

1 **TITLE II—OIL AND GAS**
2 **Subtitle A—Alaska Natural Gas**
3 **Pipeline**

4 **SEC. 2001. SHORT TITLE.**

5 This subtitle may be cited as the “Alaska Natural
6 Gas Pipeline Act of 2003”.

7 **SEC. 2002. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) Construction of a natural gas pipeline sys-
10 tem from the Alaskan North Slope to United States
11 markets is in the national interest and will enhance
12 national energy security by providing access to the
13 significant gas reserves in Alaska needed to meet the
14 anticipated demand for natural gas.

15 (2) The Commission issued a conditional certifi-
16 cate of public convenience and necessity for the
17 Alaska natural gas transportation system, which re-
18 mains in effect.

19 (b) PURPOSES.—The purposes of this subtitle are as
20 follows:

21 (1) To provide a statutory framework for the
22 expedited approval, construction, and initial oper-
23 ation of an Alaska natural gas transportation
24 project, as an alternative to the framework provided
25 in the Alaska Natural Gas Transportation Act of

1 1976 (15 U.S.C. 719 et seq.), which remains in ef-
2 fect.

3 (2) To establish a process for providing access
4 to such transportation project in order to promote
5 competition in the exploration, development, and
6 production of Alaska natural gas.

7 (3) To clarify Federal authorities under the
8 Alaska Natural Gas Transportation Act of 1976.

9 **SEC. 2003. DEFINITIONS.**

10 In this subtitle, the following definitions apply:

11 (1) ALASKA NATURAL GAS.—The term “Alaska
12 natural gas” means natural gas derived from the
13 area of the State of Alaska lying north of 64 degrees
14 North latitude.

15 (2) ALASKA NATURAL GAS TRANSPORTATION
16 PROJECT.—The term “Alaska natural gas transpor-
17 tation project” means any natural gas pipeline sys-
18 tem that carries Alaska natural gas to the border
19 between Alaska and Canada (including related facili-
20 ties subject to the jurisdiction of the Commission)
21 that is authorized under either—

22 (A) the Alaska Natural Gas Transpor-
23 tation Act of 1976 (15 U.S.C. 719 et seq.); or

24 (B) section 2004.

1 (3) ALASKA NATURAL GAS TRANSPORTATION
2 SYSTEM.—The term “Alaska natural gas transpor-
3 tation system” means the Alaska natural gas trans-
4 portation project authorized under the Alaska Nat-
5 ural Gas Transportation Act of 1976 and designated
6 and described in section 2 of the President’s deci-
7 sion.

8 (4) COMMISSION.—The term “Commission”
9 means the Federal Energy Regulatory Commission.

10 (5) PRESIDENT’S DECISION.—The term “Presi-
11 dent’s decision” means the decision and report to
12 Congress on the Alaska natural gas transportation
13 system issued by the President on September 22,
14 1977, pursuant to section 7 of the Alaska Natural
15 Gas Transportation Act of 1976 (15 U.S.C. 719e)
16 and approved by Public Law 95–158 (91 Stat.
17 1268).

18 **SEC. 2004. ISSUANCE OF CERTIFICATE OF PUBLIC CONVEN-**
19 **IENCE AND NECESSITY.**

20 (a) AUTHORITY OF THE COMMISSION.—Notwith-
21 standing the provisions of the Alaska Natural Gas Trans-
22 portation Act of 1976 (15 U.S.C. 719 et seq.), the Com-
23 mission may, pursuant to section 7(c) of the Natural Gas
24 Act (15 U.S.C. 717f(c)), consider and act on an applica-
25 tion for the issuance of a certificate of public convenience

1 and necessity authorizing the construction and operation
2 of an Alaska natural gas transportation project other than
3 the Alaska natural gas transportation system.

4 (b) ISSUANCE OF CERTIFICATE.—

5 (1) IN GENERAL.—The Commission shall issue
6 a certificate of public convenience and necessity au-
7 thorizing the construction and operation of an Alas-
8 ka natural gas transportation project under this sec-
9 tion if the applicant has satisfied the requirements
10 of section 7(e) of the Natural Gas Act (15 U.S.C.
11 717f(e)).

12 (2) CONSIDERATIONS.—In considering an appli-
13 cation under this section, the Commission shall pre-
14 sume that—

15 (A) a public need exists to construct and
16 operate the proposed Alaska natural gas trans-
17 portation project; and

18 (B) sufficient downstream capacity will
19 exist to transport the Alaska natural gas mov-
20 ing through such project to markets in the con-
21 tiguous United States.

22 (c) EXPEDITED APPROVAL PROCESS.—The Commis-
23 sion shall issue a final order granting or denying any ap-
24 plication for a certificate of public convenience and neces-
25 sity under section 7(c) of the Natural Gas Act (15 U.S.C.

1 717f(c)) and this section not more than 60 days after the
2 issuance of the final environmental impact statement for
3 that project pursuant to section 2005.

4 (d) PROHIBITION ON CERTAIN PIPELINE ROUTE.—
5 No license, permit, lease, right-of-way, authorization, or
6 other approval required under Federal law for the con-
7 struction of any pipeline to transport natural gas from
8 lands within the Prudhoe Bay oil and gas lease area may
9 be granted for any pipeline that follows a route that
10 traverses—

11 (1) the submerged lands (as defined by the
12 Submerged Lands Act) beneath, or the adjacent
13 shoreline of, the Beaufort Sea; and

14 (2) enters Canada at any point north of 68 de-
15 grees North latitude.

16 (e) OPEN SEASON.—Except where an expansion is
17 ordered pursuant to section 2006, initial or expansion ca-
18 pacity on any Alaska natural gas transportation project
19 shall be allocated in accordance with procedures to be es-
20 tablished by the Commission in regulations governing the
21 conduct of open seasons for such project. Such procedures
22 shall include the criteria for and timing of any open sea-
23 sons, be consistent with the purposes set forth in section
24 2002(b)(2), and, for any open season for capacity beyond
25 the initial capacity, provide the opportunity for the trans-

1 portation of natural gas other than from the Prudhoe Bay
2 and Point Thompson units. The Commission shall issue
3 such regulations not later than 120 days after the date
4 of enactment of this Act.

5 (f) PROJECTS IN THE CONTIGUOUS UNITED
6 STATES.—Applications for additional or expanded pipeline
7 facilities that may be required to transport Alaska natural
8 gas from Canada to markets in the contiguous United
9 States may be made pursuant to the Natural Gas Act.
10 To the extent such pipeline facilities include the expansion
11 of any facility constructed pursuant to the Alaska Natural
12 Gas Transportation Act of 1976, the provisions of that
13 Act shall continue to apply.

14 (g) STUDY OF IN-STATE NEEDS.—The holder of the
15 certificate of public convenience and necessity issued,
16 modified, or amended by the Commission for an Alaska
17 natural gas transportation project shall demonstrate that
18 it has conducted a study of Alaska in-State needs, includ-
19 ing tie-in points along the Alaska natural gas transpor-
20 tation project for in-State access.

21 (h) ALASKA ROYALTY GAS.—The Commission, upon
22 the request of the State of Alaska and after a hearing,
23 may provide for reasonable access to the Alaska natural
24 gas transportation project for the State of Alaska or its
25 designee for the transportation of the State's royalty gas

1 for local consumption needs within the State; except that
2 the rates of existing shippers of subscribed capacity on
3 such project shall not be increased as a result of such ac-
4 cess.

5 (i) REGULATIONS.—The Commission may issue regu-
6 lations to carry out the provisions of this section.

7 **SEC. 2005. ENVIRONMENTAL REVIEWS.**

8 (a) COMPLIANCE WITH NEPA.—The issuance of a
9 certificate of public convenience and necessity authorizing
10 the construction and operation of any Alaska natural gas
11 transportation project under section 2004 shall be treated
12 as a major Federal action significantly affecting the qual-
13 ity of the human environment within the meaning of sec-
14 tion 102(2)(C) of the National Environmental Policy Act
15 of 1969 (42 U.S.C. 4332(2)(C)).

16 (b) DESIGNATION OF LEAD AGENCY.—The Commis-
17 sion shall be the lead agency for purposes of complying
18 with the National Environmental Policy Act of 1969, and
19 shall be responsible for preparing the statement required
20 by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c))
21 with respect to an Alaska natural gas transportation
22 project under section 2004. The Commission shall prepare
23 a single environmental statement under this section, which
24 shall consolidate the environmental reviews of all Federal
25 agencies considering any aspect of the project.

1 (c) OTHER AGENCIES.—All Federal agencies consid-
2 ering aspects of the construction and operation of an Alas-
3 ka natural gas transportation project under section 2004
4 shall cooperate with the Commission, and shall comply
5 with deadlines established by the Commission in the prep-
6 aration of the statement under this section. The statement
7 prepared under this section shall be used by all such agen-
8 cies to satisfy their responsibilities under section
9 102(2)(C) of the National Environmental Policy Act of
10 1969 (42 U.S.C. 4332(2)(C)) with respect to such project.

11 (d) EXPEDITED PROCESS.—The Commission shall
12 issue a draft statement under this section not later than
13 12 months after the Commission determines the applica-
14 tion to be complete and shall issue the final statement not
15 later than 6 months after the Commission issues the draft
16 statement, unless the Commission for good cause finds
17 that additional time is needed.

18 **SEC. 2006. PIPELINE EXPANSION.**

19 (a) AUTHORITY.—With respect to any Alaska natural
20 gas transportation project, upon the request of one or
21 more persons and after giving notice and an opportunity
22 for a hearing, the Commission may order the expansion
23 of such project if it determines that such expansion is re-
24 quired by the present and future public convenience and
25 necessity.

1 (b) REQUIREMENTS.—Before ordering an expansion,
2 the Commission shall—

3 (1) approve or establish rates for the expansion
4 service that are designed to ensure the recovery, on
5 an incremental or rolled-in basis, of the cost associ-
6 ated with the expansion (including a reasonable rate
7 of return on investment);

8 (2) ensure that the rates as established do not
9 require existing shippers on the Alaska natural gas
10 transportation project to subsidize expansion ship-
11 pers;

12 (3) find that the proposed shipper will comply
13 with, and the proposed expansion and the expansion
14 of service will be undertaken and implemented based
15 on, terms and conditions consistent with the then-ef-
16 fective tariff of the Alaska natural gas transpor-
17 tation project;

18 (4) find that the proposed facilities will not ad-
19 versely affect the financial or economic viability of
20 the Alaska natural gas transportation project;

21 (5) find that the proposed facilities will not ad-
22 versely affect the overall operations of the Alaska
23 natural gas transportation project;

1 (6) find that the proposed facilities will not di-
2 minish the contract rights of existing shippers to
3 previously subscribed certificated capacity;

4 (7) ensure that all necessary environmental re-
5 views have been completed; and

6 (8) find that adequate downstream facilities
7 exist or are expected to exist to deliver incremental
8 Alaska natural gas to market.

9 (c) **REQUIREMENT FOR A FIRM TRANSPORTATION**
10 **AGREEMENT.**—Any order of the Commission issued pur-
11 suant to this section shall be null and void unless the per-
12 son or persons requesting the order executes a firm trans-
13 portation agreement with the Alaska natural gas transpor-
14 tation project within a reasonable period of time as speci-
15 fied in such order.

16 (d) **LIMITATION.**—Nothing in this section shall be
17 construed to expand or otherwise affect any authorities of
18 the Commission with respect to any natural gas pipeline
19 located outside the State of Alaska.

20 (e) **REGULATIONS.**—The Commission may issue reg-
21 ulations to carry out the provisions of this section.

22 **SEC. 2007. FEDERAL COORDINATOR.**

23 (a) **ESTABLISHMENT.**—There is established, as an
24 independent office in the executive branch, the Office of

1 the Federal Coordinator for Alaska Natural Gas Trans-
2 portation Projects.

3 (b) FEDERAL COORDINATOR.—The Office shall be
4 headed by a Federal Coordinator for Alaska Natural Gas
5 Transportation Projects, who shall—

6 (1) be appointed by the President, by and with
7 the advice of the Senate;

8 (2) hold office at the pleasure of the President;
9 and

10 (3) be compensated at the rate prescribed for
11 level III of the Executive Schedule (5 U.S.C. 5314).

12 (c) DUTIES.—The Federal Coordinator shall be re-
13 sponsible for—

14 (1) coordinating the expeditious discharge of all
15 activities by Federal agencies with respect to an
16 Alaska natural gas transportation project; and

17 (2) ensuring the compliance of Federal agencies
18 with the provisions of this subtitle.

19 (d) REVIEWS AND ACTIONS OF OTHER FEDERAL
20 AGENCIES.—

21 (1) EXPEDITED REVIEWS AND ACTIONS.—All
22 reviews conducted and actions taken by any Federal
23 officer or agency relating to an Alaska natural gas
24 transportation project authorized under this section
25 shall be expedited, in a manner consistent with com-

1 pletion of the necessary reviews and approvals by the
2 deadlines set forth in this subtitle.

3 (2) PROHIBITION ON CERTAIN TERMS AND CON-
4 DITIONS.—Except with respect to Commission ac-
5 tions under sections 2004, 2005, and 2006, no Fed-
6 eral officer or agency shall have the authority to in-
7 clude terms and conditions that are permitted, but
8 not required, by law on any certificate, right-of-way,
9 permit, lease, or other authorization issued to an
10 Alaska natural gas transportation project if the Fed-
11 eral Coordinator determines that the terms and con-
12 ditions would prevent or impair in any significant re-
13 spect the expeditious construction and operation of
14 the project.

15 (3) PROHIBITION ON CERTAIN ACTIONS.—Ex-
16 cept with respect to Commission actions under sec-
17 tions 2004, 2005, and 2006, unless required by law,
18 no Federal officer or agency shall add to, amend, or
19 abrogate any certificate, right-of-way, permit, lease,
20 or other authorization issued to an Alaska natural
21 gas transportation project if the Federal Coordinator
22 determines that such action would prevent or impair
23 in any significant respect the expeditious construc-
24 tion and operation of the project.

1 (e) STATE COORDINATION.—The Federal Coordi-
2 nator shall enter into a Joint Surveillance and Monitoring
3 Agreement, approved by the President and the Governor
4 of Alaska, with the State of Alaska similar to that in effect
5 during construction of the Trans-Alaska Oil Pipeline to
6 monitor the construction of the Alaska natural gas trans-
7 portation project. The Federal Government shall have pri-
8 mary surveillance and monitoring responsibility where the
9 Alaska natural gas transportation project crosses Federal
10 lands and private lands, and the State government shall
11 have primary surveillance and monitoring responsibility
12 where the Alaska natural gas transportation project
13 crosses State lands.

14 (f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS
15 AND AUTHORITY.—Upon appointment of the Federal Co-
16 ordinator by the President, all of the functions and au-
17 thority of the Office of Federal Inspector of Construction
18 for the Alaska Natural Gas Transportation System vested
19 in the Secretary of Energy pursuant to section 3012(b)
20 of Public Law 102–486 (15 U.S.C. 719e(b)), including all
21 functions and authority described and enumerated in the
22 Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33,663),
23 Executive Order No. 12142 of June 21, 1979 (44 Fed.
24 Reg. 36,927), and section 5 of the President’s decision,
25 shall be transferred to the Federal Coordinator.

1 **SEC. 2008. JUDICIAL REVIEW.**

2 (a) **EXCLUSIVE JURISDICTION.**—Except for review by
3 the Supreme Court of the United States on writ of certio-
4 rari, the United States Court of Appeals for the District
5 of Columbia Circuit shall have original and exclusive juris-
6 diction to determine—

7 (1) the validity of any final order or action (in-
8 cluding a failure to act) of any Federal agency or of-
9 ficer under this subtitle;

10 (2) the constitutionality of any provision of this
11 subtitle, or any decision made or action taken under
12 this subtitle; or

13 (3) the adequacy of any environmental impact
14 statement prepared under the National Environ-
15 mental Policy Act of 1969 with respect to any action
16 under this subtitle.

17 (b) **DEADLINE FOR FILING CLAIM.**—Claims arising
18 under this subtitle may be brought not later than 60 days
19 after the date of the decision or action giving rise to the
20 claim.

21 (c) **EXPEDITED CONSIDERATION.**—The United
22 States Court of Appeals for the District of Columbia Cir-
23 cuit shall set any action brought under subsection (a) for
24 expedited consideration, taking into account the national
25 interest as described in section 2002(a).

1 (d) AMENDMENT TO ANGTA.—Section 10(c) of the
2 Alaska Natural Gas Transportation Act of 1976 (15
3 U.S.C. 719h) is amended by inserting after paragraph (1)
4 the following:

5 “(2) The United States Court of Appeals for the Dis-
6 trict of Columbia Circuit shall set any action brought
7 under this section for expedited consideration, taking into
8 account the national interest described in section 2.”.

9 **SEC. 2009. STATE JURISDICTION OVER IN-STATE DELIVERY**
10 **OF NATURAL GAS.**

11 (a) LOCAL DISTRIBUTION.—Any facility receiving
12 natural gas from the Alaska natural gas transportation
13 project for delivery to consumers within the State of Alas-
14 ka shall be deemed to be a local distribution facility within
15 the meaning of section 1(b) of the Natural Gas Act (15
16 U.S.C. 717(b)), and therefore not subject to the jurisdic-
17 tion of the Commission.

18 (b) ADDITIONAL PIPELINES.—Nothing in this sub-
19 title, except as provided in section 2004(d), shall preclude
20 or affect a future gas pipeline that may be constructed
21 to deliver natural gas to Fairbanks, Anchorage,
22 Matanuska-Susitna Valley, or the Kenai peninsula or
23 Valdez or any other site in the State of Alaska for con-
24 sumption within or distribution outside the State of Alas-
25 ka.

1 (c) RATE COORDINATION.—Pursuant to the Natural
2 Gas Act, the Commission shall establish rates for the
3 transportation of natural gas on the Alaska natural gas
4 transportation project. In exercising such authority, the
5 Commission, pursuant to section 17(b) of the Natural Gas
6 Act (15 U.S.C. 717p(b)), shall confer with the State of
7 Alaska regarding rates (including rate settlements) appli-
8 cable to natural gas transported on and delivered from the
9 Alaska natural gas transportation project for use within
10 the State of Alaska.

11 **SEC. 2010. STUDY OF ALTERNATIVE MEANS OF CONSTRUC-**
12 **TION.**

13 (a) REQUIREMENT OF STUDY.—If no application for
14 the issuance of a certificate or amended certificate of pub-
15 lic convenience and necessity authorizing the construction
16 and operation of an Alaska natural gas transportation
17 project has been filed with the Commission not later than
18 18 months after the date of enactment of this Act, the
19 Secretary of Energy shall conduct a study of alternative
20 approaches to the construction and operation of the
21 project.

22 (b) SCOPE OF STUDY.—The study shall consider the
23 feasibility of establishing a Government corporation to
24 construct an Alaska natural gas transportation project,
25 and alternative means of providing Federal financing and

1 ownership (including alternative combinations of Govern-
2 ment and private corporate ownership) of the project.

3 (c) CONSULTATION.—In conducting the study, the
4 Secretary of Energy shall consult with the Secretary of
5 the Treasury and the Secretary of the Army (acting
6 through the Commanding General of the Corps of Engi-
7 neers).

8 (d) REPORT.—If the Secretary of Energy is required
9 to conduct a study under subsection (a), the Secretary
10 shall submit a report containing the results of the study,
11 the Secretary's recommendations, and any proposals for
12 legislation to implement the Secretary's recommendations
13 to Congress.

14 **SEC. 2011. CLARIFICATION OF ANGTA STATUS AND AU-**
15 **THORITIES.**

16 (a) SAVINGS CLAUSE.—Nothing in this subtitle af-
17 fects any decision, certificate, permit, right-of-way, lease,
18 or other authorization issued under section 9 of the Alaska
19 Natural Gas Transportation Act of 1976 (15 U.S.C.
20 719g) or any Presidential findings or waivers issued in
21 accordance with that Act.

22 (b) CLARIFICATION OF AUTHORITY TO AMEND
23 TERMS AND CONDITIONS TO MEET CURRENT PROJECT
24 REQUIREMENTS.—Any Federal officer or agency respon-
25 sible for granting or issuing any certificate, permit, right-

1 of-way, lease, or other authorization under section 9 of
2 the Alaska Natural Gas Transportation Act of 1976 (15
3 U.S.C. 719g) may add to, amend, or abrogate any term
4 or condition included in such certificate, permit, right-of-
5 way, lease, or other authorization to meet current project
6 requirements (including the physical design, facilities, and
7 tariff specifications), so long as such action does not com-
8 pel a change in the basic nature and general route of the
9 Alaska natural gas transportation system as designated
10 and described in section 2 of the President's decision, or
11 would otherwise prevent or impair in any significant re-
12 spect the expeditious construction and initial operation of
13 such transportation system.

14 (c) UPDATED ENVIRONMENTAL REVIEWS.—The Sec-
15 retary of Energy shall require the sponsor of the Alaska
16 natural gas transportation system to submit such updated
17 environmental data, reports, permits, and impact analyses
18 as the Secretary determines are necessary to develop de-
19 tailed terms, conditions, and compliance plans required by
20 section 5 of the President's decision.

21 **SEC. 2012. SENSE OF CONGRESS.**

22 It is the sense of Congress that an Alaska natural
23 gas transportation project will provide significant eco-
24 nomic benefits to the United States and Canada. In order
25 to maximize those benefits, Congress urges the sponsors

1 of the pipeline project to make every effort to use steel
2 that is manufactured or produced in North America and
3 to negotiate a project labor agreement to expedite con-
4 struction of the pipeline.

5 **SEC. 2013. PARTICIPATION OF SMALL BUSINESS CON-**
6 **CERNS.**

7 (a) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that an Alaska natural gas transportation project
9 will provide significant economic benefits to the United
10 States and Canada. In order to maximize those benefits,
11 Congress urges the sponsors of the pipeline project to
12 maximize the participation of small business concerns in
13 contracts and subcontracts awarded in carrying out the
14 project.

15 (b) STUDY.—

16 (1) IN GENERAL.—The Comptroller General
17 shall conduct a study on the extent to which small
18 business concerns participate in the construction of
19 oil and gas pipelines in the United States.

20 (2) REPORT.—Not later than 1 year after the
21 date of enactment of this Act, the Comptroller Gen-
22 eral shall transmit to Congress a report containing
23 the results of the study.

24 (3) UPDATES.—The Comptroller General shall
25 update the study at least once every 5 years and

1 transmit to Congress a report containing the results
2 of the update.

3 (4) APPLICABILITY.—After the date of comple-
4 tion of the construction of an Alaska natural gas
5 transportation project, this subsection shall no
6 longer apply.

7 (c) SMALL BUSINESS CONCERN DEFINED.—In this
8 section, the term “small business concern” has the mean-
9 ing given such term in section 3(a) of the Small Business
10 Act (15 U.S.C. 632(a)).

11 **SEC. 2014. ALASKA PIPELINE CONSTRUCTION TRAINING**
12 **PROGRAM.**

13 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
14 of Labor (in this section referred to as the “Secretary”)
15 may make grants to the Alaska Department of Labor and
16 Workforce Development to—

17 (1) develop a plan to train, through the work-
18 force investment system established in the State of
19 Alaska under the Workforce Investment Act of 1998
20 (112 Stat. 936 et seq.), adult and dislocated work-
21 ers, including Alaska Natives, in urban and rural
22 Alaska in the skills required to construct and oper-
23 ate an Alaska gas pipeline system; and

24 (2) implement the plan developed pursuant to
25 paragraph (1).

1 (b) REQUIREMENTS FOR PLANNING GRANTS.—The
2 Secretary may make a grant under subsection (a)(1) only
3 if—

4 (1) the Governor of Alaska certifies in writing
5 to the Secretary that there is a reasonable expecta-
6 tion that construction of an Alaska gas pipeline will
7 commence within 3 years after the date of such cer-
8 tification; and

9 (2) the Secretary of the Interior concurs in
10 writing to the Secretary with the certification made
11 under paragraph (1).

12 (c) REQUIREMENTS FOR IMPLEMENTATION
13 GRANTS.—The Secretary may make a grant under sub-
14 section (a)(2) only if—

15 (1) the Secretary has approved a plan developed
16 pursuant to subsection (a)(1);

17 (2) the Governor of Alaska requests the grant
18 funds and certifies in writing to the Secretary that
19 there is a reasonable expectation that the construc-
20 tion of an Alaska gas pipeline system will commence
21 within 2 years after the date of such certification;

22 (3) the Secretary of the Interior concurs in
23 writing to the Secretary with the certification made
24 under paragraph (2) after considering—

1 (A) the status of necessary State and Fed-
2 eral permits;

3 (B) the availability of financing for the
4 pipeline project; and

5 (C) other relevant factors and cir-
6 cumstances.

7 (d) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary of
9 Labor such sums as may be necessary, but not to exceed
10 \$20,000,000, to carry out this section.

11 **Subtitle B—Strategic Petroleum**
12 **Reserve**

13 **SEC. 2101. FULL CAPACITY OF STRATEGIC PETROLEUM RE-**
14 **SERVE.**

15 The President shall—

16 (1) fill the Strategic Petroleum Reserve estab-
17 lished pursuant to part B of title I of the Energy
18 Policy and Conservation Act (42 U.S.C. 6231 et
19 seq.) to full capacity as soon as practicable;

20 (2) acquire petroleum for the Strategic Petro-
21 leum Reserve by the most practicable and cost-effec-
22 tive means, with consideration being given to domes-
23 tically produced petroleum, including the acquisition
24 of crude oil the United States is entitled to receive

1 in kind as royalties from production on Federal
2 lands; and

3 (3) ensure that the fill rate minimizes impacts
4 on petroleum markets.

5 **SEC. 2102. STRATEGIC PETROLEUM RESERVE EXPANSION.**

6 (a) PLAN.—Not later than 180 days after the date
7 of the enactment of this Act, the Secretary of Energy shall
8 transmit to the Congress a plan for the expansion of the
9 Strategic Petroleum Reserve to 1,000,000,000 barrels,
10 including—

11 (1) plans for the elimination of infrastructure
12 impediments to maximum drawdown capability;

13 (2) a schedule for the completion of all required
14 environmental reviews;

15 (3) provision for consultation with Federal and
16 State environmental agencies;

17 (4) a schedule and procedures for site selection;

18 and

19 (5) anticipated annual budget requests.

20 (b) CONSTRUCTION OF ADDITIONAL CAPACITY.—The
21 Secretary of Energy shall acquire property and complete
22 construction for the expansion of the Strategic Petroleum
23 Reserve in accordance with the plan transmitted under
24 subsection (a).

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary of En-
3 ergy \$1,500,000,000 for carrying out this section, to re-
4 main available until expended.

5 **SEC. 2103. PERMANENT AUTHORITY TO OPERATE THE**
6 **STRATEGIC PETROLEUM RESERVE AND**
7 **OTHER ENERGY PROGRAMS.**

8 (a) AMENDMENT TO TITLE I OF THE ENERGY POL-
9 ICY AND CONSERVATION ACT.—Title I of the Energy Pol-
10 icy and Conservation Act (42 U.S.C. 6211 et seq.) is
11 amended—

12 (1) by striking section 166 (42 U.S.C. 6246)
13 and inserting—

14 “AUTHORIZATION OF APPROPRIATIONS
15 “SEC. 166. There are authorized to be appropriated
16 to the Secretary such sums as may be necessary to carry
17 out this part and part D, to remain available until ex-
18 pended.”;

19 (2) by striking section 186 (42 U.S.C. 6250e);
20 and

21 (3) by striking part E (42 U.S.C. 6251; relat-
22 ing to the expiration of title I of the Act).

23 (b) AMENDMENT TO TITLE II OF THE ENERGY POL-
24 ICY AND CONSERVATION ACT.—Title II of the Energy
25 Policy and Conservation Act (42 U.S.C. 6271 et seq.) is
26 amended—

1 (1) by inserting before section 273 (42 U.S.C.
2 6283) the following:

3 “PART C—SUMMER FILL AND FUEL BUDGETING
4 PROGRAMS”;

5 (2) by striking section 273(e) (42 U.S.C.
6 6283(e); relating to the expiration of summer fill
7 and fuel budgeting programs); and

8 (3) by striking part D (42 U.S.C. 6285; relat-
9 ing to the expiration of title II of the Act).

10 (c) TECHNICAL AMENDMENTS.—The table of con-
11 tents for the Energy Policy and Conservation Act is
12 amended—

13 (1) by amending the items relating to part D
14 of title I to read as follows:

“PART D—NORTHEAST HOME HEATING OIL RESERVE

“Sec. 181. Establishment.

“Sec. 182. Authority.

“Sec. 183. Conditions for release; plan.

“Sec. 184. Northeast Home Heating Oil Reserve Account.

“Sec. 185. Exemptions.”;

15 (2) by amending the items relating to part C of
16 title II to read as follows:

“PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

“Sec. 273. Summer fill and fuel budgeting programs.”; and

17 (3) by striking the items relating to part D of
18 title II.

19 (d) AMENDMENT TO THE ENERGY POLICY AND CON-
20 SERVATION ACT.—Section 183(b)(1) of the Energy Policy

1 and Conservation Act (42 U.S.C. 6250b(b)(1)) is amended
2 by inserting “(considered as a heating season average)”
3 after “mid-October through March”.

4 **Subtitle C—Hydraulic Fracturing**

5 **SEC. 2201. HYDRAULIC FRACTURING.**

6 Paragraph (1) of section 1421(d) of the Safe Drink-
7 ing Water Act (42 U.S.C. 300h(d)) is amended to read
8 as follows:

9 “(1) The term ‘underground injection’—

10 “(A) means the subsurface emplacement of
11 fluids by well injection; and

12 “(B) excludes—

13 “(i) the underground injection of nat-
14 ural gas for purposes of storage; and

15 “(ii) the underground injection of
16 fluids or propping agents pursuant to hy-
17 draulic fracturing operations related to oil
18 or gas production activities.”.

19 **Subtitle D—Unproven Oil and Nat- 20 ural Gas Reserves Recovery 21 Program**

22 **SEC. 2301. PROGRAM.**

23 The Secretary shall carry out a program to dem-
24 onstrate technologies for the recovery of oil and natural
25 gas reserves from reservoirs described in section 2302.

1 **SEC. 2302. ELIGIBLE RESERVOIRS.**

2 The program under this subtitle shall only address
3 oil and natural gas reservoirs with 1 or more of the fol-
4 lowing characteristics:

5 (1) Complex geology involving rapid changes in
6 the type and quality of the oil reservoir across the
7 reservoir.

8 (2) Low reservoir pressure.

9 (3) Unconventional natural gas reservoirs in
10 coalbeds, tight sands, or shales.

11 **SEC. 2303. FOCUS AREAS.**

12 The program under this subtitle may focus on areas
13 including coal-bed methane, deep drilling, natural gas pro-
14 duction from tight sands, natural gas production from gas
15 shales, innovative production techniques (including hori-
16 zontal drilling, fracture detection methodologies, and
17 three-dimensional seismic), and enhanced recovery tech-
18 niques.

19 **SEC. 2304. LIMITATION ON LOCATION OF ACTIVITIES.**

20 Activities under this subtitle shall be carried out
21 only—

22 (1) in—

23 (A) areas onshore in the United States on
24 public land administered by the Secretary of the
25 Interior available for oil and gas leasing, where

1 consistent with applicable law and land use
2 plans; and

3 (B) areas onshore in the United States on
4 State or private land, subject to applicable law;
5 and

6 (2) with the approval of the appropriate Fed-
7 eral or State land management agency or private
8 land owner.

9 **SEC. 2305. PROGRAM ADMINISTRATION.**

10 (a) **ROLE OF THE SECRETARY.**—The Secretary shall
11 have ultimate responsibility for, and oversight of, all as-
12 pects of the program under this subtitle.

13 (b) **ROLE OF THE PROGRAM CONSORTIUM.**—

14 (1) **IN GENERAL.**—The Secretary shall contract
15 with a consortium to—

16 (A) manage awards pursuant to subsection
17 (e)(4);

18 (B) make recommendations to the Sec-
19 retary for project solicitations;

20 (C) disburse funds awarded under sub-
21 section (e) as directed by the Secretary in ac-
22 cordance with the annual plan under subsection
23 (d); and

24 (D) carry out other activities assigned to
25 the program consortium by this section.

1 (2) LIMITATION.—The Secretary may not as-
2 sign any activities to the program consortium except
3 as specifically authorized under this section.

4 (3) CONFLICT OF INTEREST.—(A) The Sec-
5 retary shall establish procedures—

6 (i) to ensure that each board member, offi-
7 cer, or employee of the program consortium
8 who is in a decisionmaking capacity under sub-
9 section (e)(3) or (4) shall disclose to the Sec-
10 retary any financial interests in, or financial re-
11 lationships with, applicants for or recipients of
12 awards under this section, including those of
13 his or her spouse or minor child, unless such re-
14 lationships or interests would be considered to
15 be remote or inconsequential; and

16 (ii) to require any board member, officer,
17 or employee with a financial relationship or in-
18 terest disclosed under clause (i) to recuse him-
19 self or herself from any review under subsection
20 (e)(3) or oversight under subsection (e)(4) with
21 respect to such applicant or recipient.

22 (B) The Secretary may disqualify an applica-
23 tion or revoke an award under this section if a board
24 member, officer, or employee has failed to comply

1 with procedures required under subparagraph
2 (A)(ii).

3 (c) SELECTION OF THE PROGRAM CONSORTIUM.—

4 (1) IN GENERAL.—The Secretary shall select
5 the program consortium through an open, competi-
6 tive process.

7 (2) MEMBERS.—The program consortium may
8 include corporations and institutions of higher edu-
9 cation. The Secretary shall give preference in the se-
10 lection of the program consortium to applicants with
11 broad representation from the various major oil and
12 natural gas basins in the United States. After sub-
13 mitting a proposal under paragraph (4), the pro-
14 gram consortium may not add members without the
15 consent of the Secretary.

16 (3) TAX STATUS.—The program consortium
17 shall be an entity that is exempt from tax under sec-
18 tion 501(c)(3) of the Internal Revenue Code of
19 1986.

20 (4) SCHEDULE.—Not later than 90 days after
21 the date of enactment of this Act, the Secretary
22 shall solicit proposals for the creation of the pro-
23 gram consortium, which must be submitted not less
24 than 180 days after the date of enactment of this
25 Act. The Secretary shall select the program consor-

1 tium not later than 240 days after such date of en-
2 actment.

3 (5) APPLICATION.—Applicants shall submit a
4 proposal including such information as the Secretary
5 may require. At a minimum, each proposal shall—

6 (A) list all members of the consortium;

7 (B) fully describe the structure of the con-
8 sortium, including any provisions relating to in-
9 tellectual property; and

10 (C) describe how the applicant would carry
11 out the activities of the program consortium
12 under this section.

13 (6) ELIGIBILITY.—To be eligible to be selected
14 as the program consortium, an applicant must be an
15 entity whose members collectively have demonstrated
16 capabilities in planning and managing programs for
17 the production of oil or natural gas.

18 (7) CRITERION.—The Secretary may consider
19 the amount of the fee an applicant proposes to re-
20 ceive under subsection (f) in selecting a consortium
21 under this section.

22 (d) ANNUAL PLAN.—

23 (1) IN GENERAL.—The program under this
24 subtitle shall be carried out pursuant to an annual

1 plan prepared by the Secretary in accordance with
2 paragraph (2).

3 (2) DEVELOPMENT.—(A) Before drafting an
4 annual plan under this subsection, the Secretary
5 shall solicit specific written recommendations from
6 the program consortium for each element to be ad-
7 dressed in the plan, including those described in
8 paragraph (4). The Secretary may request that the
9 program consortium submit its recommendations in
10 the form of a draft annual plan.

11 (B) The Secretary shall submit the rec-
12 ommendations of the program consortium under
13 subparagraph (A) to the Advisory Committee for re-
14 view, and the Advisory Committee shall provide to
15 the Secretary written comments by a date deter-
16 mined by the Secretary. The Secretary may also so-
17 licit comments from any other experts.

18 (C) The Secretary shall consult regularly with
19 the program consortium throughout the preparation
20 of the annual plan.

21 (3) PUBLICATION.—The Secretary shall trans-
22 mit to the Congress and publish in the Federal Reg-
23 ister the annual plan, along with any written com-
24 ments received under paragraph (2)(A) and (B).
25 The annual plan shall be transmitted and published

1 not later than 60 days after the date of enactment
2 of an Act making appropriations for a fiscal year for
3 the program under this subtitle.

4 (4) CONTENTS.—The annual plan shall describe
5 the ongoing and prospective activities of the pro-
6 gram under this subtitle and shall include—

7 (A) a list of any solicitations for awards
8 that the Secretary plans to issue to carry out
9 activities, including the topics for such work,
10 who would be eligible to apply, selection cri-
11 teria, and the duration of awards; and

12 (B) a description of the activities expected
13 of the program consortium to carry out sub-
14 section (e)(4).

15 (e) AWARDS.—

16 (1) IN GENERAL.—The Secretary shall make
17 awards to carry out activities under the program
18 under this subtitle. The program consortium shall
19 not be eligible to receive such awards, but members
20 of the program consortium may receive such awards.

21 (2) PROPOSALS.—

22 (A) SOLICITATION.—The Secretary shall
23 solicit proposals for awards under this sub-
24 section in such manner and at such time as the

1 Secretary may prescribe, in consultation with
2 the program consortium.

3 (B) CONTENTS.—Each proposal submitted
4 shall include the following:

5 (i) An estimate of the potential
6 unproven reserves in the reservoir, estab-
7 lished by a registered petroleum engineer.

8 (ii) An estimate of the potential for
9 success of the project.

10 (iii) A detailed project plan.

11 (iv) A detailed analysis of the costs
12 associated with the project.

13 (v) A time frame for project comple-
14 tion.

15 (vi) Evidence that any lienholder on
16 the project will subordinate its interests to
17 the extent necessary to ensure that the
18 Federal government receives its portion of
19 any revenues pursuant to section 2308.

20 (vii) Such other matters as the Sec-
21 retary considers appropriate.

22 (3) REVIEW.—The Secretary shall make awards
23 under this subsection through a competitive process,
24 which shall include a review by individuals selected
25 by the Secretary. Such individuals shall include, for

1 each application, Federal officials, the program con-
2 sortium, and non-Federal experts who are not board
3 members, officers, or employees of the program con-
4 sortium or of a member of the program consortium.

5 (4) OVERSIGHT.—(A) The program consortium
6 shall oversee the implementation of awards under
7 this subsection, consistent with the annual plan
8 under subsection (d), including disbursing funds and
9 monitoring activities carried out under such awards
10 for compliance with the terms and conditions of the
11 awards.

12 (B) Nothing in subparagraph (A) shall limit the
13 authority or responsibility of the Secretary to over-
14 see awards, or limit the authority of the Secretary
15 to review or revoke awards.

16 (C) The Secretary shall provide to the program
17 consortium the information necessary for the pro-
18 gram consortium to carry out its responsibilities
19 under this paragraph.

20 (f) FEE.—To compensate the program consortium
21 for carrying out its activities under this section, the Sec-
22 retary shall provide to the program consortium a fee in
23 an amount not to exceed 7.5 percent of the amounts
24 awarded under subsection (e) for each fiscal year.

1 (g) DISALLOWED EXPENSES.—No portion of any
2 award shall be used by a recipient for general or adminis-
3 trative expenses of any kind.

4 (h) AUDIT.—The Secretary shall retain an inde-
5 pendent, commercial auditor to determine the extent to
6 which funds provided to the program consortium, and
7 funds provided under awards made under subsection (e),
8 have been expended in a manner consistent with the pur-
9 poses and requirements of this subtitle. The auditor shall
10 transmit a report annually to the Secretary, who shall
11 transmit the report to Congress, along with a plan to rem-
12 edy any deficiencies cited in the report.

13 **SEC. 2306. ADVISORY COMMITTEE.**

14 (a) ESTABLISHMENT.—Not later than 270 days after
15 the date of enactment of this Act, the Secretary shall es-
16 tablish an Advisory Committee.

17 (b) MEMBERSHIP.—The Advisory Committee shall be
18 composed of members appointed by the Secretary and
19 including—

20 (1) individuals with extensive experience or
21 operational knowledge of oil and natural gas produc-
22 tion, including independent oil and gas producers;

23 (2) individuals broadly representative of oil and
24 natural gas production; and

25 (3) no individuals who are Federal employees.

1 (c) DUTIES.—The Advisory Committee shall advise
2 the Secretary on the development and implementation of
3 activities under this subtitle.

4 (d) COMPENSATION.—A member of the Advisory
5 Committee shall serve without compensation but shall re-
6 ceive travel expenses, including per diem in lieu of subsist-
7 ence, in accordance with applicable provisions under sub-
8 chapter I of chapter 57 of title 5, United States Code.

9 (e) PROHIBITION.—The Advisory Committee shall
10 not make recommendations on funding awards to con-
11 sortia or for specific projects.

12 **SEC. 2307. LIMITS ON PARTICIPATION.**

13 An entity shall be eligible to receive an award under
14 this subtitle only if the Secretary finds—

15 (1) that the entity's participation in the pro-
16 gram under this subtitle would be in the economic
17 interest of the United States;

18 (2) that the entity is a United States-owned en-
19 tity organized under the laws of the United States
20 with production levels of less than 1,000 barrels per
21 day of oil equivalent; and

22 (3) that the entity has demonstrated that non-
23 governmental third party sources of financing are
24 not available for the proposal project.

1 **SEC. 2308. PAYMENTS TO FEDERAL GOVERNMENT.**

2 (a) INITIAL RATE.—Until the amount of a grant
3 under this subtitle has been fully repaid to the Federal
4 Government under this subsection, 95 percent of all reve-
5 nues derived from increased incremental production at-
6 tributable to participation in the program under this sub-
7 title shall be paid to the Secretary by the purchaser of
8 such increased production.

9 (b) RATE AFTER REPAYMENT.—After the Federal
10 Government has been fully repaid under subsection (a),
11 5 percent of all revenues derived from increased incre-
12 mental production attributable to participation in the pro-
13 gram under this subtitle shall be paid to the Secretary
14 by the purchaser of such increased production.

15 **SEC. 2309. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated to the Sec-
17 retary for carrying out this subtitle \$100,000,000, to re-
18 main available until expended.

19 **SEC. 2310. PUBLIC AVAILABILITY OF PROJECT RESULTS**
20 **AND METHODOLOGIES.**

21 The results of any project undertaken pursuant to
22 this subtitle and the methodologies used to achieve those
23 results shall be made public by the Secretary. The meth-
24 odologies used shall not be proprietary so that such meth-
25 odologies may be used for other projects by persons not
26 seeking awards pursuant to this subtitle.

1 **SEC. 2311. SUNSET.**

2 The authority provided by this subtitle shall termi-
3 nate on September 30, 2010.

4 **SEC. 2312. DEFINITIONS.**

5 In this subtitle:

6 (1) **PROGRAM CONSORTIUM.**—The term “pro-
7 gram consortium” means the consortium selected
8 under section 2305(c).

9 (2) **REMOTE OR INCONSEQUENTIAL.**—The term
10 “remote or inconsequential” has the meaning given
11 that term in regulations issued by the Office of Gov-
12 ernment Ethics under section 208(b)(2) of title 18,
13 United States Code.

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

16 **Subtitle E—Miscellaneous**

17 **SEC. 2401. APPEALS RELATING TO PIPELINE CONSTRUC-**
18 **TION PROJECTS.**

19 (a) **AGENCY OF RECORD.**—Any Federal administra-
20 tive agency proceeding that is an appeal or review of Fed-
21 eral authority for an interstate natural gas pipeline con-
22 struction project, including construction of natural gas
23 storage and liquefied natural gas facilities, shall use as
24 its exclusive record for all purposes the record compiled
25 by the Federal Energy Regulatory Commission pursuant

1 to such Commission's proceeding under section 7 of the
2 Natural Gas Act.

3 (b) SENSE OF THE CONGRESS.—It is the sense of
4 the Congress that all Federal and State agencies with ju-
5 risdiction over interstate natural gas pipeline construction
6 activities should coordinate their proceedings within the
7 time frames established by the Federal Energy Regulatory
8 Commission while it is acting pursuant to section 7 of the
9 Natural Gas Act to determine whether a proposed inter-
10 state natural gas pipeline is in the public convenience and
11 necessity.

12 **SEC. 2402. NATURAL GAS MARKET DATA TRANSPARENCY.**

13 (a) ESTABLISHMENT OF SYSTEM.—Not later than
14 180 days after the date of enactment of this Act, the Fed-
15 eral Energy Regulatory Commission shall issue rules au-
16 thorizing or establishing an electronic information system
17 to provide the Commission and the public with timely ac-
18 cess to such information as is necessary or appropriate
19 to facilitate price transparency and participation in nat-
20 ural gas markets. Such system shall provide information
21 about the market price of natural gas sold in interstate
22 commerce.

23 (b) DATA SUBJECT TO DISCLOSURE.—Rules issued
24 under subsection (a) shall require public availability only
25 of—

1 (1) aggregate data; and

2 (2) transaction-specific data that is otherwise
3 required by the Federal Energy Regulatory Commis-
4 sion to be made public.

5 (c) CIVIL PENALTY.—Any person who violates any
6 provision of a rule issued under subsection (a) shall be
7 subject to a civil penalty of not more than \$1,000,000 for
8 each day that such violation continues. Such penalty shall
9 be assessed by the Federal Energy Regulatory Commis-
10 sion, after notice and opportunity for public hearing. In
11 determining the amount of a proposed penalty, the Com-
12 mission shall take into consideration the seriousness of the
13 violation and the efforts of such person to remedy the vio-
14 lation in a timely manner.

15 **SEC. 2403. OIL AND GAS EXPLORATION AND PRODUCTION**

16 **DEFINED.**

17 Section 502 of the Federal Water Pollution Control
18 Act (33 U.S.C. 1362) is amended by adding at the end
19 the following:

20 “(21) The term ‘oil and gas exploration and produc-
21 tion’ means all field operations necessary for both explo-
22 ration and production of oil and gas, including activities
23 necessary to prepare a site for drilling and for the move-
24 ment and placement of drilling equipment, whether or not
25 such activities may be considered construction activities.”.