

112TH CONGRESS
1ST SESSION

S. _____

To promote the production and use of renewable energy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. KLOBUCHAR introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To promote the production and use of renewable energy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) IN GENERAL.—This Act may be cited as the “Se-
5 curing America’s Future with Energy and Sustainable
6 Technologies Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition of Secretary.

TITLE I—RENEWABLE FUEL PROGRAM

1 definition of ‘lifecycle greenhouse gas emissions’
2 in paragraph (1)(H), for purposes of deter-
3 mining whether a fuel meets a definition under
4 paragraph (1) or complies with paragraph
5 (2)(A)(i), the Administrator shall exclude emis-
6 sions from indirect land use changes outside the
7 country of origin of the feedstock of a renew-
8 able fuel.

9 “(B) NATIONAL ACADEMIES OF SCIENCE
10 REPORT.—

11 “(i) IN GENERAL.—Not later than
12 180 days after the date of enactment of
13 this paragraph, the Administrator and the
14 Secretary of Agriculture shall jointly ar-
15 range for the National Academies of
16 Science to review and report on specified
17 issues relating to indirect greenhouse gas
18 emissions relating to transportation fuels.

19 “(ii) MODELS AND METHODOLO-
20 GIES.—The report shall evaluate and re-
21 port on whether there are economic and
22 environmental models and methodologies
23 that individually, or as a system, can
24 project with reliability, predictability, and
25 confidence—

1 “(I) for purposes of determining
2 whether a fuel meets a definition
3 under paragraph (1) or complies with
4 paragraph (2)(A)(i), indirect land use
5 changes that are related to the pro-
6 duction of renewable fuels and that
7 may occur outside the country in
8 which the feedstocks are grown, and
9 the impacts of those changes on
10 greenhouse gas emissions; and

11 “(II) indirect effects, both do-
12 mestic and international, related to
13 the production and importation of
14 nonrenewable transportation fuels
15 that have significant greenhouse gas
16 emissions, and the impact of those ef-
17 fects on greenhouse gas emissions.

18 “(iii) ADMINISTRATION.—

19 “(I) IN GENERAL.—The report
20 shall—

21 “(aa) include a review and
22 assessment of all pertinent sci-
23 entific studies, methodologies,
24 and data;

1 “(bb) evaluate potential
2 methodologies for calculating
3 emissions (including an evalua-
4 tion of methods for annualizing
5 emissions associated with forest
6 degradation or land conversion);
7 and

8 “(cc) make appropriate rec-
9 ommendations.

10 “(II) INDIRECT EFFECTS.—The
11 recommendations shall address indi-
12 rect effects, both domestic and inter-
13 national, relating to the production
14 and importation of nonrenewable
15 transportation fuels that have signifi-
16 cant greenhouse gas emissions.

17 “(III) VALIDATION.—The report
18 shall use appropriate validation proce-
19 dures, including sensitivity analyses,
20 to measure how results change as as-
21 sumptions change.

22 “(IV) MODELS.—The evaluation
23 shall include a model, methodology, or
24 system of models that assesses how

1 reliably the models, methodologies, or
2 systems—

3 “(aa) track actual outcomes
4 over historical periods using
5 available historical data; and

6 “(bb) will project future out-
7 comes.

8 “(iv) AVAILABILITY.—The report
9 shall—

10 “(I) be publicly available; and

11 “(II) include sufficient informa-
12 tion and data so that economists and
13 other scientists with relevant expertise
14 that are not on the National Acad-
15 emies of Science panel can fully evalu-
16 ate the conclusions of the report.

17 “(v) DEADLINE.—The report shall be
18 completed not later than 3 years after the
19 date of enactment of this paragraph.

20 “(C) DETERMINATION.—

21 “(i) IN GENERAL.—The Administrator
22 and the Secretary of Agriculture shall,
23 after notice and an opportunity for public
24 comment, determine—

1 “(I) whether, for purposes of de-
2 termining compliance with the percent
3 reductions in lifecycle greenhouse gas
4 emissions specified in paragraph (1)
5 for various renewable fuels, scientif-
6 ically valid models and methodologies
7 exist to project indirect land use
8 changes that are related to the pro-
9 duction of renewable fuels and that
10 occur outside the country in which the
11 feedstocks are grown outside the
12 country of origin of the feedstocks;
13 and

14 “(II) the impact of those changes
15 on greenhouse gas emissions.

16 “(ii) BASIS.—

17 “(I) REPORT.—The determina-
18 tion shall take into account the find-
19 ings and recommendations of the re-
20 port required under subparagraph
21 (B), as well as other available sci-
22 entific, economic, and other relevant
23 information.

24 “(II) OTHER FEDERAL AGEN-
25 CIES.—The Administrator and the

1 Secretary of Agriculture may also con-
2 sider methods used by the Environ-
3 mental Protection Agency, the De-
4 partment of Agriculture, and other
5 Federal agencies to assess or guide re-
6 lated policies.

7 “(iii) PUBLICATION OF DETERMINA-
8 TIONS.—

9 “(I) IN GENERAL.—The Admin-
10 istrator and the Secretary of Agri-
11 culture shall publish—

12 “(aa) a proposed determina-
13 tion not later than 4 years after
14 the date of enactment of this
15 paragraph; and

16 “(bb) a final determination
17 not later than 5 years after the
18 date of enactment of this para-
19 graph.

20 “(II) EXPLANATION.—An expla-
21 nation and justification of the deter-
22 mination shall be included in the pro-
23 posed and final actions, together with
24 a response to comments received.

25 “(D) RESPONSE TO DETERMINATION.—

1 “(i) POSITIVE DETERMINATION.—

2 “(I) IN GENERAL.—In the case
3 of a positive determination under sub-
4 paragraph (C), the Administrator and
5 the Secretary of Agriculture shall,
6 after notice and an opportunity for
7 public comment, by the same date
8 jointly establish 1 or more methodolo-
9 gies to calculate greenhouse gas emis-
10 sions from indirect land use changes
11 that are attributable to the production
12 of renewable fuels and that occur out-
13 side the country in which feedstocks
14 are grown outside the country of ori-
15 gin of the feedstock for purposes of
16 calculating the lifecycle greenhouse
17 gas emissions of a renewable fuel to
18 determine whether the renewable fuel
19 meets a definition under paragraph
20 (1) or complies with paragraph
21 (2)(A)(i).

22 “(II) ADMINISTRATION.—In the
23 calendar year following a positive de-
24 termination under subparagraph
25 (C)—

1 “(aa) the exclusion under
2 subparagraph (A) shall termi-
3 nate; and

4 “(bb) the Administrator
5 shall promulgate a regulation by
6 the same date that shall include
7 emissions from indirect land use
8 changes outside the country of
9 origin of a feedstock of a renew-
10 able fuel for purposes of calcu-
11 lating the lifecycle greenhouse
12 gas emissions of the renewable
13 fuel to determine whether the re-
14 newable fuel meets a definition
15 under paragraph (1) or complies
16 with paragraph (2)(A)(i) for re-
17 newable fuels sold in the calendar
18 year.

19 “(III) EFFECTIVE DATE.—The
20 effective date of the regulation shall
21 be 6 years after the date of enactment
22 of this paragraph.

23 “(ii) NEGATIVE DETERMINATION.—A
24 negative determination under subpara-

1 graph (C) shall include a statement of the
2 basis for the determination.

3 “(E) ACCOUNTABILITY.—The joint duties
4 and actions of the Administrator and the Sec-
5 retary of Agriculture under this paragraph shall
6 be subject to sections 304 and 307 as if the du-
7 ties and actions were the duties and actions of
8 the Administrator alone.”.

9 **SEC. 104. MODIFICATION OF DEFINITION OF RENEWABLE**
10 **BIOMASS.**

11 (a) NATIONAL ACADEMY OF SCIENCES REPORT.—
12 Not later than 1 year after the date of enactment of this
13 Act, the Administrator of the Environmental Protection
14 Agency, the Secretary of Agriculture, and the Federal En-
15 ergy Regulatory Commission shall jointly enter into an ar-
16 rangement with the National Academy of Sciences to
17 evaluate how sources of renewable biomass contribute to
18 the goals of increasing the energy independence of the
19 United States, protecting the environment, and reducing
20 global warming pollution.

21 (b) MODIFICATION.—

22 (1) EPA MODIFICATION AUTHORITY.—After re-
23 viewing the report required by subsection (a), the
24 Administrator of the Environmental Protection
25 Agency, with the concurrence of the Secretary of Ag-

1 riculture, may, by regulation and after public notice
2 and comment, modify the non-Federal land portion
3 of the definition of “renewable biomass” in section
4 211(o)(1)(I) of the Clean Air Act (42 U.S.C.
5 7545(o)(1)(I)) and in section 610 of the Public Util-
6 ity Regulatory Policies Act of 1978 in order to ad-
7 vance the goals of increasing the energy independ-
8 ence of the United States, protecting the environ-
9 ment, and reducing global warming pollution.

10 (2) FERC MODIFICATION AUTHORITY.—After
11 reviewing the report required by subsection (a), the
12 Federal Energy Regulatory Commission, with the
13 concurrence of the Secretary of Agriculture, may, by
14 regulation and after public notice and comment,
15 modify the non-Federal lands portion of the defini-
16 tion of “renewable biomass” in section 610(a) of the
17 Public Utility Regulatory Policies Act of 1978 in
18 order to advance the goals of increasing the energy
19 independence of the United States, protecting the
20 environment, and reducing global warming pollution.

21 (c) FEDERAL LAND.—

22 (1) SCIENTIFIC REVIEW.—Not later than 1 year
23 after the date of enactment of this Act, the Sec-
24 retary of the Interior, the Secretary of Agriculture,
25 and the Administrator of the Environmental Protec-

1 tion Agency shall conduct a joint scientific review to
2 evaluate how sources of biomass from Federal land
3 could contribute to the goals of increasing the en-
4 ergy independence of the United States, protecting
5 the environment, and reducing global warming pollu-
6 tion.

7 (2) MODIFICATION AUTHORITY.—Based on the
8 scientific review, the agencies may, by rule, modify
9 the definition of “renewable biomass” from Federal
10 land in sections 211(o)(1)(I) of the Clean Air Act
11 (42 U.S.C. 7545(o)(1)(I)) and section 610 of the
12 Public Utility Regulatory Policies Act of 1978, as
13 appropriate, to advance the goals of increasing the
14 energy independence of the United States, protecting
15 the environment, and reducing global warming pollu-
16 tion.

17 **TITLE II—PRODUCTION AND USE** 18 **OF RENEWABLE FUEL**

19 **SEC. 201. LOAN GUARANTEES FOR PROJECTS TO CON-** 20 **STRUCT RENEWABLE FUEL PIPELINES.**

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

24 “(6) RENEWABLE FUEL.—The term ‘renewable
25 fuel’ has the meaning given the term in section

1 211(o)(1) of the Clean Air Act (42 U.S.C.
2 7545(o)(1)), except that the term shall include all
3 ethanol and biodiesel.

4 “(7) RENEWABLE FUEL PIPELINE.—The term
5 ‘renewable fuel pipeline’ means a pipeline for trans-
6 porting renewable fuel.”.

7 (b) AMOUNT.—Section 1702(c) of the Energy Policy
8 Act of 2005 (42 U.S.C. 16512(c)) is amended—

9 (1) by striking “Unless otherwise” and insert-
10 ing the following:

11 “(1) IN GENERAL.—Unless otherwise”; and

12 (2) by adding at the end the following:

13 “(2) RENEWABLE FUEL PIPELINES.—A guar-
14 antee for a project described in section 1703(b)(11)
15 shall be in an amount equal to 80 percent of the
16 project cost of the facility that is the subject of the
17 guarantee, as estimated at the time at which the
18 guarantee is issued.”.

19 (c) REASONABLE PROSPECT OF REPAYMENT.—Sec-
20 tion 1702(d) of the Energy Policy Act of 2005 (42 U.S.C.
21 16512(d)) is amended by adding at the end the following:

22 “(4) RENEWABLE FUEL PIPELINE.—In deter-
23 mining under paragraph (1) whether there is a rea-
24 sonable prospect of repayment with respect to a re-
25 newable fuel pipeline project described in section

1 1703(b)(11), the Secretary shall not require a dem-
2 onstration of existing contractual obligations for a
3 specific minimum capacity of pipeline usage.”.

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

8 “(11) Renewable fuel pipelines.”.

9 (e) RAPID DEPLOYMENT OF RENEWABLE FUEL.—
10 Section 1705 of the Energy Policy Act of 2005 (42 U.S.C.
11 16516) is amended—

12 (1) in subsection (a)—

13 (A) in the matter preceding paragraph (1),
14 by inserting “or, in the case of projects de-
15 scribed in paragraph (4), September 30, 2013”
16 before the colon at the end; and

17 (B) by adding at the end the following:

18 “(4) Installation of sufficient infrastructure to
19 allow for the cost-effective deployment of clean en-
20 ergy technologies appropriate to each region of the
21 United States, including the deployment of renew-
22 able fuel pipelines through loan guarantees in an
23 amount equal to 80 percent of the cost.”; and

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

4 “(C) an automobile that uses hydrogen
5 fuel cell technology;

6 “(D) a hybrid automobile, or an auto-
7 mobile with any other technology, that uses at
8 least—

9 “(i) during the 10-year period begin-
10 ning on the date of enactment of this sec-
11 tion, 50 percent less fossil fuel per mile
12 than the average of vehicles in the class of
13 the hybrid automobile or an automobile
14 with any other technology (under the appli-
15 cable corporate average fuel standard
16 under section 32902 of title 49, United
17 States Code); and

18 “(ii) effective beginning 10 years after
19 the date of enactment of this section, 75
20 percent less fossil fuel per mile than the
21 average of vehicles in the class of the hy-
22 brid automobile or an automobile with any
23 other technology (under the applicable cor-
24 porate average fuel standard under section
25 32902 of title 49, United States Code); or

1 “(E) an automobile that only uses an elec-
2 tric motor to move the vehicle.

3 “(4) HYBRID AUTOMOBILE.—The term ‘hybrid
4 automobile’ means a light-duty automobile that uses
5 2 or more distinct power sources to move the vehicle.

6 “(5) LIGHT-DUTY AUTOMOBILE.—The term
7 ‘light-duty automobile’ means a light-duty auto-
8 mobile (as defined in regulations promulgated by the
9 Secretary of Transportation to establish corporate
10 average fuel standards under section 32902 of title
11 49, United States Code).

12 “(6) LIGHT-DUTY AUTOMOBILE MANUFAC-
13 TURER’S ANNUAL COVERED INVENTORY.—The term
14 ‘light-duty automobile manufacturer’s annual cov-
15 ered inventory’ means the number of light-duty
16 automobiles powered solely by an internal combus-
17 tion engine that a manufacturer, during a given cal-
18 endar year, manufactures in the United States or
19 imports from outside of the United States for sale
20 in the United States.

21 “(7) M85.—The term ‘M85’ means a fuel mix-
22 ture containing 85 percent methanol and 15 percent
23 gasoline by volume.

24 “(b) OPEN FUEL STANDARD FOR TRANSPOR-
25 TATION.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), each light-duty automobile manufactur-
3 er’s annual covered inventory shall be comprised
4 of—

5 “(A) not less than 30 percent fuel choice-
6 enabling automobiles by model year 2013;

7 “(B) not less than 50 percent fuel choice-
8 enabling automobiles by model year 2015;

9 “(C) not less than 80 percent fuel choice-
10 enabling automobiles by model year 2017; and

11 “(D) not less than 100 percent of fuel
12 choice-enabling automobiles by model year 2021
13 and each model year thereafter.

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

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

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

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

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

15 “(ii) A disruption in the use and in-
16 stallation by the manufacturer of such
17 component.

18 “(iii) The failure for plug-in hybrid
19 electric automobiles to meet State air qual-
20 ity requirements as a result of the require-
21 ment described in paragraph (1).

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

1 “(D) NOTICE.—The Secretary shall pub-
2 lish in the Federal Register—

3 “(i) notice of each application received
4 from a manufacturer;

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

7 “(iii) the reasons for granting or de-
8 nying such exemptions.

9 “(c) LIMITED LIABILITY PROTECTION FOR RENEW-
10 ABLE FUEL AND ETHANOL MANUFACTURE, USE, OR DIS-
11 TRIBUTION.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of Federal or State law, any fuel con-
14 taining ethanol or a renewable fuel (as defined in
15 section 211(o)(1) of the Clean Air Act) that is used
16 or intended to be used to operate an internal com-
17 bustion engine shall not be deemed to be a defective
18 product or subject to a failure to warn due to such
19 ethanol or renewable fuel content unless such fuel
20 violates a control or prohibition imposed by the Ad-
21 ministrator under section 211 of the Clean Air Act
22 (42 U.S.C. 7545).

23 “(2) SAVINGS PROVISION.—Nothing in this sub-
24 section may be construed to affect the liability of
25 any person other than liability based upon a claim

1 of defective product and failure to warn described in
2 paragraph (1).

3 “(d) RULEMAKING.—Not later than 1 year after the
4 date of the enactment of this section, the Secretary of
5 Transportation shall promulgate regulations to carry out
6 this section in consultation with the Administrator and
7 taking into consideration existing regulations.”.

8 (b) CONFORMING AMENDMENT.—The analysis for
9 chapter 329 of title 49, United States Code, is amended
10 by adding at the end the following:

“Sec. 32920. Open fuel standard for transportation.”.

11 **SEC. 203. TAX INCENTIVES FOR QUALIFIED BLENDER**
12 **PUMPS.**

13 (a) CREDIT FOR INSTALLATION OF BLENDER
14 PUMPS.—Section 30C of the Internal Revenue Code of
15 1986 is amended by redesignating subsections (f) and (g)
16 as subsections (g) and (h), respectively, and by inserting
17 after subsection (e) the following new subsection:

18 “(f) TREATMENT OF BLENDER PUMPS AS QUALI-
19 FIED ALTERNATIVE FUEL VEHICLE REFUELING PROP-
20 erty.—

21 “(1) IN GENERAL.—A qualified blender pump
22 shall be treated as qualified alternative refueling
23 property under this section.

24 “(2) QUALIFIED BLENDER PUMP.—For pur-
25 poses of this subsection, the term ‘qualified blender

1 pump’ means property (not including a building or
2 its structural components)—

3 “(A) which is subject to the allowance for
4 depreciation or which is installed on property
5 which is used as a principal residence,

6 “(B) the original use of which begins with
7 the taxpayer, and

8 “(C) which is for the storage or dispensing
9 of a qualified ethanol blend into the fuel tank
10 of a motor vehicle (as defined in section
11 179A(e)(2)) propelled by such blend, but only
12 if—

13 “(i) the storage or dispensing is at the
14 point where such fuel is delivered into the
15 fuel tank of the motor vehicle, and

16 “(ii) such property is capable of dis-
17 pensing qualified ethanol blends of not less
18 than 3 different percentage volumes of eth-
19 anol which may be selected by the pump
20 operator.

21 “(3) QUALIFIED ETHANOL BLEND.—For pur-
22 poses of this subsection, the term ‘qualified ethanol
23 blend’ means any fuel which is not less than 20 per-
24 cent ethanol by volume and not more than 85 per-
25 cent ethanol by volume.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this subsection shall apply to property placed in service
3 after the date of the enactment of this Act.

4 **SEC. 204. BLENDER PUMP INSTALLATION.**

5 (a) DEFINITIONS.—In this section:

6 (1) BLENDER PUMP.—The term “blender
7 pump” means an automotive fuel dispensing pump
8 capable of dispensing at least 3 different blends of
9 gasoline and ethanol, as selected by the pump oper-
10 ator, including blends ranging from 0 percent eth-
11 anol to 85 percent denatured ethanol, as determined
12 by the Secretary.

13 (2) COVERED ENTITY.—The term “covered en-
14 tity” means an individual or entity that owns or
15 manages 10 or more retail fueling stations.

16 (3) E-85 FUEL.—The term “E-85 fuel” means
17 a blend of gasoline approximately 85 percent of the
18 content of which is ethanol.

19 (4) ETHANOL FUEL BLEND.—The term “eth-
20 anol fuel blend” means a blend of gasoline or a spe-
21 cial fuel and ethanol, with a minimum of 0 percent
22 and maximum of 85 percent of the content of which
23 is denatured ethanol.

24 (b) MANDATE.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the Secretary shall, by regulation, require each cov-
3 ered entity to install, at each retail fueling station
4 owned or managed by the covered entity, as a re-
5 placement for each pump at the retail fueling station
6 that requires replacement after the effective date de-
7 scribed in paragraph (2)—

8 (A) a blender pump; and

9 (B) all blender pump fuel infrastructure,
10 including infrastructure necessary—

11 (i) for the direct retail sale of ethanol
12 fuel blends (including E-85 fuel), includ-
13 ing blender pumps, transmission lines, and
14 storage tanks; and

15 (ii) to directly market ethanol fuel
16 blends (including E-85 fuel) to gas retail-
17 ers, including inline blending equipment,
18 pumps, storage tanks, and loadout equip-
19 ment.

20 (2) EFFECTIVE DATE.—The effective date of
21 the regulations described in paragraph (1) shall be
22 January 1, 2013.

1 **TITLE III—RENEWABLE ENERGY**
2 **TAX EXTENSIONS**

3 **SEC. 301. MODIFICATION OF CREDIT FOR ALCOHOL USED**
4 **AS FUEL.**

5 (a) IN GENERAL.—Section 40 of the Internal Rev-
6 enue Code of 1986 is amended to read as follows:

7 **“SEC. 40. ALCOHOL, ETC., USED AS FUEL.**

8 “(a) GENERAL RULE.—For purposes of section 38,
9 the alcohol fuels credit determined under this section for
10 the taxable year is an amount equal to the sum of—

11 “(1) the credit amount for each gallon of quali-
12 fied alcohol production during such taxable year,

13 “(2) the cellulosic biofuel producer credit deter-
14 mined under subsection (c) for such taxable year,
15 plus

16 “(3) in the case of an eligible small ethanol pro-
17 ducer, the small ethanol producer credit.

18 “(b) QUALIFIED ALCOHOL PRODUCTION.—For pur-
19 poses of this section—

20 “(1) IN GENERAL.—The term ‘qualified alcohol
21 production’ means qualified alcohol which is pro-
22 duced by the taxpayer and which—

23 “(A) is sold by the taxpayer to another
24 person—

1 “(i) for use by such other person in
2 the production of a qualified mixture in the
3 ordinary course of such other person’s
4 trade or business,

5 “(ii) for use by such other person as
6 a fuel in the ordinary course of such other
7 person’s trade or business (other than cas-
8 ual off-farm production), or

9 “(iii) who sells such alcohol at retail
10 to another person and places such alcohol
11 in the fuel tank of such other person, or

12 “(B) is used or sold by the taxpayer for
13 any purpose described in subparagraph (A).

14 “(2) QUALIFIED ALCOHOL.—The term ‘quali-
15 fied alcohol’ means alcohol—

16 “(A) which has lifecycle greenhouse gas
17 emissions that are at least 15 percent less than
18 baseline lifecycle greenhouse gas emissions (as
19 determined by the Administrator of the Envi-
20 ronmental Protection Agency, in conjunction
21 with the Secretary of Agriculture), and

22 “(B) which has a proof of not less than
23 200 (determined without regard to any added
24 denaturants), and

1 does not include any alcohol which is purchased by
 2 the producer and the proof of which is increased by
 3 the producer by additional distillation.

4 “(3) ALCOHOL.—The term ‘alcohol’ includes
 5 methanol and ethanol, without regard to the feed-
 6 stock from which such alcohol is produced.

7 “(4) QUALIFIED MIXTURE.—The term ‘quali-
 8 fied mixture’ means a mixture of alcohol and gaso-
 9 line or of alcohol and a special fuel which—

10 “(A) is sold by the person producing such
 11 mixture to any person for use as a fuel, or

12 “(B) is used as a fuel by the person pro-
 13 ducing such mixture.

14 “(5) DENIAL OF DOUBLE BENEFIT.—The
 15 amount of any qualified alcohol production which is
 16 qualified cellulosic biofuel production shall not be
 17 taken into account under subsection (a)(1).

18 “(6) CREDIT AMOUNT.—For purposes of sub-
 19 section (a)(1), the credit amount shall be determined
 20 in accordance with the following table:

“In the case of any sale or use during calendar year:	The credit amount is:
2012	20 cents
2013	15 cents
2014	10 cents
2015 or thereafter	5 cents.

21 “(c) CELLULOSIC BIOFUEL PRODUCER CREDIT.—

1 “(1) IN GENERAL.—The cellulosic biofuel pro-
2 ducer credit determined under this subsection of any
3 taxpayer is an amount equal to \$1.01 for each gal-
4 lon of qualified cellulosic biofuel production.

5 “(2) QUALIFIED CELLULOSIC BIOFUEL PRO-
6 DUCTION.—For purposes of this subsection, the
7 term ‘qualified cellulosic biofuel production’ means
8 any cellulosic biofuel which is produced by the tax-
9 payer, and which during the taxable year—

10 “(A) is sold by the taxpayer to another
11 person—

12 “(i) for use by such other person in
13 the production of a qualified cellulosic
14 biofuel mixture in such other person’s
15 trade or business (other than casual off-
16 farm production),

17 “(ii) for use by such other person as
18 a fuel in a trade or business, or

19 “(iii) who sells such cellulosic biofuel
20 at retail to another person and places such
21 cellulosic biofuel in the fuel tank of such
22 other person, or

23 “(B) is used or sold by the taxpayer for
24 any purpose described in subparagraph (A).

1 The qualified cellulosic biofuel production of any
2 taxpayer for any taxable year shall not include any
3 alcohol which is purchased by the taxpayer and with
4 respect to which such producer increases the proof
5 of the alcohol by additional distillation.

6 “(3) QUALIFIED CELLULOSIC BIOFUEL MIX-
7 TURE.—For purposes of this subsection, the term
8 ‘qualified cellulosic biofuel mixture’ means a mixture
9 of cellulosic biofuel and gasoline or of cellulosic
10 biofuel and a special fuel which—

11 “(A) is sold by the person producing such
12 mixture to any person for use as a fuel, or

13 “(B) is used as a fuel by the person pro-
14 ducing such mixture.

15 “(4) CELLULOSIC BIOFUEL.—For purposes of
16 this subsection—

17 “(A) IN GENERAL.—The term ‘cellulosic
18 biofuel’ means any liquid fuel which—

19 “(i) is produced from any
20 lignocellulosic or hemicellulosic matter that
21 is available on a renewable or recurring
22 basis, and

23 “(ii) meets the registration require-
24 ments for fuels and fuel additives estab-
25 lished by the Environmental Protection

1 Agency under section 211 of the Clean Air
2 Act (42 U.S.C. 7545).

3 “(B) EXCLUSION OF LOW-PROOF ALCO-
4 HOL.—Such term shall not include any alcohol
5 with a proof of less than 200. The determina-
6 tion of the proof of any alcohol shall be made
7 without regard to any added denaturants.

8 “(C) EXCLUSION OF UNPROCESSED
9 FUELS.—The term ‘cellulosic biofuel’ shall not
10 include any fuel if—

11 “(i) more than 4 percent of such fuel
12 (determined by weight) is any combination
13 of water and sediment, or

14 “(ii) the ash content of such fuel is
15 more than 1 percent (determined by
16 weight).

17 “(5) ALLOCATION OF CELLULOSIC BIOFUEL
18 PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

19 “(A) ELECTION TO ALLOCATE.—

20 “(i) IN GENERAL.—In the case of a
21 cooperative organization described in sec-
22 tion 1381(a), any portion of the credit de-
23 termined under this subsection for the tax-
24 able year may, at the election of the orga-
25 nization, be apportioned pro rata among

1 patrons of the organization on the basis of
2 the quantity or value of business done with
3 or for such patrons for the taxable year.

4 “(ii) FORM AND EFFECT OF ELEC-
5 TION.—An election under clause (i) for any
6 taxable year shall be made on a timely
7 filed return for such year. Such election,
8 once made, shall be irrevocable for such
9 taxable year. Such election shall not take
10 effect unless the organization designates
11 the apportionment as such in a written no-
12 tice mailed to its patrons during the pay-
13 ment period described in section 1382(d).

14 “(B) TREATMENT OF ORGANIZATIONS AND
15 PATRONS.—

16 “(i) ORGANIZATIONS.—The amount of
17 the credit not apportioned to patrons pur-
18 suant to subparagraph (A) shall be in-
19 cluded in the amount determined under
20 this subsection for the taxable year of the
21 organization.

22 “(ii) PATRONS.—The amount of the
23 credit apportioned to patrons pursuant to
24 subparagraph (A) shall be included in the
25 amount determined under this subsection

1 for the first taxable year of each patron
2 ending on or after the last day of the pay-
3 ment period (as defined in section
4 1382(d)) for the taxable year of the orga-
5 nization or, if earlier, for the taxable year
6 of each patron ending on or after the date
7 on which the patron receives notice from
8 the cooperative of the apportionment.

9 “(iii) SPECIAL RULES FOR DECREASE
10 IN CREDITS FOR TAXABLE YEAR.—If the
11 amount of the credit of the organization
12 determined under this subsection for a tax-
13 able year is less than the amount of such
14 credit shown on the return of the organiza-
15 tion for such year, an amount equal to the
16 excess of—

17 “(I) such reduction, over

18 “(II) the amount not apportioned
19 to such patrons under subparagraph
20 (A) for the taxable year,

21 shall be treated as an increase in tax im-
22 posed by this chapter on the organization.
23 Such increase shall not be treated as tax
24 imposed by this chapter for purposes of de-

1 termining the amount of any credit under
2 this chapter or for purposes of section 55.

3 “(d) SMALL ETHANOL PRODUCER CREDIT.—

4 “(1) IN GENERAL.—The small ethanol producer
5 credit of any eligible small ethanol producer for any
6 taxable year is 10 cents for each gallon of qualified
7 ethanol fuel production of such producer.

8 “(2) QUALIFIED ETHANOL FUEL PRODUC-
9 TION.—For purposes of this subsection, the term
10 ‘qualified ethanol fuel production’ means any quali-
11 fied alcohol which is ethanol and which is produced
12 by an eligible small ethanol producer.

13 “(3) LIMITATION.—The qualified ethanol fuel
14 production of any producer for any taxable year
15 shall not exceed 15,000,000 gallons (determined
16 without regard to any qualified cellulosic biofuel pro-
17 duction).

18 “(4) ADDITIONAL DISTILLATION EXCLUDED.—
19 The qualified ethanol fuel production of any pro-
20 ducer for any taxable year shall not include any al-
21 cohol which is purchased by the producer and with
22 respect to which such producer increases the proof
23 of the alcohol by additional distillation.

24 “(5) ELIGIBLE SMALL ETHANOL PRODUCER.—

1 “(A) IN GENERAL.—For purposes of this
2 subsection, the term ‘eligible small ethanol pro-
3 ducer’ means a person who, at all times during
4 the taxable year, has a productive capacity for
5 alcohol (as defined in subsection (b)(3)) not in
6 excess of 60,000,000 gallons.

7 “(B) AGGREGATION RULE.—For purposes
8 of the 15,000,000 gallon limitation under para-
9 graph (3) and the 60,000,000 gallon limitation
10 under subparagraph (A), all members of the
11 same controlled group of corporations (within
12 the meaning of section 267(f)) and all persons
13 under common control (within the meaning of
14 section 52(b) but determined by treating an in-
15 terest of more than 50 percent as a controlling
16 interest) shall be treated as 1 person.

17 “(C) PARTNERSHIPS, S CORPORATIONS,
18 AND OTHER PASS-THRU ENTITIES.—In the case
19 of a partnership, trust, S corporation, or other
20 pass-thru entity, the limitations contained in
21 paragraph (3) and subparagraph (A) shall be
22 applied at the entity level and at the partner or
23 similar level.

24 “(D) ALLOCATION.—For purposes of this
25 subsection, in the case of a facility in which

1 more than 1 person has an interest, productive
2 capacity shall be allocated among such persons
3 in such manner as the Secretary may prescribe.

4 “(E) REGULATIONS.—The Secretary may
5 prescribe such regulations as may be nec-
6 essary—

7 “(i) to prevent the credit under this
8 subsection from directly or indirectly bene-
9 fitting any person with a direct or indirect
10 productive capacity of more than
11 60,000,000 gallons of alcohol during the
12 taxable year, or

13 “(ii) to prevent any person from di-
14 rectly or indirectly benefitting with respect
15 to more than 15,000,000 gallons of ethanol
16 during the taxable year.

17 “(6) ALLOCATION OF SMALL ETHANOL PRO-
18 DUCER CREDIT TO PATRONS OF COOPERATIVE.—
19 Rules similar to the rules of subsection (c)(5) shall
20 apply for purposes of this subsection.

21 “(e) PERFORMANCE CREDIT FOR ALCOHOL.—

22 “(1) IN GENERAL.—In the case of any qualified
23 alcohol production in a taxable year from qualified
24 alcohol which has a baseline lifecycle greenhouse gas
25 improvement of not less than 50 percent, the credit

1 amount determined under subsection (a)(1) for such
2 taxable year with respect to such production shall be
3 increased by the applicable amount.

4 “(2) APPLICABLE AMOUNT.—For purposes of
5 paragraph (1), the applicable amount is—

6 “(A) 5 cents for every gallon of qualified
7 alcohol production from qualified alcohol which
8 has a baseline lifecycle greenhouse gas improve-
9 ment of not less than 50 percent and less than
10 75 percent,

11 “(B) 15 cents for every gallon of qualified
12 alcohol production from qualified alcohol which
13 has a baseline lifecycle greenhouse gas improve-
14 ment of not less than 75 percent and less than
15 90 percent, and

16 “(C) 25 cents for every gallon of qualified
17 alcohol production from qualified alcohol which
18 has a baseline lifecycle greenhouse gas improve-
19 ment of not less than 90 percent.

20 “(3) BASELINE LIFECYCLE GREENHOUSE GAS
21 IMPROVEMENT.—For purposes of this subsection,
22 the term ‘baseline lifecycle greenhouse gas improve-
23 ment’ means the amount, expressed as a percentage,
24 which is—

1 “(A) the direct lifecycle greenhouse gas
2 emissions of an alcohol, divided by

3 “(B) the baseline lifecycle greenhouse gas
4 emissions,

5 as determined by the Administrator of the Environ-
6 mental Protection Agency, in conjunction with the
7 Secretary of Agriculture.

8 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-
9 poses of this section—

10 “(1) SPECIAL FUEL.—The term ‘special fuel’
11 includes any liquid fuel (other than gasoline) which
12 is suitable for use in an internal combustion engine.

13 “(2) REGISTRATION REQUIREMENT.—No credit
14 shall be determined under subsection (a)(1), (c), or
15 (d) with respect to any taxpayer unless such tax-
16 payer is registered with the Secretary as a producer
17 of alcohol or cellulosic biofuel, whichever is applica-
18 ble, under section 4101.

19 “(3) SPECIAL RULE FOR CELLULOSIC BIOFUEL
20 PRODUCER CREDIT.—No cellulosic biofuel producer
21 credit shall be determined under subsection (c) with
22 respect to any cellulosic biofuel unless such cellulosic
23 biofuel is produced in the United States and used as
24 a fuel in the United States. For purposes of this

1 subsection, the term ‘United States’ includes any
2 possession of the United States.

3 “(4) LIMITATION TO ALCOHOL WITH CONNEC-
4 TION TO THE UNITED STATES.—No credit shall be
5 determined under this section with respect to any al-
6 cohol which is produced outside the United States.
7 For purposes of this paragraph, the term ‘United
8 States’ includes any possession of the United States.

9 “(5) MIXTURE OR ALCOHOL NOT USED AS A
10 FUEL, ETC.—

11 “(A) MIXTURES.—If—

12 “(i) any credit was determined under
13 this section with respect to alcohol used in
14 the production of any qualified mixture,
15 and

16 “(ii) any person—

17 “(I) separates the alcohol from
18 the mixture, or

19 “(II) without separation, uses the
20 mixture other than as a fuel,

21 then there is hereby imposed on such person a
22 tax equal to such credit so determined with re-
23 spect to each gallon of alcohol in such mixture.

24 “(B) ALCOHOL.—If—

1 “(i) any credit was determined under
2 this section with respect to the retail sale
3 of any alcohol, and

4 “(ii) any person mixes such alcohol or
5 uses such alcohol other than as a fuel,

6 then there is hereby imposed on such person a
7 tax equal to such credit so determined with re-
8 spect to each gallon of such alcohol.

9 “(C) CELLULOSIC BIOFUEL PRODUCER
10 CREDIT.—If—

11 “(i) any credit is allowed under sub-
12 section (c), and

13 “(ii) any person does not use such
14 fuel for a purpose described in subsection
15 (c)(3),

16 then there is hereby imposed on such person a
17 tax equal to \$1.01 for each gallon of such cellu-
18 losic biofuel.

19 “(D) SMALL ETHANOL PRODUCER CRED-
20 IT.—If—

21 “(i) any credit is allowed under sub-
22 section (d), and

23 “(ii) any person does not use such
24 fuel for a purpose described in subsection
25 (b)(1)(A),

1 then there is hereby imposed on such person a
2 tax equal to 10 cents a gallon for each gallon
3 of such alcohol.

4 “(E) APPLICABLE LAWS.—All provisions of
5 law, including penalties, shall, insofar as appli-
6 cable and not inconsistent with this section,
7 apply in respect of any tax imposed under sub-
8 paragraph (A), (B), (C), or (D) as if such tax
9 were imposed by section 4081 and not by this
10 chapter.

11 “(6) VOLUME OF ALCOHOL.—For purposes of
12 determining under subsection (a) the number of gal-
13 lons of alcohol with respect to which a credit is al-
14 lowable under subsection (a), the volume of alcohol
15 shall include the volume of any denaturant (includ-
16 ing gasoline) which is added under any formulas ap-
17 proved by the Secretary to the extent that such de-
18 naturants do not exceed 2 percent of the volume of
19 such alcohol (including denaturants).

20 “(7) PASS-THRU IN THE CASE OF ESTATES AND
21 TRUSTS.—Under regulations prescribed by the Sec-
22 retary, rules similar to the rules of subsection (d) of
23 section 52 shall apply.

24 “(8) ALLOCATION OF GENERAL CREDIT TO PA-
25 TRONS OF COOPERATIVE.—Rules similar to the rules

1 of subsection (e)(5) shall apply for purposes of the
2 portion of the credit determined under subsection
3 (a)(1).

4 “(g) COORDINATION WITH EXEMPTION FROM EX-
5 CISE TAX.—The amount of the credit determined under
6 this section with respect to any alcohol shall, under regula-
7 tions prescribed by the Secretary, be properly reduced to
8 take into account any benefit provided with respect to such
9 alcohol solely by reason of the application of section
10 4041(b)(2), section 6426, or section 6427(e).

11 “(h) TERMINATION.—

12 “(1) IN GENERAL.—This section shall not apply
13 to any sale or use for any period after December 31,
14 2016.

15 “(2) NO CARRYOVERS TO CERTAIN YEARS
16 AFTER EXPIRATION.—If this section ceases to apply
17 for any period by reason of paragraph (1), no
18 amount attributable to any sale or use before the
19 first day of such period may be carried under section
20 39 by reason of this section (treating the amount al-
21 lowed by reason of this section as the first amount
22 allowed by this subpart) to any taxable year begin-
23 ning after the 3-taxable-year period beginning with
24 the taxable year in which such first day occurs.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 4101(a)(1) of the Internal Revenue
2 Code of 1986 is amended by striking “section
3 40(b)(6)(E)” and inserting “section 40(c)(4)”.

4 (2) Section 6426(g) of such Code is amended
5 by striking “section 40(c)” and inserting “section
6 40(g)”.

7 (3) Section 6501(m) of such Code is amended
8 by striking “40(f),”.

9 (c) MODIFICATION OF VOLUMETRIC ETHANOL EX-
10 CISE TAX CREDIT.—

11 (1) IN GENERAL.—Subsection (b) of section
12 6426 of the Internal Revenue Code of 1986, as
13 amended by this Act, is amended—

14 (A) by striking paragraph (2) and insert-
15 ing the following:

16 “(2) APPLICABLE AMOUNT.—For purposes of
17 this subsection, with respect to each gallon of alco-
18 hol, the applicable amount is the sum of the credit
19 amount determined in accordance with the following
20 table plus the applicable amount under section
21 40(e)(2) attributable to such gallon:

“In the case of any sale, use, or re- moval during calendar year:	The credit amount is:
2012	20 cents
2013	15 cents
2014	10 cents
2015	5 cents.
2016 and thereafter	0 cents”, and

1 (B) by striking “December 31, 2011” in
2 paragraph (6) and inserting “December 31,
3 2015”.

4 (2) PAYMENTS IN LIEU OF CREDITS.—Subpara-
5 graph (A) of section 6427(e)(6) is amended by strik-
6 ing “December 31, 2010” and inserting “December
7 31, 2015”.

8 (d) EXTENSION OF ADDITIONAL DUTIES ON ETH-
9 ANOL.—Headings 9901.00.50 and 9901.00.52 of the Har-
10 monized Tariff Schedule of the United States are each
11 amended in the effective period column by striking “1/1/
12 2012” and inserting “1/1/2016”.

13 (e) EFFECTIVE DATES.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the amendments made by this section
16 shall apply to fuel sold and used after December 31,
17 2011.

18 (2) ADDITIONAL DUTIES.—The amendments
19 made by subsection (d) shall take effect on January
20 1, 2012.

21 **SEC. 302. REFORM OF BIODIESEL INCOME TAX INCEN-**
22 **TIVES.**

23 (a) IN GENERAL.—Section 40A of the Internal Rev-
24 enue Code of 1986 is amended to read as follows:

1 **“SEC. 40A. BIODIESEL PRODUCTION.**

2 “(a) IN GENERAL.—For purposes of section 38, the
3 biodiesel fuels credit determined under this section for the
4 taxable year is \$1.00 for each gallon of biodiesel produced
5 by the taxpayer which during the taxable year—

6 “(1) is sold by such producer to another per-
7 son—

8 “(A) for use by such other person’s trade
9 or business (other than casual off-farm produc-
10 tion),

11 “(B) for use by such other person as a fuel
12 in a trade or business, or

13 “(C) who sells such biodiesel at retail to
14 another person and places such biodiesel in the
15 fuel tank of such other person, or

16 “(2) is used or sold by such producer for any
17 purpose described in paragraph (1).

18 “(b) INCREASED CREDIT FOR SMALL PRODUCERS.—

19 “(1) IN GENERAL.—In the case of any eligible
20 small biodiesel producer, subsection (a) shall be ap-
21 plied by increasing the dollar amount contained
22 therein by 10 cents.

23 “(2) LIMITATION.—Paragraph (1) shall only
24 apply with respect to the first 15,000,000 gallons of
25 biodiesel produced by any eligible small biodiesel
26 producer during any taxable year.

1 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
2 TAX.—The amount of the credit determined under this
3 section with respect to any biodiesel shall be reduced to
4 take into account any benefit provided with respect to such
5 biodiesel solely by reason of the application of section
6 6426 or 6427(e).

7 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
8 poses of this section—

9 “(1) BIODIESEL.—The term ‘biodiesel’ means
10 liquid fuel derived from biomass which meets—

11 “(A) the registration requirements for
12 fuels and fuel additives established by the Envi-
13 ronmental Protection Agency under section 211
14 of the Clean Air Act (42 U.S.C. 7545), and

15 “(B) the requirements of the American So-
16 ciety of Testing and Materials D6751.

17 Such term shall not include any liquid with respect
18 to which a credit may be determined under section
19 40.

20 “(2) BIODIESEL NOT USED FOR A QUALIFIED
21 PURPOSE.—If—

22 “(A) any credit was determined with re-
23 spect to any biodiesel under this section, and

1 “(B) any person does not use such bio-
2 diesel for the purpose described in subsection
3 (a),
4 then there is hereby imposed on such person a tax
5 equal to the product of the rate applicable under
6 subsection (a) and the number of gallons of such
7 biodiesel.

8 “(3) PASS-THRU IN THE CASE OF ESTATES AND
9 TRUSTS.—Under regulations prescribed by the Sec-
10 retary, rules similar to the rules of subsection (d) of
11 section 52 shall apply.

12 “(4) LIMITATION TO BIODIESEL PRODUCED IN
13 THE UNITED STATES.—No credit shall be deter-
14 mined under this section with respect to any bio-
15 diesel unless such biodiesel is produced in the United
16 States from raw feedstock. For purposes of this
17 paragraph, the term ‘United States’ includes any
18 possession of the United States.

19 “(5) BIODIESEL TRANSFERS FROM AN IRS REG-
20 ISTERED BIODIESEL PRODUCTION FACILITY TO AN
21 IRS REGISTERED TERMINAL OR REFINERY.—The
22 credit allowed under subsection (a) shall be allowed
23 to the terminal or refinery referred to in section
24 4081(a)(1)(B)(i) in instances where section
25 4081(a)(1)(B)(iii) is applicable. The credit allowed

1 under subsection (a) cannot be claimed by a ter-
2 minal or refinery on fuel upon which the credit was
3 previously claimed by a biodiesel producer.

4 “(e) DEFINITIONS AND SPECIAL RULES FOR SMALL
5 BIODIESEL PRODUCERS.—

6 “(1) ELIGIBLE SMALL BIODIESEL PRODUCER.—

7 The term ‘eligible small biodiesel producer’ means a
8 person who at all times during the taxable year has
9 a productive capacity for biodiesel not in excess of
10 60,000,000 gallons.

11 “(2) AGGREGATION RULE.—For purposes of

12 the 15,000,000 gallon limitation under subsection
13 (b)(2) and the 60,000,000 gallon limitation under
14 paragraph (1), all members of the same controlled
15 group of corporations (within the meaning of section
16 267(f)) and all persons under common control (with-
17 in the meaning of section 52(b) but determined by
18 treating an interest of more than 50 percent as a
19 controlling interest) shall be treated as 1 person.

20 “(3) PARTNERSHIP, S CORPORATION, AND

21 OTHER PASS-THRU ENTITIES.—In the case of a
22 partnership, trust, S corporation, or other pass-thru
23 entity, the limitations contained in subsection (b)(2)
24 and paragraph (1) shall be applied at the entity level
25 and at the partner or similar level.

1 “(4) ALLOCATION.—For purposes of this sub-
2 section, in the case of a facility in which more than
3 1 person has an interest, productive capacity shall
4 be allocated among such persons in such manner as
5 the Secretary may prescribe.

6 “(5) REGULATIONS.—The Secretary may pre-
7 scribe such regulations as may be necessary—

8 “(A) to prevent the credit provided for in
9 subsection (b) from directly or indirectly bene-
10 fitting any person with a direct or indirect pro-
11 ductive capacity of more than 60,000,000 gal-
12 lons of biodiesel during the taxable year, or

13 “(B) to prevent any person from directly
14 or indirectly benefitting with respect to more
15 than 15,000,000 gallons during the taxable
16 year.

17 “(6) ALLOCATION OF SMALL BIODIESEL CREDIT
18 TO PATRONS OF COOPERATIVE.—

19 “(A) ELECTION TO ALLOCATE.—

20 “(i) IN GENERAL.—In the case of a
21 cooperative organization described in sec-
22 tion 1381(a), any portion of the increase
23 determined under subsection (b) for the
24 taxable year may, at the election of the or-
25 ganization, be apportioned pro rata among

1 patrons of the organization on the basis of
2 the quantity or value of business done with
3 or for such patrons for the taxable year.

4 “(ii) FORM AND EFFECT OF ELEC-
5 TION.—An election under clause (i) for any
6 taxable year shall be made on a timely
7 filed return for such year. Such election,
8 once made, shall be irrevocable for such
9 taxable year. Such election shall not take
10 effect unless the organization designates
11 the apportionment as such in a written no-
12 tice mailed to its patrons during the pay-
13 ment period described in section 1382(d).

14 “(B) TREATMENT OF ORGANIZATIONS AND
15 PATRONS.—

16 “(i) ORGANIZATIONS.—The amount of
17 the credit not apportioned to patrons pur-
18 suant to subparagraph (A) shall be in-
19 cluded in the amount determined under
20 subsection (b) for the taxable year of the
21 organization.

22 “(ii) PATRONS.—The amount of the
23 credit apportioned to patrons pursuant to
24 subparagraph (A) shall be included in the
25 amount determined under such subsection

1 for the first taxable year of each patron
2 ending on or after the last day of the pay-
3 ment period (as defined in section
4 1382(d)) for the taxable year of the orga-
5 nization or, if earlier, for the taxable year
6 of each patron ending on or after the date
7 on which the patron receives notice from
8 the cooperative of the apportionment.

9 “(iii) SPECIAL RULES FOR DECREASE
10 IN CREDITS FOR TAXABLE YEAR.—If the
11 amount of the credit of the organization
12 determined under such subsection for a
13 taxable year is less than the amount of
14 such credit shown on the return of the or-
15 ganization for such year, an amount equal
16 to the excess of—

17 “(I) such reduction, over

18 “(II) the amount not apportioned
19 to such patrons under subparagraph
20 (A) for the taxable year, shall be
21 treated as an increase in tax imposed
22 by this chapter on the organization.

23 Such increase shall not be treated as tax
24 imposed by this chapter for purposes of de-

1 termining the amount of any credit under
2 this chapter or for purposes of section 55.

3 “(f) RENEWABLE DIESEL.—For purposes of this
4 title—

5 “(1) TREATMENT IN THE SAME MANNER AS
6 BIODIESEL.—Renewable diesel shall be treated in
7 the same manner as biodiesel.

8 “(2) RENEWABLE DIESEL DEFINED.—The term
9 ‘renewable diesel’ means liquid fuel derived from bio-
10 mass which meets—

11 “(A) the registration requirements for
12 fuels and fuel additives established by the Envi-
13 ronmental Protection Agency under section 211
14 of the Clean Air Act (42 U.S.C. 7545), and

15 “(B) the requirements of the American So-
16 ciety of Testing and Materials D975 or D396,
17 or other equivalent standard approved by the
18 Secretary.

19 Such term shall not include any liquid with respect
20 to which a credit may be determined under section
21 40. Such term does not include any fuel derived
22 from coprocessing biomass with a feedstock which is
23 not biomass. For purposes of this paragraph, the
24 term ‘biomass’ has the meaning given such term by
25 section 45K(c)(3).

1 “(3) CERTAIN AVIATION FUEL.—Except as pro-
2 vided in the last 3 sentences of paragraph (2), the
3 term ‘renewable diesel’ shall include fuel derived
4 from biomass which meets the requirements of a De-
5 partment of Defense specification for military jet
6 fuel or an American Society of Testing and Mate-
7 rials specification for aviation turbine fuel.

8 “(g) TERMINATION.—This section shall not apply to
9 any sale or use after December 31, 2016.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for subpart D of part IV of subchapter A of chapter 1
12 of such Code is amended by striking the item relating to
13 section 40A and inserting the following new item:

 “Sec. 40A. Biodiesel production.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to biodiesel sold or used after De-
16 cember 31, 2011.

17 **SEC. 303. REFORM OF BIODIESEL EXCISE TAX INCENTIVES.**

18 (a) IN GENERAL.—Subsection (c) of section 6426 of
19 the Internal Revenue Code of 1986 is amended to read
20 as follows:

21 “(c) BIODIESEL CREDIT.—

22 “(1) IN GENERAL.—For purposes of this sec-
23 tion, the biodiesel credit is \$1.00 for each gallon of
24 biodiesel produced by the taxpayer and which—

1 “(A) is sold by such producer to another
2 person—

3 “(i) for use by such other person’s
4 trade or business (other than casual off-
5 farm production),

6 “(ii) for use by such other person as
7 a fuel in a trade or business, or

8 “(iii) who sells such biodiesel at retail
9 to another person and places such biodiesel
10 in the fuel tank of such other person, or

11 “(B) is used or sold by such producer for
12 any purpose described in subparagraph (A).

13 “(2) DEFINITIONS.—Any term used in this sub-
14 section which is also used in section 40A shall have
15 the meaning given such term by section 40A.

16 “(3) BIODIESEL TRANSFERS FROM AN IRS REG-
17 ISTERED BIODIESEL PRODUCTION FACILITY TO AN
18 IRS REGISTERED TERMINAL.—The credit allowed
19 under this subsection can be claimed by a registered
20 terminal or refinery in instances where section
21 4081(a)(1)(B)(iii) is applicable. The credit allowed
22 under this subsection cannot be claimed by a ter-
23 minal or refinery on fuel upon which the credit was
24 previously claimed by a biodiesel producer.

1 “(4) TERMINATION.—This subsection shall not
2 apply to any sale, use, or removal for any period
3 after December 31, 2016.”.

4 (b) PAYMENT OF CREDIT.—Subsection (e) of section
5 6427 of such Code is amended—

6 (1) by striking “or the biodiesel mixture credit”
7 in paragraph (1),

8 (2) by redesignating paragraphs (3) through
9 (6) as paragraphs (4) through (7), respectively, and
10 by inserting after paragraph (2) the following new
11 paragraph:

12 “(3) BIODIESEL CREDIT.—If any person pro-
13 duces biodiesel and sells or uses such biodiesel as
14 provided in section 6426(c), the Secretary shall pay
15 (without interest) to such person an amount equal to
16 the biodiesel credit with respect to such biodiesel.”,

17 (3) by striking “paragraph (1) or (2)” each
18 place it appears in paragraphs (4) and (6), as redesi-
19 gnated by paragraph (2), and inserting “paragraph
20 (1), (2), or (3)”,

21 (4) by striking “alternative fuel” each place it
22 appears in paragraphs (4) and (6), as redesignated
23 by paragraph (2), and inserting “fuel”, and

24 (5) by striking “biodiesel mixture (as defined in
25 section 6426(c)(3))” in paragraph (7)(B), as so re-

1 designated, and inserting “biodiesel (within the
2 meaning of section 40A)”.

3 (c) EXEMPTION FOR BIODIESEL TRANSFERRED
4 FROM A REGISTERED PRODUCER TO A REGISTERED TER-
5 MINAL.—Subparagraph (B) of section 4081(a)(1) of such
6 Code is amended—

7 (1) by striking “clause (ii)” in clause (i) and in-
8 serting “clauses (ii) and (iii)”, and

9 (2) by adding at the end the following new
10 clause:

11 “(iii) EXEMPTIONS FOR BIODIESEL
12 TRANSFERRED FROM A REGISTERED PRO-
13 DUCER TO A REGISTERED TERMINAL.—
14 The tax imposed by this paragraph shall
15 not apply to any removal or entry of bio-
16 diesel (as defined in section 40A(d)(1))
17 transferred in bulk (without regard to the
18 manner of such transfer) to a terminal or
19 refinery if—

20 “(I) such biodiesel was produced
21 by a person who is registered under
22 section 4101 as a producer of bio-
23 diesel and who provides reporting
24 under the ExStars fuel reporting sys-

1 tem of the Internal Revenue Service,
2 and

3 “(II) the operator of such ter-
4 minal or refinery is registered under
5 section 4101.”.

6 (d) PRODUCER REGISTRATION REQUIREMENT.—

7 Subsection (a) of section 6426 of such Code is amended
8 by striking “subsections (d) and (e)” in the flush sentence
9 at the end and inserting “subsections (c), (d), and (e)”.

10 (e) RECAPTURE.—Subsection (f) of section 6426 of
11 such Code is amended to read as follows:

12 “(f) RECAPTURE.—

13 “(1) ALCOHOL FUEL MIXTURES.—If—

14 “(A) any credit was determined under this
15 section with respect to alcohol used in the pro-
16 duction of any alcohol fuel mixture, and

17 “(B) any person—

18 “(i) separates the alcohol from the
19 mixture, or

20 “(ii) without separation, uses the mix-
21 ture other than as a fuel,

22 then there is hereby imposed on such person a tax
23 equal to the product of the applicable amount and
24 the number of gallons of such alcohol.

1 “(2) BIODIESEL.—If any credit was determined
2 under this section with respect to the production of
3 any biodiesel and any person does not use such bio-
4 diesel for a purpose described in subsection (c)(1),
5 then there is hereby imposed on such person a tax
6 equal to \$1 for each gallon of such biodiesel.

7 “(3) APPLICABLE LAWS.—All provisions of law,
8 including penalties, shall, insofar as applicable and
9 not inconsistent with this section, apply in respect of
10 any tax imposed under paragraph (1) or (2) as if
11 such tax were imposed by section 4081 and not by
12 this section.”.

13 (f) CLERICAL AMENDMENT.—The heading of section
14 6426 of such Code (and the item relating to such section
15 in the table of sections for subchapter B of chapter 65
16 of such Code) is amended by striking “alcohol fuel, bio-
17 diesel, and alternative fuel mixtures” and inserting “alco-
18 hol fuel mixtures, biodiesel production, and alternative fuel
19 mixtures”.

20 (g) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to biodiesel sold or used after De-
22 cember 31, 2011.

23 **SEC. 304. BIODIESEL TREATED AS TAXABLE FUEL.**

24 (a) BIODIESEL TREATED AS TAXABLE FUEL.—
25 Clause (i) of section 4083(a)(3)(A) of such Code is amend-

1 ed by inserting “, including biodiesel (as defined in section
2 6426(c)(3)),” after “(other than gasoline)”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to biodiesel removed, entered, or
5 sold after the date which is 6 months after the date of
6 the enactment of this Act.

7 **TITLE IV—RENEWABLE ELEC-**
8 **TRICITY INTEGRATION CRED-**
9 **IT**

10 **SEC. 401. RENEWABLE ELECTRICITY INTEGRATION CREDIT.**

11 (a) BUSINESS CREDIT.—

12 (1) IN GENERAL.—Subpart D of part IV of
13 subchapter A of chapter 1 of the Internal Revenue
14 Code of 1986 is amended by adding at the end the
15 following new section:

16 **“SEC. 45S. RENEWABLE ELECTRICITY INTEGRATION CRED-**
17 **IT.**

18 “(a) GENERAL RULE.—For purposes of section 38,
19 in the case of an eligible taxpayer, the renewable electricity
20 integration credit for any taxable year is an amount equal
21 to the product of—

22 “(1) the intermittent renewable portfolio factor
23 of such eligible taxpayer, and

24 “(2) the number of kilowatt hours of renewable
25 electricity—

1 “(A) purchased or produced by such tax-
 2 payer, and

3 “(B) sold by such taxpayer to a retail cus-
 4 tomer during the taxable year.

5 “(b) INTERMITTENT RENEWABLE PORTFOLIO FAC-
 6 TOR.—

7 “(1) YEARS BEFORE 2017.—In the case of tax-
 8 able years beginning before January 1, 2017, the
 9 intermittent renewable portfolio factor for an eligible
 10 taxpayer shall be determined as follows:

“In the case of an eligible taxpayer whose intermittent renewable electricity percentage is:	For taxable years beginning before 2012, the intermittent renewable portfolio factor is:	For taxable years beginning in or after 2012, the intermittent renewable portfolio factor is:
Less than 4 percent	zero cents	zero cents
At least 4 percent but less than 8 percent	0.1 cents	zero cents
At least 8 percent but less than 12 percent ...	0.2 cents	0.2 cents
At least 12 percent but less than 16 percent ...	0.3 cents	0.3 cents
At least 16 percent but less than 20 percent ...	0.4 cents	0.4 cents
At least 20 percent but less than 24 percent ...	0.5 cents	0.5 cents
Equal to or greater than 24 percent	0.6 cents	0.6 cents

11 “(2) YEARS AFTER 2016.—In the case of tax-
 12 able years beginning after December 31, 2016, the
 13 intermittent renewable portfolio factor for an eligible
 14 taxpayer shall be determined as follows:

“In the case of an eligible taxpayer whose intermittent renewable electricity percentage is:	For taxable years beginning before 2019, the intermittent renewable portfolio factor is:	For taxable years beginning in or after 2019, the intermittent renewable portfolio factor is:
Less than 10 percent	zero cents	zero cents
At least 10 percent but less than 12 percent ...	0.2 cents	zero cents
At least 12 percent but less than 16 percent ...	0.3 cents	0.15 cents
At least 16 percent but less than 20 percent ...	0.4 cents	0.4 cents
At least 20 percent but less than 24 percent ...	0.5 cents	0.5 cents
Equal to or greater than 24 percent	0.6 cents	0.6 cents

1 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section—

3 “(1) ELIGIBLE TAXPAYER.—The term ‘eligible
4 taxpayer’ means an electric utility (as defined in sec-
5 tion 3(22) of the Federal Power Act, (16 U.S.C.
6 796(22)).

7 “(2) RENEWABLE ELECTRICITY.—The term ‘re-
8 newable electricity’ means electricity generated by—

9 “(A) any facility using wind to generate
10 such electricity;

11 “(B) any facility using solar energy to gen-
12 erate such electricity; or

13 “(C) any facility using any other intermit-
14 tent renewable energy source which the Sec-
15 retary of Energy determines has a capacity fac-
16 tor of less than 50 percent on an annual basis.

17 “(3) INTERMITTENT RENEWABLE ELECTRICITY
18 PERCENTAGE.—The term ‘intermittent renewable

1 electricity percentage’ means the percentage of an el-
2 ible taxpayer’s total sales of electricity to retail
3 customers that is derived from renewable electricity
4 (determine without regard to whether such elec-
5 tricity was produced by the taxpayer).

6 “(4) APPLICATION OF OTHER RULES.—For
7 purposes of this section, rules similar to the rules of
8 paragraphs (1), (3), and (5) of section 45(e) shall
9 apply.

10 “(5) CREDIT ALLOWED ONLY WITH RESPECT
11 TO 1 ELIGIBLE ENTITY.—No credit shall be allowed
12 under subsection (a) with respect to renewable elec-
13 tricity purchased from another eligible entity if a
14 credit has been allowed under this section or a pay-
15 ment has been made under section 6433 to such
16 other eligible entity.

17 “(d) CREDIT DISALLOWED UNLESS CREDIT PASSED
18 TO THIRD PARTY GENERATORS CHARGED FOR INTEGRA-
19 TION COSTS.—

20 “(1) IN GENERAL.—In the case of renewable
21 electricity eligible for the credit under subsection (a)
22 that is purchased and not produced by an eligible
23 taxpayer, no credit shall be allowed unless any
24 charge the taxpayer has assessed the seller to re-
25 cover the integration costs associated with such elec-

1 tricity has been reduced (but not below zero) to the
2 extent of the credit received under subsection (a) as-
3 sociated with such electricity.

4 “(2) DEFINITIONS.—For purposes of paragraph
5 (1), charges intended to recover integration costs do
6 not include amounts paid by the producer of the
7 electricity for interconnection facilities, distribution
8 upgrades, network upgrades, or stand alone network
9 upgrades as those terms have been defined by the
10 Federal Energy Regulatory Commission in its
11 Standard Interconnection Procedures.

12 “(e) COORDINATION WITH PAYMENTS.—The amount
13 of the credit determined under this section with respect
14 to any electricity shall be reduced to take into account any
15 payment provided with respect to such electricity solely by
16 reason of the application of section 6433.”.

17 (2) CREDIT MADE PART OF GENERAL BUSINESS
18 CREDIT.—Subsection (b) of section 38 of the Inter-
19 nal Revenue Code of 1986 is amended by striking
20 “plus” at the end of paragraph (35), by striking the
21 period at the end of paragraph (36) and inserting “,
22 plus”, and by adding at the end the following new
23 paragraph:

24 “(37) the renewable electricity integration cred-
25 it determined under section 45S(a).”.

1 (3) SPECIFIED CREDIT.—Subparagraph (B) of
2 section 38(c)(4) of the Internal Revenue Code of
3 1986 is amended by redesignating clauses (vii)
4 through (ix) as clauses (viii) through (x), respec-
5 tively, and by inserting after clause (v) the following
6 new clause:

7 “(vi) the credit determined under sec-
8 tion 45S.”.

9 (4) CLERICAL AMENDMENT.—The table of sec-
10 tions for subpart D of part IV of subchapter A of
11 chapter 1 of the Internal Revenue Code of 1986 is
12 amended by adding at the end the following new
13 item:

“Sec. 45S. Renewable electricity integration credit.”.

14 (b) PAYMENTS IN LIEU OF CREDIT.—

15 (1) IN GENERAL.—Subchapter B of chapter 65
16 of the Internal Revenue Code of 1986 is amended by
17 adding at the end the following new section:

18 **“SEC. 6433. RENEWABLE ELECTRICITY INTEGRATION PAY-**
19 **MENTS.**

20 “(a) IN GENERAL.—If any eligible person sells re-
21 newable electricity to a retail customer, the Secretary shall
22 pay (without interest) to any such person who elects to
23 receive a payment an amount equal to the product of—

24 “(1) the intermittent renewable portfolio factor
25 of such eligible person; and

1 “(2) the number of kilowatt hours of renewable
2 electricity—

3 “(A) purchased or produced by such per-
4 son; and

5 “(B) sold by such person in the trade or
6 business of such person to a retail customer.

7 “(b) TIMING OF PAYMENTS.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graph (2), rules similar to the rules of section
10 6427(i)(1) shall apply for purposes of this section.

11 “(2) QUARTERLY PAYMENTS.—

12 “(A) IN GENERAL.—If, at the close of any
13 quarter of the taxable year of any person, at
14 least \$750 is payable in the aggregate under
15 subsection (a), to such person with respect to
16 electricity purchased or produced during—

17 “(i) such quarter; or

18 “(ii) any prior quarter (for which no
19 other claim has been filed) during such
20 taxable year, a claim may be filed under
21 this section with respect to such electricity.

22 “(B) TIME FOR FILING CLAIM.—No claim
23 filed under this paragraph shall be allowed un-
24 less filed on or before the last day of the first

1 quarter following the earliest quarter included
2 in the claim.

3 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section:

5 “(1) ELIGIBLE PERSON.—The term ‘eligible
6 person’ means an electric utility (as defined in sec-
7 tion 3(22) of the Federal Power Act, (16 U.S.C.
8 796(22)).

9 “(2) OTHER DEFINITIONS.—Any term used in
10 this section which is also used in section 45S shall
11 have the meaning given such term under section
12 45S.

13 “(3) APPLICATION OF OTHER RULES.—For
14 purposes of this section, rules similar to the rules of
15 paragraphs (1) and (3) of section 45(e) shall apply.

16 “(d) PAYMENT DISALLOWED UNLESS AMOUNT
17 PASSED TO THIRD PARTY GENERATORS CHARGED FOR
18 INTEGRATION COSTS.—

19 “(1) IN GENERAL.—In the case of renewable
20 electricity eligible for the payment under subsection
21 (a) that is purchased and not produced by an eligi-
22 ble person, no payment shall be made under this sec-
23 tion unless any charge the eligible person has as-
24 sessed the seller to recover the integration costs as-
25 sociated with such electricity has been reduced (but

1 not below zero) to the extent of the payment re-
2 ceived under subsection (a) associated with such
3 electricity.

4 “(2) DEFINITIONS.—For purposes of paragraph
5 (1), charges intended to recover integration costs do
6 not include amounts paid by the producer of the
7 electricity for interconnection facilities, distribution
8 upgrades, network upgrades, or stand alone network
9 upgrades as those terms have been defined by the
10 Federal Energy Regulatory Commission in its
11 Standard Interconnection Procedures.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions for subpart B of chapter 65 of the Internal
14 Revenue Code of 1986 is amended by adding at the
15 end the following new item:

“Sec. 6433. Renewable electricity integration payments.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to electricity produced or pur-
18 chased after December 31, 2010.

19 **TITLE V—WIND ENERGY**

20 **SEC. 501. REMOVAL OF CERTAIN TAX RESTRICTIONS TO** 21 **PROMOTE EXPANSION OF CAPITAL FOR WIND** 22 **FARM INVESTMENT.**

23 (a) EXEMPTION FROM PASSIVE LOSS RULES.—

24 (1) IN GENERAL.—Section 469(c) of the Inter-
25 nal Revenue Code of 1986 (defining passive activity)

1 is amended by adding at the end the following new
2 paragraph:

3 “(8) CERTAIN RENEWABLE ENERGY FACILI-
4 TIES.—The term ‘passive activity’ shall not include
5 any trade or business involving ownership of 1 or
6 more facilities described in section 45(d)(1).”.

7 (2) EFFECTIVE DATE.—The amendment made
8 by this subsection shall apply to taxable years begin-
9 ning after December 31, 2010.

10 (b) APPLICATION OF AT-RISK RULES.—

11 (1) IN GENERAL.—Section 465(b)(6) of the In-
12 ternal Revenue Code of 1986 (relating to qualified
13 nonrecourse financing treated as amount at risk) is
14 amended—

15 (A) by inserting “or renewable energy
16 property” after “real property” each place it
17 appears in subparagraphs (A) and (B)(i), and

18 (B) by adding at the end the following new
19 subparagraph:

20 “(F) RENEWABLE ENERGY PROPERTY.—
21 The term ‘renewable energy property’ means
22 property described in section 45(d)(1).”.

23 (2) EFFECTIVE DATE.—The amendments made
24 by this subsection shall apply to losses incurred after

1 December 31, 2010, with respect to property placed
2 in service by the taxpayer after such date.

3 (c) TREATMENT OF INCOME AND GAINS FROM WIND
4 ENERGY AS QUALIFYING INCOME FOR PUBLICLY TRADED
5 PARTNERSHIPS.—

6 (1) IN GENERAL.—Section 7704(d) of the In-
7 ternal Revenue Code of 1986 (defining qualifying in-
8 come) is amended—

9 (A) by inserting “wind energy,” after “fer-
10 tilizer,” in paragraph (1)(E), and

11 (B) by adding at the end the following new
12 paragraph:

13 “(6) WIND ENERGY.—For purposes of para-
14 graph (1)(E), income and gains from wind energy
15 include amounts realized from the sale of renewable
16 energy credits, pollution allowances, and other envi-
17 ronmental attributes.”.

18 (2) EFFECTIVE DATE.—The amendments made
19 by this subsection shall apply on the date of enact-
20 ment of this Act.

21 (d) ANTI-ABUSE RULES.—The Secretary of Treasury
22 or the Secretary’s designee shall prescribe such rules as
23 are necessary to prevent the abuse of the purposes of the
24 amendments made by this section.

1 **TITLE VI—RENEWABLE ELEC-**
2 **TRICITY AND ENERGY EFFI-**
3 **CIENCY RESOURCE STAND-**
4 **ARDS**

5 **SEC. 601. RENEWABLE ELECTRICITY AND ENERGY EFFI-**
6 **CIENCY RESOURCE STANDARDS.**

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

10 **“SEC. 610. RENEWABLE ELECTRICITY AND ENERGY EFFI-**
11 **CIENCY RESOURCE STANDARDS.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) BASE QUANTITY OF ELECTRICITY.—

14 “(A) IN GENERAL.—The term ‘base quan-
15 tity of electricity’ means the total quantity of
16 electricity sold by an electric utility to electric
17 consumers in a calendar year.

18 “(B) EXCLUSIONS.—The term ‘base quan-
19 tity of electricity’ does not include electricity
20 generated by a hydroelectric facility (including
21 a pumped storage facility but excluding incre-
22 mental hydropower).

23 “(2) DISTRIBUTED GENERATION FACILITY.—

24 The term ‘distributed generation facility’ means a
25 facility at a customer site.

1 “(3) GEOTHERMAL ENERGY.—The term ‘geo-
2 thermal energy’ means energy derived from a geo-
3 thermal deposit (within the meaning of section
4 613(e)(2) of the Internal Revenue Code of 1986).

5 “(4) INCREMENTAL GEOTHERMAL PRODUC-
6 TION.—

7 “(A) IN GENERAL.—The term ‘incremental
8 geothermal production’ means, for any year, the
9 excess of—

10 “(i) the total kilowatt hours of elec-
11 tricity produced from a facility (including a
12 distributed generation facility) using geo-
13 thermal energy; over

14 “(ii) the average number of kilowatt
15 hours produced annually at the facility for
16 5 of the previous 7 calendar years before
17 the date of enactment of this section after
18 eliminating the highest and the lowest kilo-
19 watt hour production years in that 7-year
20 period.

21 “(B) SPECIAL RULE.—A facility described
22 in subparagraph (A) that was placed in service
23 at least 7 years before the date of enactment of
24 this section shall, commencing with the year in
25 which that date of enactment occurs, reduce the

1 amount calculated under subparagraph (A)(ii)
2 each year, on a cumulative basis, by the average
3 percentage decrease in the annual kilowatt hour
4 production for the 7-year period described in
5 subparagraph (A)(ii) with such cumulative sum,
6 but not to exceed 30 percent.

7 “(5) INCREMENTAL HYDROPOWER.—

8 “(A) IN GENERAL.—The term ‘incremental
9 hydropower’ means additional energy generated
10 as a result of efficiency improvements or capac-
11 ity additions made on or after—

12 “(i) January 1, 2001; or

13 “(ii) the effective commencement date
14 of an existing applicable State renewable
15 portfolio standard program at a hydro-
16 electric facility that was placed in service
17 before that date.

18 “(B) EXCLUSION.—The term ‘incremental
19 hydropower’ does not include additional energy
20 generated as a result of operational changes not
21 directly associated with efficiency improvements
22 or capacity additions.

23 “(C) MEASUREMENT AND CERTIFI-
24 CATION.—Efficiency improvements and capacity

1 additions referred to in subparagraph (B) shall
2 be—

3 “(i) measured on the basis of the
4 same water flow information used to deter-
5 mine a historic average annual generation
6 baseline for the hydroelectric facility; and

7 “(ii) certified by the Secretary or the
8 Federal Energy Regulatory Commission.

9 “(6) OCEAN ENERGY.—The term ‘ocean energy’
10 includes current, wave, tidal, and thermal energy.

11 “(7) RENEWABLE BIOMASS.—Subject to section
12 104(b) of the Securing America’s Future with En-
13 ergy and Sustainable Technologies Act, the term ‘re-
14 newable biomass’ means—

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

1 reduce or contain disease or insect infestation,
2 or to restore ecosystem health, and that are—
3 “(i) not from components of—
4 “(I) a component of the National
5 Wild and Scenic Rivers System;
6 “(II) a component of the Na-
7 tional Wilderness Preservation Sys-
8 tem;
9 “(III) a National Monument;
10 “(IV) any part of the National
11 Landscape Conservation System;
12 “(V) a designated wilderness
13 study area or other areas managed for
14 wilderness characteristics;
15 “(VI) an inventoried roadless
16 area within the National Forest Sys-
17 tem;
18 “(VII) an old growth stand (as
19 defined by the applicable land man-
20 agement plan);
21 “(VIII) a late-successional stand
22 (except for dead, severely damaged, or
23 badly infested trees) (as defined by
24 the applicable land management
25 plan); or

1 “(IX) a designated primitive
2 area;

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 ap-
7 plicable law and land management plans;

8 “(B) any organic matter that is available
9 on a renewable or recurring basis from non-
10 Federal land or land belonging to an Indian or
11 Indian tribe that is held in trust by the United
12 States or subject to a restriction against alien-
13 ation imposed by the United States, including—

14 “(i) renewable plant material, includ-
15 ing—

16 “(I) feed grains;

17 “(II) other agricultural commod-
18 ities;

19 “(III) other plants and trees; and

20 “(IV) algae; and

21 “(ii) waste material (other than com-
22 monly recycled paper), including—

23 “(I) crop residue;

1 “(II) other vegetative waste ma-
2 terial (including wood waste and wood
3 residues);

4 “(III) animal waste and byprod-
5 ucts (including fats, oils, greases, and
6 manure);

7 “(IV) construction waste;

8 “(V) food waste and yard waste;
9 and

10 “(VI) waste from single or multi-
11 cellular organisms; and

12 “(C) residues and byproducts from wood,
13 pulp, or paper products facilities.

14 “(8) RENEWABLE ENERGY.—The term ‘renew-
15 able energy’ means electric energy generated at a fa-
16 cility (including a distributed generation facility)
17 from—

18 “(A) solar, wind, geothermal, or ocean en-
19 ergy;

20 “(B) renewable biomass;

21 “(C) landfill gas;

22 “(D) municipal solid waste;

23 “(E) incremental hydropower; or

24 “(F) hydropower that has been certified by
25 the Low Impact Hydropower Institute.

1 “(b) RENEWABLE ELECTRICITY REQUIREMENT.—

2 “(1) REQUIREMENT.—

3 “(A) IN GENERAL.—Subject to subpara-
4 graph (B), each electric utility that sells elec-
5 tricity to electric consumers shall obtain a per-
6 centage of the base quantity of electricity the
7 electric utility sells to electric consumers in any
8 calendar year through the means of compliance
9 identified in paragraph (2).

10 “(B) PERCENTAGE.—The percentage ob-
11 tained in a calendar year under subparagraph
12 (A) shall not be less than the amount specified
13 in the following table:

“Calendar years:	Minimum annual percentage:
2013	10
2014	11
2015	12
2016	13
2017	14
2018	15
2019	16
2020	17
2021	18
2022	19
2023	21
2024	23
2025	25

14 “(2) MEANS OF COMPLIANCE.—Not later than
15 60 days after the end of each calendar year, an elec-
16 tric utility shall meet the requirements of paragraph
17 (1) by—

1 “(A) submitting to the Secretary renewable
2 energy credits issued under subsection (c);

3 “(B) making alternative compliance pay-
4 ments to the Secretary at the rate of 4 cents
5 per kilowatt hour (as adjusted for inflation
6 under subsection (g));

7 “(C) submitting to the Secretary energy
8 efficiency credits established under section
9 611(k) in a quantity that shall not exceed 15
10 percent of the minimum percentage required in
11 each calendar year under subparagraph (B); or

12 “(D) conducting a combination of activities
13 described in subparagraphs (A), (B), and (C).

14 “(3) CLEAN ENERGY JOBS.—In carrying out
15 this title, the Secretary shall, to the maximum ex-
16 tent practicable, encourage electric utilities, in meet-
17 ing the requirements of paragraph (1), also—

18 “(A) to create jobs that pay a living wage
19 that supports a family;

20 “(B) to provide health insurance benefits
21 to employees; and

22 “(C) to comply with all Federal labor and
23 environmental laws (including regulations).

24 “(c) RENEWABLE ENERGY CREDIT TRADING PRO-
25 GRAM.—

1 “(1) IN GENERAL.—Not later than December
2 31, 2011, the Secretary, in consultation with the Ad-
3 ministrators, shall establish a renewable energy credit
4 trading program under which electric utilities shall
5 submit to the Secretary renewable energy credits to
6 certify the compliance of the electric utilities with re-
7 spect to obligations under subsection (b)(1).

8 “(2) ADMINISTRATION.—As part of the pro-
9 gram, the Secretary shall—

10 “(A) issue renewable energy credits to gen-
11 erators of electric energy from new renewable
12 energy;

13 “(B) issue renewable energy credits to
14 electric utilities associated with State renewable
15 portfolio standard compliance mechanisms pur-
16 suant to subsection (h);

17 “(C) subject to subparagraph (D), ensure
18 that a kilowatt hour, including the associated
19 renewable energy credit, shall be used only once
20 for purposes of compliance with this section;

21 “(D) allow double credits for generation
22 from facilities on Indian land and brownfield
23 sites, and triple credits for generation from
24 small renewable distributed generators (mean-
25 ing those no larger than 1 megawatt);

1 “(E) ensure that, with respect to a pur-
2 chaser that, as of the date of enactment of this
3 section, has a purchase agreement from a re-
4 newable energy facility placed in service before
5 that date (other than a biomass energy facility),
6 the credit associated with the generation of re-
7 newable energy under the contract is issued to
8 the purchaser of the electric energy; and

9 “(F) not allow energy efficiency credits es-
10 tablished under section 611(k) to be traded.

11 “(3) DURATION.—A credit described in para-
12 graph (2)(A) may only be used for compliance with
13 this section during the 3-year period beginning on
14 the date of issuance of the credit.

15 “(4) TRANSFERS.—An electric utility that holds
16 credits in excess of the quantity of credits needed to
17 comply with subsection (b) may transfer the credits
18 to another electric utility.

19 “(5) DELEGATION OF MARKET FUNCTION.—
20 The Secretary may delegate to an appropriate entity
21 that establishes markets the administration of a na-
22 tional tradeable renewable energy credit market for
23 purposes of creating a transparent national market
24 for the sale or trade of renewable energy credits.

25 “(d) ENFORCEMENT.—

1 “(1) CIVIL PENALTIES.—Any electric utility
2 that fails to meet the compliance requirements of
3 subsection (b) shall be subject to a civil penalty.

4 “(2) AMOUNT OF PENALTY.—Subject to para-
5 graph (3), the amount of the civil penalty shall be
6 equal to the product obtained by multiplying—

7 “(A) the number of kilowatt-hours of elec-
8 tric energy sold to electric consumers in viola-
9 tion of subsection (b); by

10 “(B) the greater of—

11 “(i) 2 cents (adjusted for inflation
12 under subsection (g)); or

13 “(ii) 200 percent of the average mar-
14 ket value of renewable energy credits dur-
15 ing the year in which the violation oc-
16 curred.

17 “(3) MITIGATION OR WAIVER.—

18 “(A) IN GENERAL.—The Secretary may
19 mitigate or waive a civil penalty under this sub-
20 section if the electric utility is unable to comply
21 with subsection (b) due to a reason outside of
22 the reasonable control of the electric utility.

23 “(B) REDUCTION.—The Secretary shall re-
24 duce the amount of any penalty determined
25 under paragraph (2) by an amount paid by the

1 electric utility to a State for failure to comply
2 with the requirement of a State renewable en-
3 ergy program if the State requirement is great-
4 er than the applicable requirement of subsection
5 (b).

6 “(4) PROCEDURE FOR ASSESSING PENALTY.—
7 The Secretary shall assess a civil penalty under this
8 subsection in accordance with the procedures pre-
9 scribed by section 333(d) of the Energy Policy and
10 Conservation Act (42 U.S.C. 6303(d)).

11 “(e) STATE RENEWABLE ENERGY ACCOUNT PRO-
12 GRAM.—

13 “(1) IN GENERAL.—There is established in the
14 Treasury a State renewable energy account program.

15 “(2) DEPOSITS.—All money collected by the
16 Secretary from alternative compliance payments and
17 the assessment of civil penalties under this section
18 shall be deposited into the renewable energy account
19 established pursuant to this subsection.

20 “(3) USE.—Proceeds deposited in the State re-
21 newable energy account shall be used by the Sec-
22 retary to carry out a program to provide grants to
23 the State agency responsible for developing State en-
24 ergy conservation plans under section 362 of the En-
25 ergy Policy and Conservation Act (42 U.S.C. 6322)

1 for the purposes of promoting renewable energy pro-
2 duction, including programs that promote tech-
3 nologies that reduce the use of electricity at cus-
4 tomer sites, such as solar water heating.

5 “(4) ADMINISTRATION.—The Secretary may
6 issue guidelines and criteria for grants awarded
7 under this subsection.

8 “(5) RECORDS.—State energy offices receiving
9 grants under this section shall maintain such
10 records and evidence of compliance as the Secretary
11 may require.

12 “(6) PREFERENCE.—In allocating funds under
13 this subsection, the Secretary shall give preference—

14 “(A) to States in regions that have a dis-
15 proportionately small share of economically sus-
16 tainable renewable energy generation capacity;
17 and

18 “(B) to State programs to stimulate or en-
19 hance innovative renewable energy technologies.

20 “(f) EXEMPTIONS.—During any calendar year, this
21 section shall not apply to an electric utility that sold less
22 than 4,000,000 megawatt-hours of electric energy to elec-
23 tric consumers during the preceding calendar year.

24 “(g) INFLATION ADJUSTMENT.—Not later than De-
25 cember 31 of each year beginning in 2011, the Secretary

1 shall adjust for United States dollar inflation from Janu-
2 ary 1, 2011 (as measured by the Consumer Price Index)—

3 “(1) the price of a renewable energy credit
4 under subsection (c)(2); and

5 “(2) the amount of the civil penalty per kilo-
6 watt-hour under subsection (d)(2).

7 “(h) STATE PROGRAMS.—

8 “(1) IN GENERAL.—Subject to paragraph (2),
9 nothing in this section diminishes any authority of
10 a State or political subdivision of a State to adopt
11 or enforce any law or regulation respecting renew-
12 able energy.

13 “(2) COMPLIANCE.—Except as provided in sub-
14 section (d)(3), no such law or regulation shall relieve
15 any person of any requirement otherwise applicable
16 under this section.

17 “(3) COORDINATION.—The Secretary, in con-
18 sultation with States having such renewable energy
19 programs, shall, to the maximum extent practicable,
20 facilitate coordination between the Federal program
21 and State programs.

22 “(4) REGULATIONS.—

23 “(A) IN GENERAL.—The Secretary, in con-
24 sultation with States, shall promulgate regula-
25 tions to ensure that an electric utility subject to

1 the requirements of this section that is also
2 subject to a State renewable energy standard
3 receives renewable energy credits in relation to
4 equivalent quantities of renewable energy asso-
5 ciated with compliance mechanisms, other than
6 the generation or purchase of renewable energy
7 by the electric utility, including the acquisition
8 of certificates or credits and the payment of
9 taxes, fees, surcharges, or other financial com-
10 pliance mechanisms by the electric utility or a
11 customer of the electric utility, directly associ-
12 ated with the generation or purchase of renew-
13 able energy.

14 “(B) PROHIBITION ON DOUBLE COUNT-
15 ING.—The regulations promulgated under this
16 paragraph shall ensure that a kilowatt hour as-
17 sociated with a renewable energy credit issued
18 pursuant to this subsection shall not be used
19 for compliance with this section more than
20 once.

21 “(i) RECOVERY OF COSTS.—

22 “(1) IN GENERAL.—The Commission shall pro-
23 mulgate and enforce such regulations as are nec-
24 essary to ensure that an electric utility recovers all

1 prudently incurred costs associated with compliance
2 with this section.

3 “(2) APPLICABLE LAW.—A regulation under
4 paragraph (1) shall be enforceable in accordance
5 with the provisions of law applicable to enforcement
6 of regulations under the Federal Power Act (16
7 U.S.C. 791a et seq.).

8 “(j) REGULATIONS.—

9 “(1) IN GENERAL.—Not later than 18 months
10 after the date of enactment of this title, the Sec-
11 retary, in consultation with the leaders of relevant
12 Federal agencies, shall promulgate regulations to
13 carry out this title.

14 “(2) PRIORITIES.—The regulations promul-
15 gated under paragraph (1) shall prioritize the use of
16 components and products produced in the United
17 States, without placing constraints that prevent
18 compliance under this title, for new renewable en-
19 ergy facilities eligible to participate in activities
20 under this title.

21 “(k) TERMINATION OF AUTHORITY.—This section
22 and the authority provided by this section terminate on
23 December 31, 2040.”.

24 (b) TABLE OF CONTENTS AMENDMENT.—The table
25 of contents of the Public Utility Regulatory Policies Act

1 of 1978 (16 U.S.C. prec. 2601) is amended by adding at
2 the end of the items relating to title VI the following:

“Sec. 609. Rural and remote communities electrification grants.

“Sec. 610. Renewable electricity and energy efficiency resource standards.”.

3 **SEC. 602. ENERGY EFFICIENCY RESOURCE STANDARD FOR**
4 **RETAIL ELECTRICITY AND NATURAL GAS DIS-**
5 **TRIBUTORS.**

6 (a) IN GENERAL.—Title VI of the Public Utility Reg-
7 ulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) (as
8 amended by section 601(a)) is amended by adding at the
9 end the following:

10 **“SEC. 611. ENERGY EFFICIENCY RESOURCE STANDARD FOR**
11 **RETAIL ELECTRICITY AND NATURAL GAS DIS-**
12 **TRIBUTORS.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) ADMINISTRATOR.—The term ‘Adminis-
15 trator’ means the Administrator of the Environ-
16 mental Protection Agency.

17 “(2) AFFILIATE.—The term ‘affiliate’, when
18 used with respect to a person, means another person
19 that owns or controls, is owned or controlled by, or
20 is under common ownership control with, the person,
21 as determined under regulations promulgated by the
22 Secretary.

23 “(3) ANSI.—The term ‘ANSI’ means the
24 American National Standards Institute.

1 “(4) ASHRAE.—The term ‘ASHRAE’ means
2 the American Society of Heating, Refrigerating, and
3 Air Conditioning Engineers.

4 “(5) BASE QUANTITY.—

5 “(A) IN GENERAL.—The term ‘base quan-
6 tity’, when used with respect to a retail elec-
7 tricity distributor or retail natural gas dis-
8 tributor, means the average annual quantity of
9 electricity or natural gas delivered by the retail
10 electricity distributor or retail natural gas dis-
11 tributor to retail customers during the 5 cal-
12 endar years immediately preceding the date of
13 enactment of this section.

14 “(B) EXCLUSION.—The term ‘base quan-
15 tity’, when used to determine the base quantity
16 of a retail natural gas distributor, does not in-
17 clude natural gas delivered for purposes of elec-
18 tricity generation.

19 “(6) CODES AND STANDARDS SAVINGS.—

20 “(A) IN GENERAL.—The term ‘codes and
21 standards savings’ means a reduction in end-
22 use electricity or natural gas consumption in
23 the service territory of a retail electricity dis-
24 tributor or a retail natural gas distributor as a
25 result of the adoption and implementation, after

1 the date of enactment of this section, of new or
2 revised appliance and equipment efficiency
3 standards or building energy codes.

4 “(B) BASELINES.—In calculating codes
5 and standards savings—

6 “(i) the baseline for calculating sav-
7 ings from building codes shall be the more
8 stringent of—

9 “(I) the 2006 International En-
10 ergy Conservation Code for residential
11 buildings and the ASHRAE/ANSI/
12 IESNA Standard 90.1 (2004) for
13 commercial buildings;

14 “(II) the applicable State build-
15 ing code in effect on the date of en-
16 actment of this section; or

17 “(III) a baseline determined by
18 the Secretary; and

19 “(ii) the baseline for calculating sav-
20 ings from appliance standards shall be the
21 average efficiency of new appliances in the
22 applicable 1 or more categories prior to
23 adoption and implementation of the new
24 standard.

1 “(7) COST-EFFECTIVE.—The term ‘cost-effec-
2 tive’, when used with respect to an energy efficiency
3 measure, means that the measure achieves a net
4 present value of economic benefits over the life of
5 the measure, both directly to the energy consumer
6 and to the economy, that is greater than the net
7 present value of the cost of the measure over the life
8 of the measure, both directly to the energy consumer
9 and to the economy.

10 “(8) CUSTOMER FACILITY SAVINGS.—The term
11 ‘customer facility savings’ means a reduction in end-
12 use electricity or natural gas consumption (including
13 recycled energy savings) at a facility of an end-use
14 consumer of electricity or natural gas served by a re-
15 tail electricity distributor or natural gas distributor,
16 as compared to—

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

21 “(B) in the case of new equipment that re-
22 places existing equipment with remaining useful
23 life—

1 “(i) consumption of the existing
2 equipment for the remaining useful life of
3 the equipment; and

4 “(ii) after that useful life, consump-
5 tion of new equipment of average effi-
6 ciency;

7 “(C) in the case of a new facility, con-
8 sumption at a reference facility of average effi-
9 ciency; or

10 “(D) in the case of energy savings meas-
11 ures at a facility not covered by subparagraphs
12 (A) through (C), consumption at the facility
13 during a base year.

14 “(9) ELECTRICITY SAVINGS.—The term ‘elec-
15 tricity savings’ means reductions in electricity con-
16 sumption achieved through measures implemented
17 after the date of enactment of this section, as deter-
18 mined in accordance with regulations promulgated
19 by the Secretary, through—

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

23 “(B) reductions in distribution system
24 losses of electricity achieved by a retail elec-
25 tricity distributor, as compared to losses attrib-

1 utable to new or replacement distribution sys-
2 tem equipment of average efficiency (as defined
3 in regulations promulgated by the Secretary);
4 and

5 “(C) codes and standards savings of elec-
6 tricity.

7 “(10) IESNA.—The term ‘IESNA’ mean the
8 Illuminating Engineering Society of North America.

9 “(11) NATURAL GAS SAVINGS.—The term ‘nat-
10 ural gas savings’ means reductions in natural gas
11 consumption from measures implemented after the
12 date of enactment of this section, as determined in
13 accordance with regulations promulgated by the Sec-
14 retary, through—

15 “(A) customer facility savings of natural
16 gas, adjusted to reflect any associated increase
17 in electricity consumption or consumption of
18 other fuels at the facility;

19 “(B) reductions in leakage, operational
20 losses, and consumption of natural gas fuel to
21 operate a gas distribution system, achieved by
22 a retail natural gas distributor, as compared to
23 similar leakage, losses, and consumption during
24 a base period (which shall not be less than 1
25 year); and

1 “(C) codes and standards savings of nat-
2 ural gas.

3 “(12) POWER POOL.—The term ‘power pool’
4 means an association of 2 or more interconnected
5 electric systems that is recognized by the Commis-
6 sion as having an agreement to coordinate oper-
7 ations and planning for improved reliability and effi-
8 ciencies, including a Regional Transmission Organi-
9 zation or an Independent System Operator.

10 “(13) RECYCLED ENERGY SAVINGS.—The term
11 ‘recycled energy savings’ means a reduction in elec-
12 tricity or natural gas consumption that results from
13 a modification of an industrial or commercial system
14 that commenced operation before the date of enact-
15 ment of this section, in order to recapture electrical,
16 mechanical, or thermal energy that would otherwise
17 be wasted, as determined in accordance with regula-
18 tions promulgated by the Secretary.

19 “(14) REPORTING PERIOD.—The term ‘report-
20 ing period’ means—

21 “(A) calendar year 2013; and

22 “(B) each successive calendar year there-
23 after.

24 “(15) RETAIL ELECTRICITY DISTRIBUTOR.—

1 “(A) IN GENERAL.—The term ‘retail elec-
2 tricity distributor’ means, for any calendar
3 year, an electric utility that owns or operates an
4 electric distribution facility and, using the facil-
5 ity, delivered not less than 4,000,000 mega-
6 watt-hours of electric energy to electric con-
7 sumers for purposes other than resale during
8 the most recent 2-calendar-year period for
9 which data are available.

10 “(B) ADMINISTRATION.—For purposes of
11 determining whether an electric utility qualifies
12 as a retail electricity distributor under subpara-
13 graph (A)—

14 “(i) deliveries by any affiliate of an
15 electric utility to electric consumers for
16 purposes other than resale shall be consid-
17 ered to be deliveries by the electric utility;
18 and

19 “(ii) deliveries by any electric utility
20 to a lessee, tenant, or affiliate of the elec-
21 tric utility shall not be treated as deliveries
22 to electric consumers.

23 “(16) RETAIL NATURAL GAS DISTRIBUTOR.—

24 “(A) IN GENERAL.—The term ‘retail nat-
25 ural gas distributor’ means, for any given cal-

1 endar year, a local distribution company (as de-
2 fined in section 2 of the Natural Gas Policy Act
3 of 1978 (15 U.S.C. 3301)), that delivered to
4 natural gas consumers more than
5 5,000,000,000 cubic feet of natural gas during
6 the most recent 2-calendar-year period for
7 which data are available.

8 “(B) ADMINISTRATION.—For purposes of
9 determining whether a person qualifies as a re-
10 tail natural gas distributor under subparagraph
11 (A)—

12 “(i) deliveries of natural gas by any
13 affiliate of a local distribution company to
14 consumers for purposes other than resale
15 shall be considered to be deliveries by the
16 local distribution company; and

17 “(ii) deliveries of natural gas to a les-
18 see, tenant, or affiliate of a local distribu-
19 tion company shall not be treated as deliv-
20 eries to natural gas consumers.

21 “(17) THIRD-PARTY EFFICIENCY PROVIDER.—

22 The term ‘third-party efficiency provider’ means any
23 retailer, building owner, energy service company, fi-
24 nancial institution or other commercial, industrial or
25 nonprofit entity that is capable of providing elec-

1 tricity savings or natural gas savings in accordance
2 with subsections (e) and (f).

3 “(b) ESTABLISHMENT OF PROGRAM.—Not later than
4 18 months after the date of enactment of this section, the
5 Secretary shall, by regulation, establish a program to im-
6 plement and enforce this section, including—

7 “(1) measurement and verification procedures
8 and standards under subsection (f);

9 “(2) requirements under which retail electricity
10 distributors and retail natural gas distributors
11 shall—

12 “(A) demonstrate, document, and report
13 compliance with the performance standards es-
14 tablished under subsection (d); and

15 “(B) estimate the impact of the standards
16 on current and future electricity and natural
17 gas use in the service territories of the retail
18 electricity distributors and retail natural gas
19 distributors, respectively; and

20 “(3) requirements governing applications for,
21 and implementation of, delegated State administra-
22 tion under subsection (h).

23 “(c) COORDINATION WITH STATE PROGRAMS.—In
24 establishing and implementing the program established
25 under this section, the Secretary, in coordination with the

1 Administrator, shall, to the maximum extent practicable,
2 preserve the integrity, and incorporate the best practices,
3 of existing State energy efficiency programs.

4 “(d) PERFORMANCE STANDARDS.—

5 “(1) COMPLIANCE OBLIGATION.—Not later
6 than April 1 of the calendar year immediately fol-
7 lowing each reporting period—

8 “(A) each retail electricity distributor shall
9 submit to the Secretary a report, in accordance
10 with regulations promulgated by the Secretary,
11 demonstrating that the retail electricity dis-
12 tributor has achieved cumulative electricity sav-
13 ings (adjusted to account for any attrition of
14 savings measures implemented in prior years)
15 in each calendar year that are least equal to the
16 applicable percentage, established under para-
17 graph (2), (3), or (4), of the base quantity of
18 the retail electricity distributor; and

19 “(B) each retail natural gas distributor
20 shall submit to the Secretary a report, in ac-
21 cordance with regulations promulgated by the
22 Secretary, demonstrating that the retail natural
23 gas distributor has achieved cumulative natural
24 gas savings (adjusted to account for any attri-
25 tion of savings measures implemented in prior

1 years) in each calendar year compared to the
 2 base quantity of the retail natural gas dis-
 3 tributor.

4 “(2) STANDARDS FOR 2012 THROUGH 2020.—

5 For purposes of paragraph (1), for each of calendar
 6 years 2012 through 2020, the applicable percentages
 7 shall be as follows:

“Calendar years:	Cumulative Electricity Savings Percentage:
2012	1.5
2013	2.5
2014	3.5
2015	4.5
2016	5.5
2017	6.5
2018	7.5
2019	8.5
2020	9.5

8 “(3) SUBSEQUENT YEARS.—

9 “(A) CALENDAR YEARS 2021 THROUGH
 10 2030.—Not later than December 31, 2015, the
 11 Secretary shall promulgate regulations estab-
 12 lishing performance standards (expressed as ap-
 13 plicable percentages of base quantity for both
 14 cumulative electricity savings and cumulative
 15 natural gas savings) for each of calendar years
 16 2021 through 2030.

17 “(B) SUBSEQUENT EXTENSIONS.—Except
 18 as provided in subparagraph (A), not later than
 19 December 31 of the penultimate reporting pe-
 20 riod for which performance standards have been

1 established under this paragraph, the Secretary
2 shall promulgate regulations establishing per-
3 formance standards (expressed as applicable
4 percentages of base quantity for both cumu-
5 lative electricity savings and cumulative natural
6 gas savings) for the 10-calendar-year period fol-
7 lowing the last calendar year for which perform-
8 ance standards previously were established.

9 “(C) REQUIREMENTS.—

10 “(i) IN GENERAL.—Subject to clause
11 (ii), the Secretary shall establish standards
12 under this paragraph at levels that reflect
13 the maximum achievable level of cost-effec-
14 tive energy efficiency potential, taking into
15 account—

16 “(I) cost-effective energy savings
17 achieved by leading retail electricity
18 distributors and retail natural gas dis-
19 tributors;

20 “(II) opportunities for new codes
21 and standard savings;

22 “(III) technology improvements;
23 and

24 “(IV) other indicators of cost-ef-
25 fective energy efficiency potential.

1 “(ii) MINIMUM PERCENTAGE.—In no
2 case shall the applicable percentages for
3 any calendar year be lower than the appli-
4 cable percentage for calendar year 2020
5 (including any increase in the standard for
6 calendar year 2020 pursuant to paragraph
7 (4)).

8 “(4) MIDCOURSE REVIEW AND ADJUSTMENT OF
9 STANDARDS.—

10 “(A) IN GENERAL.—Not later than De-
11 cember 31, 2014, and at 10-year intervals
12 thereafter, the Secretary shall—

13 “(i) review the most recent standards
14 established under paragraph (2) or (3);
15 and

16 “(ii) by regulation, increase the stand-
17 ards if the Secretary determines that addi-
18 tional cost-effective energy efficiency po-
19 tential is achievable, taking into account
20 the factors described in paragraph (3)(C).

21 “(B) LEAD TIME.—If the Secretary revises
22 standards under this paragraph, the regulations
23 shall provide adequate lead time to ensure that
24 compliance with the increased standards is fea-
25 sible.

1 “(5) DELAY OF SUBMISSION FOR FIRST RE-
2 PORTING PERIOD.—

3 “(A) IN GENERAL.—Notwithstanding
4 paragraphs (1) and (2), for the 2013 reporting
5 period, the Secretary may accept a request from
6 a retail electricity distributor or a retail natural
7 gas distributor to delay the required submission
8 of documentation of part or all of the required
9 savings for up to 2 years.

10 “(B) PLAN.—The request for delay shall
11 include a plan for coming into full compliance
12 by the end of the 2013 through 2014 reporting
13 period.

14 “(e) TRANSFERS OF ELECTRICITY OR NATURAL GAS
15 SAVINGS.—

16 “(1) BILATERAL CONTRACTS FOR SAVINGS
17 TRANSFERS.—Subject to the other provisions of this
18 section, a retail electricity distributor or retail nat-
19 ural gas distributor may use electricity savings or
20 natural gas savings purchased, pursuant to a bilat-
21 eral contract, from another retail electricity dis-
22 tributor or retail natural gas distributor, a State, or
23 a third-party efficiency provider to meet the applica-
24 ble performance standard under subsection (d).

1 “(2) REQUIREMENTS.—Electricity or natural
2 gas savings purchased and used for compliance pur-
3 suant to this subsection shall be—

4 “(A) measured and verified in accordance
5 with subsection (f);

6 “(B) reported in accordance with sub-
7 section (d); and

8 “(C) achieved within the same State as is
9 served by the retail electricity distributor or re-
10 tail natural gas distributor.

11 “(3) EXCEPTION.—Notwithstanding paragraph
12 (2)(C), a State regulatory authority may authorize a
13 retail electricity distributor or a retail natural gas
14 distributor regulated by the State regulatory author-
15 ity to purchase savings achieved in a different State,
16 if—

17 “(A) the savings are achieved within the
18 same power pool; and

19 “(B) the State regulatory authority that
20 regulates the purchaser oversees the measure-
21 ment and verification of the savings pursuant to
22 the procedures and standards applicable in the
23 State of the purchaser.

24 “(4) REGULATORY APPROVAL.—Nothing in this
25 subsection limits or affects the authority of a State

1 regulatory authority to require a retail electricity
2 distributor or retail natural gas distributor that is
3 regulated by the State regulatory authority to obtain
4 the authorization or approval of the State regulatory
5 authority for a contract for transfer of savings
6 under this subsection.

7 “(5) LIMITATIONS.—In the interest of opti-
8 mizing achievement of cost-effective efficiency poten-
9 tial, the Secretary may prescribe such limitations as
10 the Secretary determines to be appropriate with re-
11 spect to the proportion of the compliance obligation
12 of a retail electricity or natural gas distributor,
13 under the applicable performance standards under
14 subsection (d), that may be met using electricity or
15 natural gas savings that are purchased under this
16 subsection.

17 “(f) MEASUREMENT AND VERIFICATION OF SAV-
18 INGS.—The regulations promulgated under subsection (b)
19 shall include—

20 “(1) procedures and standards for defining and
21 measuring electricity savings and natural gas sav-
22 ings that can be counted towards the performance
23 standards established under subsection (d), which
24 shall—

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

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

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

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

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

17 “(F) include procedures for counting com-
18 bined heat and power savings and recycled en-
19 ergy savings;

20 “(G) establish methods for calculating
21 codes and standards savings, including the use
22 of verified compliance rates;

23 “(H) count only measures and savings that
24 are additional to business-as-usual practices;

1 “(I) except in the case of codes and stand-
2 ards savings, ensure that the retail electricity
3 distributor or retail natural gas distributor
4 claiming the savings played a significant role in
5 achieving the savings (including through the ac-
6 tivities of a designated agent of the distributor
7 or through the purchase of transferred savings);

8 “(J) avoid double-counting of savings used
9 for compliance with this section and section
10 610, including transferred savings; and

11 “(K) include savings from programs ad-
12 ministered by the retail electric or natural gas
13 distributor that are funded by Federal, State,
14 or other sources; and

15 “(2) procedures and standards for third-party
16 verification of reported electricity savings or natural
17 gas savings.

18 “(g) ENFORCEMENT AND JUDICIAL REVIEW.—

19 “(1) REVIEW OF RETAIL DISTRIBUTOR RE-
20 PORTS.—

21 “(A) IN GENERAL.—The Secretary shall
22 review each report submitted to the Secretary
23 by a retail electricity distributor or retail nat-
24 ural gas distributor under subsection (d) to

1 verify that the applicable performance stand-
2 ards under that subsection have been met.

3 “(B) EXCLUSIONS.—In determining com-
4 pliance with the applicable performance stand-
5 ards, the Secretary shall exclude reported elec-
6 tricity savings or natural gas savings that are
7 not adequately demonstrated and documented,
8 in accordance with the regulations promulgated
9 under subsections (d), (e), and (f).

10 “(2) PENALTY FOR FAILURE TO DOCUMENT
11 ADEQUATE SAVINGS.—If a retail electricity dis-
12 tributor or a retail natural gas distributor fails to
13 demonstrate compliance with an applicable perform-
14 ance standard under subsection (d) or to pay to the
15 State an applicable alternative compliance payment
16 under subsection (h)(4), the Secretary shall assess
17 against the retail electricity distributor or retail nat-
18 ural gas distributor a civil penalty for each such fail-
19 ure in an amount equal to, as adjusted for inflation
20 in accordance with such regulations as the Secretary
21 may promulgate—

22 “(A) \$100 per megawatt-hour of electricity
23 savings or alternative compliance payment that
24 the retail electricity distributor failed to achieve
25 or make, respectively; or

1 “(B) \$10 per million Btu of natural gas
2 savings or alternative compliance payment that
3 the retail natural gas distributor failed to
4 achieve or make, respectively.

5 “(3) OFFSETTING STATE PENALTIES.—The
6 Secretary shall reduce the amount of any penalty
7 under paragraph (2) by the amount paid by the ap-
8 plicable retail electricity distributor or retail natural
9 gas distributor to a State for failure to comply with
10 the requirements of a State energy efficiency re-
11 source standard during the same compliance period,
12 if the State standard is—

13 “(A) comparable in type to the Federal
14 standard established under this section; and

15 “(B) more stringent than the applicable
16 performance standards under subsection (d).

17 “(4) ENFORCEMENT PROCEDURES.—The Sec-
18 retary shall assess a civil penalty, as provided under
19 paragraph (2), in accordance with the procedures
20 described in section 333(d) of the Energy Policy and
21 Conservation Act (42 U.S.C. 6303(d)).

22 “(5) JUDICIAL REVIEW.—

23 “(A) IN GENERAL.—Any person that will
24 be adversely affected by a final action taken by
25 the Secretary under this section, other than the

1 assessment of a civil penalty, may use the pro-
2 cedures for review described in section 336(b)
3 of the Energy Policy and Conservation Act (42
4 U.S.C. 6306(b)).

5 “(B) ADMINISTRATION.—For purposes of
6 this paragraph, references to a rule in section
7 336(b) of the Energy Policy and Conservation
8 Act (42 U.S.C. 6306(b)) shall be considered to
9 refer also to all other final actions of the Sec-
10 retary under this section other than the assess-
11 ment of a civil penalty.

12 “(h) STATE ADMINISTRATION.—

13 “(1) IN GENERAL.—On receipt of an applica-
14 tion from the Governor of a State (including, for
15 purposes of this subsection, the Mayor of the Dis-
16 trict of Columbia), the Secretary may delegate to the
17 State the administration of this section within the
18 territory of the State if the Secretary determines
19 that the State will implement an energy efficiency
20 program that meets or exceeds the requirements of
21 this section, including—

22 “(A) achieving electricity savings and nat-
23 ural gas savings at least as great as the savings
24 required under the applicable performance
25 standards established under subsection (d);

1 “(B) reviewing reports and verifying elec-
2 tricity savings and natural gas savings achieved
3 in the State (including savings transferred from
4 outside the State); and

5 “(C) collecting any alternative compliance
6 payments under paragraph (4) and using the
7 payments to implement cost-effective efficiency
8 programs.

9 “(2) SECRETARIAL DETERMINATION.—The Sec-
10 retary shall make a substantive determination ap-
11 proving or disapproving a State application, after
12 public notice and comment, not later than 180 days
13 after the date of receipt of a complete application.

14 “(3) ALTERNATIVE MEASUREMENT AND
15 VERIFICATION PROCEDURES AND STANDARDS.—As
16 part of an application submitted under paragraph
17 (1), a State may request to use alternative measure-
18 ment and verification procedures and standards to
19 the procedures and standards established under sub-
20 section (f), if the State demonstrates that the alter-
21 native procedures and standards provide a level of
22 accuracy of measurement and verification that is at
23 least equivalent to the Federal procedures and
24 standards promulgated under subsection (f).

25 “(4) ALTERNATIVE COMPLIANCE PAYMENTS.—

1 “(A) IN GENERAL.—As part of an applica-
2 tion submitted under paragraph (1), a State
3 may permit retail electricity distributors or re-
4 tail natural gas distributors to pay to the State,
5 by not later than April 1 of the calendar year
6 immediately following the applicable reporting
7 period, an alternative compliance payment in an
8 amount equal to, as adjusted for inflation in ac-
9 cordance with such regulations as the Secretary
10 may promulgate, not less than—

11 “(i) \$50 per megawatt-hour of elec-
12 tricity savings needed to make up any def-
13 icit with regard to a compliance obligation
14 under the applicable performance stand-
15 ard; or

16 “(ii) \$5 per million Btu of natural gas
17 savings needed to make up any deficit with
18 regard to a compliance obligation under
19 the applicable performance standard.

20 “(B) USE OF PAYMENTS.—

21 “(i) IN GENERAL.—Alternative com-
22 pliance payments collected by a State pur-
23 suant to subparagraph (A) shall be used
24 by the State to administer the delegated
25 authority of the State under this section

1 and to implement cost-effective energy effi-
2 ciency programs.

3 “(ii) PROGRAMS.—The programs
4 shall—

5 “(I) to the maximum extent prac-
6 ticable, achieve electricity savings and
7 natural gas savings in the State suffi-
8 cient to make up the deficit associated
9 with the alternative compliance pay-
10 ments; and

11 “(II) be measured and verified in
12 accordance with the applicable proce-
13 dures and standards under subsection
14 (f) or paragraph (3), as the case may
15 be.

16 “(5) REVIEW OF STATE IMPLEMENTATION.—

17 “(A) PERIODIC REVIEW.—Every 2 years,
18 the Secretary shall review State implementation
19 of this section for conformance with the re-
20 quirements of this section in approximately $\frac{1}{2}$
21 of the States that have received approval under
22 this subsection to administer the program, so
23 that each State shall be reviewed at least once
24 every 4 years.

1 “(B) REPORT.—To facilitate the review,
2 the Secretary may require the State to submit
3 a report demonstrating the compliance of the
4 State with the requirements of this section, in-
5 cluding—

6 “(i) reports submitted by retail elec-
7 tricity distributors and retail natural gas
8 distributors to the State demonstrating
9 compliance with applicable performance
10 standards;

11 “(ii) the impact of the standards on
12 projected electricity and natural gas de-
13 mand within the State;

14 “(iii) an accounting of the use of al-
15 ternative compliance payments by the
16 State and the resulting electricity savings
17 and natural gas savings achieved; and

18 “(iv) such other information as the
19 Secretary determines appropriate.

20 “(C) REVIEW ON PETITION.—Notwith-
21 standing subparagraph (A), on the receipt of a
22 public petition containing a credible allegation
23 of substantial deficiencies, the Secretary shall
24 promptly review the implementation by the
25 State of delegated authority under this section.

1 “(D) DEFICIENCIES.—

2 “(i) IN GENERAL.—If deficiencies are
3 found in a review under this paragraph,
4 the Secretary shall—

5 “(I) notify the State; and

6 “(II) direct the State to correct
7 the deficiencies and to report to the
8 Secretary on progress not later than
9 180 days after the date of the receipt
10 of review results.

11 “(ii) SUBSTANTIAL DEFICIENCIES.—If
12 the deficiencies are substantial, the Sec-
13 retary shall—

14 “(I) disallow such reported sav-
15 ings as the Secretary determines are
16 not credible due to deficiencies;

17 “(II) re-review the State not
18 later than 2 years after the date of
19 the original review; and

20 “(III) if substantial deficiencies
21 remain uncorrected after the review
22 provided for under subclause (II), re-
23 voke the authority of the State to ad-
24 minister the program established
25 under this section.

1 “(6) CALLS FOR REVISION OF STATE APPLICA-
2 TIONS.—As a condition of maintaining the delegated
3 authority of a State to administer this section, the
4 Secretary may require the State to submit a revised
5 application under paragraph (1) if the Secretary
6 has—

7 “(A) promulgated new or revised perform-
8 ance standards under subsection (d);

9 “(B) promulgated new or substantially re-
10 vised measurement and verification procedures
11 and standards under subsection (f); or

12 “(C) otherwise substantially revised the
13 program established under this section.

14 “(i) INFORMATION AND REPORTS.—In accordance
15 with section 13 of the Federal Energy Administration Act
16 of 1974 (15 U.S.C. 772), the Secretary may require any
17 retail electricity distributor, any retail natural gas dis-
18 tributor, any third-party efficiency provider, or such other
19 entities as the Secretary considers appropriate, to provide
20 any information the Secretary determines appropriate to
21 carry out this section.

22 “(j) STATE LAW.—Nothing in this section diminishes
23 or qualifies any authority of a State or political subdivision
24 of a State to adopt or enforce any law (including a regula-
25 tion) respecting electricity savings or natural gas savings,

1 including any law (including a regulation) establishing en-
2 ergy efficiency requirements that are more stringent than
3 the requirements established under this section, except
4 that no such law or regulation may relieve any person of
5 any requirement otherwise applicable under this section.

6 “(k) ENERGY EFFICIENCY CREDITS.—The Secretary
7 shall issue energy efficiency credits at the end of each cal-
8 endar year to eligible retail electricity distributor for each
9 kilowatt hour of electricity savings above the applicable
10 percentage, established under paragraph (2), (3), or (4)
11 of subsection (d), of the base quantity of the retail elec-
12 tricity distributor in a quantity that shall not exceed 15
13 percent of the minimum percentage required in each cal-
14 endar year under section 610(b)(1)(B).”.

15 (b) TABLE OF CONTENTS AMENDMENT.—The table
16 of contents of the Public Utility Regulatory Policies Act
17 of 1978 (16 U.S.C. prec. 2601) (as amended by section
18 601(b)) is amended by adding at the end of the items re-
19 lating to title VI the following:

“Sec. 611. Energy efficiency resource standard for retail electricity and natural
gas distributors.”.

20 **SEC. 603. VOLUNTARY RENEWABLE ENERGY MARKETS.**

21 (a) IN GENERAL.—It is the policy of the United
22 States to support the continued growth of voluntary re-
23 newable energy markets.

1 (b) ADMINISTRATION.—Nothing in this Act or the
2 amendments made by this Act is intended to interfere with
3 or prevent the continued operation and growth of the vol-
4 untary renewable energy market.

5 (c) REPORT ON EFFICACY OF VOLUNTARY RENEW-
6 ABLE ENERGY MARKET.—Not later than 2 years after the
7 date of enactment of this Act, the Comptroller General
8 of the United States shall submit to Congress a report
9 describing the efficacy of the voluntary renewable energy
10 market in the context of the pollution reduction and in-
11 vestment programs under this Act and the amendments
12 made by this Act, including—

13 (1) whether meaningful reductions in carbon di-
14 oxide emissions have occurred in response to invest-
15 ments in the voluntary renewable energy market;

16 (2) whether the voluntary market continues to
17 grow; and

18 (3) a list of recommended strategies for ensur-
19 ing that—

20 (A) meaningful emissions reductions may
21 occur; and

22 (B) the voluntary renewable energy market
23 may continue to grow.