (5) by a deadline established
17 under this subsection is out of compliance with
18 this section.
19 "(B) LOCAL COMPLIANCE.—In any State
20 that is out of compliance with this section as
21 provided in subparagraph (A), a local govern-
22 ment may be in compliance with this section by
23 meeting all certification requirements applicable
24 to the State.

1 "(C) NONCOMPLIANCE.—Any State that is
2 not in compliance with this section, as provided
3 in subparagraph (A), shall, until the State re-
4 gains such compliance, be ineligible to receive—
5 "(i) emission allowances pursuant to
6 subsection (h)(1);
7 "(ii) Federal funding in excess of that
8 State's share (calculated according to the
9 allocation formula in section 363 of the
10 Energy Policy and Conservation Act (42
11 U.S.C. 6323)) of $125,000,000 each year;
12 and
13 "(iii) for—
14 "(I) the first year for which the
15 State is out of compliance, 25 percent
16 of any additional funding or other
17 items of monetary value otherwise
18 provided under the American Clean
19 Energy and Security Act of 2009;
20 "(II) the second year for which
21 the State is out of compliance, 50 per-
22 cent of any additional funding or
23 other items of monetary value other-
24 wise provided under the American

1 Clean Energy and Security Act of
2 2009;
3 "(III) the third year for which
4 the State is out of compliance, 75 per-
5 cent of any additional funding or
6 other items of monetary value other-
7 wise provided under the American
8 Clean Energy and Security Act of
9 2009; and
10 "(IV) the fourth and subsequent
11 years for which the State is out of
12 compliance, 100 percent of any addi-
13 tional funding or other items of mone-
14 tary value otherwise provided under
15 the American Clean Energy and Secu-
16 rity Act of 2009.
17 "(f) FEDERAL ENFORCEMENT.—Where a State fails
18 and local governments in that State also fail to enforce
19 the applicable State or national energy efficiency building
20 codes, the Secretary shall enforce such codes, as follows:
21 "(1) The Secretary shall establish, by rule,
22 within 2 years after the date of enactment of the
23 American Clean Energy and Security Act of 2009,
24 an energy efficiency building code enforcement capa-
25 bility.

"(2) Such enforcement capability shall be designed to achieve 90 percent compliance with such code in any State within 1 year after the date of the Secretary's determination that such State is out of compliance with this section.

"(3) The Secretary may set and collect reasonable inspection fees to cover the costs of inspections required for such enforcement. Revenue from fees collected shall be available to the Secretary to carry out the requirements of this section upon appropriation.

"(g) ENFORCEMENT PROCEDURES.—(1) The Secretary shall assess a civil penalty for violations of this section, pursuant to subsection (d)(3), in accordance with the procedures described in section 333(d) of the Energy Policy and Conservation Act (42 U.S.C. 6303). The United States district courts shall also have jurisdiction to restrain any violation of this section or rules adopted thereunder, in accordance with the procedures described in section 334 of the Energy Policy and Conservation Act (42 U.S.C. 6304).

"(2) Each day of unlawful occupancy shall be considered a separate violation.

"(3) In the event a building constructed out of compliance with the applicable code has been conveyed by a

1 knowing builder or knowing seller to an unknowing pur-
2 chaser, the builder or seller shall be the violator.
3 "(h) FEDERAL SUPPORT.—
4 "(1) ALLOWANCE ALLOCATION FOR STATE
5 COMPLIANCE.—Not later than June 1, 2011, and on
6 that date in each year thereafter, the Administrator
7 shall provide emission allowances to the SEED Ac-
8 count for each State that the Secretary identifies as
9 a State from which he has accepted the State's cer-
10 tification under subsection (e)(5) for compliance
11 with the then current national energy efficiency
12 building codes. Such allowances shall be distributed
13 from an amount of 0.5 percent of the allowances
14 made available for each year pursuant to the Amer-
15 ican Clean Energy and Security Act of 2009 to each
16 State in accordance with a formula established by
17 the Secretary as follows:
18 "(A) One-fifth in an equal amount to each
19 of the 50 States and United States territories.
20 "(B) Two-fifths as a function of the rel-
21 ative energy use in all buildings in each State
22 in the most recent year for which data is avail-
23 able.
24 "(C) Two-fifths based on the number of
25 building construction starts recorded in each

State, the number of new building permits applied for in each State, or other relevant available data indicating building activity in each State, in the judgment of the Secretary, for the year prior to the year of the allocation.

"(2) ALLOWANCE ALLOCATION TO LOCAL GOVERNMENTS.—In the instance that the Secretary certifies that one or more local governments are in compliance with this section pursuant to subsection (e)(6)(B), the Administrator shall provide to each such local government the portion of the emission allowances that would have been provided to that State as a function of the population of that locality as a proportion of the population of that State as a whole.

"(3) UNALLOCATED ALLOWANCES.—To the extent that allowances are not provided to State or local governments for lack of certification in any year, those allowances shall be added to the amount provided to those States and local governments that are certified as eligible in that year.

"(4) USE OF ALLOWANCES.—Each State or each local government shall use such emission allowances as it receives pursuant to this section exclusively for the purposes of this section, including cov-

1 ering a reasonable portion of the costs of the devel-
2 opment, adoption, implementation, and enforcement
3 of a State or local energy efficiency building code
4 with respect to which a certification is accepted by
5 the Secretary under subsection (c)(2)(B) or sub-
6 section (e)(6)(B), or the national energy efficiency
7 building code.

8 "(i) ANNUAL REPORTS BY SECRETARY.—The Sec-
9 retary shall annually submit to Congress, and publish in
10 the Federal Register, a report on—

11 "(1) the status of national building energy effi-
12 ciency codes;

13 "(2) the status of energy efficiency building
14 code adoption and compliance in the States;

15 "(3) the implementation of this section; and

16 "(4) impacts of past action under this section,
17 and potential impacts of further action, on lifetime
18 energy use by buildings, including resulting energy
19 and cost savings.".

20 **SEC. 202. BUILDING RETROFIT PROGRAM.**

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

22 (1) NONRESIDENTIAL BUILDING.—The term
23 "nonresidential building" means a building with a
24 primary use or purpose other than residential hous-
25 ing, including commercial offices, schools, academic

1 and other public and private institutions, nonprofit
2 organizations, hospitals, hotels, and houses of wor-
3 ship. Such buildings shall include mixed-use prop-
4 erties used for both residential and nonresidential
5 purposes in which more than half of building floor
6 space is nonresidential.

7 (2) PERFORMANCE-BASED BUILDING RETROFIT
8 PROGRAM.—The term "performance-based building
9 retrofit program" means a program that determines
10 building energy efficiency success based on actual
11 measured savings after a retrofit is complete, as evi-
12 denced by energy invoices or evaluation protocols.

13 (3) PRESCRIPTIVE BUILDING RETROFIT PRO-
14 GRAM.—The term "prescriptive building retrofit pro-
15 gram" means a program that projects building ret-
16 rofit energy efficiency success based on the known
17 effectiveness of measures prescribed to be included
18 in a retrofit.

19 (4) RECOMMISSIONING;
20 RETROCOMMISSIONING.—The terms "recommis-
21 sioning" and "retrocommissioning" have the mean-
22 ing given those terms in section 543(f)(1) of the Na-
23 tional Energy Conservation Policy Act (42 U.S.C.
24 8253(f)(1)).

1 (5) RESIDENTIAL BUILDING.—The term "resi-
2 dential building" means a building whose primary
3 use is residential. Such buildings shall include sin-
4 gle-family homes (both attached and detached),
5 owner-occupied units in larger buildings with their
6 own dedicated space-conditioning systems, and build-
7 ings used for both residential and nonresidential
8 purposes in which more than half of building floor
9 space is residential.

10 (6) STATE ENERGY PROGRAM.—The term
11 "State Energy Program" means the program under
12 part D of title III of the Energy Policy and Con-
13 servation Act (42 U.S.C. 6321 et seq.).

14 (b) ESTABLISHMENT.—The Administrator shall de-
15 velop and implement, in consultation with the Secretary
16 of Energy, standards for a national energy and environ-
17 mental building retrofit policy for single-family and multi-
18 family residences. The Administrator shall develop and
19 implement, in consultation with the Secretary of Energy
20 and the Director of Commercial High-Performance Green
21 Buildings, standards for a national energy and environ-
22 mental building retrofit policy for nonresidential buildings.
23 The programs to implement the residential and nonresi-
24 dential policies based on the standards developed under
25 this section shall together be known as the Retrofit for

1 Energy and Environmental Performance (REEP) pro-
2 gram.
3 (c) PURPOSE.—The purpose of the REEP program
4 is to facilitate the retrofitting of existing buildings across
5 the United States to achieve maximum cost-effective en-
6 ergy efficiency improvements and significant improve-
7 ments in water use and other environmental attributes.
8 (d) FEDERAL ADMINISTRATION.—
9 (1) EXISTING PROGRAMS.— In creating and op-
10 erating the REEP program—
11 (A) the Administrator shall make appro-
12 priate use of existing programs, including the
13 Energy Star program and in particular the En-
14 vironmental Protection Agency Energy Star for
15 Buildings program; and
16 (B) the Secretary of Energy shall make
17 appropriate use of existing programs, including
18 delegating authority to the Director of Commer-
19 cial High-Performance Green Buildings ap-
20 pointed under section 421 of the Energy Inde-
21 pendence and Security Act of 2007 (42 U.S.C.
22 17081), who shall designate and provide fund-
23 ing to support a high-performance green build-
24 ing partnership consortium pursuant to sub-

1 section (f) of such section to support efforts
2 under this section.
3 (2) CONSULTATION AND COORDINATION.—The
4 Administrator and the Secretary of Energy shall
5 consult with and coordinate with the Secretary of
6 Housing and Urban Development in carrying out the
7 REEP program.
8 (3) ALLOCATION OF ALLOWANCES.—The Ad-
9 ministrator shall support the REEP program by
10 providing emission allowances to each State's SEED
11 Account for the purposes of the program, and pro-
12 viding, as appropriate, emission allowances to a local
13 government entity that carries out the purposes of
14 this section in the absence of a State program. The
15 Administrator shall support administration of the
16 program through such existing State and local agen-
17 cies or entities, including those regulated by the
18 State, that the State designates to carry out the
19 purposes of this section. The Administrator shall en-
20 sure accountability for allowances dispensed, and
21 shall confirm measurement and verification of en-
22 ergy, water, and environmental savings achieved.
23 (4) ASSISTANCE.—The Administrator and the
24 Secretary of Energy shall provide consultation and
25 assistance to State and local agencies for the estab-

1 lishment of revolving loan funds, loan guarantees, or
2 other forms of financial assistance under this sec-
3 tion.
4 (e) STATE AND LOCAL ADMINISTRATION.—
5 (1) DELEGATION.—The designated State agen-
6 cy, agencies, or entities described in subsection
7 (d)(3) may delegate performance of appropriate ele-
8 ments of the REEP program, upon their request
9 and subject to State law, to counties, municipalities,
10 appropriate public agencies, and other divisions of
11 local government, as well as to entities regulated by
12 the State. In making any such delegation, a State
13 shall give priority to entities that administer existing
14 comprehensive retrofit programs, including those
15 under the supervision of State utility regulators. The
16 State shall ensure accountability for the use of al-
17 lowances provided under this section, and to the ex-
18 tent such allowances are sold by the State, for the
19 proceeds. States shall maintain responsibility for
20 meeting the standards and requirements of the
21 REEP program. In any State that elects not to ad-
22 minister the REEP program, a unit of local govern-
23 ment may propose to do so within its jurisdiction,
24 and if the Administrator finds that such local gov-
25 ernment is capable of administering the program,

1 the Administrator may provide allowances to that
2 local government, prorated according to the popu-
3 lation of the local jurisdiction relative to the popu-
4 lation of the State, for purposes of the REEP pro-
5 gram.

6 (2) EMPLOYMENT.—States and local govern-
7 ment entities may administer a REEP program in
8 a manner that authorizes public or regulated inves-
9 tor-owned utilities, building auditors and inspectors,
10 contractors, nonprofit organizations, for-profit com-
11 panies, and other entities to perform audits and ret-
12 rofit services under this section. A State may pro-
13 vide incentives for retrofits without direct participa-
14 tion by the State or its agents, so long as the result-
15 ing savings are measured and verified. A State or
16 local administrator of a REEP program shall seek
17 to ensure that sufficient qualified entities are avail-
18 able to support retrofit activities so that building
19 owners have a competitive choice among qualified
20 auditors, raters, contractors, and providers of serv-
21 ices related to retrofits. Nothing in this section is in-
22 tended to preclude or preempt the right of a building
23 owner to choose the specific providers of retrofit
24 services to engage for a retrofit project in that own-
25 er's building.

1 (3) EQUAL INCENTIVES FOR EQUAL IMPROVE-
2 MENT.—In general, the States should strive to offer
3 the same levels of incentives for retrofits that meet
4 the same efficiency improvement goals, regardless of
5 whether the State, its agency or entity, or the build-
6 ing owner has conducted the retrofit achieving the
7 improvement, provided the improvement is measured
8 and verified.

9 (f) ELEMENTS OF REEP PROGRAM.—The Adminis-
10 trator, in consultation with the Secretary of Energy, shall
11 establish goals, guidelines, practices, and standards for ac-
12 complishing the purpose stated in subsection (c), and shall
13 annually review and, as appropriate, revise such goals,
14 guidelines, practices, and standards. The program under
15 this section shall include the following:

16 (1) Residential Energy Services Network
17 (RESNET) or Building Performance Institute
18 (BPI) analyst certification of residential building en-
19 ergy and environment auditors, inspectors, and rat-
20 ers, or an equivalent certification system as deter-
21 mined by the Administrator.

22 (2) BPI certification or licensing by States of
23 residential building energy and environmental ret-
24 rofit contractors, or an equivalent certification or li-
25 censing system as determined by the Administrator.

1 (3) Provision of BPI, RESNET, or other ap-
2 propriate information on equipment and procedures,
3 as determined by the Administrator, that contractors
4 can use to test the energy and environmental effi-
5 ciency of buildings effectively (such as infrared pho-
6 tography and pressurized testing, and tests for water
7 use and indoor air quality).
8 (4) Provision of clear and effective materials to
9 describe the testing and retrofit processes for typical
10 buildings.
11 (5) Guidelines for offering and managing pre-
12 scriptive building retrofit programs and perform-
13 ance-based building retrofit programs for residential
14 and nonresidential buildings.
15 (6) Guidelines for applying recommissioning
16 and retrocommissioning principles to improve a
17 building's operations and maintenance procedures.
18 (7) A requirement that building retrofits con-
19 ducted pursuant to a REEP program utilize, espe-
20 cially in all air-conditioned buildings, roofing mate-
21 rials with high solar energy reflectance, unless inap-
22 propriate due to green roof management, solar en-
23 ergy production, or for other reasons identified by
24 the Administrator, in order to reduce energy con-
25 sumption within the building, increase the albedo of

1 the building's roof, and decrease the heat island ef-
2 fect in the area of the building.
3 (8) Determination of energy savings in a per-
4 formance-based building retrofit program through—
5 (A) for residential buildings, comparison of
6 before and after retrofit scores on the Home
7 Energy Rating System (HERS) Index, where
8 the final score is produced by an objective third
9 party;
10 (B) for nonresidential buildings, Environ-
11 mental Protection Agency Portfolio Manager
12 benchmarks; or
13 (C) for either residential or nonresidential
14 buildings, use of an Administrator-approved
15 simulation program by a contractor with the
16 appropriate certification, subject to appropriate
17 software standards and verification of at least
18 15 percent of all work done, or such other per-
19 centage as the Administrator may determine.
20 (9) Guidelines for utilizing the Energy Star
21 Portfolio Manager, the Home Energy Rating System
22 (HERS) rating system, Home Performance with En-
23 ergy Star program approvals, and any other tools
24 associated with the retrofit program.

1 (10) Requirements and guidelines for post-ret-
2 rofit inspection and confirmation of work and energy
3 savings.
4 (11) Detailed descriptions of funding options
5 for the benefit of State and local governments, along
6 with model forms, accounting aids, agreements, and
7 guides to best practices.
8 (12) Guidance on opportunities for—
9 (A) rating or certifying retrofitted build-
10 ings as Energy Star buildings, or as green
11 buildings under a recognized green building rat-
12 ing system;
13 (B) assigning Home Energy Rating Sys-
14 tem (HERS) or similar ratings; and
15 (C) completing any applicable building per-
16 formance labels.
17 (13) Sample materials for publicizing the pro-
18 gram to building owners, including public service an-
19 nouncements and advertisements.
20 (14) Processes for tracking the numbers and lo-
21 cations of buildings retrofitted under the REEP pro-
22 gram, with information on projected and actual sav-
23 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.—The REEP pro-
6 gram shall be supported by the use of emission al-
7 lowances allocated to the States' SEED Accounts
8 pursuant to section 132 of this Act. To the extent
9 that a State provides allowances to local govern-
10 ments within the State to implement elements of the
11 REEP Program, that shall be deemed a distribution
12 of such allowances to units of local government pur-
13 suant 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 funding provided under
15 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.—The program es-
25 tablished in this section shall be supported by the

1 use of emission allowances allocated to the States'
2 SEED Accounts pursuant to section 782 of this Act.
3 To the extent that a State provides allowances to
4 local governments within the State to implement this
5 program, that shall be deemed a distribution of such
6 allowances to units of local government pursuant to
7 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.—The program
19 established in this section shall be supported by
20 the use of emission allowances allocated to the
21 States' SEED Accounts pursuant to section
22 132 of this Act. To the extent that a State pro-
23 vides allowances to local governments within the
24 State to implement this program, that shall be
25 deemed a distribution of such allowances to

1 units of local government pursuant to sub-
2 section (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. Such a final rule shall be effective no later than
22 January 1, 2020.
23 "(B) A final rule issued under subparagraph
24 (A) shall establish efficiency standards at the max-
25 imum level that is technically feasible and economi-

1 cally justified, as provided in subsections (o) and (p)
2 of section 325. The Secretary may also, in such rule-
3 making, amend or discontinue the product exclusions
4 listed in section 340(26)(A) through (P), or amend
5 the lumen maintenance requirements in paragraph
6 (3) if the Secretary determines that such amend-
7 ments are consistent with the purposes of this Act.
8 "(C) If the Secretary issues a final rule under
9 subparagraph (A) establishing amended standards,
10 the final rule shall provide that the amended stand-
11 ards apply to products manufactured on or after
12 January 1, 2020, or one year after the date on
13 which the final amended standard is published,
14 whichever is later.
15 "(h) OUTDOOR HIGH LIGHT OUTPUT LAMPS.—Each
16 outdoor high light output lamp manufactured on or after
17 January 1, 2012, shall have a lighting efficiency of at least
18 45 lumens per watt.".
19 (3) TEST PROCEDURES.— Section 343(a) of the
20 Energy Policy and Conservation Act (42 U.S.C.
21 6314(a)) is amended by adding at the end the fol-
22 lowing:
23 "(10) OUTDOOR LIGHTING.—
24 "(A) With respect to outdoor luminaires
25 and outdoor high light output lamps, the test

1 procedures shall be based upon the test proce-
2 dures specified in illuminating engineering soci-
3 ety procedures LM–79 as of March 1, 2009,
4 and LM-31, and/or other appropriate consensus
5 test procedures developed by the Illuminating
6 Engineering Society or other appropriate con-
7 sensus standards bodies.

8 "(B) If illuminating engineering society
9 procedure LM—79 is amended, the Secretary
10 shall amend the test procedures established in
11 subparagraph (A) as necessary to be consistent
12 with the amended LM–79 test procedure, unless
13 the Secretary determines, by rule, published in
14 the Federal Register and supported by clear
15 and convincing evidence, that to do so would
16 not meet the requirements for test procedures
17 under paragraph (2).

18 "(C) The Secretary may revise the test
19 procedures for outdoor luminaires or outdoor
20 high light output lamps by rule consistent with
21 paragraph (2), and may incorporate as appro-
22 priate consensus test procedures developed by
23 the Illuminating Engineering Society or other
24 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 (21)".
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 redesig-
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. 6293(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)(C).
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 designated 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.

"(ii) Have jacket losses not exceeding 0.75 percent of the input rating.

"(iii) Have either power venting or a flue damper.".

SEC. 213. APPLIANCE EFFICIENCY DETERMINATIONS AND PROCEDURES.

(a) DEFINITION OF ENERGY CONSERVATION STANDARD.—Section 321(6) of the Energy Policy and Conservation Act (42 U.S.C. 6291(6)) is amended to read as follows:

"(6) ENERGY CONSERVATION STANDARD.—

"(A) IN GENERAL.—The term 'energy conservation standard' means 1 or more performance standards that—

"(i) for covered products (excluding clothes washers, dishwashers, showerheads, faucets, water closets, and urinals), prescribe a minimum level of energy efficiency or a maximum quantity of energy use, determined in accordance with test procedures prescribed under section 323;

"(ii) for showerheads, faucets, water closets, and urinals, prescribe a minimum level of water efficiency or a maximum 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).

"(D) EFFECT OF PARAGRAPH.—Nothing in this paragraph authorizes the Secretary to issue a direct final rule based solely on receipt of more than 1 statement containing recommended test procedures relating to the direct final rule.".

(c) UPDATING TELEVISION TEST METHODS.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)), as amended by sections 211 and 212 of this Act, and subsection (b) of this section, is further amended by adding at the end the following new paragraph:

"(24) TELEVISIONS.—(A) On the date of enactment of this section, Appendix H to Subpart B of Part 430 of the United States Code of Federal Regulations, 'Uniform Test Method for Measuring the Energy Consumption of Television Sets', is repealed.

"(B) No later than 12 months after enactment of this paragraph the Secretary shall publish in the Federal Register a final rule prescribing a new test method for televisions.".

(d) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—(1) Section 325(o)(2)(B)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)(2)(B)(i)) 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 or other emission reductions that will be achieved by
7 virtue of the higher energy efficiency of the covered
8 products resulting from the imposition of the stand-
9 ard;
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.—The Secretary shall ensure that
10 standards for environmentally responsible methods
11 of recycling established by the Administrator pursu-
12 ant to section 608 of the Clean Air Act are employed
13 before a bounty payment is made under this sub-
14 section for a product containing a refrigerant. Noth-
15 ing in this section shall be interpreted to alter the
16 requirements of section 608 of the Clean Air Act or
17 to relieve any person from complying with those re-
18 quirements.
19 (e) PREMIUM AWARDS FOR DEVELOPMENT AND
20 PRODUCTION OF SUPEREFFICIENT BEST-IN-CLASS PROD-
21 UCTS.—
22 (1) IN GENERAL.—(A) The Secretary of Energy
23 shall provide premium awards to manufacturers for
24 the development and production of Superefficient
25 Best-in-Class Products. The Secretary shall set and

1 periodically revise standards for eligibility of prod-
2 ucts for designation as a Superefficient Best-in-
3 Class Product.

4 (B) The Secretary may establish a standard for
5 a Superefficient Best-in-Class Product even if no
6 product meeting that standard exists, if the Sec-
7 retary has reasonable grounds to conclude that a
8 mass-producible product could be made to meet that
9 standard.

10 (C) The Secretary may also establish a Super-
11 efficient Best-in-Class Product standard that is met
12 by one or more existing Best-in-Class Product mod-
13 els, if those product models have distinct energy effi-
14 ciency attributes and performance characteristics
15 that make them significantly better than other prod-
16 uct models qualifying as best-in-class. The Secretary
17 may not designate as Superefficient Best-in-Class
18 Products under this subparagraph models that rep-
19 resent more than 10 percent of the currently quali-
20 fying Best-in-Class Product models.

21 (2) PREMIUM AWARDS.—(A) The premium
22 award payment provided to a manufacturer under
23 this subsection shall be in addition to any bonus
24 payments made under subsection (c).

1 (B) The amount of the premium award paid
2 per unit of Superefficient Best-in-Class Products
3 sold to retailers or distributors shall be the product
4 of—
5 (i) an amount determined by the Sec-
6 retary; and
7 (ii) the difference in energy consumption
8 between the Superefficient Best-in-Class Prod-
9 uct and the average product in the product
10 class.
11 (C) The Secretary shall determine the amount
12 under subparagraph (B)(i) for each product type, in
13 consultation with State and utility efficiency pro-
14 gram administrators as well as the Administrator,
15 based on consideration of the present value to the
16 Nation of the energy (and water or other resources
17 or inputs) saved over the useful life of the product.
18 The Secretary may also take into consideration the
19 methods used to increase sales of qualifying prod-
20 ucts in determining such amount.
21 (D) The Secretary may adjust the value de-
22 scribed in subparagraph (C) upward or downward as
23 appropriate, including based on the effect of the pre-
24 mium awards on the sales of products in different

1 classes that may be affected by the program under
2 this subsection.
3 (E) Premium award payments shall be applied
4 to sales of any Superefficient Best-in-Class Product
5 for the first 3 years after designation as a Supereffi-
6 cient Best-in-Class Product.
7 (3) COORDINATION OF INCENTIVES.—No prod-
8 uct for which Federal tax credit is received under
9 section 45M of the Internal Revenue Code of 1986
10 shall be eligible to receive premium award payments
11 pursuant to this subsection.
12 (f) REPORTING.—The Secretary of Energy shall re-
13 quire, as a condition of receiving a bonus, bounty, or pre-
14 mium award under this section, that a report containing
15 the following documentation be provided:
16 (1) For retailers and distributors, the number
17 of units sold within each product type, and model-
18 specific wholesale purchase prices and retail sale
19 prices, on a monthly basis.
20 (2) For manufacturers, model-specific energy
21 consumption data.
22 (3) For manufacturers, on an immediate basis,
23 information concerning any product design or func-
24 tion changes that affect the energy consumption of
25 the unit.

1 (4) The methods used to increase the sales of
2 qualifying products.
3 (g) MONITORING AND VERIFICATION PROTOCOLS.—
4 The Secretary of Energy shall establish monitoring and
5 verification protocols for energy consumption tests for
6 each product model and for sales of energy-efficient mod-
7 els.
8 (h) DISCLOSURE.—The Secretary of Energy may re-
9 quire that retailers and distributors disclose publicly and
10 to consumers their participation in the program under this
11 section.
12 (i) COST-EFFECTIVENESS REQUIREMENT.—
13 (1) REQUIREMENT.—The Secretary of Energy
14 shall make cost-effectiveness a top priority in design-
15 ing the program under, and administering, this sec-
16 tion, except that the cost-effectiveness of providing
17 premium awards to manufacturers under subsection
18 (e), in aggregate, may be lower by this measure than
19 that of the bonuses and bounties to retailers and
20 distributors under subsections (c) and (d).
21 (2) DEFINITIONS.—In this subsection:
22 (A) COST-EFFECTIVENESS.—The term
23 "cost-effectiveness" means a measure of aggre-
24 gate savings in the cost of energy over the life-
25 time of a product in relation to the cost to the

1 Secretary of the bonuses, bounties, and pre-
2 mium awards provided under this section for a
3 product.
4 (B) SAVINGS.—The term "savings" means
5 the cumulative megawatt-hours of electricity or
6 million British thermal units of other fuels
7 saved by a product during the projected useful
8 life of the product, in comparison to projected
9 energy consumption of the average product in
10 the same class, taking into consideration the
11 impact of any documented measures to replace,
12 retire, and recycle low-efficiency products at the
13 time of purchase of highly-efficient substitutes.
14 (j) DEFINITIONS.—In this section—
15 (1) the term "distributor" mean an individual,
16 organization, or company that sells products in mul-
17 tiple lots and not directly to end-users;
18 (2) the term "retailer" means an individual, or-
19 ganization, or company that sells products directly
20 to end-users; and
21 (3) the term "Superefficient Best-in-Class
22 Product" means a product that—
23 (A) can be mass produced; and
24 (B) achieves the highest level of efficiency
25 that the Secretary of Energy finds can, given

1 the current state of technology, be produced
2 and sold commercially to mass-market con-
3 sumers.

4 (k) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated $300,000,000 for each
6 of the fiscal years 2010 through 2014 to the Secretary
7 of Energy for purposes of this section, of which not more
8 than 10 percent for any fiscal year may be expended on
9 program administration.

10 **SEC. 215. PURPOSE OF ENERGY STAR.**

11 Section 324A of the Energy Policy and Conservation
12 Act (42 U.S.C. 6294a) is amended—

13 (1) by redesignating subsections (b) through (d)
14 as subsections (c) through (e), respectively; and

15 (2) by inserting after subsection (a) the fol-
16 lowing new subsection:

17 "(b) PURPOSE.—The purpose of the Energy Star
18 program for products is to assist consumers in selecting
19 products for purchase that have demonstrated high energy
20 efficiency and that are cost-effective from the consumer's
21 perspective, ensuring that any incremental cost attrib-
22 utable to the energy-efficient features of such products will
23 be more than recovered in the value of energy savings the
24 products will make possible within several years of pur-
25 chase, typically within 3 years but no more than 5 years.".

Subtitle C—Transportation Efficiency

SEC. 221. EMISSIONS STANDARDS.

(a) MOTOR VEHICLE STANDARDS.—The President shall use statutory authorities in effect on the day before the date of enactment of this section to set motor vehicle standards that—

(1) are achievable by the automobile manufacturing companies;

(2) to the extent practicable, harmonize standards that may be set by the National Highway Traffic Safety Administration pursuant to the authority in chapter 329 of title 49, United States Code, standards that may be set by the Administrator of the Environmental Protection Agency pursuant to the authority in the Clean Air Act, and standards that have or may be set by the State of California;

(3) achieve at least as much emissions reductions as would be achieved by implementation of the California law AB 1493 if enforced in the State of California and the other States that have adopted the standard; and

(4) do not preempt California's legal authority to adopt and enforce its own mobile source emissions standards.

1 (b) GREENHOUSE GAS EMISSION STANDARDS FOR
2 MOBILE SOURCES.—Title VIII of the Clean Air Act, as
3 added by section 331 of this Act, is amended by inserting
4 after part A the following new part:

5 **"PART B—MOBILE SOURCES**

6 **"SEC. 821. GREENHOUSE GAS EMISSION STANDARDS FOR**
7 **MOBILE SOURCES.**

8 "(a) MOTOR VEHICLES AND ENGINES.—

9 "(1) Pursuant to section 202(a)(1), by Decem-
10 ber 31, 2010, the Administrator shall promulgate
11 standards applicable to emissions of greenhouse
12 gases from new heavy-duty vehicles and engines, ex-
13 cluding such vehicles covered by the Tier II stand-
14 ards (as established by the Administrator as of the
15 date of enactment of this section). The Adminis-
16 trator may revise these standards from time to time.

17 "(2) Regulations issued under section 202(a)(1)
18 applicable to emissions of greenhouse gases from
19 new heavy-duty vehicles and engines, excluding such
20 vehicles covered by the Tier II standards (as estab-
21 lished by the Administrator as of the date of enact-
22 ment of this section), shall contain standards that
23 achieve the greatest degree of emissions reduction
24 achievable based on the application of technology
25 which the Administrator determines will be available

at the time such standards take effect, taking into consideration cost, energy, and safety factors associated with the application of such technology. Any such regulations shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology.

"(b) NONROAD VEHICLES AND ENGINES.—

"(1) Pursuant to section 213(a)(4), the Administrator shall promulgate standards applicable to emissions of greenhouse gases from new marine vessels and locomotives, and from new engines used in marine vessels and locomotives, by December 31, 2012. The Administrator shall also promulgate standards applicable to emissions of greenhouse gases for such other classes and categories of nonroad vehicles and engines as the Administrator determines appropriate and in the timeframe the Administrator determines appropriate. The Administrator shall base such determination, among other factors, on the relative contribution of greenhouse gas emissions, and the costs for achieving reductions, from such classes or categories of new nonroad engines and vehicles. The Administrator may revise these standards from time to time.

1 "(2) Standards under section 213(a)(4) applica-
2 ble to emissions of greenhouse gases from new ma-
3 rine vessels and locomotives, and from new engines
4 used in marine vessels and locomotives, shall achieve
5 the greatest degree of emissions reduction achievable
6 based on the application of technology which the Ad-
7 ministrator determines will be available at the time
8 such standards take effect, taking into consideration
9 cost, energy, and safety factors associated with the
10 application of such technology. Any such regulations
11 shall take effect after such period as the Adminis-
12 trator finds necessary to permit the development and
13 application of the requisite technology.
14 "(3) For purposes of this section and standards
15 under section 213(a)(4) applicable to emissions of
16 greenhouse gases, the term 'nonroad engines and ve-
17 hicles' shall include non-internal combustion engines
18 and the vehicles these engines power (such as elec-
19 tric engines and electric vehicles), for those non-in-
20 ternal combustion engines and vehicles which would
21 be in the same category and have the same uses as
22 nonroad engines and vehicles that are powered by in-
23 ternal combustion engines.
24 "(c) AIRCRAFT AND AIRCRAFT ENGINES.—

1 "(1) Pursuant to section 231(a), the Adminis-
2 trator shall promulgate standards applicable to emis-
3 sions of greenhouse gases from new aircraft and new
4 engines used in aircraft by December 31, 2012. Not-
5 withstanding any requirement in section 231(a), the
6 Administrator shall also promulgate standards appli-
7 cable to emissions of greenhouse gases from other
8 classes and categories of aircraft and aircraft en-
9 gines for such classes and categories as the Adminis-
10 trator determines appropriate and in the timeframe
11 the Administrator determines appropriate. The Ad-
12 ministrator may revise these standards from time to
13 time.
14 "(2) Standards under section 231(a) applicable
15 to emissions of greenhouse gases from new aircraft
16 and new engines used in aircraft, and any later revi-
17 sions or additional standards, shall achieve the
18 greatest degree of emissions reduction achievable
19 based on the application of technology which the Ad-
20 ministrator determines will be available at the time
21 such standards take effect, taking into consideration
22 cost, energy, and safety factors associated with the
23 application of such technology. Any such standards
24 shall take effect after such period as the Adminis-

1 trator finds necessary to permit the development and
2 application of the requisite technology.
3 "(d) AVERAGING, BANKING, AND TRADING OF EMIS-
4 SIONS CREDITS.—In establishing standards applicable to
5 emissions of greenhouse gases pursuant to this section and
6 sections 202(a), 213(a)(4), and 231(a), the Administrator
7 may establish provisions for averaging, banking, and trad-
8 ing of greenhouse gas emissions credits within or across
9 classes or categories of motor vehicles and motor vehicle
10 engines, nonroad vehicles and engines (including marine
11 vessels), and aircraft and aircraft engines, to the extent
12 the Administrator determines appropriate and considering
13 the factors appropriate in setting standards under those
14 sections. Such provisions may include reasonable and ap-
15 propriate provisions concerning generation, banking, trad-
16 ing, duration, and use of credits.
17 "(e) REPORTS.—The Administrator shall, from time
18 to time, submit a report to Congress that projects the
19 amount of greenhouse gas emissions from the transpor-
20 tation sector, including transportation fuels, for the years
21 2030 and 2050, based on the standards adopted under
22 this section.".

1 **SEC. 222. GREENHOUSE GAS EMISSIONS REDUCTIONS**
2 **THROUGH TRANSPORTATION EFFICIENCY.**

3 Title VIII of the Clean Air Act, as added by section
4 331 of this Act, is further amended by inserting after part
5 C the following new part:

6 **"PART D—PLANNING REQUIREMENTS**

7 **"SEC. 841. GREENHOUSE GAS EMISSIONS REDUCTIONS**
8 **THROUGH TRANSPORTATION EFFICIENCY.**

9 "(a) IN GENERAL.—Each State shall—

10 "(1) not later than 3 years after the date of en-
11 actment of this section, submit to the Administrator
12 goals for transportation-related greenhouse gas
13 emissions reductions; and

14 "(2) as part of each transportation plan or
15 transportation improvement program developed
16 under title 23 or title 49, United States Code, en-
17 sure that a plan to achieve such goals, or an up-
18 dated version of such a plan, is submitted to the Ad-
19 ministrator and to the Secretary of Transportation
20 (in this section referred to as the 'Secretary') by
21 each metropolitan planning organization in the State
22 for an area with a population exceeding 200,000.

23 "(b) MODELS AND METHODOLOGIES.—

24 "(1) IN GENERAL.—The Administrator shall
25 promulgate regulations to establish standards for
26 use in developing goals, plans, and strategies under

1 this section and for monitoring progress toward such
2 goals. Such standards shall include—
3 "(A) data collection techniques for assess-
4 ing State and regional transportation-related
5 greenhouse gas emissions;
6 "(B) methodologies for determining trans-
7 portation-related greenhouse gas emissions
8 baselines;
9 "(C) models and methodologies for sce-
10 nario analysis; and
11 "(D) models and methodologies for esti-
12 mating transportation-related greenhouse gas
13 emissions reductions from the strategies consid-
14 ered under this section.
15 Such regulations may approve or improve existing
16 models and methodologies
17 "(2) TIMING.—The Administrator shall—
18 "(A) publish proposed regulations under
19 paragraph (1) not later than 1 year after the
20 date of enactment of this section; and
21 "(B) promulgate final regulations under
22 paragraph (1) not later than 2 years after such
23 date of enactment.
24 "(3) ASSESSMENT.—At least every 6 years
25 after promulgating final regulations under para-

1 graph (1), the Administrator, in coordination with
2 the Secretary, shall assess current and projected
3 progress in reducing transportation-related green-
4 house gas emissions. The assessment shall examine
5 the contributions to emissions reductions attrib-
6 utable to improvements in vehicle efficiency, green-
7 house gas performance of transportation fuels, and
8 increased efficiency in utilizing transportation sys-
9 tems.
10 "(c) GREENHOUSE GAS REDUCTION GOALS.—
11 "(1) CONSULTATION.—Each State shall develop
12 the goals referred to in subsection (a)(1)—
13 "(A) in concurrence with State agencies re-
14 sponsible for air quality and transportation;
15 "(B) in consultation with each metropoli-
16 tan planning organization for an area in the
17 State with a population exceeding 200,000 and
18 applicable local air quality and transportation
19 agencies; and
20 "(C) with public involvement, including
21 public comment periods and meetings.
22 "(2) PERIOD.—The goals referred to in sub-
23 section (a)(1) shall be for 4-, 10-, and 20-year peri-
24 ods.

1 "(3) TARGETS; DESIGNATED YEAR.—The goals
2 referred to in subsection (a)(1) shall establish tar-
3 gets to reduce transportation-related greenhouse gas
4 emissions in the covered area. The targets shall be
5 designed to ensure that the levels of such emissions
6 stabilize and decrease after a designated year. The
7 State shall consider designating 2010 as such des-
8 ignated year.
9 "(4) COVERED AREA.—The goals referred to in
10 subsection (a)(1)—
11 "(A) shall be established on a statewide
12 basis;
13 "(B) shall be established for each metro-
14 politan planning organization in the State for
15 an area with a population exceeding 200,000;
16 and
17 "(C) may be established on a voluntary
18 basis, in accordance with the provisions of this
19 section, for any metropolitan planning organiza-
20 tion not described in subparagraph (B).
21 "(5) REVISED GOALS.—Every 4 years, each
22 State shall update and revise, as appropriate, the
23 goals referred to in subsection (a)(1).
24 "(d) PLANNING.—A plan submitted under subsection
25 (a)(2) shall—

1 "(1) be based upon the models and methodolo-
2 gies established by the Administrator under sub-
3 section (b);
4 "(2) use transportation and land use scenario
5 analysis to address transportation-related green-
6 house gas emissions and economic development im-
7 pacts; and
8 "(3) be developed—
9 "(A) with public involvement, including
10 public comment periods and meetings which
11 provide opportunities for comment from a vari-
12 ety of stakeholders based on age, race, income,
13 and disability;
14 "(B) with regional coordination, including
15 with respect to—
16 "(i) metropolitan planning organiza-
17 tions;
18 "(ii) the localities comprising the met-
19 ropolitan planning organization;
20 "(iii) the State in which the metro-
21 politan planning organization is located;
22 and
23 "(iv) air quality, environmental
24 health, and transportation agencies for the
25 State and region involved; and

1 "(C) in consultation with the State and
2 local housing, public health, economic develop-
3 ment, land use, environment, and public trans-
4 portation agencies.
5 "(e) STRATEGIES.—In developing goals under sub-
6 section (a)(1) and a plan under subsection (a)(2), the
7 State or metropolitan planning organization, as applicable,
8 shall consider transportation and land use planning strate-
9 gies to reduce transportation-related greenhouse gas emis-
10 sions, including the following:
11 "(1) Efforts to increase or improve public
12 transportation, including—
13 "(A) new public transportation systems,
14 including new commuter rail systems;
15 "(B) expansion of existing public transpor-
16 tation systems;
17 "(C) employer-based subsidies;
18 "(D) cleaner locomotive technologies; and
19 "(E) quality of service improvements, in-
20 cluding improved frequency of service.
21 "(2) Updates to zoning and other land use reg-
22 ulations and plans to support development that—
23 "(A) coordinates transportation and land
24 use planning;

1 "(B) focuses future growth close to exist-
2 ing and planned job centers and public facili-
3 ties;
4 "(C) uses existing infrastructure;
5 "(D) promotes walking, bicycling, and pub-
6 lic transportation use; and
7 "(E) mixes land uses such as housing, re-
8 tail, and schools.
9 "(3) Implementation of a policy (referred to as
10 a 'complete streets policy') that—
11 "(A) ensures adequate accommodation of
12 all users of transportation systems, including
13 pedestrians, bicyclists, public transportation
14 users, motorists, children, the elderly, and indi-
15 viduals with disabilities; and
16 "(B) adequately addresses the safety and
17 convenience of all users of the transportation
18 system.
19 "(4) Construction of bicycle and pedestrian in-
20 frastructure facilities, including facilities that im-
21 prove the connections with networks that provide ac-
22 cess to human services, employment, schools, and re-
23 tail.
24 "(5) Projects to promote telecommuting, flexi-
25 ble work schedules, or satellite work centers.

1 "(6) Pricing measures, including tolling, con-
2 gestion pricing, and pay-as-you-drive insurance.
3 "(7) Intermodal freight system strategies, in-
4 cluding enhanced rail services, short sea shipping,
5 and other strategies.
6 "(8) Parking policies.
7 "(9) Intercity rail service, including high speed
8 rail.
9 "(10) Travel demand management projects.
10 "(11) Restriction of the use of certain roads, or
11 lanes, by vehicles other than passenger buses and
12 high-occupancy vehicles.
13 "(12) Reduction of vehicle idling, including
14 idling associated with freight management, construc-
15 tion, transportation, and commuter operations.
16 "(13) Policies to encourage the use of retrofit
17 technologies and early replacement of vehicles, en-
18 gines and equipment to reduce transportation-re-
19 lated greenhouse gas emissions from existing mobile
20 sources.
21 "(14) Other projects that the Administrator
22 finds reduce transportation-related greenhouse gas
23 emissions.

1 "(f) PUBLIC AVAILABILITY.—The Administrator
2 shall publish, including by posting on the Environmental
3 Protection Agency's website—
4 "(1) the goals and plans submitted under sub-
5 section (a); and
6 "(2) for each plan submitted under subsection
7 (a)(2), an analysis of the anticipated effects of the
8 plan on greenhouse gas emissions and oil consump-
9 tion.
10 "(g) CERTIFICATION.—The Administrator, in con-
11 sultation with the Secretary, shall certify a State or metro-
12 politan planning organization greenhouse gas reduction
13 plan submitted under subsection (a)(2) if the plan's imple-
14 mentation is likely to meet the corresponding greenhouse
15 gas reduction goal referred to in subsection (a)(1). If the
16 Administrator, in consultation with the Secretary, deter-
17 mines that a submitted plan cannot be certified, the State
18 or metropolitan planning organization shall revise and re-
19 submit the plan within 1 year.
20 "(h) ENFORCEMENT.—If the Administrator finds
21 that a State has failed to submit goals under subsection
22 (a)(1), has failed to ensure the submission of a plan under
23 subsection (a)(2), or has failed to submit a revised plan
24 under subsection (g), for any area in the State (irrespec-
25 tive of whether the area is a nonattainment area), the Ad-

1 ministrator shall impose a prohibition in accordance with
2 section 179(b)(1) applicable to the area within 2 years of
3 such a finding. The Administrator may not impose a pro-
4 hibition under the preceding sentence, and no action may
5 be brought by the Administrator or any other entity alleg-
6 ing a violation of this section, based on the content or ade-
7 quacy of a goal or plan submitted under subsection (a)(1)
8 or (a)(2) or failure to achieve the goal submitted under
9 subsection (a)(1).

10 "(i) COMPETITIVE GRANTS.—

11 "(1) GRANTS.—The Administrator, in consulta-
12 tion with the Secretary, may—

13 "(A) award grants to support activities re-
14 lated to improving data collection, modeling,
15 and monitoring systems to assess transpor-
16 tation-related greenhouse gas emissions and the
17 effects of plans, policies, and strategies ref-
18 erenced in this section;

19 "(B) award grants to States and metro-
20 politan planning organizations for the develop-
21 ment of goals and plans to be submitted under
22 sections (a)(1) or (a)(2); and

23 "(C) award grants, on a competitive basis,
24 to implement plans certified under subsection
25 (g) or elements thereof, provided that each

1 project thus funded includes a measurement
2 and evaluation component that meets the regu-
3 lations promulgated under subsection (b).
4 "(2) PRIORITY.—In making grants under para-
5 graph (1)(C), the Administrator shall give priority to
6 applicants based upon—
7 "(A) the amount of total greenhouse gas
8 emissions to be reduced as a result of imple-
9 mentation of a certified plan, within the covered
10 area, as determined by methods established
11 under subsection (b); and
12 "(B) the amount of per capita greenhouse
13 gas emissions to be reduced as a result of im-
14 plementation of a certified plan, within the cov-
15 ered area, as determined by methods estab-
16 lished under subsection (b);
17 "(C) the cost effectiveness, in terms of dol-
18 lars per tons of greenhouse gas reductions, to
19 be achieved as a result of the implementation of
20 a certified plan;
21 "(D) the potential for both short- and
22 long-term reductions; and
23 "(E) such other factors as the Adminis-
24 trator determines appropriate.

1 "(3) AUTHORIZATION OF APPROPRIATIONS.—
2 To carry out this subsection, there are authorized to
3 be appropriated such sums as may be necessary.
4 "(j) DEFINITIONS.—In this section:
5 "(1) The term 'metropolitan planning organiza-
6 tion' means a metropolitan planning organization, as
7 such term is used in section 176.
8 "(2) The term 'scenario analysis' means an
9 analysis that is conducted by identifying different
10 trends and making projections based on those trends
11 to develop a range of scenarios and estimates of how
12 each scenario could improve access to goods and
13 services, including access to employment, education,
14 and health care (especially for elderly and economi-
15 cally disadvantaged communities), and could affect
16 rates of—
17 "(A) vehicle miles traveled;
18 "(B) vehicle hours traveled;
19 "(C) use of mobile source fuel by type, in-
20 cluding electricity; and
21 "(D) transportation-related greenhouse gas
22 emissions.
23 "(k) LAND USE AUTHORITY.—Nothing in this sec-
24 tion may be construed to—

1 "(1) infringe upon the existing authority of
2 State or local governments to plan or control land
3 use; or
4 "(2) provide or transfer authority over land use
5 to any other entity.".

6 **SEC. 223. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
7 **GRAM.**

8 Part B of title VIII of the Clean Air Act, as added
9 by section 221 of this Act is amended by adding after sec-
10 tion 821 the following section:

11 **"SEC. 822. SMARTWAY TRANSPORTATION EFFICIENCY PRO-**
12 **GRAM.**

13 "(a) IN GENERAL.—There is established within the
14 Environmental Protection Agency a SmartWay Transport
15 Program to quantify, demonstrate, and promote the bene-
16 fits of technologies, products, fuels, and operational strate-
17 gies that reduce petroleum consumption, air pollution, and
18 greenhouse gas emissions from the mobile source sector.
19 "(b) GENERAL DUTIES.—Under the program estab-
20 lished under this section, the Administrator shall carry out
21 each of the following:
22 "(1) Development of measurement protocols to
23 evaluate the energy consumption and greenhouse gas
24 impacts from technologies and strategies in the mo-

1 bile source sector, including those for passenger
2 transport and goods movement.
3 "(2) Development of qualifying thresholds for
4 certifying, verifying, or designating energy-efficient,
5 low-greenhouse gas SmartWay technologies and
6 strategies for each mode of passenger transportation
7 and goods movement.
8 "(3) Development of partnership and recogni-
9 tion programs to promote best practices and drive
10 demand for energy-efficient, low-greenhouse gas
11 transportation performance.
12 "(4) Promotion of the availability of, and en-
13 couragement of the adoption of, SmartWay certified
14 or verified technologies and strategies, and publica-
15 tion of the availability of financial incentives, such
16 as assistance from loan programs and other Federal
17 and State incentives.
18 "(c) SMARTWAY TRANSPORT FREIGHT PARTNER-
19 SHIP.—The Administrator shall establish a SmartWay
20 Transport Partnership program with shippers and carriers
21 of goods to promote energy-efficient, low-greenhouse gas
22 transportation. In carrying out such partnership, the Ad-
23 ministrator shall undertake each of the following:
24 "(1) Certification of the energy and greenhouse
25 gas performance of participating freight carriers, in-

1 cluding those operating rail, trucking, marine, and
2 other goods movement operations.
3 "(2) Publication of a comprehensive energy and
4 greenhouse gas performance index of freight modes
5 (including rail, trucking, marine, and other modes of
6 transporting goods) and individual freight companies
7 so that shippers can choose to deliver their goods
8 more efficiently.
9 "(3) Development of tools for—
10 "(A) carriers to calculate their energy and
11 greenhouse gas performance; and
12 "(B) shippers to calculate the energy and
13 greenhouse gas impacts of moving their prod-
14 ucts and to evaluate the relative impacts from
15 transporting their goods by different modes and
16 corporate carriers.
17 "(4) Provision of recognition opportunities for
18 participating shipper and carrier companies dem-
19 onstrating advanced practices and achieving superior
20 levels of greenhouse gas performance.
21 "(d) IMPROVING FREIGHT GREENHOUSE GAS PER-
22 FORMANCE DATABASES.—The Administrator shall, in co-
23 ordination with other appropriate agencies, define and col-
24 lect data on the physical and operational characteristics
25 of the Nation's truck population, with special emphasis on

1 data related to energy efficiency and greenhouse gas per-
2 formance to inform the performance index published
3 under subsection (c)(2) of this section, and other means
4 of goods transport as necessary, at least every 5 years.
5 "(e) ESTABLISHMENT OF FINANCING PROGRAM.—
6 The Administrator shall establish a SmartWay Financing
7 Program to competitively award funding to eligible entities
8 identified by the Administrator in accordance with the
9 program requirements in subsection (g).
10 "(f) PURPOSE.—Under the SmartWay Financing
11 Program, eligible entities shall—
12 "(1) use funds awarded by the Administrator to
13 provide flexible loan and lease terms that increase
14 approval rates or lower the costs of loans and leases
15 in accordance with guidance developed by the Ad-
16 ministrator; and
17 "(2) make such loans and leases available to
18 public and private entities for the purpose of adopt-
19 ing low-greenhouse gas technologies or strategies for
20 the mobile source sector that are designated by the
21 Administrator.
22 "(g) PROGRAM REQUIREMENTS.—The Administrator
23 shall determine program design elements and require-
24 ments, including—

1 "(1) the type of financial mechanism with
2 which to award funding, in the form of grants or
3 contracts;
4 "(2) the designation of eligible entities to re-
5 ceive funding, including State, tribal, and local gov-
6 ernments, regional organizations comprised of gov-
7 ernmental units, nonprofit organizations, or for-prof-
8 it companies;
9 "(3) criteria for evaluating applications from el-
10 igible entities, including anticipated—
11 "(A) cost-effectiveness of loan or lease pro-
12 gram on a metric-ton-of-greenhouse gas-saved-
13 per-dollar basis;
14 "(B) ability to promote the loan or lease
15 program and associated technologies and strate-
16 gies to the target audience; and
17 "(4) reporting requirements for entities that re-
18 ceive awards, including—
19 "(A) actual cost-effectiveness and green-
20 house gas savings from the loan or lease pro-
21 gram based on a methodology designated by the
22 Administrator;
23 "(B) the total number of applications and
24 number of approved applications; and

"(C) terms granted to loan and lease recipients compared to prevailing market practices.

"(h) AUTHORIZATION OF APPROPRIATIONS.—Such sums as necessary are authorized to be appropriated to the Administrator to carry out this section.".

SEC. 224. STATE VEHICLE FLEETS.

Section 507(o) of the Energy Policy Act of 1992 (42 U.S.C. 13257) is amended by adding the following new paragraph at the end thereof:

"(3) The Secretary shall revise the rules under this subsection with respect to the types of alternative fueled vehicles required for compliance with this subsection to ensure those rules are consistent with any guidance issued pursuant to section 303 of this Act.".

Subtitle D—Industrial Energy Efficiency Programs

SEC. 241. INDUSTRIAL PLANT ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall continue to support the development of the American National Standards Institute (ANSI) voluntary industrial plant energy efficiency certification program, pending International Standards Organization (ISO) consensus standard 50001, and other related ANSI/ISO standards. In addition, the Department

1 shall undertake complementary activities through the De-
2 partment of Energy's Industry Technologies Program that
3 support the voluntary implementation of such standards
4 by manufacturing firms. There are authorized to be appro-
5 priated to the Secretary such sums as are necessary to
6 carry out these activities. The Secretary shall report to
7 Congress on the status of standards development and
8 plans for further standards development pursuant to this
9 Section by not later than 18 months after the date of en-
10 actment of this Act, and shall prepare a second such re-
11 port 18 months thereafter.

12 **SEC. 242. ELECTRIC AND THERMAL WASTE ENERGY RECOV-**
13 **ERY AWARD PROGRAM.**

14 (a) ELECTRIC AND THERMAL WASTE ENERGY RE-
15 COVERY AWARDS.—The Secretary of Energy shall estab-
16 lish a program to make monetary awards to the owners
17 and operators of new and existing electric energy genera-
18 tion facilities or thermal energy production facilities using
19 fossil or nuclear fuel, to encourage them to use innovative
20 means of recovering any thermal energy that is a poten-
21 tially useful byproduct of electric power generation or
22 other processes to—

23 (1) generate additional electric energy; or

24 (2) make sales of thermal energy not used for
25 electric generation, in the form of steam, hot water,

1 chilled water, or desiccant regeneration, or for other
2 commercially valid purposes.
3 (b) AMOUNT OF AWARDS.—
4 (1) ELIGIBILITY.—Awards shall be made under
5 subsection (a) only for the use of innovative means
6 that achieve net energy efficiency at the facility con-
7 cerned significantly greater than the current stand-
8 ard technology in use at similar facilities.
9 (2) AMOUNT.—The amount of an award made
10 under subsection (a) shall equal an amount up to
11 the value of 25 percent of the energy projected to be
12 recovered or generated during the first 5 years of
13 operation of the facility using the innovative energy
14 recovery method, or such lesser amount that the
15 Secretary determines to be the minimum amount
16 that can cost-effectively stimulate such innovation.
17 (3) LIMITATION.—No person may receive an
18 award under this section if a grant under the waste
19 energy incentive grant program under section 373 of
20 the Energy Policy and Conservation Act (42 U.S.C.
21 6343) is made for the same energy savings resulting
22 from the same innovative method.
23 (c) REGULATORY STATUS.—The Secretary of Energy
24 shall—

1 (1) assist State regulatory commissions to iden-
2 tify and make changes in State regulatory programs
3 for electric utilities to provide appropriate regulatory
4 status for thermal energy byproduct businesses of
5 regulated electric utilities to encourage those utilities
6 to enter businesses making the sales referred to in
7 subsection (a)(2); and
8 (2) encourage self-regulated utilities to enter
9 businesses making the sales referred to in subsection
10 (a)(2).
11 (d) ELIGIBILITY FOR SEED LOANS.—Owners and op-
12 erators of electric energy generation and thermal energy
13 production facilities shall be eligible for SEED Fund loans
14 under subtitle D of title I to provide initial capital for en-
15 tering into businesses involving sales referred to in sub-
16 section (a)(2).
17 (e) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary of En-
19 ergy such sums as are necessary for the purposes of this
20 section.

21 **SEC. 243. CLARIFYING ELECTION OF WASTE HEAT RECOV-**
22 **ERY FINANCIAL INCENTIVES.**

23 Section 373(e) of the Energy Policy and Conservation
24 Act (42 U.S.C. 6343(e)) is amended—

(1) by striking "that qualifies for" and inserting "who elects to claim"; and

(2) by inserting "from that project" after "for waste heat recovery".

Subtitle E—Improvements in Energy Savings Performance Contracting

SEC. 251. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) COMPETITION REQUIREMENTS FOR TASK OR DELIVERY ORDERS UNDER ENERGY SAVINGS PERFORMANCE CONTRACTS.—

(1) COMPETITION REQUIREMENTS.—Subsection (a) of section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following paragraph:

"(3)(A) The head of a Federal agency may issue a task or delivery order under an energy savings performance contract by—

"(i) notifying all contractors that have received an award under such contract that the agency proposes to discuss energy savings performance services for some or all of its facilities, soliciting an expression of interest in performing site surveys or investigations and feasibility designs and studies and the submission of

1 qualifications from such contractors, and in-
2 cluding in such notice summary information
3 concerning energy use for any facilities that the
4 agency has specific interest in including in such
5 contract;
6 "(ii) reviewing all expressions of interest
7 and qualifications submitted pursuant to the
8 notice under clause (i);
9 "(iii) selecting two or more contractors
10 (from among those reviewed under clause (ii))
11 to conduct discussions concerning the contrac-
12 tors' respective qualifications to implement po-
13 tential energy conservation measures, including
14 requesting references demonstrating experience
15 on similar efforts and the resulting energy sav-
16 ings of such similar efforts;
17 "(iv) selecting and authorizing—
18 "(I) more than one contractor (from
19 among those selected under clause (iii)) to
20 conduct site surveys, investigations, feasi-
21 bility designs and studies or similar assess-
22 ments for the energy savings performance
23 contract services (or for discrete portions
24 of such services), for the purpose of allow-
25 ing each such contractor to submit a firm,

1 fixed-price proposal to implement specific
2 energy conservation measures; or
3 "(II) one contractor (from among
4 those selected under clause (iii)) to conduct
5 a site survey, investigation, a feasibility de-
6 sign and study or similar for the purpose
7 of allowing the contractor to submit a
8 firm, fixed-price proposal to implement
9 specific energy conservation measures;
10 "(v) negotiating a task or delivery order
11 for energy savings performance contracting
12 services with the contractor or contractors se-
13 lected under clause (iv) based on the energy
14 conservation measures identified.; and
15 "(vi) issuing a task or delivery order for
16 energy savings performance contracting services
17 to such contractor or contractors.
18 "(B) The issuance of a task or delivery order
19 for energy savings performance contracting services
20 pursuant to subparagraph (A) is deemed to satisfy
21 the task and delivery order competition requirements
22 in section 2304c(d) of title 10, United States Code,
23 and section 303J(d) of the Federal Property and
24 Administrative Services Act of 1949 (41 U.S.C.
25 253j(d)).

1 "(C) The Secretary may issue guidance as nec-
2 essary to agencies issuing task or delivery orders
3 pursuant to subparagraph (A).".
4 (2) EFFECTIVE DATE.—The amendment made
5 by paragraph (1) is inapplicable to task or delivery
6 orders issued before the date of enactment of this
7 section.
8 (b) INCLUSION OF THERMAL RENEWABLE EN-
9 ERGY.—Section 203 of the Energy Policy Act of 2005 (42
10 U.S.C. 15852) is amended—
11 (1) in subsection (a), by striking "electric"; and
12 (2) in subsection (b)(2), by inserting "or ther-
13 mal" after "means electric".
14 (c) CREDIT FOR RENEWABLE ENERGY PRODUCED
15 AND USED ON SITE.—Subsection (c) of section 203 of the
16 Energy Policy Act of 2005 (42 U.S.C. 15852) is amended
17 to read as follows:
18 "(c) CALCULATION.—Renewable energy produced at
19 a Federal facility, on Federal lands, or on Indian lands
20 (as defined in title XXVI of the Energy Policy Act of 1992
21 (25 U.S.C. 3501 et seq.)), shall be calculated separately
22 from renewable energy consumed at a Federal facility, and
23 each may be used to comply with the consumption require-
24 ment under subsection (a).".

1 (d) FINANCING FLEXIBILITY.—Section 801(a)(2)(F)
2 of the National Energy Conservation Policy Act (42
3 U.S.C. 8287(a)(2)(F)), as so redesignated by subsection
4 (b)(1) of this section, is amended by striking "In" and
5 inserting "Notwithstanding any other provision of law,
6 in".

7 **Subtitle F—Public Institutions**

8 **SEC. 261. PUBLIC INSTITUTIONS.**

9 Section 399A of the Energy Policy and Conservation
10 Act (42 U.S.C. 6371h–1) is amended—

11 (1) in subsection (a)(5), by striking "or a des-
12 ignee" and inserting "a not-for-profit hospital or
13 not-for-profit inpatient health care facility, or a des-
14 ignated agent";

15 (2) in subsection (c)(1), by striking subpara-
16 graph (C);

17 (3) in subsection (f)(3)(A), by striking
18 "$1,000,000" and inserting "$2,500,000"; and

19 (4) in subsection (i)(1), by striking
20 "$250,000,000 for each of fiscal years 2009 through
21 2013" and inserting "such sums as may be nec-
22 essary for each of fiscal years 2010 through 2015".

SEC. 262. COMMUNITY ENERGY EFFICIENCY FLEXIBILITY.

Section 545(b)(3) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17155(b)(3)) is amended—

(1) by striking "Indian tribe may use" and all that follows through "for administrative expenses" and inserting "Indian tribe may use for administrative expenses";

(2) by striking subparagraphs (B) and (C);

(3) by redesignating the remaining clauses (i) and (ii) as subparagraphs (A) and (B), respectively and adjusting the margin of those subparagraphs accordingly; and

(4) by striking the semicolon at the end and inserting a period.

SEC. 263. SMALL COMMUNITY JOINT PARTICIPATION.

(a) Section 541(3)(A) of the Energy Independence and Security Act of 2007 is amended in clause (i) by changing the word "and" to "or" at the end of subclause (II), in subclause (ii)(II) by striking the period at the end of and inserting a semicolon and the word "or", and by inserting the following new clause (iii):

"(iii) a group of adjacent, contiguous, or geographically proximate units of local government that reach agreement to act jointly for purposes of this section and that

1 represent a combined population of not
2 less than 35,000.".
3 (b) Section 541(3)(B) of the Energy Independence
4 and Security Act of 2007 is amended in subclause (ii)(II)
5 by striking the period at the end of and inserting a semi-
6 colon and the word "or", and by inserting the following
7 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 50,000.".

14 **SEC. 264. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
15 **PROGRAM.**

16 (a) IN GENERAL.—The Secretary of Energy is au-
17 thorized to make grants to private, non-profit, mission-
18 driven community development organizations including
19 community development corporations and community de-
20 velopment financial institutions to provide financing to
21 businesses and projects that improve energy efficiency;
22 identify and develop alternative, renewable, and distrib-
23 uted energy supplies; provide technical assistance and pro-
24 mote job and business opportunities for low-income resi-

1 dents; and increase energy conservation in low income
2 rural and urban communities.
3 (b) GRANTS.—The purpose of such grants is to in-
4 crease the flow of capital and benefits to low income com-
5 munities, minority-owned and woman-owned businesses
6 and entrepreneurs and other projects and activities located
7 in low income communities in order to reduce environ-
8 mental degradation, foster energy conservation and effi-
9 ciency and create job and business opportunities for local
10 residents. The Secretary may make grants on a competi-
11 tive basis for—
12 (1) investments that develop alternative, renew-
13 able, and distributed energy supplies;
14 (2) capitalizing loan funds that lend to energy
15 efficiency projects and energy conservation pro-
16 grams;
17 (3) technical assistance to plan, develop and
18 manage an energy efficiency financing program; and
19 (4) technical and financial assistance to assist
20 small-scale businesses and private entities develop
21 new renewable and distributed sources of power or
22 combined heat and power generation.
23 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
24 purposes of this section there is authorized to be appro-

1 priated $50,000,000 for each of the fiscal years 2010
2 through 2015.

3 TITLE III—REDUCING GLOBAL
4 WARMING POLLUTION

5 **SEC. 301. SHORT TITLE.**

6 This title, and sections 112, 116, 121, 221, 222, and
7 223 of this Act, may be cited as the "Safe Climate Act".

8 Subtitle A—Reducing Global
9 Warming Pollution

10 **SEC. 311. REDUCING GLOBAL WARMING POLLUTION.**

11 The Clean Air Act (42 U.S.C. and following) is
12 amended by adding after title VI the following new title:

13 "TITLE VII—GLOBAL WARMING
14 POLLUTION REDUCTION PRO-
15 GRAM

16 **"PART A—GLOBAL WARMING POLLUTION**
17 **REDUCTION GOALS AND TARGETS**

18 **"SEC. 701. FINDINGS AND PURPOSE.**

19 "(a) FINDINGS.—The Congress finds as follows:
20 "(1) Global warming poses a significant threat
21 to the national security, economy, public health and
22 welfare, and environment of the United States, as
23 well as of other nations.
24 "(2) Reviews of scientific studies, including by
25 the Intergovernmental Panel on Climate Change and

1 the National Academy of Sciences, demonstrate that
2 global warming is the result of the combined anthro-
3 pogenic greenhouse gas emissions from numerous
4 sources of all types and sizes. Each increment of
5 emission, when combined with other emissions,
6 causes or contributes materially to the acceleration
7 and extent of global warming and its adverse effects
8 for the lifetime of such gas in the atmosphere. Ac-
9 cordingly, controlling emissions in small as well as
10 large amounts is essential to prevent, slow the pace
11 of, reduce the threats from, and mitigate global
12 warming and its adverse effects.
13 "(3) Because they induce global warming,
14 greenhouse gas emissions cause or contribute to in-
15 juries to persons in the United States, including—
16 "(A) adverse health effects such as disease
17 and loss of life;
18 "(B) displacement of human populations;
19 "(C) damage to property and other inter-
20 ests related to ocean levels, acidification, and
21 ice changes;
22 "(D) severe weather and seasonal changes;
23 "(E) disruption, costs, and losses to busi-
24 ness, trade, employment, farms, subsistence,

1 aesthetic enjoyment of the environment, recre-
2 ation, culture, and tourism;
3 "(F) damage to plants, forests, lands, and
4 waters;
5 "(G) harm to wildlife and habitat;
6 "(H) scarcity of water and the decreased
7 abundance of other natural resources;
8 "(I) worsening of tropospheric air pollu-
9 tion;
10 "(J) substantial threats of similar damage;
11 and
12 "(K) other harm.
13 "(4) That many of these effects and risks of fu-
14 ture effects of global warming are widely shared
15 does not minimize the adverse effects individual per-
16 sons have suffered, will suffer, and are at risk of
17 suffering because of global warming.
18 "(5) That some of the adverse and potentially
19 catastrophic effects of global warming are at risk of
20 occurring and not a certainty does not negate the
21 harm persons suffer from actions that increase the
22 likelihood, extent, and severity of such future im-
23 pacts.
24 "(6) Nations of the world look to the United
25 States for leadership in addressing the threat of and

1 harm from global warming. Full implementation of
2 the Safe Climate Act is critical to engage other na-
3 tions in an international effort to mitigate the threat
4 of and harm from global warming.
5 "(7) Global warming and its adverse effects are
6 occurring and are likely to continue and increase in
7 magnitude, and to do so at a greater and more
8 harmful rate, unless the Safe Climate Act is fully
9 implemented and enforced in an expeditious manner.
10 "(b) PURPOSE.—It is the general purpose of the Safe
11 Climate Act to help prevent, reduce the pace of, mitigate,
12 and remedy global warming and its adverse effects. To ful-
13 fill such purpose, it is necessary to—
14 "(1) require the timely fulfillment of all govern-
15 mental acts and duties, both substantive and proce-
16 dural, and the prompt compliance of covered entities
17 with the requirements of the Safe Climate Act;
18 "(2) establish and maintain an effective, trans-
19 parent, and fair market for emission allowances and
20 preserve the integrity of the cap on emissions and of
21 offset credits;
22 "(3) advance the production and deployment of
23 clean energy and energy efficiency technologies; and
24 "(4) ensure effective enforcement of the Safe
25 Climate Act by citizens, States, Indian tribes, and

1 all levels of government because each violation of the
2 Safe Climate Act is likely to result in an additional
3 increment of greenhouse gas emission and will slow
4 the pace of implementation of the Safe Climate Act
5 and delay the achievement of the goals set forth in
6 section 702, and cause or contribute to global warm-
7 ing and its adverse effects.

8 **"SEC. 702. ECONOMY-WIDE REDUCTION GOALS.**

9 "The goals of the Safe Climate Act are to reduce
10 steadily the quantity of United States greenhouse gas
11 emissions such that—

12 "(1) in 2012, the quantity of United States
13 greenhouse gas emissions does not exceed 97 percent
14 of the quantity of United States greenhouse gas
15 emissions in 2005;

16 "(2) in 2020, the quantity of United States
17 greenhouse gas emissions does not exceed 80 percent
18 of the quantity of United States greenhouse gas
19 emissions in 2005;

20 "(3) in 2030, the quantity of United States
21 greenhouse gas emissions does not exceed 58 percent
22 of the quantity of United States greenhouse gas
23 emissions in 2005; and

24 "(4) in 2050, the quantity of United States
25 greenhouse gas emissions does not exceed 17 percent

1 of the quantity of United States greenhouse gas
2 emissions in 2005.

3 **"SEC. 703. REDUCTION TARGETS FOR SPECIFIED SOURCES.**

4 "(a) IN GENERAL.—The regulations issued under
5 section 721 shall cap and reduce annually the greenhouse
6 gas emissions of capped sources each calendar year begin-
7 ning in 2012 such that—

8 "(1) in 2012, the quantity of greenhouse gas
9 emissions from capped sources does not exceed 97
10 percent of the quantity of greenhouse gas emissions
11 from such sources in 2005;

12 "(2) in 2020, the quantity of greenhouse gas
13 emissions from capped sources does not exceed 83
14 percent of the quantity of greenhouse gas emissions
15 from such sources in 2005;

16 "(3) in 2030, the quantity of greenhouse gas
17 emissions from capped sources does not exceed 58
18 percent of the quantity of greenhouse gas emissions
19 from such sources in 2005; and

20 "(4) in 2050, the quantity of greenhouse gas
21 emissions from capped sources does not exceed 17
22 percent of the quantity of greenhouse gas emissions
23 from such sources in 2005.

24 "(b) DEFINITION.—For purposes of this section, the
25 term 'greenhouse gas emissions from such sources in

1 2005' means emissions to which section 722 would have
2 applied if the requirements of this title for the specified
3 year had been in effect for 2005.

4 **"SEC. 704. SUPPLEMENTAL POLLUTION REDUCTIONS.**

5 "For the purposes of decreasing the likelihood of cat-
6 astrophic climate change, preserving tropical forests,
7 building capacity to generate offset credits, and facili-
8 tating international action on global warming, the Admin-
9 istrator shall set aside the percentage specified in section
10 781 of the quantity of emission allowances established
11 under section 721(a) for each year, to be used to achieve
12 a reduction of greenhouse gas emissions from deforest-
13 ation in developing countries in accordance with part E.
14 In 2020, activities supported under part E shall provide
15 greenhouse gas reductions in an amount equal to an addi-
16 tional 10 percentage points of reductions from United
17 States greenhouse gas emissions in 2005. The Adminis-
18 trator shall transfer these allowances with respect to ac-
19 tivities in countries that enter into and implement agree-
20 ments or arrangements relating to reduced deforestation
21 as described in section 754(a)(2).

22 **"SEC. 705. REVIEW AND PROGRAM RECOMMENDATIONS.**

23 "(a) IN GENERAL.—The Administrator shall, in con-
24 sultation with appropriate Federal agencies, submit to

1 Congress a report not later than July 1, 2013, and every
2 4 years thereafter, that includes—
3 "(1) an analysis of key findings based on the
4 latest scientific information and data relevant to
5 global climate change;
6 "(2) an analysis of capabilities to monitor and
7 verify greenhouse gas reductions on a worldwide
8 basis, including for the United States, as required
9 under the Safe Climate Act; and
10 "(3) an analysis of the status of worldwide
11 greenhouse gas reduction efforts, including imple-
12 mentation of the Safe Climate Act and other poli-
13 cies, both domestic and international, for reducing
14 greenhouse gas emissions, preventing dangerous at-
15 mospheric concentrations of greenhouse gases, pre-
16 venting significant irreversible consequences of cli-
17 mate change, and reducing vulnerability to the im-
18 pacts of climate change.
19 "(b) EXCEPTION.—Paragraph (3) of subsection (a)
20 shall not apply to the first report submitted under such
21 subsection.
22 "(c) LATEST SCIENTIFIC INFORMATION.—The anal-
23 ysis required under subsection (a)(1) shall—
24 "(1) address existing scientific information and
25 reports, considering, to the greatest extent possible,

1 the most recent assessment report of the Intergov-
2 ernmental Panel on Climate Change, reports by the
3 United States Global Change Research Program and
4 Federal agencies, and the European Union's global
5 temperature data assessment; and
6 "(2) review trends and projections for—
7 "(A) global and country-specific annual
8 emissions of greenhouse gases, and cumulative
9 emissions produced between 1850 and the
10 present, including—
11 "(i) global cumulative emissions of an-
12 thropogenic greenhouse gases;
13 "(ii) global annual emissions of an-
14 thropogenic greenhouse gases; and
15 "(iii) by country, annual total, annual
16 per capita, and cumulative anthropogenic
17 emissions of greenhouse gases for the top
18 50 emitting nations;
19 "(B) significant changes, both globally and
20 by region, in annual net non-anthropogenic
21 greenhouse gas from natural sources, including
22 permafrost, forests, or oceans;
23 "(C) global atmospheric concentrations of
24 greenhouse gases, expressed in annual con-
25 centration units as well as carbon dioxide

1 equivalents based on 100-year global warming
2 potentials;
3 "(D) major climate forcing factors, such as
4 aerosols;
5 "(E) global average temperature, expressed
6 as seasonal and annual averages in land, ocean,
7 and land-plus-ocean averages; and
8 "(F) sea level rise;
9 "(3) assess the current and potential impacts of
10 global climate change on—
11 "(A) human populations, including impacts
12 on public health, economic livelihoods, subsist-
13 ence, human infrastructure, and displacement
14 or permanent relocation due to flooding, severe
15 weather, extended drought, erosion, or other
16 ecosystem changes;
17 "(B) freshwater systems, including water
18 resources for human consumption and agri-
19 culture and natural and managed ecosystems,
20 flood and drought risks, and relative humidity;
21 "(C) the carbon cycle, including impacts
22 related to the thawing of permafrost, the fre-
23 quency and intensity of wildfire, and terrestrial
24 and ocean carbon sinks;

1 "(D) ecosystems and animal and plant
2 populations, including impacts on species abun-
3 dance, phenology, and distribution;
4 "(E) oceans and ocean ecosystems, includ-
5 ing effects on sea level, ocean acidity, ocean
6 temperatures, coral reefs, ocean circulation,
7 fisheries, and other indicators of ocean eco-
8 system health;
9 "(F) the cryosphere, including effects on
10 ice sheet mass balance, mountain glacier mass
11 balance, and sea-ice extent and volume;
12 "(G) changes in the intensity, frequency,
13 or distribution of severe weather events, includ-
14 ing precipitation, tropical cyclones, tornadoes
15 and severe heat waves;
16 "(H) agriculture and forest systems, in-
17 cluding effects on growing season, distribution,
18 and yield; and
19 "(I) any other indicators the Administrator
20 deems appropriate;
21 "(4) summarize any significant socio-economic
22 impacts of climate change in the United States, in-
23 cluding the territories of the United States, drawing
24 on work by Federal agencies and the academic lit-
25 erature, including impacts on—

1 "(A) public health;

2 "(B) human infrastructure, including
3 coastal infrastructure vulnerability to extreme
4 events and sea level rise, river floodplain infra-
5 structure, and sewer and water management
6 systems;

7 "(C) agriculture and forests, including ef-
8 fects on potential growing season, distribution,
9 and yield;

10 "(D) water resources for human consump-
11 tion, agriculture and natural and managed eco-
12 systems, flood and drought risks and relative
13 humidity;

14 "(E) energy supply and use; and

15 "(F) transportation;

16 "(5) in assessing risks and impacts, use a risk
17 management framework, including both qualitative
18 and quantitative measures, to assess the observed
19 and projected impacts of current and future climate
20 change, accounting for—

21 "(A) both monetized and non-monetized
22 losses;

23 "(B) potential nonlinear, abrupt, or essen-
24 tially irreversible changes in the climate system;

1 "(C) potential nonlinear increases in the
2 cost of impacts;
3 "(D) potential low-probability, high impact
4 events; and
5 "(E) whether impacts are transitory or es-
6 sentially permanent;
7 "(6) based on the findings of the Administrator
8 under this section, as well as assessments produced
9 by the Intergovernmental Panel on Climate Change,
10 the United States Global Change Research program,
11 and other relevant scientific entities—
12 "(A) describe increased risks to natural
13 systems and society that would result from an
14 increase in global average temperature 3.6 de-
15 grees Fahrenheit (2 degrees Celsius) above the
16 pre-industrial average or an increase in atmos-
17 pheric greenhouse gas concentrations above 450
18 parts per million carbon dioxide equivalent; and
19 "(B) identify and assess—
20 "(i) significant residual risks not
21 avoided by the thresholds described in sub-
22 paragraph (A);
23 "(ii) alternative thresholds or targets
24 that may more effectively limit the risks
25 identified pursuant to clause (i); and

"(iii) thresholds in addition to those described in subparagraph (A) which significantly increase the risk of certain impacts or render them essentially permanent.

"(d) STATUS OF MONITORING AND VERIFICATION CAPABILITIES TO EVALUATE GREENHOUSE GAS REDUCTION EFFORTS.—The analysis required under subsection (a)(2) shall evaluate the capabilities of the monitoring, reporting, and verification systems used to quantify progress in achieving reductions in greenhouse gas emissions by the United States as described in section 702, including—

"(1) quantification of emissions and emission reductions by entities participating in the cap and trade program under this title;

"(2) quantification of emissions and emission reductions by entities participating in the offset program under this title;

"(3) quantification of emission and emissions reductions by entities regulated by performance standards;

"(4) quantification of aggregate net emissions and emissions reductions by the United States; and

1 "(5) quantification of global changes in net
2 emissions and in sources and sinks of greenhouse
3 gases.
4 "(e) STATUS OF GREENHOUSE GAS REDUCTION EF-
5 FORTS.—The analysis required under subsection (a)(3)
6 shall address—
7 "(1) whether the programs under Safe Climate
8 Act and other Federal statutes are resulting in suffi-
9 cient United States greenhouse gas emissions reduc-
10 tions to meet the emissions reduction targets de-
11 scribed in section 702, taking into account the use
12 of offsets; and
13 "(2) whether United States actions, taking into
14 account international actions, commitments, and
15 trends, and considering the range of plausible emis-
16 sions scenarios, are sufficient to avoid—
17 "(A) atmospheric greenhouse gas con-
18 centrations above 450 parts per million carbon
19 dioxide equivalent;
20 "(B) global average surface temperature
21 3.6 degrees Fahrenheit (2 degrees Celsius)
22 above the pre-industrial average, or such other
23 temperature thresholds as the Administrator
24 deems appropriate; and

1 "(C) other temperature or greenhouse gas
2 thresholds identified pursuant to subsection
3 (c)(6)(B).
4 "(f) RECOMMENDATIONS.—
5 "(1) LATEST SCIENTIFIC INFORMATION.—
6 Based on the analysis described in subsection (a)(1),
7 each report under subsection (a) shall identify ac-
8 tions that could be taken to—
9 "(A) improve the characterization of
10 changes in the earth-climate system and im-
11 pacts of global climate change;
12 "(B) better inform decision making and
13 actions related to global climate change;
14 "(C) mitigate risks to natural and social
15 systems; and
16 "(D) design policies to better account for
17 climate risks.
18 "(2) MONITORING, REPORTING AND
19 VERIFICATION.—Based on the analysis described in
20 subsection (a)(2), each report under subsection (a)
21 shall identify key gaps in measurement, reporting,
22 and verification capabilities and make recommenda-
23 tions to improve the accuracy and reliability of those
24 capabilities.

1 "(3) STATUS OF GREENHOUSE GAS REDUCTION
2 EFFORTS.—Based on the analysis described in sub-
3 section (a)(3), taking into account international ac-
4 tions, commitments, and trends, and considering the
5 range of plausible emissions scenarios, each report
6 under subsection (a) shall identify—
7 "(A) the quantity of additional reductions
8 required to meet the emissions reduction tar-
9 gets in section 702;
10 "(B) the quantity of additional reductions
11 in global greenhouse gas emissions needed to
12 avoid the identified concentration and tempera-
13 ture thresholds described in subsection (e); and
14 "(C) possible strategies and approaches for
15 achieving additional reductions.
16 "(g) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to carry out this section
18 such sums as may be necessary.
19 **"SEC. 706. NATIONAL ACADEMY REVIEW.**
20 "(a) IN GENERAL.—Not later than 1 year after the
21 date of enactment of this title, the Administrator shall
22 offer to enter into a contract with the National Academy
23 of Sciences (in this section referred to as the 'Academy')
24 under which the Academy shall, not later than July 1,

1 2014, and every 4 years thereafter, submit to Congress
2 and the Administrator a report that includes—
3 "(1) a review of the most recent report and rec-
4 ommendations issued under section 705;
5 "(2) an analysis of technologies to achieve re-
6 ductions in greenhouse gas emissions.
7 "(b) FAILURE TO ISSUE A REPORT.—In the event
8 that the Administrator has not issued all or part of the
9 most recent report required under section 705, the Acad-
10 emy shall conduct its own review and analysis of the re-
11 quired information.
12 "(c) TECHNOLOGICAL INFORMATION.—The analysis
13 required under subsection (a)(2) shall—
14 "(1) review existing technological information
15 and reports, including the most recent reports by the
16 Department of Energy, the United States Global
17 Change Research Program, the Intergovernmental
18 Panel on Climate Change, and the International En-
19 ergy Agency and any other relevant information on
20 technologies or practices that reduce or limit green-
21 house gas emissions;
22 "(2) include the participation of technical ex-
23 perts from relevant private industry sectors;
24 "(3) review the current and future projected de-
25 ployment of technologies and practices in the United

1 States that reduce or limit greenhouse gas emis-
2 sions, including—
3 "(A) technologies for capture and seques-
4 tration of greenhouse gases;
5 "(B) technologies to improve energy effi-
6 ciency;
7 "(C) low- or zero-greenhouse gas emitting
8 energy technologies;
9 "(D) low- or zero-greenhouse gas emitting
10 fuels;
11 "(E) biological sequestration practices and
12 technologies; and
13 "(F) any other technologies the Academy
14 deems relevant; and
15 "(4) review and compare the emissions reduc-
16 tion potential, commercial viability, market penetra-
17 tion, investment trends, and deployment of the tech-
18 nologies described in paragraph (3), including—
19 "(A) the need for additional research and
20 development, including publicly funded research
21 and development;
22 "(B) the extent of commercial deployment,
23 including, where appropriate, a comparison to
24 the cost and level of deployment of conventional

1 fossil fuel-fired energy technologies and devices;
2 and
3 "(C) an evaluation of any substantial tech-
4 nological, legal, or market-based barriers to
5 commercial deployment.
6 "(d) RECOMMENDATIONS.—
7 "(1) LATEST SCIENTIFIC INFORMATION.—
8 Based on the review described in subsection (a)(1),
9 the Academy shall identify actions that could be
10 taken to—
11 "(A) improve the characterization of
12 changes in the earth-climate system and im-
13 pacts of global climate change;
14 "(B) better inform decision making and
15 actions related to global climate change;
16 "(C) mitigate risks to natural and social
17 systems;
18 "(D) design policies to better account for
19 climate risks; and
20 "(E) improve the accuracy and reliability
21 of capabilities to monitor, report and verify
22 greenhouse gas emissions reduction efforts.
23 "(2) TECHNOLOGICAL INFORMATION.—Based
24 on the analysis described in subsection (a)(2), the
25 Academy shall identify—

1 "(A) additional emissions reductions that
2 may be possible as a result of technologies de-
3 scribed in the analysis;
4 "(B) barriers to the deployment of such
5 technologies; and
6 "(C) actions that could be taken to speed
7 deployment of such technologies.
8 "(3) STATUS OF GREENHOUSE GAS REDUCTION
9 EFFORTS.—Based on the review described in sub-
10 section (a)(1), the Academy shall identify—
11 "(A) the quantity of additional reductions
12 required to meet the emissions reduction tar-
13 gets described in section 702; and
14 "(B) the quantity of additional reductions
15 in global greenhouse gas emissions needed to
16 avoid the concentration and temperature
17 thresholds described in section 705(c)(6)(A) or
18 identified pursuant to section 705(c)(6)(B).
19 "(e) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to carry out this section
21 such sums as may be necessary.
22 **"SEC. 707. PRESIDENTIAL RESPONSE AND RECOMMENDA-**
23 **TIONS.**
24 "Not later than July 1, 2017, and every 4 years
25 thereafter—

"(1) the President shall direct relevant Federal agencies to use existing statutory authority to take appropriate actions identified in the report submitted under section 705 by the National Academy of Sciences in the previous year and to address any shortfalls identified in such report; and

"(2) in the event that the National Academy of Sciences has concluded, in the most recent report submitted under section 705, that the United States will not achieve the necessary domestic greenhouse gas emissions reductions, or that global actions will not maintain safe global average surface temperature and atmospheric greenhouse gas concentration thresholds, the President shall submit to Congress a plan identifying domestic and international actions that will achieve necessary additional greenhouse gas reductions, including any recommendations for legislative action.

"PART B—DESIGNATION AND REGISTRATION OF GREENHOUSE GASES

"SEC. 711. DESIGNATION OF GREENHOUSE GASES.

"(a) GREENHOUSE GASES.—For purposes of this title, the following are greenhouse gases:

"(1) Carbon dioxide.

"(2) Methane.

1 "(3) Nitrous oxide.

2 "(4) Sulfur hexafluoride.

3 "(5) Hydrofluorocarbons from a chemical man-
4 ufacturing process at an industrial stationary
5 source.

6 "(6) Any perfluorocarbon.

7 "(7) Nitrogen trifluoride.

8 "(8) Any other anthropogenic gas designated as
9 a greenhouse gas by the Administrator under this
10 section.

11 "(b) DETERMINATION ON ADMINISTRATOR'S INITIA-
12 TIVE.—The Administrator shall, by rule—

13 "(1) determine whether 1 metric ton of another
14 anthropogenic gas makes the same or greater con-
15 tribution to global warming over 100 years as 1 met-
16 ric ton of carbon dioxide;

17 "(2) determine the carbon dioxide equivalent
18 value for each gas with respect to which the Admin-
19 istrator makes an affirmative determination under
20 paragraph (1);

21 "(3) for each gas with respect to which the Ad-
22 ministrator makes an affirmative determination
23 under paragraph (1) and that is used as a substitute
24 for a class I or class II substance under title VI, de-
25 termine the extent to which to regulate that gas

1 under section 619 and specify appropriate compli-
2 ance obligations under section 619;
3 "(4) designate as a greenhouse gas for purposes
4 of this title each gas for which the Administrator
5 makes an affirmative determination under para-
6 graph (1), to the extent that it is not regulated
7 under section 619; and
8 "(5) specify the appropriate compliance obliga-
9 tions under this title for each gas designated as a
10 greenhouse gas under paragraph (4).
11 "(c) PETITIONS TO DESIGNATE A GREENHOUSE
12 GAS.—
13 "(1) IN GENERAL.—Any person may petition
14 the Administrator to designate as a greenhouse gas
15 any anthropogenic gas 1 metric ton of which makes
16 the same or greater contribution to global warming
17 over 100 years as 1 metric ton of carbon dioxide.
18 "(2) CONTENTS OF PETITION.—The petitioner
19 shall provide sufficient data, as specified by rule by
20 the Administrator, to demonstrate that the gas is
21 likely to be a greenhouse gas and is likely to be pro-
22 duced, imported, used, or emitted in the United
23 States. To the extent practicable, the petitioner shall
24 also identify producers, importers, distributors,
25 users, and emitters of the gas in the United States.

1 "(3) REVIEW AND ACTION BY THE ADMINIS-
2 TRATOR.—Not later than 90 days after receipt of a
3 petition under paragraph (2), the Administrator
4 shall determine whether the petition is complete and
5 notify the petitioner and the public of the decision.
6 "(4) ADDITIONAL INFORMATION.—The Admin-
7 istrator may require producers, importers, distribu-
8 tors, users, or emitters of the gas to provide infor-
9 mation on the contribution of the gas to global
10 warming over 100 years compared to carbon dioxide.
11 "(5) TREATMENT OF PETITION.—For any sub-
12 stance used as a substitute for a class I or class II
13 substance under title VI, the Administrator may
14 elect to treat a petition under this subsection as a
15 petition to list the substance as a class II, group II
16 substance under section 619, and may require the
17 petition to be amended to address listing criteria
18 promulgated under that section.
19 "(6) DETERMINATION.—Not later than 2 years
20 after receipt of a complete petition, the Adminis-
21 trator shall, after notice and an opportunity for com-
22 ment—
23 "(A) issue and publish in the Federal Reg-
24 ister—

1 "(i) a determination that 1 metric ton
2 of the gas does not make a contribution to
3 global warming over 100 years that is
4 equal to or greater than that made by 1
5 metric ton of carbon dioxide; and
6 "(ii) an explanation of the decision; or
7 "(B) determine that 1 metric ton of the
8 gas makes a contribution to global warming
9 over 100 years that is equal to or greater than
10 that made by 1 metric ton of carbon dioxide,
11 and take the actions described in subsection (b)
12 with respect to such gas.
13 "(7) GROUNDS FOR DENIAL.—The Adminis-
14 trator may not deny a petition under this subsection
15 solely on the basis of inadequate Environmental Pro-
16 tection Agency resources or time for review.
17 "(d) MANUFACTURING AND EMISSION NOTICES.—
18 "(1) NOTICE REQUIREMENT.—
19 "(A) IN GENERAL.—Effective 24 months
20 after the date of enactment of this title, no per-
21 son may manufacture or introduce into inter-
22 state commerce a fluorinated gas, or emit a sig-
23 nificant quantity, as determined by the Admin-
24 istrator, of any fluorinated gas that is gen-

1 erated as a byproduct during the production or
2 use of another fluorinated gas, unless—
3 "(i) the gas is designated as a green-
4 house gas under this section or is an
5 ozone-depleting substance listed as a class
6 I or class II substance under title VI;
7 "(ii) the Administrator has deter-
8 mined that 1 metric ton of such gas does
9 not make a contribution to global warming
10 that is equal to or greater than that made
11 by 1 metric ton of carbon dioxide; or
12 "(iii) the person manufacturing or im-
13 porting the gas for distribution into inter-
14 state commerce, or emitting the gas, has
15 submitted to the Administrator, at least 90
16 days before the start of such manufacture,
17 importation, or emission, a notice of such
18 person's manufacture, importation, or
19 emission of such gas, and the Adminis-
20 trator has not determined that notice or a
21 substantially similar notice is incomplete.
22 "(B) ALTERNATIVE COMPLIANCE.—For a
23 gas that is a substitute for a class I or class II
24 substance under title VI and either has been
25 listed as acceptable for use under section 612

1 or is currently subject to evaluation under sec-
2 tion 612, the Administrator may accept the no-
3 tice and information provided pursuant to that
4 section as fulfilling the obligation under clause
5 (iii) of subparagraph (A).
6 "(2) REVIEW AND ACTION BY THE ADMINIS-
7 TRATOR.—
8 "(A) COMPLETENESS.—Not later than 90
9 days after receipt of notice under paragraph
10 (1)(A)(iii) or (B), the Administrator shall deter-
11 mine whether the notice is complete.
12 "(B) DETERMINATION.— If the Adminis-
13 trator determines that the notice is complete,
14 the Administrator shall, after notice and an op-
15 portunity for comment, not later than 12
16 months after receipt of the notice—
17 "(i) issue and publish in the Federal
18 Register 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 an expla-
23 nation of the decision; or
24 "(ii) determine that 1 metric ton of
25 the gas makes a contribution to global

1 warming over 100 years that is equal to or
2 greater than that made by 1 metric ton of
3 carbon dioxide, and take the actions de-
4 scribed in subsection (b) with respect to
5 such gas.

6 "(e) REGULATIONS.—Not later than one year after
7 the date of enactment of this title, the Administrator shall
8 promulgate regulations to carry out this section. Such reg-
9 ulations shall include—

10 "(1) requirements for the contents of a petition
11 submitted under subsection (c);

12 "(2) requirements for the contents of a notice
13 required under subsection (d); and

14 "(3) methods and standards for evaluating the
15 carbon dioxide equivalent value of a gas.

16 "(f) GASES REGULATED UNDER TITLE VI.—The
17 Administrator shall not designate a gas as a greenhouse
18 gas under this section to the extent that the gas is regu-
19 lated under title VI.

20 "(g) SAVINGS CLAUSE.—Nothing in this section shall
21 be interpreted to relieve any person from complying with
22 the requirements of section 612.

1 **"SEC. 712. CARBON DIOXIDE EQUIVALENT VALUE OF**
2 **GREENHOUSE GASES.**

3 "(a) MEASURE OF QUANTITY OF GREENHOUSE
4 GASES.—Any provision of this title or title VIII that refers
5 to a quantity or percentage of a quantity of greenhouse
6 gases shall mean the quantity or percentage of the green-
7 house gases expressed in carbon dioxide equivalents.

8 "(b) INITIAL VALUE.—Except as provided by the Ad-
9 ministrator under this section or section 711, the carbon
10 dioxide equivalent value of greenhouse gases for purposes
11 of this Act shall be as 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-4310mee	1,640
CF_4	7,390
C_2F_6	12,200

"CARBON DIOXIDE EQUIVALENT OF 1 TON OF LISTED GREENHOUSE GASES—Continued

Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
C_4F_{10}	8,860
C_6F_{14}	9,300
SF_6	22,800
NF_3	17,200

1 "(c) PERIODIC REVIEW.—

2 "(1) Not later than February 1, 2017, and (ex-
3 cept as provided in paragraph (3)) not less than
4 every 5 years thereafter, the Administrator shall—

5 "(A) review and, if appropriate, revise the
6 carbon dioxide equivalent values established
7 under this section or section 711(b)(2), based
8 on a determination of the number of metric
9 tons of carbon dioxide that makes the same
10 contribution to global warming over 100 years
11 as 1 metric ton of each greenhouse gas; and

12 "(B) publish in the Federal Register the
13 results of that review and any revisions.

14 "(2) A revised determination published in the
15 Federal Register under paragraph (1)(B) shall take
16 effect for greenhouse gas emissions starting on Jan-
17 uary 1 of the first calendar year starting at least 9
18 months after the date on which the revised deter-
19 mination was published.

1 "(3) The Administrator may decrease the fre-
2 quency of review and revision under paragraph (1)
3 if the Administrator determines that such decrease
4 is appropriate in order to synchronize such review
5 and revision with any similar review process carried
6 out pursuant to the United Nations Framework
7 Convention on Climate Change, done at New York
8 on May 9, 1992, or to an agreement negotiated
9 under that convention, except that in no event shall
10 the Administrator carry out such review and revision
11 any less frequently than every 10 years.

12 "(d) METHODOLOGY.—In setting carbon dioxide
13 equivalent values, for purposes of this section or section
14 711, the Administrator shall take into account publica-
15 tions by the Intergovernmental Panel on Climate Change
16 or a successor organization under the auspices of the
17 United Nations Environmental Programme and the World
18 Meteorological Organization.

19 **"SEC. 713. GREENHOUSE GAS REGISTRY.**

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

21 "(1) CLIMATE REGISTRY.—The term 'Climate
22 Registry' means the greenhouse gas emissions reg-
23 istry jointly established and managed by more than
24 40 States and Indian tribes in 2007 to collect high-
25 quality greenhouse gas emission data from facilities,

1 corporations, and other organizations to support var-
2 ious greenhouse gas emission reporting and reduc-
3 tion policies for the member States and Indian
4 tribes.

5 "(2) REPORTING ENTITY.—The term 'reporting
6 entity' means—

7 "(A) a covered entity;

8 "(B) an entity that—

9 "(i) would be a covered entity if it had
10 emitted, produced, imported, manufac-
11 tured, or delivered in 2008 or any subse-
12 quent year more than the applicable
13 threshold level in the definition of covered
14 entity in paragraph (14) of section 700;
15 and

16 "(ii) has emitted, produced, imported,
17 manufactured, or delivered in 2008 or any
18 subsequent year more than the applicable
19 threshold level in the definition of covered
20 entity in paragraph (14) of section 700,
21 provided that the figure of 25,000 tons of
22 carbon dioxide equivalent is read instead
23 as 10,000 tons of carbon dioxide equivalent
24 and the figure of 460,000,000 cubic feet is
25 read instead as 276,000,000 cubic feet;

1 "(C) any other entity that emits a green-
2 house gas, or produces, imports, manufactures,
3 or delivers material whose use results or may
4 result in greenhouse gas emissions if the Ad-
5 ministrator determines that reporting under
6 this section by such entity will help achieve the
7 purposes of this title or title VIII;
8 "(D) any vehicle fleet with emissions of
9 more than 25,000 tons of carbon dioxide equiv-
10 alent on an annual basis, if the Administrator
11 determines that the inclusion of such fleet will
12 help achieve the purposes of this title or title
13 VIII; or
14 "(E) any entity that delivers electricity to
15 an energy-intensive facility in an industrial sec-
16 tor that meets the energy or greenhouse gas in-
17 tensity criteria in section 764(b)(2)(A)(i).
18 "(b) REGULATIONS.—
19 "(1) IN GENERAL.—Not later than 6 months
20 after the date of enactment of this title, the Admin-
21 istrator shall issue regulations establishing a Federal
22 greenhouse gas registry. Such regulations shall—
23 "(A) require reporting entities to submit to
24 the Administrator data on—

1 "(i) greenhouse gas emissions in the
2 United States;
3 "(ii) the production and manufacture
4 in the United States, importation into the
5 United States, and, at the discretion of the
6 Administrator, exportation from the
7 United States, of fuels and industrial gases
8 the uses of which result or may result in
9 greenhouse gas emissions;
10 "(iii) deliveries in the United States of
11 natural gas, and any other gas meeting the
12 specifications for commingling with natural
13 gas for purposes of delivery, the combus-
14 tion of which result or may result in green-
15 house gas emissions; and
16 "(iv) the capture and sequestration of
17 greenhouse gases;
18 "(B) require covered entities and, where
19 appropriate, other reporting entities to submit
20 to the Administrator data sufficient to ensure
21 compliance with or implementation of the re-
22 quirements of this title;
23 "(C) require reporting of electricity deliv-
24 ered to industrial sources in energy-intensive in-
25 dustries;

1 "(D) ensure the completeness, consistency,
2 transparency, accuracy, precision, and reliability
3 of such data;
4 "(E) take into account the best practices
5 from the most recent Federal, State, tribal, and
6 international protocols for the measurement, ac-
7 counting, reporting, and verification of green-
8 house gas emissions, including protocols from
9 the Climate Registry and other mandatory
10 State or multistate authorized programs;
11 "(F) take into account the latest scientific
12 research;
13 "(G) require that, for covered entities with
14 respect to greenhouse gases to which section
15 722 applies, and, to the extent determined to be
16 appropriate by the Administrator, for covered
17 entities with respect to other greenhouse gases
18 and for other reporting entities, submitted data
19 are based on—
20 "(i) continuous monitoring systems
21 for fuel flow or emissions, such as contin-
22 uous emission monitoring systems;
23 "(ii) alternative systems that are dem-
24 onstrated as providing data with the same
25 precision, reliability, accessibility, and

1 timeliness, or, to the extent the Adminis-
2 trator determines is appropriate for report-
3 ing small amounts of emissions, the same
4 precision, reliability, and accessibility and
5 similar timeliness, as data provided by con-
6 tinuous monitoring systems for fuel flow or
7 emissions; or
8 "(iii) alternative methodologies that
9 are demonstrated to provide data with pre-
10 cision, reliability, accessibility, and timeli-
11 ness, or, to the extent the Administrator
12 determines is appropriate for reporting
13 small amounts of emissions, precision, reli-
14 ability, and accessibility, as similar as is
15 technically feasible to that of data gen-
16 erally provided by continuous monitoring
17 systems for fuel flow or emissions, if the
18 Administrator determines that, with re-
19 spect to a reporting entity, there is no con-
20 tinuous monitoring system or alternative
21 system described in clause (i) or (ii) that
22 is technically feasible;
23 "(H) require that the Administrator, in de-
24 termining the extent to which the requirement
25 to use systems or methodologies in accordance

1 with subparagraph (G) is appropriate for re-
2 porting entities other than covered entities or
3 for greenhouse gases to which section 722 does
4 not apply, consider the cost of using such sys-
5 tems and methodologies, and of using other sys-
6 tems and methodologies that are available and
7 suitable, for quantifying the emissions involved
8 in light of the purposes of this title, including
9 the goal of collecting consistent entity-wide
10 data;
11 "(I) include methods for minimizing double
12 reporting and avoiding irreconcilable double re-
13 porting of greenhouse gas emissions;
14 "(J) establish measurement protocols for
15 carbon capture and sequestration systems, in-
16 cluding those where enhanced hydrocarbon re-
17 covery operations occur, taking into consider-
18 ation the regulations promulgated under section
19 813;
20 "(K) require that reporting entities provide
21 the data required under this paragraph in re-
22 ports submitted electronically to the Adminis-
23 trator, in such form and containing such infor-
24 mation as may be required by the Adminis-
25 trator;

1 "(L) include requirements for keeping
2 records supporting or related to, and protocols
3 for auditing, submitted data;
4 "(M) establish consistent policies for calcu-
5 lating carbon content and greenhouse gas emis-
6 sions for each type of fossil fuel with respect to
7 which reporting is required;
8 "(N) subsequent to implementation of poli-
9 cies developed under subparagraph (M), provide
10 for immediate dissemination, to States, Indian
11 tribes, and on the Internet, of all data reported
12 under this section as soon as practicable after
13 electronic audit by the Administrator and any
14 resulting correction of data, except that data
15 shall not be disseminated under this subpara-
16 graph if—
17 "(i) its nondissemination is vital to
18 the national security of the United States,
19 as determined by the President; or
20 "(ii) it is confidential business infor-
21 mation that cannot be derived from infor-
22 mation that is otherwise publicly available
23 and that would cause significant calculable
24 competitive harm if published, except
25 that—

1 "(I) data relating to greenhouse
2 gas emissions, including any upstream
3 or verification data from reporting en-
4 tities, shall not be considered to be
5 confidential business information; and
6 "(II) data that is confidential
7 business information shall be provided
8 to a State or Indian tribe within
9 whose jurisdiction the reporting entity
10 is located, if the Administrator deter-
11 mines that such State or Indian tribe
12 has in effect protections for confiden-
13 tial business information that are
14 equivalent to protections applicable to
15 the Federal Government;
16 "(O) prescribe methods by which the Ad-
17 ministrator shall, in cases in which satisfactory
18 data are not submitted to the Administrator for
19 any period of time, estimate emission, produc-
20 tion, importation, manufacture, or delivery lev-
21 els—
22 "(i) for covered entities with respect
23 to greenhouse gas emissions, production,
24 importation, manufacture, or delivery regu-
25 lated under this title to ensure that emis-

1 sions, production, importation, manufac-
2 ture, or deliveries are not underreported,
3 and to create a strong incentive for meet-
4 ing data monitoring and reporting require-
5 ments—
6 "(I) with a conservative estimate
7 of the highest emission, production,
8 importation, manufacture, or delivery
9 levels that may have occurred during
10 the period for which data are missing;
11 or
12 "(II) to the extent the Adminis-
13 trator considers appropriate, with an
14 estimate of such levels assuming the
15 unit is emitting, producing, importing,
16 manufacturing, or delivering at a
17 maximum potential level during the
18 period, in order to ensure that such
19 levels are not underreported and to
20 create a strong incentive for meeting
21 data monitoring and reporting re-
22 quirements; and
23 "(ii) for covered entities with respect
24 to greenhouse gas emissions to which sec-
25 tion 722 does not apply and for other re-

1 porting entities, with a reasonable estimate
2 of the emission, production, importation,
3 manufacture, or delivery levels that may
4 have occurred during the period for which
5 data are missing;
6 "(P) require the designation of a des-
7 ignated representative for each reporting entity;
8 "(Q) require an appropriate certification,
9 by the designated representative for the report-
10 ing entity, of accurate and complete accounting
11 of greenhouse gas emissions, as determined by
12 the Administrator; and
13 "(R) include requirements for other data
14 necessary for accurate and complete accounting
15 of greenhouse gas emissions, as determined by
16 the Administrator, including data for quality
17 assurance of monitoring systems, monitors and
18 other measurement devices, and other data
19 needed to verify reported emissions, production,
20 importation, manufacture, or delivery.
21 "(2) TIMING.—
22 "(A) CALENDAR YEARS 2007 THROUGH
23 2010.—For a base period of calendar years
24 2007 through 2010, each reporting entity shall
25 submit annual data required under this section

1 to the Administrator not later than March 31,
2 2011. The Administrator may waive or modify
3 reporting requirements for calendar years 2007
4 through 2010 for categories of reporting enti-
5 ties to the extent that the Administrator deter-
6 mines that the reporting entities did not keep
7 data or records necessary to meet reporting re-
8 quirements. The Administrator may, in addition
9 to or in lieu of such requirements, collect infor-
10 mation on energy consumption and production.
11 "(B) SUBSEQUENT CALENDAR YEARS.—
12 For calendar year 2011 and each subsequent
13 calendar year, each reporting entity shall sub-
14 mit quarterly data required under this section
15 to the Administrator not later than 60 days
16 after the end of the applicable quarter, except
17 when the data is already being reported to the
18 Administrator on an earlier timeframe for an-
19 other program.
20 "(3) WAIVER OF REPORTING REQUIREMENTS.—
21 The Administrator may waive reporting require-
22 ments under this section for specific entities to the
23 extent that the Administrator determines that suffi-
24 cient and equally or more reliable verified and timely
25 data are available to the Administrator and the pub-

1 lic on the Internet under other mandatory statutory
2 requirements.
3 "(4) ALTERNATIVE THRESHOLD.—The Admin-
4 istrator may, by rule, establish applicability thresh-
5 olds for reporting under this section using alter-
6 native metrics and levels, provided that such metrics
7 and levels are easier to administer and cover the
8 same size and type of sources as the threshold de-
9 fined in this section.
10 "(c) INTERRELATIONSHIP WITH OTHER SYSTEMS.—
11 In developing the regulations issued under subsection (b),
12 the Administrator shall take into account the work done
13 by the Climate Registry and other mandatory State or
14 multistate programs. Such regulations shall include an ex-
15 planation of any major differences in approach between
16 the system established under the regulations and such reg-
17 istries and programs.

18 **"PART C—PROGRAM RULES**

19 **"SEC. 721. EMISSION ALLOWANCES.**

20 "(a) IN GENERAL.—The Administrator shall estab-
21 lish a separate quantity of emission allowances for each
22 calendar year starting in 2012, in the amounts prescribed
23 under subsection (e).
24 "(b) IDENTIFICATION NUMBERS.—The Adminis-
25 trator shall assign to each emission allowance established

1 under subsection (a) a unique identification number that
2 includes the vintage year for that emission allowance.
3 "(c) LEGAL STATUS OF EMISSION ALLOWANCES.—
4 "(1) IN GENERAL.—An allowance established
5 by the Administrator under this title does not con-
6 stitute a property right.
7 "(2) TERMINATION OR LIMITATION.—Nothing
8 in this Act or any other provision of law shall be
9 construed to limit or alter the authority of the
10 United States, including the Administrator acting
11 pursuant to statutory authority, to terminate or
12 limit allowances or offset credits.
13 "(3) OTHER PROVISIONS UNAFFECTED.—Ex-
14 cept as otherwise specified in this Act, nothing in
15 this Act relating to allowances or offset credits es-
16 tablished or issued under this title shall affect the
17 application of any other provision of law to a covered
18 entity, or the responsibility for a covered entity to
19 comply with any such provision of law.
20 "(d) SAVINGS PROVISION.—Nothing in this title shall
21 be construed as requiring a change of any kind in any
22 State law regulating electric utility rates and charges, or
23 as affecting any State law regarding such State regula-
24 tion, or as limiting State regulation (including any
25 prudency review) under such a State law. Nothing in this

1 title shall be construed as modifying the Federal Power
2 Act or as affecting the authority of the Federal Energy
3 Regulatory Commission under that Act. Nothing in this
4 title shall be construed to interfere with or impair any pro-
5 gram for competitive bidding for power supply in a State
6 in which such program is established.

7 "(e) ALLOWANCES FOR EACH CALENDAR YEAR.—

8 "(1) IN GENERAL.—Except as provided in para-
9 graph (2), the number of emission allowances estab-
10 lished by the Administrator under subsection (a) for
11 each calendar year shall be as provided in the fol-
12 lowing table:

"Calendar year	Emission allowances (in millions)
2012	4,627
2013	4,544
2014	5,099
2015	5,003
2016	5,482
2017	5,375
2018	5,269
2019	5,162
2020	5,056
2021	4,903
2022	4,751
2023	4,599
2024	4,446

"Calendar year	Emission allowances (in millions)
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
2047	1,410
2048	1,285
2049	1,160
2050 and each year thereafter	1,035

1 "(2) REVISION.—

1 "(A) IN GENERAL.—The Administrator
2 may adjust, in accordance with subparagraph
3 (B), the number of emission allowances estab-
4 lished pursuant to paragraph (1) if, after notice
5 and an opportunity for public comment, the Ad-
6 ministrator determines that—
7 "(i) United States greenhouse gas
8 emissions in 2005 were other than 7,206
9 million metric tons carbon dioxide equiva-
10 lent;
11 "(ii) if the requirements of this title
12 for 2012 had been in effect in 2005, sec-
13 tion 722 would have required emission al-
14 lowances to be held for other than 66.2
15 percent of United States greenhouse gas
16 emissions in 2005;
17 "(iii) if the requirements of this title
18 for 2014 had been in effect in 2005, sec-
19 tion 722 would have required emission al-
20 lowances to be held for other than 75.7
21 percent of United States greenhouse gas
22 emissions in 2005; or
23 "(iv) if the requirements of this title
24 for 2016 had been in effect in 2005, sec-
25 tion 722 would have required emission al-

1 lowances to be held for other than 84.5
2 percent United States greenhouse gas
3 emissions in 2005.
4 "(B) ADJUSTMENT FORMULA.—
5 "(i) IN GENERAL.—If the Adminis-
6 trator adjusts under this paragraph the
7 number of emission allowances established
8 pursuant to paragraph (1), the number of
9 emission allowances the Administrator es-
10 tablishes for any given calendar year shall
11 equal the product of—
12 "(I) United States greenhouse
13 gas emissions in 2005, expressed in
14 tons of carbon dioxide equivalent;
15 "(II) the percent of United
16 States greenhouse gas emissions in
17 2005, expressed in tons of carbon di-
18 oxide equivalent, that would have been
19 subject to section 722 if the require-
20 ments of this title for the given cal-
21 endar year had been in effect in 2005;
22 and
23 "(III) the percentage set forth
24 for that calendar year in section

1 703(a), or determined under clause
2 (ii) of this subparagraph.
3 "(ii) TARGETS.—In applying the for-
4 mula under clause (i)(III) of this subpara-
5 graph, for calendar years for which a per-
6 centage is not listed in section 703(a), the
7 Administrator shall use a uniform annual
8 decline in the amount of emissions between
9 the years that are specified.
10 "(iii) LIMITATION ON ADJUSTMENT
11 TIMING.—Once a calendar year has start-
12 ed, the Administrator may not adjust the
13 number of emission allowances to be estab-
14 lished for that calendar year.
15 "(C) LIMITATION ON ADJUSTMENT AU-
16 THORITY.—The Administrator may adjust
17 under this paragraph the number of emission
18 allowances to be established pursuant to para-
19 graph (1) only once.
20 "(f) COMPENSATORY ALLOWANCE.—
21 "(1) IN GENERAL.—The regulations promul-
22 gated under subsection (g) shall provide for the es-
23 tablishment and distribution of compensatory allow-
24 ances for—

1 "(A) the destruction, in 2012 or later, of
2 fluorinated gases that are greenhouse gases if—
3 "(i) allowances or offset credits were
4 retired for their production or importation;
5 and
6 "(ii) such gases are not required to be
7 destroyed under any other provision of law;
8 "(B) the nonemissive use, in 2012 or later,
9 of petroleum-based or coal-based liquid or gas-
10 eous fuel, petroleum coke, natural gas liquid, or
11 natural gas as a feedstock, if allowances or off-
12 set credits were retired for the greenhouse
13 gases that would have been emitted from their
14 combustion; and
15 "(C) the conversionary use, in 2012 or
16 later, of fluorinated gases in a manufacturing
17 process, including semiconductor research or
18 manufacturing, if allowances or offset credits
19 were retired for the production or importation
20 of such gas.
21 "(2) ESTABLISHMENT AND DISTRIBUTION.—
22 "(A) IN GENERAL.—Not later than 90
23 days after the end of each calendar year, the
24 Administrator shall establish and distribute to
25 the entity taking the actions described in sub-

1 paragraph (A), (B), or (C) of paragraph (1) a
2 quantity of compensatory allowances equivalent
3 to the number of tons of carbon dioxide equiva-
4 lent of avoided emissions achieved through such
5 actions. In establishing the quantity of compen-
6 satory allowances, the Administrator shall take
7 into account the carbon dioxide equivalent value
8 of any greenhouse gas resulting from such ac-
9 tion.

10 "(B) SOURCE OF ALLOWANCES.—Compen-
11 satory allowances established under this sub-
12 section shall not be emission allowances estab-
13 lished under subsection (a).

14 "(C) IDENTIFICATION NUMBERS.—The
15 Administrator shall assign to each compen-
16 satory allowance established under subpara-
17 graph (A) a unique identification number.

18 "(3) DEFINITIONS.—For purposes of this sub-
19 section—

20 "(A) the term 'destruction' means the con-
21 version of a greenhouse gas by thermal, chem-
22 ical, or other means to another gas or set of
23 gases with little or no carbon dioxide equivalent
24 value;

1 "(B) the term 'nonemissive use' means the
2 use of fossil fuel as a feedstock in an industrial
3 or manufacturing process to the extent that
4 greenhouse gases are not emitted from such
5 process, and to the extent that the products of
6 such process are not intended for use as a fuel
7 or are otherwise intended to be contained in a
8 fuel; and
9 "(C) the term 'conversionary use' means
10 the conversion during research or manufac-
11 turing of a fluorinated gas into another green-
12 house gas or set of gases with a lower carbon
13 dioxide equivalent value.
14 "(g) REGULATIONS.—Not later than 24 months after
15 the date of enactment of this title, the Administrator shall
16 promulgate regulations to carry out the provisions of this
17 title.
18 "(h) FEEDSTOCK EMISSIONS STUDY.—
19 "(1) The Administrator may conduct a study to
20 determine the extent to which petroleum-based or
21 coal-based liquid or gaseous fuel, petroleum coke,
22 natural gas liquid, or natural gas are used as feed-
23 stocks in manufacturing processes to produce prod-
24 ucts and the greenhouse gas emissions resulting
25 from such uses.

1 "(2) If as a result of such a study, the Admin-
2 istrator determines that the use of such products by
3 noncoverd sources results in substantial emissions of
4 greenhouse gases or their precursors and that such
5 emissions have not been adequately addressed under
6 other requirements of this Act, the Administrator
7 may, after notice and comment rulemaking, promul-
8 gate a regulation reducing compensatory allowances
9 commensurately if doing so will not result in leak-
10 age.

11 **"SEC. 722. PROHIBITION OF EXCESS EMISSIONS.**

12 "(a) PROHIBITION.—Except as provided in sub-
13 section (c), effective January 1, 2012, each covered entity
14 is prohibited from emitting greenhouse gases, and having
15 attributable greenhouse gas emissions, in combination, in
16 excess of its allowable emissions level. A covered entity's
17 allowable emissions level for each calendar year is the
18 number of emission allowances (or credits or other allow-
19 ances as provided in subsection (d)) it holds as of 12:01
20 a.m. on April 1 (or a later date established by the Admin-
21 istrator under subsection (j)) of the following calendar
22 year.

23 "(b) METHODS OF DEMONSTRATING COMPLIANCE.—
24 Except as otherwise provided in this section, the owner
25 or operator of a covered entity shall not be considered to

be in compliance with the prohibition in subsection (a) unless, as of 12:01 a.m. on April 1 (or a later date established by the Administrator under subsection (j)) of each calendar year starting in 2013, the owner or operator holds a quantity of emission allowances (or credits or other allowances as provided in subsection (d)) at least as great as the quantity calculated as follows:

"(1) ELECTRICITY SOURCES.—For a covered entity described in section 700(14)(A), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that such covered entity emitted in the previous calendar year, excluding emissions resulting from the combustion of—

"(A) petroleum-based or coal-based liquid fuel;

"(B) natural gas liquid;

"(C) renewable biomass;

"(D) petroleum coke; or

"(E) any fluorinated gas that is a greenhouse gas purchased for use at that covered entity, except for nitrogen trifluoride.

"(2) FUEL PRODUCERS AND IMPORTERS.—For a covered entity described in section 700(14)(B), 1 emission allowance for each ton of carbon dioxide equivalent of greenhouse gas that would be emitted

1 from the combustion of any petroleum-based or coal-
2 based liquid fuel, petroleum coke, or natural gas liq-
3 uid, produced or imported by such covered entity
4 during the previous calendar year for sale or dis-
5 tribution in interstate commerce, assuming no cap-
6 ture and sequestration of any greenhouse gas emis-
7 sions.

8 "(3) INDUSTRIAL GAS PRODUCERS AND IM-
9 PORTERS.—For a covered entity described in section
10 700(14)(C), 1 emission allowance for each ton of
11 carbon dioxide equivalent of fossil fuel-based carbon
12 dioxide, nitrous oxide, or any other fluorinated gas
13 that is a greenhouse gas (except for nitrogen
14 trifluoride), or any combination thereof, produced or
15 imported by such covered entity during the previous
16 calendar year for sale or distribution in interstate
17 commerce or released as fugitive emissions in the
18 production of fluorinated gas.

19 "(4) GEOLOGICAL SEQUESTRATION SITES.—For
20 a covered entity described in section 700(14)(D), 1
21 emission allowance for each ton of carbon dioxide
22 equivalent of greenhouse gas that such covered enti-
23 ty emitted in the previous calendar year.

24 "(5) INDUSTRIAL STATIONARY SOURCES.—For
25 a covered entity described in section 700(14)(E),

1 (F), or (G), 1 emission allowance for each ton of
2 carbon dioxide equivalent of greenhouse gas that
3 such covered entity emitted in the previous calendar
4 year, excluding emissions resulting from the combus-
5 tion of—
6 "(A) petroleum-based or coal-based liquid
7 fuel;
8 "(B) natural gas liquid;
9 "(C) renewable biomass;
10 "(D) petroleum coke; or
11 "(E) any fluorinated gas that is a green-
12 house gas purchased for use at that covered en-
13 tity, except for nitrogen trifluoride.
14 "(6) INDUSTRIAL FOSSIL FUEL-FIRED COMBUS-
15 TION DEVICES.—For a covered entity described in
16 section 700(14)(H), 1 emission allowance for each
17 ton of carbon dioxide equivalent of greenhouse gas
18 that the devices emitted in the previous calendar
19 year, excluding emissions resulting from the combus-
20 tion of—
21 "(A) petroleum-based or coal-based liquid
22 fuel;
23 "(B) natural gas liquid;
24 "(C) renewable biomass; or
25 "(D) petroleum coke.

1 "(7) NATURAL GAS LOCAL DISTRIBUTION COM-
2 PANIES.—For a covered entity described in section
3 700(14)(I), 1 emission allowance for each ton of car-
4 bon dioxide equivalent of greenhouse gas that will be
5 emitted from the combustion of the natural gas, and
6 any other gas meeting the specifications for commin-
7 gling with natural gas for purposes of deliver, that
8 such entity delivered during the previous calendar
9 year to customers that are not covered entities, as-
10 suming no capture and sequestration of that green-
11 house gas.
12 "(8) NITROGEN TRIFLUORIDE SOURCES.—For
13 a covered entity described in section 700(14)(J), 1
14 emission allowance for each ton of carbon dioxide
15 equivalent of nitrogen trifluoride that such covered
16 entity emitted in the previous calendar year.
17 "(9) ALGAE-BASED FUELS.—Where carbon di-
18 oxide (or another greenhouse gas) is used as an
19 input in the production of fuels, the Administrator
20 shall ensure that allowances are not required to be
21 held both for the carbon dioxide used to grow algae
22 and for the carbon dioxide emitted from combustion
23 of the fuel produced from such algae.
24 "(10) FUGITIVE EMISSIONS.—The greenhouse
25 gas emissions to which paragraphs (1), (5), (6), and

1 (8) apply shall not include fugitive emissions of
2 greenhouse gas, except to the extent the Adminis-
3 trator determines that data on the carbon dioxide
4 equivalent value of greenhouse gas in the fugitive
5 emissions can be provided with sufficient precision,
6 reliability, accessibility, and timeliness to ensure the
7 integrity of emission allowances, the allowance track-
8 ing system, and the cap on emissions.

9 "(11) EXPORT EXEMPTION.—This section shall
10 not apply to any petroleum-based or coal-based liq-
11 uid fuel, petroleum coke, natural gas liquid, or
12 fluorinated gas that is exported for any calendar
13 year.

14 "(12) NATURAL GAS LIQUIDS.—Notwith-
15 standing subsection (a), in the case where the owner
16 or operator of a covered entity described in section
17 700(14)(B) that produces natural gas liquids does
18 not take ownership of the liquids, nor is responsible
19 for the distribution or use of the liquids in com-
20 merce, the owner of the liquids shall be responsible
21 for compliance under this section. In such a case,
22 the owner of the covered entity shall provide the Ad-
23 ministrator, in a manner to be determined by the
24 Administrator, information regarding the quantity

1 and ownership of liquids produced at the covered en-
2 tity.
3 "(13) APPLICATION OF MULTIPLE PARA-
4 GRAPHS.—For a covered entity to which more than
5 1 of paragraphs (1) through (8) apply, all applicable
6 paragraphs shall apply, except that not more than 1
7 emission allowance shall be required for the same
8 emission.
9 "(c) PHASE-IN OF PROHIBITION.—
10 "(1) INDUSTRIAL STATIONARY SOURCES.—The
11 prohibition under subsection (a) shall first apply to
12 a covered entity described in section 700(14)(E),
13 (F), (G), or (H) with respect to emissions occurring
14 during calendar year 2014.
15 "(2) NATURAL GAS LOCAL DISTRIBUTION COM-
16 PANIES.—The prohibition under subsection (a) shall
17 first apply to a covered entity described in section
18 700(14)(I) with respect to deliveries occurring dur-
19 ing calendar year 2016.
20 "(d) ADDITIONAL METHODS.—In addition to using
21 the method of compliance described in subsection (b), a
22 covered entity may do the following:
23 "(1) OFFSET CREDITS.—
24 "(A) IN GENERAL.—Covered entities col-
25 lectively may, in accordance with this para-

1 graph, use offset credits to demonstrate compli-
2 ance for up to a maximum of 2 billion tons of
3 greenhouse gas emissions annually. The ability
4 to demonstrate compliance with offset credits
5 shall be divided pro rata among covered entities
6 by allowing each covered entity to satisfy a per-
7 centage of the number of allowances required to
8 be held under subsection (b) to demonstrate
9 compliance by holding 1 domestic offset credit
10 or 1.25 international offset credits in lieu of an
11 emission allowance, except as provided in sub-
12 paragraph (D).
13 "(B) APPLICABLE PERCENTAGE.—The
14 percentage referred to in subparagraph (A) for
15 a given calendar year shall be determined by di-
16 viding 2 billion by the sum of 2 billion plus the
17 number of emission allowances established
18 under section 721(a) for the previous year, and
19 multiplying that number by 100. Not more than
20 one half of the applicable percentage under this
21 paragraph may be used for a year by holding
22 domestic offset credits, and not more than one
23 half of the applicable percentage under this
24 paragraph may be used for a year by holding

1 international offset credits, except as provided
2 in subparagraph (C).
3 "(C) MODIFIED PERCENTAGES.—If the
4 Administrator determines that domestic offset
5 credits available for use in any calendar year at
6 domestic offset prices generally equal to or less
7 than allowance prices, are likely to offset less
8 than 0.9 billion tons of greenhouse gas emis-
9 sions measured in tons of carbon dioxide
10 equivalents, the Administrator shall increase
11 the percent of emissions that can be offset
12 through the use of international offset credits
13 (and decrease the percent of emissions that can
14 be allowed through the use of domestic offset
15 credits by the same amount) to reflect the
16 amount that 1.0 billion exceeds the number of
17 domestic offset credits the Administrator deter-
18 mines is available for that year, up to a max-
19 imum of 0.5 billion emissions.
20 "(D) INTERNATIONAL OFFSET CREDITS.—
21 Notwithstanding subparagraph (A), to dem-
22 onstrate compliance prior to calendar year
23 2018, a covered entity may use 1 international
24 offset credit in lieu of an emission allowance up
25 to the amount permitted under this paragraph.

1 "(E) PRESIDENT'S RECOMMENDATION.—
2 The President may make a recommendation to
3 Congress as to whether the number 2 billion
4 specified in subparagraphs (A) and (B) should
5 be increased or decreased.
6 "(2) INTERNATIONAL EMISSION ALLOW-
7 ANCES.—To demonstrate compliance, a covered enti-
8 ty may hold an international emission allowance in
9 lieu of an emission allowance, except as modified
10 under section 728(d).
11 "(3) COMPENSATORY ALLOWANCES.—To dem-
12 onstrate compliance, a covered entity may hold a
13 compensatory allowance obtained under section
14 721(f) in lieu of an emission allowance.
15 "(d) RETIREMENT OF ALLOWANCES AND CRED-
16 ITS.—As soon as practicable after a deadline established
17 for covered entities to demonstrate compliance with this
18 title, the Administrator shall retire the quantity of allow-
19 ances or credits required to be held under this title.
20 "(e) ALTERNATIVE METRICS.—For categories of cov-
21 ered entities described in subparagraph (B), (C), (F), (G),
22 or (H) of section 700(14), the Administrator may, by rule,
23 establish an applicability threshold for inclusion under
24 those subparagraphs using an alternative metric and level,
25 provided that such metric and level are easier to admin-

1 ister and cover the same size and type of sources as the
2 threshold defined in such subparagraphs.
3 "(f) THRESHOLD REVIEW.—For each category of
4 covered entities described in subparagraph (B), (C), (F),
5 (G), or (H) of section 700(14), the Administrator shall,
6 in 2020 and once every 8 years thereafter, review the car-
7 bon dioxide equivalent emission thresholds that are used
8 to define covered entities. After consideration of—
9 "(1) emissions from covered entities in each
10 such category, and from other entities of the same
11 type that emit less than the threshold amount for
12 the category (including emission sources that com-
13 mence operation after the date of enactment of this
14 title that are not covered entities); and
15 "(2) whether greater greenhouse gas emission
16 reductions can be cost-effectively achieved by low-
17 ering the applicable threshold,
18 the Administrator may by rule lower such threshold to not
19 less than 10,000 tons of carbon dioxide equivalent emis-
20 sions. In determining the cost effectiveness of potential re-
21 ductions from lowering the threshold for covered entities,
22 the Administrator shall consider alternative regulatory
23 greenhouse gas programs, including setting standards
24 under other titles of this Act.

1 "(g) DESIGNATED REPRESENTATIVES.—The regula-
2 tions promulgated under section 721(g) shall require that
3 each covered entity, and each entity holding allowances or
4 credits or receiving allowances or credits from the Admin-
5 istrator under this title, select a designated representative.
6 "(h) EDUCATION AND OUTREACH.—
7 "(1) IN GENERAL.—The Administrator shall es-
8 tablish and carry out a program of education and
9 outreach to assist covered entities, especially entities
10 having little experience with environmental regu-
11 latory requirements similar or comparable to those
12 under this title, in preparing to meet the compliance
13 obligations of this title. Such program shall include
14 education with respect to using markets to effec-
15 tively achieve such compliance.
16 "(2) FAILURE TO RECEIVE INFORMATION.—A
17 failure to receive information or assistance under
18 this subsection may not be used as a defense against
19 an allegation of any violation of this title.
20 "(i) ADJUSTMENT OF DEADLINE.—The Adminis-
21 trator may, by rule, establish a deadline for demonstrating
22 compliance, for a calendar year, later than the date pro-
23 vided in subsection (a), as necessary to ensure the avail-
24 ability of emissions data, but in no event shall the deadline
25 be later than June 1.

1 "(j) NOTICE REQUIREMENT FOR COVERED ENTITIES
2 RECEIVING NATURAL GAS FROM NATURAL GAS LOCAL
3 DISTRIBUTION COMPANIES.—The owner or operator of a
4 covered entity that takes delivery of natural gas from a
5 natural gas local distribution company shall, not later
6 than September 1 of each calendar year, notify such nat-
7 ural gas local distribution company in writing that such
8 entity will qualify as a covered entity under this title for
9 that calendar year.

10 "(k) COMPLIANCE OBLIGATION.—For purposes of
11 this title, the year of a compliance obligation is the year
12 in which compliance is determined, not the year in which
13 the greenhouse gas emissions occur or the covered entity
14 has attributable greenhouse gas emissions.

15 **"SEC. 723. PENALTY FOR NONCOMPLIANCE.**

16 "(a) ENFORCEMENT.—A violation of any prohibition
17 of, requirement of, or regulation promulgated pursuant to
18 this title shall be a violation of this Act. It shall be a viola-
19 tion of this Act for a covered entity to emit greenhouse
20 gases, and have attributable greenhouse gas emissions, in
21 combination, in excess of its allowable emissions level as
22 provided in section 722(a). Each ton of carbon dioxide
23 equivalent for which a covered entity fails to demonstrate
24 compliance under section 722(b) shall be a separate viola-
25 tion.

1 "(b) EXCESS EMISSIONS PENALTY.—

2 "(1) IN GENERAL.—The owner or operator of
3 any covered entity that fails for any year to comply,
4 on the deadline described in section 722(a) or (i),
5 shall be liable for payment to the Administrator of
6 an excess emissions penalty in the amount described
7 in paragraph (2).

8 "(2) AMOUNT.—The amount of an excess emis-
9 sions penalty required to be paid under paragraph
10 (1) shall be equal to the product obtained by multi-
11 plying—

12 "(A) the tons of carbon dioxide equivalent
13 for which the owner or operator of a covered
14 entity failed to comply under section 722(b) on
15 the deadline; by

16 "(B) twice the fair market value of emis-
17 sion allowances established for emissions occur-
18 ring in the calendar year for which the emission
19 allowances were due.

20 "(3) TIMING.—An excess emissions penalty re-
21 quired under this subsection shall be immediately
22 due and payable to the Administrator, without de-
23 mand, in accordance with regulations promulgated
24 by the Administrator, which shall be issued not later

1 than 2 years after the date of enactment of this
2 title.
3 "(4) NO EFFECT ON LIABILITY.—An excess
4 emissions penalty due and payable by the owners or
5 operators of a covered entity under this subsection
6 shall not diminish the liability of the owners or oper-
7 ators for any fine, penalty, or assessment against
8 the owners or operators for the same violation under
9 any other provision of this Act or any other law.
10 "(c) EXCESS EMISSIONS ALLOWANCES.—The owner
11 or operator of a covered entity that fails for any year to
12 comply on the deadline described in section 722(a) or (i)
13 shall be liable to offset the covered entity's excess com-
14 bination of greenhouse gases emitted and attributable
15 greenhouse gas emissions by an equal quantity of emission
16 allowances during the following calendar year, or such
17 longer period as the Administrator may prescribe. During
18 the year in which the covered entity failed to comply, or
19 any year thereafter, the Administrator may deduct the
20 emission allowances required under this subsection to off-
21 set the covered entity's excess actual or attributable emis-
22 sions.
23 **"SEC. 724. TRADING.**
24 "(a) PERMITTED TRANSACTIONS.—Except as other-
25 wise provided in this title, the lawful holder of an emission

1 allowance, compensatory allowance, or offset credit may,
2 without restriction, sell, exchange, transfer, hold for com-
3 pliance in accordance with section 722, or request that the
4 Administrator retire the emission allowance or offset cred-
5 it.

6 "(b) NO RESTRICTION ON TRANSACTIONS.—The
7 privilege of purchasing, holding, selling, exchanging,
8 transferring, and requesting retirement of emission allow-
9 ances, compensatory allowances, or offset credits shall not
10 be restricted to the owners and operators of covered enti-
11 ties, except as otherwise provided in this title.

12 "(c) EFFECTIVENESS OF ALLOWANCE TRANS-
13 FERS.—No transfer of an emission allowance, compen-
14 satory allowance, or offset credit shall be effective for pur-
15 poses of this title until a certification of the transfer,
16 signed by the designated representative of the transferor,
17 is received and recorded by the Administrator in accord-
18 ance with regulations promulgated under section 721(g).

19 "(d) ALLOWANCE TRACKING SYSTEM.—The regula-
20 tions promulgated under section 721(g) shall include a
21 system for issuing, recording, holding, and tracking allow-
22 ances and offset credits that shall specify all necessary
23 procedures and requirements for an orderly and competi-
24 tive functioning of the allowance and offset credit market.

1 Such regulations shall provide for appropriate publication
2 of the information in the system on the Internet.

3 **"SEC. 725. BANKING AND BORROWING.**

4 "(a) BANKING.—An emission allowance may be used
5 to comply with section 722 or section 723 for emissions
6 in—

7 "(1) the vintage year for the allowance; or

8 "(2) any calendar year subsequent to the vin-
9 tage year for the allowance.

10 "(b) EXPIRATION.—

11 "(1) REGULATIONS.—The Administrator may
12 establish by regulation criteria and procedures for
13 determining whether, and for implementing a deter-
14 mination that, the expiration of an allowance or
15 credit established or issued by the Administrator
16 under this title, or expiration of the ability to use an
17 international emission allowance to comply with sec-
18 tion 722, is necessary to ensure the authenticity and
19 integrity of allowances or credits or the allowance
20 tracking system.

21 "(2) GENERAL RULE.—An allowance or credit
22 established or issued by the Administrator under
23 this title shall not expire unless—

24 "(A) it is retired by the Administrator as
25 required under this title; or

"(B) it is determined to expire or to have expired by a specific date by the Administrator in accordance with regulations promulgated under paragraph (1).

"(3) INTERNATIONAL EMISSION ALLOWANCES.—The ability to use an international emission allowance to comply with section 722 shall not expire unless—

"(A) the allowance is retired by the Administrator as required by this title; or

"(B) the ability to use such allowance to meet such compliance obligation requirements is determined to expire or to have expired by a specific date by the Administrator in accordance with regulations promulgated under paragraph (1).

"(c) BORROWING FUTURE VINTAGE YEAR ALLOWANCES.—

"(1) BORROWING WITHOUT INTEREST.—In addition to the uses described in subsection (a), an emission allowance may be used to comply with section 722(a) or section 723 for emissions, production, importation, manufacture, or deliveries in the calendar year immediately preceding the vintage year for the allowance.

1 "(2) BORROWING WITH INTEREST.—

2 "(A) IN GENERAL.—A covered entity may
3 satisfy up to 15 percent of its compliance obli-
4 gations under section 722(a) in a specific cal-
5 endar year by holding emission allowances with
6 a vintage year 1 to 5 years later than that cal-
7 endar year.

8 "(B) LIMITATIONS.—An emission allow-
9 ance borrowed pursuant to this paragraph shall
10 be an emission allowance established by the Ad-
11 ministrator for a specific future calendar year
12 under section 721(a) and that is held by the
13 borrower.

14 "(C) REPAYMENT WITH INTEREST.—For
15 each emission allowance that an owner or oper-
16 ator of a covered entity borrows pursuant to
17 this paragraph, such owner or operator shall, at
18 the time it borrows the allowance, hold for re-
19 tirement by the Administrator a quantity of
20 emission allowances that is equal to the product
21 obtained by multiplying—

22 "(i) 0.08; by

23 "(ii) the number of years between the
24 calendar year in which the allowance is

being used to satisfy a compliance obligation and the vintage year of the allowance.

"SEC. 726. STRATEGIC RESERVE.

"(a) STRATEGIC RESERVE AUCTIONS.—

"(1) IN GENERAL.—Once each quarter of each calendar year for which allowances are established under section 721(a), the Administrator shall auction strategic reserve allowances.

"(2) RESTRICTION TO COVERED ENTITIES.—In each auction conducted under paragraph (1), only covered entities that the Administrator expects will be required to comply with section 722(a) in the following calendar year shall be eligible to make purchases.

"(b) POOL OF EMISSION ALLOWANCES FOR STRATEGIC RESERVE AUCTIONS.—

"(1) FILLING THE STRATEGIC RESERVE INITIALLY.—

"(A) IN GENERAL.—The Administrator shall, not later than 2 years after the date of enactment of this title, establish a strategic reserve account, and shall place in that account an amount of emission allowances established under section 721(a) for each calendar year

1 from 2012 through 2050 in the amounts speci-
2 fied in subparagraph (B) of this paragraph.
3 "(B) AMOUNT.—The amount referred to in
4 subparagraph (A) shall be—
5 "(i) for each of calendar years 2012
6 through 2019, 1 percent of the quantity of
7 emission allowances established for that
8 year pursuant to section 721(e)(1);
9 "(ii) for each of calendar years 2020
10 through 2029, 2 percent of the quantity of
11 emission allowances established for that
12 year pursuant to section 721(e)(1); and
13 "(iii) for each of calendar years 2030
14 through 2050, 3 percent of the quantity of
15 emission allowances established for that
16 year pursuant to section 721(e)(1).
17 "(C) EFFECT ON OTHER PROVISIONS.—
18 Any provision in this title (except for subpara-
19 graph (B) of this paragraph) that refers to a
20 quantity or percentage of the emission allow-
21 ances established for a calendar year under sec-
22 tion 721(a) shall be considered to refer to the
23 amount of emission allowances as determined
24 pursuant to section 721(e), less any emission
25 allowances established for that year that are

1 placed in the strategic reserve account under
2 this paragraph.
3 "(2) SUPPLEMENTING THE STRATEGIC RE-
4 SERVE.—The Administrator shall also—
5 "(A) at the end of each calendar year,
6 transfer to the strategic reserve account each
7 emission allowance that was offered for sale but
8 not sold at any auction conducted under part
9 H; and
10 "(B) transfer emission allowances estab-
11 lished under subsection (g) from auction pro-
12 ceeds, and deposit them into the strategic re-
13 serve, to the extent necessary to maintain the
14 reserve at its original size.
15 "(e) MINIMUM STRATEGIC RESERVE AUCTION
16 PRICE.—
17 "(1) IN GENERAL.—At each strategic reserve
18 auction, the Administrator shall offer emission al-
19 lowances for sale beginning at a minimum price per
20 emission allowance, which shall be known as the
21 'minimum strategic reserve auction price'.
22 "(2) INITIAL MINIMUM STRATEGIC RESERVE
23 AUCTION PRICES.—The minimum strategic reserve
24 auction price shall be [insert amount twice the
25 EPA-modeled 2012 allowance price EPA provides to

1 the Committee] for the strategic reserve auctions
2 held in 2012. For the strategic reserve auctions held
3 in 2013 and 2014, the minimum strategic reserve
4 auction price shall be the strategic reserve auction
5 price for the previous year increased by 5 percent
6 plus the rate of inflation (as measured by the Con-
7 sumer Price Index for All Urban Consumers).
8 "(3) MINIMUM STRATEGIC RESERVE AUCTION
9 PRICE IN SUBSEQUENT YEARS.—For each strategic
10 reserve auction held in 2015 and each year there-
11 after, the minimum strategic reserve auction price
12 shall be 60 percent above a rolling 36-month average
13 of the daily closing price for that year's emission al-
14 lowance vintage as reported on registered carbon
15 trading facilities, calculated using constant dollars.
16 "(d) QUANTITY OF EMISSION ALLOWANCES RE-
17 LEASED FROM THE STRATEGIC RESERVE.—
18 "(1) INITIAL LIMITS.—For each of calendar
19 years 2012 through 2016, the annual limit on the
20 number of emission allowances from the strategic re-
21 serve account that may be auctioned is an amount
22 equal to 5 percent of the emission allowances estab-
23 lished for that calendar year under section 721(a).
24 This limit does not apply to international offset

1 credits sold on consignment pursuant to subsection
2 (h).
3 "(2) LIMITS IN SUBSEQUENT YEARS.—For cal-
4 endar year 2017 and each year thereafter, the an-
5 nual limit on the number of emission allowances
6 from the strategic reserve account that may be auc-
7 tioned is an amount equal to 10 percent of the emis-
8 sion allowances established for that calendar year
9 under section 721(a). This limit does not apply to
10 international offset credits sold on consignment pur-
11 suant to subsection (h).
12 "(3) ALLOCATION OF LIMITATION.—One-fourth
13 of each year's annual strategic reserve auction limit
14 under this subsection shall be made available for
15 auction in each quarter. Any allowances from the
16 strategic reserve account that are made available for
17 sale in a quarterly auction and not sold shall be
18 rolled over and added to the quantity available for
19 sale in the following quarter, except that allowances
20 not sold at auction in the fourth quarter of a year
21 shall not be rolled over to the following calendar
22 year's auctions, but shall be returned to the stra-
23 tegic reserve account.
24 "(e) PURCHASE LIMIT.—

1 "(1) IN GENERAL.—Except as provided in para-
2 graph (2) or (3), the annual number of emission al-
3 lowances that a covered entity may purchase at the
4 strategic reserve auctions in each calendar year shall
5 not exceed 20 percent of the covered entity's emis-
6 sions during the most recent year for which allow-
7 ances or credits were retired under section 722(a).
8 "(2) 2012 LIMIT.—For calendar year 2012, the
9 maximum aggregate number of emission allowances
10 that a covered entity may purchase from that year's
11 strategic reserve auctions shall be 20 percent of the
12 covered entity's greenhouse gas emissions that the
13 covered entity reported to the registry established
14 under section 713 for 2011 and that would be sub-
15 ject to section 722(a) if occurring in later calendar
16 years.
17 "(3) NEW ENTRANTS.—The Administrator
18 shall, by regulation, establish a separate limitation
19 applicable to entities that expect to become a cov-
20 ered entity in the year of the auction, permitting
21 them to purchase emission allowances at the stra-
22 tegic reserve auctions in their first calendar year of
23 operation in an amount of at least 20 percent of
24 their expected combined emissions and attributable
25 greenhouse gas emissions for that year.

1 "(f) DELEGATION OR CONTRACT.—Pursuant to regu-
2 lations under this section, the Administrator may, by dele-
3 gation or contract, provide for the conduct of strategic re-
4 serve auctions under the Administrator's supervision by
5 other departments or agencies of the Federal Government
6 or by nongovernmental agencies, groups, or organizations.
7 "(g) USE OF AUCTION PROCEEDS.—
8 "(1) DEPOSIT IN STRATEGIC RESERVE FUND.—
9 The proceeds from strategic reserve auctions shall be
10 placed in the Strategic Reserve Fund established
11 under section 782(c), and shall be available without
12 further appropriation or fiscal year limitation for the
13 purposes described in this subsection.
14 "(2) INTERNATIONAL OFFSET CREDITS FOR RE-
15 DUCED DEFORESTATION.—The Administrator shall
16 use the proceeds from each strategic reserve auction
17 to purchase international offset credits issued for re-
18 duced deforestation activities pursuant to section
19 743(e). The Administrator shall retire those inter-
20 national offset credits and establish a number of
21 emission allowances equal to 80 percent of the num-
22 ber of international offset credits so retired. Emis-
23 sion allowances established under this paragraph
24 shall be in addition to those established under sec-
25 tion 721(a).

1 "(3) EMISSION ALLOWANCES.—The Adminis-
2 trator shall deposit emission allowances established
3 under paragraph (2) in the strategic reserve, except
4 that, with respect to any such emission allowances in
5 excess of the amount necessary to fill the strategic
6 reserve to its original size, the Administrator shall—
7 "(A) except as provided in subparagraph
8 (B), assign a vintage year to the emission al-
9 lowance, which shall be no earlier than the year
10 in which the allowance is established under
11 paragraph (2), and make the emission allow-
12 ances available for auction under section 791;
13 and
14 "(B) to the extent any such allowances
15 cannot be assigned a vintage year because of
16 the limitation in paragraph (4), retire the allow-
17 ances.
18 "(4) LIMITATION.—In no case may the Admin-
19 istrator assign under paragraph (3)(A) more emis-
20 sion allowances to a vintage year than the number
21 of emission allowances from that vintage year that
22 were placed in the strategic reserve account under
23 subsection (b)(1).
24 "(h) AVAILABILITY OF INTERNATIONAL OFFSET
25 CREDITS FOR AUCTION.—

1 "(1) IN GENERAL.—The regulations promul-
2 gated under section 721(g) shall allow any entity
3 holding international offset credits from reduced de-
4 forestation issued under section 743(e) to request
5 that the Administrator include such offset credits in
6 an upcoming strategic reserve auction. The regula-
7 tions shall provide that—
8 "(A) such international offset credits will
9 be used to fill bid orders only after the supply
10 of strategic reserve allowances available for sale
11 at that auction has been depleted;
12 "(B) international offset credits may be
13 sold at a strategic reserve auction under this
14 subsection only if the Administrator determines
15 that it is highly likely that covered entities will,
16 to cover emissions occurring in the year the
17 auction is held, use under section 722 offset
18 credits in an amount equal to or greater than
19 80 percent of 2 billion tons of carbon dioxide
20 equivalent;
21 "(C) upon sale of such international offset
22 credits, the Administrator shall retire those
23 international offset credits, and establish and
24 provide to the purchasers a number of emission
25 allowances equal to 80 percent of the number of

1 international offset credits so retired, which al-
2 lowances shall be in addition to those estab-
3 lished under section 721(a); and
4 "(D) for international offset credits sold
5 pursuant to this subsection, the proceeds for
6 the entity that offered the international offset
7 credits for sale shall be the lesser of—
8 "(i) the average daily closing price for
9 international offset credits sold on reg-
10 istered exchanges (or if such price is un-
11 available, the average price as determined
12 by the Administrator) during the six
13 months prior to the strategic reserve auc-
14 tion at which they were auctioned, with the
15 remaining funds collected upon the sale of
16 the international offset credits deposited in
17 the Treasury; and
18 "(ii) the amount received for the
19 international offset credits at the auction.
20 "(2) PROCEEDS.—For international offset cred-
21 its auctioned pursuant to this subsection, notwith-
22 standing section 3302 of title 31, United States
23 Code, or any other provision of law, within 90 days
24 of receipt, the United States shall transfer the pro-
25 ceeds from the auction, as defined in paragraph

1 (1)(D), to the entity which possessed the inter-
2 national offset credits auctioned. No funds trans-
3 ferred from a purchaser to a seller of international
4 offset credits under this paragraph shall be held by
5 any officer or employee of the United States or
6 treated for any purpose as public monies.

7 "(3) PRICING.—When the Administrator acts
8 under this subsection as the agent of an entity in
9 possession of international offset credits, the Admin-
10 istrator is not obligated to obtain the highest price
11 possible for the international offset credits, and in-
12 stead shall auction such international offset credits
13 in the same manner and pursuant to the same rules
14 (except as modified in paragraph (1)) as set forth
15 for auctioning strategic reserve allowances. Entities
16 requesting that such international offset credits be
17 offered for sale at a strategic reserve auction may
18 not set a minimum reserve price for their inter-
19 national offset credits.

20 "(i) INITIAL REGULATIONS.—Not later than 24
21 months after the date of enactment of this title, the Ad-
22 ministrator shall promulgate regulations, in consultation
23 with other appropriate agencies, governing the auction of
24 allowances under this section. Such regulations shall in-
25 clude the following requirements:

1 "(1) FREQUENCY; FIRST AUCTION.—Auctions
2 shall be held four times per year at regular intervals,
3 with the first auction to be held no later than March
4 31, 2012.
5 "(2) AUCTION FORMAT.—Auctions shall follow
6 a single-round, sealed-bid, uniform price format.
7 "(3) PARTICIPATION; FINANCIAL ASSURANCE.—
8 Auctions shall be open to any covered entity eligible
9 to purchase emission allowances under subsection
10 (a)(2), except that the Administrator may establish
11 financial assurance requirements to ensure that auc-
12 tion participants can and will perform on their bids.
13 "(4) DISCLOSURE OF BENEFICIAL OWNER-
14 SHIP.—Each bidder in an auction shall be required
15 to disclose the person or entity sponsoring or bene-
16 fitting from the bidder's participation in the auction
17 if such person or entity is, in whole or in part, other
18 than the bidder.
19 "(5) PURCHASE LIMITS.—No person may, di-
20 rectly or in concert with another participant, pur-
21 chase more than 20 percent of the allowances of-
22 fered for sale at any quarterly auction.
23 "(6) PUBLICATION OF INFORMATION.—After
24 the auction, the Administrator shall, in a timely
25 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, the provisions of this title
25 shall be implemented by permits issued to covered entities

1 (and enforced) in accordance with the provisions of title
2 V, as modified by this title. Any such permit issued by
3 the Administrator, or by a State with an approved permit
4 program, shall require a covered entity to hold a number
5 of emission allowances at least equal to the total annual
6 amount of carbon dioxide equivalents for its combined
7 emissions and attributable greenhouse gas emissions to
8 which section 722 applies. No such permit shall be issued
9 that is inconsistent with the requirements of this title, and
10 title V as applicable. Nothing in this section regarding
11 compliance plans or in title V shall be construed as affect-
12 ing emission allowances. Submission of a statement by the
13 owner or operator, or the designated representative of the
14 owners and operators, of a covered entity that the owners
15 and operators will hold emission allowances not less than
16 the total amount of carbon dioxide equivalents for a year
17 for its combined emissions and attributable greenhouse
18 gas emissions to which section 722 applies shall be deemed
19 to meet the proposed and approved planning requirements
20 of title V. Recordation by the Administrator of transfers
21 of emission allowances shall amend automatically all appli-
22 cable proposed or approved permit applications, compli-
23 ance 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 from an independent power producer, the
11 certificate shall state—

12 "(1) that emission allowances and the proceeds
13 of transactions involving emission allowances will be
14 deemed to be held or distributed in proportion to
15 each holder's legal, equitable, leasehold, or contrac-
16 tual reservation or entitlement; or

17 "(2) if such multiple holders have expressly pro-
18 vided for a different distribution of emission allow-
19 ances by contract, that emission allowances and the
20 proceeds of transactions involving emission allow-
21 ances will be deemed to be held or distributed in ac-
22 cordance with the contract.

23 A passive lessor, or a person who has an equitable interest
24 through such lessor, whose rental payments are not based,
25 either directly or indirectly, upon the revenues or income

1 from the covered entity or other person shall not be
2 deemed to be a holder of a legal, equitable, leasehold, or
3 contractual interest for the purpose of holding or distrib-
4 uting emission allowances as provided in this subsection,
5 during either the term of such leasehold or thereafter, un-
6 less expressly provided for in the leasehold agreement. Ex-
7 cept as otherwise provided in this subsection, where all
8 legal or equitable title to or interest in a covered entity,
9 or other entity, is held by a single person, the certificate
10 shall state that all emission allowances received by the en-
11 tity are deemed to be held for that person.

12 "(c) PROHIBITION.—It shall be unlawful for any per-
13 son to operate any covered entity [that is a stationary
14 source subject to title V] except in compliance with the
15 terms and requirements of a permit issued by the Admin-
16 istrator or a State with an approved permit program. For
17 purposes of this subsection, compliance, as provided in
18 section 504(f), with a permit issued under title V which
19 complies with this title for covered entities shall be deemed
20 compliance with this subsection as well as section 502(a).

21 **"SEC. 728. INTERNATIONAL EMISSION ALLOWANCES.**

22 "(a) QUALIFYING PROGRAMS.—The Administrator,
23 in consultation with the Secretary of State, may by rule
24 designate an international climate change program as a
25 qualifying international program if—

1 "(1) the program is run by a national or supra-
2 national foreign government, and imposes a manda-
3 tory absolute tonnage limit on greenhouse gas emis-
4 sions from 1 or more foreign countries, or from 1 or
5 more economic sectors in such a country or coun-
6 tries; and
7 "(2) the program is at least as stringent as the
8 program established by this title, including provi-
9 sions to ensure at least comparable monitoring, com-
10 pliance, enforcement, quality of offsets, and restric-
11 tions on the use of offsets.
12 "(b) DISQUALIFIED ALLOWANCES.—An international
13 emission allowance may not be held under section
14 722(d)(2) if it is in the nature of an offset instrument
15 or allowance awarded based on the achievement of green-
16 house gas emission reductions or avoidance, or greenhouse
17 gas sequestration, that are not subject to the mandatory
18 absolute tonnage limits referred to in subsection (a)(1).
19 "(c) RETIREMENT.—
20 "(1) ENTITY CERTIFICATION.—The owner or
21 operator of an entity that holds an international
22 emission allowance under section 722(d)(2) shall
23 certify to the Administrator that such international
24 emission allowance has not previously been used to

1 comply with any foreign, international, or domestic
2 greenhouse gas regulatory program.
3 "(2) RETIREMENT.—
4 "(A) FOREIGN AND INTERNATIONAL REG-
5 ULATORY ENTITIES.—The Administrator, in
6 consultation with the Secretary of State, shall
7 seek, by whatever means appropriate, including
8 agreements and technical cooperation on allow-
9 ance tracking, to ensure that any relevant for-
10 eign, international, and domestic regulatory en-
11 tities—
12 "(i) are notified of the use, for pur-
13 poses of compliance with this title, of any
14 international emission allowance; and
15 "(ii) provide for the disqualification of
16 such international emission allowance for
17 any subsequent use under the relevant for-
18 eign, international, or domestic greenhouse
19 gas regulatory program, regardless of
20 whether such use is a sale, exchange, or
21 submission to satisfy a compliance obliga-
22 tion.
23 "(B) DISQUALIFICATION FROM FURTHER
24 USE.—The Administrator shall ensure that,
25 once an international emission allowance has

been disqualified or otherwise used for purposes of compliance with this title, such allowance shall be disqualified from any further use under this title.

"(d) USE LIMITATIONS.—The Administrator may, by rule, modify the percentage applicable to international emission allowances under section 722(d)(2), consistent with the purposes of the Safe Climate Act.

"PART D—OFFSETS

"SEC. 731. OFFSETS INTEGRITY ADVISORY BOARD.

"(a) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this title, the Administrator shall establish an independent Offsets Integrity Advisory Board. The Advisory Board shall make recommendations to the Administrator for use in promulgating and revising regulations under this part and part E, and for ensuring the overall environmental integrity of the programs established pursuant to those regulations.

"(b) MEMBERSHIP.—The Advisory Board shall be comprised of at least nine members. Each member shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section. The Administrator shall appoint Advisory Board members, including a chair and vice-chair of the Advisory Board. Terms shall

1 be 3 years in length, except for initial terms, which may
2 be up to 5 years in length to allow staggering. Members
3 may be reappointed only once for an additional 3-year
4 term, and such second term may follow directly after a
5 first term.

6 "(c) ACTIVITIES.—The Advisory Board established
7 pursuant to subsection (a) shall—

8 "(1) provide recommendations, not later than
9 90 days after the Advisory Board's establishment
10 and periodically thereafter, to the Administrator re-
11 garding offset project types that should be consid-
12 ered for eligibility under section 733, taking into
13 consideration relevant scientific and other issues, in-
14 cluding—

15 "(A) the availability of a representative
16 data set for use in developing the activity base-
17 line;

18 "(B) the potential for accurate quantifica-
19 tion of greenhouse gas reduction, avoidance, or
20 sequestration for an offset project type;

21 "(C) the potential level of scientific and
22 measurement uncertainty associated with an
23 offset project type; and

24 "(D) any beneficial or adverse environ-
25 mental, public health, welfare, social, economic,

1 or energy effects associated with an offset
2 project type;
3 "(2) make available to the Administrator its ad-
4 vice and comments on offset methodologies that
5 should be considered under regulations promulgated
6 pursuant to section 734(a) and (b), including meth-
7 odologies to address the issues of additionality, ac-
8 tivity baselines, measurement, leakage, uncertainty,
9 permanence, and environmental integrity;
10 "(3) make available the Administrator, and
11 other relevant Federal agencies, its advice and com-
12 ments regarding scientific, technical, and methodo-
13 logical issues specific to the issuance of international
14 offset credits under section 743;
15 "(4) make available to the Administrator, and
16 other relevant Federal agencies, its advice and com-
17 ments regarding scientific, technical, and methodo-
18 logical issues associated with the implementation of
19 part E;
20 "(5) make available to the Administrator its ad-
21 vice and comments on areas in which further knowl-
22 edge is required to appraise the adequacy of exist-
23 ing, revised, or proposed methodologies for use
24 under this part and part E, and describe the re-

1 search efforts necessary to provide the required in-
2 formation; and
3 "(6) make available to the Administrator its ad-
4 vice and comments on other ways to improve or
5 safeguard the environmental integrity of programs
6 established under this part and part E.
7 "(d) SCIENTIFIC REVIEW OF OFFSET AND DEFOR-
8 ESTATION REDUCTION PROGRAMS.—Not later than Janu-
9 ary 1, 2017, and at five-year intervals thereafter, the Ad-
10 visory Board shall submit to the Administrator and make
11 available to the public an analysis of relevant scientific and
12 technical information related to this part and part E. The
13 Advisory Board shall review approved and potential meth-
14 odologies, scientific studies, offset project monitoring, off-
15 set project verification reports, and audits related to this
16 part and part E, and evaluate the net emissions effects
17 of implemented offset projects. The Advisory Board shall
18 recommend changes to offset methodologies, protocols, or
19 project types, or to the overall offset program under this
20 part, to ensure that offset credits issued by the Adminis-
21 trator do not compromise the integrity of the annual emis-
22 sion reductions established under section 703, and to
23 avoid or minimize adverse effects to human health or the
24 environment.

1 **"SEC. 732. ESTABLISHMENT OF OFFSETS PROGRAM.**

2 "(a) REGULATIONS.—Not later than 2 years after
3 the date of enactment of this title, the Administrator, in
4 consultation with appropriate Federal agencies and taking
5 into consideration the recommendations of the Advisory
6 Board, shall promulgate regulations establishing a pro-
7 gram for the issuance of offset credits in accordance with
8 the requirements of this part. The Administrator shall pe-
9 riodically revise these regulations as necessary to meet the
10 requirements of this part.

11 "(b) REQUIREMENTS.—The regulations described in
12 subsection (a) shall—

13 "(1) authorize the issuance of offset credits
14 with respect to qualifying offset projects that result
15 in reductions or avoidance of greenhouse gas emis-
16 sions, or sequestration of greenhouse gases;

17 "(2) ensure that such offset credits represent
18 verifiable and additional greenhouse gas emission re-
19 ductions or avoidance, or increases in sequestration;

20 "(3) ensure that offset credits issued for se-
21 questration offset projects are only issued for green-
22 house gas reductions that are permanent;

23 "(4) provide for the implementation of the re-
24 quirements of this part; and

1 "(5) include as reductions in greenhouse gases
2 reductions achieved through the destruction of meth-
3 ane and its conversion to carbon dioxide.
4 "(c) COORDINATION TO MINIMIZE NEGATIVE EF-
5 FECTS.—In promulgating and implementing regulations
6 under this part, the Administrator shall act (including by
7 rejecting projects, if necessary) to avoid or minimize, to
8 the maximum extent practicable, adverse effects on human
9 health or the environment resulting from the implementa-
10 tion of offset projects under this part.
11 "(d) OFFSET REGISTRY.—The Administrator shall
12 establish within the allowance tracking system established
13 under section 724(d) an Offset Registry for qualifying off-
14 set projects and offset credits issued with respect thereto
15 under this part.
16 "(e) LEGAL STATUS OF OFFSET CREDIT.—An offset
17 credit does not constitute a property right.
18 "(f) FEES.—The Administrator shall assess fees pay-
19 able by offset project developer in an amount necessary
20 to cover the administrative costs to the Environmental
21 Protection Agency of carrying out the activities under this
22 part. Amounts collected for such fees shall be available
23 to the Administrator for carrying out the activities under
24 this part to the extent provided in advance in appropria-
25 tions Acts.

1 **"SEC. 733. ELIGIBLE PROJECT TYPES.**

2 "(a) LIST OF ELIGIBLE PROJECT TYPES.—

3 "(1) IN GENERAL.—As part of the regulations
4 promulgated under section 732(a), the Adminis-
5 trator shall establish, and may periodically revise, a
6 list of types of projects eligible to generate offset
7 credits, including international offset credits, under
8 this part.

9 "(2) ADVISORY BOARD RECOMMENDATIONS.—
10 In determining the eligibility of project types, the
11 Administrator shall take into consideration the rec-
12 ommendations of the Advisory Board. If a list estab-
13 lished under this section differs from the rec-
14 ommendations of the Advisory Board, the regula-
15 tions promulgated under section 732(a) shall include
16 a justification for the discrepancy.

17 "(3) INITIAL DETERMINATION.—The Adminis-
18 trator shall establish the initial eligibility list under
19 paragraph (1) not later than one year after the date
20 of enactment of this title. The Administrator shall
21 add additional project types to the list not later than
22 2 years after the date of enactment of this title. In
23 determining the initial list, the Administrator shall
24 give priority to consideration of offset project types
25 that are recommended by the Advisory Board and
26 for which there are well developed methodologies

1 that the Administrator determines would meet the
2 criteria of section 734, with such modifications as
3 the Administrator deems appropriate. In issuing
4 methodologies pursuant to section 734, the Adminis-
5 trator shall give priority to methodologies for offset
6 types included on the initial eligibility list.
7 "(b) MODIFICATION OF LIST.—The Administrator—
8 "(1) may at any time, by rule, add a project
9 type to the list established under subsection (a) if
10 the Administrator, in consultation with appropriate
11 Federal agencies and taking into consideration the
12 recommendations of the Advisory Board, determines
13 that the project type can generate additional reduc-
14 tions or avoidance of greenhouse gas emissions, or
15 sequestration of greenhouse gases, subject to the re-
16 quirements of this part;
17 "(2) may at any time, by rule, determine that
18 a project type on the list does not generate addi-
19 tional reductions or avoidance of greenhouse gas
20 emissions, or sequestration of greenhouse gases, sub-
21 ject to the requirements of this part, and remove a
22 project type from the list established under sub-
23 section (a), in consultation with appropriate Federal
24 agencies and taking into consideration the rec-
25 ommendations of the Advisory Board; and

1 "(3) shall consider adding to or removing from
2 the list established under subsection (a), at a min-
3 imum, project types proposed to the Adminis-
4 trator—
5 "(A) by petition pursuant to subsection
6 (c); or
7 "(B) by the Advisory Board.
8 "(c) PETITION PROCESS.—Any person may petition
9 the Administrator to modify the list established under sub-
10 section (a) by adding or removing a project type pursuant
11 to subsection (b). Any such petition shall include a show-
12 ing by the petitioner that there is adequate data to estab-
13 lish that the project type does or does not meet the re-
14 quirements of this part. Not later than 12 months after
15 receipt of such a petition, the Administrator shall either
16 grant or deny the petition and publish a written expla-
17 nation of the reasons for the Administrator's decision. The
18 Administrator may not deny a petition under this sub-
19 section on the basis of inadequate Environmental Protec-
20 tion Agency resources or time for review.
21 **"SEC. 734. REQUIREMENTS FOR OFFSET PROJECTS.**
22 "(a) METHODOLOGIES.—As part of the regulations
23 promulgated under section 732(a), the Administrator shall
24 establish, for each type of offset project listed as eligible
25 under section 733, the following:

1 "(1) ADDITIONALITY.—A standardized method-
2 ology for determining the additionality of greenhouse
3 gas emission reductions or avoidance, or greenhouse
4 gas sequestration, achieved by an offset project of
5 that type. Such methodology shall ensure, at a min-
6 imum, that any greenhouse gas emission reduction
7 or avoidance, or any greenhouse gas sequestration, is
8 considered additional only to the extent that it re-
9 sults from activities that—
10 "(A) are not required by or undertaken to
11 comply with any law, including any regulation
12 or consent order;
13 "(B) were not commenced prior to Janu-
14 ary 1, 2009, except for offset project activities
15 that commenced after January 1, 2001, and
16 were registered as of the date of enactment of
17 this title under an offset program with respect
18 to which the Administrator has made an affirm-
19 ative determination under section 740(a)(2);
20 "(C) are not receiving support under part
21 E of this title or title IV, subtitle D of the
22 American Clean Energy and Security Act of
23 2009; and
24 "(D) exceed the activity baseline estab-
25 lished under paragraph (2).

1 "(2) ACTIVITY BASELINES.—A standardized
2 methodology for establishing activity baselines for
3 offset projects of that type. The Administrator shall
4 set activity baselines to reflect a conservative esti-
5 mate of business-as-usual performance or practices
6 for the relevant type of activity such that the base-
7 line provides an adequate margin of safety to ensure
8 the environmental integrity of offsets calculated in
9 reference to such baseline.
10 "(3) QUANTIFICATION METHODS.—A standard-
11 ized methodology for determining the extent to
12 which greenhouse gas emission reductions or avoid-
13 ance, or greenhouse gas sequestration, achieved by
14 an offset project of that type exceed a relevant activ-
15 ity baseline, including protocols for monitoring and
16 accounting for uncertainty.
17 "(4) LEAKAGE.—A standardized methodology
18 for accounting for and mitigating potential leakage,
19 if any, from an offset project of that type, taking
20 uncertainty into account.
21 "(b) ACCOUNTING FOR REVERSALS.—
22 "(1) IN GENERAL.—For each type of sequestra-
23 tion project listed under section 733, the Adminis-
24 trator shall establish requirements to account for
25 and address reversals, including—

1 "(A) a requirement to report any reversal
2 with respect to an offset project for which offset
3 credits have been issued under this part;
4 "(B) provisions to require emission allow-
5 ances to be held in amounts to fully compensate
6 for greenhouse gas emissions attributable to re-
7 versals, and to assign responsibility for holding
8 such emission allowances; and
9 "(C) any other provisions the Adminis-
10 trator determines necessary to account for and
11 address reversals.
12 "(2) MECHANISMS.—The Administrator shall
13 prescribe mechanisms to ensure that any sequestra-
14 tion with respect to which an offset credit is issued
15 under this part results in a permanent net increase
16 in sequestration, and that full account is taken of
17 any actual or potential reversal of such sequestra-
18 tion, with an adequate margin of safety. The Admin-
19 istrator shall prescribe at least one of the following
20 mechanisms to meet the requirements of this para-
21 graph:
22 "(A) An offsets reserve, pursuant to para-
23 graph (3).
24 "(B) Insurance that provides for purchase
25 and provision to the Administrator for retire-

1 ment of an amount of offset credits or emission
2 allowances equal in number to the tons of car-
3 bon dioxide equivalents of greenhouse gas emis-
4 sions released due to reversal.
5 "(C) Another mechanism that the Admin-
6 istrator determines satisfies the requirements of
7 this part.
8 "(3) OFFSETS RESERVE.—
9 "(A) IN GENERAL.—An offsets reserve re-
10 ferred to in paragraph (2)(A) is a program
11 under which, before issuance of offset credits
12 under this part, the Administrator shall sub-
13 tract and reserve from the quantity to be issued
14 a quantity of offset credits based on the risk of
15 reversal. The Administrator shall—
16 "(i) hold these reserved offset credits
17 in the offsets reserve; and
18 "(ii) register the holding of the re-
19 served offset credits in the Offset Registry
20 established under section 732(d).
21 "(B) PROJECT REVERSAL.—
22 "(i) IN GENERAL.—If a reversal has
23 occurred with respect an offset project for
24 which offset credits are reserved under this
25 paragraph, the Administrator shall remove

1 offset credits from the offsets reserve and
2 cancel them to fully account for the tons of
3 carbon dioxide equivalent that are no
4 longer sequestered.
5 "(ii) INTENTIONAL REVERSALS.—If
6 the Administrator determines that a rever-
7 sal was intentional, the offset project devel-
8 oper for the relevant offset project shall
9 place into the offsets reserve a quantity of
10 offset credits, or combination of offset
11 credits and emission allowances, equal in
12 number to the number of reserve offset
13 credits that were canceled due to the rever-
14 sal pursuant to clause (i).
15 "(iii) UNINTENTIONAL REVERSALS.—
16 If the Administrator determines that a re-
17 versal was unintentional, the offset project
18 developer for the relevant offset project
19 shall place into the offsets reserve a quan-
20 tity of offset credits, or combination of off-
21 set credits and emission allowances, equal
22 in number to half the number of offset
23 credits that were reserved for that offset
24 project, or half the number of reserve off-
25 set credits that were canceled due to the

1 reversal pursuant to clause (i), whichever
2 is less.
3 "(C) USE OF RESERVED OFFSET CRED-
4 ITS.—Offset credits placed into the offsets re-
5 serve under this paragraph may not be used to
6 comply with section 722.
7 "(c) CREDITING PERIODS.—
8 "(1) IN GENERAL.—For each offset project
9 type, the Administrator shall specify a crediting pe-
10 riod, and establish provisions for petitions for new
11 crediting periods, in accordance with this subsection.
12 "(2) DURATION.—The crediting period shall be
13 no less than 5 and no greater than 10 years for any
14 project type other than those involving sequestra-
15 tion.
16 "(3) ELIGIBILITY.—An offset project shall be
17 eligible to generate offset credits under this part
18 only during the project's crediting period. During
19 such crediting period, the project shall remain eligi-
20 ble to generate offset credits, subject to the meth-
21 odologies and project type eligibility list that applied
22 as of the date of project approval under section 735,
23 except as provided in paragraph (4) of this sub-
24 section.

1 "(4) PETITION FOR NEW CREDITING PERIOD.—
2 An offset project developer may petition for a new
3 crediting period to commence after termination of a
4 crediting period, subject to the methodologies and
5 project type eligibility list in effect at the time when
6 such petition is submitted. A petition may not be
7 submitted under this paragraph more than 18
8 months before the end of the pending crediting pe-
9 riod. The Administrator may limit the number of
10 new crediting periods available for projects of par-
11 ticular project types.

12 "(d) ENVIRONMENTAL INTEGRITY.—In establishing
13 the requirements under this section, the Administrator
14 shall apply conservative assumptions or methods to maxi-
15 mize the certainty that the environmental integrity of the
16 cap established under section 703 is not compromised.

17 "(e) PRE-EXISTING METHODOLOGIES.—In promul-
18 gating requirements under this section, the Administrator
19 shall give due consideration to methodologies for offset
20 projects existing as of the date of enactment of this title.

21 "(f) ADDED PROJECT TYPES.—The Administrator
22 shall establish methodologies described in subsection (a),
23 and, as applicable, requirements and mechanisms for re-
24 versals as described in subsection (b), for any project type
25 that is added to the list pursuant to section 733.

1 **"SEC. 735. APPROVAL OF OFFSET PROJECTS.**

2 "(a) APPROVAL PETITION.—An offset project devel-
3 oper shall submit an offset project approval petition pro-
4 viding such information as the Administrator requires to
5 determine whether the offset project is eligible for issuance
6 of offset credits under rules promulgated pursuant to this
7 part.

8 "(b) TIMING.—An approval petition shall be sub-
9 mitted to the Administrator under subsection (a) no later
10 than the time at which an offset project's first verification
11 report is submitted under section 736.

12 "(c) APPROVAL PETITION REQUIREMENTS.—As part
13 of the regulations promulgated under section 732, the Ad-
14 ministrator shall include provisions for, and shall specify,
15 the required components of an offset project approval peti-
16 tion required under subsection (a), which shall include—

17 "(1) designation of an offset project developer;
18 and

19 "(2) any other information that the Adminis-
20 trator considers to be necessary to achieve the pur-
21 poses of this part.

22 "(d) APPROVAL AND NOTIFICATION.—Not later than
23 90 days after receiving a complete approval petition under
24 subsection (a), the Administrator shall approve or deny
25 the petition in writing and, if the petition is denied, pro-
26 vide the reasons for denial. After an offset project is ap-

1 proved, the offset project developer shall not be required
2 to resubmit an approval petition during the offset project's
3 crediting period, except as provided in section 734(c)(4).
4 "(e) APPEAL.—The Administrator shall establish
5 procedures for appeal and review of determinations made
6 under subsection (d).
7 "(f) VOLUNTARY PREAPPROVAL REVIEW.—The Ad-
8 ministrator may establish a voluntary preapproval review
9 procedure, to allow an offset project developer to request
10 the Administrator to conduct a preliminary eligibility re-
11 view for an offset project. Findings of such reviews shall
12 not be binding upon the Administrator. The voluntary
13 preapproval review procedure—
14 "(1) shall require the offset project developer to
15 submit such basic project information as the Admin-
16 istrator requires to provide a meaningful review; and
17 "(2) shall require a response from the Adminis-
18 trator not later than 6 weeks after receiving a re-
19 quest for review under this subsection.
20 **"SEC. 736. VERIFICATION OF OFFSET PROJECTS.**
21 "(a) IN GENERAL.—As part of the regulations pro-
22 mulgated under section 732(a), the Administrator shall es-
23 tablish requirements, including protocols, for verification
24 of the quantity of greenhouse gas emission reductions or
25 avoidance, or sequestration of greenhouse gases, resulting

1 from an offset project. The regulations shall require that
2 an offset project developer shall submit a report, prepared
3 by a third-party verifier accredited under subsection (d),
4 providing such information as the Administrator requires
5 to determine the quantity of greenhouse gas emission re-
6 ductions or avoidance, or sequestration of greenhouse gas,
7 resulting from the offset project.

8 "(b) SCHEDULE.—The Administrator shall prescribe
9 a schedule for the submission of verification reports under
10 subsection (a).

11 "(c) VERIFICATION REPORT REQUIREMENTS.—The
12 Administrator shall specify the required components of a
13 verification report required under subsection (a), which
14 shall include—

15 "(1) the name and contact information for a
16 designated representative for the offset project devel-
17 oper;

18 "(2) the quantity of greenhouse gas reduced,
19 avoided, or sequestered;

20 "(3) the methodologies applicable to the project
21 pursuant to section 734;

22 "(4) a certification that the project meets the
23 applicable requirements;

24 "(5) a certification establishing that the conflict
25 of interest requirements in the regulations promul-

1 gated under subsection (d)(1) have been complied
2 with; and
3 "(6) any other information that the Adminis-
4 trator considers to be necessary to achieve the pur-
5 poses of this part.
6 "(d) VERIFIER ACCREDITATION.—
7 "(1) IN GENERAL.—As part of the regulations
8 promulgated under section 732(a), the Adminis-
9 trator shall establish a process and requirements for
10 periodic accreditation of third-party verifiers to en-
11 sure that such verifiers are professionally qualified
12 and have no conflicts of interest.
13 "(2) STANDARDS.—
14 "(A) AMERICAN NATIONAL STANDARDS IN-
15 STITUTE ACCREDITATION.—The Administrator
16 may accredit, or accept for purposes of accredi-
17 tation under this subsection, verifiers accredited
18 under the American National Standards Insti-
19 tute (ANSI) accreditation program in accord-
20 ance with ISO 14065. The Administrator shall
21 accredit, or accept for accreditation, verifiers
22 under this subparagraph only if the Adminis-
23 trator finds that the American National Stand-
24 ards Institute accreditation program provides

1 sufficient assurance that the requirements of
2 this part will be met.
3 "(B) EPA ACCREDITATION.—As part of
4 the regulations promulgated under section
5 732(a), the Administrator may establish accred-
6 itation standards for verifiers under this sub-
7 section, and may establish related training and
8 testing programs and requirements.
9 "(3) PUBLIC ACCESSIBILITY.—Each verifier
10 meeting the requirements for accreditation in ac-
11 cordance with this subsection shall be listed in a
12 publicly accessible database, which shall be main-
13 tained and updated by the Administrator.
14 **"SEC. 737. ISSUANCE OF OFFSET CREDITS.**
15 "(a) DETERMINATION AND NOTIFICATION.—Not
16 later than 90 days after receiving a complete verification
17 report under section 736, the Administrator shall—
18 "(1) make the report publicly available;
19 "(2) make a determination of the quantity of
20 greenhouse gas emissions reduced or avoided, or
21 greenhouse gases sequestered, resulting from an off-
22 set project approved under section 735; and
23 "(3) notify the offset project developer in writ-
24 ing of such determination.

1 "(b) ISSUANCE OF OFFSET CREDITS.—The Adminis-
2 trator shall issue one offset credit to an offset project de-
3 veloper for each ton of carbon dioxide equivalent that the
4 Administrator has determined has been reduced, avoided,
5 or sequestered during the period covered by a verification
6 report submitted in accordance with section 736, only if—
7 "(1) the Administrator has approved the offset
8 project pursuant to section 735; and
9 "(2) the relevant emissions reduction, avoid-
10 ance, or sequestration has already occurred, during
11 the offset project's crediting period.
12 "(c) APPEAL.—The Administrator shall establish
13 procedures for appeal and review of determinations made
14 under subsection (a).
15 "(d) TIMING.—Offset credits meeting the criteria es-
16 tablished in subsection (b) shall be issued not later than
17 2 weeks following the verification determination made by
18 the Administrator under subsection (a).
19 "(e) REGISTRATION.—The Administrator shall as-
20 sign a unique serial number to and register each offset
21 credit to be issued in the Offset Registry established under
22 section 732(d).
23 **"SEC. 738. AUDITS.**
24 "(a) IN GENERAL.—The Administrator shall, on an
25 ongoing basis, conduct random audits of offset projects,

1 offset credits, and practices of third-party verifiers. In
2 each year, the Administrator shall conduct audits, at min-
3 imum, for a representative sample of project types and
4 geographic areas.

5 "(b) DELEGATION.—The Administrator may delegate
6 to a State or tribal government the responsibility for con-
7 ducting audits under this section if the Administrator
8 finds that the program proposed by the State or tribal
9 government provides assurances equivalent to those pro-
10 vided by the auditing program of the Administrator, and
11 that the integrity of the offset program under this part
12 will be maintained. Nothing in this subsection shall pre-
13 vent the Administrator from conducting any audit the Ad-
14 ministrator considers necessary and appropriate.

15 **"SEC. 739. PROGRAM REVIEW AND REVISION.**

16 "At least once every 5 years, the Administrator shall
17 review and, based on new or updated information and tak-
18 ing into consideration the recommendations of the Advi-
19 sory Board, update and revise—

20 "(1) the list of eligible project types established
21 under section 733;

22 "(2) the methodologies established, including
23 specific activity baselines, under section 734(a);

24 "(3) the reversal requirements and mechanisms
25 established or prescribed under section 734(b);

1 "(4) measures to improve the accountability of
2 the offsets program; and
3 "(5) any other requirements established under
4 this part to ensure the environmental integrity and
5 effective operation of this part.
6 **"SEC. 740. EARLY OFFSET SUPPLY.**
7 "(a) PROJECTS REGISTERED UNDER OTHER GOV-
8 ERNMENT-RECOGNIZED PROGRAMS.—Except as provided
9 in subsection (b) or (c), the Administrator shall issue one
10 offset credit for each ton of carbon dioxide equivalent
11 emissions reduced, avoided, or sequestered—
12 "(1) under an offset project that was started
13 after January 1, 2001;
14 "(2) for which a credit was issued under any
15 regulatory or voluntary greenhouse gas emission off-
16 set program that the Administrator determines—
17 "(A) was established under State or tribal
18 law or regulation prior to January 1, 2009;
19 "(B) has developed offset project type
20 standards, methodologies, and protocols
21 through a public consultation process or a peer
22 review process;
23 "(C) has made available to the public
24 standards, methodologies, and protocols that re-
25 quire that credited emission reductions, avoid-

1 ance, or sequestration are permanent, addi-
2 tional, verifiable, and enforceable;
3 "(D) requires that all emission reductions,
4 avoidance, or sequestration be verified by a
5 State regulatory agency or an accredited third-
6 party independent verification body;
7 "(E) requires that all credits issued are
8 registered in a publicly accessible registry, with
9 individual serial numbers assigned for each ton
10 of carbon dioxide equivalent emission reduc-
11 tions, avoidance, or sequestration; and
12 "(F) ensures that no credits are issued for
13 activities for which the entity administering the
14 program, or a program administrator or rep-
15 resentative, has funded, solicited, or served as a
16 fund administrator for the development of, the
17 project or activity that caused the emission re-
18 duction, avoidance, or sequestration; and
19 "(3) for which the credit described in para-
20 graph (2) is transferred to the Administrator.
21 "(b) INELIGIBLE CREDITS.—Subsection (a) shall not
22 apply to offset credits that have expired or have been re-
23 tired, canceled, or used for compliance under a program
24 established under State or tribal law or regulation.

1 "(c) LIMITATION.—Notwithstanding subsection
2 (a)(1), offset credits shall be issued under this section—
3 "(1) only for reductions or avoidance of green-
4 house gas emissions, or sequestration of greenhouse
5 gases, that occur after January 1, 2009; and
6 "(2) only until the date that is 3 years after the
7 date of enactment of this title, or the date that regu-
8 lations promulgated under section 732(a) take ef-
9 fect, whichever occurs sooner.
10 "(d) RETIREMENT OF CREDITS.—The Administrator
11 shall seek to ensure that offset credits described in sub-
12 section (a)(2) are retired for purposes of use under a pro-
13 gram described in subsection (b).
14 "(e) OTHER PROGRAMS.—(1) Offset programs that
15 otherwise meet all of the criteria of subsection (a)(2), but
16 do not meet one of the following criteria:
17 "(A) were not established under State or tribal
18 law; or
19 "(B) were not established prior to January 1,
20 2001.
21 "(2) The Administrator shall approve any such pro-
22 gram that the Administrator determines has criteria and
23 methodologies of at least equal stringency to the criteria
24 and methodologies of the programs established under
25 State or tribal law that the Administrator determines meet

1 the criteria of subsection (a)(2). The Administrator may
2 approve types of offsets under any such program that are
3 subject to criteria and methodologies of at least equal
4 stringency to the criteria and methodologies for such types
5 of offsets applied under the programs established under
6 State or tribal law that the Administrator determines meet
7 the criteria of subsection (a)(2).

8 **"SEC. 741. ENVIRONMENTAL CONSIDERATIONS.**

9 "If the Administrator lists forestry projects as eligible
10 offset project types under section 733, the Administrator,
11 in consultation with appropriate Federal agencies, shall
12 promulgate regulations for the selection and use of tree
13 species in forestry offset projects—

14 "(1) to ensure that native species are given pri-
15 mary consideration in such projects;

16 "(2) to enhance biological diversity in such
17 projects;

18 "(3) to prohibit the use of federally designated
19 or State-designated noxious weeds;

20 "(4) to prohibit the use of a species listed by
21 a regional or State invasive plant authority within
22 the applicable region or State; and

23 "(5) in accordance with widely accepted, envi-
24 ronmentally sustainable forestry practices.

1 **"SEC. 742. TRADING.**

2 "Section 724 shall apply to the trading of offset cred-
3 its.

4 **"SEC. 743. INTERNATIONAL OFFSET CREDITS.**

5 "(a) IN GENERAL.—The Administrator, in consulta-
6 tion with the Secretary of State and the Administrator
7 of the United States Agency for International Develop-
8 ment, may issue, in accordance with this section, inter-
9 national offset credits based on activities that reduce or
10 avoid greenhouse gas emissions, or increase sequestration
11 of greenhouse gases, in a developing country. Such credits
12 may be issued for projects pursuant to the requirements
13 of this part or as provided in subsection (c), (d), or (e).

14 "(b) ISSUANCE.—

15 "(1) REGULATIONS.—Not later than 2 years
16 after the date of enactment of this title, the Admin-
17 istrator, in consultation with the Secretary of State,
18 the Administrator of the United States Agency for
19 International Development, and any other appro-
20 priate Federal agency, and taking into consideration
21 the recommendations of the Advisory Board, shall
22 promulgate regulations for implementing this sec-
23 tion. Except as otherwise provided in this section,
24 the issuance of international offset credits under this
25 section shall be subject to the requirements of this
26 part.

1 "(2) REQUIREMENTS FOR INTERNATIONAL
2 OFFSET CREDITS.—The Administrator may issue
3 international offset credits only if—
4 "(A) the United States is a party to a bi-
5 lateral or multilateral agreement or arrange-
6 ment that includes the country in which the
7 project or measure achieving the relevant green-
8 house gas emission reduction or avoidance, or
9 greenhouse gas sequestration, has occurred;
10 "(B) such country is a developing country;
11 and
12 "(C) such agreement or arrangement—
13 "(i) ensures that all of the require-
14 ments of this part apply to the issuance of
15 international offset credits under this sec-
16 tion; and
17 "(ii) provides for the appropriate dis-
18 tribution of international offset credits
19 issued.
20 "(c) SECTOR-BASED CREDITS.—
21 "(1) IN GENERAL.—In order to minimize the
22 potential for leakage and to encourage countries to
23 take nationally appropriate mitigation actions to re-
24 duce or avoid greenhouse gas emissions, or sequester

1 greenhouse gases, the Administrator, in consultation
2 with the Secretary of State, shall—
3 "(A) identify sectors of specific countries
4 with respect to which the issuance of inter-
5 national offset credits on a sectoral basis is ap-
6 propriate; and
7 "(B) issue international offset credits for
8 such sectors only on a sectoral basis.
9 "(2) IDENTIFICATION OF SECTORS.—
10 "(A) GENERAL RULE.—For purposes of
11 paragraph (1)(A), a sectoral basis shall be ap-
12 propriate for activities—
13 "(i) in countries that have compara-
14 tively high greenhouse gas emissions, or
15 comparatively greater levels of economic
16 development; and
17 "(ii) that, if located in the United
18 States, would be within a sector subject to
19 the compliance obligation under section
20 722.
21 "(B) FACTORS.—In determining the sec-
22 tors and countries for which international offset
23 credits should be awarded only on a sectoral
24 basis, the Administrator, in consultation with

1 the Secretary of State, shall consider the fol-
2 lowing factors:
3 "(i) The country's gross domestic
4 product.
5 "(ii) The country's total greenhouse
6 gas emissions.
7 "(iii) Whether the comparable sector
8 of the United States economy is covered by
9 the compliance obligation under section
10 722.
11 "(iv) The heterogeneity or homo-
12 geneity of sources within the relevant sec-
13 tor.
14 "(v) Whether the relevant sector pro-
15 vides products or services that are sold in
16 internationally competitive markets.
17 "(vi) The risk of leakage if inter-
18 national offset credits were issued on a
19 project-level basis, instead of on a sectoral
20 basis, for activities within the relevant sec-
21 tor.
22 "(vii) The capability of accurately
23 measuring, monitoring, reporting, and
24 verifying the performance of sources across
25 the relevant sector.

1 "(viii) Such other factors as the Ad-
2 ministrator, in consultation with the Sec-
3 retary of State, determines are appropriate
4 to—
5 "(I) ensure the integrity of the
6 United States greenhouse gas emis-
7 sions cap established under section
8 703; and
9 "(II) encourage countries to take
10 nationally appropriate mitigation ac-
11 tions to reduce or avoid greenhouse
12 gas emissions, or sequester green-
13 house gases.
14 "(3) SECTORAL BASIS.—
15 "(A) DEFINITION.—In this subsection, the
16 term 'sectoral basis' means the issuance inter-
17 national offset credits only for the quantity of
18 sector-wide reductions or avoidance of green-
19 house gas emissions, or sector-wide increases in
20 sequestration of greenhouse gases, achieved
21 across the relevant sector of the economy rel-
22 ative to a baseline level of performance estab-
23 lished in an agreement or arrangement de-
24 scribed in subsection (b)(2)(A) for the sector.

1 "(B) BASELINE.—The baseline for a sec-
2 tor shall be established at levels of greenhouse
3 gas emissions lower than would occur under a
4 business-as-usual scenario taking into account
5 relevant domestic or international policies or in-
6 centives to reduce greenhouse gas emissions,
7 among other factors, and additionality and per-
8 formance shall be determined on the basis of
9 such baseline.
10 "(d) CREDITS ISSUED BY AN INTERNATIONAL
11 BODY.—
12 "(1) IN GENERAL.—The Administrator, in con-
13 sultation with the Secretary of State, may issue
14 international offset credits in exchange for instru-
15 ments in the nature of offset credits that are issued
16 by an international body established pursuant to the
17 United Nations Framework Convention on Climate
18 Change, to a protocol to such Convention, or to a
19 treaty that succeeds such Convention. The Admini-
20 strator may issue international offset credits under
21 this subsection only if, in addition to the require-
22 ments of subsection (b), the Administrator has de-
23 termined that the international body that issued the
24 instruments has implemented substantive and proce-
25 dural requirements for the relevant project type that

1 provide equal or greater assurance of the integrity of
2 such instruments as is provided by the requirements
3 of this part.
4 "(2) RETIREMENT.—The Administrator, in
5 consultation with the Secretary of State, shall seek,
6 by whatever means appropriate, including agree-
7 ments, arrangements, or technical cooperation with
8 the international issuing body described in para-
9 graph (1), to ensure that such body—
10 "(A) is notified of the Administrator's
11 issuance, under this subsection, of an inter-
12 national offset credit in exchange for an instru-
13 ment issued by such international body; and
14 "(B) provides, to the extent feasible, for
15 the disqualification of the instrument issued by
16 such international body for subsequent use
17 under any relevant foreign or international
18 greenhouse gas regulatory program, regardless
19 of whether such use is a sale, exchange, or sub-
20 mission to satisfy a compliance obligation.
21 "(e) OFFSETS FROM REDUCED DEFORESTATION.—
22 "(1) REQUIREMENTS.—The Administrator, in
23 accordance with the regulations promulgated under
24 subsection (b)(1) and an agreement or arrangement
25 described in subsection (b)(2)(A), shall issue inter-

1 national offset credits for greenhouse gas emission
2 reductions achieved through activities to reduce de-
3 forestation only if, in addition to the requirements of
4 subsection (b)—
5 "(A) the activity occurs in—
6 "(i) a country listed by the Adminis-
7 trator pursuant to paragraph (2);
8 "(ii) a state or province listed by the
9 Administrator pursuant to paragraph (5);
10 or
11 "(iii) a country listed by the Adminis-
12 trator pursuant to paragraph (6);
13 "(B) except as provided in paragraph (5)
14 or (6), the quantity of the international offset
15 credits is determined by comparing the national
16 emissions from deforestation relative to a na-
17 tional deforestation baseline for that country es-
18 tablished, in accordance with an agreement or
19 arrangement described in subsection (b)(2)(A),
20 pursuant to paragraph (4);
21 "(C) the reduction in emissions from de-
22 forestation has occurred before the issuance of
23 the international offset credit and, taking into
24 consideration relevant international standards,
25 has been demonstrated using ground-based in-

1 ventories, remote sensing technology, and other
2 methodologies to ensure that all relevant carbon
3 stocks are accounted;
4 "(D) the Administrator has made appro-
5 priate adjustments, such as discounting for any
6 additional uncertainty, to account for cir-
7 cumstances specific to the country, including its
8 technical capacity described in paragraph
9 (2)(A);
10 "(E) the activity is designed, carried out,
11 and managed—
12 "(i) in accordance with widely accept-
13 ed, environmentally sustainable forest
14 management practices;
15 "(ii) to promote or restore native for-
16 est species and ecosystems where prac-
17 ticable, and to avoid the introduction of
18 invasive nonnative species;
19 "(iii) in a manner that gives due re-
20 gard to the rights and interests of forest-
21 dependent communities, indigenous peo-
22 ples, and vulnerable social groups;
23 "(iv) with consultations with, and full
24 participation of, forest-dependent commu-
25 nities and indigenous peoples in affected

1 areas, as partners and primary stake-
2 holders, prior to and during the design,
3 planning, implementation, and monitoring
4 and evaluation of activities; and
5 "(v) with equitable sharing of profits
6 and benefits derived from offset credits
7 with forest-dependent communities and in-
8 digenous peoples; and
9 "(F) the reduction otherwise satisfies and
10 is consistent with any relevant requirements es-
11 tablished by an agreement reached under the
12 auspices of the United Nations Framework
13 Convention on Climate Change.
14 "(2) ELIGIBLE COUNTRIES.—The Adminis-
15 trator, in consultation with the Secretary of State
16 and the Administrator of the United States Agency
17 for International Development, and in accordance
18 with an agreement or arrangement described in sub-
19 section (b)(2)(A), shall establish, and periodically re-
20 view and update, a list of the developing countries
21 that have the capacity to participate in deforestation
22 reduction activities at a national level, including—
23 "(A) the technical capacity to monitor,
24 measure, report, and verify forest carbon fluxes
25 for all significant sources of greenhouse gas

1 emissions from deforestation with an acceptable
2 level of uncertainty, as determined taking into
3 account relevant international standards, such
4 as those established by the Intergovernmental
5 Panel on Climate Change;
6 "(B) the institutional capacity to reduce
7 emissions from deforestation, including strong
8 forest governance and mechanisms to equitably
9 distribute deforestation resources for local ac-
10 tions; and
11 "(C) a land use or forest sector strategic
12 plan that—
13 "(i) assesses national and local drivers
14 of deforestation and forest degradation and
15 identifies reforms to national policies need-
16 ed to address them;
17 "(ii) estimates the country's emissions
18 from deforestation and forest degradation;
19 "(iii) identifies improvements in data
20 collection, monitoring, and institutional ca-
21 pacity necessary to implement a national
22 deforestation reduction program; and
23 "(iv) establishes a timeline for imple-
24 menting the program and transitioning to
25 low-emissions development.

1 "(3) PROTECTION OF INTERESTS.—With re-
2 spect to an agreement or arrangement described in
3 subsection (b)(2)(A) with a country that addresses
4 international offset credits under this subsection, the
5 Administrator, in consultation with the Secretary of
6 State and the Administrator of the United States
7 Agency for International Development, shall seek to
8 ensure the establishment and enforcement by such
9 country of legal regimes, standards, and safeguards
10 that—
11 "(A) give due regard to the rights and in-
12 terests of forest-dependent communities, indige-
13 nous peoples, and vulnerable social groups;
14 "(B) promote consultations with, and full
15 participation of, forest-dependent communities
16 and indigenous peoples in affected areas, as
17 partners and primary stakeholders, prior to and
18 during the design, planning, implementation,
19 and monitoring and evaluation of activities; and
20 "(C) facilitate sharing of profits and bene-
21 fits derived from international offset credits
22 with forest-dependent communities and indige-
23 nous peoples.

1 "(4) NATIONAL DEFORESTATION BASELINE.—A
2 national deforestation baseline established under this
3 subsection shall—
4 "(A) be national in scope;
5 "(B) be consistent with nationally appro-
6 priate mitigation commitments or actions with
7 respect to deforestation, taking into consider-
8 ation the average annual historical deforestation
9 rates of the country during a period of at least
10 5 years, the applicable drivers of deforestation,
11 and other factors to ensure additionality;
12 "(C) establish a trajectory that would re-
13 sult in zero net deforestation by not later than
14 20 years after the national deforestation base-
15 line has been established;
16 "(D) be adjusted over time to take account
17 of changing national circumstances;
18 "(E) be designed to account for all signifi-
19 cant sources of greenhouse gas emissions from
20 deforestation in the country; and
21 "(F) be consistent with the national defor-
22 estation baseline, if any, established for such
23 country under section 754(d)(1).
24 "(5) STATE-LEVEL OR PROVINCE-LEVEL AC-
25 TIVITIES.—

1 "(A) ELIGIBLE STATES OR PROVINCES.—
2 The Administrator, in consultation with the
3 Secretary of State and the Administrator of the
4 United States Agency for International Devel-
5 opment, shall establish, and periodically review
6 and update, a list of states or provinces in de-
7 veloping countries where—
8 "(i) the developing country is not in-
9 cluded on the list of countries established
10 pursuant to paragraph (6)(A);
11 "(ii) the state or province by itself is
12 a major emitter of greenhouse gases from
13 tropical deforestation on a scale commen-
14 surate to the emissions of other countries;
15 and
16 "(iii) the state or province meets the
17 eligibility criteria in paragraphs (2) and
18 (3) for the geographic area under its juris-
19 diction.
20 "(B) ACTIVITIES.—The Administrator may
21 issue international offset credits for greenhouse
22 gas emission reductions achieved through activi-
23 ties to reduce deforestation at a state or provin-
24 cial level that meet the requirements of this sec-
25 tion. Such credits shall be determined by com-

1 paring the emissions from deforestation within
2 that state or province relative to the state or
3 province deforestation baseline for that state or
4 province established, in accordance with an
5 agreement or arrangement described in sub-
6 section (b)(2)(A), pursuant to subparagraph
7 (C) of this paragraph.

8 "(C) STATE-LEVEL OR PROVINCE-LEVEL
9 DEFORESTATION BASELINE.—A state-level or
10 province-level deforestation baseline shall—

11 "(i) be consistent with any existing
12 nationally appropriate mitigation commit-
13 ments or actions for the country in which
14 the activity is occurring, taking into con-
15 sideration the average annual historical de-
16 forestation rates of the state or province
17 during a period of at least 5 years, rel-
18 evant drivers of deforestation, and other
19 factors to ensure additionality;

20 "(ii) establish a trajectory that would
21 result in zero net deforestation by not later
22 than 20 years after the state-level or prov-
23 ince-level deforestation baseline has been
24 established; and

1 "(iii) be designed to account for all
2 significant sources of greenhouse gas emis-
3 sions from deforestation in the state or
4 province and adjusted to fully account for
5 emissions leakage outside the state or
6 province.
7 "(D) PHASE OUT.—Beginning in 2017, the
8 Administrator shall issue no further inter-
9 national offset credits for eligible state-level or
10 province-level activities to reduce deforestation
11 pursuant to this paragraph.
12 "(6) PROJECTS AND PROGRAMS TO REDUCE
13 DEFORESTATION.—
14 "(A) ELIGIBLE COUNTRIES.—The Admin-
15 istrator, in consultation with the Secretary of
16 State and the Administrator of the United
17 States Agency for International Development,
18 shall establish, and periodically review and up-
19 date, a list of developing countries that—
20 "(i) the Administrator determines,
21 based on recent, credible, and reliable
22 emissions data, account for less than 1
23 percent of global greenhouse gas emissions
24 and less than 3 percent of global forest-

1 sector and land use change greenhouse gas
2 emissions; and
3 "(ii) have, or in the determination of
4 the Administrator are making a good faith
5 effort to develop, a land use or forest sec-
6 tor strategic plan that meets the criteria
7 described in paragraph (2)(C).
8 "(B) ACTIVITIES.—The Administrator may
9 issue international offset credits for greenhouse
10 gas emission reductions achieved through
11 project or program level activities to reduce de-
12 forestation in countries listed under subpara-
13 graph (A) that meet the requirements of this
14 section. The quantity of international offset
15 credits shall be determined by comparing the
16 project-level or program-level emissions from
17 deforestation to a deforestation baseline for
18 such project or program established pursuant to
19 subparagraph (C).
20 "(C) PROJECT-LEVEL OR PROGRAM-LEVEL
21 BASELINE.—
22 "(i) A project-level or program-level
23 deforestation baseline shall—
24 "(I) be consistent with any exist-
25 ing nationally appropriate mitigation

1 commitments or actions for the coun-
2 try in which the project or program is
3 occurring, taking into consideration
4 the average annual historical deforest-
5 ation rates in the project or program
6 boundary during a period of at least
7 5 years, applicable drivers of deforest-
8 ation, and other factors to ensure
9 additionality;
10 "(II) be designed to account for
11 all significant sources of greenhouse
12 gas emissions from deforestation in
13 the project or program boundary; and
14 "(III) be adjusted to fully ac-
15 count for emissions leakage outside
16 the project or program boundary.
17 "(D) PHASE OUT.—(i) Beginning in 2017,
18 the Administrator shall issue no further inter-
19 national offset credits for project-level or pro-
20 gram-level activities as described in this para-
21 graph, except as provided in clause (ii).
22 "(ii) The Administrator may extend the
23 phase out deadline for the issuance of inter-
24 national offset credits under this section to no
25 later than 2025 with respect to eligible activi-

1 ties taking place in a least developed nation,
2 which is a foreign country that the United Na-
3 tions has identified as among the least devel-
4 oped of developing countries at the time that
5 the Administrator determines to provide an ex-
6 tension, provided that the Administrator, in
7 consultation with the Secretary of State and the
8 Administrator of the United States Agency for
9 International Development, determines the na-
10 tion—
11 "(I) lacks sufficient capacity to adopt
12 and implement effective programs to
13 achieve reductions in deforestation meas-
14 ured against national baselines;
15 "(II) is receiving support under part
16 E to develop such capacity; and
17 "(III) has developed and is working
18 towards implementation of a credible na-
19 tional strategy or plan to reduce deforest-
20 ation.
21 "(7) DEFORESTATION.—In implementing this
22 subsection, the Administrator, taking into consider-
23 ation the recommendations of the Advisory Board,
24 may include forest degradation, or soil carbon losses

1 associated with forested wetlands or peatlands, with-
2 in the meaning of deforestation.
3 "(f) MODIFICATION OF REQUIREMENTS.—In promul-
4 gating regulations under subsection (b)(1) with respect to
5 the issuance of international offset credits under sub-
6 section (c), (d), or (e), the Administrator may modify or
7 omit a requirement of this part (excluding the require-
8 ments of this section) if the Administrator determines that
9 the application of that requirement to this subsection is
10 not feasible. In modifying or omitting such a requirement
11 on the basis of infeasibility, the Administrator shall en-
12 sure, with an adequate margin of safety, the integrity of
13 international offset credits issued under this section and
14 of the greenhouse gas emissions cap established pursuant
15 to section 703.
16 "(g) AVOIDING DOUBLE COUNTING.—The Adminis-
17 trator, in consultation with the Secretary of State, shall
18 seek, by whatever means appropriate, including agree-
19 ments, arrangements, or technical cooperation, to ensure
20 that activities on the basis of which international offset
21 credits are issued under this section are not used for com-
22 pliance with an obligation to reduce or avoid greenhouse
23 gas emissions, or increase greenhouse gas sequestration,
24 under a foreign or international regulatory system. In ad-
25 dition, no international offset credits shall be issued for

1 emission reductions from activities with respect to which
2 emission allowances were allocated under section 781 for
3 distribution under part E.

4 "(h) LIMITATION.—The Administrator shall not issue
5 international offset credits generated by products based
6 on the destruction of hydrofluorocarbons.

7 **"PART E—SUPPLEMENTAL EMISSIONS**
8 **REDUCTIONS FROM REDUCED DEFORESTATION**

9 **"SEC. 751. DEFINITIONS.**

10 "In this part:

11 "(1) LEAKAGE PREVENTION ACTIVITIES.—The
12 term 'leakage prevention activities' means activities
13 in developing countries that are directed at pre-
14 serving existing forest carbon stocks, including for-
15 ested wetlands and peatlands, that might, absent
16 such activities, be lost through leakage.

17 "(2) NATIONAL DEFORESTATION REDUCTION
18 ACTIVITIES.—The term 'national deforestation re-
19 duction activities' means activities in developing
20 countries that reduce a quantity of greenhouse gas
21 emissions from deforestation that is calculated by
22 measuring actual emissions against a national defor-
23 estation baseline established pursuant to section
24 754(d)(1) and (2).

1 "(3) SUBNATIONAL DEFORESTATION REDUC-
2 TION ACTIVITIES.—The term 'subnational deforest-
3 ation reduction activities' means activities in devel-
4 oping countries that reduce a quantity of greenhouse
5 gas emissions from deforestation that are calculated
6 by measuring actual emissions using an appropriate
7 baseline established by the Administrator that is less
8 than national in scope.

9 "(4) SUPPLEMENTAL EMISSIONS REDUC-
10 TIONS.—The term 'supplemental emissions reduc-
11 tions' means greenhouse gas emissions reductions
12 achieved from reduced or avoided deforestation
13 under this part.

14 "(5) USAID.—The term 'USAID' means the
15 United States Agency for International Develop-
16 ment.

17 **"SEC. 752. FINDINGS.**

18 "Congress finds that—

19 "(1) as part of a global effort to mitigate cli-
20 mate change, it is in the national interest of the
21 United States to assist developing countries to re-
22 duce and ultimately halt emissions from deforest-
23 ation;

24 "(2) deforestation is one of the largest sources
25 of greenhouse gas emissions in developing countries,

1 amounting to roughly 20 percent of overall emissions
2 globally;
3 "(3) recent scientific analysis shows that it will
4 be substantially more difficult to limit the increase
5 in global temperatures to less than 2 degrees centi-
6 grade above preindustrial levels without reducing
7 and ultimately halting net emissions from deforest-
8 ation;
9 "(4) reducing emissions from deforestation is
10 highly cost-effective, compared to many other
11 sources of emissions reductions;
12 "(5) in addition to contributing significantly to
13 worldwide efforts to address global warming, this as-
14 sistance will generate significant environmental and
15 social cobenefits, including protection of biodiversity,
16 ecosystem services, and forest-related livelihoods;
17 and
18 "(6) Under the Bali Action Plan, developed
19 country parties to the United Nations Framework
20 Convention on Climate Change, including the United
21 States, committed to 'enhanced action on the provi-
22 sion of financial resources and investment to support
23 action on mitigation and adaptation and technology
24 cooperation,' including, inter alia, consideration of
25 improved access to adequate, predictable, and sus-

1 tainable financial resources and financial and tech-
2 nical support, and the provision of new and addi-
3 tional resources, including official and concessional
4 funding for developing country parties.

5 **"SEC. 753. SUPPLEMENTAL EMISSIONS REDUCTIONS**
6 **THROUGH REDUCED DEFORESTATION.**

7 "(a) REGULATIONS.—Not later than 2 years after
8 the date of enactment of this title, the Administrator, in
9 consultation with the Administrator of USAID and any
10 other appropriate agencies, shall promulgate regulations
11 establishing a program to use emission allowances set
12 aside for this purpose under section 781 to achieve the
13 reduction of greenhouse gas emissions from deforestation
14 in developing countries in accordance with the require-
15 ments of this part.

16 "(b) OBJECTIVES.—The objectives of the program es-
17 tablished under this section shall be to—

18 "(1) achieve supplemental emissions reductions
19 of at least 720,000,000 tons of carbon dioxide equiv-
20 alent in 2020, a cumulative amount of at least
21 6,000,000,000 tons of carbon dioxide equivalent by
22 December 31, 2025, and additional supplemental
23 emissions reductions in subsequent years;

24 "(2) build capacity to reduce deforestation in
25 developing countries experiencing deforestation, in-

1 cluding preparing developing countries to participate
2 in international markets for international offset
3 credits for reduced emissions from deforestation; and
4 "(3) preserve existing forest carbon stocks in
5 countries where such forest carbon may be vulner-
6 able to international leakage, particularly in devel-
7 oping countries with largely intact native forests.

8 **"SEC. 754. REQUIREMENTS FOR INTERNATIONAL DEFOR-**
9 **ESTATION REDUCTION PROGRAM.**

10 "(a) ELIGIBLE COUNTRIES.—The Administrator
11 may support activities under this part only with respect
12 to a developing country that—
13 "(1) the Administrator, in consultation with the
14 Administrator of USAID, determines is experiencing
15 deforestation or forest degradation or has standing
16 forest carbon stocks that may be at risk of deforest-
17 ation or degradation; and
18 "(2) has entered into a bilateral or multilateral
19 agreement or arrangement with the United States
20 establishing the conditions of its participation in the
21 program established under this part, which shall in-
22 clude an agreement to meet the standards estab-
23 lished under subsection (d) for the activities to
24 which those standards apply.

1 "(b) ACTIVITIES.—(1) Subject to the requirements of
2 this part, the Administrator, in consultation with the Ad-
3 ministrator of USAID, may support activities to achieve
4 the objectives identified in section 753(b), including—
5 "(A) national deforestation reduction ac-
6 tivities;
7 "(B) subnational deforestation reduction
8 activities, including pilot activities that reduce
9 greenhouse gas emissions but are subject to sig-
10 nificant uncertainty;
11 "(C) activities to measure, monitor, and
12 verify deforestation, avoided deforestation, and
13 deforestation rates;
14 "(D) leakage prevention activities;
15 "(E) development of measurement, moni-
16 toring, and verification capacities to enable a
17 country to quantify supplemental emissions re-
18 ductions and to generate for sale offset credits
19 from reduced or avoided deforestation;
20 "(F) development of governance structures
21 to reduce deforestation and illegal logging;
22 "(G) enforcement of requirements for re-
23 duced deforestation or forest conservation;
24 "(H) efforts to combat illegal logging and
25 increase enforcement cooperation;

1 "(I) providing incentives for policy reforms
2 to achieve the objectives identified in section
3 753(b); and
4 "(J) monitoring and evaluation of the re-
5 sults of the activities conducted under this sec-
6 tion.
7 "(2) ACTIVITIES SELECTED BY USAID.—
8 "(A) The Administrator of USAID, in con-
9 sultation with the Administrator, may select for
10 support and implementation pursuant to sub-
11 section (c) any of the activities described in
12 paragraph (1), consistent with this part and the
13 regulations promulgated under subsection (d),
14 and subject to the requirement to achieve the
15 objectives listed in section 753(b)(1).
16 "(B) With respect to the activities listed in
17 subparagraphs (iv) through (x) of this section,
18 the Administrator of USAID, in consultation
19 with the Administrator, shall have primary but
20 not exclusive responsibility for selecting the ac-
21 tivities to be supported and implemented.
22 "(3) INTERAGENCY COORDINATION.—The Ad-
23 ministrator and the Administrator of USAID shall
24 jointly develop and biennially update a strategic plan
25 for meeting the objectives listed in section 753(b)

1 and shall execute a memorandum of understanding
2 delineating the agencies' respective roles in imple-
3 menting this part.
4 "(c) MECHANISMS.—
5 "(1) IN GENERAL.—The Administrator may
6 support activities to achieve the objectives identified
7 in section 753(b) by—
8 "(A) developing and implementing pro-
9 grams and projects that achieve such objectives;
10 and
11 "(B) distributing emission allowances to a
12 country that is eligible under subsection (a), to
13 any private or public group (including inter-
14 national organizations), or to an international
15 fund established by an international agreement
16 to which the United States is a party, to carry
17 out activities to achieve such objectives.
18 "(2) USAID ACTIVITIES.—With respect to ac-
19 tivities selected and implemented by the Adminis-
20 trator of USAID pursuant to (b)(2), the Adminis-
21 trator shall distribute emission allowances as pro-
22 vided in subparagraph (1) based upon the direction
23 of the Administrator of USAID, subject to the avail-
24 ability of allowances for such activities.

1 "(3) IMPLEMENTATION THROUGH INTER-
2 NATIONAL ORGANIZATIONS.—If support is distrib-
3 uted through an international organization, the
4 agency responsible for selecting activities in accord-
5 ance with subparagraph (b)(1) or (2), in consulta-
6 tion with the Secretary of State, shall ensure the es-
7 tablishment and implementation of adequate mecha-
8 nisms to apply and enforce the eligibility require-
9 ments and other requirements of this section.
10 "(4) ROLE OF THE SECRETARY OF STATE.—
11 The Administrator may not distribute emission al-
12 lowances to the government of another country or to
13 an international organization or international fund
14 unless the Secretary of State has concurred with
15 such distribution.
16 "(d) STANDARDS.—The Administrator, in consulta-
17 tion with the Administrator of USAID, shall promulgate
18 standards to ensure that supplemental emissions reduc-
19 tions achieved through supported activities are additional,
20 measurable, verifiable, permanent, monitored, and account
21 for leakage and uncertainty. In addition, such standards
22 shall—
23 "(1) require the establishment of a national de-
24 forestation baseline for each country with national

1 deforestation reduction activities that is used to ac-
2 count for reductions achieved from such activities;
3 "(2) provide that a national deforestation base-
4 line established under paragraph (1) shall—
5 "(A) be national in scope;
6 "(B) be consistent with nationally appro-
7 priate mitigation commitments or actions with
8 respect to deforestation, taking into consider-
9 ation the average annual historical deforestation
10 rates of the country during a period of at least
11 5 years and other factors to ensure
12 additionality;
13 "(C) establish a trajectory that would re-
14 sult in zero net deforestation by not later than
15 20 years from the date the baseline is estab-
16 lished;
17 "(D) be adjusted over time to take account
18 of changing national circumstances;
19 "(E) be designed to account for all signifi-
20 cant sources of greenhouse gas emissions from
21 deforestation in the country; and
22 "(F) be consistent with the national defor-
23 estation baseline, if any, established for such
24 country under section 743(e)(4);

1 "(3) with respect to support provided pursuant
2 to subsection (b)(1) or (2), require supplemental
3 emissions reductions to be achieved and verified
4 prior to compensation through the distribution of
5 emission allowances under this part;
6 "(4) with respect to accounting for subnational
7 deforestation reduction activities that lack the stand-
8 ardized or precise measurement and monitoring
9 techniques needed for a full accounting of changes
10 in emissions or baselines, or are subject to other
11 sources of uncertainty, apply a conservative discount
12 factor to reflect the uncertainty regarding the levels
13 of reductions achieved;
14 "(5) ensure that activities under this part shall
15 be designed, carried out, and managed—
16 "(A) in accordance with widely accepted,
17 environmentally sustainable forestry practices;
18 and
19 "(B) to promote native species and con-
20 servation or restoration of native forests, if
21 practicable, and to avoid the introduction of
22 invasive nonnative species; and
23 "(6) with respect to support for all activities
24 under this part, seek to ensure the establishment

1 and enforcement by the recipient country of legal re-
2 gimes, standards, and safeguards that—
3 "(A) give due regard to the rights and in-
4 terests of local communities, indigenous and
5 forest-dependent peoples, and vulnerable social
6 groups;
7 "(B) promote consultations with local com-
8 munities and indigenous and forest-dependent
9 peoples in affected areas, as partners and pri-
10 mary stakeholders, prior to and during the de-
11 sign, planning, implementation, monitoring, and
12 evaluation of activities under this part; and
13 "(C) encourage sharing of profits from in-
14 centives for emissions reductions or leakage
15 prevention with local communities and indige-
16 nous and forest-dependent peoples.
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

on Environment and Public Works and the Committee on Foreign Relations of the Senate, and make available to the public, a report on the support provided under this part during the prior fiscal year. The report shall include—

"(1) a statement of the quantity of supplemental emissions reductions for which compensation was provided under this part during the prior fiscal year, as registered by the Administrator under section 754(f); and

"(2) a description of the national and subnational deforestation reduction activities, capacity-building activities, and leakage prevention activities supported under this part, including a statement of the quantity of emission allowances distributed to each recipient for each activity during the prior fiscal year, and a description of what was accomplished through each of the activities.

"(b) REVIEWS.—Not later than 4 years after the date of enactment of this title and every 5 years thereafter, the Administrator and the Administrator of USAID and taking into consideration any evaluation by or recommendations from the Advisory Board established under section 731, shall conduct a review of the activities undertaken pursuant to this part and make any appropriate

1 changes in the program established under this part based
2 on the findings of the review. The review shall include the
3 effects of the activities on—

4 "(1) total documented carbon stocks of each
5 country that directly or indirectly received support
6 under this part compared with such country's na-
7 tional deforestation baseline established under sec-
8 tion 754(d)(1);

9 "(2) the number of countries with the capacity
10 to generate for sale instruments in the nature of off-
11 set credits from forest-related activities, and the
12 amount of such activities;

13 "(3) forest governance in each country that di-
14 rectly or indirectly received support under this part;

15 "(4) indigenous and forest-dependent peoples
16 residing in areas affected by such activities;

17 "(5) biodiversity and ecosystem services within
18 forested areas associated with the activities;

19 "(6) international leakage; and

20 "(7) any program or mechanism established
21 under the United Nations Framework Convention on
22 Climate Change related to greenhouse gas emissions
23 from deforestation.

1 **"SEC. 756. LEGAL EFFECT OF PART.**

2 "(1) IN GENERAL.—Nothing in this part super-
3 sedes, limits, or otherwise affects any restriction im-
4 posed by Federal law (including regulations) on any
5 interaction between an entity located in the United
6 States and an entity located in a foreign country.

7 "(2) ROLE OF THE SECRETARY OF STATE.—
8 Nothing in this part shall be construed as affecting
9 the role of the Secretary of State or the responsibil-
10 ities of the Secretary under section 622 (c) of the
11 Foreign Assistance Act of 1961.".

12 **SEC. 312. DEFINITIONS.**

13 Title VII of the Clean Air Act, as added by section
14 311 of this Act, is amended by inserting before part A
15 the following new section:

16 **"SEC. 700. DEFINITIONS.**

17 "In this title:

18 "(1) ADDITIONAL.—The term 'additional',
19 when used with respect to reductions or avoidance of
20 greenhouse gas emissions, or to sequestration of
21 greenhouse gases, means reductions, avoidance, or
22 sequestration that result in a lower level of net
23 greenhouse gas emissions or atmospheric concentra-
24 tions than would occur in the absence of an offset
25 project.

"(2) ADDITIONALITY.—The term 'additionality' means the extent to which reductions or avoidance of greenhouse gas emissions, or sequestration of greenhouse gases, are additional.

"(3) ADVISORY BOARD.—The term 'Advisory Board' means the Offsets Integrity Advisory Board established under section 731.

"(4) AFFILIATED.—The term 'affiliated'—

"(A) when used in relation to an entity means owned or controlled by, or under common ownership or control with, another entity, as determined by the Administrator; and

"(B) when used in relation to a natural gas local distribution company, means owned or controlled by, or under common ownership or control with, another natural gas local distribution company, as determined by the Administrator.

"(5) ALLOWANCE.—The term 'allowance' means a limited authorization to emit, or have attributable greenhouse gas emissions in an amount of, 1 ton of carbon dioxide equivalent of a greenhouse gas in accordance with this title, including an emission allowance, a compensatory allowance, or an 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(14)(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(14)(C), the tons of carbon dioxide
16 equivalent of carbon dioxide, nitrous oxide, any
17 fluorinated gas, other than nitrogen trifluoride,
18 that is a greenhouse gas, or any combination
19 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(14)(I), green-
3 house gases that would be emitted from the
4 combustion of the natural gas, and any other
5 gas meeting the specifications for commingling
6 with natural gas for purposes of delivery, that
7 such entity delivered during the previous cal-
8 endar year to customers that are not covered
9 entities, assuming no capture and sequestration
10 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(a)(2) or (7) 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 products designated by the
8 Administrator for sale or distribution in inter-
9 state commerce in 2008 or any subsequent year
10 more than 25,000 tons of carbon dioxide equiv-
11 alent of—
12 "(i) fossil fuel-based carbon dioxide;
13 "(ii) nitrous oxide;
14 "(iii) perfluorocarbons;
15 "(iv) sulfur hexafluoride;
16 "(v) any other fluorinated gas, except
17 for nitrogen trifluoride, that is a green-
18 house gas, as designated by the Adminis-
19 trator under section 711(b) or (c); or
20 "(vi) any combination of greenhouse
21 gases described in clauses (i) through (vi).
22 "(D) Any geologic sequestration site.
23 "(E) Any stationary source in the fol-
24 lowing industrial sectors:
25 "(i) Adipic acid production.

1 "(ii) Primary aluminum production.

2 "(iii) Ammonia manufacturing.

3 "(iv) Cement production, excluding
4 grinding-only operations.

5 "(v) Hydrochlorofluorocarbon produc-
6 tion.

7 "(vi) Lime manufacturing.

8 "(vii) Nitric acid production.

9 "(viii) Petroleum refining.

10 "(ix) Phosphoric acid production.

11 "(x) Silicon carbide production.

12 "(xi) Soda ash production.

13 "(xii) Titanium dioxide production.

14 "(xiii) Coal-based liquid or gaseous
15 fuel production.

16 "(F) Any stationary source in the chemical
17 or petrochemical sector that, in 2008 or any
18 subsequent year—

19 "(i) produces acrylonitrile, carbon
20 black, ethylene, ethylene dichloride, ethyl-
21 ene oxide, or methanol; or

22 "(ii) produces a chemical or petro-
23 chemical product if producing that product
24 results in annual combustion plus process

1 emissions of 25,000 or more tons of carbon
2 dioxide equivalent.
3 "(G) Any stationary source that—
4 "(i) is in one of the following indus-
5 trial sectors: ethanol production; ferroalloy
6 production; fluorinated gas production;
7 food processing; glass production; hydrogen
8 production; iron and steel production; lead
9 production; pulp and paper manufacturing;
10 and zinc production; and
11 "(ii) has emitted 25,000 or more tons
12 of carbon dioxide equivalent in 2008 or
13 any subsequent year.
14 "(H) Any fossil fuel-fired combustion de-
15 vice (such as a boiler) or grouping of such de-
16 vices that—
17 "(i) is all or part of an industrial
18 source not specified in subparagraph (E),
19 (F), or (G); and
20 "(ii) has emitted 25,000 or more tons
21 of carbon dioxide equivalent in 2008 or
22 any subsequent year.
23 "(I) Any natural gas local distribution
24 company that (or any group of 2 or more affili-
25 ated natural gas local distribution companies

1 that, in the aggregate) in 2008 or any subse-
2 quent year, delivers 460,000,000 cubic feet or
3 more of natural gas to customers that are not
4 covered entities.
5 "(J) Any stationary source that has emit-
6 ted 25,000 or more tons of carbon dioxide
7 equivalent emission of nitrogen trifluoride in
8 2008 or any subsequent year.
9 "(14) CREDITING PERIOD.—The term 'crediting
10 period' means the period with respect to which an
11 offset project is eligible to earn offset credits under
12 part D, as determined under section 734(c).
13 "(15) DESIGNATED REPRESENTATIVE.—The
14 term 'designated representative' means, with respect
15 to a covered entity, a reporting entity, an offset
16 project developer, or any other entity receiving or
17 holding allowances or offset credits under this title,
18 an individual authorized, through a certificate of
19 representation submitted to the Administrator by
20 the owners and operators, to represent the owners
21 and operators in all matters pertaining to this title
22 (including the holding, transfer, or disposition of al-
23 lowances or offset credits), and to make all submis-
24 sions to the 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 they shall be subject to section 722(a)(4).
20 "(20) EMISSION ALLOWANCE.—The term 'emis-
21 sion allowance' means an allowance established
22 under section 721(a) or section 726(g)(2) or
23 (h)(1)(C).
24 "(21) FAIR MARKET VALUE.—The term 'fair
25 market value' means the average daily closing price

1 on registered exchanges or, if such a price is un-
2 available, the average price as determined by the Ad-
3 ministrator, during a specified time period, of an
4 emission allowance.

5 "(22) FEDERAL LAND.—The term 'Federal
6 land' means land that is owned by the United
7 States, other than land held in trust for an Indian
8 or Indian tribe.

9 "(23) FOSSIL FUEL.—The term 'fossil fuel'
10 means natural gas, petroleum, coal, or any form of
11 solid, liquid, or gaseous fuel derived from such mate-
12 rial, including consumer products that are derived
13 from such materials and are combusted.

14 "(24) FOSSIL FUEL-FIRED.—The term 'fossil
15 fuel-fired' means powered by combustion of fossil
16 fuel, alone or in combination with any other fuel, re-
17 gardless of the percentage of fossil fuel consumed.

18 "(25) FUGITIVE EMISSIONS.—The term 'fugi-
19 tive emissions' means emissions from leaks, valves,
20 joints, or other small openings in pipes, ducts, or
21 other equipment, or from vents.

22 "(26) GEOLOGIC SEQUESTRATION; GEOLOGI-
23 CALLY SEQUESTERED.—The terms 'geologic seques-
24 tration' and 'geologically sequestered' mean the se-

1 questration of greenhouse gases in subsurface geo-
2 logic formations for purposes of permanent storage.
3 "(27) GEOLOGIC SEQUESTRATION SITE.—The
4 term 'geologic sequestration site' means a site where
5 carbon dioxide is geologically sequestered.
6 "(28) GREENHOUSE GAS.—The term 'green-
7 house gas' means any gas described in section
8 711(a) or designated under section 711(b), (c), or
9 (d), except to the extent that it is regulated under
10 title VI.
11 "(29) HIGH CONSERVATION PRIORITY LAND.—
12 The term 'high conservation priority land' means
13 land that is not Federal land and is—
14 "(A) globally or State ranked as critically
15 imperiled or imperiled under a State Natural
16 Heritage Program; or
17 "(B) old-growth or late-successional forest,
18 as identified by the office of the State Forester
19 or relevant State agency with regulatory juris-
20 diction over forestry activities.
21 "(30) HOLD.—The term 'hold' means, with re-
22 spect to an allowance or offset credit, to have in the
23 appropriate account in the allowance tracking sys-
24 tem, or submit to the Administrator for recording in
25 such account.

1 "(31) INDUSTRIAL SOURCE.—The term 'indus-
2 trial source' means any stationary source that—
3 "(A) is not an electricity source; and
4 "(B) is in—
5 "(i) the manufacturing sector (as de-
6 fined in North American Industrial Classi-
7 fication System codes 31, 32, and 33); or
8 "(ii) the natural gas processing or
9 natural gas pipeline transportation sector
10 (as defined in North American Industrial
11 Classification System codes 211112 or
12 486210).
13 "(32) INTERNATIONAL EMISSION ALLOW-
14 ANCE.—The term 'international emission allowance'
15 means a tradable authorization to emit 1 ton of car-
16 bon dioxide equivalent of greenhouse gas that is
17 issued by a national or supranational foreign govern-
18 ment pursuant to a qualifying international program
19 designated by the Administrator pursuant to section
20 728(a).
21 "(33) INTERNATIONAL FOREST CARBON ACTIVI-
22 TIES.—The term 'international forest carbon activi-
23 ties' means national or subnational activities in
24 countries other than the United States that are di-
25 rected at—

1 "(A) reducing greenhouse gas emissions
2 from deforestation or forest degradation; or
3 "(B) increasing sequestration of carbon
4 through—
5 "(i) afforestation or reforestation of
6 acreage not forested as of January 1,
7 2009;
8 "(ii) restoration of degraded land or
9 forest; or
10 "(iii) improved forest management.
11 "(34) INTERNATIONAL OFFSET CREDIT.—The
12 term 'international offset credit' means an offset
13 credit issued by the Administrator under section
14 743.
15 "(35) LEAKAGE.—The term 'leakage' means a
16 significant increase in greenhouse gas emissions, or
17 significant decrease in sequestration, which is caused
18 by an offset project and occurs outside the bound-
19 aries of the offset project.
20 "(36) MINERAL SEQUESTRATION.—The term
21 'mineral sequestration' means sequestration of car-
22 bon dioxide from the atmosphere by capturing car-
23 bon dioxide into a permanent mineral, such as the
24 aqueous precipitation of carbonate minerals that re-

1 sults in the storage of carbon dioxide in a mineral
2 form.
3 "(37) NATURAL GAS LIQUID.—The term 'nat-
4 ural gas liquid' means ethane, butane, isobutene nat-
5 ural gasoline, and propane which is ready for com-
6 mercial sale or use.
7 "(38) NATURAL GAS LOCAL DISTRIBUTION
8 COMPANY.—The term 'natural gas local distribution
9 company' has the meaning given the term 'local dis-
10 tribution company' in section 2(17) of the Natural
11 Gas Policy Act of 1978 (15 U.S.C. 3301(17)).
12 "(39) OFFSET CREDIT.—The term 'offset cred-
13 it' means a credit issued under part D.
14 "(40) OFFSET PROJECT.—The term 'offset
15 project' means a project or activity that reduces or
16 avoids greenhouse gas emissions, or sequesters
17 greenhouse gases, and for which offset credits are
18 issued under part D.
19 "(41) OFFSET PROJECT DEVELOPER.—The
20 term 'offset project developer' means the individual
21 or entity designated as the offset project developer
22 in an offset project approval petition under section
23 735(c)(1).
24 "(42) PETROLEUM.—The term 'petroleum' in-
25 cludes crude oil, tar sands, oil shale, and heavy oils.

1 "(43) RENEWABLE BIOMASS.—The term 're-
2 newable biomass' means any of the following:
3 "(A) Plant material, including waste mate-
4 rial, harvested or collected from actively man-
5 aged agricultural land that was in cultivation,
6 cleared, or fallow and nonforested on the date
7 of enactment;
8 "(B) Plant material, including waste mate-
9 rial, harvested or collected from pastureland
10 that was nonforested on the date of enactment;
11 "(C) Nonhazardous vegetative matter de-
12 rived from waste, including separated yard
13 waste, landscape right-of-way trimmings, con-
14 struction and demolition debris or food waste
15 (but not municipal solid waste, recyclable waste
16 paper, painted, treated or pressurized wood, or
17 wood contaminated with plastic or metals);
18 "(D) Animal waste or animal byproducts,
19 including products of animal waste digesters;
20 "(E) Algae;
21 "(F) Trees, brush, slash, residues, or any
22 other vegetative matter removed from within
23 600 feet of any building, campground, or route
24 designated for evacuation by a public official
25 with responsibility for emergency preparedness,

1 or from within 300 feet of a paved road, electric
2 transmission line; utility tower, or water supply
3 line;
4 "(G) Residues from or byproducts of
5 milled logs;
6 "(H) Any of the following removed from
7 forested land that is not Federal and is not
8 high conservation priority land:
9 "(i) Trees, brush, slash, residues,
10 interplanted energy crops, or any other
11 vegetative matter removed from an actively
12 managed tree plantation established—
13 "(I) prior to the date of enact-
14 ment of this section; or
15 "(II) on land that, as of the date
16 of enactment of this section, was cul-
17 tivated or fallow and non-forested.
18 "(ii) Trees, logging residue, thinnings,
19 cull trees, pulpwood, and brush removed
20 from naturally-regenerated forests or other
21 non-plantation forests, including for the
22 purposes of hazardous fuel reduction or
23 preventative treatment for reducing or con-
24 taining insect or disease infestation.

1 "(iii) Logging residue, thinnings, cull
2 trees, pulpwood, brush and species that are
3 non-native and noxious, from stands that
4 were planted and managed after the enact-
5 ment of this sentence to restore or main-
6 tain native forest types.
7 "(iv) Dead or severely damaged trees
8 removed within 5 years of fire, blowdown,
9 or other natural disaster, and badly in-
10 fested trees.
11 "(I) Materials, pre-commercial thinnings,
12 or removed invasive species from National For-
13 est System land and public lands (as defined in
14 section 103 of the Federal Land Policy and
15 Management Act of 1976 (43 U.S.C. 1702)),
16 including those that are byproducts of preven-
17 tive treatments (such as trees, wood, brush,
18 thinnings, chips, and slash), that are removed
19 as part of a federally recognized timber sale, or
20 that are removed to reduce hazardous fuels, to
21 reduce or contain disease or insect infestation,
22 or to restore ecosystem health, and that are—
23 "(i) not from are not from compo-
24 nents of the National Wilderness Preserva-
25 tion System, Wilderness Study Areas,

1 Inventoried Roadless Areas, old growth or
2 mature forest stands, components of the
3 National Landscape Conservation System,
4 National Monuments, National Conserva-
5 tion Areas, Designated Primitive Areas; or
6 Wild and Scenic Rivers corridors;
7 "(ii) harvested in environmentally sus-
8 tainable quantities, as determined by the
9 appropriate Federal land manager; and
10 "(iii) are harvested in accordance with
11 Federal and State law, and applicable land
12 management plans.
13 "(44) RETIRE.—The term 'retire', with respect
14 to an allowance or offset credit established or issued
15 under this title, means to disqualify such allowance
16 or offset credit for any subsequent use under this
17 title, regardless of whether the use is a sale, ex-
18 change, or submission of the allowance or offset
19 credit to satisfy a compliance obligation.
20 "(45) REVERSAL.—The term 'reversal' means
21 an intentional or unintentional loss of sequestered
22 greenhouse gases to the atmosphere.
23 "(46) SEQUESTERED AND SEQUESTRATION.—
24 The terms 'sequestered' and 'sequestration' mean
25 the separation, isolation, or removal of greenhouse

gases from the atmosphere, as determined by the Administrator. The terms include biological, geologic, and mineral sequestration, but do not include ocean fertilization techniques.

"(47) STATIONARY SOURCE.—The term 'stationary source' means any integrated operation comprising any plant, building, structure, or stationary equipment, including support buildings and equipment, that is located within one or more contiguous or adjacent properties, is under common control of the same person or persons, and emits or may emit a greenhouse gas.

"(48) STRATEGIC RESERVE ALLOWANCE.—The term 'strategic reserve allowance' means an emission allowance reserved for, transferred to, or deposited in the strategic reserve, or established, under section 726.

"(49) TON OF CARBON DIOXIDE EQUIVALENT.—The term 'ton of carbon dioxide equivalent' has the meaning specified in section 712(b) or determined by the Administrator under section 711 or 712.

"(50) UNCAPPED EMISSIONS.—The term 'uncapped emissions' means emissions of greenhouse

1 gases emitted after December 31, 2011, that are not
2 capped emissions.
3 "(51) UNITED STATES GREENHOUSE GAS EMIS-
4 SIONS.—The term 'United States greenhouse gas
5 emissions' means the total quantity of annual green-
6 house gas emissions from the United States, as cal-
7 culated by the Administrator and reported to the
8 United Nations Framework Convention on Climate
9 Change Secretariat.
10 "(52) UTILITY UNIT.—The term 'utility unit'
11 means a combustion device that, on January 1,
12 2009, or any date thereafter, is fossil fuel-fired and
13 serves a generator that produces electricity for sale,
14 unless such combustion device, during the 12-month
15 period starting the later of January 1, 2009, or the
16 commencement of commercial operation and each
17 calendar year starting after such later date—
18 "(A) is part of an integrated cycle system
19 that cogenerates steam and electricity during
20 normal operation and that supplies one-third or
21 less of its potential electric output capacity and
22 25 MW or less of electrical output for sale; or
23 "(B) combusts materials of which more
24 than 95 percent is municipal solid waste on a
25 heat input basis.

"(53) VINTAGE YEAR.—The term 'vintage year' means the calendar year for which an emission allowance is established under section 721(a) or which is assigned to an emission allowance under section 726(g)(3)(A), except that the vintage year for a strategic reserve allowance shall be the year in which such allowance is purchased at auction.".

Subtitle B—Disposition of Allowances

SEC. 321. DISPOSITION OF ALLOWANCES FOR GLOBAL WARMING POLLUTION REDUCTION PROGRAM.

Title VII of the Clean Air Act, as added by section 311 of this Act, is amended by adding at the end the following part:

"PART H—DISPOSITION OF ALLOWANCES

"SEC. 781. ALLOCATION OF ALLOWANCES FOR SUPPLEMENTAL REDUCTIONS.

"(a) IN GENERAL.—The Administrator shall allocate for each vintage year the following percentage of the emission allowances established under section 721(a), for distribution in accordance with part E:

"(1) For vintage years 2012 through 2025, 5 percent.

1 "(2) For vintage years 2026 through 2030, 3
2 percent.
3 "(3) For vintage years 2031 through 2050, 2
4 percent.
5 "(b) ADJUSTMENT.—The Administrator shall modify
6 the percentages set forth in subsection (a) as necessary
7 to ensure the achievement of the annual supplemental
8 emission reduction objective for 2020, and the cumulative
9 reduction objective through 2025, set forth in section
10 753(b)(1).
11 "(c) CARRYOVER.—If the Administrator has not dis-
12 tributed all of the allowances allocated pursuant to this
13 section for a given vintage year by the end of that year,
14 the Administrator shall—
15 "(1) auction the remaining emission allowances
16 under section 791 not later than March 31 of the
17 year following that vintage year; and
18 "(2) increase the allocation for the vintage year
19 after the vintage year for which emission allowances
20 were undistributed by the amount of undistributed
21 emission allowances.
22 **"SEC. 782. ALLOCATION OF EMISSION ALLOWANCES.**
23 "(a) ELECTRICITY CONSUMERS.—The Administrator
24 shall allocate emission allowances for the benefit of elec-

1 tricity consumers, to be distributed in accordance with sec-
2 tion 783 in the following amounts:
3 "(1) For vintage years 2012 and 2013, 43.75
4 percent of the emission allowances established for
5 each year under section 721(a).
6 "(2) For vintage years 2014 and 2015, 38.89
7 percent of the emission allowances established for
8 each year under section 721(a).
9 "(3) For vintage years 2016 through 2025,
10 35.00 percent of the emission allowances established
11 for each year under section 721(a).
12 "(4) For vintage year 2026, 28 percent of the
13 emission allowances established for each year under
14 section 721(a).
15 "(5) For vintage year 2027, 21 percent of the
16 emission allowances established for each year under
17 section 721(a).
18 "(6) For vintage year 2028, 14 percent of the
19 emission allowances established for each year under
20 section 721(a).
21 "(7) For vintage year 2029, 7 percent of the
22 emission allowances established for each year under
23 section 721(a).
24 "(b) NATURAL GAS CONSUMERS.—The Adminis-
25 trator shall allocate emission allowances for the benefit of

1 natural gas consumers to be distributed in accordance
2 with section 784 in the following amounts:
3 "(1) For vintage years 2016 through 2025, 9
4 percent of the emission allowances established for
5 each year under section 721(a).
6 "(2) For vintage year 2026, 7.2 percent of the
7 emission allowances established for each year under
8 section 721(a).
9 "(3) For vintage year 2027, 5.4 percent of the
10 emission allowances established for each year under
11 section 721(a).
12 "(4) For vintage year 2028, 3.6 percent of the
13 emission allowances established for each year under
14 section 721(a).
15 "(5) For vintage year 2029, 1.8 percent of the
16 emission allowances established for each year under
17 section 721(a).
18 "(c) HOME HEATING OIL AND PROPANE CON-
19 SUMERS.—The Administrator shall allocate emission al-
20 lowances for the benefit of home heating oil and propane
21 consumers to be distributed in accordance with section
22 785 in the following amounts:
23 "(1) For vintage years 2012 and 2013, 1.875
24 percent of the emission allowances established for
25 each year under section 721(a).

1 "(2) For vintage years 2014 and 2015, 1.67
2 percent of the emission allowances established for
3 each year under section 721(a).
4 "(3) For vintage years 2016 through 2025, 1.5
5 percent of the emission allowances established for
6 each year under section 721(a).
7 "(4) For vintage year 2026, 1.2 percent of the
8 emission allowances established for each year under
9 section 721(a).
10 "(5) For vintage year 2027, 0.9 percent of the
11 emission allowances established for each year under
12 section 721(a).
13 "(6) For vintage year 2028, 0.6 percent of the
14 emission allowances established for each year under
15 section 721(a).
16 "(7) For vintage year 2029, 0.3 percent of the
17 emission allowances established for each year under
18 section 721(a).
19 "(d) LOW INCOME CONSUMERS.—For each vintage
20 year starting in 2012, the Administrator shall auction 15
21 percent of the emission allowances established for each
22 year under section 721(a), pursuant to section 791, with
23 the proceeds used for the benefit of low income consumers
24 to fund the program set forth in subtitle C of title IV of
25 American Clean Energy and Security Act of 2009.

1 "(e) TRADE-VULNERABLE INDUSTRIES.—The Ad-
2 ministrator shall allocate emission allowances to energy-
3 intensive, trade-exposed entities, to be distributed in ac-
4 cordance with part F, in the following amounts:

5 "(1) For vintage years 2012 and 2013, up to
6 2.0 percent of the emission allowances established
7 for each year under section 721(a).

8 "(2) For vintage years 2014, up to 15 percent
9 of the emission allowances established for that year
10 under section 721(a).

11 "(3) For vintage years 2015 through 2025, the
12 maximum number of allowances that shall be dis-
13 tributed shall decline by the same amount that the
14 annual reduction target set forth in section 702 de-
15 clines (which is 1.75 percentage points annually for
16 2015 through 2020, and 2.5 percentage points an-
17 nually from 2021 through 2025).

18 "(4) For vintage years 2026 through 2050, the
19 maximum number of allowances that shall be dis-
20 tributed shall decline by the same amount that the
21 annual reduction target set forth in section 702 de-
22 clines (which is 2.5 percentage points annually for
23 2026 through 2030, and 1.55 percentage points an-
24 nually from 2031 through 2050) and shall be multi-
25 plied by a factor, which shall be 90 percent in 2026

1 and decline 10 percentage points a year until it
2 reaches zero, unless the President sets a different
3 factor under section 767(c)(3)(A), that shall not ex-
4 ceed 100 percent.
5 "(f) DEPLOYMENT OF CARBON CAPTURE AND SE-
6 QUESTRATION TECHNOLOGY.—
7 "(1) ANNUAL ALLOCATION.—The Adminis-
8 trator shall allocate emission allowances for the de-
9 ployment of carbon capture and sequestration tech-
10 nology to be distributed in accordance with section
11 786 in the following amounts:
12 "(A) For vintage years 2014 through
13 2017, 2 percent of the emission allowances es-
14 tablished for each year under section 721(a).
15 "(B) For vintage years 2018 through
16 2050, 5 percent of the emission allowances es-
17 tablished for each year under section 721(a).
18 "(2) CARRYOVER.—If the Administrator has
19 not distributed all of the allowances allocated pursu-
20 ant to this section for a given vintage year by the
21 end of that year, the Administrator shall—
22 "(A) auction those emission allowances
23 under section 791 not later than March 31 of
24 the year following that vintage year; and

1 "(B) increase the allocation under this
2 subsection for the vintage year after the vintage
3 year for which emission allowances were
4 undisbursed by the amount of undisbursed
5 emission allowances.

6 "(g) INVESTMENT IN ENERGY EFFICIENCY AND RE-
7 NEWABLE ENERGY.—The Administrator shall allocate
8 emission allowances to invest in energy efficiency and re-
9 newable energy as follows:

10 "(1) To be distributed in accordance with sec-
11 tion 132 of the American Clean Energy and Security
12 Act of 2009 in the following amounts:

13 "(A) For vintage years 2012 through
14 2015, 9.5 percent of the emission allowances es-
15 tablished for each year under section 721(a).

16 "(B) For vintage years 2016 through
17 2017, 7.0 percent of the emission allowances es-
18 tablished for each year under section 721(a).

19 "(C) For vintage years 2018 through
20 2021, 6.0 percent of the emission allowances es-
21 tablished for each year under section 721(a).

22 "(D) For vintage years 2022 through
23 2025, 1.5 percent of the emission allowances es-
24 tablished for each year under section 721(a).

1 "(E) For vintage years 2026 through
2 2050, 4.5 percent of the emission allowances es-
3 tablished for each year under section 721(a).
4 "(F) At the same time the vintage year
5 2022 through 2025 allowances are distributed,
6 3.55 percent of emission allowances established
7 under section 721(a) for the vintage year four
8 years greater shall also be distributed (which
9 shall be in addition to the emission allowances
10 in subparagraph (E)).
11 "(2) To be distributed in accordance with sec-
12 tion 201 of the American Clean Energy and Security
13 Act of 2009 in the amount of 0.5 percent of emis-
14 sion allowances established under section 721(a) for
15 each vintage year from 2012 through 2050.
16 "(h) CLEAN ENERGY INNOVATION CENTERS.—The
17 Administrator shall allocate 1 percent of emission allow-
18 ances for each vintage year from 2012 through 2050 to
19 be distributed to Clean Energy Innovation Centers in ac-
20 cordance with section 181 of the American Clean Energy
21 and Security Act of 2009.
22 "(i) INVESTMENT IN CLEAN VEHICLE TECH-
23 NOLOGY.—The Administrator shall allocate emission al-
24 lowances to invest in the development and deployment of
25 clean vehicles, to be distributed in accordance with section

1 124 of the American Clean Energy and Security Act of
2 2009 in the following amounts:
3 "(1) For vintage years 2012 through 2017, 3
4 percent of the emission allowances established for
5 each year under section 721(a).
6 "(2) For vintage years 2018 through 2025, 1
7 percent of the emission allowances established for
8 each year under section 721(a).
9 "(j) DOMESTIC FUEL PRODUCTION.—For vintage
10 years 2014 through 2026, the Administrator shall allocate
11 2.0 percent of the emission allowances established under
12 section 721(a) to domestic refiners, to be distributed in
13 accordance with part F.
14 "(k) INVESTMENT IN WORKERS.—The Administrator
15 shall auction pursuant to section 791 emission allowances
16 for workers in the following amounts and shall report to
17 the Secretary of Labor the amount of proceeds from the
18 sale of these allowances:
19 "(1) For vintage years 2012 through 2021, 0.5
20 percent of the emission allowances established for
21 each year under section 721(a).
22 "(2) For vintage years 2022 through 2050, 1.0
23 percent of the emission allowances established for
24 each year under section 721(a).

1 "(l) DOMESTIC ADAPTATION.—The Administrator
2 shall allocate emission allowances for domestic adaptation
3 as follows:
4 "(1) To be distributed in accordance with sec-
5 tion 453 of the American Clean Energy and Security
6 Act in the following amounts:
7 "(A) For vintage years 2012 through
8 2021, 0.9 percent of the emission allowances es-
9 tablished for each year under section 721(a).
10 "(B) For vintage years 2022 through
11 2026, 1.9 percent of the emission allowances es-
12 tablished for each year under section 721(a).
13 "(C) For vintage years 2027 through
14 2050, 3.9 percent of the emission allowances es-
15 tablished for each year under section 721(a).
16 "(2) For vintage year 2012 and thereafter, the
17 Administrator shall auction 0.1 percent of the emis-
18 sion allowances established for each year under sec-
19 tion 721(a), pursuant to section 791, and shall de-
20 posit the proceeds in the Climate Change Health
21 Protection and Promotion Fund established by sec-
22 tion 467 of the American Clean Energy and Security
23 Act.
24 "(m) WILDLIFE AND NATURAL RESOURCE ADAPTA-
25 TION.—The Administrator shall auction pursuant to sec-

1 tion 791 emission allowances for domestic wildlife and nat-
2 ural resource adaptation in the amounts listed in para-
3 graphs (1) through (3) and shall deposit the proceeds from
4 the sale of these allowances in the Natural Resources Cli-
5 mate Change Adaptation Account established pursuant to
6 section 480(a) of the American Clean Energy and Security
7 Act. Funds so deposited shall be available for expenditure,
8 without further appropriation or fiscal year limitation.

9 "(1) For vintage years 2012 through 2021, 1.0
10 percent of the emission allowances established for
11 each year under section 721(a).

12 "(2) For vintage years 2022 through 2026, 2.0
13 percent of the emission allowances established for
14 each year under section 721(a).

15 "(3) For vintage years 2027 through 2050, 4.0
16 percent of the emission allowances established for
17 each year under section 721(a).

18 "(n) INTERNATIONAL ADAPTATION.—The Adminis-
19 trator shall allocate emission allowances for international
20 adaptation to be distributed in accordance with part 2 of
21 subtitle E of title IV of the American Clean Energy and
22 Security Act in the following amounts:

23 "(1) For vintage years 2012 through 2021, 1.0
24 percent of the emission allowances established for
25 each year under section 721(a).

1 "(2) For vintage years 2022 through 2026, 2.0
2 percent of the emission allowances established for
3 each year under section 721(a).
4 "(3) For vintage years 2027 through 2050, 4.0
5 percent of the emission allowances established for
6 each year under section 721(a).
7 "(o) INTERNATIONAL CLEAN TECHNOLOGY DEPLOY-
8 MENT.—The Administrator shall allocate emission allow-
9 ances for international clean technology deployment for
10 distribution in accordance with subtitle D of title IV of
11 the American Clean Energy and Security Act in the fol-
12 lowing amounts:
13 "(1) For vintage years 2012 through 2021, 1.0
14 percent of the emission allowances established for
15 each year under section 721(a).
16 "(2) For vintage years 2022 through 2026, 2.0
17 percent of the emission allowances established for
18 each year under section 721(a).
19 "(3) For vintage years 2027 through 2050, 4.0
20 percent of the emission allowances established for
21 each year under section 721(a).
22 "(p) RELEASE OF FUTURE ALLOWANCES.—The Ad-
23 ministrator shall make future year allowances available by
24 auctioning allowances, pursuant to section 791, in the fol-
25 lowing amounts:

1 "(1) In each of calendar years 2015 through
2 2020, a string of 0.7 billion allowances with vintage
3 years 11 to 16 years after the year of the auction,
4 with an equal number of allowances from each vin-
5 tage year in the string.
6 "(2) In each of calendar years 2021 through
7 2025, a string of 0.5 billion allowances with vintage
8 years 11 to 16 years after the year of the auction,
9 with an equal number of allowances from each vin-
10 tage year in the string.
11 "(3) In each of calendar years 2026 through
12 2030, a string of 0.3 billion allowances with vintage
13 years 11 to 16 years after the year of the auction,
14 with an equal number of allowances from each vin-
15 tage year in the string.
16 "(q) DEFICIT REDUCTION.—
17 "(1) For each of vintage years 2012 through
18 2025, any allowances not designated for distribution
19 or auction pursuant to section 781, subsections (a)
20 through (o) of this section, or section 790 shall be
21 auctioned by the Administrator pursuant to section
22 791 and the proceeds shall be deposited into the
23 Treasury.
24 "(2) Unless otherwise specified, any allowances
25 allocated pursuant to subsections (a) through (o)

1 and not distributed by March 31 of the calendar
2 year following the allowance's vintage year, shall be
3 auctioned by the Administrator and the proceeds
4 shall be deposited into the Treasury.
5 "(3) For auctions conducted through vintage
6 year 2025 pursuant to subsection (p), the auction
7 proceeds shall be deposited into the Treasury.
8 "(r) CLIMATE CHANGE CONSUMER DIVIDEND.—For
9 each of vintage years 2026 through 2050, the Adminis-
10 trator shall auction pursuant to section 791 any allowance
11 established under section 721(a) for that year and not des-
12 ignated for distribution or auction pursuant to subsections
13 (a) through (p), and place the proceeds from the sale of
14 these allowances in the Climate Change Dividend Fund.
15 For auctions conducted in 2026 and thereafter pursuant
16 to subsection (p), the auction proceeds shall be deposited
17 into the Climate Change Dividend Fund. Funds so depos-
18 ited shall be available for expenditure, without further ap-
19 propriation or fiscal year limitation.
20 **"SEC. 783. ELECTRICITY CONSUMERS.**
21 "(a) DEFINITIONS.—For purposes of this section:
22 "(1) ELECTRICITY LOCAL DISTRIBUTION COM-
23 PANY.—The term 'electricity local distribution com-
24 pany' means an electric utility—

1 "(A) that has a legal, regulatory, or con-
2 tractual obligation to deliver electricity directly
3 to retail consumers in the United States, re-
4 gardless of whether that entity or another enti-
5 ty sells the electricity as a commodity to those
6 retail consumers; and
7 "(B) the retail rates of which, except in
8 the case of a registered electric cooperative, are
9 regulated by a State regulatory authority, regu-
10 latory commission, municipality, public utility,
11 or by an Indian tribe pursuant to tribal law.
12 "(2) LONG-TERM CONTRACT GENERATOR.—The
13 term 'long-term contract generator' means a quali-
14 fying small power production facility or a qualifying
15 cogeneration facility (within the meaning of section
16 3(17)(C) or 3(18)(B) of the Federal Power Act), or
17 a new independent power production facility (within
18 the meaning of section 416(a)(2) of this Act, except
19 that subparagraph (C) of such definition shall not
20 apply for purposes of this paragraph), that is—
21 "(A) a covered entity;
22 "(B) as of the commencement of operation,
23 a facility consisting of one or more utility units
24 with total installed net output capacity (in
25 MWe) of no more than 130 percent of the fa-

1 cility's total planned net output capacity (in
2 MWe);
3 "(C) as of the date of enactment of this
4 title, a facility with a power sales agreement ex-
5 ecuted before January 1, 2007, that governs
6 the facility's electricity sales and provides for
7 sales at a price (whether a fixed price or a price
8 formula) for electricity that does not allow for
9 recovery of the costs of compliance with the lim-
10 itation on greenhouse gas emissions under this
11 title; and
12 "(B) not a merchant coal generator (within
13 the meaning of paragraph (3)).
14 "(3) MERCHANT COAL GENERATOR.—The term
15 'merchant coal generator' means an electric genera-
16 tion facility that—
17 "(A) is a covered entity;
18 "(B) derives at least 85 percent of its heat
19 input from coal, petroleum coke, or any com-
20 bination of these 2 fuels;
21 "(C) is not owned by a Federal, State, or
22 regional agency or power authority; and
23 "(D) generates electricity for sale to oth-
24 ers, provided that such sales are not subject
25 to—

1 "(i) retail rate regulation by a State
2 public utility commission; or
3 "(ii) self-regulation of rates by a local
4 government, State agency, or electric coop-
5 erative.
6 "(4) STATE REGULATORY AUTHORITY.—The
7 term 'State regulatory authority' has the meaning
8 given that term in section 3(17) of the Public Utility
9 Regulatory Policies Act of 1978 (16 U.S.C.
10 2602(17)).
11 "(b) ELECTRICITY LOCAL DISTRIBUTION COMPA-
12 NIES.—
13 "(1) ALLOCATION.—Not later than June 30 of
14 2011 and each calendar year thereafter through
15 2028, the Administrator shall distribute to electricity
16 local distribution companies the quantity of emission
17 allowances allocated for the electricity sector for the
18 following vintage year pursuant to section 782(a),
19 provided that the Administrator shall first subtract
20 from such quantity and distribute or reserve for dis-
21 tribution the quantity of emission allowances for the
22 relevant vintage year that are required for distribu-
23 tion under subsections (c) and (d) of this section.
24 "(2) DISTRIBUTION OF ALLOWANCES.—

1 "(A) DISTRIBUTION BASED ON EMIS-
2 SIONS.—
3 "(i) IN GENERAL.—For each vintage
4 year, 50 percent of the emission allowances
5 available for distribution under paragraph
6 (1) shall be distributed by the Adminis-
7 trator among individual electricity local
8 distribution companies ratably based on
9 the annual average carbon dioxide emis-
10 sions attributable to generation of elec-
11 tricity sold at retail by each such company
12 during—
13 "(I) calendar years 2006 through
14 2008; or
15 "(II) any 3 consecutive calendar
16 years between 1999 and 2008, inclu-
17 sive, that such company selects, pro-
18 vided that the company timely informs
19 the Administrator of such selection.
20 "(ii) DETERMINATION OF EMIS-
21 SIONS.—As part of the regulations promul-
22 gated pursuant to subsection (e), the Ad-
23 ministrator, after consultation with the
24 Energy Information Administration, shall
25 determine the average amount of carbon

1 dioxide emissions attributable to genera-
2 tion of electricity sold at retail by each
3 electricity local distribution company for
4 each of the years 1999 through 2008.
5 Such determinations shall be as precise as
6 practicable, taking into account the nature
7 of data currently available and the nature
8 of markets and regulation in effect in var-
9 ious regions of the country. The following
10 requirements shall apply to such deter-
11 minations:

12 "(I) The Administrator shall de-
13 termine the amount of fossil fuel-
14 based electricity delivered at retail by
15 each electricity local distribution com-
16 pany, and shall use appropriate emis-
17 sion factors to calculate carbon diox-
18 ide emissions associated with the gen-
19 eration of such electricity.

20 "(II) Where it is not practical to
21 determine the precise fuel mix for the
22 electricity delivered at retail by an in-
23 dividual electricity local distribution
24 company, the Administrator may use
25 the best available data, including aver-

1 age data on a regional basis with ref-
2 erence to Regional Transmission Or-
3 ganizations or regional entities (as
4 that term is defined in section
5 215(a)(7) of the Federal Power Act
6 (16 U.S.C. 824o(a)(7)), to estimate
7 fuel mix and emissions. Different
8 methodologies may be applied in dif-
9 ferent regions if appropriate to obtain
10 the most accurate estimate.
11 "(B) DISTRIBUTION BASED ON DELIV-
12 ERIES.—
13 "(i) INITIAL ALLOCATION FOR-
14 MULA.—Except as provided in clause (ii),
15 for each vintage year, the Administrator
16 shall distribute 50 percent of the emission
17 allowances allocated under paragraph (1)
18 of this subsection among individual elec-
19 tricity local distribution companies ratably
20 based on each electricity local distribution
21 company's annual average retail electricity
22 deliveries for 2006 through 2008, unless
23 the owner or operator of the company se-
24 lects 3 other consecutive years between

1999 and 2008, inclusive, and timely notifies the Administrator of its selection.

"(ii) UPDATING.—Prior to distributing 2015 vintage emission allowances under this subparagraph and at 3-year intervals thereafter, the Administrator shall update the distribution formula under this subparagraph to reflect changes in each electricity local distribution company's service territory since the most recent formula was established. For each successive 3-year period, the Administrator shall distribute allowances ratably among individual electricity local distribution companies based on the product of—

"(I) each electricity local distribution company's average annual deliveries per customer during calendar years 2006 through 2008, or during the 3 alternative consecutive years selected by such company under clause (i); and

"(II) the number of customers of such electricity local distribution company in the most recent year in which

1 the formula is updated under this
2 clause.
3 "(3) USE OF ALLOWANCES.—
4 "(A) RATEPAYER BENEFIT.—Emission al-
5 lowances distributed to an electricity local dis-
6 tribution company under this subsection shall
7 be used exclusively for the benefit of retail rate-
8 payers of such electricity local distribution com-
9 pany. Emission allowances received by an elec-
10 tricity local distribution company under this
11 subsection may not be used to support elec-
12 tricity sales to entities or persons other than
13 the retail ratepayers of such electricity local dis-
14 tribution company.
15 "(B) RATEPAYER CLASSES.—In using
16 emission allowances distributed under this sec-
17 tion for the benefit of ratepayers, an electricity
18 local distribution company shall ensure that
19 ratepayer benefits are distributed—
20 "(i) among ratepayer classes ratably
21 based on electricity deliveries to each class;
22 and
23 "(ii) equitably among individual rate-
24 payers within each ratepayer class, includ-

1 ing entities that receive emission allow-
2 ances pursuant to part F.
3 "(C) LIMITATION.—No electricity local dis-
4 tribution company may use emission allowances
5 to provide to any ratepayer a rebate that is
6 based solely on the quantity of electricity deliv-
7 ered to such ratepayer. To the extent an elec-
8 tricity local distribution company uses the value
9 of emission allowances distributed under this
10 subsection to provide rebates, it shall, to the
11 maximum extent practicable, provide such re-
12 bates with regard to the fixed portion of rate-
13 payers' bills.
14 "(D) GUIDELINES.—As part of the regula-
15 tions promulgated under subsection (e), the Ad-
16 ministrator shall prescribe specific guidelines
17 for the implementation of the requirements of
18 this paragraph.
19 "(4) REGULATORY PROCEEDINGS.—
20 "(A) REQUIREMENT.—No electricity local
21 distribution company shall be eligible to receive
22 emission allowances under this subsection un-
23 less the State regulatory authority with author-
24 ity over such company, or the entity with au-
25 thority to regulate retail electricity rates of an

1 electricity local distribution company not regu-
2 lated by a State regulatory authority, has—
3 "(i) promulgated a regulation or com-
4 pleted a rate proceeding (or the equivalent,
5 in the case of a ratemaking entity other
6 than a State regulatory authority) that
7 provides for the full implementation of the
8 requirements of paragraph (3) of this sub-
9 section; and
10 "(ii) made available to the Adminis-
11 trator and the public a report describing,
12 in adequate detail, the manner in which
13 the requirements of paragraph (3) will be
14 implemented.
15 "(B) UPDATING.—The Administrator shall
16 require, as a condition of continued receipt of
17 emission allowances under this subsection by an
18 electricity local distribution company, that a
19 new regulation be promulgated or rate pro-
20 ceeding be completed, and a new report be
21 made available to the Administrator and the
22 public, pursuant to subparagraph (A), not less
23 frequently than every 5 years.
24 "(5) PLANS AND REPORTING.—

1 "(A) REGULATIONS.—As part of the regu-
2 lations promulgated under subsection (e), the
3 Administrator shall prescribe requirements gov-
4 erning plans and reports to be submitted by
5 electricity local distribution companies in ac-
6 cordance with this paragraph.
7 "(B) PLANS.—Not later than April 30 of
8 2011 and every 5 years thereafter through
9 2026, each electricity local distribution com-
10 pany shall submit to the Administrator a plan,
11 approved by the State regulatory authority or
12 other entity charged with regulating the retail
13 rates of such company, describing such com-
14 pany's plans for the disposition of the value of
15 emission allowances to be received pursuant to
16 this subsection, in accord with the requirements
17 of this subsection.
18 "(C) REPORTS.—Not later than June 30
19 of 2013 and each calendar year thereafter
20 through 2031, each electricity local distribution
21 company that received emission allowances
22 under this subsection in the preceding calendar
23 year shall submit a report to the Administrator,
24 and to the relevant State regulatory authority
25 or the entity with authority to regulate retail

electricity rates in the case of an electricity local distribution company not regulated by a State regulatory authority, describing the disposition of the value of any emission allowances received by the company in the prior calendar year pursuant to this subsection, including—

"(i) a description of sales, transfer, exchange, or use by the company for compliance with obligations under this title, of any such emission allowances;

"(ii) the monetary value received by the company, whether in money or in some other form, from the sale, transfer, or exchange of emission allowances received by the company under this section;

"(iii) the manner in which the company's disposition of emission allowances received under this subsection complies with the requirements of this subsection, including each of the requirements of paragraph (3); and

"(iv) such other information as the Administrator may require pursuant to subparagraph (A).

1 "(D) PUBLICATION.—The Administrator
2 shall make available to the public all plans and
3 reports submitted by electricity local distribu-
4 tion companies under this section, including by
5 publishing such plans and reports on the Inter-
6 net.
7 "(6) AUDITS.—Each year, the Administrator
8 shall conduct an audit of a representative sample of
9 electricity local distribution companies receiving
10 emission allowances under this subsection to ensure
11 compliance with the requirements of this subsection.
12 In selecting electricity local distribution companies
13 for audit, the Administrator shall take into account
14 any credible evidence of noncompliance with the re-
15 quirements of this subsection. The Administrator
16 shall make available to the public a report describing
17 the results of each such audit, including by pub-
18 lishing such report on the Internet.
19 "(7) ENFORCEMENT.—A violation of any re-
20 quirement of this subsection shall be a violation of
21 this Act. Each emission allowance the value of which
22 is used in violation of the requirements of this sub-
23 section shall be a separate violation.
24 "(c) MERCHANT COAL GENERATORS.—

1 "(1) QUALIFYING EMISSIONS.—The qualifying
2 emissions for a merchant coal generator for a given
3 calendar year shall be the product of the number of
4 megawatt hours of electricity generated by such gen-
5 erator in such calendar year and the average carbon
6 dioxide emissions per megawatt hour generated by
7 such generator during calendar years 2006 through
8 2008, provided that the number of megawatt hours
9 in a given calendar year for purposes of such cal-
10 culation shall be reduced in proportion to the portion
11 of such generator's carbon dioxide emissions that
12 were captured and sequestered in such calendar year
13 and for which such generator received or will receive
14 bonus emission allowances under section 785.
15 "(2) PHASE-DOWN SCHEDULE.—The Adminis-
16 trator shall identify an annual phase-down factor,
17 applicable to distributions to merchant coal genera-
18 tors for each of calendar years 2012 through 2029,
19 that corresponds to the overall decline in the amount
20 of emission allowances to be allocated to the elec-
21 tricity sector in such years pursuant to section
22 782(a). Such factor shall—
23 "(A) for calendar year 2012, be equal to
24 1.0;

1 "(B) for each of calendar years 2013
2 through 2029, correspond to the quotient of—
3 "(i) the quantity of emission allow-
4 ances to be allocated to the electricity sec-
5 tor under section 782(a) for such calendar
6 year; divided by
7 "(ii) the quantity of emission allow-
8 ances to be allocated to the electricity sec-
9 tor under section 782(a) for calendar year
10 2012.
11 "(3) DISTRIBUTION OF EMISSION ALLOW-
12 ANCES.—Not later than March 1 of 2013 and each
13 calendar year through 2030, the Administrator shall
14 distribute emission allowances of the preceding vin-
15 tage year to each merchant coal generator equal to
16 the product of—
17 "(A) 0.5;
18 "(B) the qualifying emissions for such
19 merchant coal generator for the preceding year,
20 as determined under paragraph (1); and
21 "(C) the phase-down factor for the pre-
22 ceding calendar year, as identified under para-
23 graph (2).
24 "(4) ADJUSTMENT.—

1 "(A) STUDY.—Not later than July 1,
2 2014, the Administrator, in consultation with
3 the Federal Energy Regulatory Commission,
4 shall complete a study to determine whether the
5 allocation formula under paragraph (3) is re-
6 sulting in, or is likely to result in, windfall prof-
7 its to merchant coal generators or substantially
8 disparate treatment of merchant coal genera-
9 tors operating in different markets or regions.
10 "(B) REGULATION.—If the Administrator,
11 in consultation with the Federal Energy Regu-
12 latory Commission, makes an affirmative find-
13 ing of windfall profits or disparate treatment
14 under subparagraph (A), the Administrator
15 shall, not later than 18 months after the com-
16 pletion of the study described in subparagraph
17 (A), promulgate regulations providing for the
18 adjustment of the allocation formula under
19 paragraph (3) to mitigate, to the extent prac-
20 ticable, such windfall profits, if any, and such
21 disparate treatment, if any.
22 "(5) LIMITATION ON ALLOWANCES.—Notwith-
23 standing paragraph (3) or (4), for any vintage year
24 the Administrator shall distribute under this sub-
25 section no more than 10 percent of the total quan-

1 tity of emission allowances available for such vintage
2 year for distribution to the electricity sector under
3 section 782(a). If the quantity of emission allow-
4 ances that would otherwise be distributed pursuant
5 to paragraph (3) or (4) for any vintage year would
6 exceed such limit, the Administrator shall distribute
7 10 percent of the total emission allowances available
8 for distribution under section 782(a) for such vin-
9 tage year ratably among merchant coal generators
10 based on the formula in paragraph (3) or (4).
11 "(d) GENERATORS WITH LONG-TERM POWER PUR-
12 CHASE AGREEMENTS.—
13 "(1) RESERVED ALLOWANCES.—Notwith-
14 standing subsections (b) and (c) of this section, the
15 Administrator shall withhold from distribution to
16 electricity local distribution companies a number of
17 emission allowances equal to 105 percent of the
18 emission allowances the Administrator anticipates
19 will be distributed to long-term contract generators
20 under this subsection. If not required to distribute
21 all of these reserved allowances under this sub-
22 section, the Administrator shall distribute any re-
23 maining emission allowances to the electricity local
24 distribution companies in accordance with subsection
25 (b).

1 "(2) DISTRIBUTION.—Not later than March 1
2 of 2013 and each calendar year through 2030, the
3 Administrator shall distribute to the owner or oper-
4 ator of each long-term contract generator the num-
5 ber of emission allowances of the preceding vintage
6 year that are equal to the number of tons of carbon
7 dioxide emitted as a result of a qualifying long-term
8 power purchase agreement referred to in subsection
9 (a)(2)(C).
10 "(3) DURATION.—A long-term contract gener-
11 ator shall cease to be eligible to receive allocations
12 under this subsection upon the earliest of the fol-
13 lowing dates:
14 "(A) The date when the facility no longer
15 qualifies as a qualifying small power production
16 facility or a qualifying cogeneration facility
17 (within the meaning of section 3(17)(C) or
18 3(18)(B) of the Federal Power Act), or a new
19 independent power production facility (within
20 the meaning of section 416(a)(2) of this Act,
21 except that subparagraph (C) of such definition
22 shall not apply for purposes of this clause).
23 "(B) The date when the facility no longer
24 meets the total installed net output capacity cri-

1 terion required to be met as of the commence-
2 ment of operation in subsection (a)(2)(B).
3 "(C) The date when the power purchase
4 agreement referred to in subsection (a)(2)(C)—
5 "(i) expires;
6 "(ii) is terminated; or
7 "(iii) is amended in any way that
8 changes the location of the facility, the
9 price (whether a fixed price or price for-
10 mula) for electricity sold under such agree-
11 ment, the quantity of electricity sold under
12 the agreement, or the expiration or termi-
13 nation date of the agreement.
14 "(4) ELIGIBILITY.—To be eligible to receive al-
15 lowance distributions under this subsection, a long-
16 term contract generator shall submit each of the fol-
17 lowing in writing to the Administrator within 180
18 days after the date of enactment of this title, and
19 not later than September 30 of each vintage year for
20 which such generator wishes to receive emission al-
21 lowances:
22 "(A) A certificate of representation de-
23 scribed in section 700(16).
24 "(B) An identification of each owner and
25 each operator of the facility.

1 "(C) An identification of the units at the
2 facility and the location of the facility.
3 "(D) A written certification by the des-
4 ignated representative that the facility meets all
5 the requirements of the definition of a long-
6 term contract generator.
7 "(E) The expiration date of the power pur-
8 chase agreement referred to in subsection
9 (a)(2)(C).
10 "(F) A copy of the power purchase agree-
11 ment referred to in subsection (a)(2)(C).
12 "(5) NOTIFICATION.—Not later than 30 days
13 after a facility loses, in accordance with paragraph
14 (3), its eligibility for emission allowances distributed
15 pursuant to this subsection, the designated rep-
16 resentative of such facility shall notify the Adminis-
17 trator in writing when, and on what basis, the facil-
18 ity lost its eligibility to receive emission allowances.
19 "(e) REGULATIONS.—Not later than 2 years after the
20 date of enactment of this title, the Administrator, in con-
21 sultation with the Federal Energy Regulatory Commis-
22 sion, shall promulgate regulations to implement the re-
23 quirements of this section.
24 **"SEC. 784. NATURAL GAS CONSUMERS.**
25 "(a) DEFINITIONS.—For purposes of this section:

1 "(1) NATURAL GAS LOCAL DISTRIBUTION COM-
2 PANY.—The term 'natural gas local distribution
3 company' means a natural gas local distribution
4 company that is a covered entity.
5 "(2) COST-EFFECTIVE.—The term 'cost-effec-
6 tive', with respect to an energy efficiency program,
7 means that the program meets the Total Resource
8 Cost Test, which requires that the net present value
9 of economic benefits over the life of the program, in-
10 cluding avoided supply and delivery costs and de-
11 ferred or avoided investments, is greater than the
12 net present value of the economic costs over the life
13 of the program, including program costs and incre-
14 mental costs borne by the energy consumer.
15 "(b) ALLOCATION.—Not later than June 30 of 2015
16 and each calendar year thereafter through 2028, the Ad-
17 ministrator shall distribute to natural gas local distribu-
18 tion companies the quantity of emission allowances allo-
19 cated for the following vintage year pursuant to section
20 782(b). Such allowances shall be distributed among local
21 natural gas distribution companies based on the following
22 formula:
23 "(1) INITIAL FORMULA.—Except as provided in
24 paragraph (2), for each vintage year, the Adminis-
25 trator shall distribute emission allowances among

1 natural gas local distribution companies ratably
2 based on each such company's annual average retail
3 natural gas deliveries for 2006 through 2008, unless
4 the owner or operator of the company selects 3 other
5 consecutive years between 1999 and 2008, inclusive,
6 and timely notifies the Administrator of its selection.
7 "(2) UPDATING.—Prior to distributing 2019
8 vintage emission allowances and at 3-year intervals
9 thereafter, the Administrator shall update the dis-
10 tribution formula under this subsection to reflect
11 changes in each natural gas local distribution com-
12 pany's service territory since the most recent for-
13 mula was established. For each successive 3-year pe-
14 riod, the Administrator shall distribute allowances
15 ratably among natural gas local distribution compa-
16 nies based on the product of—
17 "(A) each natural gas local distribution
18 company's average annual natural gas deliveries
19 per customer during calendar years 2006
20 through 2008, or during the 3 alternative con-
21 secutive years selected by such company under
22 paragraph (1); and
23 "(B) the number of customers of such nat-
24 ural gas local distribution company in the most

1 recent year in which the formula is updated
2 under this paragraph.
3 "(c) USE OF ALLOWANCES.—
4 "(1) RATEPAYER BENEFIT.—Emission allow-
5 ances distributed to a natural gas local distribution
6 company under this section shall be used exclusively
7 for the benefit of retail ratepayers of such natural
8 gas local distribution company. Emission allowances
9 received by a natural gas local distribution company
10 under this section may not be used to support nat-
11 ural gas sales to entities or persons other than the
12 retail ratepayers of such natural gas local distribu-
13 tion company.
14 "(2) RATEPAYER CLASSES.—In using emission
15 allowances distributed under this section for the ben-
16 efit of ratepayers, a natural gas local distribution
17 company shall ensure that ratepayer benefits are
18 distributed—
19 "(A) among ratepayer classes ratably
20 based on natural gas deliveries to each class;
21 and
22 "(B) equitably among individual ratepayers
23 within each ratepayer class.
24 "(3) LIMITATION.—No natural gas local dis-
25 tribution company may use emission allowances to

1 provide to any ratepayer a rebate that is based solely
2 on the quantity of natural gas delivered to such
3 ratepayer. To the extent a natural gas local distribu-
4 tion company uses the value of emission allowances
5 distributed under this subsection to provide rebates,
6 it shall, to the maximum extent practicable, provide
7 such rebates with regard to the fixed portion of rate-
8 payers' bills.

9 "(4) ENERGY EFFICIENCY PROGRAMS.—The
10 value of no less than one third of the emission allow-
11 ances distributed to natural gas local distribution
12 companies pursuant to this section in any calendar
13 year shall be used for cost-effective energy efficiency
14 programs for natural gas consumers. Such programs
15 must be authorized and overseen by the State regu-
16 latory authority, or by the entity with regulatory au-
17 thority over retail natural gas rates in the case of
18 a natural gas local distribution company that is not
19 regulated by a State regulatory authority.

20 "(5) GUIDELINES.—As part of the regulations
21 promulgated under subsection (h), the Administrator
22 shall prescribe specific guidelines for the implemen-
23 tation of the requirements of this subsection.

24 "(d) REGULATORY PROCEEDINGS.—

1 "(1) REQUIREMENT.—No natural gas local dis-
2 tribution company shall be eligible to receive emis-
3 sion allowances under this section unless the State
4 regulatory authority with authority over such com-
5 pany, or the entity with authority to regulate retail
6 rates of a natural gas local distribution company not
7 regulated by a State regulatory authority, has—
8 "(A) promulgated a regulation or com-
9 pleted a rate proceeding (or the equivalent, in
10 the case of a ratemaking entity other than a
11 State regulatory authority) that provides for
12 the full implementation of the requirements of
13 subsection (c); and
14 "(B) made available to the Administrator
15 and the public a report describing, in adequate
16 detail, the manner in which the requirements of
17 subsection (c) will be implemented.
18 "(2) UPDATING.—The Administrator shall re-
19 quire, as a condition of continued receipt of emission
20 allowances under this section by a natural gas local
21 distribution company, that a new regulation be pro-
22 mulgated or rate proceeding be completed, and a
23 new report be made available to the Administrator
24 and the public, pursuant to paragraph (1), not less
25 frequently than every 5 years.

1 "(e) PLANS AND REPORTING.—

2 "(1) REGULATIONS.—As part of the regulations
3 promulgated under subsection (h), the Administrator
4 shall prescribe requirements governing plans and re-
5 ports to be submitted by natural gas local distribu-
6 tion companies in accordance with this subsection.

7 "(2) PLANS.—Not later than April 30 of 2015
8 and every 5 years thereafter through 2025, each
9 natural gas local distribution company shall submit
10 to the Administrator a plan, approved by the State
11 regulatory authority or other entity charged with
12 regulating the retail rates of such company, describ-
13 ing such company's plans for the disposition of the
14 value of emission allowances to be received pursuant
15 to this section, in accord with the requirements of
16 this section.

17 "(3) REPORTS.—Not later than June 30 of
18 2017 and each calendar year thereafter through
19 2031, each natural gas local distribution company
20 that received emission allowances under this section
21 in the preceding calendar year shall submit a report
22 to the Administrator, approved by the relevant State
23 regulatory authority or the entity with authority to
24 regulate retail natural gas rates in the case of a nat-
25 ural gas local distribution company not regulated by

1 a State regulatory authority, describing the disposi-
2 tion of the value of any emission allowances received
3 by the company in the prior calendar year pursuant
4 to this subsection, including—
5 "(A) a description of sales, transfer, ex-
6 change, or use by the company for compliance
7 with obligations under this title, of any such
8 emission allowances;
9 "(B) the monetary value received by the
10 company, whether in money or in some other
11 form, from the sale, transfer, or exchange of
12 emission allowances received by the company
13 under this section;
14 "(C) the manner in which the company's
15 disposition of emission allowances received
16 under this subsection complies with the require-
17 ments of this section, including each of the re-
18 quirements of subsection (c);
19 "(D) the cost-effectiveness of, and energy
20 savings achieved by, energy efficiency programs
21 supported through such emission allowances;
22 and
23 "(E) such other information as the Admin-
24 istrator may require pursuant to paragraph (1).

1 "(4) PUBLICATION.—The Administrator shall
2 make available to the public all plans and reports
3 submitted by natural gas local distribution compa-
4 nies under this subsection, including by publishing
5 such plans and reports on the Internet.
6 "(f) AUDITS.—Each year, the Administrator shall
7 conduct an audit of a representative sample of natural gas
8 local distribution companies receiving emission allowances
9 under this section to ensure compliance with the require-
10 ments of this section. In selecting natural gas local dis-
11 tribution companies for audit, the Administrator shall
12 take into account any credible evidence of noncompliance
13 with the requirements of this section. The Administrator
14 shall make available to the public a report describing the
15 results of each such audit, including by publishing such
16 report on the Internet.
17 "(g) ENFORCEMENT.—A violation of any require-
18 ment of this section shall be a violation of this Act. Each
19 emission allowance the value of which is used in violation
20 of the requirements of this section shall be a separate vio-
21 lation.
22 "(h) REGULATIONS.—Not later than January 1,
23 2014, the Administrator, in consultation with the Federal
24 Energy Regulatory Commission, shall promulgate regula-
25 tions to implement the requirements of this section.

1 **"SEC. 785. HOME HEATING OIL AND PROPANE CONSUMERS.**

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

3 "(1) CARBON CONTENT.—The term 'carbon
4 content' means the amount of carbon dioxide that
5 will be emitted as a result of the combustion of a
6 fuel.

7 "(2) COST-EFFECTIVE.—The term 'cost-effec-
8 tive', with respect to an energy efficiency program,
9 means that the program meets the Total Resource
10 Cost Test, which requires that the net present value
11 of economic benefits over the life of the program, in-
12 cluding avoided supply and delivery costs and de-
13 ferred or avoided investments, is greater than the
14 net present value of the economic costs over the life
15 of the program, including program costs and incre-
16 mental costs borne by the energy consumer.

17 "(b) ALLOCATION.—Not later than September 30 of
18 each of calendar years 2012 through 2030, the Adminis-
19 trator shall distribute among the States, in accordance
20 with this section, the quantity of emission allowances allo-
21 cated pursuant to section 782(c).

22 "(c) DISTRIBUTION AMONG STATES.—The Adminis-
23 trator shall distribute allowances among the States under
24 this section each year ratably based on the ratio of—

1 "(1) the carbon content of home heating oil and
2 propane sold to consumers within each State in the
3 preceding year for residential or commercial uses; to
4 "(2) the carbon content of home heating oil and
5 propane sold to consumers within the United States
6 in the preceding year for residential or commercial
7 uses.
8 "(d) USE OF ALLOWANCES.—
9 "(1) IN GENERAL.—States shall use emission
10 allowances distributed under this section exclusively
11 for the benefit of consumers of home heating oil or
12 propane for residential or commercial purposes.
13 Such proceeds shall be used exclusively for—
14 "(A) cost-effective energy efficiency pro-
15 grams for consumers that use home heating oil
16 or propane for residential or commercial pur-
17 poses; or
18 "(B) rebates or other direct financial as-
19 sistance programs for consumers of home heat-
20 ing oil or propane used for residential or com-
21 mercial purposes.
22 "(2) ADMINISTRATION AND DELIVERY MECHA-
23 NISMS.—In administering programs supported by
24 this section, States shall—

1 "(A) use no less than 50 percent of the
2 value of emission allowances received under this
3 section for cost-effective efficiency programs to
4 reduce consumers' overall fuel costs;
5 "(B) to the extent practicable, deliver con-
6 sumer support under this section through exist-
7 ing energy efficiency and consumer energy as-
8 sistance programs or delivery mechanisms, in-
9 cluding, where appropriate, programs or mecha-
10 nisms administered by parties other than the
11 State; and
12 "(C) seek to coordinate the administration
13 and delivery of energy efficiency and consumer
14 energy assistance programs funded under this
15 section, with one another and with existing pro-
16 grams for various fuel types, so as to deliver
17 comprehensive, fuel-blind, coordinated programs
18 to consumers.
19 "(e) REPORTING.—Each State receiving emission al-
20 lowances under this section shall submit to the Adminis-
21 trator, within 12 months of each receipt of such allow-
22 ances, a report, in accordance with such requirements as
23 the Administrator may prescribe, that—
24 "(1) describes the State's use of emission allow-
25 ances distributed under this section, including a de-

1 scription of the energy efficiency and consumer as-
2 sistance programs supported with such allowances;
3 "(2) demonstrates the cost-effectiveness of, and
4 the energy savings achieved by, energy efficiency
5 programs supported under this section; and
6 "(3) includes a report prepared by an inde-
7 pendent third party, in accordance with such regula-
8 tions as the Administrator may promulgate, evalu-
9 ating the performance of the energy efficiency and
10 consumer assistance programs supported under this
11 section.
12 "(f) ENFORCEMENT.—If the Administrator deter-
13 mines that a State is not in compliance with this section,
14 the Administrator may withhold a portion of the allow-
15 ances, the value of which is equal to up to twice the value
16 of the allowances that the State failed to use in accordance
17 with the requirements of this section, that such State
18 would otherwise be eligible to receive under this section
19 in later years. Allowances withheld pursuant to this sub-
20 section shall be distributed among the remaining States
21 ratably in accordance with the formula in subsection (c).
22 **"SEC. 786-788. [SECTIONS RESERVED].**
23 **"SEC. 789. CLIMATE CHANGE REBATES.**
24 "(a) REBATE.—Not later than October 31 of each
25 calendar year, the President, or such Federal agency or

1 department as the President may designate, shall dis-
2 tribute the funds in the Consumer Climate Change Rebate
3 Fund on a per capita basis to each household in the
4 United States.

5 "(b) LIMITATIONS.—The President, or such Federal
6 agency or department as the President may designate,
7 shall establish procedures to ensure that individuals who
8 are not—

9 "(1) citizens or nationals of the United States;
10 or

11 "(2) immigrants lawfully residing in the United
12 States,

13 are excluded for the purpose of calculating and distrib-
14 uting rebates under this section.

15 **"SEC. 790. EXCHANGE FOR STATE-ISSUED ALLOWANCES.**

16 "(a) IN GENERAL.—Not later than one year after the
17 date of enactment of this title, the Administrator shall
18 issue regulations allowing any person in the United States
19 to exchange greenhouse gas emission allowances issued be-
20 fore December 31, 2011, by the State of California or for
21 the Regional Greenhouse Gas Initiative, or the Western
22 Climate Initiative (in this section referred to as 'State al-
23 lowances') for emission allowances established by the Ad-
24 ministrator under section 721(a).

1 "(b) REGULATIONS.—Regulations issued under sub-
2 section (a) shall—
3 "(1) provide that a person exchanging State al-
4 lowances under this section receive emission allow-
5 ances established under section 721(a) in the
6 amount that is sufficient to compensate for the cost
7 of obtaining and holding such State allowances;
8 "(2) establish a deadline by which persons must
9 exchange the State allowances; and
10 "(3) provide that the Federal emission allow-
11 ances disbursed pursuant to this section shall be de-
12 ducted from the allowances to be auctioned pursuant
13 to section 782(b).
14 "(c) COST OF OBTAINING STATE ALLOWANCE.—For
15 purposes of this section, the cost of obtaining a State al-
16 lowance shall be the average auction price, for emission
17 allowances issued in the year in which the State allowance
18 was issued, under the program under which the State al-
19 lowance was issued.
20 **"SEC. 791. AUCTION PROCEDURES.**
21 "(a) IN GENERAL.—To the extent that auctions of
22 emission allowances by the Administrator are authorized
23 by this part, such auctions shall be carried out pursuant
24 to this section and the regulations established hereunder.

1 "(b) INITIAL REGULATIONS.—Not later than 12
2 months after the date of enactment of this title, the Ad-
3 ministrator, in consultation with other agencies, as appro-
4 priate, shall promulgate regulations governing the auction
5 of allowances under this section. Such regulations shall in-
6 clude the following requirements:
7 "(1) FREQUENCY; FIRST AUCTION.—Auctions
8 shall be held four times per year at regular intervals,
9 with the first auction to be held no later than March
10 31, 2011.
11 "(2) AUCTION SCHEDULE; CURRENT AND FU-
12 TURE VINTAGES.—The Administrator shall, at each
13 quarterly auction under this section, offer for sale
14 both a portion of the allowances with the same vin-
15 tage year as the year in which the auction is being
16 conducted and a portion of the allowances with vin-
17 tage years from future years. The preceding sen-
18 tence shall not apply to auctions held before 2012,
19 during which period, by necessity, the Administrator
20 shall auction only allowances with a vintage year
21 that is later than the year in which the auction is
22 held. Beginning with the first auction and at each
23 quarterly auction held thereafter, the Administrator
24 may offer for sale allowances with vintage years of

1 up to four years after the year in which the auction
2 is being conducted.
3 "(3) AUCTION FORMAT.—Auctions shall follow
4 a single-round, sealed-bid, uniform price format.
5 "(4) PARTICIPATION; FINANCIAL ASSURANCE.—
6 Auctions shall be open to any person, except that
7 the Administrator may establish financial assurance
8 requirements to ensure that auction participants can
9 and will perform on their bids.
10 "(5) DISCLOSURE OF BENEFICIAL OWNER-
11 SHIP.—Each bidder in the auction shall be required
12 to disclose the person or entity sponsoring or bene-
13 fitting from the bidder's participation in the auction
14 if such person or entity is, in whole or in part, other
15 than the bidder.
16 "(6) PURCHASE LIMITS.—No person may, di-
17 rectly or in concert with another participant, pur-
18 chase more than 5 percent of the allowances offered
19 for sale at any quarterly auction.
20 "(7) PUBLICATION OF INFORMATION.—After
21 the auction, the Administrator shall, in a timely
22 fashion, publish the identities of winning bidders,
23 the quantity of allowances obtained by each winning
24 bidder, and the auction clearing price.

1 "(8) OTHER REQUIREMENTS.—The Adminis-
2 trator may include in the regulations such other re-
3 quirements or provisions as the Administrator, in
4 consultation with other agencies, as appropriate,
5 considers appropriate to promote effective, efficient,
6 transparent, and fair administration of auctions
7 under this section.

8 "(c) REVISION OF REGULATIONS.—The Adminis-
9 trator may, in consultation with other agencies, as appro-
10 priate, at any time, revise the initial regulations promul-
11 gated under subsection (b). Such revised regulations need
12 not meet the requirements identified in subsection (b) if
13 the Administrator determines that an alternative auction
14 design would be more effective, taking into account factors
15 including costs of administration, transparency, fairness,
16 and risks of collusion or manipulation. In determining
17 whether and how to revise the initial regulations under
18 this subsection, the Administrator shall not consider maxi-
19 mization of revenues to the Federal Government.

20 "(d) RESERVE AUCTION PRICE.—The minimum re-
21 serve auction price shall be $10 for auctions occurring in
22 2012. The minimum reserve price for auctions occurring
23 in years after 2012 shall be the minimum reserve auction
24 price for the previous year increased by 5 percent plus

1 the rate of inflation (as measured by the Consumer Price
2 Index for all urban consumers).

3 "(e) DELEGATION OR CONTRACT.—Pursuant to reg-
4 ulations under this section, the Administrator may by del-
5 egation or contract provide for the conduct of auctions
6 under the Administrator's supervision by other depart-
7 ments or agencies of the Federal Government or by non-
8 governmental agencies, groups, or organizations.

9 **"SEC. 792. AUCTIONING ALLOWANCES FOR OTHER ENTI-**
10 **TIES.**

11 "(a) CONSIGNMENT.—Any entity holding emission al-
12 lowances or compensatory allowances may request that the
13 Administrator auction, pursuant to section 791, the allow-
14 ances on consignment.

15 "(b) PRICING.—When the Administrator acts under
16 this section as the agent of an entity in possession of emis-
17 sion allowances, the Administrator is not obligated to ob-
18 tain the highest price possible for the emission allowances,
19 and instead shall auction consignment allowances in the
20 same manner and pursuant to the same rules as auctions
21 of other allowances under section 791. The Administrator
22 may permit emission allowance owners to condition the
23 sale of their allowances pursuant to this section on a min-
24 imum reserve price.

"(c) PROCEEDS.—For emission allowances and compensatory allowances auctioned pursuant to this section, notwithstanding section 3302 of title 31, United States Code, or any other provision of law, within 90 days of receipt, the United States shall transfer the proceeds from the auction to the entity which held the allowances auctioned. No funds transferred from a purchaser to a seller of emission allowances or compensatory allowances under this subsection shall be held by any officer or employee of the United States or treated for any purpose as public monies.

"(d) REGULATIONS.—The Administrator shall issue regulations within 24 months after the date of enactment of this title to implement this section.

"SEC. 793. ESTABLISHMENT OF FUNDS.

"There is established in the Treasury of the United States the following funds:

"(1) The Strategic Reserve Fund.

"(2) The Climate Change Rebate Fund.".

Subtitle C—Additional Greenhouse Gas Standards

SEC. 331. GREENHOUSE GAS STANDARDS.

The Clean Air Act (42 U.S.C. 7401 and following), as amended by subtitles A and B of this title, is further amended by adding the following new title after title VII:

"TITLE VIII—ADDITIONAL GREENHOUSE GAS STANDARDS

"SEC. 801. DEFINITIONS.

"For purposes of this title, terms that are defined in title VII, except for the term 'stationary source', shall have the meaning given those terms in title VII.

"PART A—STATIONARY SOURCE STANDARDS

"SEC. 811. STANDARDS OF PERFORMANCE.

"(a) UNCAPPED STATIONARY SOURCES.—

"(1) INVENTORY OF SOURCE CATEGORIES.—(A) Within 12 months after the date of enactment of this title, the Administrator shall publish under section 111(b)(1)(A) an inventory of categories of stationary sources that consist of those categories that contain sources that individually had uncapped greenhouse gas emissions greater than 10,000 tons of carbon dioxide equivalent and that, in the aggregate, were responsible for emitting at least 20 percent annually of the uncapped greenhouse gas emissions.

"(B) The Administrator shall include in the inventory under this paragraph each source category that is responsible for at least 10 percent of the uncapped methane emissions. Notwithstanding any other provision, the inventory required by this sec-

1 tion shall not include sources of enteric fermenta-
2 tion. The list under this paragraph shall include in-
3 dustrial sources, the emissions from which, when
4 added to the capped emissions from industrial
5 sources, constitute at least 95 percent of the green-
6 house gas emissions of the industrial sector.

7 "(C) For purposes of this subsection, emissions
8 shall be calculated using tons of carbon dioxide
9 equivalents. In promulgating the inventory required
10 by this paragraph and the schedule required under
11 by paragraph (2)(C), the Administrator shall use the
12 most current emissions data available at the time of
13 promulgation.

14 "(D) Notwithstanding any other provisions, the
15 Administrator may list under 111(b) any source cat-
16 egory identified in the inventory required by this
17 subsection without making a finding that the source
18 category causes or contributes significantly to, air
19 pollution with may be reasonably anticipated to en-
20 danger public health or welfare.

21 "(2) STANDARDS AND SCHEDULE.— (A) For
22 each category identified as provided in paragraph
23 (1), the Administrator shall promulgate standards of
24 performance under section 111 for the uncapped
25 emissions of greenhouse gases from stationary

1 sources in that category and shall promulgate cor-
2 responding regulations under section 111(d).
3 "(B) The Administrator shall promulgate
4 standards as required by this subsection for sta-
5 tionary sources in categories identified as provided
6 in paragraph (1) as expeditiously as practicable, as-
7 suring that—
8 "(i) standards for identified source cat-
9 egories that, combined, emitted 80 percent or
10 more of the greenhouse gas emissions of the
11 identified source categories shall be promul-
12 gated not later than 3 years after the date of
13 enactment of this title and shall include stand-
14 ards for natural gas extraction; and
15 "(ii) for all other identified source cat-
16 egories—
17 "(I) standards for not less than an
18 additional 25 percent of the identified cat-
19 egories shall be promulgated not later than
20 5 years after the date of enactment of this
21 title;
22 "(II) standards for not less than an
23 additional 25 percent of the identified cat-
24 egories shall be promulgated not later than

1 7 years after the date of enactment of this
2 title; and
3 "(III) standards for all the identified
4 categories shall be promulgated not later
5 than 10 years after the date of enactment
6 of this title.
7 "(C) Not later than 24 months after the date
8 of enactment of this title and after notice and oppor-
9 tunity for comment, the Administrator shall publish
10 a schedule establishing a date for the promulgation
11 of standards for each category of sources identified
12 pursuant to paragraph (1). The date for each cat-
13 egory shall be consistent with the requirements of
14 subparagraph (B). The determination of priorities
15 for the promulgation of standards pursuant to this
16 paragraph is not a rulemaking and shall not be sub-
17 ject to judicial review, except that failure to promul-
18 gate any standard pursuant to the schedule estab-
19 lished by this paragraph shall be subject to review
20 under section 304(a)(2).
21 "(D) Notwithstanding section 307, no action of
22 the Administrator listing a source category under
23 paragraph (1) shall be a final agency action subject
24 to judicial review, except that any such action may
25 be reviewed under section 307 when the Adminis-

1 trator issues performance standards for such cat-
2 egory.
3 "(b) CAPPED SOURCES.—No standard of perform-
4 ance shall be established under section 111 for capped
5 greenhouse gas emissions from a capped source unless the
6 Administrator determines that such standards are appro-
7 priate because of impacts, not including climate change
8 effects. In promulgating a standard of performance under
9 section 111 for the emission from capped sources of any
10 air pollutant that is not a greenhouse gas, the Adminis-
11 trator shall treat the emission of any greenhouse gas by
12 those entities as a nonair quality public health and envi-
13 ronmental impact within the meaning of section
14 111(a)(1).
15 "(c) PERFORMANCE STANDARDS.— For purposes of
16 setting a performance standard for source categories iden-
17 tified pursuant to subsection (a)—
18 "(1) The Administrator shall take into account
19 the goal of reducing total United States greenhouse
20 gas emissions as set forth in section 702.
21 "(2) The Administrator may promulgate a de-
22 sign, equipment, work practice, or operational stand-
23 ard, or any combination thereof, under section 111
24 in lieu of a standard of performance under that sec-
25 tion without regard to any determination of feasi-

1 bility that would otherwise be required under section
2 111(h).
3 "(3) Notwithstanding any other provision, in
4 setting the level of each standard required by this
5 section, the Administrator shall take into account
6 projections of allowance prices, such that the mar-
7 ginal cost of compliance (expressed as dollars per
8 ton of carbon dioxide equivalent reduced) imposed by
9 the standard would not, in the judgement of the Ad-
10 ministrator, be expected to exceed the Administra-
11 tor's projected allowance prices over the time period
12 spanning from the date of initial compliance to the
13 date that the next revisions of the standard would
14 come into effect pursuant to the schedule under sec-
15 tion 111(b)(1)(B).
16 "(d) DEFINITIONS.—In this section, the terms 'un-
17 capped greenhouse gas emissions' and 'uncapped methane
18 emissions' mean those greenhouse gas or methane emis-
19 sions, respectively, to which section 722 would not have
20 applied if the requirements of this title had been in effect
21 for the same year as the emissions data upon which the
22 list is based.
23 "(e) STUDY OF THE EFFECTS OF PERFORMANCE
24 STANDARDS.—

1 "(1) STUDY.—The Administrator shall conduct
2 a study of the impacts of performance standards re-
3 quired under this section, which shall evaluate the
4 effect of such standards on the
5 "(A) costs of achieving compliance with the
6 economy-wide reduction goals specified in sec-
7 tion 702 and the reduction targets specified in
8 section 703;
9 "(B) available supply of offset credits; and
10 "(C) ability to achieve the economy-wide
11 reduction goals specified in section 702 and any
12 other benefits of such standards.
13 "(2) REPORT.—The Administrator shall submit
14 to the House Energy and Commerce Committee a
15 report that describes the results of the study not
16 later than 18 months after the publication of the
17 standards required under subsection (a)(2)(B)(i).

18 **"PART C—EXEMPTIONS FROM OTHER PROGRAMS**

19 **"SEC. 831. CRITERIA POLLUTANTS.**

20 "No greenhouse gas may be listed under section
21 108(a) on the basis of its effect on climate change.

22 **"SEC. 832. HAZARDOUS AIR POLLUTANTS.**

23 "No greenhouse gas may be added to the list of haz-
24 ardous air pollutants under section 112 unless such green-

1 house gas meets the listing criteria of section 112(b) inde-
2 pendent of its effects on climate change.

3 **"SEC. 833. NEW SOURCE REVIEW.**

4 "The provisions of part C of title I shall not apply
5 to a greenhouse gas solely on the basis of its effect on
6 climate change or regulation under title VII or this title.

7 **"SEC. 834. TITLE V PERMITS.**

8 "Notwithstanding any provision of title III or V, in
9 determining whether a stationary source is required to
10 apply for, or operate pursuant to, a permit under title V,
11 the Administrator shall not consider the source's green-
12 house gas emissions.

13 **"SEC. 835. EXISTING PROCEEDINGS.**

14 "Nothing in the American Clean Energy and Security
15 Act of 2009, or the adoption thereof, shall affect the re-
16 quirements to be applied in administrative proceedings or
17 litigation initiated under the Clean Air Act prior to the
18 date of enactment of the American Clean Energy and Se-
19 curity Act of 2009. The preceding sentence does not apply
20 to any covered EGU that is subject to the requirements
21 of section 812(b).".

22 **SEC. 332. HFC REGULATION.**

23 (a) IN GENERAL.—Title VI of the Clean Air Act (42
24 U.S.C. 7671 et seq.) (relating to stratospheric ozone pro-
25 tection) is amended by adding at the end the following:

1 **"SEC. 619. HYDROFLUOROCARBONS (HFCS).**

2 "(a) TREATMENT AS CLASS II, GROUP II SUB-
3 STANCES.—Except as otherwise provided in this section,
4 hydrofluorocarbons shall be treated as class II substances
5 for purposes of applying the provisions of this title. The
6 Administrator shall establish two groups of class II sub-
7 stances. Class II, group I substances shall include all
8 hydrochlorofluorocarbons (HCFCs) listed pursuant to sec-
9 tion 602(b). Class II, group II substances shall include
10 each of the following:

11 "(1) Hydrofluorocarbon-23 (HFC-23).

12 "(2) Hydrofluorocarbon-32 (HFC-32).

13 "(3) Hydrofluorocarbon-41 (HFC-41).

14 "(4) Hydrofluorocarbon-125 (HFC-125).

15 "(5) Hydrofluorocarbon-134 (HFC-134).

16 "(6) Hydrofluorocarbon-134a (HFC-134a).

17 "(7) Hydrofluorocarbon-143 (HFC-143).

18 "(8) Hydrofluorocarbon-143a (HFC-143a).

19 "(9) Hydrofluorocarbon-152 (HFC-152).

20 "(10) Hydrofluorocarbon-152a (HFC-152a).

21 "(11) Hydrofluorocarbon-227ea (HFC-227ea).

22 "(12) Hydrofluorocarbon-236cb (HFC-236cb).

23 "(13) Hydrofluorocarbon-236ea (HFC-236ea).

24 "(14) Hydrofluorocarbon-236fa (HFC-236fa).

25 "(15) Hydrofluorocarbon-245ca (HFC-245ca).

26 "(16) Hydrofluorocarbon-245fa (HFC-245fa).

1 "(17) Hydrofluorocarbon-365mfc (HFC-
2 365mfc).
3 "(18) Hydrofluorocarbon-43-10mee (HFC-43-
4 10mee).
5 "(19) Hydrofluoroolefin-1234yf (HFO-1234yf).
6 "(20) Hydrofluoroolefin-1234ze (HFO-1234ze).
7 Not later than 6 months after the date of enactment of
8 this title, the Administrator shall publish an initial list of
9 class II, group II substances, which shall include the sub-
10 stances listed in this subsection. The Administrator may
11 add to the list of class II, group II substances any other
12 substance used as a substitute for a class I or II substance
13 if the Administrator determines that 1 metric ton of the
14 gas makes the same or greater contribution to global
15 warming over 100 years as 1 metric ton of carbon dioxide.
16 Within 24 months after the date of enactment of this sec-
17 tion, the Administrator shall amend the regulations under
18 this title (including the regulations referred to in sections
19 603, 608, 609, 610, 611, 612, and 613) to apply to class
20 II, group II substances.
21 "(b) CONSUMPTION AND PRODUCTION OF CLASS II,
22 GROUP II SUBSTANCES.—
23 "(1) IN GENERAL.—
24 "(A) CONSUMPTION PHASE DOWN.—In the
25 case of class II, group II substances, in lieu of

1 applying section 605 and the regulations there-
2 under, the Administrator shall promulgate reg-
3 ulations phasing down the consumption of class
4 II, group II substances in the United States,
5 and the importation of products containing any
6 class II, group II substance, in accordance with
7 this subsection within 18 months after the date
8 of enactment of this section. Effective January
9 1, 2012, it shall be unlawful for any person to
10 produce any class II, group II substance, im-
11 port any class II, group II substance, or import
12 any product containing any class II, group II
13 substance without holding one consumption al-
14 lowance or one destruction offset credit for each
15 carbon dioxide equivalent ton of the class II,
16 group II substance. Any person who exports a
17 class II, group II substance for which a con-
18 sumption allowance was retired may receive a
19 refund of that allowance from the Adminis-
20 trator following the export.
21 "(B) PRODUCTION.—If the United States
22 becomes a party or otherwise adheres to a mul-
23 tilateral agreement, including any amendment
24 to the Montreal Protocol on Substances That
25 Deplete the Ozone Layer, that restricts the pro-

1 duction of class II, group II substances, the Ad-
2 ministrator shall promulgate regulations estab-
3 lishing a baseline for the production of class II,
4 group II substances in the United States and
5 phasing down the production of class II, group
6 II substances in the United States, in accord-
7 ance with such multilateral agreement and sub-
8 ject to the same exceptions and other provisions
9 as are applicable to the phase down of con-
10 sumption of class II, group II substances under
11 this section (except that the Administrator shall
12 not require a person who obtains production al-
13 lowances from the Administrator to make pay-
14 ment for such allowances if the person is mak-
15 ing payment for a corresponding quantity of
16 consumption allowances of the same vintage
17 year). Upon the effective date of such regula-
18 tions, it shall be unlawful for any person to
19 produce any class II, group II substance with-
20 out holding one consumption allowance and one
21 production allowance, or one destruction offset
22 credit, for each carbon dioxide equivalent ton of
23 the class II, group II substance.
24 "(C) INTEGRITY OF CAP.—To maintain
25 the integrity of the class II, group II cap, the

1 Administrator may, through rulemaking, limit
2 the percentage of each person's compliance obli-
3 gation that may be met through the use of de-
4 struction offset credits or banked allowances.
5 "(D) COUNTING OF VIOLATIONS.—Each
6 emission allowance not held as required by this
7 section shall be a separate violation of this sec-
8 tion.
9 "(2) SCHEDULE.—Pursuant to the regulations
10 promulgated pursuant to paragraph (1), the number
11 of class II, group II consumption allowances estab-
12 lished by the Administrator for each calendar year
13 beginning in 2012 shall be the following percentage
14 of the baseline, as established by the Administrator
15 pursuant to paragraph (3):

"Calendar Year	Percent of Baseline
2012	90
2013	87.5
2014	85
2015	82.5
2016	80
2017	77.5
2018	75
2019	71
2020	67
2021	63

"Calendar Year	Percent of Baseline
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—
7 "(i) the annual average consumption of all
8 class II substances in calendar years 2004,
9 2005, and 2006; plus
10 "(ii) the annual average quantity of all
11 class II substances contained in imported prod-
12 ucts in calendar years 2004, 2005, and 2006.

1 "(B) Notwithstanding subparagraph (A), if the
2 Administrator determines that the baseline is higher
3 than 370 million metric tons of carbon dioxide
4 equivalents, then the Administrator shall establish
5 the baseline at 370 million metric tons of carbon di-
6 oxide equivalents.

7 "(C) Notwithstanding subparagraph (A), if the
8 Administrator determines that the baseline is lower
9 than 280 million metric tons of carbon dioxide
10 equivalents, then the Administrator shall establish
11 the baseline at 280 million metric tons of carbon di-
12 oxide equivalents.

13 "(4) DISTRIBUTION OF ALLOWANCES.—

14 "(A) IN GENERAL.—Pursuant to the regu-
15 lations promulgated under paragraph (1), for
16 each calendar year beginning in 2012, the Ad-
17 ministrator shall sell consumption allowances in
18 accordance with this paragraph.

19 "(B) ESTABLISHMENT OF POOLS.—The
20 Administrator shall establish two allowance
21 pools. Eighty percent of the consumption allow-
22 ances available for a calendar year shall be
23 placed in the producer-importer pool, and 20
24 percent of the consumption allowances available

1 for a calendar year shall be placed in the sec-
2 ondary pool.
3 "(C) PRODUCER-IMPORTER POOL.—
4 "(i) AUCTION.—(I) For each calendar
5 year, the Administrator shall offer for sale
6 at auction the following percentage of the
7 consumption allowances in the producer-
8 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

9 "(II) Any person who produced or im-
10 ported any class II substance during cal-
11 endar year 2004, 2005, or 2006 may par-
12 ticipate in the auction. No other persons
13 may participate in the auction unless per-
14 mitted to do so pursuant to subclause
15 (III).

1 "(III) Not later than three years after
2 the date of the initial auction and from
3 time to time thereafter, the Administrator
4 shall determine through rulemaking wheth-
5 er any persons who did not produce or im-
6 port a class II substance during calendar
7 year 2004, 2005, or 2006 will be permitted
8 to participate in future auctions. The Ad-
9 ministrator shall base this determination
10 on the duration, consistency, and scale of
11 such person's purchases of consumption al-
12 lowances in the secondary pool under sub-
13 paragraph (D), as well as economic or
14 technical hardship and other factors
15 deemed relevant by the Administrator.
16 "(IV) The Administrator shall set a
17 minimum bid per consumption allowance of
18 the following:
19 "(aa) For vintage year 2012,
20 $1.00.
21 "(bb) For vintage year 2013,
22 $1.20.
23 "(cc) For vintage year 2014,
24 $1.40.

1 "(dd) For vintage year 2015,
2 $1.60.
3 "(ee) For vintage year 2016,
4 $1.80.
5 "(ff) For vintage year 2017,
6 $2.00.
7 "(gg) For vintage year 2018 and
8 thereafter, $2.00 adjusted for infla-
9 tion after vintage year 2017 based
10 upon the producer price index as pub-
11 lished by the Department of Com-
12 merce.
13 "(ii) NON-AUCTION SALE.—(I) For
14 each calendar year, as soon as practicable
15 after auction, the Administrator shall offer
16 for sale the remaining consumption allow-
17 ances in the producer-importer pool at the
18 following prices:
19 "(aa) A fee of $1.00 per vintage
20 year 2012 allowance.
21 "(bb) A fee of $1.20 per vintage
22 year 2013 allowance.
23 "(cc) A fee of $1.40 per vintage
24 year 2014 allowance.

1 "(dd) For each vintage year
2 2015 allowance, a fee equal to the av-
3 erage of $1.10 and the auction clear-
4 ing price for vintage year 2014 allow-
5 ances.
6 "(ee) For each vintage year 2016
7 allowance, a fee equal to the average
8 of $1.30 and the auction clearing
9 price for vintage year 2015 allow-
10 ances.
11 "(ff) For each vintage year 2017
12 allowance, a fee equal to the average
13 of $1.40 and the auction clearing
14 price for vintage year 2016 allow-
15 ances.
16 "(gg) For each allowance of vin-
17 tage year 2018 and subsequent vin-
18 tage years, a fee equal to the auction
19 clearing price for that vintage year.
20 "(II) The Administrator shall offer to
21 sell the remaining consumption allowances
22 in the producer-importer pool to producers
23 of class II, group II substances and im-
24 porters of class II, group II substances in

1 proportion to their relative allocation
2 share.
3 "(III) Such allocation share for such
4 sale shall be determined by the Adminis-
5 trator using such producer's or importer's
6 annual average data on class II substances
7 from calendar years 2004, 2005, and
8 2006, on a carbon dioxide equivalent basis,
9 and—
10 "(aa) shall be based on a pro-
11 ducer's production, plus importation,
12 plus acquisitions and purchases from
13 persons who produced class II sub-
14 stances in the United States during
15 calendar years 2004, 2005, or 2006,
16 less exportation, less transfers and
17 sales to persons who produced class II
18 substances in the United States dur-
19 ing calendar years 2004, 2005, or
20 2006; and
21 "(bb) for an importer of class II
22 substances that did not produce in the
23 United States any class II substance
24 during calendar years 2004, 2005,

1 and 2006, shall be based on the im-
2 porter's importation less exportation.
3 For purposes of item (aa), the Adminis-
4 trator shall account for 100 percent of
5 class II, group II substances and 60 per-
6 cent of class II, group I substances. For
7 purposes of item (bb), the Administrator
8 shall account for 100 percent of class II,
9 group II substances and 100 percent of
10 class II, group I substances.
11 "(IV) Any consumption allowances
12 made available for nonauction sale to a
13 specific producer or importer of class II,
14 group II substances but not purchased by
15 the specific producer or importer shall be
16 made available for sale to any producer or
17 importer of class II substances during cal-
18 endar years 2004, 2005, and 2006. If de-
19 mand for such consumption allowances ex-
20 ceeds supply of such consumption allow-
21 ances, the Administrator shall develop and
22 utilize criteria for the sale of such con-
23 sumption allowances that may include pro
24 rata shares, historic production and impor-
25 tation, economic or technical hardship, or

1 other factors deemed relevant by the Ad-
2 ministrator. If the supply of such con-
3 sumption allowances exceeds demand, the
4 Administrator may offer such consumption
5 allowances for sale in the secondary pool as
6 set forth in subparagraph (D).
7 "(D) SECONDARY POOL.—(i) For each cal-
8 endar year, as soon as practicable after the auc-
9 tion required in subparagraph (C), the Adminis-
10 trator shall offer for sale the consumption al-
11 lowances in the secondary pool at the prices
12 listed in subparagraph (C)(ii).
13 "(ii) The Administrator shall accept appli-
14 cations for purchase of secondary pool con-
15 sumption allowances from—
16 "(I) importers of products containing
17 class II, group II substances;
18 "(II) persons who purchased any class
19 II, group II substance directly from a pro-
20 ducer or importer of class II, group II sub-
21 stances for use in a product containing a
22 class II, group II substance, a manufac-
23 turing process, or a reclamation process;
24 "(III) persons who did not produce or
25 import a class II substance during cal-

1 endar year 2004, 2005, or 2006, but who
2 the Administrator determines have subse-
3 quently taken significant steps to produce
4 or import a substantial quantity of any
5 class II, group II substance; and
6 "(IV) persons who produced or im-
7 ported any class II substance during cal-
8 endar year 2004, 2005, or 2006.
9 "(iii) If the supply of consumption allow-
10 ances in the secondary pool equals or exceeds
11 the demand for consumption allowances in the
12 secondary pool as presented in the applications
13 for purchase, the Administrator shall sell the
14 consumption allowances in the secondary pool
15 to the applicants in the amounts requested in
16 the applications for purchase. Any consumption
17 allowances in the secondary pool not purchased
18 in a calendar year may be rolled over and added
19 to the quantity available in the secondary pool
20 in the following year.
21 "(iv) If the demand for consumption allow-
22 ances in the secondary pool as presented in the
23 applications for purchase exceeds the supply of
24 consumption allowances in the secondary pool,

1 the Administrator shall sell the consumption al-
2 lowances as follows:
3 "(I) The Administrator shall first sell
4 the consumption allowances in the sec-
5 ondary pool to any importers of products
6 containing class II, group II substances in
7 the amounts requested in their applications
8 for purchase. If the demand for such con-
9 sumption allowances exceeds supply of
10 such consumption allowances, the Adminis-
11 trator shall develop and utilize criteria for
12 the sale of such consumption allowances
13 among importers of products containing
14 class II, group II substances that may in-
15 clude pro rata shares, historic importation,
16 economic or technical hardship, or other
17 factors deemed relevant by the Adminis-
18 trator.
19 "(II) The Administrator shall next
20 sell any remaining consumption allowances
21 to persons identified in subclauses (II) and
22 (III) of clause (ii) in the amounts re-
23 quested in their applications for purchase.
24 If the demand for such consumption allow-
25 ances exceeds remaining supply of such

1 consumption allowances, the Administrator
2 shall develop and utilize criteria for the
3 sale of such consumption allowances
4 among subclauses (II) and (III) applicants
5 that may include pro rata shares, historic
6 use, economic or technical hardship, or
7 other factors deemed relevant by the Ad-
8 ministrator.
9 "(III) The Administrator shall then
10 sell any remaining consumption allowances
11 to persons who produced or imported any
12 class II substance during calendar year
13 2004, 2005, or 2006 in the amounts re-
14 quested in their applications for purchase.
15 If demand for such consumption allow-
16 ances exceeds remaining supply of such
17 consumption allowances, the Administrator
18 shall develop and utilize criteria for the
19 sale of such consumption allowances that
20 may include pro rata shares, historic pro-
21 duction and importation, economic or tech-
22 nical hardship, or other factors deemed rel-
23 evant by the Administrator.
24 "(IV) Each person who purchases
25 consumption allowances in a non-auction

1 sale under this subparagraph shall be re-
2 quired to disclose the person or entity
3 sponsoring or benefitting from the pur-
4 chases if such person or entity is, in whole
5 or in part, other than the purchaser or the
6 purchaser's employer.

7 "(E) DISCRETION TO WITHHOLD ALLOW-
8 ANCES.—Nothing in this paragraph prevents
9 the Administrator from exercising discretion to
10 withhold and retire consumption allowances
11 that would otherwise be available for auction or
12 nonauction sale. Not later than 18 months after
13 the date of enactment of this section, the Ad-
14 ministrator shall promulgate regulations estab-
15 lishing criteria for withholding and retiring con-
16 sumption allowances.

17 "(5) BANKING.—A consumption allowance or
18 destruction offset credit may be used to meet the
19 compliance obligation requirements of paragraph (1)
20 in—

21 "(A) the vintage year for the allowance or
22 destruction offset credit; or

23 "(B) any calendar year subsequent to the
24 vintage year for the allowance or destruction
25 offset credit.

1 "(6) AUCTIONS.—

2 "(A) INITIAL REGULATIONS.—Not later
3 than 18 months after the date of enactment of
4 this section, the Administrator shall promulgate
5 regulations governing the auction of allowances
6 under this section. Such regulations shall in-
7 clude the following requirements:

8 "(i) FREQUENCY; FIRST AUCTION.—
9 Auctions shall be held one time per year at
10 regular intervals, with the first auction to
11 be held no later than October 31, 2011.

12 "(ii) AUCTION FORMAT.—Auctions
13 shall follow a single-round, sealed-bid, uni-
14 form price format.

15 "(iii) FINANCIAL ASSURANCE.—The
16 Administrator may establish financial as-
17 surance requirements to ensure that auc-
18 tion participants can and will perform on
19 their bids.

20 "(iv) DISCLOSURE OF BENEFICIAL
21 OWNERSHIP.—Each bidder in the auction
22 shall be required to disclose the person or
23 entity sponsoring or benefitting from the
24 bidder's participation in the auction if such
25 person or entity is, in whole or in part,

1 other than the bidder or the bidder's em-
2 ployer.
3 "(v) PUBLICATION OF INFORMA-
4 TION.—After the auction, the Adminis-
5 trator shall, in a timely fashion, publish
6 the number of bidders, number of winning
7 bidders, the quantity of allowances sold,
8 and the auction clearing price.
9 "(vi) BIDDING LIMITS IN 2012.—In
10 the vintage year 2012 auction, no auction
11 participant may, directly or in concert with
12 another participant, bid for or purchase
13 more allowances offered for sale at the
14 auction than the greater of—
15 "(I) the number of allowances
16 which, when added to the number of
17 allowances available for purchase by
18 the participant in the producer-im-
19 porter pool non-auction sale, would
20 equal the participant's annual average
21 consumption of class II, group II sub-
22 stances in calendar years 2004, 2005,
23 and 2006; or
24 "(II) the number of allowances
25 equal to the product of—

"(aa) 1.20 multiplied by the participant's allocation share of the producer-importer pool non-auction sale as determined under paragraph (4)(C)(ii); and

"(bb) the number of vintage year 2012 allowances offered at auction.

"(vii) BIDDING LIMITS IN 2013.—In the vintage year 2013 auction, no auction participant may, directly or in concert with another participant, bid for or purchase more allowances offered for sale at the auction than the product of—

"(I) 1.15 multiplied by the ratio of the total number of vintage year 2012 allowances purchased by the participant from the auction and from the producer-importer pool non-auction sale to the total number of vintage year 2012 allowances in the producer-importer pool; and

"(II) the number of vintage year 2013 allowances offered at auction.

1 "(viii) BIDDING LIMITS IN SUBSE-
2 QUENT YEARS.—In the auctions for vin-
3 tage year 2014 and subsequent vintage
4 years, no auction participant may, directly
5 or in concert with another participant, bid
6 for or purchase more allowances offered
7 for sale at the auction than the product
8 of—
9 "(I) 1.15 multiplied by the ratio
10 of the highest number of allowances
11 held by the participant in any of the
12 three prior vintage years to meet its
13 compliance obligation under para-
14 graph (1) to the total number of al-
15 lowances in the producer-importer
16 pool for such vintage year; and
17 "(II) the number of allowances
18 offered at auction for that vintage
19 year.
20 "(ix) OTHER REQUIREMENTS.—The
21 Administrator may include in the regula-
22 tions such other requirements or provisions
23 as the Administrator considers necessary
24 to promote effective, efficient, transparent,

1 and fair administration of auctions under
2 this section.
3 "(B) REVISION OF REGULATIONS.—The
4 Administrator may, at any time, revise the ini-
5 tial regulations promulgated under subpara-
6 graph (A) based on the Administrator's experi-
7 ence in administering allowance auctions. Such
8 revised regulations need not meet the require-
9 ments identified in subparagraph (A) if the Ad-
10 ministrator determines that an alternative auc-
11 tion design would be more effective, taking into
12 account factors including costs of administra-
13 tion, transparency, fairness, and risks of collu-
14 sion or manipulation. In determining whether
15 and how to revise the initial regulations under
16 this paragraph, the Administrator shall not con-
17 sider maximization of revenues to the Federal
18 Government.
19 "(C) DELEGATION OR CONTRACT.—Pursu-
20 ant to regulations under this section, the Ad-
21 ministrator may, by delegation or contract, pro-
22 vide for the conduct of auctions under the Ad-
23 ministrator's supervision by other departments
24 or agencies of the Federal Government or by

1 nongovernmental agencies, groups, or organiza-
2 tions.
3 "(7) PAYMENTS FOR ALLOWANCES.—
4 "(A) INITIAL REGULATIONS.—Not later
5 than 18 months after the date of enactment of
6 this section, the Administrator shall promulgate
7 regulations governing the payment for allow-
8 ances purchased in auction and non-auction
9 sales under this section. Such regulations shall
10 include the requirement that, in the event that
11 full payment for purchased allowances is not
12 made on the date of purchase, equal payments
13 shall be made one time per calendar quarter
14 with all payments for allowances of a vintage
15 year made by the end of that vintage year.
16 "(B) REVISION OF REGULATIONS.— The
17 Administrator may, at any time, revise the ini-
18 tial regulations promulgated under subpara-
19 graph (A) based on the Administrator's experi-
20 ence in administering collection of payments.
21 Such revised regulations need not meet the re-
22 quirements identified in subparagraph (A) if
23 the Administrator determines that an alter-
24 native payment structure or frequency would be
25 more effective, taking into account factors in-

1 cluding cost of administration, transparency,
2 and fairness. In determining whether and how
3 to revise the initial regulations under this para-
4 graph, the Administrator shall not consider
5 maximization of revenues to the Federal Gov-
6 ernment.

7 "(C) PENALTIES FOR NON-PAYMENT.—
8 Failure to pay for purchased allowances in ac-
9 cordance with the regulations promulgated pur-
10 suant to this paragraph shall be a violation of
11 the requirements of subsection (b). Section
12 113(c)(3) shall apply in the case of any person
13 who knowingly fails to pay for purchased allow-
14 ances in accordance with the regulations pro-
15 mulgated pursuant to this paragraph

16 "(8) IMPORTED PRODUCTS.—If the United
17 States becomes a party or otherwise adheres to a
18 multilateral agreement, including any amendment to
19 the Montreal Protocol on Substances That Deplete
20 the Ozone Layer, which restricts the production and
21 consumption of class II, group II substances—

22 "(A) as of the date on which such agree-
23 ment or amendment enters into force, it shall
24 no longer be unlawful for any person to import
25 from a party to such agreement or amendment

1 any product containing any class II, group II
2 substance whose production and consumption
3 are regulated by such agreement or amendment
4 without holding one consumption allowance or
5 one destruction offset credit for each carbon di-
6 oxide equivalent ton of the class II, group II
7 substance;
8 "(B) the Administrator shall promulgate
9 regulations within 12 months of the date the
10 United States becomes a party or otherwise ad-
11 heres to such agreement or amendment, or the
12 date on which such agreement or amendment
13 enters into force, whichever is later, to establish
14 a new baseline for purposes of paragraph (2),
15 which new baseline shall be the original baseline
16 less the carbon dioxide equivalent of the annual
17 average quantity of any class II substances reg-
18 ulated by such agreement or amendment con-
19 tained in products imported from parties to
20 such agreement or amendment in calendar
21 years 2004, 2005, and 2006;
22 "(C) as of the date on which such agree-
23 ment or amendment enters into force, no per-
24 son importing any product containing any class
25 II, group II substance may, directly or in con-

1 cert with another person, purchase any con-
2 sumption allowances for sale by the Adminis-
3 trator for the importation of products from a
4 party to such agreement or amendment that
5 contain any class II, group II substance re-
6 stricted by such agreement or amendment; and
7 "(D) the Administrator may adjust the
8 two allowance pools established in paragraph
9 (4) such that up to 90 percent of the consump-
10 tion allowances available for a calendar year are
11 placed in the producer-importer pool with the
12 remaining consumption allowances placed in the
13 secondary pool.
14 "(9) OFFSETS.—
15 "(A) CHLOROFLUOROCARBON DESTRUC-
16 TION.—Within 18 months after the date of en-
17 actment of this section, the Administrator shall
18 promulgate regulations to provide for the
19 issuance of offset credits for the destruction, in
20 the calendar year 2012 or later, of
21 chlorofluorocarbons in the United States. The
22 Administrator shall establish and distribute to
23 the destroying entity a quantity of destruction
24 offset credits equal to 0.8 times the number of
25 tons of carbon dioxide equivalents of reduction

1 achieved through the destruction. No destruc-
2 tion offset credits shall be established for the
3 destruction of a class II, group II substance.
4 "(B) DEFINITION.—For purposes of this
5 paragraph, the term 'destruction' means the
6 conversion of a substance by thermal, chemical,
7 or other means to another substance with little
8 or no carbon dioxide equivalent value and no
9 ozone depletion potential.
10 "(C) REGULATIONS.—The regulations pro-
11 mulgated under this paragraph shall include
12 standards and protocols for project eligibility,
13 certification of destroyers, monitoring, tracking,
14 destruction efficiency, quantification of project
15 and baseline emissions and carbon dioxide
16 equivalent value, and verification. The Adminis-
17 trator shall ensure that destruction offset cred-
18 its represent real and verifiable destruction of
19 chlorofluorocarbons or other class I or class II,
20 group I, substances authorized under subpara-
21 graph (D).
22 "(D) OTHER SUBSTANCES.—The Adminis-
23 trator may promulgate regulations to add to the
24 list of class I and class II, group I, substances
25 that may be destroyed for destruction offset

1 credits, taking into account a candidate sub-
2 stance's carbon dioxide equivalent value, ozone
3 depletion potential, prevalence in banks in the
4 United States, and emission rates, as well as
5 the need for additional cost containment under
6 the class II, group II cap and the integrity of
7 the class II, group II cap. The Administrator
8 shall not add a class I or class II, group I sub-
9 stance to the list if the consumption of the sub-
10 stance has not been completely phased-out
11 internationally (except for essential use exemp-
12 tions or other similar exemptions) pursuant to
13 the Montreal Protocol.

14 "(E) EXTENSION OF OFFSETS.—(i) At any
15 time after the Administrator promulgates regu-
16 lations pursuant to subparagraph (A), the Ad-
17 ministrator may add the types of destruction
18 projects authorized to receive destruction offset
19 credits under this paragraph to the list of types
20 of projects eligible for offset credits under sec-
21 tion 733. Nothing in this paragraph shall affect
22 the issuance of offset credits under section 740.

23 "(ii) The Administrator shall not make the
24 addition under clause (i) unless the Adminis-
25 trator finds that insufficient destruction is oc-

1 curring or is projected to occur under this para-
2 graph and that the addition would increase de-
3 struction.
4 "(iii) In no event shall more than one de-
5 struction offset credit be issued under title VII
6 and this section for the destruction of the same
7 quantity of a substance.
8 "(10) LEGAL STATUS OF ALLOWANCES AND
9 CREDITS.—None of the following constitutes a prop-
10 erty right:
11 "(A) A production or consumption allow-
12 ance.
13 "(B) A destruction offset credit.
14 "(c) DEADLINES FOR COMPLIANCE.—Notwith-
15 standing the deadlines specified for class II substances in
16 sections 608, 609, 610, 612, and 613 that occur prior to
17 January 1, 2009, the deadline for promulgating regula-
18 tions under those sections for class II, group II substances
19 shall be January 1, 2012.
20 "(d) EXCEPTIONS FOR ESSENTIAL USES.—Notwith-
21 standing any phase down of production and consumption
22 required by this section, to the extent consistent with any
23 applicable multilateral agreement to which the United
24 States is a party or otherwise adheres, the Administrator
25 may provide the following exceptions for essential uses:

1 "(1) MEDICAL DEVICES.—The Administrator,
2 after notice and opportunity for public comment,
3 and in consultation with the Commissioner of the
4 Food and Drug Administration, may provide an ex-
5 ception for the production and consumption of class
6 II, group II substances solely for use in medical de-
7 vices.

8 "(2) AVIATION SAFETY.—The Administrator,
9 after notice and opportunity for public comment,
10 may authorize the production and consumption of
11 limited quantities of class II, group II substances
12 solely for the purposes of aviation safety if the Ad-
13 ministrator of the Federal Aviation Administration,
14 in consultation with the Administrator, determines
15 that no safe and effective substitute has been devel-
16 oped and that such authorization is necessary for
17 aviation safety purposes.

18 "(e) DEVELOPING COUNTRIES.—Notwithstanding
19 any phase down of production required by this section, the
20 Administrator, after notice and opportunity for public
21 comment, may authorize the production of limited quan-
22 tities of class II, group II substances in excess of the
23 amounts otherwise allowable under this section solely for
24 export to, and use in, developing countries. Any produc-
25 tion authorized under this subsection shall be solely for

1 purposes of satisfying the basic domestic needs of such
2 countries as provided in applicable international agree-
3 ments, if any, to which the United States is a party or
4 otherwise adheres.

5 "(f) NATIONAL SECURITY; FIRE SUPPRESSION,
6 ETC..—The provisions of subsection (f) and paragraphs
7 (1) and (2) of subsection (g) of section 604 shall apply
8 to any consumption and production phase down of class
9 II, group II substances in the same manner and to the
10 same extent, consistent with any applicable international
11 agreement to which the United States is a party or other-
12 wise adheres, as such provisions apply to the substances
13 specified in such subsection.

14 "(g) ACCELERATED SCHEDULE.—In lieu of section
15 606, the provisions of paragraphs (1), (2), and (3) of this
16 subsection shall apply in the case of class II, group II sub-
17 stances.

18 "(1) IN GENERAL.—The Administrator shall
19 promulgate initial regulations not later than 18
20 months after the date of enactment of this section,
21 and revised regulations any time thereafter, which
22 establish a schedule for phasing down the consump-
23 tion (and, if the condition in subsection (b)(1)(B) is
24 met, the production) of class II, group II substances
25 that is more stringent than the schedule set forth in

1 this section if, based on the availability of sub-
2 stitutes, the Administrator determines that such
3 more stringent schedule is practicable, taking into
4 account technological achievability, safety, and other
5 factors the Administrator deems relevant, or if the
6 Montreal Protocol, or any applicable international
7 agreement to which the United States is a party or
8 otherwise adheres, is modified or established to in-
9 clude a schedule or other requirements to control or
10 reduce production, consumption, or use of any class
11 II, group II substance more rapidly than the appli-
12 cable schedule under this section.

13 "(2) PETITION.—Any person may submit a pe-
14 tition to promulgate regulations under this sub-
15 section in the same manner and subject to the same
16 procedures as are provided in section 606(b).

17 "(3) INCONSISTENCY.— If the Administrator
18 determines that the provisions of this section regard-
19 ing banking, allowance rollover, or destruction offset
20 credits create a significant potential for inconsist-
21 ency with the requirements of any applicable inter-
22 national agreement to which the United States is a
23 party or otherwise adheres, the Administrator may
24 promulgate regulations restricting the availability of
25 banking, allowance rollover, or destruction offset

1 credits to the extent necessary to avoid such incon-
2 sistency.
3 "(h) EXCHANGE.—Section 607 shall not apply in the
4 case of class II, group II substances. Production and con-
5 sumption allowances for class II, group II substances may
6 be freely exchanged or sold but may not be converted into
7 allowances for class II, group I substances.
8 "(i) LABELING.—(1) In applying section 611 to prod-
9 ucts containing or manufactured with class II, group II
10 substances, in lieu of the words 'destroying ozone in the
11 upper atmosphere' on labels required under section 611
12 there shall be substituted the words 'contributing to global
13 warming'.
14 "(2) The Administrator may, through rulemaking,
15 exempt from the requirements of section 611 products
16 containing or manufactured with class II, group II sub-
17 stances determined to have little or no carbon dioxide
18 equivalent value compared to other substances used in
19 similar products.
20 "(j) NONESSENTIAL PRODUCTS.—For the purposes
21 of section 610, class II, group II substances shall be regu-
22 lated under section 610(b), except that in applying section
23 610(b) the word 'hydrofluorocarbon' shall be substituted
24 for the word 'chlorofluorocarbon' and the term 'class II,
25 group II' shall be substituted for the term 'class I'. Class

1 II, group II substances shall not be subject to the provi-
2 sions of section 610(d).

3 "(k) INTERNATIONAL TRANSFERS.—In the case of
4 class II, group II substances, in lieu of sections 616(a)
5 and 616(b), this subsection shall apply. To the extent con-
6 sistent with any applicable international agreement to
7 which the United States is a party or otherwise adheres,
8 including any amendment to the Montreal Protocol, the
9 United States may engage in transfers with other parties
10 to such agreement or amendment under the following con-
11 ditions:

12 "(1) The United States may transfer produc-
13 tion allowances to another party to such agreement
14 or amendment if, at the time of the transfer, the
15 Administrator establishes revised production limits
16 for the United States accounting for the transfer in
17 accordance with regulations promulgated pursuant
18 to this subsection.

19 "(2) The United States may acquire production
20 allowances from another party to such agreement or
21 amendment if, at the time of the transfer, the Ad-
22 ministrator finds that the other party has revised its
23 domestic production limits in the same manner as
24 provided with respect to transfers by the United

1 States in the regulations promulgated pursuant to
2 this subsection.
3 "(l) RELATIONSHIP TO OTHER LAWS.—
4 "(1) STATE LAWS.—For purposes of section
5 116, the requirements of this section for class II,
6 group II substances shall be treated as requirements
7 for the control and abatement of air pollution.
8 "(2) INTERNATIONAL AGREEMENTS.—Section
9 614 shall apply to the provisions of this section con-
10 cerning class II, group II substances, except that for
11 the words 'Montreal Protocol' there shall be sub-
12 stituted the words 'Montreal Protocol, or any appli-
13 cable international agreement to which the United
14 States is a party or otherwise adheres that restricts
15 the production or consumption of class II, group II
16 substances,' and for the words 'Article 4 of the Mon-
17 treal Protocol' there shall be substituted 'any provi-
18 sion of such international agreement regarding trade
19 with non-parties'.
20 "(3) FEDERAL FACILITIES.—For purposes of
21 section 118, the requirements of this section for
22 class II, group II substances and corresponding
23 State, interstate, and local requirements, administra-
24 tive authority, and process and sanctions shall be
25 treated as requirements for the control and abate-

1 ment of air pollution within the meaning of section
2 118.
3 "(m) CARBON DIOXIDE EQUIVALENT VALUE.—(1)
4 In lieu of section 602(e), the provisions of this subsection
5 shall apply in the case of class II, group II substances.
6 Simultaneously with establishing the list of class II, group
7 II substances, and simultaneously with any addition to
8 that list, the Administrator shall publish the carbon diox-
9 ide equivalent value of each listed class II, group II sub-
10 stance, based on a determination of the number of metric
11 tons of carbon dioxide that makes the same contribution
12 to global warming over 100 years as 1 metric ton of each
13 class II, group II substance.
14 "(2) Not later than February 1, 2017, and not less
15 than every 5 years thereafter, the Administrator shall—
16 "(A) review, and if appropriate, revise the car-
17 bon dioxide equivalent values established for class II,
18 group II substances based on a determination of the
19 number of metric tons of carbon dioxide that makes
20 the same contributions to global warming over 100
21 years as 1 metric ton of each class II, group II sub-
22 stance; and
23 "(B) publish in the Federal Register the results
24 of that review and any revisions.

1 "(3) A revised determination published in the Federal
2 Register under paragraph (2)(B) shall take effect for pro-
3 duction of class II, group II substances, consumption of
4 class II, group II substances, and importation of products
5 containing class II, group II substances starting on Janu-
6 ary 1 of the first calendar year starting at least 9 months
7 after the date on which the revised determination was pub-
8 lished.

9 "(4) The Administrator may decrease the frequency
10 of review and revision under paragraph (2) if the Adminis-
11 trator determines that such decrease is appropriate in
12 order to synchronize such review and revisions with any
13 similar review process carried out pursuant to the United
14 Nations Framework Convention on Climate Change, an
15 agreement negotiated under that convention, The Vienna
16 Convention for the Protection of the Ozone Layer, or an
17 agreement negotiated under that convention, except that
18 in no event shall the Administrator carry out such review
19 and revision any less frequently than every 10 years.

20 "(n) REPORTING REQUIREMENTS.—In lieu of sub-
21 sections (b) and (c) of section 603, paragraphs (1) and
22 (2) of this subsection shall apply in the case of class II,
23 group II substances:

24 "(1) IN GENERAL.—On a quarterly basis, or
25 such other basis (not less than annually) as deter-

1 mined by the Administrator, each person who pro-
2 duced, imported, or exported a class II, group II
3 substance, or who imported a product containing a
4 class II, group II substance, shall file a report with
5 the Administrator setting forth the carbon dioxide
6 equivalent amount of the substance that such person
7 produced, imported, or exported, as well as the
8 amount that was contained in products imported by
9 that person, during the preceding reporting period.
10 Each such report shall be signed and attested by a
11 responsible officer. If all other reporting is complete,
12 no such report shall be required from a person after
13 April 1 of the calendar year after such person per-
14 manently ceases production, importation, and expor-
15 tation of the substance, as well as importation of
16 products containing the substance, and so notifies
17 the Administrator in writing. If the United States
18 becomes a party or otherwise adheres to a multilat-
19 eral agreement, including any amendment to the
20 Montreal Protocol on Substances That Deplete the
21 Ozone Layer, that restricts the production and con-
22 sumption of class II, group II substances, then, if all
23 other reporting is complete, no such report shall be
24 required from a person with respect to importation
25 from parties to such agreement or amendment of

1 products containing any class II, group II substance
2 restricted by such agreement or amendment, after
3 April 1 of the calendar year following the year dur-
4 ing which such agreement or amendment enters into
5 force.

6 "(2) BASELINE REPORTS FOR CLASS II, GROUP
7 II SUBSTANCES.—

8 "(A) IN GENERAL.—Unless such informa-
9 tion has been previously reported to the Admin-
10 istrator, on the date on which the first report
11 under paragraph (1) of this subsection is re-
12 quired to be filed, each person who produced,
13 imported, or exported a class II, group II sub-
14 stance, or who imported a product containing a
15 class II substance, (other than a substance
16 added to the list of class II, group II substances
17 after the publication of the initial list of such
18 substances under this section), shall file a re-
19 port with the Administrator setting forth the
20 amount of such substance that such person pro-
21 duced, imported, exported, or that was con-
22 tained in products imported by that person,
23 during each of calendar years 2004, 2005, and
24 2006.

1 "(B) PRODUCERS.—In reporting under
2 subparagraph (A), each person who produced in
3 the United States a class II substance during
4 calendar years 2004, 2005, or 2006 shall—
5 "(i) report all acquisitions or pur-
6 chases of class II substances during each
7 of calendar years 2004, 2005, and 2006
8 from all other persons who produced in the
9 United States a class II substance during
10 calendar years 2004, 2005, or 2006, and
11 supply evidence of such acquisitions and
12 purchases as deemed necessary by the Ad-
13 ministrator; and
14 "(ii) report all transfers or sales of
15 class II substances during each of calendar
16 years 2004, 2005, and 2006 to all other
17 persons who produced in the United States
18 a class II substance during calendar years
19 2004, 2005, or 2006, and supply evidence
20 of such transfers and sales as deemed nec-
21 essary by the Administrator.
22 "(C) ADDED SUBSTANCES.—In the case of
23 a substance added to the list of class II, group
24 II substances after publication of the initial list
25 of such substances under this section, each per-

1 son who produced, imported, exported, or im-
2 ported products containing such substance in
3 calendar year 2004, 2005, or 2006 shall file a
4 report with the Administrator within 180 days
5 after the date on which such substance is added
6 to the list, setting forth the amount of the sub-
7 stance that such person produced, imported,
8 and exported, as well as the amount that was
9 contained in products imported by that person,
10 in calendar years 2004, 2005, and 2006.

11 "(o) STRATOSPHERIC OZONE AND CLIMATE PROTEC-
12 TION FUND.—

13 "(1) IN GENERAL.—There is established in the
14 Treasury of the United States a Stratospheric Ozone
15 and Climate Protection Fund.

16 "(2) DEPOSITS.—The Administrator shall de-
17 posit all proceeds from the auction and non-auction
18 sale of allowances under this section into the Strato-
19 spheric Ozone and Climate Protection Fund.

20 "(3) USE.—Amounts deposited into the Strato-
21 spheric Ozone and Climate Protection Fund shall be
22 available, subject to appropriations, exclusively for
23 the following purposes:

24 "(A) RECOVERY, RECYCLING, AND REC-
25 LAMATION.—The Administrator may utilize

1 funds to establish a program to incentivize the
2 recovery, recycling, and reclamation of any
3 Class II substances in order to reduce emissions
4 of such substances.

5 "(B) MULTILATERAL FUND.—If the
6 United States becomes a party or otherwise ad-
7 heres to a multilateral agreement, including any
8 amendment to the Montreal Protocol on Sub-
9 stances That Deplete the Ozone Layer, which
10 restricts the production and consumption of
11 class II, group II substances, the Administrator
12 may utilize funds to meet any related contribu-
13 tion obligation of the United States to the Mul-
14 tilateral Fund for the Implementation of the
15 Montreal Protocol or similar multilateral fund
16 established under such multilateral agreement.

17 "(C) BEST-IN-CLASS APPLIANCES DEPLOY-
18 MENT PROGRAM.—The Secretary of Energy is
19 authorized to utilize funds to carry out the pur-
20 poses of section 214 of the American Clean En-
21 ergy and Security Act of 2009.

22 "(D) LOW GLOBAL WARMING PRODUCT
23 TRANSITION ASSISTANCE PROGRAM.—

24 "(i) IN GENERAL.—The Adminis-
25 trator, in consultation with the Secretary

1 of Energy, may utilize funds in fiscal years
2 2012 through 2022 to establish a program
3 to provide financial assistance to manufac-
4 turers of products containing class II,
5 group II substances to facilitate the transi-
6 tion to products that contain or utilize al-
7 ternative substances with no or low carbon
8 dioxide equivalent value and no ozone de-
9 pletion potential.

10 "(ii) DEFINITION.—In this subpara-
11 graph, the term 'products' means refrig-
12 erators, freezers, dehumidifiers, air condi-
13 tioners, foam insulation, technical aerosols,
14 fire protection systems, and semiconduc-
15 tors.

16 "(iii) FINANCIAL ASSISTANCE.—The
17 Administrator may provide financial assist-
18 ance to manufacturers pursuant to clause
19 (i) for—

20 "(I) the design and configuration
21 of new consumer products that use al-
22 ternative substances with no or low
23 carbon dioxide equivalent value and
24 no ozone depletion potential; and

"(II) the redesign and retooling of facilities for the manufacture of consumer products in the United States that use alternative substances with no or low carbon dioxide equivalent value and no ozone depletion potential.

"(iv) REPORTS.—For any fiscal year during which the Administrator provides financial assistance pursuant to this subparagraph, the Administrator shall submit a report to the Congress within 3 months of the end of such fiscal year detailing the amounts, recipients, specific purposes, and results of the financial assistance provided."

(b) TABLE OF CONTENTS.—The table of contents of title VI of the Clean Air Act (42 U.S.C. 7671 et seq.) is amended by adding the following new item at the end thereof:

"Sec. 619. Hydrofluorocarbons (HFCs).".

(c) FIRE SUPPRESSION AGENTS.—Section 605(a) of the Clean Air Act (42 U.S.C. 7671(a)) is amended—

(1) by striking "or" at the end of paragraph (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 the light absorbing component of
22 carbonaceous aerosols.
23 (b) BLACK CARBON ABATEMENT REPORT.—Not
24 later than one year after the date of enactment of this
25 section, the Administrator shall, in consultation with other

1 appropriate Federal agencies, submit to Congress a report
2 regarding black carbon emissions. The report shall include
3 the following:
4 (1) A summary of the current research that
5 identifies—
6 (A) an inventory of the major sources of
7 black carbon emissions in the United States
8 and throughout the world, including—
9 (i) an estimate of the quantity of cur-
10 rent and projected future emissions; and
11 (ii) the net climate forcing of the
12 emissions from such sources, including
13 consideration of co-emissions of other pol-
14 lutants;
15 (B) effective and cost-effective control
16 technologies, operations, and strategies for ad-
17 ditional domestic and international black carbon
18 emissions reductions, such as diesel retrofit
19 technologies on existing on-road and off-road
20 engines and programs to address residential
21 cookstoves, forest burning, and other agri-
22 culture-based burning;
23 (C) potential metrics quantifying the cli-
24 matic effects of black carbon emissions, includ-
25 ing its radiative forcing and warming effects,

1 that may be used to compare the climate bene-
2 fits of different mitigation strategies, including
3 an assessment of the uncertainty in such
4 metrics; and
5 (D) the public health and environmental
6 benefits associated with additional controls for
7 black carbon emissions.
8 (2) Recommendations regarding—
9 (A) development of additional emissions
10 monitoring techniques and capabilities, mod-
11 eling, and other black carbon-related areas of
12 study;
13 (B) areas of focus for additional study of
14 technologies, operations, and strategies with the
15 greatest potential to reduce emissions of black
16 carbon; and
17 (C) actions, in addition to those identified
18 by the Administrator under section 851 of the
19 Clean Air Act (as amended by subsection (c)),
20 the Federal Government may take to encourage
21 or require reductions in black carbon emissions.
22 (c) BLACK CARBON MITIGATION.—Title VIII of the
23 Clean Air Act, as added by section 331 of this Act, and
24 amended by section 222 of this Act, is further amended
25 by adding after part D the following new part:

1 **"PART E—BLACK CARBON**

2 **"SEC. 851. BLACK CARBON.**

3 "(a) DOMESTIC BLACK CARBON MITIGATION.—Not
4 later than one year after the date of enactment of this
5 section, the Administrator, taking into consideration the
6 public health and environmental impacts of black carbon
7 emissions, including the effects on global warming, the
8 Arctic, and other snow and ice-covered surfaces, shall pro-
9 pose regulations under the existing authorities of this Act
10 to reduce emissions of black carbon or propose a finding
11 that existing regulations promulgated pursuant to this Act
12 adequately regulate black carbon emissions. Not later than
13 two years after the date of enactment of this section, the
14 Administrator shall promulgate final regulations under the
15 existing authorities of this Act or finalize the proposed
16 finding.

17 "(b) INTERNATIONAL BLACK CARBON MITIGA-
18 TION.—

19 "(1) REPORT.—Not later than one year after
20 the date of enactment of this section, the Adminis-
21 trator, in coordination with the Secretary of State
22 and other appropriate Federal agencies, shall trans-
23 mit a report to Congress on the amount, type, and
24 direction of all present United States financial, tech-
25 nical, and related assistance to foreign countries to

1 reduce, mitigate, and otherwise abate black carbon
2 emissions.
3 "(2) OTHER OPPORTUNITIES.—The report re-
4 quired under paragraph (1) shall also identify oppor-
5 tunities and recommendations, including action
6 under existing authorities, to achieve significant
7 black carbon emission reductions in foreign countries
8 through technical assistance or other approaches
9 to—
10 "(A) promote sustainable solutions to
11 bring clean, efficient, safe, and affordable
12 stoves, fuels, or both stoves and fuels to resi-
13 dents of developing countries that are reliant on
14 solid fuels such as wood, dung, charcoal, coal,
15 or crop residues for home cooking and heating,
16 so as to help reduce the public health, environ-
17 mental, and economic impacts of black carbon
18 emissions from these sources by—
19 "(i) identifying key regions for large-
20 scale demonstration efforts, and key part-
21 ners in each such region; and
22 "(ii) developing for each such region a
23 large-scale implementation strategy with a
24 goal of collectively reaching 20,000,000

1 homes over 5 years with interventions that
2 will—
3 "(I) increase stove efficiency by
4 over 50 percent (or such other goal as
5 determined by the Administrator);
6 "(II) reduce emissions of black
7 carbon by over 60 percent (or such
8 other goal as determined by the Ad-
9 ministrator); and
10 "(III) reduce the incidence of se-
11 vere pneumonia in children under 5
12 years old by over 30 percent (or such
13 other goal as determined by the Ad-
14 ministrator);
15 "(B) make technological improvements to
16 diesel engines and provide greater access to
17 fuels that emit less or no black carbon;
18 "(C) reduce unnecessary agricultural or
19 other biomass burning where feasible alter-
20 natives exist;
21 "(D) reduce unnecessary fossil fuel burn-
22 ing that produces black carbon where feasible
23 alternatives exist;
24 "(E) reduce other sources of black carbon
25 emissions; and

1 "(F) improve capacity to achieve greater
2 compliance with existing laws to address black
3 carbon emissions.".
4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated such sums as are nec-
6 essary to carry out this section.
7 **SEC. 334. STATES.**
8 Section 116 of the Clean Air Act (42 U.S.C. 7416)
9 is amended by adding the following at the end thereof:
10 "For the purposes of this section, the phrases 'standard
11 or limitation respecting emissions of air pollutants' and
12 'requirements respecting control or abatement of air pollu-
13 tion' shall include any provision to: cap greenhouse gas
14 emissions, require surrender to the State or a political
15 subdivision thereof of emission allowances or offset credits
16 established or issued under this Act, and require the use
17 of such allowances or credits as a means of demonstrating
18 compliance with requirements established by a State or
19 political subdivision thereof.".
20 **SEC. 335. STATE PROGRAMS.**
21 Title VIII of the Clean Air Act, as added by section
22 331 of this Act and amended by several sections of this
23 Act, is further amended by adding after part E (as added
24 by section 333 of this Act) the following new part:

1 **"PART F—MISCELLANEOUS**

2 **"SEC. 861. STATE PROGRAMS.**

3 "Notwithstanding section 116, no State or political
4 subdivision thereof shall implement or enforce a cap and
5 trade program that covers any capped emissions emitted
6 during the years 2012 through 2017. For purposes of this
7 section, the term 'cap and trade program' means a system
8 of greenhouse gas regulation under which a State or polit-
9 ical subdivision issues a limited number of tradable instru-
10 ments in the nature of emission allowances and requires
11 that sources within its jurisdiction surrender such
12 tradeable instruments for each unit of greenhouse gases
13 emitted during a compliance period. For purposes of this
14 section, a 'cap-and-trade program' does not include a tar-
15 get or limit on greenhouse gas emissions adopted by a
16 State or political subdivision that is implemented other
17 than through the issuance and surrender of a limited num-
18 ber of tradable instruments in the nature of emission al-
19 lowances, nor does it include any other standard, limit,
20 regulation, or program to reduce greenhouse gas emissions
21 that is not implemented through the issuance and sur-
22 render of a limited number of tradeable instruments in
23 the nature of emission allowances. For purposes of this
24 section, the term 'cap and trade program' does not in-
25 clude, among other things, fleet-wide motor vehicle emis-
26 sion requirements that allow greater emissions with in-

1 creased vehicle production, or requirements that fuels, or
2 other products, meet an average pollution emission rate
3 or lifecycle greenhouse gas standard.".

4 **SEC. 336. ENFORCEMENT.**

5 (a) REMAND.—Section 307(b) of the Clean Air Act
6 (42 U.S.C. 7607(b)) is amended by adding the following
7 new paragraph at the end thereof:

8 "(3) If the court determines that any action of
9 the Administrator is arbitrary, capricious, or other-
10 wise unlawful, the court may remand such action,
11 without vacatur, if vacatur would impair or delay
12 protection of the environment or public health or
13 otherwise undermine the timely achievement of the
14 purposes of this Act.".

15 (b) PETITION FOR RECONSIDERATION.—Section
16 307(d)(7)(B) of the Clean Air Act (42 U.S.C.
17 7607(d)(7)(B)) is amended as follows:

18 (1) By inserting after the second sentence "If
19 a petition for reconsideration is filed, the Adminis-
20 trator shall take final action on such petition, in-
21 cluding promulgation of final action either revising
22 or determining not to revise the action for which re-
23 consideration is sought, within 150 days after the
24 petition is received by the Administrator or the peti-

1 tion shall be deemed denied for the purpose of judi-
2 cial review.''.
3 (2) By amending the third sentence to read as
4 follows: ''Such person may seek judicial review of
5 such denial, or of any other final action, by the Ad-
6 ministrator, in response to a petition for reconsider-
7 ation, in the United States court of appeals for the
8 appropriate circuit (as provided in subsection (b)).''.
9 **SEC. 337. CONFORMING AMENDMENTS.**
10 (a) FEDERAL ENFORCEMENT.—Section 113 of the
11 Clean Air Act (42 U.S.C. 7413) is amended as follows:
12 (1) In subsection (a)(3), by striking ''or title
13 VI,'' and inserting ''title VI, title VII, or title VIII''.
14 (2) In subsection (b), by striking ''or a major
15 stationary source'' and inserting ''a major stationary
16 source, or a covered EGU under title VIII,'' in the
17 material preceding paragraph (1).
18 (3) In paragraph (2), by striking ''or title VI''
19 and inserting ''title VI, title VII, or title VIII''.
20 (4) In subsection (c)—
21 (A) in the first sentence of paragraph (1),
22 by striking ''or title VI (relating to strato-
23 spheric ozone control),'' and inserting ''title VI
24 (relating to stratospheric ozone control), or title

1 VII or VIII (relating to reduction of greenhouse
2 gas emissions),"; and
3 (B) in the first sentence of paragraph (3),
4 by striking "or VI" and inserting "VI, VII,
5 VIII".
6 (5) In subsection (d)(1)(B), by striking "or VI"
7 and inserting "VI, VII, or VIII".
8 (6) In subsection (f), in the first sentence, by
9 striking "or VI" and inserting "VI, VII, or VIII".
10 (b) RETENTION OF STATE AUTHORITY.—Section
11 116 of the Clean Air Act (42 U.S.C. 7416) is amended
12 as follows:
13 (1) By striking "and 233" and inserting "233".
14 (2) By striking "of moving sources)" and in-
15 serting "of moving sources), and 861 (preempting
16 certain State greenhouse gas programs for a limited
17 time)".
18 (c) INSPECTIONS, MONITORING, AND ENTRY.—Sec-
19 tion 114(a) of the Clean Air Act (42 U.S.C. 7414(a)) is
20 amended by striking "section 112," and all that follows
21 through "(ii)" and inserting the following: "section 112,
22 or any regulation of greenhouse gas emissions under title
23 VII or VIII, (ii)".

1 (d) ENFORCEMENT.—Subsection (f) of section 304 of
2 the Clean Air Act (42 U.S.C. 7604(f)) is amended as fol-
3 lows:
4 (1) By striking "; or" at the end of paragraph
5 (3) thereof and inserting a comma.
6 (2) By striking the period at the end of para-
7 graph (4) thereof and inserting ", or".
8 (3) By adding the following after paragraph (4)
9 thereof:
10 "(5) any requirement of title VII or VIII.".
11 (e) ADMINISTRATIVE PROCEEDINGS AND JUDICIAL
12 REVIEW.—Section 307 of the Clean Air Act (42 U.S.C.
13 7607) is amended as follows:
14 (1) In subsection (a), by striking ", or section
15 306" and inserting "section 306, or title VII or
16 VIII".
17 (2) In subsection (b)(1)—
18 (A) by striking ",," and inserting "," in
19 each place such punctuation appears; and
20 (B) by striking "section 120," in the first
21 sentence and inserting "section 120, any final
22 action under title VII or VIII,".
23 (3) In subsection (d)(1) by amending subpara-
24 graph (S) to read as follows:

"(S) the promulgation or revision of any regulation under title VII or VIII,".

Subtitle D—Carbon Market Assurance

SEC. 341. CARBON MARKET ASSURANCE.

The Federal Power Act (16 U.S.C. 791a and following) is amended by adding at the end the following:

"PART IV—CARBON MARKET ASSURANCE

"SEC. 401. OVERSIGHT AND ASSURANCE OF CARBON MARKETS.

"(a) DEFINITIONS.—In this section:

"(1) CONTRACT OF SALE.—The term 'contract of sale' includes sales, agreements of sale, and agreements to sell.

"(2) COVERED ENTITY.—The term 'covered entity' shall have the meaning given in section 700 of the Clean Air Act.

"(3) FUTURE DELIVERY.—The term 'future delivery' does not include any sale of any cash commodity for deferred shipment or delivery.

"(4) OFFSET CREATION CONTRACT.—The term 'offset creation contract' mean a written agreement for the origination and development of an offset project, and the related issuance of offset credits, pursuant to title VII of the Clean Air Act.

1 "(5) REGULATED ALLOWANCE.—The term 'reg-
2 ulated allowance' means any emission allowance,
3 compensatory allowance, offset credit, or renewable
4 energy credit established or issued under the Amer-
5 ican Clean Energy and Security Act of 2009.
6 "(6) REGULATED ALLOWANCE DERIVATIVE.—
7 The term 'regulated allowance derivative' means an
8 instrument that is, or includes, an instrument—
9 "(A) which—
10 "(i) is of the character of, or is com-
11 monly known to the trade as, a 'put op-
12 tion', 'call option', 'privilege', 'indemnity',
13 'advance guaranty', 'decline guaranty', or
14 'swap agreement'; or
15 "(ii) is a contract of sale for future
16 delivery other than an offset creation con-
17 tract; and
18 "(B) the value of which, in whole or in
19 part, is expressly linked to the price of a regu-
20 lated allowance or another regulated allowance
21 derivative.
22 "(7) REGULATED INSTRUMENT.—The term
23 'regulated instrument' means a regulated allowance
24 or a regulated allowance derivative.
25 "(b) REGULATED ALLOWANCE MARKET.—

1 "(1) AUTHORITY.—The Commission shall pro-
2 mulgate regulations for the establishment, operation,
3 and oversight of markets for regulated allowances
4 not later than 18 months after the date of the enact-
5 ment of this section, and from time to time there-
6 after as may be appropriate.
7 "(2) REGULATIONS.—The regulations promul-
8 gated pursuant to paragraph (1) shall—
9 "(A) provide for effective and comprehen-
10 sive market oversight;
11 "(B) prohibit fraud, market manipulation
12 (including an entity's fraudulent or manipula-
13 tive conduct with respect to regulated allowance
14 derivatives that benefits the entity in regulated
15 allowance markets), and excess speculation, and
16 provide measures to limit unreasonable fluctua-
17 tion in the prices of regulated allowances;
18 "(C) facilitate compliance with title VII of
19 the Clean Air Act by covered entities;
20 "(D) ensure market transparency and rec-
21 ordkeeping deemed necessary and appropriate
22 by the Commission to provide for efficient price
23 discovery; prevention of fraud, market manipu-
24 lation, and excess speculation; and compliance
25 with title VII of the Clean Air Act and section

610 of the Public Utility Regulatory Policies Act;

"(E) as necessary, ensure that position limitations for individual market participants are established with respect to each class of regulated allowances;

"(F) as necessary, ensure that margin requirements are established for each class of regulated allowances;

"(G) provide for the formation and operation of a fair, orderly and liquid national market system that allows for the best execution in the trading of regulated allowances;

"(H) limit or eliminate counterparty risks, market power concentration risks, and other risks associated with over-the-counter trading; and

"(I) establish standards for qualification as, and operation of, trading facilities for regulated allowances;

"(J) establish standards for qualification as, and operation of, clearing organizations for trading facilities for regulated allowances; and

"(K) include such other requirements as necessary to preserve market integrity and fa-

1 cilitate compliance with title VII of the Clean
2 Air Act and section 610 of the Public Utility
3 Regulatory Policies Act and the regulations pro-
4 mulgated under such title and such section.
5 "(3) ENFORCEMENT.—
6 "(A) IN GENERAL.—If the Commission de-
7 termines, after notice and an opportunity for a
8 hearing on the record, that any entity has vio-
9 lated any rule or order issued by the Commis-
10 sion under this subsection, the Commission may
11 issue an order—
12 "(i) prohibiting the entity from trad-
13 ing on a trading facility for regulated al-
14 lowances registered with the Commission,
15 and requiring all such facilities to refuse
16 the entity all privileges for such period as
17 may be specified in the order;
18 "(ii) if the entity is registered with
19 the Commission in any capacity, sus-
20 pending for a period of not more than 6
21 months, or revoking, the registration of the
22 entity;
23 "(iii) assessing the entity a civil pen-
24 alty of not more than $1,000,000 per day
25 per violation for as long as the violation

1 continues (and in determining the amount
2 of a civil penalty, the Commission shall
3 take into account the nature and serious-
4 ness of the violation and the efforts to
5 remedy the violation); and
6 "(iv) requiring disgorgement of unjust
7 profits, restitution to entities harmed by
8 the violation as determined by the Com-
9 mission, or both.
10 "(B) AUTHORITY TO SUSPEND OR REVOKE
11 REGISTRATION.—The Commission may suspend
12 for a period of not more than 6 months, or re-
13 voke, the registration of a trading facility for
14 regulated allowances or of a clearing organiza-
15 tion registered by the Commission if, after no-
16 tice and opportunity for a hearing on the
17 record, the Commission finds that—
18 "(i) the entity violated any rule or
19 order issued by the Commission under this
20 subsection; or
21 "(ii) a director, officer, employee, or
22 agent of the entity has violated any rule or
23 order issued by the Commission under this
24 subsection.
25 "(C) CEASE AND DESIST PROCEEDINGS.—

1 "(i) IN GENERAL.—If the Commission
2 determines that any entity may be vio-
3 lating, may have violated, or may be about
4 to violate any provision of this part, or any
5 regulation promulgated by, or any restric-
6 tion, condition, or order made or imposed
7 by, the Commission under this part, and if
8 the Commission finds that the alleged vio-
9 lation or threatened violation, or the con-
10 tinuation of the violation, is likely to result
11 in significant harm to covered entities or
12 market participants, or significant harm to
13 the public interest, the Commission may
14 issue a temporary order requiring the enti-
15 ty—
16 "(I) to cease and desist from the
17 violation or threatened violation;
18 "(II) to take such action as is
19 necessary to prevent the violation or
20 threatened violation; and
21 "(III) to prevent, as the Commis-
22 sion determines to be appropriate—
23 "(aa) significant harm to
24 covered entities or market par-
25 ticipants;

1 "(bb) significant harm to
2 the public interest; and
3 "(cc) frustration of the abil-
4 ity of the Commission to conduct
5 the proceedings or to redress the
6 violation at the conclusion of the
7 proceedings.
8 "(ii) TIMING OF ENTRY.—An order
9 issued under clause (i) shall be entered
10 only after notice and opportunity for a
11 hearing, unless the Commission determines
12 that notice and hearing before entry would
13 be impracticable or contrary to the public
14 interest.
15 "(iii) EFFECTIVE DATE.—A tem-
16 porary order issued under clause (i)
17 shall—
18 "(I) become effective upon serv-
19 ice upon the entity; and
20 "(II) unless set aside, limited, or
21 suspended by the Commission or a
22 court of competent jurisdiction, re-
23 main effective and enforceable pend-
24 ing the completion of the proceedings.

1 "(D) PROCEEDINGS REGARDING DISSIPA-
2 TION OR CONVERSION OF ASSETS.—
3 "(i) IN GENERAL.—In a proceeding
4 involving an alleged violation of a regula-
5 tion or order promulgated or issued by the
6 Commission, if the Commission determines
7 that the alleged violation or related cir-
8 cumstances are likely to result in signifi-
9 cant dissipation or conversion of assets,
10 the Commission may issue a temporary
11 order requiring the respondent to take
12 such action as is necessary to prevent the
13 dissipation or conversion of assets.
14 "(ii) TIMING OF ENTRY.—An order
15 issued under clause (i) shall be entered
16 only after notice and opportunity for a
17 hearing, unless the Commission determines
18 that notice and hearing before entry would
19 be impracticable or contrary to the public
20 interest.
21 "(iii) EFFECTIVE DATE.—A tem-
22 porary order issued under clause (i)
23 shall—
24 "(I) become effective upon serv-
25 ice upon the respondent; and

1 "(II) unless set aside, limited, or
2 suspended by the Commission or a
3 court of competent jurisdiction, re-
4 main effective and enforceable pend-
5 ing the completion of the proceedings.
6 "(E) REVIEW OF TEMPORARY ORDERS.—
7 "(i) APPLICATION FOR REVIEW.—At
8 any time after a respondent has been
9 served with a temporary cease-and-desist
10 order pursuant to subparagraph (C) or
11 order regarding the dissipation or conver-
12 sion of assets pursuant to subparagraph
13 (D), the respondent may apply to the Com-
14 mission to have the order set aside, lim-
15 ited, or suspended.
16 "(ii) NO PRIOR HEARING.—If a re-
17 spondent has been served with a temporary
18 order entered without a prior hearing of
19 the Commission—
20 "(I) the respondent may, not
21 later than 10 days after the date on
22 which the order was served, request a
23 hearing on the application; and
24 "(II) the Commission shall hold a
25 hearing and render a decision on the

1 application at the earliest practicable
2 time.
3 "(iii) JUDICIAL REVIEW.—
4 "(I) IN GENERAL.—An entity
5 shall not be required to submit a re-
6 quest for rehearing of a temporary
7 order before seeking judicial review in
8 accordance with this subparagraph.
9 "(II) TIMING OF REVIEW.—Not
10 later than 10 days after the date on
11 which a respondent is served with a
12 temporary cease-and-desist order en-
13 tered with a prior hearing of the Com-
14 mission, or 10 days after the date on
15 which the Commission renders a deci-
16 sion on an application and hearing
17 under clause (i) with respect to any
18 temporary order entered without such
19 a prior hearing—
20 "(aa) the respondent may
21 obtain a review of the order in a
22 United States circuit court hav-
23 ing jurisdiction over the circuit in
24 which the respondent resides or
25 has a principal place of business,

1 or in the United States Court of
2 Appeals for the District of Co-
3 lumbia Circuit, for an order set-
4 ting aside, limiting, or sus-
5 pending the effectiveness or en-
6 forcement of the order; and
7 "(bb) the court shall have
8 jurisdiction to enter such an
9 order.
10 "(III) NO PRIOR HEARING.—A
11 respondent served with a temporary
12 order entered without a prior hearing
13 of the Commission may not apply to
14 the applicable court described in sub-
15 clause (II) except after a hearing and
16 decision by the Commission on the ap-
17 plication of the respondent under
18 clauses (i) and (ii).
19 "(iv) PROCEDURES.—Section 222 and
20 Part III shall apply to—
21 "(I) an application for review of
22 an order under clause (i); and
23 "(II) an order subject to review
24 under clause (iii).

1 "(v) NO AUTOMATIC STAY OF TEM-
2 PORARY ORDER.—The commencement of
3 proceedings under clause (iii) shall not, un-
4 less specifically ordered by the court, oper-
5 ate as a stay of the order of the Commis-
6 sion.
7 "(F) ACTIONS TO COLLECT CIVIL PEN-
8 ALTIES.—If any person fails to pay a civil pen-
9 alty assessed under this subsection after an
10 order assessing the penalty has become final
11 and unappealable, the Commission shall bring
12 an action to recover the amount of the penalty
13 in any appropriate United States district court.
14 In any such action, the validity or appropriate-
15 ness of the final assessment order or judgment
16 shall not be subject to review.
17 "(4) TRANSACTION FEES.—
18 "(A) IN GENERAL.—The Commission
19 shall, in accordance with this paragraph, estab-
20 lish and collect transaction fees designed to re-
21 cover the costs to the Federal Government of
22 the supervision and regulation of regulated al-
23 lowance markets and market participants, in-
24 cluding related costs for enforcement activities,
25 policy and rulemaking activities, administration,

1 legal services, and international regulatory ac-
2 tivities.
3 "(B) INITIAL FEE RATE.—Each trading
4 facility on or through which regulated allow-
5 ances are transacted shall pay to the Commis-
6 sion a fee at a rate of not more than $15 per
7 $1,000,000 of the aggregate dollar amount of
8 sales of regulated allowances transacted
9 through the facility.
10 "(C) ANNUAL ADJUSTMENT OF FEE
11 RATE.—The Commission shall, on an annual
12 basis—
13 "(i) assess the rate at which fees are
14 to be collected as necessary to meet the
15 cost recovery requirement in subparagraph
16 (A); and
17 "(ii) consistent with subparagraph
18 (B), adjust the rate as necessary in order
19 to meet the requirement.
20 "(D) REPORT ON ADEQUACY OF FEES IN
21 RECOVERING COSTS.—The Commission, shall,
22 on an annual basis, report to the Committee on
23 Energy and Commerce of the House of Rep-
24 resentatives and the Committee on Energy and
25 Natural Resources of the Senate on the ade-

1 quacy of the transaction fees in providing fund-
2 ing for the Commission to regulate the regu-
3 lated allowance markets.
4 "(5) JUDICIAL REVIEW.—Judicial review of ac-
5 tions taken by the Commission under this subsection
6 shall be pursuant to part III.
7 "(6) INFORMATION-SHARING.—Within 6
8 months after a Federal agency with jurisdiction over
9 regulated allowance derivatives is delegated author-
10 ity pursuant to subsection (c)(1), the agency shall
11 enter into a memorandum of understanding with the
12 Commission relating to information sharing, which
13 shall include provisions ensuring that information re-
14 quests to markets within the respective jurisdiction
15 of the agency are properly coordinated to facilitate,
16 among other things, effective information-sharing
17 while minimizing duplicative information requests,
18 and provisions regarding the treatment of propri-
19 etary information.
20 "(7) ADDITIONAL EMPLOYEES REPORT AND AP-
21 POINTMENT.—Within 18 months after the date of
22 the enactment of this section, the Commission shall
23 submit to the President, the Committee on Energy
24 and Commerce of the House of Representatives, and
25 the Committee on Energy and Natural Resources of

1 the Senate, a report that contains recommendations
2 as to how many additional employees would be nec-
3 essary to provide robust oversight and enforcement
4 of the regulations promulgated under this sub-
5 section. As soon as practicable after the completion
6 of the report, subject to appropriations, the Commis-
7 sion shall appoint the recommended number of addi-
8 tional employees for such purposes.
9 "(c) DELEGATION OF AUTHORITY BY THE PRESI-
10 DENT.—
11 "(1) DELEGATION.—The President, taking into
12 consideration the recommendations of the inter-
13 agency working group established in subsection (d),
14 shall delegate to members of the working group and
15 the heads of other appropriate Federal agencies the
16 authority to promulgate regulations for the estab-
17 lishment, operation, and oversight of all markets for
18 regulated allowance derivatives.
19 "(2) REGULATIONS.—The regulations promul-
20 gated pursuant to paragraph (1) shall—
21 "(A) provide for effective and comprehen-
22 sive market oversight;
23 "(B) prohibit fraud, market manipulation,
24 and excess speculation, and provide measures to

1 limit unreasonable fluctuation in the prices of
2 regulated allowance derivatives;
3 "(C) facilitate compliance with title VII of
4 the Clean Air Act by covered entities;
5 "(D) ensure market transparency and rec-
6 ordkeeping necessary to provide for efficient
7 price discovery; prevention of fraud, market ma-
8 nipulation, and excess speculation; and compli-
9 ance with title VII of the Clean Air Act and
10 section 610 of the Public Utility Regulatory
11 Policies Act;
12 "(E) ensure that position limitations for
13 individual market participants are established
14 with respect to each regulated allowance deriva-
15 tive and aggregate position limitations for indi-
16 vidual market participants are established with
17 respect to all regulated allowance derivative
18 markets;
19 "(F) ensure that margin requirements are
20 established for each regulated allowance deriva-
21 tive;
22 "(G) provide for the formation and oper-
23 ation of a market system that allows for best
24 execution in the trading of regulated allowance
25 derivatives;

1 "(H) to the extent the regulations deviate
2 from the rule set forth in paragraph (4)(B),
3 limit or eliminate counterparty risks, market
4 power concentration risks, and other risks asso-
5 ciated with over-the-counter trading, and pro-
6 mulgate reporting and market transparency
7 rules for large traders;
8 "(I) ensure that market participants do
9 not evade position limits or otherwise under-
10 mine the integrity and effectiveness of the regu-
11 lations promulgated under subparagraph (C)
12 through participation in markets not subject to
13 the position limits and regulations;
14 "(J) establish standards, as necessary, for
15 qualification as, and operation of, trading facili-
16 ties for regulated allowance derivatives;
17 "(K) establish standards, as necessary, for
18 qualification as, and operation of, clearing orga-
19 nizations for trading facilities for regulated al-
20 lowance derivatives;
21 "(L) provide boards of trade designated as
22 contract markets under the Commodity Ex-
23 change Act, and market participants, with an
24 adequate transition period for compliance with

1 any new regulatory requirements established
2 under this paragraph;
3 "(M) determine whether and to what ex-
4 tent offset creation contracts, to the extent in-
5 corporating regulated allowance derivatives,
6 should be governed by the same regulations
7 that apply to other regulated allowance deriva-
8 tives; and
9 "(N) include such other requirements as
10 necessary to preserve market integrity and fa-
11 cilitate compliance with title VII of the Clean
12 Air Act and section 610 of the Public Utility
13 Regulatory Policies Act and the regulations pro-
14 mulgated under such title and such section.
15 "(3) DEADLINE.—The agencies authorized to
16 promulgate regulations for the establishment, oper-
17 ation, and oversight of markets for regulated allow-
18 ance derivatives pursuant to paragraph (1) shall
19 promulgate such regulations not later than 18
20 months after the date of enactment of this section,
21 and from time to time thereafter as may be appro-
22 priate.
23 "(4) DEFAULT RULES.—
24 "(A) An individual market participant, di-
25 rectly or in concert with another participant,

1 shall not control more than 10 percent of the
2 open interest in any regulated allowance deriva-
3 tive.
4 "(B) All contracts for the purchase or sale
5 of any regulated allowance derivative shall be
6 executed on or through a board of trade des-
7 ignated as a contract market under the Com-
8 modity Exchange Act.
9 "(C) To the extent that regulations pro-
10 mulgated under this subsection provide dif-
11 ferent rules with respect to the matters de-
12 scribed in subparagraph (A) or (B), the regula-
13 tions shall supersede subparagraph (A) or (B),
14 as the case may be.
15 "(d) WORKING GROUP.—
16 "(1) ESTABLISHMENT.—Not later than 30 days
17 after the date of the enactment of this section, the
18 President shall establish an interagency working
19 group on carbon market oversight, which shall in-
20 clude the Administrator of the Environmental Pro-
21 tection Agency and representatives of other relevant
22 agencies, to make recommendations to the President
23 regarding proposed regulations for the establish-
24 ment, operation, and oversight of markets for regu-
25 lated allowance derivatives.

1 "(2) REPORT.—Not later than 180 days after
2 the date of the enactment of this section, and bienni-
3 ally thereafter, the interagency working group shall
4 submit a written report to the President and Con-
5 gress that includes its recommendations to the
6 President regarding proposed regulations for the es-
7 tablishment, operation, and oversight of markets for
8 regulated allowance derivatives and any rec-
9 ommendations to Congress for statutory changes
10 needed to ensure the establishment, operation, and
11 oversight of transparent, fair, stable, and efficient
12 markets for regulated allowance derivatives.
13 "(e) ENFORCEMENT OF REGULATIONS.—Each Fed-
14 eral agency that promulgates under subsection (c) a regu-
15 lation of conduct with respect to a regulated allowance de-
16 rivative shall have the same authority to enforce compli-
17 ance with the regulation as the Commodity Futures Trad-
18 ing Commission has to enforce compliance with any regu-
19 lation of similar conduct with respect to a contract, agree-
20 ment, or transaction over which the Commodity Futures
21 Trading Commission has jurisdiction, except that any en-
22 forcement by the Federal Energy Regulatory Commission
23 shall be pursuant to section 222 and Part III.
24 "(f) PROHIBITION ON PRICE OR MARKET MANIPULA-
25 TION, FRAUD, AND FALSE OR MISLEADING STATEMENTS

1 OR REPORTS.—(1) It shall be a felony punishable by a
2 fine of not more than $25,000,000 (or $5,000,000 in the
3 case of a person who is an individual) or imprisonment
4 for not more than 20 years, or both, together with the
5 costs of prosecution for any person, directly or indirectly—
6 "(A) in connection with a transaction involving
7 a regulated instrument, to knowingly—
8 "(i) use any manipulative or deceptive de-
9 vice or contrivance in violation of regulations
10 promulgated pursuant to this section;
11 "(ii) corner or attempt to corner the regu-
12 lated instrument; or
13 "(iii) cheat or defraud, or attempt to cheat
14 or defraud, any other person;
15 "(B) to knowingly deliver or cause to be deliv-
16 ered a false, misleading, or inaccurate report con-
17 cerning information or conditions that affect or tend
18 to affect the price of a regulated instrument;
19 "(C) to knowingly make, or cause to be made,
20 in an application, report, or document required to be
21 filed under any regulation promulgated pursuant to
22 this section, a statement which is false or misleading
23 with respect to a material fact, or to omit any mate-
24 rial fact required to be stated therein or necessary
25 to make the statements therein not misleading; or

1 "(D) to knowingly falsify, conceal, or cover up
2 by any trick, scheme, or artifice a material fact,
3 make any false, fictitious, or fraudulent statements
4 or representations, or make or use any false writing
5 or document that contains a false, fictitious, or
6 fraudulent statement or entry, to an entity on or
7 through which transactions in regulated instruments
8 occur, or are settled or cleared, acting in furtherance
9 of its official duties under this section or regulations
10 promulgated under this section.

11 "(2) If a person is found guilty of a felony established
12 in paragraph (1), the person may be prohibited from hold-
13 ing or trading regulated instruments for a period of not
14 more than 5 years pursuant to the regulations promul-
15 gated under this section, except that, if the person is a
16 covered entity, the person shall be allowed to hold suffi-
17 cient regulated allowances to meet its compliance obliga-
18 tions.

19 "(g) RELATION TO STATE LAW.—Nothing in this
20 section shall preclude, diminish or qualify any authority
21 of a State or political subdivision thereof to adopt or en-
22 force any unfair competition, antitrust, consumer protec-
23 tion, securities, commodities or any other law or regula-
24 tion, except that no such State law or regulation may re-

1 lieve any person of any requirement otherwise applicable
2 under this section.
3 "(h) MARKET REPORTS.—
4 "(1) COLLECTION AND ANALYSIS OF INFORMA-
5 TION.—The Commission, in conjunction with the
6 Federal agency with jurisdiction over regulated al-
7 lowance derivatives pursuant to subsection (c)(1),
8 shall, on a continuous basis, collect and analyze the
9 following information on the functioning of the mar-
10 kets for regulated instruments established under this
11 part:
12 "(A) The status of, and trends in, the
13 markets, including prices, trading volumes,
14 transaction types, and trading channels and
15 mechanisms.
16 "(B) Spikes, collapses, and volatility in
17 prices of regulated instruments, and the causes
18 therefor.
19 "(C) The relationship between the market
20 for regulated allowances and allowance deriva-
21 tives, and the spot and futures markets for en-
22 ergy commodities, including electricity.
23 "(D) Evidence of fraud or manipulation in
24 any such market, the effects on any such mar-
25 ket of any such fraud or manipulation (or

1 threat of fraud or manipulation) that the Com-
2 mission, in conjunction with the Federal agen-
3 cy, has identified, and the effectiveness of cor-
4 rective measures undertaken by the Commis-
5 sion, in conjunction with the Federal agency, to
6 address the fraud, manipulation, or threat.
7 "(E) The economic effects of the markets,
8 including to macro- and micro-economic effects
9 of unexpected significant increases and de-
10 creases in the price of regulated instruments.
11 "(F) Any changes in the roles, activities,
12 or strategies of various market participants.
13 "(G) Regional, industrial, and consumer
14 responses to the markets, and energy invest-
15 ment responses to the markets.
16 "(H) Any other issue related to the mar-
17 kets that the Commission, in conjunction with
18 the entities, deems appropriate.
19 "(2) ANNUAL REPORTS TO THE CONGRESS.—
20 Not later than 1 month after the end of each cal-
21 endar year, the Commission, in conjunction with the
22 Federal agency, shall submit to the President, the
23 Committee on Energy and Commerce of the House
24 of Representatives, and the Committee on Energy
25 and Natural Resources of the Senate, and make

available to the public, a report on the matters described in paragraph (1) with respect to the year, including recommendations for any administrative or statutory measures the Commission, in conjunction with the Federal agency, considers necessary to address any threats to the transparency, fairness, or integrity of the markets in regulated instruments.''.

Subtitle E—Additional Market Assurance

SEC. 351. REGULATION OF CERTAIN TRANSACTIONS IN DERIVATIVES INVOLVING ENERGY COMMODITIES.

(a) ENERGY COMMODITY DEFINED.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (14), by inserting '', an energy commodity,'' after ''excluded commodity'';

(2) by redesignating paragraphs (13) through (21) and paragraphs (22) through (34) as paragraphs (14) through (22) and paragraphs (24) through (36), respectively;

(3) by inserting after paragraph (12) the following:

''(13) ENERGY COMMODITY.—The term 'energy commodity' means—

''(A) coal;

1 "(B) crude oil, gasoline, diesel fuel, jet
2 fuel, heating oil, and propane;
3 "(C) electricity (excluding financial trans-
4 mission rights which are subject to regulation
5 and oversight by the Federal Energy Regu-
6 latory Commission);
7 "(D) natural gas; and
8 "(E) any other substance (other than an
9 excluded commodity, a metal, or an agricultural
10 commodity) that is used as a source of energy,
11 as the Commission, in its discretion, deems ap-
12 propriate."; and
13 (4) by inserting after paragraph (22) (as so re-
14 designated by paragraph (2) of this subsection) the
15 following:
16 "(23) INCLUDED ENERGY TRANSACTION.—The
17 term 'included energy transaction' means a contract,
18 agreement, or transaction in an energy commodity
19 for future delivery that provides for a delivery point
20 of the energy commodity in the United States or a
21 territory or possession of the United States, or that
22 is offered or transacted on or through a computer
23 terminal located in the United States.".
24 (b) EXTENSION OF REGULATORY AUTHORITY TO
25 SWAPS INVOLVING ENERGY TRANSACTIONS.—Section

1 2(g) of such Act (7 U.S.C. 2(g)) is amended by inserting
2 "or an energy commodity" after "agricultural com-
3 modity".

4 (c) ELIMINATION OF EXEMPTION FOR OVER-THE-
5 COUNTER SWAPS INVOLVING ENERGY COMMODITIES.—
6 Section 2(h)(1) of such Act (7 U.S.C. 2(h)(1)) is amended
7 by inserting "(other than an energy commodity)" after
8 "exempt commodity".

9 (d) EXTENSION OF REGULATORY AUTHORITY TO IN-
10 CLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS
11 OF TRADE.—Section 4 of such Act (7 U.S.C. 6) is amend-
12 ed—

13 (1) in subsection (a), by inserting ", and which
14 is not an included energy transaction" after "terri-
15 tories or possessions" the 2nd place it appears; and

16 (2) in subsection (b), by adding at the end the
17 following: "The preceding sentence shall not apply
18 with respect to included energy transactions.".

19 (e) LIMITATION OF GENERAL EXEMPTIVE AUTHOR-
20 ITY OF THE CFTC WITH RESPECT TO INCLUDED EN-
21 ERGY TRANSACTIONS.—

22 (1) IN GENERAL.—Section 4(c) of such Act (7
23 U.S.C. 6(c)) is amended by adding at the end the
24 following:

1 "(6) The Commission may not exempt any in-
2 cluded energy transaction from the requirements of
3 subsection (a), unless the Commission provides 60
4 days advance notice to the Congress and the Posi-
5 tion Limit Energy Advisory Group and solicits pub-
6 lic comment about the exemption request and any
7 proposed Commission action.".
8 (2) NULLIFICATION OF NO-ACTION LETTER EX-
9 EMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE
10 TO INCLUDED ENERGY TRANSACTIONS.—Beginning
11 180 days after the date of the enactment of this Act,
12 any exemption provided by the Commodity Futures
13 Trading Commission that has allowed included en-
14 ergy transactions (as defined in section 1a(13) of
15 the Commodity Exchange Act) to be conducted with-
16 out regard to the requirements of section 4(a) of
17 such Act shall be null and void.
18 (f) REQUIREMENT TO ESTABLISH UNIFORM SPECU-
19 LATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS.—
20 (1) IN GENERAL.—Section 4a(a) of such Act (7
21 U.S.C. 6a(a)) is amended—
22 (A) by inserting "(1)" after "(a)";
23 (B) by inserting after the 2nd sentence the
24 following: "With respect to energy transactions,
25 the Commission shall fix limits on the aggre-

1 gate number of positions which may be held by
2 any person for each month across all markets
3 subject to the jurisdiction of the Commission.";
4 (C) in the 4th sentence by inserting ", con-
5 sistent with the 3rd sentence," after "Commis-
6 sion"; and
7 (D) by adding after and below the end the
8 following:
9 "(2)(A) Not later than 60 days after the date of the
10 enactment of this paragraph, the Commission shall con-
11 vene a Position Limit Energy Advisory Group consisting
12 of representatives from—
13 "(i) 7 predominantly commercial short hedgers
14 of the actual energy commodity for future delivery;
15 "(ii) 7 predominantly commercial long hedgers
16 of the actual energy commodity for future delivery;
17 "(iii) 4 non-commercial participants in markets
18 for energy commodities for future delivery; and
19 "(iv) each designated contract market or de-
20 rivatives transaction execution facility upon which a
21 contract in the energy commodity for future delivery
22 is traded, and each electronic trading facility that
23 has a significant price discovery contract in the en-
24 ergy commodity.

1 "(B) Not later than 60 days after the date on which
2 the advisory group is convened under subparagraph (A),
3 and annually thereafter, the advisory group shall submit
4 to the Commission advisory recommendations regarding
5 the position limits to be established in paragraph (1).
6 "(C) The Commission shall have exclusive authority
7 to grant exemptions for bona fide hedging transactions
8 and positions from position limits imposed under this Act
9 on energy transactions.".
10 (2) CONFORMING AMENDMENTS.—
11 (A) SIGNIFICANT PRICE DISCOVERY CON-
12 TRACTS.—Section 2(h)(7) of such Act (7 U.S.C.
13 2(h)(7)) is amended—
14 (i) in subparagraph (A)—
15 (I) by inserting "of this para-
16 graph and section 4a(a)" after "(B)
17 through (D)"; and
18 (II) by inserting "of this para-
19 graph" before the period; and
20 (ii) in subparagraph (C)(ii)(IV)—
21 (I) in the heading, by striking
22 "LIMITATIONS OR"; and
23 (II) by striking "position limita-
24 tions or".

1 (B) CONTRACTS TRADED ON OR THROUGH
2 DESIGNATED CONTRACT MARKETS.—Section
3 5(d)(5) of such Act (7 U.S.C. 7(d)(5)) is
4 amended—
5 (i) in the heading by striking "LIMI-
6 TATIONS OR"; and
7 (ii) by striking "position limitations
8 or".
9 (C) CONTRACTS TRADED ON OR THROUGH
10 DERIVATIVES TRANSACTION EXECUTION FACILI-
11 TIES.—Section 5a(d)(4) of such Act (7 U.S.C.
12 7a(d)(4)) is amended—
13 (i) in the heading by striking "LIMI-
14 TATIONS OR"; and
15 (ii) by striking "position limits or".
16 (g) ELIMINATION OF THE SWAPS LOOPHOLE.—Sec-
17 tion 4a(c) of such Act (7 U.S.C. 6a(c)) is amended—
18 (1) by inserting "(1)" after "(c)"; and
19 (2) by adding after and below the end the fol-
20 lowing:
21 "(2) For the purposes of contracts of sale for future
22 delivery and options on such contracts or commodities, the
23 Commission shall define what constitutes a bona fide
24 hedging transaction or position as a transaction or posi-
25 tion that—

1 "(A)(i) represents a substitute for transactions
2 made or to be made or positions taken or to be
3 taken at a later time in a physical marketing chan-
4 nel;
5 "(ii) is economically appropriate to the reduc-
6 tion of risks in the conduct and management of a
7 commercial enterprise; and
8 "(iii) arises from the potential change in the
9 value of—
10 "(I) assets that a person owns, produces,
11 manufactures, processes, or merchandises or
12 anticipates owning, producing, manufacturing,
13 processing, or merchandising;
14 "(II) liabilities that a person owns or an-
15 ticipates incurring; or
16 "(III) services that a person provides, pur-
17 chases, or anticipates providing or purchasing;
18 or
19 "(B) reduces risks attendant to a position re-
20 sulting from a transaction that—
21 "(i) was executed pursuant to subsection
22 (d), (g), (h)(1), or (h)(2) of section 2, or an ex-
23 emption issued by the Commission by rule, reg-
24 ulation or order; and

1 "(ii) was executed opposite a counterparty
2 for which the transaction would qualify as a
3 bona fide hedging transaction pursuant to para-
4 graph (2)(A) of this subsection.".
5 (h) DETAILED REPORTING AND DISAGGREGATION OF
6 MARKET DATA.—Section 4 of such Act (7 U.S.C. 6) is
7 amended by adding at the end the following:
8 "(e) DETAILED REPORTING AND DISAGGREGATION
9 OF MARKET DATA.—
10 "(1) INDEX TRADERS AND SWAP DEALERS RE-
11 PORTING.—The Commission shall issue a proposed
12 rule defining and classifying index traders and swap
13 dealers (as those terms are defined by the Commis-
14 sion) for purposes of data reporting requirements
15 and setting routine detailed reporting requirements
16 for any positions of such entities in contracts traded
17 on designated contract markets, over-the-counter
18 markets, derivatives transaction execution facilities,
19 foreign boards of trade subject to section 4(f), and
20 electronic trading facilities with respect to signifi-
21 cant price discovery contracts not later than 120
22 days after the date of the enactment of this sub-
23 section, and issue a final rule within 180 days after
24 such date of enactment.

1 "(2) DISAGGREGATION OF INDEX FUNDS AND
2 OTHER DATA IN MARKETS.—Subject to section 8
3 and beginning within 60 days of the issuance of the
4 final rule required by paragraph (1), the Commis-
5 sion shall disaggregate and make public weekly—
6 "(A) the number of positions and total no-
7 tional value of index funds and other passive,
8 long-only and short-only positions (as defined
9 by the Commission) in all markets to the extent
10 such information is available; and
11 "(B) data on speculative positions relative
12 to bona fide physical hedgers in those markets
13 to the extent such information is available.
14 "(3) DISCLOSURE OF IDENTITY OF HOLDERS
15 OF POSITIONS IN INDEXES IN EXCESS OF POSITION
16 LIMITS.—The Commission shall include in its weekly
17 Commitment of Trader reports the identity of each
18 person who holds a position in an index in excess of
19 a limit imposed under section 4i.".
20 (i) AUTHORITY TO SET LIMITS TO PREVENT EXCES-
21 SIVE SPECULATION IN INDEXES.—
22 (1) IN GENERAL.—Section 4a of such Act (7
23 U.S.C. 6a) is amended by adding at the end the fol-
24 lowing:

1 "(f) The provisions of this section shall apply to the
2 amounts of trading which may be done or positions which
3 may be held by any person under contracts of sale of an
4 index for future delivery on or subject to the rules of any
5 contract market, derivatives transaction execution facility,
6 or over-the-counter market, or on an electronic trading fa-
7 cility with respect to a significant price discovery contract,
8 in the same manner in which this section applies to con-
9 tracts of sale of a commodity for future delivery.".

10 (2) REGULATIONS.—The Commodity Futures
11 Trading Commission shall issue regulations under
12 section 4a(f) of the Commodity Exchange Act within
13 180 days after the date of the enactment of this Act.

14 **SEC. 352. NO EFFECT ON AUTHORITY OF THE FEDERAL EN-**
15 **ERGY REGULATORY COMMISSION.**

16 Section 2 of the Commodity Exchange Act (7 U.S.C.
17 2) is amended by adding at the end the following:.

18 "(j) NO EFFECT ON FERC AUTHORITY.—This Act
19 shall not be interpreted to affect the jurisdiction of the
20 Federal Energy Regulatory Commission with respect to
21 the authority of the Federal Energy Regulatory Commis-
22 sion under the Federal Power Act (16 U.S.C. 791a et
23 seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or
24 other law to obtain information, carry out enforcement ac-

1 tions, or otherwise carry out the responsibilities of the
2 Federal Energy Regulatory Commission.''.

3 **SEC. 353. INSPECTOR GENERAL OF THE COMMODITY FU-**
4 **TURES TRADING COMMISSION.**

5 (a) ELEVATION OF OFFICE.—

6 (1) INCLUSION OF CFTC IN DEFINITION OF ES-
7 TABLISHMENT.—

8 (A) Section 11(1) of the Inspector General
9 Act of 1978 (5 U.S.C. App.) is amended by
10 striking ''or the Federal Cochairpersons of the
11 Commissions established under section 15301
12 of title 40, United States Code;'' and inserting
13 ''the Federal Cochairpersons of the Commis-
14 sions established under section 15301 of title
15 40, United States Code; or the Chairman of the
16 Commodity Futures Trading Commission;''.

17 (B) Section 11(2) of the Inspector General
18 Act of 1978 (5 U.S.C. App.) is amended by
19 striking ''or the Commissions established under
20 section 15301 of title 40, United States Code,''
21 and inserting ''the Commissions established
22 under section 15301 of title 40, United States
23 Code, or the Commodity Futures Trading Com-
24 mission,''.

1 (2) EXCLUSION OF CFTC FROM DEFINITION OF
2 DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2)
3 of the Inspector General Act of 1978 (5 U.S.C.
4 App.) is amended by striking "the Commodity Fu-
5 tures Trading Commission,".
6 (b) EFFECTIVE DATE; TRANSITION RULE.—
7 (1) EFFECTIVE DATE.—The amendments made
8 by this section shall take effect 30 days after the
9 date of the enactment of this Act.
10 (2) TRANSITION RULE.—An individual serving
11 as Inspector General of the Commodity Futures
12 Trading Commission on the effective date of this
13 section pursuant to an appointment made under sec-
14 tion 8G of the Inspector General Act of 1978 (5
15 U.S.C. App.)—
16 (A) may continue so serving until the
17 President makes an appointment under section
18 3(a) of such Act consistent with the amend-
19 ments made by this section; and
20 (B) shall, while serving under subpara-
21 graph (A), remain subject to the provisions of
22 section 8G of such Act which apply with respect
23 to the Commodity Futures Trading Commis-
24 sion.

1 **SEC. 354. SETTLEMENT AND CLEARING THROUGH REG-**
2 **ISTERED DERIVATIVES CLEARING ORGANIZA-**
3 **TIONS.**
4 (a) IN GENERAL.—
5 (1) APPLICATION TO EXCLUDED DERIVATIVE
6 TRANSACTIONS.—
7 (A) Section 2(d)(1) of the Commodity Ex-
8 change Act (7 U.S.C. 2(d)(1)) is amended—
9 (i) by striking "and" at the end of
10 subparagraph (A);
11 (ii) by striking the period at the end
12 of subparagraph (B) and inserting "and";
13 and
14 (iii) by adding at the end the fol-
15 lowing:
16 "(C) except as provided in section 4(f), the
17 agreement, contract, or transaction is settled
18 and cleared through a derivatives clearing orga-
19 nization registered with the Commission.".
20 (B) Section 2(d)(2) of such Act (7 U.S.C.
21 2(d)(2)) is amended—
22 (i) by striking "and" at the end of
23 subparagraph (B);
24 (ii) by striking the period at the end
25 of subparagraph (C) and inserting "; and";
26 and

1 (iii) by adding at the end the fol-
2 lowing:
3 "(D) except as provided in section 4(f), the
4 agreement, contract, or transaction is settled
5 and cleared through a derivatives clearing orga-
6 nization registered with the Commission.".
7 (2) APPLICATION TO CERTAIN SWAP TRANS-
8 ACTIONS.—Section 2(g) of such Act (7 U.S.C. 2(g))
9 is amended—
10 (A) by striking "and" at the end of para-
11 graph (2);
12 (B) by striking the period at the end of
13 paragraph (3) and inserting "; and"; and
14 (C) by adding at the end the following:
15 "(4) except as provided in section 4(f), settled
16 and cleared through a derivatives clearing organiza-
17 tion registered with the Commission.".
18 (3) APPLICATION TO CERTAIN TRANSACTIONS
19 IN EXEMPT COMMODITIES.—
20 (A) Section 2(h)(1) of such Act (7 U.S.C.
21 2(h)(1)) is amended—
22 (i) by striking "and" at the end of
23 subparagraph (A);

1 (ii) by striking the period at the end
2 of subparagraph (B) and inserting "; 3 and"; and
4 (iii) by adding at the end the fol-
5 lowing:
6 "(C) except as provided in section 4(f), is
7 settled and cleared through a derivatives clear-
8 ing organization registered with the Commis-
9 sion.".
10 (B) Section 2(h)(3) of such Act (7 U.S.C.
11 2(h)(3)) is amended—
12 (i) by striking "and" at the end of
13 subparagraph (A);
14 (ii) by striking the period at the end
15 of subparagraph (B) and inserting "; 16 and"; and
17 (iii) by adding at the end the fol-
18 lowing:
19 "(C) except as provided in section 4(f), set-
20 tled and cleared through a derivatives clearing
21 organization registered with the Commission.".
22 (4) GENERAL EXEMPTIVE AUTHORITY.—Sec-
23 tion 4(c)(1) of such Act (7 U.S.C. 6(c)(1)) is
24 amended by inserting "the agreement, contract, or
25 transaction, except as provided in section 4(h), will

1 be settled and cleared through a derivatives clearing
2 organization registered with the Commission and''
3 before ''the Commission determines''.
4 (5) CONFORMING AMENDMENT RELATING TO
5 SIGNIFICANT PRICE DISCOVERY CONTRACTS.—Sec-
6 tion 2(h)(7)(D) of such Act (7 U.S.C. 2(h)(7)(D)) is
7 amended by striking the heading for the subpara-
8 graph and all that follows through ''As part of'' and
9 inserting the following:
10 ''(D) REVIEW OF IMPLEMENTATION.—As
11 part of''.
12 (b) ALTERNATIVES TO CLEARING THROUGH DES-
13 IGNATED CLEARING ORGANIZATIONS.—Section 4 of such
14 Act (7 U.S.C. 6), as amended by section 351(h) of this
15 Act, is amended by adding at the end the following:
16 ''(f) ALTERNATIVES TO CLEARING THROUGH DES-
17 IGNATED CLEARING ORGANIZATIONS.—
18 ''(1) SETTLEMENT AND CLEARING THROUGH
19 CERTAIN OTHER REGULATED ENTITIES.—An agree-
20 ment, contract, or transaction, or class thereof, re-
21 lating to an excluded commodity, that would other-
22 wise be required to be settled and cleared by section
23 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or
24 2(h)(3)(C) of this Act, or subsection (c)(1) of this
25 section may be settled and cleared through an entity

1 listed in subsections (a) or (b) of section 409 of the
2 Federal Deposit Insurance Corporation Improvement
3 Act of 1991.
4 "(2) WAIVER OF CLEARING REQUIREMENT.—
5 "(A) The Commission, in its discretion,
6 may exempt an agreement, contract, or trans-
7 action, or class thereof, that would otherwise be
8 required by section 2(d)(1)(C), 2(d)(2)(D),
9 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act,
10 or subsection (c)(1) of this section to be settled
11 and cleared through a derivatives clearing orga-
12 nization registered with the Commission from
13 such requirement.
14 "(B) In granting exemptions pursuant to
15 subparagraph (A), the Commission shall consult
16 with the Securities and Exchange Commission
17 and the Board of Governors of the Federal Re-
18 serve System regarding exemptions that relate
19 to excluded commodities or entities for which
20 the Securities Exchange Commission or the
21 Board of Governors of the Federal Reserve Sys-
22 tem serve as the primary regulator.
23 "(C) Before granting an exemption pursu-
24 ant to subparagraph (A), the Commission shall

1 find that the agreement, contract, or trans-
2 action, or class thereof—
3 "(i) is highly customized as to its ma-
4 terial terms and conditions;
5 "(ii) is transacted infrequently;
6 "(iii) does not serve a significant
7 price-discovery function in the market-
8 place; and
9 "(iv) is being entered into by parties
10 who can demonstrate the financial integ-
11 rity of the agreement, contract, or trans-
12 action and their own financial integrity, as
13 such terms and standards are determined
14 by the Commission. The standards may in-
15 clude, with respect to any federally regu-
16 lated financial entity for which net capital
17 requirements are imposed, a net capital re-
18 quirement associated with any agreement,
19 contract, or transaction subject to an ex-
20 emption from the clearing requirement
21 that is higher than the net capital require-
22 ment that would be associated with such a
23 transaction were it cleared
24 "(D) Any agreement, contract, or trans-
25 action, or class thereof, which is exempted pur-

1 suant to subparagraph (A) shall be reported to
2 the Commission in a manner designated by the
3 Commission, or to such other entity the Com-
4 mission deems appropriate.

5 "(E) The Commission, the Securities and
6 Exchange Commission and the Board of Gov-
7 ernors of the Federal Reserve System shall
8 enter into a memorandum of understanding by
9 which the information reported to the Commis-
10 sion pursuant to subparagraph (D) with regard
11 to excluded commodities or entities for which
12 the Securities Exchange Commission or the
13 Board of Governors of the Federal Reserve Sys-
14 tem serve as the primary regulator may be pro-
15 vided to the other agencies.

16 "(g) SPOT AND FORWARD EXCLUSION.—The settle-
17 ment and clearing requirements of section 2(d)(1)(C),
18 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(c)(1)
19 shall not apply to an agreement, contract, or transaction
20 of any cash commodity for immediate or deferred ship-
21 ment or delivery, as defined by the Commission.".

22 (c) ADDITIONAL REQUIREMENTS APPLICABLE TO
23 APPLICANTS FOR REGISTRATION AS A DERIVATIVE
24 CLEARING ORGANIZATION.—Section 5b(c)(2) of such Act

1 (7 U.S.C. 7a-1(c)(2)) is amended by adding at the end
2 the following:
3 "(O) DISCLOSURE OF GENERAL INFORMA-
4 TION.—The applicant shall disclose publicly and
5 to the Commission information concerning—
6 "(i) the terms and conditions of con-
7 tracts, agreements, and transactions
8 cleared and settled by the applicant;
9 "(ii) the conventions, mechanisms,
10 and practices applicable to the contracts,
11 agreements, and transactions;
12 "(iii) the margin-setting methodology
13 and the size and composition of the finan-
14 cial resource package of the applicant; and
15 "(iv) other information relevant to
16 participation in the settlement and clearing
17 activities of the applicant.
18 "(P) DAILY PUBLICATION OF TRADING IN-
19 FORMATION.—The applicant shall make public
20 daily information on settlement prices, volume,
21 and open interest for contracts settled or
22 cleared pursuant to the requirements of
23 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C),
24 2(h)(3)(C) or 4(c)(1) of this Act by the appli-
25 cant if the Commission determines that the

1 contracts perform a significant price discovery
2 function for transactions in the cash market for
3 the commodity underlying the contracts.
4 "(Q) FITNESS STANDARDS.—The applicant
5 shall establish and enforce appropriate fitness
6 standards for directors, members of any dis-
7 ciplinary committee, and members of the appli-
8 cant, and any other persons with direct access
9 to the settlement or clearing activities of the
10 applicant, including any parties affiliated with
11 any of the persons described in this subpara-
12 graph.".
13 (d) AMENDMENTS.—
14 (1) Section 409 of the Federal Deposit Insur-
15 ance Corporation Improvement Act of 1991 (12
16 U.S.C. 4422) is amended by adding at the end the
17 following:
18 "(c) CLEARING REQUIREMENT.—A multilateral
19 clearing organization described in subsections (a) or (b)
20 of this section shall comply with requirements similar to
21 the requirements of sections 5b and 5c or the Commodity
22 Exchange Act.".
23 (2) Section 407 of the Legal Certainty for
24 Bank Products Act of 2000 (7 U.S.C. 27e) is
25 amended by inserting "and the settlement and clear-

1 ing requirements of sections 2(d)(1)(C), 2(d)(2)(D),
2 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such
3 Act'' after ''the clearing of covered swap agree-
4 ments''.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect 150 days after the date of
7 the enactment of this Act.

8 (f) TRANSITION RULE.—Any agreement, contract, or
9 transaction entered into before the date of the enactment
10 of this Act or within 150 days after such date of enact-
11 ment, in reliance on subsection (d), (g), (h)(1), or (h)(3)
12 of section 2 of the Commodity Exchange Act or any other
13 exemption issued by the Commission Futures Trading
14 Commission by rule, regulation, or order shall, within 90
15 days after such date of enactment, unless settled and
16 cleared through an entity registered with the Commission
17 as a derivatives clearing organization or another clearing
18 entity pursuant to section 4(f) of such Act, be reported
19 to the Commission in a manner designated by the Com-
20 mission, or to such other entity as the Commission deems
21 appropriate.

1 **SEC. 355. LIMITATION ON ELIGIBILITY TO PURCHASE A**
2 **CREDIT DEFAULT SWAP.**

3 (a) IN GENERAL.—Section 4c of the Commodity Ex-
4 change Act (7 U.S.C. 6c) is amended by adding at the
5 end the following:

6 "(h) LIMITATION ON ELIGIBILITY TO PURCHASE A
7 CREDIT DEFAULT SWAP.—It shall be unlawful for any
8 person to enter into a credit default swap unless the per-
9 son—

10 "(1) owns a credit instrument which is insured
11 by the credit default swap;

12 "(2) would experience financial loss if an event
13 that is the subject of the credit default swap occurs
14 with respect to the credit instrument; and

15 "(3) meets such minimum capital adequacy
16 standards as may be established by the Commission,
17 in consultation with the Board of Governors of the
18 Federal Reserve System, or such more stringent
19 minimum capital adequacy standards as may be es-
20 tablished by or under the law of any State in which
21 the swap is originated or entered into, or in which
22 possession of the contract involved takes place.".

23 (b) ELIMINATION OF PREEMPTION OF STATE
24 BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT
25 SWAPS.—Section 12(e)(2)(B) of such Act (7 U.S.C.
26 16(e)(2)(B)) is amended by inserting "(other than a credit

1 default swap in which the purchaser of the swap would
2 not experience financial loss if an event that is the subject
3 of the swap occurred)" before "that is excluded".

4 (c) DEFINITION OF CREDIT DEFAULT SWAP.—Sec-
5 tion 1a of such Act (7 U.S.C. 1a), as amended by section
6 351(a) of this Act, is amended by adding at the end the
7 following:

8 "(37) CREDIT DEFAULT SWAP.—the term 'cred-
9 it default swap' means a contract which insures a
10 party to the contract against the risk that an entity
11 may experience a loss of value as a result of an
12 event specified in the contract, such as a default or
13 credit downgrade. A credit default swap that is trad-
14 ed on or cleared by a registered entity shall be ex-
15 cluded from the definition of a security as defined in
16 this Act and in section 2(a)(1) of the Securities Act
17 of 1933 or section 3(a)(10) of the Securities Ex-
18 change Act of 1934, except it shall be deemed a se-
19 curity solely for purpose of enforcing prohibitions
20 against insider trading in sections 10 and 16 of the
21 Securities Exchange Act of 1934.".

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall be effective for credit default swaps (as
24 defined in section 1a(37) of the Commodity Exchange Act)

1 entered into after 60 days after the date of the enactment
2 of this section.

3 **SEC. 356. TRANSACTION FEES.**

4 (a) IN GENERAL.—Section 12 of the Commodity Ex-
5 change Act (7 U.S.C. 16) is amended by redesignating
6 subsections (e), (f), and (g) as subsections (f), (g), and
7 (h), respectively, and inserting after subsection (d) the fol-
8 lowing:

9 "(e) CLEARING FEES.—

10 "(1) IN GENERAL.—The Commission shall, in
11 accordance with this subsection, charge and collect
12 from each registered clearing organization, and each
13 such organization shall pay to the Commission,
14 transaction fees at a rate calculated to recover the
15 costs to the Federal Government of the supervision
16 and regulation of futures markets, except those di-
17 rectly related to enforcement.

18 "(2) FEES ASSESSED PER SIDE OF CLEARED
19 CONTRACTS.—

20 "(A) IN GENERAL.—The Commission shall
21 determine the fee rate referred to in paragraph
22 (1), and shall apply the fee rate per side of any
23 transaction cleared.

24 "(B) AUTHORITY TO DELEGATE.— The
25 Commission may determine the procedures by

1 which the fee rate is to be applied on the trans-
2 actions subject to the fee, or delegate the au-
3 thority to make the determination to any appro-
4 priate derivatives clearing organization.
5 "(3) EXEMPTIONS.—The Commision may not
6 impose a fee under paragraph (1) on—
7 "(A) a class of contracts or transactions if
8 the Commission finds that it is in the public in-
9 terest to exempt the class from the fee; or
10 "(B) a contract or transaction cleared by
11 a registered derivatives clearing organization
12 that is—
13 "(i) subject to fees under section 31
14 of the Securities Exchange Act of 1934; or
15 "(ii) a security as defined in the Secu-
16 rities Act of 1933 or the Securities Ex-
17 change Act of 1934.
18 "(4) DATES FOR PAYMENT OF FEES.—The fees
19 imposed under paragraph (1) shall be paid on or be-
20 fore—
21 "(A) March 15 of each year, with respect
22 to transactions occurring on or after the pre-
23 ceding September 1 and on or before the pre-
24 ceding December 31; and

1 "(B) September 15 of each year, with re-
2 spect to transactions occurring on or after the
3 preceding January 1 and on or before the pre-
4 ceding August 31.
5 "(5) ANNUAL ADJUSTMENT OF FEE RATES.—
6 "(A) IN GENERAL.—Not later than April
7 30 of each fiscal year , the Commission shall,
8 by order, adjust each fee rate determined under
9 paragraph (2) for the fiscal year to a uniform
10 adjusted rate that, when applied to the esti-
11 mated aggregate number of cleared sides of
12 transactions for the fiscal year, is reasonably
13 likely to produce aggregate fee receipts under
14 this subsection for the fiscal year equal to the
15 target offsetting receipt amount for the fiscal
16 year.
17 "(B) DEFINITIONS.—In subparagraph (A):
18 "(i) ESTIMATED AGGREGATE NUMBER
19 OF CLEARED SIDES OF TRANSACTIONS.—
20 The term 'estimated aggregate number of
21 cleared sides of transactions' means, with
22 respect to a fiscal year, the aggregate
23 number of cleared sides of transactions to
24 be cleared by registered derivatives clear-
25 ing organizations during the fiscal year, as

1 estimated by the Commission, after con-
2 sultation with the Office of Management
3 and Budget, using the methodology re-
4 quired for making projections pursuant to
5 section 257 of the Balanced Budget and
6 Emergency Deficit Control Act of 1985.
7 "(ii) TARGET OFFSETTING RECEIPT
8 AMOUNT.—The term 'target offsetting re-
9 ceipt amount' means, with respect to a fis-
10 cal year, the total level of Commission
11 budget authority for all non-enforcement
12 activities of the Commission, as contained
13 in the regular appropriations Acts for the
14 fiscal year.
15 "(C) NO JUDICIAL REVIEW.—An adjusted
16 fee rate prescribed under subparagraph (A)
17 shall not be subject to judicial review.
18 "(6) PUBLICATION.—Not later than April 30 of
19 each fiscal year, the Commission shall cause to be
20 published in the Federal Register notices of the fee
21 rates applicable under this subsection for the suc-
22 ceeding fiscal year, and any estimate or projection
23 on which the fee rates are based.
24 "(7) INAPPLICABILITY OF CERTAIN PROCE-
25 DURAL RULES.—Section 553 of title 5, United

States Code, shall not apply with respect to any exercise of authority under this subsection.

"(8) ESTABLISHMENT OF FUTURES AND OPTIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF FEES.—There is established in the Treasury of the United States an account which shall be known as the 'Futures and Options Transaction Fee Account'. All fees collected under this subsection for a fiscal year shall be deposited in the account. Amounts in the account are authorized to be appropriated to fund the expenditures of the Commission.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to fiscal years beginning 30 or more days after the date of the enactment of this Act.

(c) TRANSITION RULE.—If this section becomes law after March 31 and before September 1 of a fiscal year, then paragraphs (5)(A) and (6) of section 12(e) of the Commodity Exchange Act shall be applied, in the case of the 1st fiscal year beginning after the date of the enactment of this Act, by substituting "August 31" for "April 30".

SEC. 357. NO EFFECT ON AUTHORITY OF THE FEDERAL TRADE COMMISSION.

Nothing in this subtitle shall be interpreted to affect or diminish the jurisdiction or authority of the Federal

1 Trade Commission with respect to its authorities under
2 the Federal Trade Commission Act (15 U.S.C. 41 et seq.)
3 or the Energy Independence and Security Act of 2007
4 (Public Law 110–140) to obtain information, to carry out
5 enforcement activities or otherwise carry out the respon-
6 sibilities of the Federal Trade Commission.

7 **SEC. 358. REGULATION OF CARBON DERIVATIVES MAR-**
8 **KETS.**

9 (a) DEFAULT RULE.—Section 2 of the Commodity
10 Exchange Act (7 U.S.C. 2), as amended by section 352
11 of this Act, is amended by adding at the end the following:
12 "(k) The Commission shall have jurisdiction over the
13 establishment, operations, and oversight of markets for
14 regulated allowance derivatives (as defined in section 401
15 of the Federal Power Act (16 U.S.C. 791a and following),
16 and shall provide for the establishment, operation, and
17 oversight of the markets in accordance with the same reg-
18 ulations that apply under this Act to included energy
19 transactions.".

20 (b) PRESIDENTIAL DETERMINATIONS.—To the ex-
21 tent that the President delegates the authority to promul-
22 gate regulations for the establishment, operation, and
23 oversight of all markets for regulated allowance derivatives
24 to a Federal agency other than the Commodity Futures
25 Trading Commission pursuant to section 401 of the Fed-

eral Power Act, such determination shall supersede subsection (a). To the extent that the President determines that regulations promulgated pursuant to section 401(c)(2) of the Federal Power Act would provide for more stringent and effective market oversight, such regulations shall supersede subsection (a). Nothing in this section shall be construed to affect the operation of the default rules established in section 401(c)(4) of the Federal Power Act.

TITLE IV—TRANSITIONING TO A CLEAN ENERGY ECONOMY

Subtitle A—Industrial Sector

SEC. 401. ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS.

Title VII of the Clean Air Act is amended by inserting after part E the following new part:

"PART F—ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS

"SEC. 761. PURPOSES.

"(a) PURPOSE OF PART.—The purposes of this part are—

"(1) to promote a strong global effort to significantly reduce greenhouse gas emissions, and, through this global effort, stabilize greenhouse gas concentrations in the atmosphere at a level that will

1 prevent dangerous anthropogenic interference with
2 the climate system; and
3 "(2) to prevent an increase in greenhouse gas
4 emissions in countries other than the United States
5 as a result of direct and indirect compliance costs in-
6 curred under this title.
7 "(b) PURPOSES OF SUBPART 1.—The purposes of
8 subpart 1 are additionally—
9 "(1) to rebate the owners and operators of enti-
10 ties in eligible domestic industrial sectors for their
11 greenhouse gas emission costs incurred under this
12 title, but not for costs associated with other related
13 or unrelated market dynamics;
14 "(2) to design such rebates in a way that will
15 prevent carbon leakage while also rewarding innova-
16 tion and facility-level investments in energy effi-
17 ciency performance improvements; and
18 "(3) to eliminate or reduce distribution of emis-
19 sion allowances under this part when such distribu-
20 tion is no longer necessary to prevent carbon leakage
21 from eligible industrial sectors.
22 **"SEC. 762. INTERNATIONAL NEGOTIATIONS.**
23 "(a) FINDING.—Congress finds that the purposes of
24 this part, as set forth in section 761, can be most effec-

1 tively addressed and achieved through agreements nego-
2 tiated between the United States and foreign countries.
3 "(b) STATEMENT OF POLICY.—It is the policy of the
4 United States to work proactively under the United Na-
5 tions Framework Convention on Climate Change, and in
6 other appropriate forums, to establish binding agreements,
7 including sectoral agreements, committing all major
8 greenhouse gas-emitting nations to contribute equitably to
9 the reduction of global greenhouse gas emissions.
10 "(c) NOTIFICATION OF FOREIGN COUNTRIES.—Not
11 later than January 1, 2020, the President shall notify for-
12 eign countries that an International Reserve Allowance
13 Program, as described in subpart 2, may apply to primary
14 products produced in a foreign country by a sector for
15 which the President has made a determination described
16 in section 767(c).
17 **"SEC. 763. DEFINITIONS.**
18 "In this part:
19 "(1) CARBON LEAKAGE.—The term 'carbon
20 leakage' means any substantial increase (as deter-
21 mined by the Administrator) in greenhouse gas
22 emissions by industrial entities located in other
23 countries if such increase is caused by an incre-
24 mental cost of production increase in the United

1 States resulting from the implementation of this
2 title.
3 "(2) ELIGIBLE INDUSTRIAL SECTOR.—The
4 term 'eligible industrial sector' means an industrial
5 sector determined by the Administrator under sec-
6 tion 764(b) to be eligible to receive emission allow-
7 ance rebates under subpart 1.
8 "(3) INDUSTRIAL SECTOR.—The term 'indus-
9 trial sector' means any sector that is in the manu-
10 facturing sector (as defined in NAICS codes 31, 32,
11 and 33).
12 "(4) NAICS.—The term 'NAICS' means the
13 North American Industrial Classification System of
14 2002.
15 "(5) OUTPUT.—The term 'output' means the
16 total tonnage or other standard unit of production
17 (as determined by the Administrator) produced by
18 an entity in an industrial sector. The output of the
19 cement sector is hydraulic cement, and not clinker.
20 "(6) PRIMARY PRODUCT.—The term 'primary
21 product' means a product manufactured by an eligi-
22 ble industrial sector that is—
23 "(A) iron, steel, steel mill products (includ-
24 ing pipe and tube), aluminum, cement, glass
25 (including flat, container, and specialty glass

1 and fiberglass), pulp, paper, chemicals, or in-
2 dustrial ceramics; or
3 "(B) any other manufactured product that
4 is sold in bulk for purposes of further manufac-
5 ture or inclusion in a finished product.

6 **"Subpart 1—Emission Allowance Rebate Program**

7 **"SEC. 764. ELIGIBLE INDUSTRIAL SECTORS.**

8 "(a) LIST.—
9 "(1) INITIAL LIST.—Not later than June 30,
10 2011, the Administrator shall publish in the Federal
11 Register a list of eligible industrial sectors pursuant
12 to subsection (b). Such list shall include the amount
13 of the emission allowance rebate per unit of produc-
14 tion that shall be provided to entities in each eligible
15 industrial sector in the following two calendar years
16 pursuant to section 765.
17 "(2) SUBSEQUENT LISTS.—Not later than Feb-
18 ruary 1, 2013, and every four years thereafter, the
19 Administrator shall publish in the Federal Register
20 an updated version of the list published under para-
21 graph (1).
22 "(b) ELIGIBLE INDUSTRIAL SECTORS.—
23 "(1) IN GENERAL.—Not later than June 30,
24 2011, the Administrator shall promulgate a rule des-
25 ignating, based on the criteria under paragraph (2),

1 the industrial sectors eligible for emission allowance
2 rebates under this subpart.
3 "(2) PRESUMPTIVELY ELIGIBLE INDUSTRIAL
4 SECTORS.—
5 "(A) ELIGIBILITY CRITERIA.—An owner or
6 operator of an entity shall be eligible to receive
7 emission allowance rebates under this subpart if
8 such entity is in an industrial sector that is in-
9 cluded in a six-digit classification of the NAICS
10 that meets the criteria in both clauses (i) and
11 (ii), or the criteria in clause (iii).
12 "(i) ENERGY OR GREENHOUSE GAS
13 INTENSITY.—As determined by the Admin-
14 istrator, the industrial sector had—
15 "(I) an energy intensity of at
16 least 5 percent, calculated by dividing
17 the cost of purchased electricity and
18 fuel costs of the sector by the value of
19 the shipments of the sector, based on
20 data described in subparagraph (E);
21 or
22 "(II) a greenhouse gas intensity
23 of at least 5 percent, calculated by di-
24 viding—

1 "(aa) the number 20 multi-
2 plied by the number of tons of
3 carbon dioxide equivalent green-
4 house gas emissions (including
5 direct emissions from fuel com-
6 bustion, process emissions, and
7 indirect emissions from the gen-
8 eration of electricity used to
9 produce the output of the sector)
10 of the sector; by
11 "(bb) the value of the ship-
12 ments of the sector, based on
13 data described in subparagraph
14 (E).
15 "(ii) TRADE INTENSITY.—As deter-
16 mined by the Administrator, the industrial
17 sector had a trade intensity of at least 15
18 percent, calculated by dividing the value of
19 the total imports and exports of such sec-
20 tor by the value of the shipments plus the
21 value of imports of such sector, based on
22 data described in subparagraph (E).
23 "(iii) VERY HIGH ENERGY OR GREEN-
24 HOUSE GAS INTENSITY.—As determined by
25 the Administrator, the industrial sector

had an energy or greenhouse gas intensity, as calculated under clause (i)(I) or (II), of at least 20 percent.

"(B) IRON AND STEEL SECTOR.—The Administrator shall consider as in different industrial sectors—

"(i) entities using integrated iron and steelmaking technologies (including coke ovens, blast furnaces, and other iron-making technologies); and

"(ii) entities using electric arc furnace technologies.

"(C) METAL PRODUCTION CLASSIFIED UNDER MORE THAN ONE NAICS CODE.—In determining eligibility under this subsection, the Administrator shall—

"(i) aggregate data for the beneficiation or other processing of iron and copper ores with subsequent steps in the process of metal manufacturing regardless of the NAICS code under which such activity is classified; and

"(ii) aggregate data for the manufacturing of steel with the manufacturing of

1 steel pipe and tube made from purchased
2 steel in a nonintegrated process.
3 "(D) EXCLUSION.—The petroleum refining
4 sector shall not be an eligible industrial sector.
5 "(E) DATA SOURCES.—
6 "(i) ELECTRICITY AND FUEL COSTS,
7 VALUE OF SHIPMENTS.—The Adminis-
8 trator shall determine electricity and fuel
9 costs and the value of shipments under
10 this subsection from data from the United
11 States Census of Mineral Industries and
12 the United States Census Annual Survey
13 of Manufacturers. The Administrator shall
14 take the average of data from as many of
15 the years of 2004, 2005, and 2006 for
16 which such data are available. If such data
17 are unavailable, the Administrator shall
18 make a determination based upon 2002 or
19 2006 data from the most detailed indus-
20 trial classification level of Energy Informa-
21 tion Agency's Manufacturing Energy Con-
22 sumption Survey (using 2006 data if it is
23 available) and the 2002 or 2007 Economic
24 Census of the United States (using 2007
25 data if it is available). If data from the

1 Manufacturing Energy Consumption Sur-
2 vey are unavailable for any sector at the
3 six-digit classification level in the NAICS,
4 then the Administrator may extrapolate
5 the information necessary to determine the
6 eligibility of a sector under this paragraph
7 from available Manufacturing Energy Con-
8 sumption Survey data pertaining to a
9 broader industrial category classified in the
10 NAICS. Fuel cost data shall not include
11 the cost of fuel used as feedstock by an in-
12 dustrial sector.

13 "(ii) IMPORTS AND EXPORTS.—The
14 Administrator shall base the value of im-
15 ports and exports under this subsection on
16 United States International Trade Com-
17 mission data. The Administrator shall take
18 the average of data from as many of the
19 years of 2004, 2005, and 2006 for which
20 such data are available.

21 "(iii) PERCENTAGES.—The Adminis-
22 trator shall round the energy intensity,
23 greenhouse gas intensity, and trade inten-
24 sity percentages under subparagraph (A)
25 to the nearest whole number.

1 "(iv) GREENHOUSE GAS EMISSION
2 CALCULATIONS.—When calculating the
3 tons of carbon dioxide equivalent green-
4 house gas emissions for each sector under
5 subparagraph (A)(i)(II)(aa), the Adminis-
6 trator may, to the extent necessary with
7 respect to a sector, use economic and engi-
8 neering models and the best available in-
9 formation on technology performance levels
10 for such sector.
11 "(3) ADMINISTRATIVE DETERMINATION OF AD-
12 DITIONAL ELIGIBLE INDUSTRIAL SECTORS.—
13 "(A) INDIVIDUAL SHOWING PETITION.—
14 "(i) PETITION.—The owner or oper-
15 ator of an entity in an industrial sector
16 may petition the Administrator to des-
17 ignate as eligible industrial sectors under
18 this subpart an entity or a group of enti-
19 ties that—
20 "(I) represent a subsector of a
21 six-digit section of the NAICS code;
22 and
23 "(II) meet the eligibility criteria
24 in both clauses (i) and (ii) of para-

1 graph (2)(A), or the eligibility criteria
2 in clause (iii) of paragraph (2)(A).
3 "(ii) DATA.—In making a determina-
4 tion under this subparagraph, the Admin-
5 istrator shall consider data submitted by
6 the petitioner that is specific to the entity,
7 data solicited by the Administrator from
8 other entities in the subsector, if such
9 other entities exist, and data specified in
10 paragraph (2)(E).
11 "(iii) BASIS OF SUBSECTOR DETER-
12 MINATION.—The Administrator shall de-
13 termine an entity or group of entities to be
14 a subsector of a six-digit section of the
15 NAICS code based only upon the products
16 manufactured and not the industrial proc-
17 ess by which the products are manufac-
18 tured, except that the Administrator may
19 determine an entity or group of entities
20 that manufacture a product from a virgin
21 material to be a separate subsector from
22 another entity or group of entities that
23 manufacture the same product from recy-
24 cled material.

1 "(iv) FINAL ACTION.—The Adminis-
2 trator shall take final action on such peti-
3 tion no later than 6 months after the peti-
4 tion is received by the Administrator.
5 "(B) UPDATED TRADE INTENSITY DATA.—
6 The Administrator shall designate as eligible to
7 receive emission allowance rebates under this
8 subpart an industrial sector that—
9 "(i) met the energy or greenhouse gas
10 intensity criteria in paragraph (2)(A)(i) as
11 of the date of promulgation of the rule
12 under paragraph (1); and
13 "(ii) meets the trade intensity criteria
14 in paragraph (2)(A)(ii), using data from
15 any year after 2006.
16 "(C) USE OF MOST RECENT DATA.—In de-
17 termining whether to designate a sector or sub-
18 sector as an eligible industrial sector under this
19 paragraph, the Administrator shall use the
20 most recent data available from the sources de-
21 scribed in paragraph (2)(E), rather than the
22 data from the years specified in paragraph
23 (2)(E), to determine the trade intensity of such
24 sector or subsector, but only for determining
25 such trade intensity.

1 **"SEC. 765. DISTRIBUTION OF EMISSION ALLOWANCE RE-**
2 **BATES.**
3 "(a) DISTRIBUTION SCHEDULE.—
4 "(1) IN GENERAL.—For each vintage year, the
5 Administrator shall distribute allowances pursuant
6 to this section no later than October 31 of the pre-
7 ceding calendar year. The Administrator shall make
8 such annual distributions to the owners and opera-
9 tors of each entity in an eligible industrial sector in
10 the amount of emission allowances calculated under
11 subsection (b), except that—
12 "(A) for vintage years 2012 and 2013, the
13 distribution for a covered entity shall be the en-
14 tity's indirect carbon factor as calculated under
15 subsection (b)(3); and
16 "(B) for vintage year 2026 and thereafter,
17 the distribution shall be the amount calculated
18 under subsection (b) multiplied by, except as
19 modified by the President pursuant to section
20 767(c)(3)(A) for a sector—
21 "(i) 90 percent for vintage year 2026;
22 "(ii) 80 percent for vintage year
23 2027;
24 "(iii) 70 percent for vintage year
25 2028;

"(iv) 60 percent for vintage year 2029;

"(v) 50 percent for vintage year 2030;

"(vi) 40 percent for vintage year 2031;

"(vii) 30 percent for vintage year 2032;

"(viii) 20 percent for vintage year 2033;

"(ix) 10 percent for vintage year 2034; and

"(x) 0 percent for vintage year 2035 and thereafter.

"(2) RESUMPTION OF REDUCTION.—If the President has modified the percentage stated in paragraph (1)(B) under section 767(c)(3)(A), and the President subsequently makes a determination under section 767(b) for an eligible industrial sector that more than 70 percent of global output for that sector is produced or manufactured in countries that have met at least one of the criteria in that subsection, then the reduction schedule set forth in paragraph (1)(B) of this subsection shall begin in the next vintage year, with the percentage reduction

1 based on the amount of the distribution of emission
2 allowances under this section in the previous year.
3 "(3) NEWLY ELIGIBLE SECTORS.—In addition
4 to receiving a distribution of emission allowances
5 under this section in the first distribution occurring
6 after an industrial sector is designated as eligible
7 under section 764(b)(3), the owner or operator of an
8 entity in that eligible industrial sector may receive a
9 prorated share of any emission allowances made
10 available for distribution under this section that
11 were not distributed for the year in which the peti-
12 tion for eligibility was granted under section
13 764(b)(3).
14 "(b) CALCULATION OF DIRECT AND INDIRECT CAR-
15 BON FACTORS.—
16 "(1) IN GENERAL.—
17 "(A) COVERED ENTITIES.—Except as pro-
18 vided in subsection (a), for covered entities, the
19 amount of emission allowance rebates shall be
20 based on the sum of the covered entity's direct
21 and indirect carbon factors.
22 "(B) OTHER ELIGIBLE ENTITIES.—For
23 entities that are in eligible industrial sectors
24 but are not covered entities, the amount of

1 emission allowance rebates shall be based on
2 the entity's indirect carbon factor.
3 "(C) NEW ENTITIES.—Not later than 2
4 years after the date of enactment of this title,
5 the Administrator shall issue regulations gov-
6 erning the distribution of emission allowance re-
7 bates for the first and second years of operation
8 of a new entity in an eligible industrial sector.
9 These regulations shall provide for—
10 "(i) the distribution of emission allow-
11 ance rebates to such entities based on com-
12 parable entities in the same sector; and
13 "(ii) an adjustment in the third and
14 fourth years of operation to reconcile the
15 total amount of emission allowance rebates
16 received during the first and second years
17 of operation to the amount the entity
18 would have received during the first and
19 second years of operation had the appro-
20 priate data been available.
21 "(2) DIRECT CARBON FACTOR.—The direct car-
22 bon factor for a covered entity for a vintage year is
23 the product of—

1 "(A) the average output of the covered en-
2 tity for the two years preceding the year of the
3 distribution; and
4 "(B) the most recent calculation of the av-
5 erage direct greenhouse gas emissions (ex-
6 pressed in tons of carbon dioxide equivalent)
7 per unit of output for all covered entities in the
8 sector, as determined by the Administrator
9 under paragraph (4).
10 "(3) INDIRECT CARBON FACTOR.—
11 "(A) IN GENERAL.—The indirect carbon
12 factor for an entity for a calendar year is the
13 product obtained by multiplying the average
14 output of the entity for the two years preceding
15 the years of the distribution by both the elec-
16 tricity emissions intensity factor determined
17 pursuant to subparagraph (B) and the elec-
18 tricity efficiency factor determined pursuant to
19 subparagraph (C) for the year concerned.
20 "(B) ELECTRICITY EMISSIONS INTENSITY
21 FACTOR.—Each person selling electricity to the
22 owner or operator of an entity in any sector
23 designated as an eligible industrial sector under
24 section 764(b) shall provide the owner or oper-
25 ator of the entity and the Administrator, on an

1 annual basis, the electricity emissions intensity
2 factor for the entity. The electricity emissions
3 intensity factor for the entity, expressed in tons
4 of carbon dioxide equivalents per kilowatt hour,
5 is determined by dividing—
6 "(i) the annual sum of the hourly
7 product of—
8 "(I) the electricity purchased by
9 the entity from that person in each
10 hour (expressed in kilowatt hours),
11 multiplied by
12 "(II) the cost the person selling
13 the electricity passes to the entity per
14 ton of carbon dioxide equivalent emit-
15 ted by the electricity provider per kilo-
16 watt hour, taking into account the en-
17 tity's retail rate arrangements, by
18 "(ii) the total kilowatt hours of elec-
19 tricity purchased by the entity from that
20 person during that year.
21 "(C) ELECTRICITY EFFICIENCY FACTOR.—
22 The electricity efficiency factor is the average
23 amount of electricity (in kilowatt hours) used
24 per unit of output for all entities in the relevant
25 sector, as determined by the Administrator

1 based on the best available data, including data
2 provided under paragraph (6).
3 "(D) INDIRECT CARBON FACTOR REDUC-
4 TION.—If an electricity provider received a free
5 allocation of emission allowances pursuant to
6 section [782], the Administrator shall adjust
7 the indirect carbon factor to avoid rebates to
8 the eligible entity for costs that the Adminis-
9 trator determines were not incurred by the in-
10 dustrial entity because the allowances were free-
11 ly allocated to the eligible entity's electricity
12 provider and used for the benefit of industrial
13 consumers.
14 "(4) GREENHOUSE GAS INTENSITY CALCULA-
15 TIONS.—The Administrator shall calculate the aver-
16 age direct greenhouse gas emissions (expressed in
17 tons of carbon dioxide equivalent) per unit of output
18 for all covered entities in each eligible industrial sec-
19 tor every four years using an average of the two
20 most recent years of the best available data.
21 "(5) ENSURING EFFICIENCY IMPROVEMENTS.—
22 When making greenhouse gas calculations, the Ad-
23 ministrator shall—
24 "(A) limit the average direct greenhouse
25 gas emissions per unit of output, calculated

1 under paragraph (4), for any eligible industrial
2 sector to an amount that is not greater than it
3 was in any previous calculation under this sub-
4 section; and
5 "(B) limit the electric emissions intensity
6 factor, calculated under paragraph (3)(B) and
7 resulting from a change in electricity supply,
8 for any entity to an amount that is not greater
9 than it was during any previous year.
10 "(6) DATA SOURCES.—For the purposes of this
11 subsection—
12 "(A) the Administrator shall use data from
13 the greenhouse gas registry, established under
14 section 713, where it is available; and
15 "(B) each owner or operator of an entity
16 in an eligible industrial sector and each depart-
17 ment, agency, and instrumentality of the
18 United States shall provide the Administrator
19 with such information as the Administrator
20 finds necessary to determine the direct carbon
21 factor and the indirect carbon factor for each
22 entity subject to this section.
23 "(c) TOTAL MAXIMUM DISTRIBUTION.—Notwith-
24 standing subsections (a) and (b), the Administrator shall
25 not distribute more allowances for any vintage year pursu-

1 ant to this section than are allocated for use under this
2 part pursuant to section [782] for that vintage year. For
3 any vintage year for which the total emission allowance
4 rebates calculated pursuant to this section exceed the
5 number of allowances allocated pursuant to section [782],
6 the Administrator shall reduce each entity's distribution
7 on a pro rata basis so that the total distribution under
8 this section equals the number of allowances allocated
9 under section [782].

10 **"Subpart 2—International Reserve Allowance**
11 **Program**

12 **"SEC. 766. INTERNATIONAL RESERVE ALLOWANCE PRO-**
13 **GRAM.**

14 "(a) ESTABLISHMENT.—

15 "(1) IN GENERAL.—If the President takes an
16 action described in section 767(c)(3)(B) with respect
17 to a sector then, not later than 24 months after that
18 determination, the Administrator shall issue regula-
19 tions—

20 "(A) determining an appropriate price for
21 and offering for sale to United States importers
22 international reserve allowances;

23 "(B) requiring the submission of appro-
24 priate amounts of such allowances in conjunc-
25 tion with the importation into the United States

of a primary product produced or manufactured by that sector;

"(C) exempting from the requirements of subparagraph (B) primary products produced in—

"(i) foreign countries that the United Nations has identified as among the least developed of developing countries; or

"(ii) foreign countries that the President has determined to be responsible for less than 0.5 percent of total global greenhouse gas emissions; and

"(D) prohibiting the introduction into interstate commerce of a primary product without submitting the required number of international reserve allowances in accordance with such regulations, unless the product was produced by a covered entity under this title, or by an entity that is or could be regulated under this title.

"(2) PURPOSE OF PROGRAM.—The Administrator shall establish the program under paragraph (1) in a manner that addresses, consistent with international agreements to which the United States is a party, the competitive imbalance in the costs of

1 producing or manufacturing primary products in in-
2 dustrial sectors resulting from the difference be-
3 tween—
4 "(A) the direct and indirect costs of com-
5 plying with this title; and
6 "(B) the direct and indirect costs, if any,
7 of complying in other countries with greenhouse
8 gas regulatory programs, requirements, export
9 tariffs, or other measures adopted or imposed
10 to reduce greenhouse gas emissions.
11 "(3) EMISSION ALLOWANCE REBATES.—The
12 Administrator shall take into account the value of
13 emission allowance rebates distributed under subpart
14 1 when making calculations under paragraph (2).
15 "(4) LIMITATION.—The International Reserve
16 Allowance Program may not begin before January 1,
17 2025.
18 "(b) COVERED ENTITIES.—International reserve al-
19 lowances may not be held by covered entities to comply
20 with section 722.
21 **"Subpart 3—Presidential Determination**
22 **"SEC. 767. PRESIDENTIAL REPORTS AND DETERMINA-**
23 **TIONS.**
24 "(a) REPORT.—Not later than January 1, 2018, the
25 President shall submit a report to Congress on the effec-

1 tiveness of the distribution of emission allowance rebates
2 under subpart 1 in mitigating carbon leakage in industrial
3 sectors. Such report shall also include—
4 "(1) recommendations on how to better achieve
5 the purposes of this part, including an assessment of
6 the feasibility and usefulness of an International Re-
7 serve Allowance Program; and
8 "(2) an assessment of the amount and duration
9 of assistance, including distribution of free allow-
10 ances, being provided to eligible industrial sectors in
11 other developed countries to mitigate costs of com-
12 pliance with domestic greenhouse gas reduction pro-
13 grams in such countries.
14 "(b) PRESIDENTIAL DETERMINATION.—Not later
15 than June 30, 2022, and every four years thereafter, the
16 President, in consultation with the Administrator and
17 other appropriate agencies, shall determine, for each eligi-
18 ble industrial sector, whether more than 70 percent of
19 global output for that sector is produced or manufactured
20 in countries that have met at least one of the following
21 criteria:
22 "(1) The country is a party to an international
23 agreement to which the United States is a party
24 that includes a nationally enforceable greenhouse gas
25 emissions reduction commitment for that country

1 that is at least as stringent as that of the United
2 States.
3 "(2) The country is a party to a multilateral or
4 bilateral emission reduction agreement for that sec-
5 tor to which the United States is a party.
6 "(3) The country has an annual energy or
7 greenhouse gas intensity, as described in section
8 764(b)(2)(A)(i), for the sector that is equal to or
9 less than the energy or greenhouse gas intensity for
10 such sector in the United States in the most recent
11 calendar year for which data are available.
12 "(4) The country has implemented policies, in-
13 cluding sectoral caps, export tariffs, production fees,
14 electricity generation regulations, or greenhouse gas
15 emissions fees, that individually or collectively im-
16 pose an incremental increase on the cost of produc-
17 tion associated with greenhouse gas emissions from
18 the sector that is at least 60 percent of the cost of
19 complying with this title in the United States for
20 such sector, averaged over a two-year period.
21 "(c) EFFECT OF PRESIDENTIAL DETERMINATION.—
22 If the President makes a determination under subsection
23 (b) with respect to an eligible industrial sector that 70
24 percent or less of the global output for the sector is pro-
25 duced or manufactured in countries that have met one or

1 more of the criteria in subsection (b), then the President
2 shall, not later than June 30, 2022, and every four years
3 thereafter—
4 "(1) assess the extent to which the emission al-
5 lowance rebates provided pursuant to subpart 1 have
6 mitigated or addressed, or could mitigate or address,
7 carbon leakage in that sector;
8 "(2) assess the extent to which an International
9 Reserve Allowance Program has mitigated or ad-
10 dressed, or could mitigate or address, carbon leakage
11 in that sector and the feasibility of establishing such
12 a program; and
13 "(3) with respect to that sector—
14 "(A) modify the percentage by which direct
15 and indirect carbon factors will be multiplied
16 under section 765(a)(1)(B);
17 "(B) implement an International Reserve
18 Allowance Program under section 766 for the
19 products of the sector; or
20 "(C) take the actions in both subparagraph
21 (A) and (B).
22 "(d) REPORT TO CONGRESS.—Not later than June
23 30, 2022, and every four years thereafter, the President
24 shall transmit to the Congress a report providing notice
25 of any determination made under subsection (b), explain-

1 ing the reasons for such determination, and identifying the
2 actions taken by the President under subsection (c).
3 "(e) LIMITATION.—The President may only imple-
4 ment an International Reserve Allowance Program for sec-
5 tors producing primary products.".

6 **SEC. 402. ALLOCATIONS TO PETROLEUM REFINERIES.**

7 Title VII of the Clean Air Act is amended by insert-
8 ing after part F the following new part:

9 **"PART G—PETROLEUM REFINERIES**

10 **"SEC. 771. ALLOCATIONS TO PETROLEUM REFINERIES.**

11 "(a) OUTPUT.—In this section, the term 'output'
12 means the total tonnage or other standard unit of produc-
13 tion (as determined by the Administrator) produced by a
14 petroleum refinery.
15 "(b) IN GENERAL.—For each vintage year between
16 2014 and 2026, the Administrator shall distribute allow-
17 ances pursuant to this section to owners and operators of
18 petroleum refineries in the United States.
19 "(c) DISTRIBUTION SCHEDULE.—The Administrator
20 shall distribute emission allowances of each vintage year
21 no later than October 31 of the preceding calendar year.
22 "(d) CALCULATION OF EMISSION ALLOWANCE RE-
23 BATES.—
24 "(1) IN GENERAL.—The amount of emission al-
25 lowance rebates distributed to each refinery shall be

1 based on the sum of the refinery's direct and indi-
2 rect carbon factors.
3 "(2) NEW REFINERIES.—Not later than 2 years
4 after the date of enactment of this section, the Ad-
5 ministrator shall issue regulations governing the dis-
6 tribution of emission allowance rebates for the first
7 and second years of operation of a new petroleum
8 refinery. These regulations shall provide for—
9 "(A) the distribution of emission allowance
10 rebates to such petroleum refineries based on
11 comparable petroleum refineries; and
12 "(B) an adjustment in the third and
13 fourth years of operation to reconcile the total
14 amount of emission allowance rebates received
15 during the first and second years of operation
16 to the amount the petroleum refinery would
17 have received during the first and second years
18 of operation had the appropriate data been
19 available.
20 "(3) DIRECT CARBON FACTOR.—The direct car-
21 bon factor for a petroleum refinery for a vintage
22 year is the product of—
23 "(A) the average output of the petroleum
24 refinery for the two years preceding the year of
25 the distribution; and

1 "(B) the most recent calculation of the av-
2 erage direct greenhouse gas emissions (ex-
3 pressed in tons of carbon dioxide equivalent)
4 per unit of output for all petroleum refineries,
5 as determined by the Administrator under para-
6 graph (5).
7 "(4) INDIRECT CARBON FACTOR.—
8 "(A) IN GENERAL.—The indirect carbon
9 factor for a petroleum refinery for a vintage
10 year is the product obtained by multiplying the
11 average output of the petroleum refinery for the
12 two years preceding the years of the distribu-
13 tion by both the electricity emissions intensity
14 factor determined pursuant to subparagraph
15 (B) and the electricity efficiency factor deter-
16 mined pursuant to subparagraph (C) for the
17 year concerned.
18 "(B) ELECTRICITY EMISSIONS INTENSITY
19 FACTOR.—Each person selling electricity to the
20 owner or operator of a petroleum refinery shall
21 provide the owner or operator of the petroleum
22 refinery and the Administrator, on an annual
23 basis, the electricity emissions intensity factor
24 for the petroleum refinery. The electricity emis-
25 sions intensity factor for the petroleum refinery,

1 expressed in tons of carbon dioxide equivalents
2 per kilowatt hour, is determined by dividing—
3 "(i) the annual sum of the hourly
4 product of—
5 "(I) the electricity purchased by
6 the petroleum refinery from that per-
7 son in each hour (expressed in kilo-
8 watt hours), multiplied by
9 "(II) the cost the person selling
10 the electricity passes to the petroleum
11 refinery per ton of carbon dioxide
12 equivalent emitted by the electricity
13 provider per kilowatt hour, taking into
14 account the petroleum refinery's retail
15 rate arrangements, by
16 "(ii) the total kilowatt hours of elec-
17 tricity purchased by the petroleum refinery
18 from that person during that year.
19 "(C) ELECTRICITY EFFICIENCY FACTOR.—
20 The electricity efficiency factor is the average
21 amount of electricity (in kilowatt hours) used
22 per unit of output for all petroleum refineries,
23 as determined by the Administrator based on
24 the best available data, including data provided
25 under paragraph (7).

1 "(D) INDIRECT CARBON FACTOR REDUC-
2 TION.—If an electricity provider received a free
3 allocation of emission allowances pursuant to
4 section 782, the Administrator shall adjust the
5 indirect carbon factor to avoid rebates to the
6 petroleum refinery for costs that the Adminis-
7 trator determines were not incurred by the pe-
8 troleum refinery because the allowances were
9 freely allocated to the petroleum refinery's elec-
10 tricity provider and used for the benefit of pe-
11 troleum refineries.
12 "(5) GREENHOUSE GAS INTENSITY CALCULA-
13 TIONS.—The Administrator shall calculate the aver-
14 age direct greenhouse gas emissions (expressed in
15 tons of carbon dioxide equivalent) per unit of output
16 for all petroleum refineries not less than once every
17 five years using an average of the two most recent
18 years of the best available data.
19 "(6) ENSURING EFFICIENCY IMPROVEMENTS.—
20 When making greenhouse gas calculations, the Ad-
21 ministrator shall—
22 "(A) limit the average direct greenhouse
23 gas emissions per unit of output, calculated
24 under paragraph (5), to an amount that is not

1 greater than it was in any previous calculation
2 under this subsection; and
3 "(B) limit the electricity emissions inten-
4 sity factor, calculated under paragraph (4)(B)
5 and resulting from a change in electricity sup-
6 ply, for any petroleum refinery to an amount
7 that is not greater than it was during any pre-
8 vious year.
9 "(7) DATA SOURCES.—For the purposes of this
10 subsection—
11 "(A) the Administrator shall use data from
12 the greenhouse gas registry, established under
13 section 713, where it is available; and
14 "(B) each owner or operator of a petro-
15 leum refinery and each department, agency, and
16 instrumentality of the United States shall pro-
17 vide the Administrator with such information as
18 the Administrator finds necessary to determine
19 the direct carbon factor and the indirect carbon
20 factor for each petroleum refinery subject to
21 this section.
22 "(e) TOTAL MAXIMUM DISTRIBUTION.—The Admin-
23 istrator shall not distribute more allowances for any vin-
24 tage year pursuant to this section than are allocated for
25 use under this part pursuant to section 782 for that vin-

tage year. For any vintage year for which the total emission allowance rebates calculated pursuant to this section exceed the number of allowances allocated pursuant to section 782, the Administrator shall reduce each petroleum refinery's distribution on a pro rata basis so that the total distribution under this section equals the number of allowances allocated under section 782.".

Subtitle B—Green Jobs and Worker Transition

PART 1—GREEN JOBS

SEC. 421. CLEAN ENERGY CURRICULUM DEVELOPMENT GRANTS.

(a) AUTHORIZATION.—The Secretary of Education is authorized to award grants, on a competitive basis, to eligible partnerships to develop programs of study (containing the information described in section 122(c)(1)(A) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2342), that are focused on emerging careers and jobs in renewable energy, energy efficiency, and climate change mitigation. The Secretary of Education shall consult with the Secretary of Labor and the Secretary of Energy prior to the issuance of a solicitation for grant applications.

(b) ELIGIBLE PARTNERSHIPS.—For purposes of this section, an eligible partnership shall include—

1 (1) at least 1 local educational agency eligible
2 for funding under section 131 of the Carl D. Per-
3 kins Career and Technical Education Act of 2006
4 (20 U.S.C. 2351) or an area career and technical
5 education school or education service agency de-
6 scribed in such section;
7 (2) at least 1 postsecondary institution eligible
8 for funding under section 132 of such Act (20
9 U.S.C. 2352); and
10 (3) representatives of the community including
11 business, labor organizations, and industry that have
12 experience in clean energy.
13 (c) APPLICATION.—An eligible partnership seeking a
14 grant under this section shall submit an application to the
15 Secretary at such time and in such manner as the Sec-
16 retary may require. Applications shall include—
17 (1) a description of the eligible partners and
18 partnership, the roles and responsibilities of each
19 partner, and a demonstration of each partner's ca-
20 pacity to support the program;
21 (2) a description of the career area or areas
22 within the field of clean energy to be developed, the
23 reason for the choice, and evidence of the labor mar-
24 ket need to prepare students in that area;

1 (3) a description of the new or existing program
2 of study and both secondary and postsecondary com-
3 ponents;
4 (4) a description of the students to be served by
5 the new program of study;
6 (5) a description of how the program of study
7 funded by the grant will be replicable and dissemi-
8 nated to schools outside of the partnership, including
9 urban and rural areas;
10 (6) a description of applied learning that will be
11 incorporated into the program of study and how it
12 will incorporate or reinforce academic learning;
13 (7) a description of how the program of study
14 will be delivered;
15 (8) a description of how the program will pro-
16 vide accessibility to students, especially economically
17 disadvantaged, low performing, and urban and rural
18 students;
19 (9) a description of how the program will ad-
20 dress placement of students in nontraditional fields
21 as described in section 3(20) of the Carl D. Perkins
22 Career and Technical Education Act of 2006 (20
23 U.S.C. 2302(20)); and
24 (10) a description of how the applicant proposes
25 to consult or has consulted with a labor organiza-

1 tion, labor management partnership, apprenticeship
2 program, or joint apprenticeship and training pro-
3 gram that provides education and training in the
4 field of study for which the applicant proposes to de-
5 velop a curriculum.
6 (d) PRIORITY.—The Secretary shall give priority to
7 applications that—
8 (1) use online learning or other innovative
9 means to deliver the program of study to students,
10 educators, and instructors outside of the partner-
11 ship; and
12 (2) focus on low performing students and spe-
13 cial populations as defined in section 3(29) of the
14 Carl D. Perkins Career and Technical Education
15 Act of 2006 (20 U.S.C. 2302(29)).
16 (e) PEER REVIEW.—The Secretary shall convene a
17 peer review process to review applications for grants under
18 this section and to make recommendations regarding the
19 selection of grantees. Members of the peer review com-
20 mittee shall include—
21 (1) educators who have experience imple-
22 menting curricula with comparable purposes; and
23 (2) business and industry experts in clean en-
24 ergy-related fields.

(f) USES OF FUNDS.—Grants awarded under this section shall be used for the development, implementation, and dissemination of programs of study (as described in section 122(c)(1)(A) of the Carl D. Perkins Career and Technical Education Act (20 U.S.C. 342(c)(1)(A))) in career areas related to clean energy, renewable energy, energy efficiency, and climate change mitigation.

SEC. 422. INCREASED FUNDING FOR ENERGY WORKER TRAINING PROGRAM.

Section 171(e)(8) of the Workforce Investment Act of 1998 (29 U.S.C. 2916(e)(8)) is amended by striking "$125,000,000" and inserting "$150,000,000".

PART 2—CLIMATE CHANGE WORKER ADJUSTMENT ASSISTANCE

SEC. 425. PETITIONS, ELIGIBILITY REQUIREMENTS, AND DETERMINATIONS.

(a) PETITIONS.—

(1) FILING.—A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this part may be filed by any of the following:

(A) The group of workers.

(B) The certified or recognized union or other duly authorized representative of such workers.

1 (C) Employers of such workers, one-stop
2 operators or one-stop partners (as defined in
3 section 101 of the Workforce Investment Act of
4 1998 (29 U.S.C. 2801)), including State em-
5 ployment security agencies, or the State dis-
6 located worker unit established under title I of
7 such Act, on behalf of such workers.
8 The petition shall be filed simultaneously with the
9 Secretary of Labor and with the Governor of the
10 State in which such workers' employment site is lo-
11 cated.
12 (2) ACTION BY GOVERNORS.—Upon receipt of a
13 petition filed under paragraph (1), the Governor
14 shall—
15 (A) ensure that rapid response activities
16 and appropriate core and intensive services (as
17 described in section 134 of the Workforce In-
18 vestment Act of 1998 (29 U.S.C. 2864)) au-
19 thorized under other Federal laws are made
20 available to the workers covered by the petition
21 to the extent authorized under such laws; and
22 (B) assist the Secretary in the review of
23 the petition by verifying such information and
24 providing such other assistance as the Secretary
25 may request.

1 (3) ACTION BY THE SECRETARY.—Upon receipt
2 of the petition, the Secretary shall promptly publish
3 notice in the Federal Register and on the website of
4 the Department of Labor that the Secretary has re-
5 ceived the petition and initiated an investigation.
6 (4) HEARINGS.—If the petitioner, or any other
7 person found by the Secretary to have a substantial
8 interest in the proceedings, submits not later than
9 10 days after the date of the Secretary's publication
10 under paragraph (3) a request for a hearing, the
11 Secretary shall provide for a public hearing and af-
12 ford such interested persons an opportunity to be
13 present, to produce evidence, and to be heard.
14 (b) ELIGIBILITY.—
15 (1) IN GENERAL.—A group of workers shall be
16 certified by the Secretary as eligible to apply for ad-
17 justment assistance under this part pursuant to a
18 petition filed under subsection (a) if—
19 (A) the group of workers is employed in—
20 (i) energy producing and transforming
21 industries;
22 (ii) industries dependent upon energy
23 industries;
24 (iii) energy-intensive manufacturing
25 industries;

1 (iv) consumer goods manufacturing;
2 or
3 (v) other industries whose employment
4 the Secretary determines has been ad-
5 versely affected by any requirement of title
6 VII of the Clean Air Act;
7 (B) the Secretary determines that a sig-
8 nificant number or proportion of the workers in
9 such workers' employment site have become to-
10 tally or partially separated, or are threatened to
11 become totally or partially separated from em-
12 ployment; and
13 (C) the sales, production, or delivery of
14 goods or services have decreased as a result of
15 any requirement of title VII of the Clean Air
16 Act, including—
17 (i) the shift from reliance upon fossil
18 fuels to other sources of energy, including
19 renewable energy, that results in the clos-
20 ing of a facility or layoff of employees at
21 a facility that mines, produces, processes,
22 or utilizes fossil fuels to generate elec-
23 tricity;
24 (ii) a substantial increase in the cost
25 of energy required for a manufacturing fa-

1 cility to produce items whose prices are
2 competitive in the marketplace, to the ex-
3 tent the cost is not offset by allowance al-
4 location to the facility pursuant to title VII
5 of the Clean Air Act; or
6 (iii) other documented occurrences
7 that the Secretary determines are indica-
8 tors of an adverse impact on an industry
9 described in subparagraph (A) as a result
10 of any requirement of title VII of the
11 Clean Air Act.
12 (2) WORKERS IN PUBLIC AGENCIES.—A group
13 of workers in a public agency shall be certified by
14 the Secretary as eligible to apply for climate change
15 adjustment assistance pursuant to a petition filed if
16 the Secretary determines that a significant number
17 or proportion of the workers in the public agency
18 have become totally or partially separated from em-
19 ployment, or are threatened to become totally or
20 partially separated as a result of any requirement of
21 title VII of the Clean Air Act.
22 (3) ADVERSELY AFFECTED SERVICE WORK-
23 ERS.—A group of workers shall be certified as eligi-
24 ble to apply for climate change adjustment assist-

1 ance pursuant to a petition filed if the Secretary de-
2 termines that—
3 (A) a significant number or proportion of
4 the service workers at an employment site
5 where a group of workers has been certified by
6 the Secretary as eligible to apply for adjustment
7 assistance under this part pursuant to para-
8 graph (1) have become totally or partially sepa-
9 rated from employment, or are threatened to
10 become totally or partially separated; and
11 (B) a loss of business in the firm providing
12 service workers to an employment site is di-
13 rectly attributable to one or more of the docu-
14 mented occurrences listed in paragraph (1)(C).
15 (c) AUTHORITY TO INVESTIGATE AND COLLECT IN-
16 FORMATION.—
17 (1) IN GENERAL.—The Secretary shall, in de-
18 termining whether to certify a group of workers
19 under subsection (d), obtain information the Sec-
20 retary determines to be necessary to make the cer-
21 tification, through questionnaires and in such other
22 manner as the Secretary determines appropriate
23 from—
24 (A) the workers' employer;

1 (B) officials of certified or recognized
2 unions or other duly authorized representatives
3 of the group of workers; or
4 (C) one-stop operators or one-stop partners
5 (as defined in section 101 of the Workforce In-
6 vestment Act of 1998 (29 U.S.C. 2801)); or
7 (2) VERIFICATION OF INFORMATION.—The Sec-
8 retary shall require an employer, union, or one-stop
9 operator or partner to certify all information ob-
10 tained under paragraph (1) from the employer,
11 union, or one-stop operator or partner (as the case
12 may be) on which the Secretary relies in making a
13 determination under subsection (d), unless the Sec-
14 retary has a reasonable basis for determining that
15 such information is accurate and complete without
16 being certified.
17 (3) PROTECTION OF CONFIDENTIAL INFORMA-
18 TION.—The Secretary may not release information
19 obtained under paragraph (1) that the Secretary
20 considers to be confidential business information un-
21 less the employer submitting the confidential busi-
22 ness information had notice, at the time of submis-
23 sion, that the information would be released by the
24 Secretary, or the employer subsequently consents to
25 the release of the information. Nothing in this para-

1 graph shall be construed to prohibit the Secretary
2 from providing such confidential business informa-
3 tion to a court in camera or to another party under
4 a protective order issued by a court.

5 (d) DETERMINATION BY THE SECRETARY OF
6 LABOR.—

7 (1) IN GENERAL.—As soon as possible after the
8 date on which a petition is filed under subsection
9 (a), but in any event not later than 40 days after
10 that date, the Secretary, in consultation with the
11 Secretary of Energy and the Administrator of the
12 Environmental Protection Agency, as necessary,
13 shall determine whether the petitioning group meets
14 the requirements of subsection (b) and shall issue a
15 certification of eligibility to apply for assistance
16 under this part covering workers in any group which
17 meets such requirements. Each certification shall
18 specify the date on which the total or partial separa-
19 tion began or threatened to begin. Upon reaching a
20 determination on a petition, the Secretary shall
21 promptly publish a summary of the determination in
22 the Federal Register and on the website of the De-
23 partment of Labor, together with the Secretary's
24 reasons for making such determination.

1 (2) ONE YEAR LIMITATION.—A certification
2 under this section shall not apply to any worker
3 whose last total or partial separation from the em-
4 ployment site before the worker's application under
5 section 426(a) occurred more than 1 year before the
6 date of the petition on which such certification was
7 granted.
8 (3) REVOCATION OF CERTIFICATION.—When-
9 ever the Secretary determines, with respect to any
10 certification of eligibility of the workers of an em-
11 ployment site, that total or partial separations from
12 such site are no longer a result of the factors speci-
13 fied in subsection (b)(1), the Secretary shall termi-
14 nate such certification and promptly have notice of
15 such termination published in the Federal Register
16 and on the website of the Department of Labor, to-
17 gether with the Secretary's reasons for making such
18 determination. Such termination shall apply only
19 with respect to total or partial separations occurring
20 after the termination date specified by the Secretary.
21 (e) INDUSTRY NOTIFICATION OF ASSISTANCE.—
22 Upon receiving a notification of a determination under
23 subsection (d) with respect to a domestic industry the Sec-
24 retary of Labor shall notify the representatives of the do-
25 mestic industry affected by the determination, employers

1 publicly identified by name during the course of the pro-
2 ceeding relating to the determination, and any certified
3 or recognized union or, to the extent practicable, other
4 duly authorized representative of workers employed by
5 such representatives of the domestic industry, of—
6 (1) the adjustment allowances, training, and
7 other benefits available under this part;
8 (2) the manner in which to file a petition and
9 apply for such benefits; and
10 (3) the availability of assistance in filing such
11 petitions;
12 (4) notify the Governor of each State in which
13 one or more employers in such industry are located
14 of the Secretary's determination and the identity of
15 the employers; and
16 (5) upon request, provide any assistance that is
17 necessary to file a petition under subsection (a).
18 (f) BENEFIT INFORMATION TO WORKERS, PRO-
19 VIDERS OF TRAINING.—
20 (1) IN GENERAL.—The Secretary shall provide
21 full information to workers about the adjustment al-
22 lowances, training, and other benefits available
23 under this part and about the petition and applica-
24 tion procedures, and the appropriate filing dates, for
25 such allowances, training and services. The Sec-

1 retary shall provide whatever assistance is necessary
2 to enable groups of workers to prepare petitions or
3 applications for program benefits. The Secretary
4 shall make every effort to insure that cooperating
5 State agencies fully comply with the agreements en-
6 tered into under section 426(a) and shall periodically
7 review such compliance. The Secretary shall inform
8 the State Board for Vocational Education or equiva-
9 lent agency, the one-stop operators or one-stop part-
10 ners (as defined in section 101 of the Workforce In-
11 vestment Act of 1998 (29 U.S.C. 2801), and other
12 public or private agencies, institutions, and employ-
13 ers, as appropriate, of each certification issued
14 under subsection (d) and of projections, if available,
15 of the needs for training under as a result of such
16 certification.
17 (2) NOTICE BY MAIL.—The Secretary shall pro-
18 vide written notice through the mail of the benefits
19 available under this part to each worker whom the
20 Secretary has reason to believe is covered by a cer-
21 tification made under subsection (d)—
22 (A) at the time such certification is made,
23 if the worker was partially or totally separated
24 from the adversely affected employment before
25 such certification, or—

1 (B) at the time of the total or partial sepa-
2 ration of the worker from the adversely affected
3 employment, if subparagraph (A) does not
4 apply.
5 (3) NEWSPAPERS; WEBSITE.—The Secretary
6 shall publish notice of the benefits available under
7 this part to workers covered by each certification
8 made under subsection (d) in newspapers of general
9 circulation in the areas in which such workers reside
10 and shall make such information available on the
11 website of the Department of Labor.
12 **SEC. 426. PROGRAM BENEFITS.**
13 (a) CLIMATE CHANGE ADJUSTMENT ALLOWANCE.—
14 (1) ELIGIBILITY.—Payment of a climate change
15 adjustment allowance shall be made to an adversely
16 affected worker covered by a certification under sec-
17 tion 425(b) who files an application for such allow-
18 ance for any week of unemployment which begins on
19 or after the date of such certification, if the fol-
20 lowing conditions are met:
21 (A) Such worker's total or partial separa-
22 tion before the worker's application under this
23 part occurred—
24 (i) on or after the date, as specified in
25 the certification under which the worker is

1 covered, on which total or partial separa-
2 tion began or threatened to begin in the
3 adversely affected employment;
4 (ii) before the expiration of the 2-year
5 period beginning on the date on which the
6 determination under section 425(d) was
7 made; and
8 (iii) before the termination date, if
9 any, determined pursuant to section
10 425(d)(3).
11 (B) Such worker had, in the 52-week pe-
12 riod ending with the week in which such total
13 or partial separation occurred, at least 26
14 weeks of full-time employment or 1,040 hours
15 of part time employment in adversely affected
16 employment, or, if data with respect to weeks of
17 employment are not available, equivalent
18 amounts of employment computed under regu-
19 lations prescribed by the Secretary. For the
20 purposes of this paragraph, any week in which
21 such worker—
22 (i) is on employer-authorized leave for
23 purposes of vacation, sickness, injury, ma-
24 ternity, or inactive duty or active duty
25 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—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of paragraph (1)(C); or

(II) has ceased to participate in such training program before completing such training program; and

(ii) there is no justifiable cause for such failure or cessation; or

(B) the certification made with respect to such worker under section 425(d) is revoked under paragraph (3) of such section,

no adjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved by the Secretary under section (b)(2).

(4) WAIVERS OF TRAINING REQUIREMENTS.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (b)(2) 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 termined 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 ⅔ 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 ⅓ 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 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 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

all tentative and final determinations of eligibility and ineligibility.

(3) REGULATIONS.—

(A) Except as provided in subparagraph (B) the Administrator shall issue such regulations consistent with this section as the Administrator deems necessary or appropriate for the effective and efficient administration of the Energy Refund Program and shall promulgate all such regulations in accordance with the procedures set forth in section 553 of title 5, United States Code.

(B) Without regard to section 553 of title 5 of such Code, the Administrator may, during the period beginning with the effective date of this section and ending two years after such date, by rule promulgate as final any procedures that are substantially the same as the procedures governing the Supplemental Nutrition Assistance Program at 7 C.F.R. 273.2, 273.12.273.15.

(g) TREATMENT.—The value of the refund provided under this Act shall not be considered income or resources for any purpose under any Federal, State, or local laws, 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 exec-
4 utive 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.

Subtitle E—Adapting to Climate Change

PART 1—DOMESTIC ADAPTATION

Subpart A—National Climate Change Adaptation Program

SEC. 451. NATIONAL CLIMATE CHANGE ADAPTATION PROGRAM.

The President shall establish within the United States Global Change Research Program a National Climate Change Adaptation Program for the purpose of increasing the overall effectiveness of Federal climate change adaptation efforts.

SEC. 452. CLIMATE SERVICES.

The Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration (NOAA), shall establish within NOAA a National Climate Service to develop climate information, data, forecasts, and warnings at national and regional scales, and to distribute information related to climate impacts to State, local, and tribal governments and the public to facilitate the development and implementation of strategies to reduce society's vulnerability to climate variability and change.

SEC. 453. STATE PROGRAMS TO BUILD RESILIENCE TO CLIMATE CHANGE IMPACTS.

(a) DISTRIBUTION OF ALLOWANCES.—

(1) IN GENERAL.—Not later than September 30, 2012, and annually thereafter through 2050, the Administrator shall distribute allowances allocated for purposes of this subpart pursuant to section [782] of the Clean Air Act ratably among the State governments based on the product of—

(A) each State's population; and

(B) each State's allocation factor as determined under paragraph (2).

(2) STATE ALLOCATION FACTORS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the allocation factor for a State shall be the quotient of—

(i) the per capita income of all individuals in the United States, divided by

(ii) the per capita income of all individuals in such State.

(B) LIMITATION.—If the allocation factor for a State as calculated under subparagraph (A) would exceed 1.2, then the allocation factor for such State shall be 1.2. If the allocation factor 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 ½ 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 ½ 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 silient, 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 silient, 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 proc-
21 esses;
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 solicita-
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 plants 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 priate, 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. 460l–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. 460l–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) ⅙ 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 460l–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. 460l–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) ⅓ 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 460l–9);
19 (iii) ⅙ 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) ⅓ 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 460l–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 ganizations 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 livelihoods,
20 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.