

[CHAIRMEN'S PROPOSED CONFERENCE REPORT]

NOVEMBER 17, 2003

1 **TITLE XV—ETHANOL AND**
2 **MOTOR FUELS**
3 **Subtitle A—General Provisions**

4 **SEC. 1501. RENEWABLE CONTENT OF MOTOR VEHICLE**
5 **FUEL.**

6 (a) IN GENERAL.—Section 211 of the Clean Air Act
7 (42 U.S.C. 7545) is amended—

8 (1) by redesignating subsection (o) as sub-
9 section (q); and

10 (2) by inserting after subsection (n) the fol-
11 lowing:

12 “(o) RENEWABLE FUEL PROGRAM.—

13 “(1) DEFINITIONS.—In this section:

14 “(A) ETHANOL.—(i) The term ‘cellulosic
15 biomass ethanol’ means ethanol derived from
16 any lignocellulosic or hemicellulosic matter that
17 is available on a renewable or recurring basis,
18 including—

19 “(I) dedicated energy crops and trees;

20 “(II) wood and wood residues;

21 “(III) plants;

22 “(IV) grasses;

23 “(V) agricultural residues; and

1 “(VI) fibers.

2 “(ii) The term ‘waste derived ethanol’
3 means ethanol derived from—

4 “(I) animal wastes, including poultry
5 fats and poultry wastes, and other waste
6 materials; or

7 “(II) municipal solid waste.

8 “(B) RENEWABLE FUEL.—

9 “(i) IN GENERAL.—The term ‘renew-
10 able fuel’ means motor vehicle fuel that—

11 “(I)(aa) is produced from grain,
12 starch, oilseeds, or other biomass; or

13 “(bb) is natural gas produced
14 from a biogas source, including a
15 landfill, sewage waste treatment plant,
16 feedlot, or other place where decaying
17 organic material is found; and

18 “(II) is used to replace or reduce
19 the quantity of fossil fuel present in a
20 fuel mixture used to operate a motor
21 vehicle.

22 “(ii) INCLUSION.—The term ‘renew-
23 able fuel’ includes cellulosic biomass eth-
24 anol, waste derived ethanol, and biodiesel
25 (as defined in section 312(f) of the Energy

1 Policy Act of 1992 (42 U.S.C. 13220(f))
2 and any blending components derived from
3 renewable fuel (provided that only the re-
4 newable fuel portion of any such blending
5 component shall be considered part of the
6 applicable volume under the renewable fuel
7 program established by this subsection).

8 “(C) SMALL REFINERY.—The term ‘small
9 refinery’ means a refinery for which average ag-
10 gregate daily crude oil throughput for the cal-
11 endar year (as determined by dividing the ag-
12 gregate throughput for the calendar year by the
13 number of days in the calendar year) does not
14 exceed 75,000 barrels.

15 “(2) RENEWABLE FUEL PROGRAM.—

16 “(A) IN GENERAL.—Not later than 1 year
17 after the enactment of this subsection, the Ad-
18 ministrator shall promulgate regulations ensur-
19 ing that motor vehicle fuel sold or dispensed to
20 consumers in the contiguous United States, on
21 an annual average basis, contains the applicable
22 volume of renewable fuel as specified in sub-
23 paragraph (B). Regardless of the date of pro-
24 mulgation, such regulations shall contain com-
25 pliance provisions for refiners, blenders, and

1 importers, as appropriate, to ensure that the re-
 2 quirements of this section are met, but shall not
 3 restrict where renewable fuel can be used, or
 4 impose any per-gallon obligation for the use of
 5 renewable fuel. If the Administrator does not
 6 promulgate such regulations, the applicable per-
 7 centage referred to in paragraph (4), on a vol-
 8 ume percentage of gasoline basis, shall be 2.2
 9 in 2005.

10 “(B) APPLICABLE VOLUME.—

11 “(i) CALENDAR YEARS 2005 THROUGH
 12 2012.—For the purpose of subparagraph
 13 (A), the applicable volume for any of cal-
 14 endar years 2005 through 2012 shall be
 15 determined in accordance with the fol-
 16 lowing table:

“Applicable volume of renewable fuel

Calendar year:	(In billions of gallons)
2005	3.1
2006	3.3
2007	3.5
2008	3.8
2009	4.1
2010	4.4
2011	4.7
2012	5.0

17 “(ii) CALENDAR YEAR 2013 AND
 18 THEREAFTER.—For the purpose of sub-
 19 paragraph (A), the applicable volume for
 20 calendar year 2013 and each calendar year

1 thereafter shall be equal to the product ob-
2 tained by multiplying—

3 “(I) the number of gallons of
4 gasoline that the Administrator esti-
5 mates will be sold or introduced into
6 commerce in the calendar year; and

7 “(II) the ratio that—

8 “(aa) 5.0 billion gallons of
9 renewable fuels; bears to

10 “(bb) the number of gallons
11 of gasoline sold or introduced
12 into commerce in calendar year
13 2012.

14 “(3) NON-CONTIGUOUS STATE OPT-IN.—Upon
15 the petition of a non-contiguous State, the Adminis-
16 trator may allow the renewable fuel program estab-
17 lished by subtitle A of title XV of the Energy Policy
18 Act of 2003 to apply in such non-contiguous State
19 at the same time or any time after the Adminis-
20 trator promulgates regulations under paragraph (2).
21 The Administrator may promulgate or revise regula-
22 tions under paragraph (2), establish applicable per-
23 centages under paragraph (4), provide for the gen-
24 eration of credits under paragraph (6), and take
25 such other actions as may be necessary to allow for

1 the application of the renewable fuels program in a
2 non-contiguous State.

3 “(4) APPLICABLE PERCENTAGES.—

4 “(A) PROVISION OF ESTIMATE OF VOL-
5 UMES OF GASOLINE SALES.—Not later than Oc-
6 tober 31 of each of calendar years 2004
7 through 2011, the Administrator of the Energy
8 Information Administration shall provide to the
9 Administrator of the Environmental Protection
10 Agency an estimate of the volumes of gasoline
11 that will be sold or introduced into commerce in
12 the United States during the following calendar
13 year.

14 “(B) DETERMINATION OF APPLICABLE
15 PERCENTAGES.—

16 “(i) IN GENERAL.—Not later than
17 November 30 of each of the calendar years
18 2004 through 2011, based on the estimate
19 provided under subparagraph (A), the Ad-
20 ministrator shall determine and publish in
21 the Federal Register, with respect to the
22 following calendar year, the renewable fuel
23 obligation that ensures that the require-
24 ments of paragraph (2) are met.

1 “(ii) REQUIRED ELEMENTS.—The re-
2 newable fuel obligation determined for a
3 calendar year under clause (i) shall—

4 “(I) be applicable to refiners,
5 blenders, and importers, as appro-
6 priate;

7 “(II) be expressed in terms of a
8 volume percentage of gasoline sold or
9 introduced into commerce; and

10 “(III) subject to subparagraph
11 (C)(i), consist of a single applicable
12 percentage that applies to all cat-
13 egories of persons specified in sub-
14 clause (I).

15 “(C) ADJUSTMENTS.—In determining the
16 applicable percentage for a calendar year, the
17 Administrator shall make adjustments—

18 “(i) to prevent the imposition of re-
19 dundant obligations to any person specified
20 in subparagraph (B)(ii)(I); and

21 “(ii) to account for the use of renew-
22 able fuel during the previous calendar year
23 by small refineries that are exempt under
24 paragraph (11).

1 “(5) EQUIVALENCY.—For the purpose of para-
2 graph (2), 1 gallon of either cellulosic biomass eth-
3 anol or waste derived ethanol—

4 “(A) shall be considered to be the equiva-
5 lent of 1.5 gallon of renewable fuel; or

6 “(B) if the cellulosic biomass ethanol or
7 waste derived ethanol is derived from agricul-
8 tural residue or is an agricultural byproduct (as
9 that term is used in section 919 of the Energy
10 Policy Act of 2003), shall be considered to be
11 the equivalent of 2.5 gallons of renewable fuel.

12 “(6) CREDIT PROGRAM.—

13 “(A) IN GENERAL.—The regulations pro-
14 mulgated to carry out this subsection shall pro-
15 vide for the generation of an appropriate
16 amount of credits by any person that refines,
17 blends, or imports gasoline that contains a
18 quantity of renewable fuel that is greater than
19 the quantity required under paragraph (2).
20 Such regulations shall provide for the genera-
21 tion of an appropriate amount of credits for
22 biodiesel fuel. If a small refinery notifies the
23 Administrator that it waives the exemption pro-
24 vided paragraph (11), the regulations shall pro-
25 vide for the generation of credits by the small

1 refinery beginning in the year following such
2 notification.

3 “(B) USE OF CREDITS.—A person that
4 generates credits under subparagraph (A) may
5 use the credits, or transfer all or a portion of
6 the credits to another person, for the purpose
7 of complying with paragraph (2).

8 “(C) LIFE OF CREDITS.—A credit gen-
9 erated under this paragraph shall be valid to
10 show compliance—

11 “(i) in the calendar year in which the
12 credit was generated or the next calendar
13 year; or

14 “(ii) in the calendar year in which the
15 credit was generated or next two consecu-
16 tive calendar years if the Administrator
17 promulgates regulations under paragraph
18 (7).

19 “(D) INABILITY TO PURCHASE SUFFICIENT
20 CREDITS.—The regulations promulgated to
21 carry out this subsection shall include provi-
22 sions allowing any person that is unable to gen-
23 erate or purchase sufficient credits to meet the
24 requirements under paragraph (2) to carry for-
25 ward a renewable fuel deficit provided that, in

1 the calendar year following the year in which
2 the renewable fuel deficit is created, such per-
3 son shall achieve compliance with the renewable
4 fuel requirement under paragraph (2), and shall
5 generate or purchase additional renewable fuel
6 credits to offset the renewable fuel deficit of the
7 previous year.

8 “(7) SEASONAL VARIATIONS IN RENEWABLE
9 FUEL USE.—

10 “(A) STUDY.—For each of the calendar
11 years 2005 through 2012, the Administrator of
12 the Energy Information Administration shall
13 conduct a study of renewable fuels blending to
14 determine whether there are excessive seasonal
15 variations in the use of renewable fuels.

16 “(B) REGULATION OF EXCESSIVE SEA-
17 SONAL VARIATIONS.—If, for any calendar year,
18 the Administrator of the Energy Information
19 Administration, based on the study under sub-
20 paragraph (A), makes the determinations speci-
21 fied in subparagraph (C), the Administrator
22 shall promulgate regulations to ensure that 35
23 percent or more of the quantity of renewable
24 fuels necessary to meet the requirement of
25 paragraph (2) is used during each of the peri-

1 ods specified in subparagraph (D) of each sub-
2 sequent calendar year.

3 “(C) DETERMINATIONS.—The determina-
4 tions referred to in subparagraph (B) are
5 that—

6 “(i) less than 35 percent of the quan-
7 tity of renewable fuels necessary to meet
8 the requirement of paragraph (2) has been
9 used during one of the periods specified in
10 subparagraph (D) of the calendar year;

11 “(ii) a pattern of excessive seasonal
12 variation described in clause (i) will con-
13 tinue in subsequent calendar years; and

14 “(iii) promulgating regulations or
15 other requirements to impose a 35 percent
16 or more seasonal use of renewable fuels
17 will not prevent or interfere with the at-
18 tainment of national ambient air quality
19 standards or significantly increase the
20 price of motor fuels to the consumer.

21 “(D) PERIODS.—The two periods referred
22 to in this paragraph are—

23 “(i) April through September; and

24 “(ii) January through March and Oc-
25 tober through December.

1 “(E) EXCLUSIONS.—Renewable fuels
2 blended or consumed in 2005 in a State which
3 has received a waiver under section 209(b) shall
4 not be included in the study in subparagraph
5 (A).

6 “(8) WAIVERS.—

7 “(A) IN GENERAL.—The Administrator, in
8 consultation with the Secretary of Agriculture
9 and the Secretary of Energy, may waive the re-
10 quirement of paragraph (2) in whole or in part
11 on petition by one or more States by reducing
12 the national quantity of renewable fuel required
13 under this subsection—

14 “(i) based on a determination by the
15 Administrator, after public notice and op-
16 portunity for comment, that implementa-
17 tion of the requirement would severely
18 harm the economy or environment of a
19 State, a region, or the United States; or

20 “(ii) based on a determination by the
21 Administrator, after public notice and op-
22 portunity for comment, that there is an in-
23 adequate domestic supply or distribution
24 capacity to meet the requirement.

1 “(B) PETITIONS FOR WAIVERS.—The Ad-
2 ministrator, in consultation with the Secretary
3 of Agriculture and the Secretary of Energy,
4 shall approve or disapprove a State petition for
5 a waiver of the requirement of paragraph (2)
6 within 90 days after the date on which the peti-
7 tion is received by the Administrator.

8 “(C) TERMINATION OF WAIVERS.—A waiv-
9 er granted under subparagraph (A) shall termi-
10 nate after 1 year, but may be renewed by the
11 Administrator after consultation with the Sec-
12 retary of Agriculture and the Secretary of En-
13 ergy.

14 “(9) STUDY AND WAIVER FOR INITIAL YEAR OF
15 PROGRAM.—Not later than 180 days after the enact-
16 ment of this subsection, the Secretary of Energy
17 shall complete for the Administrator a study assess-
18 ing whether the renewable fuels requirement under
19 paragraph (2) will likely result in significant adverse
20 consumer impacts in 2005, on a national, regional,
21 or State basis. Such study shall evaluate renewable
22 fuel supplies and prices, blendstock supplies, and
23 supply and distribution system capabilities. Based
24 on such study, the Secretary shall make specific rec-
25 ommendations to the Administrator regarding waiv-

1 er of the requirements of paragraph (2), in whole or
2 in part, to avoid any such adverse impacts. Within
3 270 days after the enactment of this subsection, the
4 Administrator shall, consistent with the rec-
5 ommendations of the Secretary, waive, in whole or in
6 part, the renewable fuels requirement under para-
7 graph (2) by reducing the national quantity of re-
8 newable fuel required under this subsection in 2005.
9 This paragraph shall not be interpreted as limiting
10 the Administrator's authority to waive the require-
11 ments of paragraph (2) in whole, or in part, under
12 paragraph (8) or paragraph (10), pertaining to
13 waivers.

14 “(10) ASSESSMENT AND WAIVER.—The Admin-
15 istrator, in consultation with the Secretary of En-
16 ergy and the Secretary of Agriculture, shall evaluate
17 the requirement of paragraph (2) and determine,
18 prior to January 1, 2007, and prior to January 1
19 of any subsequent year in which the applicable vol-
20 ume of renewable fuel is increased under paragraph
21 (2)(B), whether the requirement of paragraph (2),
22 including the applicable volume of renewable fuel
23 contained in paragraph (2)(B) should remain in ef-
24 fect, in whole or in part, during 2007 or any year
25 or years subsequent to 2007. In evaluating the re-

1 requirement of paragraph (2) and in making any de-
2 termination under this section, the Administrator
3 shall consider the best available information and
4 data collected by accepted methods or best available
5 means regarding—

6 “(A) the capacity of renewable fuel pro-
7 ducers to supply an adequate amount of renew-
8 able fuel at competitive prices to fulfill the re-
9 quirement of paragraph (2);

10 “(B) the potential of the requirement of
11 paragraph (2) to significantly raise the price of
12 gasoline, food (excluding the net price impact
13 on the requirement in paragraph (2) on com-
14 modities used in the production of ethanol), or
15 heating oil for consumers in any significant
16 area or region of the country above the price
17 that would otherwise apply to such commodities
18 in the absence of such requirement;

19 “(C) the potential of the requirement of
20 paragraph (2) to interfere with the supply of
21 fuel in any significant gasoline market or region
22 of the country, including interference with the
23 efficient operation of refiners, blenders, import-
24 ers, wholesale suppliers, and retail vendors of
25 gasoline, and other motor fuels; and

1 “(D) the potential of the requirement of
2 paragraph (2) to cause or promote exceedances
3 of Federal, State, or local air quality standards.

4 If the Administrator determines, by clear and con-
5 vincing information, after public notice and the op-
6 portunity for comment, that the requirement of
7 paragraph (2) would have significant and meaning-
8 ful adverse impact on the supply of fuel and related
9 infrastructure or on the economy, public health, or
10 environment of any significant area or region of the
11 country, the Administrator may waive, in whole or
12 in part, the requirement of paragraph (2) in any one
13 year for which the determination is made for that
14 area or region of the country, except that any such
15 waiver shall not have the effect of reducing the ap-
16 plicable volume of renewable fuel specified in para-
17 graph (2)(B) with respect to any year for which the
18 determination is made. In determining economic im-
19 pact under this paragraph, the Administrator shall
20 not consider the reduced revenues available from the
21 Highway Trust Fund (section 9503 of the Internal
22 Revenue Code of 1986) as a result of the use of eth-
23 anol.

24 “(11) SMALL REFINERIES.—

1 “(A) IN GENERAL.—The requirement of
2 paragraph (2) shall not apply to small refineries
3 until the first calendar year beginning more
4 than 5 years after the first year set forth in the
5 table in paragraph (2)(B)(i). Not later than De-
6 cember 31, 2007, the Secretary of Energy shall
7 complete for the Administrator a study to de-
8 termine whether the requirement of paragraph
9 (2) would impose a disproportionate economic
10 hardship on small refineries. For any small re-
11 finery that the Secretary of Energy determines
12 would experience a disproportionate economic
13 hardship, the Administrator shall extend the
14 small refinery exemption for such small refinery
15 for no less than two additional years.

16 “(B) ECONOMIC HARDSHIP.—

17 “(i) EXTENSION OF EXEMPTION.—A
18 small refinery may at any time petition the
19 Administrator for an extension of the ex-
20 emption from the requirement of para-
21 graph (2) for the reason of dispropor-
22 tionate economic hardship. In evaluating a
23 hardship petition, the Administrator, in
24 consultation with the Secretary of Energy,

1 shall consider the findings of the study in
2 addition to other economic factors.

3 “(ii) DEADLINE FOR ACTION ON PETI-
4 TIONS.—The Administrator shall act on
5 any petition submitted by a small refinery
6 for a hardship exemption not later than 90
7 days after the receipt of the petition.

8 “(C) CREDIT PROGRAM.—If a small refin-
9 ery notifies the Administrator that it waives the
10 exemption provided by this Act, the regulations
11 shall provide for the generation of credits by
12 the small refinery beginning in the year fol-
13 lowing such notification.

14 “(D) OPT-IN FOR SMALL REFINERS.—A
15 small refinery shall be subject to the require-
16 ments of this section if it notifies the Adminis-
17 trator that it waives the exemption under sub-
18 paragraph (A).

19 “(12) ETHANOL MARKET CONCENTRATION
20 ANALYSIS.—

21 “(A) ANALYSIS.—

22 “(i) IN GENERAL.—Not later than
23 180 days after the date of enactment of
24 this subsection, and annually thereafter,
25 the Federal Trade Commission shall per-

1 form a market concentration analysis of
2 the ethanol production industry using the
3 Herfindahl-Hirschman Index to determine
4 whether there is sufficient competition
5 among industry participants to avoid price
6 setting and other anticompetitive behavior.

7 “(ii) SCORING.—For the purpose of
8 scoring under clause (i) using the
9 Herfindahl-Hirschman Index, all mar-
10 keting arrangements among industry par-
11 ticipants shall be considered.

12 “(B) REPORT.—Not later than December
13 1, 2004, and annually thereafter, the Federal
14 Trade Commission shall submit to Congress
15 and the Administrator a report on the results
16 of the market concentration analysis performed
17 under subparagraph (A)(i).”

18 (b) PENALTIES AND ENFORCEMENT.—Section
19 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is
20 amended as follows:

21 (1) In paragraph (1)—

22 (A) in the first sentence, by striking “or
23 (n)” each place it appears and inserting “(n),
24 or (o)”; and

1 (B) in the second sentence, by striking “or
2 (m)” and inserting “(m), or (o)”.

3 (2) In the first sentence of paragraph (2), by
4 striking “and (n)” each place it appears and insert-
5 ing “(n), and (o)”.

6 (c) SURVEY OF RENEWABLE FUEL MARKET.—

7 (1) SURVEY AND REPORT.—Not later than De-
8 cember 1, 2006, and annually thereafter, the Admin-
9 istrator of the Environmental Protection Agency (in
10 consultation with the Secretary of Energy acting
11 through the Administrator of the Energy Informa-
12 tion Administration) shall—

13 (A) conduct, with respect to each conven-
14 tional gasoline use area and each reformulated
15 gasoline use area in each State, a survey to de-
16 termine the market shares of—

17 (i) conventional gasoline containing
18 ethanol;

19 (ii) reformulated gasoline containing
20 ethanol;

21 (iii) conventional gasoline containing
22 renewable fuel; and

23 (iv) reformulated gasoline containing
24 renewable fuel; and

1 (B) submit to Congress, and make publicly
2 available, a report on the results of the survey
3 under subparagraph (A).

4 (2) RECORDKEEPING AND REPORTING RE-
5 QUIREMENTS.—The Administrator of the Environ-
6 mental Protection Agency (hereinafter in this sub-
7 section referred to as the “Administrator”) may re-
8 quire any refiner, blender, or importer to keep such
9 records and make such reports as are necessary to
10 ensure that the survey conducted under paragraph
11 (1) is accurate. The Administrator, to avoid duplica-
12 tive requirements, shall rely, to the extent prac-
13 ticable, on existing reporting and recordkeeping re-
14 quirements and other information available to the
15 Administrator including gasoline distribution pat-
16 terns that include multistate use areas.

17 (3) APPLICABLE LAW.—Activities carried out
18 under this subsection shall be conducted in a man-
19 ner designed to protect confidentiality of individual
20 responses.

21 **SEC. 1502. FUELS SAFE HARBOR.**

22 (a) IN GENERAL.—Notwithstanding any other provi-
23 sion of Federal or State law, no renewable fuel, as defined
24 by section 211(o)(1) of the Clean Air Act, or methyl ter-
25 tiary butyl ether (hereinafter in this section referred to as

1 “MTBE”), used or intended to be used as a motor vehicle
2 fuel, nor any motor vehicle fuel containing such renewable
3 fuel or MTBE, shall be deemed a defective product by vir-
4 tue of the fact that it is, or contains, such a renewable
5 fuel or MTBE, if it does not violate a control or prohibi-
6 tion imposed by the Administrator of the Environmental
7 Protection Agency (hereinafter in this section referred to
8 as the “Administrator”) under section 211 of such Act,
9 and the manufacturer is in compliance with all requests
10 for information under subsection (b) of such section 211
11 of such Act. If the safe harbor provided by this section
12 does not apply, the existence of a claim of defective prod-
13 uct shall be determined under otherwise applicable law.
14 Nothing in this subsection shall be construed to affect the
15 liability of any person for environmental remediation costs,
16 drinking water contamination, negligence for spills or
17 other reasonably foreseeable events, public or private nui-
18 sance, trespass, breach of warranty, breach of contract,
19 or any other liability other than liability based upon a
20 claim of defective product.

21 (b) EFFECTIVE DATE.—This section shall be effec-
22 tive as of September 5, 2003, and shall apply with respect
23 to all claims filed on or after that date.

24 **SEC. 1503. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

25 (a) FINDINGS.—Congress finds that—

1 (1) since 1979, methyl tertiary butyl ether
2 (hereinafter in this section referred to as “MTBE”)
3 has been used nationwide at low levels in gasoline to
4 replace lead as an octane booster or anti-knocking
5 agent;

6 (2) Public Law 101–549 (commonly known as
7 the “Clean Air Act Amendments of 1990”) (42
8 U.S.C. 7401 et seq.) established a fuel oxygenate
9 standard under which reformulated gasoline must
10 contain at least 2 percent oxygen by weight;

11 (3) at the time of the adoption of the fuel oxy-
12 gen standard, Congress was aware that significant
13 use of MTBE would result from the adoption of that
14 standard, and that the use of MTBE would likely be
15 important to the cost-effective implementation of
16 that program;

17 (4) Congress was aware that gasoline and its
18 component additives can and do leak from storage
19 tanks;

20 (5) the fuel industry responded to the fuel oxy-
21 genate standard established by Public Law 101–549
22 by making substantial investments in—

23 (A) MTBE production capacity; and

24 (B) systems to deliver MTBE-containing
25 gasoline to the marketplace;

1 (6) having previously required oxygenates like
2 MTBE for air quality purposes, Congress has—

3 (A) reconsidered the relative value of
4 MTBE in gasoline;

5 (B) decided to establish a date certain for
6 action by the Environmental Protection Agency
7 to prohibit the use of MTBE in gasoline; and

8 (C) decided to provide for the elimination
9 of the oxygenate requirement for reformulated
10 gasoline and to provide for a renewable fuels
11 content requirement for motor fuel; and

12 (7) it is appropriate for Congress to provide
13 some limited transition assistance—

14 (A) to merchant producers of MTBE who
15 produced MTBE in response to a market cre-
16 ated by the oxygenate requirement contained in
17 the Clean Air Act; and

18 (B) for the purpose of mitigating any fuel
19 supply problems that may result from the elimi-
20 nation of the oxygenate requirement for refor-
21 mulated gasoline and from the decision to es-
22 tablish a date certain for action by the Environ-
23 mental Protection Agency to prohibit the use of
24 MTBE in gasoline.

1 (b) PURPOSES.—The purpose of this section is to
2 provide assistance to merchant producers of MTBE in
3 making the transition from producing MTBE to producing
4 other fuel additives.

5 (c) MTBE MERCHANT PRODUCER CONVERSION AS-
6 SISTANCE.—Section 211(c) of the Clean Air Act (42
7 U.S.C. 7545(c)) is amended by adding at the end the fol-
8 lowing:

9 “(5) MTBE MERCHANT PRODUCER CONVER-
10 SION ASSISTANCE.—

11 “(A) IN GENERAL.—

12 “(i) GRANTS.—The Secretary of En-
13 ergy, in consultation with the Adminis-
14 trator, may make grants to merchant pro-
15 ducers of methyl tertiary butyl ether (here-
16 inafter in this subsection referred to as
17 ‘MTBE’) in the United States to assist the
18 producers in the conversion of eligible pro-
19 duction facilities described in subpara-
20 graph (C) to the production of iso-octane,
21 iso-octene, alkylates, or renewable fuels.

22 “(ii) DETERMINATION.—The Admin-
23 istrator, in consultation with the Secretary
24 of Energy, may determine that transition
25 assistance for the production of iso-octane,

1 iso-octene, alkylates, or renewable fuels is
2 inconsistent with the provisions of sub-
3 paragraph (B) and, on that basis, may
4 deny applications for grants authorized by
5 this paragraph.

6 “(B) FURTHER GRANTS.—The Secretary
7 of Energy, in consultation with the Adminis-
8 trator, may also further make grants to mer-
9 chant producers of MTBE in the United States
10 to assist the producers in the conversion of eli-
11 gible production facilities described in subpara-
12 graph (C) to the production of such other fuel
13 additives (unless the Administrator determines
14 that such fuel additives may reasonably be an-
15 ticipated to endanger public health or the envi-
16 ronment) that, consistent with this subsection—

17 “(i) have been registered and have
18 been tested or are being tested in accord-
19 ance with the requirements of this section;
20 and

21 “(ii) will contribute to replacing gaso-
22 line volumes lost as a result of amend-
23 ments made to subsection (k) of this sec-
24 tion by section 1504(a) and 1506 of the
25 Energy Policy Act of 2003.

1 “(C) ELIGIBLE PRODUCTION FACILI-
2 TIES.—A production facility shall be eligible to
3 receive a grant under this paragraph if the pro-
4 duction facility—

5 “(i) is located in the United States;
6 and

7 “(ii) produced MTBE for consump-
8 tion before April 1, 2003 and ceased pro-
9 duction at any time after the date of en-
10 actment of this paragraph.

11 “(D) AUTHORIZATION OF APPROPRIA-
12 TIONS.—There are authorized to be appro-
13 priated to carry out this paragraph
14 \$250,000,000 for each of fiscal years 2005
15 through 2012, to remain available until ex-
16 pended.”.

17 (d) EFFECT ON STATE LAW.—The amendments
18 made to the Clean Air Act by this title have no effect re-
19 garding any available authority of States to limit the use
20 of methyl tertiary butyl ether in motor vehicle fuel.

21 **SEC. 1504. USE OF MTBE.**

22 (a) IN GENERAL.—Subject to subsections (e) and (f),
23 not later than December 31, 2014, the use of methyl ter-
24 tiary butyl ether (hereinafter in this section referred to

1 as “MTBE”) in motor vehicle fuel in any State other than
2 a State described in subsection (c) is prohibited.

3 (b) REGULATIONS.—The Administrator of the Envi-
4 ronmental Protection Agency (hereafter referred to in this
5 section as the “Administrator”) shall promulgate regula-
6 tions to effect the prohibition in subsection (a).

7 (c) STATES THAT AUTHORIZE USE.—A State de-
8 scribed in this subsection is a State in which the Governor
9 of the State submits a notification to the Administrator
10 authorizing the use of MTBE in motor vehicle fuel sold
11 or used in the State.

12 (d) PUBLICATION OF NOTICE.—The Administrator
13 shall publish in the Federal Register each notice submitted
14 by a State under subsection (c).

15 (e) TRACE QUANTITIES.—In carrying out subsection
16 (a), the Administrator may allow trace quantities of
17 MTBE, not to exceed 0.5 percent by volume, to be present
18 in motor vehicle fuel in cases that the Administrator deter-
19 mines to be appropriate.

20 (f) LIMITATION.—The Administrator, under author-
21 ity of subsection (a), shall not prohibit or control the pro-
22 duction of MTBE for export from the United States or
23 for any other use other than for use in motor vehicle fuel.

1 **SEC. 1505. NATIONAL ACADEMY OF SCIENCES REVIEW AND**
2 **PRESIDENTIAL DETERMINATION.**

3 (a) NAS REVIEW.—Not later than May 31, 2013, the
4 Secretary shall enter into an arrangement with the Na-
5 tional Academy of Sciences to review the use of methyl
6 tertiary butyl ether (hereafter referred to in this section
7 as “MTBE”) in fuel and fuel additives. The review shall
8 only use the best available scientific information and data
9 collected by accepted methods or the best available means.
10 The review shall examine the use of MTBE in fuel and
11 fuel additives, significant beneficial and detrimental ef-
12 fects of this use on environmental quality or public health
13 or welfare including the costs and benefits of such effects,
14 likely effects of controls or prohibitions on MTBE regard-
15 ing fuel availability and price, and other appropriate and
16 reasonable actions that are available to protect the envi-
17 ronment or public health or welfare from any detrimental
18 effects of the use of MTBE in fuel or fuel additives. The
19 review shall be peer-reviewed prior to publication and all
20 supporting data and analytical models shall be available
21 to the public. The review shall be completed no later than
22 May 31, 2014.

23 (b) PRESIDENTIAL DETERMINATION.—No later than
24 June 30, 2014, the President may make a determination
25 that restrictions on the use of MTBE to be implemented
26 pursuant to section 1504 shall not take place and that

1 the legal authority contained in section 1504 to prohibit
2 the use of MTBE in motor vehicle fuel shall become null
3 and void.

4 **SEC. 1506. ELIMINATION OF OXYGEN CONTENT REQUIRE-**
5 **MENT FOR REFORMULATED GASOLINE.**

6 (a) ELIMINATION.—

7 (1) IN GENERAL.—Section 211(k) of the Clean
8 Air Act (42 U.S.C. 7545(k)) is amended as follows:

9 (A) In paragraph (2)—

10 (i) in the second sentence of subpara-
11 graph (A), by striking “(including the oxy-
12 gen content requirement contained in sub-
13 paragraph (B))”;

14 (ii) by striking subparagraph (B); and

15 (iii) by redesignating subparagraphs
16 (C) and (D) as subparagraphs (B) and
17 (C), respectively.

18 (B) In paragraph (3)(A), by striking
19 clause (v).

20 (C) In paragraph (7)—

21 (i) in subparagraph (A)—

22 (I) by striking clause (i); and

23 (II) by redesignating clauses (ii)
24 and (iii) as clauses (i) and (ii), respec-
25 tively; and

- 1 (ii) in subparagraph (C)—
- 2 (I) by striking clause (ii).
- 3 (II) by redesignating clause (iii)
- 4 as clause (ii).

5 (2) EFFECTIVE DATE.—The amendments made
6 by paragraph (1) take effect 270 days after the date
7 of enactment of this Act, except that such amend-
8 ments shall take effect upon such date of enactment
9 in any State that has received a waiver under sec-
10 tion 209(b) of the Clean Air Act.

11 (b) MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-
12 SION REDUCTIONS.—Section 211(k)(1) of the Clean Air
13 Act (42 U.S.C. 7545(k)(1)) is amended as follows:

14 (1) By striking “Within 1 year after the enact-
15 ment of the Clean Air Act Amendments of 1990,”
16 and inserting the following:

17 “(A) IN GENERAL.—Not later than No-
18 vember 15, 1991,”.

19 (2) By adding at the end the following:

20 “(B) MAINTENANCE OF TOXIC AIR POL-
21 LUTANT EMISSIONS REDUCTIONS FROM REFOR-
22 MULATED GASOLINE.—

23 “(i) DEFINITIONS.—In this subpara-
24 graph the term ‘PADD’ means a Petro-
25 leum Administration for Defense District.

1 “(ii) REGULATIONS REGARDING EMIS-
2 SIONS OF TOXIC AIR POLLUTANTS.—Not
3 later than 270 days after the date of en-
4 actment of this subparagraph the Adminis-
5 trator shall establish, for each refinery or
6 importer, standards for toxic air pollutants
7 from use of the reformulated gasoline pro-
8 duced or distributed by the refinery or im-
9 porter that maintain the reduction of the
10 average annual aggregate emissions of
11 toxic air pollutants for reformulated gaso-
12 line produced or distributed by the refinery
13 or importer during calendar years 1999
14 and 2000, determined on the basis of data
15 collected by the Administrator with respect
16 to the refinery or importer.

17 “(iii) STANDARDS APPLICABLE TO
18 SPECIFIC REFINERIES OR IMPORTERS.—

19 “(I) APPLICABILITY OF STAND-
20 ARDS.—For any calendar year, the
21 standards applicable to a refinery or
22 importer under clause (ii) shall apply
23 to the quantity of gasoline produced
24 or distributed by the refinery or im-
25 porter in the calendar year only to the

1 extent that the quantity is less than
2 or equal to the average annual quan-
3 tity of reformulated gasoline produced
4 or distributed by the refinery or im-
5 porter during calendar years 1999
6 and 2000.

7 “(II) APPLICABILITY OF OTHER
8 STANDARDS.—For any calendar year,
9 the quantity of gasoline produced or
10 distributed by a refinery or importer
11 that is in excess of the quantity sub-
12 ject to subelause (I) shall be subject
13 to standards for toxic air pollutants
14 promulgated under subparagraph (A)
15 and paragraph (3)(B).

16 “(iv) CREDIT PROGRAM.—The Admin-
17 istrator shall provide for the granting and
18 use of credits for emissions of toxic air pol-
19 lutants in the same manner as provided in
20 paragraph (7).

21 “(v) REGIONAL PROTECTION OF
22 TOXICS REDUCTION BASELINES.—

23 “(I) IN GENERAL.—Not later
24 than 60 days after the date of enact-
25 ment of this subparagraph, and not

1 later than April 1 of each calendar
2 year that begins after that date of en-
3 actment, the Administrator shall pub-
4 lish in the Federal Register a report
5 that specifies, with respect to the pre-
6 vious calendar year—

7 “(aa) the quantity of refor-
8 mulated gasoline produced that is
9 in excess of the average annual
10 quantity of reformulated gasoline
11 produced in 1999 and 2000; and

12 “(bb) the reduction of the
13 average annual aggregate emis-
14 sions of toxic air pollutants in
15 each PADD, based on retail sur-
16 vey data or data from other ap-
17 propriate sources.

18 “(II) EFFECT OF FAILURE TO
19 MAINTAIN AGGREGATE TOXICS RE-
20 Ductions.—If, in any calendar year,
21 the reduction of the average annual
22 aggregate emissions of toxic air pol-
23 lutants in a PADD fails to meet or
24 exceed the reduction of the average
25 annual aggregate emissions of toxic

1 air pollutants in the PADD in cal-
2 endar years 1999 and 2000, the Ad-
3 ministrator, not later than 90 days
4 after the date of publication of the re-
5 port for the calendar year under sub-
6 clause (I), shall—

7 “(aa) identify, to the max-
8 imum extent practicable, the rea-
9 sons for the failure, including the
10 sources, volumes, and character-
11 istics of reformulated gasoline
12 that contributed to the failure;
13 and

14 “(bb) promulgate revisions
15 to the regulations promulgated
16 under clause (ii), to take effect
17 not earlier than 180 days but not
18 later than 270 days after the
19 date of promulgation, to provide
20 that, notwithstanding clause
21 (iii)(II), all reformulated gasoline
22 produced or distributed at each
23 refinery or importer shall meet
24 the standards applicable under
25 clause (ii) not later than April 1

1 of the year following the report
2 in subclause (II) and for subse-
3 quent years.

4 “(vi) REGULATIONS TO CONTROL
5 HAZARDOUS AIR POLLUTANTS FROM
6 MOTOR VEHICLES AND MOTOR VEHICLE
7 FUELS.—Not later than July 1, 2004, the
8 Administrator shall promulgate final regu-
9 lations to control hazardous air pollutants
10 from motor vehicles and motor vehicle
11 fuels, as provided for in section 80.1045 of
12 title 40, Code of Federal Regulations (as
13 in effect on the date of enactment of this
14 subparagraph).”.

15 (c) CONSOLIDATION IN REFORMULATED GASOLINE
16 REGULATIONS.—Not later than 180 days after the date
17 of enactment of this Act, the Administrator of the Envi-
18 ronmental Protection Agency shall revise the reformulated
19 gasoline regulations under subpart D of part 80 of title
20 40, Code of Federal Regulations, to consolidate the regula-
21 tions applicable to VOC-Control Regions 1 and 2 under
22 section 80.41 of that title by eliminating the less stringent
23 requirements applicable to gasoline designated for VOC-
24 Control Region 2 and instead applying the more stringent

1 requirements applicable to gasoline designated for VOC-
2 Control Region 1.

3 (d) SAVINGS CLAUSE.—Nothing in this section is in-
4 tended to affect or prejudice either any legal claims or ac-
5 tions with respect to regulations promulgated by the Ad-
6 ministrator of the Environmental Protection Agency
7 (hereinafter in this subsection referred to as the “Admin-
8 istrator”) prior to the date of enactment of this Act re-
9 garding emissions of toxic air pollutants from motor vehi-
10 cles or the adjustment of standards applicable to a specific
11 refinery or importer made under such prior regulations
12 and the Administrator may apply such adjustments to the
13 standards applicable to such refinery or importer under
14 clause (iii)(I) of section 211(k)(1)(B) of the Clean Air Act,
15 except that—

16 (1) the Administrator shall revise such adjust-
17 ments to be based only on calendar years 1999–
18 2000; and

19 (2) for adjustments based on toxic air pollutant
20 emissions from reformulated gasoline significantly
21 below the national annual average emissions of toxic
22 air pollutants from all reformulated gasoline, the
23 Administrator may revise such adjustments to take
24 account of the scope of Federal or State prohibitions
25 on the use of methyl tertiary butyl ether imposed

1 after the date of the enactment of this paragraph,
2 except that any such adjustment shall require such
3 refiner or importer, to the greatest extent prac-
4 ticable, to maintain the reduction achieved during
5 calendar years 1999–2000 in the average annual ag-
6 gregate emissions of toxic air pollutants from refor-
7 mulated gasoline produced or distributed by the re-
8 finery or importer; *Provided that*, any such adjust-
9 ment shall not be made at a level below the average
10 percentage of reductions of emissions of toxic air
11 pollutants for reformulated gasoline supplied to
12 PADD I during calendar years 1999–2000.

13 **SEC. 1507. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

14 Section 211 of the Clean Air Act (42 U.S.C. 7545)
15 is amended by inserting after subsection (o) the following:

16 “(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES
17 AND EMISSIONS MODEL.—

18 “(1) ANTI-BACKSLIDING ANALYSIS.—

19 “(A) DRAFT ANALYSIS.—Not later than 4
20 years after the date of enactment of this sub-
21 section, the Administrator shall publish for pub-
22 lic comment a draft analysis of the changes in
23 emissions of air pollutants and air quality due
24 to the use of motor vehicle fuel and fuel addi-
25 tives resulting from implementation of the

1 amendments made by subtitle A of title XV of
2 the Energy Policy Act of 2003.

3 “(B) FINAL ANALYSIS.—After providing a
4 reasonable opportunity for comment but not
5 later than 5 years after the date of enactment
6 of this paragraph, the Administrator shall pub-
7 lish the analysis in final form.

8 “(2) EMISSIONS MODEL.—For the purposes of
9 this subsection, as soon as the necessary data are
10 available, the Administrator shall develop and final-
11 ize an emissions model that reasonably reflects the
12 effects of gasoline characteristics or components on
13 emissions from vehicles in the motor vehicle fleet
14 during calendar year 2005.”.

15 **SEC. 1508. DATA COLLECTION.**

16 Section 205 of the Department of Energy Organiza-
17 tion Act (42 U.S.C. 7135) is amended by adding at the
18 end the following:

19 “(m) RENEWABLE FUELS SURVEY.—(1) In order to
20 improve the ability to evaluate the effectiveness of the Na-
21 tion’s renewable fuels mandate, the Administrator shall
22 conduct and publish the results of a survey of renewable
23 fuels demand in the motor vehicle fuels market in the
24 United States monthly, and in a manner designed to pro-
25 tect the confidentiality of individual responses. In con-

1 ducting the survey, the Administrator shall collect infor-
2 mation both on a national and regional basis, including
3 each of the following:

4 “(A) The quantity of renewable fuels produced.

5 “(B) The quantity of renewable fuels blended.

6 “(C) The quantity of renewable fuels imported.

7 “(D) The quantity of renewable fuels de-
8 manded.

9 “(E) Market price data.

10 “(F) Such other analyses or evaluations as the
11 Administrator finds is necessary to achieve the pur-
12 poses of this section.

13 “(2) The Administrator shall also collect or estimate
14 information both on a national and regional basis, pursu-
15 ant to subparagraphs (A) through (F) of paragraph (1),
16 for the 5 years prior to implementation of this subsection.

17 “(3) This subsection does not affect the authority of
18 the Administrator to collect data under section 52 of the
19 Federal Energy Administration Act of 1974 (15 U.S.C.
20 790a).”.

21 **SEC. 1509. REDUCING THE PROLIFERATION OF STATE FUEL**
22 **CONTROLS.**

23 (a) EPA APPROVAL OF STATE PLANS WITH FUEL
24 CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act
25 (42 U.S.C. 7545(c)(4)(C)) is amended by adding at the

1 end the following: “The Administrator shall not approve
2 a control or prohibition respecting the use of a fuel or fuel
3 additive under this subparagraph unless the Adminis-
4 trator, after consultation with the Secretary of Energy,
5 publishes in the Federal Register a finding that, in the
6 Administrator’s judgment, such control or prohibition will
7 not cause fuel supply or distribution interruptions or have
8 a significant adverse impact on fuel producibility in the
9 affected area or contiguous areas.”.

10 (b) STUDY.—The Administrator of the Environ-
11 mental Protection Agency (hereinafter in this subsection
12 referred to as the “Administrator”), in cooperation with
13 the Secretary of Energy, shall undertake a study of the
14 projected effects on air quality, the proliferation of fuel
15 blends, fuel availability, and fuel costs of providing a pref-
16 erence for each of the following:

17 (A) Reformulated gasoline referred to in sub-
18 section (k) of section 211 of the Clean Air Act.

19 (B) A low RVP gasoline blend that has been
20 certified by the Administrator as having a Reid
21 Vapor Pressure of 7.0 pounds per square inch (psi).

22 (C) A low RVP gasoline blend that has been
23 certified by the Administrator as having a Reid
24 Vapor Pressure of 7.8 pounds per square inch (psi).

1 In carrying out such study, the Administrator shall obtain
2 comments from affected parties. The Administrator shall
3 submit the results of such study to the Congress not later
4 than 18 months after the date of enactment of this Act,
5 together with any recommended legislative changes.

6 **SEC. 1510. FUEL SYSTEM REQUIREMENTS HARMONIZATION**
7 **STUDY.**

8 (a) STUDY.—

9 (1) IN GENERAL.—The Administrator of the
10 Environmental Protection Agency (hereinafter in
11 this section referred to as the “Administrator”) and
12 the Secretary of Energy shall jointly conduct a study
13 of Federal, State, and local requirements concerning
14 motor vehicle fuels, including—

15 (A) requirements relating to reformulated
16 gasoline, volatility (measured in Reid vapor
17 pressure), oxygenated fuel, and diesel fuel; and

18 (B) other requirements that vary from
19 State to State, region to region, or locality to
20 locality.

21 (2) REQUIRED ELEMENTS.—The study shall
22 assess—

23 (A) the effect of the variety of require-
24 ments described in paragraph (1) on the supply,
25 quality, and price of motor vehicle fuels avail-

1 able to consumers in various States and local-
2 ities;

3 (B) the effect of the requirements de-
4 scribed in paragraph (1) on achievement of—

5 (i) national, regional, and local air
6 quality standards and goals; and

7 (ii) related environmental and public
8 health protection standards and goals;

9 (C) the effect of Federal, State, and local
10 motor vehicle fuel regulations, including mul-
11 tiple motor vehicle fuel requirements, on—

12 (i) domestic refineries;

13 (ii) the fuel distribution system; and

14 (iii) industry investment in new capaci-
15 ty;

16 (D) the effect of the requirements de-
17 scribed in paragraph (1) on emissions from ve-
18 hicles, refineries, and fuel handling facilities;

19 (E) the feasibility of developing national or
20 regional motor vehicle fuel slates for the 48
21 contiguous States that, while improving air
22 quality at the national, regional and local levels
23 consistent with the attainment of national am-
24 bient air quality standards, could—

1 (i) enhance flexibility in the fuel dis-
2 tribution infrastructure and improve fuel
3 fungibility;

4 (ii) reduce price volatility and costs to
5 consumers and producers;

6 (iii) provide increased liquidity to the
7 gasoline market; and

8 (iv) enhance fuel quality, consistency,
9 and supply;

10 (F) the feasibility of providing incentives
11 to promote cleaner burning motor vehicle fuel;
12 and

13 (G) the extent to which improvements in
14 air quality and any increases or decreases in
15 the price of motor fuel can be projected to re-
16 sult from the Environmental Protection Agen-
17 cy's Tier II requirements for conventional gaso-
18 line and vehicle emission systems, the reformu-
19 lated gasoline program, the renewable content
20 requirements established by this subtitle, State
21 programs regarding gasoline volatility, and any
22 other requirements imposed by States or local-
23 ities affecting the composition of motor fuel.

24 (b) REPORT.—

1 (1) IN GENERAL.—Not later than December 31,
2 2007, the Administrator and the Secretary of En-
3 ergy shall submit to Congress a report on the results
4 of the study conducted under subsection (a).

5 (2) RECOMMENDATIONS.—

6 (A) IN GENERAL.—The report under this
7 subsection shall contain recommendations for
8 legislative and administrative actions that may
9 be taken—

10 (i) to improve air quality;

11 (ii) to reduce costs to consumers and
12 producers; and

13 (iii) to increase supply liquidity.

14 (B) REQUIRED CONSIDERATIONS.—The
15 recommendations under subparagraph (A) shall
16 take into account the need to provide advance
17 notice of required modifications to refinery and
18 fuel distribution systems in order to ensure an
19 adequate supply of motor vehicle fuel in all
20 States.

21 (3) CONSULTATION.—In developing the report
22 under this subsection, the Administrator and the
23 Secretary of Energy shall consult with—

24 (A) the Governors of the States;

25 (B) automobile manufacturers;

1 (C) motor vehicle fuel producers and dis-
2 tributors; and

3 (D) the public.

4 **SEC. 1511. COMMERCIAL BYPRODUCTS FROM MUNICIPAL**
5 **SOLID WASTE AND CELLULOSIC BIOMASS**
6 **LOAN GUARANTEE PROGRAM.**

7 (a) DEFINITION OF MUNICIPAL SOLID WASTE.—In
8 this section, the term “municipal solid waste” has the
9 meaning given the term “solid waste” in section 1004 of
10 the Solid Waste Disposal Act (42 U.S.C. 6903).

11 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
12 of Energy (hereinafter in this section referred to as the
13 “Secretary”) shall establish a program to provide guaran-
14 tees of loans by private institutions for the construction
15 of facilities for the processing and conversion of municipal
16 solid waste and cellulosic biomass into fuel ethanol and
17 other commercial byproducts.

18 (c) REQUIREMENTS.—The Secretary may provide a
19 loan guarantee under subsection (b) to an applicant if—

20 (1) without a loan guarantee, credit is not
21 available to the applicant under reasonable terms or
22 conditions sufficient to finance the construction of a
23 facility described in subsection (b);

24 (2) the prospective earning power of the appli-
25 cant and the character and value of the security

1 pledged provide a reasonable assurance of repayment
2 of the loan to be guaranteed in accordance with the
3 terms of the loan; and

4 (3) the loan bears interest at a rate determined
5 by the Secretary to be reasonable, taking into ac-
6 count the current average yield on outstanding obli-
7 gations of the United States with remaining periods
8 of maturity comparable to the maturity of the loan.

9 (d) CRITERIA.—In selecting recipients of loan guar-
10 antees from among applicants, the Secretary shall give
11 preference to proposals that—

12 (1) meet all applicable Federal and State per-
13 mitting requirements;

14 (2) are most likely to be successful; and

15 (3) are located in local markets that have the
16 greatest need for the facility because of—

17 (A) the limited availability of land for
18 waste disposal;

19 (B) the availability of sufficient quantities
20 of cellulosic biomass; or

21 (C) a high level of demand for fuel ethanol
22 or other commercial byproducts of the facility.

23 (e) MATURITY.—A loan guaranteed under subsection
24 (b) shall have a maturity of not more than 20 years.

1 (f) TERMS AND CONDITIONS.—The loan agreement
2 for a loan guaranteed under subsection (b) shall provide
3 that no provision of the loan agreement may be amended
4 or waived without the consent of the Secretary.

5 (g) ASSURANCE OF REPAYMENT.—The Secretary
6 shall require that an applicant for a loan guarantee under
7 subsection (b) provide an assurance of repayment in the
8 form of a performance bond, insurance, collateral, or other
9 means acceptable to the Secretary in an amount equal to
10 not less than 20 percent of the amount of the loan.

11 (h) GUARANTEE FEE.—The recipient of a loan guar-
12 antee under subsection (b) shall pay the Secretary an
13 amount determined by the Secretary to be sufficient to
14 cover the administrative costs of the Secretary relating to
15 the loan guarantee.

16 (i) FULL FAITH AND CREDIT.—The full faith and
17 credit of the United States is pledged to the payment of
18 all guarantees made under this section. Any such guar-
19 antee made by the Secretary shall be conclusive evidence
20 of the eligibility of the loan for the guarantee with respect
21 to principal and interest. The validity of the guarantee
22 shall be incontestable in the hands of a holder of the guar-
23 anteed loan.

24 (j) REPORTS.—Until each guaranteed loan under this
25 section has been repaid in full, the Secretary shall annu-

1 ally submit to Congress a report on the activities of the
2 Secretary under this section.

3 (k) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as are nec-
5 essary to carry out this section.

6 (l) TERMINATION OF AUTHORITY.—The authority of
7 the Secretary to issue a loan guarantee under subsection
8 (b) terminates on the date that is 10 years after the date
9 of enactment of this Act.

10 **SEC. 1512. RESOURCE CENTER.**

11 (a) DEFINITION.—In this section, the term “RFG
12 State” means a State in which is located one or more cov-
13 ered areas (as defined in section 211(k)(10)(D) of the
14 Clean Air Act (42 U.S.C. 7545(k)(10)(D)).

15 (b) AUTHORIZATION OF APPROPRIATIONS FOR RE-
16 SOURCE CENTER.—There are authorized to be appro-
17 priated, for a resource center to further develop bioconver-
18 sion technology using low-cost biomass for the production
19 of ethanol at the Center for Biomass-Based Energy at the
20 University of Mississippi and the University of Oklahoma,
21 \$4,000,000 for each of fiscal years 2004 through 2006.

22 (c) RENEWABLE FUEL PRODUCTION RESEARCH AND
23 DEVELOPMENT GRANTS.—

24 (1) IN GENERAL.—The Administrator of the
25 Environmental Protection Agency shall provide

1 grants for the research into, and development and
2 implementation of, renewable fuel production tech-
3 nologies in RFG States with low rates of ethanol
4 production, including low rates of production of cel-
5 lulosic biomass ethanol.

6 (2) ELIGIBILITY.—

7 (A) IN GENERAL.—The entities eligible to
8 receive a grant under this subsection are aca-
9 demic institutions in RFG States, and consortia
10 made up of combinations of academic institu-
11 tions, industry, State government agencies, or
12 local government agencies in RFG States, that
13 have proven experience and capabilities with
14 relevant technologies.

15 (B) APPLICATION.—To be eligible to re-
16 ceive a grant under this subsection, an eligible
17 entity shall submit to the Administrator an ap-
18 plication in such manner and form, and accom-
19 panied by such information, as the Adminis-
20 trator may specify.

21 (3) AUTHORIZATION OF APPROPRIATIONS.—

22 There are authorized to be appropriated to carry out
23 this subsection \$25,000,000 for each of fiscal years
24 2004 through 2008.

1 **SEC. 1513. CELLULOSIC BIOMASS AND WASTE-DERIVED**
2 **ETHANOL CONVERSION ASSISTANCE.**

3 Section 211 of the Clean Air Act (42 U.S.C. 7545)
4 is amended by adding at the end the following:

5 “(r) CELLULOSIC BIOMASS AND WASTE-DERIVED
6 ETHANOL CONVERSION ASSISTANCE.—

7 “(1) IN GENERAL.—The Secretary of Energy
8 may provide grants to merchant producers of cel-
9 lulosic biomass ethanol and waste-derived ethanol in
10 the United States to assist the producers in building
11 eligible production facilities described in paragraph
12 (2) for the production of ethanol.

13 “(2) ELIGIBLE PRODUCTION FACILITIES.—A
14 production facility shall be eligible to receive a grant
15 under this subsection if the production facility—

16 “(A) is located in the United States; and

17 “(B) uses cellulosic biomass or waste-de-
18 rived feedstocks derived from agricultural resi-
19 dues, municipal solid waste, or agricultural by-
20 products as that term is used in section 919 of
21 the Energy Policy Act of 2003.

22 “(3) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated the fol-
24 lowing amounts to carry out this subsection:

25 “(A) \$100,000,000 for fiscal year 2004.

26 “(B) \$250,000,000 for fiscal year 2005.

1 “(C) \$400,000,000 for fiscal year 2006.”.

2 **SEC. 1514. BLENDING OF COMPLIANT REFORMULATED GAS-**
3 **OLINES.**

4 Section 211 of the Clean Air Act (42 U.S.C. 7545)
5 is amended by adding at the end the following:

6 “(s) BLENDING OF COMPLIANT REFORMULATED
7 GASOLINES.—

8 “(1) IN GENERAL.—Notwithstanding sub-
9 sections (h) and (k) and subject to the limitations in
10 paragraph (2) of this subsection, it shall not be a
11 violation of this subtitle for a gasoline retailer, dur-
12 ing any month of the year, to blend at a retail loca-
13 tion batches of ethanol-blended and non-ethanol-
14 blended reformulated gasoline, provided that—

15 “(A) each batch of gasoline to be blended
16 has been individually certified as in compliance
17 with subsections (h) and (k) prior to being
18 blended;

19 “(B) the retailer notifies the Administrator
20 prior to such blending, and identifies the exact
21 location of the retail station and the specific
22 tank in which such blending will take place;

23 “(C) the retailer retains and, as requested
24 by the Administrator or the Administrator’s
25 designee, makes available for inspection such

1 certifications accounting for all gasoline at the
2 retail outlet; and

3 “(D) the retailer does not, between June 1
4 and September 15 of each year, blend a batch
5 of VOC-controlled, or ‘summer’, gasoline with a
6 batch of non-VOC-controlled, or ‘winter’, gaso-
7 line (as these terms are defined under sub-
8 sections (h) and (k)).

9 “(2) LIMITATIONS.—

10 “(A) FREQUENCY LIMITATION.—A retailer
11 shall only be permitted to blend batches of com-
12 pliant reformulated gasoline under this sub-
13 section a maximum of two blending periods be-
14 tween May 1 and September 15 of each cal-
15 endar year.

16 “(B) DURATION OF BLENDING PERIOD.—
17 Each blending period authorized under sub-
18 paragraph (A) shall extend for a period of no
19 more than 10 consecutive calendar days.

20 “(3) SURVEYS.—A sample of gasoline taken
21 from a retail location that has blended gasoline with-
22 in the past 30 days and is in compliance with sub-
23 paragraphs (A), (B), (C), and (D) of paragraph (1)
24 shall not be used in a VOC survey mandated by 40
25 C.F.R. Part 80.

1 “(4) STATE IMPLEMENTATION PLANS.—A State
2 shall be held harmless and shall not be required to
3 revise its State implementation plan under section
4 110 to account for the emissions from blended gaso-
5 line authorized under paragraph (1).

6 “(5) PRESERVATION OF STATE LAW.—Nothing
7 in this subsection shall—

8 “(A) preempt existing State laws or regu-
9 lations regulating the blending of compliant
10 gasolines; or

11 “(B) prohibit a State from adopting such
12 restrictions in the future.

13 “(6) REGULATIONS.—The Administrator shall
14 promulgate, after notice and comment, regulations
15 implementing this subsection within one year after
16 the date of enactment of this subsection.

17 “(7) EFFECTIVE DATE.—This subsection shall
18 become effective 15 months after the date of its en-
19 actment and shall apply to blended batches of refor-
20 mulated gasoline on or after that date, regardless of
21 whether the implementing regulations required by
22 paragraph (6) have been promulgated by the Admin-
23 istrator by that date.

24 “(8) LIABILITY.—No person other than the
25 person responsible for blending under this subsection

1 shall be subject to an enforcement action or pen-
2 alties under subsection (d) solely arising from the
3 blending of compliant reformulated gasolines by the
4 retailers.

5 “(9) FORMULATION OF GASOLINE.—This sub-
6 section does not grant authority to the Adminis-
7 trator or any State (or any subdivision thereof) to
8 require reformulation of gasoline at the refinery to
9 adjust for potential or actual emissions increases due
10 to the blending authorized by this subsection.”.

11 **Subtitle B—Underground Storage** 12 **Tank Compliance**

13 **SEC. 1521. SHORT TITLE.**

14 This subtitle may be cited as the “Underground Stor-
15 age Tank Compliance Act of 2003”.

16 **SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.**

17 (a) IN GENERAL.—Section 9004 of the Solid Waste
18 Disposal Act (42 U.S.C. 6991c) is amended by adding at
19 the end the following:

20 “(f) TRUST FUND DISTRIBUTION.—

21 “(1) IN GENERAL.—

22 “(A) AMOUNT AND PERMITTED USES OF
23 DISTRIBUTION.—The Administrator shall dis-
24 tribute to States not less than 80 percent of the
25 funds from the Trust Fund that are made

1 available to the Administrator under section
2 9014(2)(A) for each fiscal year for use in pay-
3 ing the reasonable costs, incurred under a coop-
4 erative agreement with any State for—

5 “(i) actions taken by the State under
6 section 9003(h)(7)(A);

7 “(ii) necessary administrative ex-
8 penses, as determined by the Adminis-
9 trator, that are directly related to State
10 fund or State assurance programs under
11 subsection (c)(1);

12 “(iii) any State fund or State assur-
13 ance program carried out under subsection
14 (c)(1) for a release from an underground
15 storage tank regulated under this subtitle
16 to the extent that, as determined by the
17 State in accordance with guidelines devel-
18 oped jointly by the Administrator and the
19 States, the financial resources of the owner
20 and operator of the underground storage
21 tank (including resources provided by a
22 program in accordance with subsection
23 (c)(1)) are not adequate to pay the cost of
24 a corrective action without significantly im-

1 pairing the ability of the owner or operator
2 to continue in business; or

3 “(iv) enforcement, by a State or a
4 local government, of State or local regula-
5 tions pertaining to underground storage
6 tanks regulated under this subtitle.

7 “(B) USE OF FUNDS FOR ENFORCE-
8 MENT.—In addition to the uses of funds au-
9 thorized under subparagraph (A), the Adminis-
10 trator may use funds from the Trust Fund that
11 are not distributed to States under subpara-
12 graph (A) for enforcement of any regulation
13 promulgated by the Administrator under this
14 subtitle.

15 “(C) PROHIBITED USES.—Funds provided
16 to a State by the Administrator under subpara-
17 graph (A) shall not be used by the State to pro-
18 vide financial assistance to an owner or oper-
19 ator to meet any requirement relating to under-
20 ground storage tanks under subparts B, C, D,
21 H, and G of part 280 of title 40, Code of Fed-
22 eral Regulations (as in effect on the date of en-
23 actment of this subsection).

24 “(2) ALLOCATION.—

1 “(A) PROCESS.—Subject to subparagraphs
2 (B) and (C), in the case of a State with which
3 the Administrator has entered into a coopera-
4 tive agreement under section 9003(h)(7)(A),
5 the Administrator shall distribute funds from
6 the Trust Fund to the State using an allocation
7 process developed by the Administrator.

8 “(B) DIVERSION OF STATE FUNDS.—The
9 Administrator shall not distribute funds under
10 subparagraph (A)(iii) of subsection (f)(1) to
11 any State that has diverted funds from a State
12 fund or State assurance program for purposes
13 other than those related to the regulation of un-
14 derground storage tanks covered by this sub-
15 title, with the exception of those transfers that
16 had been completed earlier than the date of en-
17 actment of this subsection.

18 “(C) REVISIONS TO PROCESS.—The Ad-
19 ministrator may revise the allocation process re-
20 ferred to in subparagraph (A) after—

21 “(i) consulting with State agencies re-
22 sponsible for overseeing corrective action
23 for releases from underground storage
24 tanks; and

1 “(ii) taking into consideration, at a
2 minimum, each of the following:

3 “(I) The number of confirmed re-
4 leases from federally regulated leaking
5 underground storage tanks in the
6 States.

7 “(II) The number of federally
8 regulated underground storage tanks
9 in the States.

10 “(III) The performance of the
11 States in implementing and enforcing
12 the program.

13 “(IV) The financial needs of the
14 States.

15 “(V) The ability of the States to
16 use the funds referred to in subpara-
17 graph (A) in any year.

18 “(3) DISTRIBUTIONS TO STATE AGENCIES.—
19 Distributions from the Trust Fund under this sub-
20 section shall be made directly to a State agency
21 that—

22 “(A) enters into a cooperative agreement
23 referred to in paragraph (2)(A); or

24 “(B) is enforcing a State program ap-
25 proved under this section.

1 “(4) COST RECOVERY PROHIBITION.—Funds
2 from the Trust Fund provided by States to owners
3 or operators under paragraph (1)(A)(iii) shall not be
4 subject to cost recovery by the Administrator under
5 section 9003(h)(6).”.

6 (b) WITHDRAWAL OF APPROVAL OF STATE
7 FUNDS.—Section 9004(c) of the Solid Waste Disposal Act
8 (42 U.S.C. 6991c(c)) is amended by inserting the fol-
9 lowing new paragraph at the end thereof:

10 “(6) WITHDRAWAL OF APPROVAL.—After an
11 opportunity for good faith, collaborative efforts to
12 correct financial deficiencies with a State fund, the
13 Administrator may withdraw approval of any State
14 fund or State assurance program to be used as a fi-
15 nancial responsibility mechanism without with-
16 drawing approval of a State underground storage
17 tank program under section 9004(a).”.

18 **SEC. 1523. INSPECTION OF UNDERGROUND STORAGE**
19 **TANKS.**

20 (a) INSPECTION REQUIREMENTS.—Section 9005 of
21 the Solid Waste Disposal Act (42 U.S.C. 6991d) is amend-
22 ed by inserting the following new subsection at the end
23 thereof:

24 “(c) INSPECTION REQUIREMENTS.—

1 “(1) UNINSPECTED TANKS.—In the case of un-
2 derground storage tanks regulated under this sub-
3 title that have not undergone an inspection since De-
4 cember 22, 1998, not later than 2 years after the
5 date of enactment of this subsection, the Adminis-
6 trator or a State that receives funding under this
7 subtitle, as appropriate, shall conduct on-site inspec-
8 tions of all such tanks to determine compliance with
9 this subtitle and the regulations under this subtitle
10 (40 C.F.R. 280) or a requirement or standard of a
11 State program developed under section 9004.

12 “(2) PERIODIC INSPECTIONS.—After completion
13 of all inspections required under paragraph (1), the
14 Administrator or a State that receives funding under
15 this subtitle, as appropriate, shall conduct on-site in-
16 spections of each underground storage tank regu-
17 lated under this subtitle at least once every 3 years
18 to determine compliance with this subtitle and the
19 regulations under this subtitle (40 C.F.R. 280) or a
20 requirement or standard of a State program devel-
21 oped under section 9004. The Administrator may ex-
22 tend for up to one additional year the first 3-year
23 inspection interval under this paragraph if the State
24 demonstrates that it has insufficient resources to

1 complete all such inspections within the first 3-year
2 period.

3 “(3) INSPECTION AUTHORITY.—Nothing in this
4 section shall be construed to diminish the Adminis-
5 trator’s or a State’s authorities under section
6 9005(a).”.

7 (b) STUDY OF ALTERNATIVE INSPECTION PRO-
8 GRAMS.—The Administrator of the Environmental Protec-
9 tion Agency, in coordination with a State, shall gather in-
10 formation on compliance assurance programs that could
11 serve as an alternative to the inspection programs under
12 section 9005(c) of the Solid Waste Disposal Act (42
13 U.S.C. 6991d(c)) and shall, within 4 years after the date
14 of enactment of this Act, submit a report to the Congress
15 containing the results of such study.

16 **SEC. 1524. OPERATOR TRAINING.**

17 (a) IN GENERAL.—Section 9010 of the Solid Waste
18 Disposal Act (42 U.S.C. 6991i) is amended to read as fol-
19 lows:

20 **“SEC. 9010. OPERATOR TRAINING.**

21 “(a) GUIDELINES.—

22 “(1) IN GENERAL.—Not later than 2 years
23 after the date of enactment of the Underground
24 Storage Tank Compliance Act of 2003, in consulta-
25 tion and cooperation with States and after public no-

1 tice and opportunity for comment, the Administrator
2 shall publish guidelines that specify training require-
3 ments for persons having primary daily on-site man-
4 agement responsibility for the operation and mainte-
5 nance of underground storage tanks.

6 “(2) CONSIDERATIONS.—The guidelines de-
7 scribed in paragraph (1) shall take into account—

8 “(A) State training programs in existence
9 as of the date of publication of the guidelines;

10 “(B) training programs that are being em-
11 ployed by tank owners and tank operators as of
12 the date of enactment of the Underground Stor-
13 age Tank Compliance Act of 2003;

14 “(C) the high turnover rate of tank opera-
15 tors and other personnel;

16 “(D) the frequency of improvement in un-
17 derground storage tank equipment technology;

18 “(E) the nature of the businesses in which
19 the tank operators are engaged; and

20 “(F) such other factors as the Adminis-
21 trator determines to be necessary to carry out
22 this section.

23 “(b) STATE PROGRAMS.—

24 “(1) IN GENERAL.—Not later than 2 years
25 after the date on which the Administrator publishes

1 the guidelines under subsection (a)(1), each State
2 that receives funding under this subtitle shall de-
3 velop State-specific training requirements that are
4 consistent with the guidelines developed under sub-
5 section (a)(1).

6 “(2) REQUIREMENTS.—State requirements de-
7 scribed in paragraph (1) shall—

8 “(A) be consistent with subsection (a);

9 “(B) be developed in cooperation with tank
10 owners and tank operators;

11 “(C) take into consideration training pro-
12 grams implemented by tank owners and tank
13 operators as of the date of enactment of this
14 section; and

15 “(D) be appropriately communicated to
16 tank owners and operators.

17 “(3) FINANCIAL INCENTIVE.—The Adminis-
18 trator may award to a State that develops and im-
19 plements requirements described in paragraph (1),
20 in addition to any funds that the State is entitled to
21 receive under this subtitle, not more than \$200,000,
22 to be used to carry out the requirements.

23 “(c) OPERATORS.—All persons having primary daily
24 on-site management responsibility for the operation and
25 maintenance of any underground storage tank shall—

1 “(1) meet the training requirements developed
2 under subsection (b); and

3 “(2) repeat the applicable requirements devel-
4 oped under subsection (b), if the tank for which they
5 have primary daily on-site management responsibil-
6 ities is determined to be out of compliance with—

7 “(A) a requirement or standard promul-
8 gated by the Administrator under section 9003;
9 or

10 “(B) a requirement or standard of a State
11 program approved under section 9004.”.

12 (b) STATE PROGRAM REQUIREMENT.—Section
13 9004(a) of the Solid Waste Disposal Act (42 U.S.C.
14 6991c(a)) is amended by striking “and” at the end of
15 paragraph (7), by striking the period at the end of para-
16 graph (8) and inserting “; and”, and by adding the fol-
17 lowing new paragraph at the end thereof:

18 “(9) State-specific training requirements as re-
19 quired by section 9010.”.

20 (c) ENFORCEMENT.—Section 9006(d)(2) of such Act
21 (42 U.S.C. 6991e) is amended as follows:

22 (1) By striking “or” at the end of subpara-
23 graph (B).

24 (2) By adding the following new subparagraph
25 after subparagraph (C):

1 “(D) the training requirements established by
2 States pursuant to section 9010 (relating to oper-
3 ator training); or”.

4 (d) TABLE OF CONTENTS.—The item relating to sec-
5 tion 9010 in table of contents for the Solid Waste Disposal
6 Act is amended to read as follows:

“Sec. 9010. Operator training.”.

7 **SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDI-**
8 **TIVES.**

9 Section 9003(h) of the Solid Waste Disposal Act (42
10 U.S.C. 6991b(h)) is amended as follows:

11 (1) In paragraph (7)(A)—

12 (A) by striking “paragraphs (1) and (2) of
13 this subsection” and inserting “paragraphs (1),
14 (2), and (12)” ; and

15 (B) by striking “and including the authori-
16 ties of paragraphs (4), (6), and (8) of this sub-
17 section” and inserting “and the authority under
18 sections 9011 and 9012 and paragraphs (4),
19 (6), and (8),”.

20 (2) By adding at the end the following:

21 “(12) REMEDIATION OF OXYGENATED FUEL
22 CONTAMINATION.—

23 “(A) IN GENERAL.—The Administrator
24 and the States may use funds made available
25 under section 9014(2)(B) to carry out correc-

1 tive actions with respect to a release of a fuel
2 containing an oxygenated fuel additive that pre-
3 sents a threat to human health or welfare or
4 the environment.

5 “(B) APPLICABLE AUTHORITY.—The Ad-
6 ministrator or a State shall carry out subpara-
7 graph (A) in accordance with paragraph (2),
8 and in the case of a State, in accordance with
9 a cooperative agreement entered into by the Ad-
10 ministrator and the State under paragraph
11 (7).”.

12 **SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND EN-**
13 **FORCEMENT.**

14 (a) RELEASE PREVENTION AND COMPLIANCE.—Sub-
15 title I of the Solid Waste Disposal Act (42 U.S.C. 6991
16 et seq.) is amended by adding at the end the following:

17 **“SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND**
18 **COMPLIANCE.**

19 “Funds made available under section 9014(2)(D)
20 from the Trust Fund may be used to conduct inspections,
21 issue orders, or bring actions under this subtitle—

22 “(1) by a State, in accordance with a grant or
23 cooperative agreement with the Administrator, of
24 State regulations pertaining to underground storage
25 tanks regulated under this subtitle; and

1 “(2) by the Administrator, for tanks regulated
2 under this subtitle (including under a State program
3 approved under section 9004).”.

4 (b) GOVERNMENT-OWNED TANKS.—Section 9003 of
5 the Solid Waste Disposal Act (42 U.S.C. 6991b) is amend-
6 ed by adding at the end the following:

7 “(i) GOVERNMENT-OWNED TANKS.—

8 “(1) STATE COMPLIANCE REPORT.—(A) Not
9 later than 2 years after the date of enactment of
10 this subsection, each State that receives funding
11 under this subtitle shall submit to the Administrator
12 a State compliance report that—

13 “(i) lists the location and owner of each
14 underground storage tank described in subpara-
15 graph (B) in the State that, as of the date of
16 submission of the report, is not in compliance
17 with section 9003; and

18 “(ii) specifies the date of the last inspec-
19 tion and describes the actions that have been
20 and will be taken to ensure compliance of the
21 underground storage tank listed under clause
22 (i) with this subtitle.

23 “(B) An underground storage tank described in
24 this subparagraph is an underground storage tank
25 that is—

1 “(i) regulated under this subtitle; and

2 “(ii) owned or operated by the Fed-
3 eral, State, or local government.

4 “(C) The Administrator shall make each report,
5 received under subparagraph (A), available to the
6 public through an appropriate media.

7 “(2) FINANCIAL INCENTIVE.—The Adminis-
8 trator may award to a State that develops a report
9 described in paragraph (1), in addition to any other
10 funds that the State is entitled to receive under this
11 subtitle, not more than \$50,000, to be used to carry
12 out the report.

13 “(3) NOT A SAFE HARBOR.—This subsection
14 does not relieve any person from any obligation or
15 requirement under this subtitle.”.

16 (c) PUBLIC RECORD.—Section 9002 of the Solid
17 Waste Disposal Act (42 U.S.C. 6991a) is amended by add-
18 ing at the end the following:

19 “(d) PUBLIC RECORD.—

20 “(1) IN GENERAL.—The Administrator shall re-
21 quire each State that receives Federal funds to carry
22 out this subtitle to maintain, update at least annu-
23 ally, and make available to the public, in such man-
24 ner and form as the Administrator shall prescribe

1 (after consultation with States), a record of under-
2 ground storage tanks regulated under this subtitle.

3 “(2) CONSIDERATIONS.—To the maximum ex-
4 tent practicable, the public record of a State, respec-
5 tively, shall include, for each year—

6 “(A) the number, sources, and causes of
7 underground storage tank releases in the State;

8 “(B) the record of compliance by under-
9 ground storage tanks in the State with—

10 “(i) this subtitle; or

11 “(ii) an applicable State program ap-
12 proved under section 9004; and

13 “(C) data on the number of underground
14 storage tank equipment failures in the State.”.

15 (d) INCENTIVE FOR PERFORMANCE.—Section 9006
16 of the Solid Waste Disposal Act (42 U.S.C. 6991e) is
17 amended by adding at the end the following:

18 “(e) INCENTIVE FOR PERFORMANCE.—Both of the
19 following may be taken into account in determining the
20 terms of a civil penalty under subsection (d):

21 “(1) The compliance history of an owner or op-
22 erator in accordance with this subtitle or a program
23 approved under section 9004.

24 “(2) Any other factor the Administrator con-
25 siders appropriate.”.

1 (e) TABLE OF CONTENTS.—The table of contents for
2 such subtitle I is amended by adding the following new
3 item at the end thereof:

“Sec. 9011. Use of funds for release prevention and compliance.”.

4 **SEC. 1527. DELIVERY PROHIBITION.**

5 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-
6 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
7 at the end the following:

8 **“SEC. 9012. DELIVERY PROHIBITION.**

9 “(a) REQUIREMENTS.—

10 “(1) PROHIBITION OF DELIVERY OR DE-
11 POSIT.—Beginning 2 years after the date of enact-
12 ment of this section, it shall be unlawful to deliver
13 to, deposit into, or accept a regulated substance into
14 an underground storage tank at a facility which has
15 been identified by the Administrator or a State im-
16 plementing agency to be ineligible for fuel delivery or
17 deposit.

18 “(2) GUIDANCE.—Within 1 year after the date
19 of enactment of this section, the Administrator and
20 States that receive funding under this subtitle shall,
21 in consultation with the underground storage tank
22 owner and product delivery industries, for territory
23 for which they are the primary implementing agen-
24 cies, publish guidelines detailing the specific proc-
25 esses and procedures they will use to implement the

1 provisions of this section. The processes and proce-
2 dures include, at a minimum—

3 “(A) the criteria for determining which un-
4 derground storage tank facilities are ineligible
5 for delivery or deposit;

6 “(B) the mechanisms for identifying which
7 facilities are ineligible for delivery or deposit to
8 the underground storage tank owning and fuel
9 delivery industries;

10 “(C) the process for reclassifying ineligible
11 facilities as eligible for delivery or deposit; and

12 “(D) a delineation of, or a process for de-
13 termining, the specified geographic areas sub-
14 ject to paragraph (4).

15 “(3) DELIVERY PROHIBITION NOTICE.—

16 “(A) ROSTER.—The Administrator and
17 each State implementing agency that receives
18 funding under this subtitle shall establish with-
19 in 24 months after the date of enactment of
20 this section a Delivery Prohibition Roster list-
21 ing underground storage tanks under the Ad-
22 ministrator’s or the State’s jurisdiction that are
23 determined to be ineligible for delivery or de-
24 posit pursuant to paragraph (2).

1 “(B) NOTIFICATION.—The Administrator
2 and each State, as appropriate, shall make
3 readily known, to underground storage tank
4 owners and operators and to product delivery
5 industries, the underground storage tanks listed
6 on a Delivery Prohibition Roster by:

7 “(i) posting such Rosters, including
8 the physical location and street address of
9 each listed underground storage tank, on
10 official web sites and, if the Administrator
11 or the State so chooses, other electronic
12 means;

13 “(ii) updating these Rosters periodically; and

14 “(iii) installing a tamper-proof tag,
15 seal, or other device blocking the fill pipes
16 of such underground storage tanks to prevent
17 the delivery of product into such underground
18 storage tanks.
19 storage tanks.

20 “(C) ROSTER UPDATES.—The Administrator
21 and the State shall update the Delivery
22 Prohibition Rosters as appropriate, but not less
23 than once a month on the first day of the
24 month.

25 “(D) TAMPERING WITH DEVICE.—

1 “(i) PROHIBITION.—It shall be unlaw-
2 ful for any person, other than an author-
3 ized representative of the Administrator or
4 a State, as appropriate, to remove, tamper
5 with, destroy, or damage a device installed
6 by the Administrator or a State, as appro-
7 priate, under subparagraph (B)(iii) of this
8 subsection.

9 “(ii) CIVIL PENALTIES.—Any person
10 violating clause (i) of this subparagraph
11 shall be subject to a civil penalty not to ex-
12 ceed \$10,000 for each violation.

13 “(4) LIMITATION.—

14 “(A) RURAL AND REMOTE AREAS.—Sub-
15 ject to subparagraph (B), the Administrator or
16 a State shall not include an underground stor-
17 age tank on a Delivery Prohibition Roster
18 under paragraph (3) if an urgent threat to pub-
19 lic health, as determined by the Administrator,
20 does not exist and if such a delivery prohibition
21 would jeopardize the availability of, or access
22 to, fuel in any rural and remote areas.

23 “(B) APPLICABILITY OF LIMITATION.—
24 The limitation under subparagraph (A) shall
25 apply only during the 180-day period following

1 the date of a determination by the Adminis-
2 trator or the appropriate State that exercising
3 the authority of paragraph (3) is limited by
4 subparagraph (A).

5 “(b) EFFECT ON STATE AUTHORITY.—Nothing in
6 this section shall affect the authority of a State to prohibit
7 the delivery of a regulated substance to an underground
8 storage tank.

9 “(c) DEFENSE TO VIOLATION.—A person shall not be
10 in violation of subsection (a)(1) if the underground storage
11 tank into which a regulated substance is delivered is not
12 listed on the Administrator’s or the appropriate State’s
13 Prohibited Delivery Roster 7 calendar days prior to the
14 delivery being made.”.

15 (b) ENFORCEMENT.—Section 9006(d)(2) of such Act
16 (42 U.S.C. 6991e(d)(2)) is amended as follows:

17 (1) By adding the following new subparagraph
18 after subparagraph (D):

19 “(E) the delivery prohibition requirement estab-
20 lished by section 9012,”.

21 (2) By adding the following new sentence at the
22 end thereof: “Any person making or accepting a de-
23 livery or deposit of a regulated substance to an un-
24 derground storage tank at an ineligible facility in

1 violation of section 9012 shall also be subject to the
2 same civil penalty for each day of such violation.”.

3 (c) TABLE OF CONTENTS.—The table of contents for
4 such subtitle I is amended by adding the following new
5 item at the end thereof:

“Sec. 9012. Delivery prohibition.”.

6 **SEC. 1528. FEDERAL FACILITIES.**

7 Section 9007 of the Solid Waste Disposal Act (42
8 U.S.C. 6991f) is amended to read as follows:

9 **“SEC. 9007. FEDERAL FACILITIES.**

10 “(a) IN GENERAL.—Each department, agency, and
11 instrumentality of the executive, legislative, and judicial
12 branches of the Federal Government (1) having jurisdic-
13 tion over any underground storage tank or underground
14 storage tank system, or (2) engaged in any activity result-
15 ing, or which may result, in the installation, operation,
16 management, or closure of any underground storage tank,
17 release response activities related thereto, or in the deliv-
18 ery, acceptance, or deposit of any regulated substance to
19 an underground storage tank or underground storage tank
20 system shall be subject to, and comply with, all Federal,
21 State, interstate, and local requirements, both substantive
22 and procedural (including any requirement for permits or
23 reporting or any provisions for injunctive relief and such
24 sanctions as may be imposed by a court to enforce such
25 relief), respecting underground storage tanks in the same

1 manner, and to the same extent, as any person is subject
2 to such requirements, including the payment of reasonable
3 service charges. The Federal, State, interstate, and local
4 substantive and procedural requirements referred to in
5 this subsection include, but are not limited to, all adminis-
6 trative orders and all civil and administrative penalties
7 and fines, regardless of whether such penalties or fines
8 are punitive or coercive in nature or are imposed for iso-
9 lated, intermittent, or continuing violations. The United
10 States hereby expressly waives any immunity otherwise
11 applicable to the United States with respect to any such
12 substantive or procedural requirement (including, but not
13 limited to, any injunctive relief, administrative order or
14 civil or administrative penalty or fine referred to in the
15 preceding sentence, or reasonable service charge). The rea-
16 sonable service charges referred to in this subsection in-
17 clude, but are not limited to, fees or charges assessed in
18 connection with the processing and issuance of permits,
19 renewal of permits, amendments to permits, review of
20 plans, studies, and other documents, and inspection and
21 monitoring of facilities, as well as any other nondiscrim-
22 inatory charges that are assessed in connection with a
23 Federal, State, interstate, or local underground storage
24 tank regulatory program. Neither the United States, nor
25 any agent, employee, or officer thereof, shall be immune

1 or exempt from any process or sanction of any State or
2 Federal Court with respect to the enforcement of any such
3 injunctive relief. No agent, employee, or officer of the
4 United States shall be personally liable for any civil pen-
5 alty under any Federal, State, interstate, or local law con-
6 cerning underground storage tanks with respect to any act
7 or omission within the scope of the official duties of the
8 agent, employee, or officer. An agent, employee, or officer
9 of the United States shall be subject to any criminal sanc-
10 tion (including, but not limited to, any fine or imprison-
11 ment) under any Federal or State law concerning under-
12 ground storage tanks, but no department, agency, or in-
13 strumentality of the executive, legislative, or judicial
14 branch of the Federal Government shall be subject to any
15 such sanction. The President may exempt any under-
16 ground storage tank of any department, agency, or instru-
17 mentality in the executive branch from compliance with
18 such a requirement if he determines it to be in the para-
19 mount interest of the United States to do so. No such
20 exemption shall be granted due to lack of appropriation
21 unless the President shall have specifically requested such
22 appropriation as a part of the budgetary process and the
23 Congress shall have failed to make available such re-
24 quested appropriation. Any exemption shall be for a period
25 not in excess of one year, but additional exemptions may

1 be granted for periods not to exceed one year upon the
2 President's making a new determination. The President
3 shall report each January to the Congress all exemptions
4 from the requirements of this section granted during the
5 preceding calendar year, together with his reason for
6 granting each such exemption.

7 “(b) REVIEW OF AND REPORT ON FEDERAL UNDER-
8 GROUND STORAGE TANKS.—

9 “(1) REVIEW.—Not later than 12 months after
10 the date of enactment of the Underground Storage
11 Tank Compliance Act of 2003, each Federal agency
12 that owns or operates 1 or more underground stor-
13 age tanks, or that manages land on which 1 or more
14 underground storage tanks are located, shall submit
15 to the Administrator, the Committee on Energy and
16 Commerce of the United States House of Represent-
17 atives, and the Committee on the Environment and
18 Public Works of the United States Senate a compli-
19 ance strategy report that—

20 “(A) lists the location and owner of each
21 underground storage tank described in this
22 paragraph;

23 “(B) lists all tanks that are not in compli-
24 ance with this subtitle that are owned or oper-
25 ated by the Federal agency;

1 “(C) specifies the date of the last inspec-
2 tion by a State or Federal inspector of each un-
3 derground storage tank owned or operated by
4 the agency;

5 “(D) lists each violation of this subtitle re-
6 specting any underground storage tank owned
7 or operated by the agency;

8 “(E) describes the operator training that
9 has been provided to the operator and other
10 persons having primary daily on-site manage-
11 ment responsibility for the operation and main-
12 tenance of underground storage tanks owned or
13 operated by the agency; and

14 “(F) describes the actions that have been
15 and will be taken to ensure compliance for each
16 underground storage tank identified under sub-
17 paragraph (B).

18 “(2) NOT A SAFE HARBOR.—This subsection
19 does not relieve any person from any obligation or
20 requirement under this subtitle.”.

21 **SEC. 1529. TANKS ON TRIBAL LANDS.**

22 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-
23 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
24 the following at the end thereof:

1 **“SEC. 9013. TANKS ON TRIBAL LANDS.**

2 “(a) STRATEGY.—The Administrator, in coordination
3 with Indian tribes, shall, not later than 1 year after the
4 date of enactment of this section, develop and implement
5 a strategy—

6 “(1) giving priority to releases that present the
7 greatest threat to human health or the environment,
8 to take necessary corrective action in response to re-
9 leases from leaking underground storage tanks lo-
10 cated wholly within the boundaries of—

11 “(A) an Indian reservation; or

12 “(B) any other area under the jurisdiction
13 of an Indian tribe; and

14 “(2) to implement and enforce requirements
15 concerning underground storage tanks located wholly
16 within the boundaries of—

17 “(A) an Indian reservation; or

18 “(B) any other area under the jurisdiction
19 of an Indian tribe.

20 “(b) REPORT.—Not later than 2 years after the date
21 of enactment of this section, the Administrator shall sub-
22 mit to Congress a report that summarizes the status of
23 implementation and enforcement of this subtitle in areas
24 located wholly within—

25 “(1) the boundaries of Indian reservations; and

1 “(2) any other areas under the jurisdiction of
2 an Indian tribe.

3 The Administrator shall make the report under this sub-
4 section available to the public.

5 “(c) NOT A SAFE HARBOR.—This section does not
6 relieve any person from any obligation or requirement
7 under this subtitle.

8 “(d) STATE AUTHORITY.—Nothing in this section
9 applies to any underground storage tank that is located
10 in an area under the jurisdiction of a State, or that is
11 subject to regulation by a State, as of the date of enact-
12 ment of this section.”.

13 (b) TABLE OF CONTENTS.—The table of contents for
14 such subtitle I is amended by adding the following new
15 item at the end thereof:

“Sec. 9013. Tanks on Tribal lands.”.

16 **SEC. 1530. FUTURE RELEASE CONTAINMENT TECHNOLOGY.**

17 Not later than 2 years after the date of enactment
18 of this Act, the Administrator of the Environmental Pro-
19 tection Agency, after consultation with States, shall make
20 available to the public and to the Committee on Energy
21 and Commerce of the House of Representatives and the
22 Committee on Environment and Public Works of the Sen-
23 ate information on the effectiveness of alternative possible
24 methods and means for containing releases from under-
25 ground storage tanks systems.

1 **SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-
3 posal Act (42 U.S.C. 6991 et seq.) is amended by adding
4 at the end the following:

5 **“SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.**

6 “There are authorized to be appropriated to the Ad-
7 ministrator the following amounts:

8 “(1) To carry out subtitle I (except sections
9 9003(h), 9005(c), 9011 and 9012) \$50,000,000 for
10 each of fiscal years 2004 through 2008.

11 “(2) From the Trust Fund, notwithstanding
12 section 9508(c)(1) of the Internal Revenue Code of
13 1986:

14 “(A) to carry out section 9003(h) (except
15 section 9003(h)(12)) \$200,000,000 for each of
16 fiscal years 2004 through 2008;

17 “(B) to carry out section 9003(h)(12),
18 \$200,000,000 for each of fiscal years 2004
19 through 2008;

20 “(C) to carry out sections 9004(f) and
21 9005(c) \$100,000,000 for each of fiscal years
22 2004 through 2008; and

23 “(D) to carry out sections 9011 and 9012
24 \$55,000,000 for each of fiscal years 2004
25 through 2008.”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 such subtitle I is amended by adding the following new
3 item at the end thereof:

“Sec. 9014. Authorization of appropriations.”.

4 **SEC. 1532. CONFORMING AMENDMENTS.**

5 (a) IN GENERAL.—Section 9001 of the Solid Waste
6 Disposal Act (42 U.S.C. 6991) is amended as follows:

7 (1) By striking “For the purposes of this sub-
8 title—” and inserting “In this subtitle.”.

9 (2) By redesignating paragraphs (1), (2), (3),
10 (4), (5), (6), (7), and (8) as paragraphs (10), (7),
11 (4), (3), (8), (5), (2), and (6), respectively.

12 (3) By inserting before paragraph (2) (as reded-
13 igned by paragraph (2) of this subsection) the fol-
14 lowing:

15 “(1) INDIAN TRIBE.—

16 “(A) IN GENERAL.— The term ‘Indian
17 tribe’ means any Indian tribe, band, nation, or
18 other organized group or community that is rec-
19 ognized as being eligible for special programs
20 and services provided by the United States to
21 Indians because of their status as Indians.

22 “(B) INCLUSIONS.—The term ‘Indian
23 tribe’ includes an Alaska Native village, as de-
24 fined in or established under the Alaska Native

1 Claims Settlement Act (43 U.S.C. 1601 et
2 seq.); and”.

3 (4) By inserting after paragraph (8) (as redesi-
4 gnated by paragraph (2) of this subsection) the fol-
5 lowing:

6 “(9) TRUST FUND.— The term ‘Trust Fund’
7 means the Leaking Underground Storage Tank
8 Trust Fund established by section 9508 of the Inter-
9 nal Revenue Code of 1986.”.

10 (b) CONFORMING AMENDMENTS.—The Solid Waste
11 Disposal Act (42 U.S.C. 6901 and following) is amended
12 as follows:

13 (1) Section 9003(f) (42 U.S.C. 6991b(f)) is
14 amended—

15 (A) in paragraph (1), by striking
16 “9001(2)(B)” and inserting “9001(7)(B)”; and

17 (B) in paragraphs (2) and (3), by striking
18 “9001(2)(A)” each place it appears and insert-
19 ing “9001(7)(A)”.

20 (2) Section 9003(h) (42 U.S.C. 6991b(h)) is
21 amended in paragraphs (1), (2)(C), (7)(A), and (11)
22 by striking “Leaking Underground Storage Tank
23 Trust Fund” each place it appears and inserting
24 “Trust Fund”.

1 (3) Section 9009 (42 U.S.C. 6991h) is
2 amended—

3 (A) in subsection (a), by striking
4 “9001(2)(B)” and inserting “9001(7)(B)”; and

5 (B) in subsection (d), by striking “section
6 9001(1) (A) and (B)” and inserting “subpara-
7 graphs (A) and (B) of section 9001(10)”.

8 **SEC. 1533. TECHNICAL AMENDMENTS.**

9 The Solid Waste Disposal Act is amended as follows:

10 (1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A))
11 is amended by striking “sustances” and inserting
12 “substances”.

13 (2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1))
14 is amended by striking “subsection (e) and (d) of
15 this section” and inserting “subsections (c) and
16 (d)”.

17 (3) Section 9004(a) (42 U.S.C. 6991c(a)) is
18 amended by striking “in 9001(2) (A) or (B) or
19 both” and inserting “in subparagraph (A) or (B) of
20 section 9001(7)”.

21 (4) Section 9005 (42 U.S.C. 6991d) is
22 amended—

23 (A) in subsection (a), by striking “study
24 taking” and inserting “study, taking”;

1 (B) in subsection (b)(1), by striking
2 “relevent” and inserting “relevant”; and
3 (C) in subsection (b)(4), by striking
4 “Evironmental” and inserting “Environ-
5 mental”.