

ORAL ARGUMENT NOT YET SCHEDULED  
No. 22-1031 (and consolidated cases)

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In the United States Court of Appeals  
for the District of Columbia Circuit

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STATE OF TEXAS, ET AL.,  
*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,  
*Respondents.*

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On Petition For Review from the United States  
Environmental Protection Agency  
(No. EPA-HQ-OAR-2021-0208)

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**FINAL BRIEF FOR INDUSTRY RESPONDENT-INTERVENORS**

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel certify as follows:

**A. Parties**

Except for the following, all parties, intervenors, and amici appearing in these consolidated cases are listed in Respondents' Brief:

*Amici for Respondents:* The National League of Cities and The U.S. Conference of Mayors; Frank Pallone, Jr. and Thomas R. Carper; Consumer Reports; American Thoracic Society, American Medical Association, American Public Health Association, American College of Occupational and Environmental Medicine, American Academy of Pediatrics, American Association for Respiratory Care, Climate Psychiatry Alliance, American College of Physicians, American College of Chest Physicians, Academic Pediatric Association and American Academy of Allergy, Asthma, & Immunology; Constitutional Accountability Center; Institute for Policy Integrity at New York University School of Law; and Margo Oge and John Hannon.

## **B. Rulings Under Review**

The agency action under review is entitled “Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards,” 86 Fed. Reg. 74,434 (Dec. 30, 2021).

## **C. Related Cases**

There are no related cases within the meaning of Circuit Rule 28(a)(1)(C).

/s/ Kevin Poloncarz  
Kevin Poloncarz

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and this Court's Rule 26.1, Industry Respondent-Intervenors respectfully submit the following corporate disclosure statement:

The National Coalition for Advanced Transportation is an unincorporated association and does not have a parent corporation. No publicly-held entity owns 10 percent or more of the National Coalition for Advanced Transportation. The National Coalition for Advanced Transportation has the following members<sup>1</sup>: Constellation Energy Corporation, Edison International, EVgo, Exelon Corporation and its affiliate operating companies (Atlantic City Electric, Baltimore Gas & Electric, Commonwealth Edison Company, Delmarva Power, PECO, and PEPCO), Lucid USA, Inc., Pacific Gas and Electric Company, Plug In America, Portland General Electric, Rivian Automotive, Sacramento Municipal Utility District, and Tesla, Inc.

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<sup>1</sup> National Coalition for Advanced Transportation member Center for Climate and Energy Solutions is not participating in this litigation as this organization does not participate in litigation as a matter of general practice.

Advanced Energy United certifies that Advanced Energy United is a not-for-profit business association dedicated to making energy secure, clean, and affordable. Advanced Energy United does not have any parent companies or issue stock, and no publicly held company has a 10 percent or greater ownership interest in Advanced Energy United.

Calpine Corporation (“Calpine”) certifies that it is a privately held corporation. CPN Management, LP owns 100 percent of the common stock of Calpine. Volt Parent GP, LLC is the General Partner of CPN Management, LP. Energy Capital Partners III, LLC owns the controlling interest in Volt Parent GP, LLC. Calpine is among America’s largest generators of electricity from natural gas and geothermal resources, with 77 power plants in operation or under construction in 16 U.S. states and Canada, amounting to nearly 26,000 megawatts of generating capacity. Calpine also provides retail electric service to customers in competitive markets throughout the United States, including an additional seven states (beyond those in which it operates generation resources), through its subsidiaries Calpine Energy Solutions and Champion Energy Services.

National Grid USA states that it is a holding company with regulated direct and indirect subsidiaries engaged in the transmission, distribution and sale of electricity and natural gas and the generation of electricity. It is the direct or indirect corporate parent of several subsidiary electric distribution companies, including Massachusetts Electric Company, Nantucket Electric Company, and Niagara Mohawk Power Corporation. National Grid USA is also the direct corporate parent of National Grid Generation LLC, which supplies capacity to, and produces energy for, the use of customers of the Long Island Power Authority. All of the outstanding shares of common stock of National Grid USA are owned by National Grid North America Inc. All of the outstanding shares of common stock of National Grid North America Inc. are owned by National Grid (US) Partner 1 Limited. All of the outstanding ordinary shares of National Grid (US) Partner 1 Limited are owned by National Grid (US) Investments 4 Limited. All of the outstanding ordinary shares of National Grid (US) Investments 4 Limited are owned by National Grid (US) Holdings Limited. All of the outstanding ordinary shares of National Grid (US) Holdings Limited are owned by National Grid plc. National Grid plc is a public company

organized under the laws of England and Wales, with ordinary shares listed on the London Stock Exchange, and American Depositary Shares listed on the New York Stock Exchange. No publicly held corporation directly owns more than 10 percent of National Grid plc's outstanding ordinary shares.

New York Power Authority states that it is a New York State public-benefit corporation. It is the largest state public power utility in the United States, with 16 generating facilities and more than 1,400 circuit-miles of transmission lines. New York Power Authority sells electricity to more than 1,000 customers, including local and state government entities, municipal and rural cooperative electric systems, industry, large and small businesses and non-profit organizations. New York Power Authority has no parent corporation and no publicly held company owns greater than 10 percent ownership interest in it.

Power Companies Climate Coalition states that it is an unincorporated association of companies engaged in the generation and distribution of electricity and natural gas, organized to advocate for responsible solutions to address climate change and reduce emissions of greenhouse gases and other pollutants, including through participation

in litigation concerning federal regulation. Its members include the Los Angeles Department of Water and Power, The City of Seattle, by and through its City Light Department (“Seattle City Light”), as well as Calpine, National Grid USA and New York Power Authority.

Los Angeles Department of Water and Power states that it is a vertically integrated publicly-owned electric utility of the City of Los Angeles, serving a population of over 4 million people within a 465 square mile service territory covering the City of Los Angeles and portions of the Owens Valley. Los Angeles Department of Water and Power is the third largest electric utility in the state, one of five California balancing authorities, and the nation’s largest municipal utility. Los Angeles Department of Water and Power owns and operates a diverse portfolio of generation, transmission, and distribution assets across several states. Los Angeles Department of Water and Power’s diverse portfolio includes electricity produced from natural gas, hydropower, coal, nuclear, wind, biomass, geothermal, and solar energy resources. Los Angeles Department of Water and Power owns and/or operates the majority of its conventional generating resources, with a net dependable generating capacity of 7,967 megawatts. Its transmission system, which includes

more than 3,700 circuit-miles of transmission lines, transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and elsewhere within California to the City of Los Angeles. Los Angeles Department of Water and Power's mission is to provide clean, reliable water and power in a safe, environmentally responsible, and cost-effective manner.

Seattle City Light states that it is a municipal electric utility providing retail electricity service to nearly 455,000 customers in the Seattle metropolitan area serving nearly 1 million Seattle-area residents. Seattle's power resources are over 90 percent hydropower, much of which is owned and operated by Seattle. Additionally, Seattle operates its hydroelectric projects to support flood control, instream flows for fish, and reservoir recreation. As of 2016, Seattle's total system generation capability was 2,014.1 MW.

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## GLOSSARY

EPA	U.S. Environmental Protection Agency
EPA Br.	Brief of Respondents U.S. Environmental Protection Agency and Michael S. Regan
Fuel Br.	Brief of Private Petitioners
JA	Joint Appendix
Private Petitioners	American Fuel & Petrochemical Manufacturers, Clean Fuels Development Coalition, Competitive Enterprise Institute, Diamond Alternative Energy, LLC, Domestic Energy Producers Alliance, Energy Marketers of America, ICM, Inc., Illinois Corn Growers Association, Illinois Soybean Association, Indiana Corn Growers Association, Indiana Soybean Alliance, Inc., Iowa Soybean Association, Kansas Corn Growers Association, Kentucky Corn Growers Association, Anthony Kreucher, Walter M. Kreucher, James Leedy, Michigan Corn Growers Association, Michigan Soybean Association, Minnesota Soybean Growers Association, Missouri Corn Growers Association, North Dakota Soybean Growers Association, Ohio Soybean Association, Marc Scribner, South Dakota Soybean Association, and Valero Renewable Fuels Company, LLC
State Br.	Brief of State Petitioners
State Petitioners	Texas, Alabama, Alaska, Arkansas, Arizona, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, and Utah

## INTRODUCTION

Under Section 202 of the Clean Air Act, EPA must set emission standards for new motor vehicles and account for development and application of the requisite technology when doing so. Since 1971, EPA has regulated tailpipe pollutants emitted by light-duty vehicles.

For decades, Congress and EPA have considered reducing emissions through vehicle electrification. This technology has become financially feasible and popular with consumers. In 2021, EPA set emission standards for light-duty vehicles based on the feasible emission-control technologies available, including vehicle electrification. *See* 86 Fed. Reg. 74,434 (Dec. 30, 2021) (“Standards”). Under these Standards, EPA projected that electric vehicles and plug-in hybrid electric vehicles will reach up to a 17 percent market-share of new vehicles in Model Year 2026.

Industry Respondent-Intervenors (hereinafter “Respondent-Intervenors”) agree with all of EPA’s arguments that the Court need not reach the merits of the petitions and that the Standards are reasonable and do not pose a major question. Respondent-Intervenors amplify three of EPA’s arguments to clarify why the Standards do not pose a major

question. First, Petitioners' fact-based arguments cannot form the basis of a cognizable challenge under the major-questions doctrine. Second, even if viewed through the lens of the major-questions doctrine, the anticipated vehicle electrification is well within the capabilities of the electric grid. Third, the vehicle electrification contemplated by the Standards does not implicate supply-chain issues affecting national security. EPA acted well within its statutory authority and did so reasonably.

### **STATEMENTS OF JURISDICTION AND THE ISSUES**

Respondent-Intervenors adopt Respondents' Statements of Jurisdiction and Issues Presented.

### **STATUTES AND REGULATIONS**

Pertinent statutes and regulations that are not reproduced in the addendum to Respondents' brief are reproduced in the addendum to this brief.

### **STATEMENT OF THE CASE**

Respondent-Intervenors adopt Respondents' Statement of the Case, and add the following.

Respondent-Intervenors include coalitions and companies across a range of industries focused on manufacturing electric vehicles, deploying

the charging infrastructure needed to integrate them to the electricity grid, and providing affordable and reliable low-carbon electricity to customers to power such vehicles.

## SUMMARY OF ARGUMENT

I. The major-questions doctrine is inapplicable as a matter of law. Petitioners challenge the fact-based assessments EPA made based on the record before it, arguing that the Standards will adversely *affect* the electric grid or national security. But that in no way demonstrates the “extraordinary” case of an agency transforming its power in “unheralded” ways. Where, as here, an agency is exercising its delegated statutory authority, courts must review a challenge under the deferential arbitrary and capricious standard. Such a challenge would fail because EPA appropriately considered grid reliability and supply-chain security, as well as related considerations of cost, energy and safety. Regardless, Petitioners have forfeited an arbitrary-and-capricious claim because their arguments are based solely on the major-questions doctrine.

II. Even when viewed through the lens of the major-questions doctrine, the Standards’ alleged impacts on the electric grid do not implicate that doctrine. First, State Petitioners may not raise a grid-

reliability argument before this Court because they did not raise it before EPA. Second, the facts clearly establish that the Standards will not impair grid reliability. EPA properly relied upon a Department of Energy report demonstrating that the anticipated demand from electric vehicles is well within the grid's capabilities. Moreover, electric vehicles promote innovative grid-management services, which are intended to improve reliability. Recent large federal investments to accelerate deployment of low-carbon generation and grid resiliency only confirm that the expected rate of vehicle electrification can be managed by the grid.

III. Nor could the Standards implicate the major-questions doctrine on the basis that electric vehicle battery supply chains allegedly jeopardize national security. EPA sufficiently considered battery and supply chain issues and was satisfied that automakers are addressing demand for the critical minerals used in electric vehicles. Moreover, by reducing the Nation's consumption of foreign oil, the Standards will improve national security.

## ARGUMENT

### I. Petitioners' Fact-Based Arguments Cannot Form a Cognizable Challenge Under the Major-Questions Doctrine

Petitioners' challenges to EPA's fact-based assessment of grid-reliability and supply-chain issues are not legally cognizable under the major-questions doctrine. The doctrine is limited to "extraordinary cases" in which an agency construes a vague or seldom used statutory term in a way that gives it "unheralded" regulatory power over "a significant portion of the American economy." *West Virginia v. EPA*, 142 S. Ct. 2587, 2608 (2022) (citations omitted). Petitioners do not argue that EPA claimed the power to regulate the Nation's entire electric grid or foreign manufacturing. Rather, they argue that EPA "t[ook] action that diminishes electric grid reliability," State Br. 20, and that electric vehicle battery supply chains jeopardize the United States' national security interests. *See* State Br. 22–24; Fuel Br. 29–30. Both arguments raise only ordinary questions about whether the facts in the record support the Standards. Where the agency is exercising its delegated statutory authority, consonant with its exercise of that authority for decades, courts must review a fact-based challenge under the deferential arbitrary

and capricious standard. *See, e.g., Multicultural Media, Telecom & Internet Council v. FCC*, 873 F.3d 932, 934–36 (D.C. Cir. 2017).

Had Petitioners correctly brought an arbitrary-and-capricious claim raising either issue, it would fail. EPA did not “entirely fail[] to consider an important aspect of the problem.” *See Mingo Logan Coal Co. v. EPA*, 829 F.3d 710, 718 (D.C. Cir. 2016) (citations omitted). EPA appropriately considered relevant factors under Section 202(a), including lead-time for “development and application of the requisite technology” and “cost.” *See* 42 U.S.C. § 7521(a)(2). As explained in more detail below, EPA reasonably considered grid-reliability and supply-chain issues. EPA acknowledged and responded to comments about the grid, reasonably relying on a Department of Energy analysis of grid capabilities. JA1079–80. It noted potential technologies that may improve grid reliability in the future, again relying on a study by the Department of Energy. *See* 86 Fed. Reg. at 74,487 & n.152.

With respect to supply-chain security, EPA appropriately considered all relevant factors. EPA acknowledged and accounted for uncertainty in costs due to supply chain issues. *See, e.g.,* 86 Fed. Reg. at 74,478–79; Response to Comments, JA1075–76, JA1084–85, JA1087,

JA1103–06; Regulatory Impact Analysis, JA861, JA888–92. And EPA reasonably responded to comments about geopolitical risks. *See* Response to Comments, JA1076, JA1085, JA1103–06.

In any event, as EPA explains, Petitioners forfeited an arbitrary-and-capricious argument concerning grid impacts and supply chains because their complaints on these subjects are based solely on the major-questions doctrine. EPA Br. 59 n.14.

## **II. Concerns About Grid Reliability Do Not Implicate the Major-Questions Doctrine**

Even when viewed through the lens of the major-questions doctrine, State Petitioners’ grid-reliability argument falls short. State Petitioners cannot raise the argument now because they neglected to raise it to EPA, and the argument lacks support in (or out of) the record.

### **A. Petitioners Are Barred From Raising This Argument**

Section 307 of the Clean Air Act precludes State Petitioners from arguing that grid-reliability concerns implicate the major-questions doctrine. That provision states that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment . . . may be raised during judicial review.” 42 U.S.C.

§ 7607(d)(7)(B). This rule is “strictly enforced.” *Growth Energy v. EPA*, 5 F.4th 1, 24 (D.C. Cir. 2021).

State Petitioners purport that they (as States) have “the greatest knowledge regarding questions of grid reliability” and that these issues “are of particularly significant import to Texas.” State Br. 17 & n.2 (quoting *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016)). But when two groups of State Petitioners submitted comments on the Standards—including 13 and 18 pages of single-spaced text—neither mentioned the electric grid, much less that the anticipated vehicle electrification might so affect the grid that it poses a “major question” beyond EPA’s authority. *See* JA389–401; JA413–30. As State Petitioners did not raise this issue, much less with “reasonable specificity,” their challenge is foreclosed under Section 307.

The comments quoted in State Petitioners’ brief are all by stakeholders who either *support* the Standards or preferred even *greater* levels of electric-vehicle deployment. State Br. 19 (citing comments of Environmental Protection Network, Stellantis, and the Maryland

Department of the Environment).<sup>2</sup> To the extent these comments raised concerns about the grid, they merely noted the benefits of further private and governmental investments in electric-vehicle charging infrastructure and other complementary policies. *See* JA363–64; JA550–53; JA375–76. EPA responded to these comments in detail proportionate to the concerns raised. In particular, EPA noted that charging infrastructure would not act as a barrier to the electric-vehicle penetration contemplated by the final rule “[g]iven the level of activity, investment, and progress in [electric-vehicle] charging infrastructure to date and planned . . . .” JA1071–73 (noting \$7.5 billion in investments in electric-vehicle charging).

Had State Petitioners expressed their distinct concerns about impacts to the grid, EPA would have responded accordingly. But they cannot expect EPA to anticipate and address unarticulated concerns.

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<sup>2</sup> As State Petitioners note, Maryland has intervened in support of EPA’s standards. *See, e.g.*, State Br. 19. Stellantis is a member of the Alliance for Automotive Innovation, which also intervened in support of EPA. Stellantis also noted in its comments its desire to “achieve a 40-50% EV mix in the U.S. by 2030.” JA510. The Environmental Protection Network’s comments were in support of even *greater* levels of electric vehicle deployment, including 100% electric vehicle sales by 2035. JA365.

## B. The Standards Pose No Risk to Grid Reliability

Regardless, the additional vehicle electrification anticipated by the Standards will not impair grid reliability. The Standards contemplate only a modest increase in electric-vehicle market share: from 7 percent in Model Year 2023 to 17 percent in Model Year 2026. *See* 86 Fed. Reg. at 74,485 & tbl. 33. This amounts to a 3.3 percent market-share increase each year, and it aligns with voluntary commitments by automakers. *Id.* at 74,485–86.<sup>3</sup>

In responding to comments about electric-vehicle impacts on the grid, EPA relied on a 2019 Department of Energy report (“Report”) modeling how different trends of electric-vehicle deployment would affect the grid. *See* JA1080 & n.39, JA1084 & n.46 (citing Electric Vehicles at Scale Grid Summary Report, JA823–43). EPA quoted the Report’s conclusion that “sufficient energy generation and generation capacity is expected to be available to support a growing [electric-vehicle] fleet as it evolves over time, *even with high [ ] market growth.*” JA1080 (quoting

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<sup>3</sup> For example, General Motors intends to sell exclusively zero-emission light duty vehicles by 2035, Volvo has announced plans to sell only electric cars by 2030, Volkswagen announced that half of its U.S. sales will be all electric by 2030, and Fiat announced all-electric sales by 2030. *See* 86 Fed. Reg. at 74,486.

JA828) (emphasis added). Under that “high” market-growth scenario, the Department had assumed that 40 percent of new vehicles sold would be electric by 2030. JA830. This high-growth scenario far outpaces the 17 percent electric-vehicle market-share by 2026 anticipated by EPA. Extrapolating the annual 3.3 percent increase through 2030 would result in an electric-vehicle market share of just 30 percent of new-vehicle sales—well under the 40 percent that the Department concluded the grid can accommodate. *See* JA839–840. And as explained *infra* (at 13–17), the Department’s 40 percent figure underestimates the grid’s capacity to support electric vehicles because it did not account for demand-management services and new policies that will accelerate deployment of new generation.

State Petitioners misread this Report in claiming that it “illustrates that there are serious reliability concerns.” *See* State Br. 20. In interpreting the Report’s data from the past ten years, State Petitioners appear to confuse energy generation (i.e., the amount of electricity delivered to the grid) with energy capacity (i.e., the amount of electricity that could have been generated if demand had existed). They insist that the grid will struggle to maintain reliability because (1) over the last

decade, the grid averaged less than 5 terawatt-hours of new generation per year; and (2) a 12 percent electric-vehicle-share in 2030 (i.e., the “medium” growth scenario) would require 8 terawatt-hours of new generation per year. *Id.* But as the Department explained, although *generation* increased 5 terawatt-hours each year over the last decade, dispatchable generating *capacity* increased more than is necessary to meet projected electric-vehicle market growth. JA837–39. On this basis, the Report concluded that the grid could support a “high” growth scenario in which 40 percent of new vehicles are electric in 2030. *See supra.*

In claiming that “the grid cannot accommodate this demand without massive new investment,” State Br. 19, State Petitioners ignore the extensive evidence that power companies and utilities have already been making these investments. As Respondent-Intervenors explained during this rulemaking, “[u]tilities have long-term planning horizons for considering investments in improvements to the electricity grid to support transportation electrification.” JA369. Power companies have been bringing a substantial amount of renewable energy generation online, and (as the Department of Energy noted) this trend is expected to continue. *See* JA371 (citing U.S. Energy Information Administration’s

Annual Energy Outlook 2021, projecting that “[r]enewable electricity generation increases more rapidly than overall electricity demand through 2050”); *accord* JA839.

Additionally, the Department of Energy Report underestimates the grid’s capabilities for at least two reasons. First, the Department assumed “an unmanaged charging scenario” that was “intentionally chosen as an illustrative worst case.” JA827. But it noted that this worst-case scenario was “unlikely to occur given the current work on managed charging solutions and the monetary benefits of their implementation.” JA838. Second, the Department could not have known in 2019 about upcoming major policy changes that will further support grid reliability.

*First*, as the Department noted (but did not incorporate into its models), utilities have been innovating to smooth energy demand through managed-charging solutions. Many utilities now vary energy prices to encourage electric-vehicle customers to charge at off-peak times. JA372–73. As of March 2020, about half of U.S. investor-owned utilities had optional time-of-use rates that price energy based on the day, time, and season. *Id.* Another form of smart charging delays vehicle charging

until the vehicle receives a signal from the grid that demand has declined. JA372. In improving utilization of the existing power grid, these innovations benefit “all customers[,] whose rates could decline as electric vehicles help to shift demand.” *Id.*; *see* JA835 (noting that managed charging may mean “very little new capacity for [electric vehicles] is required”).<sup>4</sup>

As explained in another Department of Energy study, electric vehicles may soon further enhance grid resilience by storing and transferring energy back to buildings and the grid. *See* 86 Fed. Reg. at 74,487; Enhancing Grid Resilience with Integrated Storage from Electric Vehicles, JA130–31. This could take the form either of “vehicle-to-building” charging (i.e., providing back-up energy for homes and businesses) or “vehicle-to-grid” charging (i.e., providing the grid with energy storage to balance the distribution system). JA131.

To realize these demand-management benefits, utilities have exponentially accelerated investments in electric-vehicle

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<sup>4</sup> For these reasons, State Amici supporting Petitioners are mistaken in believing that the ongoing decline of coal generation will hurt the grid. *See* Amicus for Petitioner Brief, Doc. 1973638, at 22–23. That’s especially so because other dispatchable resources like natural gas are alive and well.

infrastructure—and much of that growth postdates the Department’s study. *See* JA369 (noting that industry investment in 2020 was three times higher than in 2019); JA555 (noting increased investments of power companies and utilities in charging infrastructure). For instance, Southern California Edison has a \$437 million program to install approximately 38,000 charging ports in California. JA369. State Petitioners complain that “[c]harging infrastructure is enormously expensive,” State Br. 19, but they ignore that these investments are happening at a scale commensurate to the expected market penetration of electric vehicles.

*Second*, recent changes in the law confirm that the grid will outperform expectations from 2019. The Department of Energy based its analysis on “historical growth rates” of energy generation and generation capacity. JA828. But it acknowledged that favorable policy environments have resulted in annual generation growth rates “equivalent to the electrical consumption of as many as 25 million new light duty EVs (the equivalent of roughly 150% of all new light-duty vehicle sales in the U.S. today).” JA827. Such high growth occurred in the 1970s and 1990s when policy encouraged increased investments in

nuclear and fossil generation. *Id.* As in those periods, federal policy is once again prioritizing investments in energy generation and transmission, and the private sector is moving in the same direction.

State Petitioners emphasize the Environmental Protection Network's statement (in favor of the Standards) about the "critical need for complementary federal policies to support a fast transition to [electric vehicles]," but they fail to acknowledge that many of those policies have materialized. *See* State Br. 19 (citing JA1054). As EPA noted in response, in the Infrastructure Investment and Jobs Act, Congress supported grid resilience and electric vehicle deployment. *See* JA1071, JA1073; *see, e.g.*, Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 40101, 135 Stat. 429, 923–28 (2021) (\$5 billion in competitive grants to enhance grid resilience); § 40323, 135 Stat. at 1019–22 (\$6 billion to support nuclear generation).

Federal policy has advanced further since EPA finalized the Standards. The Inflation Reduction Act of 2022, which became law last August, provides an additional \$370 billion in energy tax credits, incentivizing the deployment of renewable generation and a suite of zero- and low-carbon generation technologies. *See* Pub. L. No. 117-169, 136

Stat. 1818 (2022). To improve transmission, the Inflation Reduction Act provides \$40 billion in loan authority to support transmission projects and emerging technologies, including deployment of high-voltage direct current. *See* § 50141, 136 Stat. at 2042–44. An independent analysis by Credit Suisse concludes that the Inflation Reduction Act will draw even more private sector investment, leading to a combined \$1.7 trillion over the next 10 years. *See* Credit Suisse, *Treeprint: US Inflation Reduction Act - A Tipping Point in Climate Action*, at 5 (2022), <https://www.credit-suisse.com/treeprintusinflationreductionact>. These developments confirm that the grid will be able to support greater levels of electric-vehicle penetration than the Department of Energy contemplated in 2019, let alone the more modest levels contemplated by EPA’s Standards.<sup>5</sup>

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<sup>5</sup> State Petitioners also cite to the Energy Policy Act of 1992, arguing that, because it included demonstration programs encouraging both electric vehicles and charging infrastructure, Congress “recognized that grid investment and reliability was [sic] essential to the success of electric vehicles.” State Br. 18. But that in no way demonstrates that the Standards, which spur the adoption of electric vehicles (and incidentally affect the grid), reflect a transformative expansion of EPA’s Clean Air Act authority.

State Petitioners also erroneously argue that alleged impacts on the grid cause the Standards to have “economic significance.” Their only support is an extra-record 2008 estimate that \$298 billion in transmission investments would be needed from 2010 to 2030, which they allege “puts grid reliability in ‘major question’ territory.” *See* State Br. 15 (citing a 2008 figure noted in *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 51 (D.C. Cir. 2014)). They make no assertion, however, that those total transmission-system costs are attributable to vehicle electrification, let alone the Standards. Technological innovation, consumer demand, and investor pressure are all stimulating vehicle electrification, so only the *marginal costs to the grid* of vehicle electrification could be traceable to the Standards. Those costs would be limited to costs that (1) will occur after 2023; (2) will result from electric vehicles; and (3) would not have occurred but for these Standards. These costs would amount to only a fraction of State Petitioners’ 2008 estimate of investments in new transmission facilities needed from 2010 to 2030.

At most, the Standards “may end up causing an incidental” effect on the grid, but this does not trigger the major-questions doctrine. *See West Virginia*, 142 S. Ct. at 2613 n.4.

### III. The Electric Vehicle Supply Chain Does Not Implicate the Major-Questions Doctrine

There is also no basis for Petitioners' argument that the major-questions doctrine is triggered by Petitioners' allegation that electric vehicle battery supply chains jeopardize the United States' national security interests. *See* State Br. 22–24; Fuel Br. 29–30. First, even if the Standards have some effect on national security, that in no way demonstrates that EPA has arrogated decisions beyond its authority to establish emissions standards for light-duty vehicles. Moreover, as EPA has explained, the Standards will *improve* national security by reducing the United States' consumption of foreign oil. *See* EPA Br. 58–59; Response to Comments, JA1101–08 (reduction in oil consumption from this rule results in 91 percent reduction in U.S. oil imports).

Importantly, EPA considered battery and supply-chain issues and was satisfied that automakers, including those among this Respondent-Intervenors group, are addressing demand for the critical minerals used in many electric vehicles by reducing dependence on cobalt, improving recycling, directly securing materials, and developing domestic supplies. *See* Response to Comments, JA1076, JA1085, JA1103–06; *see also* Tesla Impact Report 2020, JA403 (Tesla directly sourced vast majority of

lithium it used in 2020 from mines in Australia and Argentina and was exploring lithium sourcing in the United States); JA404 (Tesla's nickel-based cathode has less cobalt than similar chemistries used in industry, and Tesla is working towards batteries with less cobalt and, for some applications, potentially eliminating cobalt). EPA also found that the issue of dependence on imported materials and minerals is not unique to electric vehicles, but also affects conventional vehicles, which have relied on imported platinum and palladium in catalytic converters used to control tailpipe emissions and on foreign-manufactured computer chips. JA1076.

The Executive Branch and Congress are also taking actions outside this rulemaking to increase domestic battery manufacturing and domestic sourcing of key components. Response to Comments, JA1104–06; EPA Br. 10. For example, the Infrastructure Investment and Jobs Act allocated a combined \$6 billion for grants for battery material processing and battery manufacturing and recycling projects, giving priority to entities that will not use materials supplied by “a foreign entity of concern.” § 40207, 135 Stat. at 963–71. The Inflation Reduction Act provided a combined \$5 billion to support domestic zero-emission

vehicle manufacturing facilities and production. §§ 50142–50143, 136 Stat. at 2044. That Act also provided a 10 percent advanced manufacturing production tax credit to spur domestic production of critical minerals. § 13502(b)(1)(M), 136 Stat. at 1973. Recognizing these federal and private investments to reduce dependence on imported minerals, and EPA’s analysis that reduced foreign oil dependence improves national security, there is no basis for Petitioners’ argument that supply-chain risks implicate the major-questions doctrine.

\* \* \*

In the event the Court does not dismiss or deny the petitions for review, Respondent-Intervenors join EPA’s request for the opportunity for further briefing on remedy. *See* EPA Br. 94 n.30. Vacatur of the Standards would have disruptive consequences and alter significant reliance interests of the automakers regulated by the Standards (who have intervened in defense of EPA here) and others, including Respondent-Intervenors, who have made significant investments to plan and facilitate electrification. *See, e.g., Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331-32 (D.C. Cir. 2021).

## CONCLUSION

For these reasons, the petitions should be denied.

Dated: April 27, 2023

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## CERTIFICATE OF COMPLIANCE

This Brief complies with Federal Rule of Appellate Procedure 32(f) and (g), along with the Court's September 22, 2022 Order, because it contains 3,857 words.

This Brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word and Century 14-point font.

Dated: April 27, 2023

/s/ Kevin Poloncarz  
Kevin Poloncarz

**CERTIFICATE OF SERVICE**

I hereby certify that on April 27, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Dated: April 27, 2023

/s/ Kevin Poloncarz  
Kevin Poloncarz

ORAL ARGUMENT NOT YET SCHEDULED  
No. 22-1031 (and consolidated cases)

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In the United States Court of Appeals  
for the District of Columbia Circuit

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STATE OF TEXAS, ET AL.,  
*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,  
*Respondents.*

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On Petition For Review from the United States  
Environmental Protection Agency  
(No. EPA-HQ-OAR-2021-0208)

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INDUSTRY RESPONDENT-INTERVENORS' STATUTORY  
ADDENDUM

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Except for the following, all applicable statutes, etc., are contained in EPA's Statutory and Regulatory Addendum, Doc. 1996732.

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Pub. L. No. 117-169, 136 Stat. 1818 (2022) (excerpts) ..... ADD21

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Public Law 117-58  
117th Congress

An Act

To authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Nov. 15, 2021  
[H.R. 3684]

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

Infrastructure  
Investment and  
Jobs Act.

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

23 USC 101 note.

(a) **SHORT TITLE.**—This Act may be cited as the “Infrastructure Investment and Jobs Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. References.

**DIVISION A—SURFACE TRANSPORTATION**

- Sec. 10001. Short title.
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**TITLE I—FEDERAL-AID HIGHWAYS**

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**DIVISION D—ENERGY****SEC. 40001. DEFINITIONS.**

42 USC 18701.

In this division:

(1) **DEPARTMENT.**—The term “Department” means the Department of Energy.

(2) **INDIAN TRIBE.**—The term “Indian Tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

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

**TITLE I—GRID INFRASTRUCTURE AND RESILIENCY****Subtitle A—Grid Infrastructure Resilience and Reliability****SEC. 40101. PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID.**

42 USC 18711.

(a) **DEFINITIONS.**—In this section:

(1) **DISRUPTIVE EVENT.**—The term “disruptive event” means an event in which operations of the electric grid are disrupted, preventively shut off, or cannot operate safely due to extreme weather, wildfire, or a natural disaster.

(2) **ELIGIBLE ENTITY.**—The term “eligible entity” means—

- (A) an electric grid operator;
- (B) an electricity storage operator;
- (C) an electricity generator;
- (D) a transmission owner or operator;
- (E) a distribution provider;
- (F) a fuel supplier; and
- (G) any other relevant entity, as determined by the Secretary.

(3) **NATURAL DISASTER.**—The term “natural disaster” has the meaning given the term in section 602(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)).

(4) **POWER LINE.**—The term “power line” includes a transmission line or a distribution line, as applicable.

(5) **PROGRAM.**—The term “program” means the program established under subsection (b).

(b) **ESTABLISHMENT OF PROGRAM.**—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish a program under which the Secretary shall make grants to eligible entities, States, and Indian Tribes in accordance with this section.

Deadline.

(c) **GRANTS TO ELIGIBLE ENTITIES.**—

(1) **IN GENERAL.**—The Secretary may make a grant under the program to an eligible entity to carry out activities that—

(A) are supplemental to existing hardening efforts of the eligible entity planned for any given year; and

(B)(i) reduce the risk of any power lines owned or operated by the eligible entity causing a wildfire; or

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(ii) increase the ability of the eligible entity to reduce the likelihood and consequences of disruptive events.

(2) APPLICATION.—

(A) IN GENERAL.—An eligible entity desiring a grant under the program shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(B) REQUIREMENT.—As a condition of receiving a grant under the program, an eligible entity shall submit to the Secretary, as part of the application of the eligible entity submitted under subparagraph (A), a report detailing past, current, and future efforts by the eligible entity to reduce the likelihood and consequences of disruptive events.

(3) LIMITATION.—The Secretary may not award a grant to an eligible entity in an amount that is greater than the total amount that the eligible entity has spent in the previous 3 years on efforts to reduce the likelihood and consequences of disruptive events.

(4) PRIORITY.—In making grants to eligible entities under the program, the Secretary shall give priority to projects that, in the determination of the Secretary, will generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events.

(5) SMALL UTILITIES SET ASIDE.—The Secretary shall ensure that not less than 30 percent of the amounts made available to eligible entities under the program are made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year.

(d) GRANTS TO STATES AND INDIAN TRIBES.—

(1) IN GENERAL.—The Secretary, in accordance with this subsection, may make grants under the program to States and Indian Tribes, which each State or Indian Tribe may use to award grants to eligible entities.

(2) ANNUAL APPLICATION.—

(A) IN GENERAL.—For each fiscal year, to be eligible to receive a grant under this subsection, a State or Indian Tribe shall submit to the Secretary an application that includes a plan described in subparagraph (B).

(B) PLAN REQUIRED.—A plan prepared by a State or Indian Tribe for purposes of an application described in subparagraph (A) shall—

(i) describe the criteria and methods that will be used by the State or Indian Tribe to award grants to eligible entities;

(ii) be adopted after notice and a public hearing; and

(iii) describe the proposed funding distributions and recipients of the grants to be provided by the State or Indian Tribe.

(3) DISTRIBUTION OF FUNDS.—

(A) IN GENERAL.—The Secretary shall provide grants to States and Indian Tribes under this subsection based on a formula determined by the Secretary, in accordance with subparagraph (B).

(B) REQUIREMENT.—The formula referred to in subparagraph (A) shall be based on the following factors:

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(i) The total population of the State or Indian Tribe.

(ii)(I) The total area of the State or the land of the Indian Tribe; or

(II) the areas in the State or on the land of the Indian Tribe with a low ratio of electricity customers per mileage of power lines.

(iii) The probability of disruptive events in the State or on the land of the Indian Tribe during the previous 10 years, as determined based on the number of federally declared disasters or emergencies in the State or on the land of the Indian Tribe, as applicable, including—

(I) disasters for which Fire Management Assistance Grants are provided under section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5187);

(II) major disasters declared by the President under section 401 of that Act (42 U.S.C. 5170);

(III) emergencies declared by the President under section 501 of that Act (42 U.S.C. 5191); and

(IV) any other federally declared disaster or emergency in the State or on the land of the Indian Tribe.

(iv) The number and severity, measured by population and economic impacts, of disruptive events experienced by the State or Indian Tribe on or after January 1, 2011.

(v) The total amount, on a per capita basis, of public and private expenditures during the previous 10 years to carry out mitigation efforts to reduce the likelihood and consequences of disruptive events in the State or on the land of the Indian Tribe, with States or Indian Tribes with higher per capita expenditures receiving additional weight or consideration as compared to States or Indian Tribes with lower per capita expenditures.

(C) ANNUAL UPDATE OF DATA USED IN DISTRIBUTION OF FUNDS.—Beginning 1 year after the date of enactment of this Act, the Secretary shall annually update—

Effective date.

(i) all data relating to the factors described in subparagraph (B); and

(ii) all other data used in distributing grants to States and Indian Tribes under this subsection.

(4) OVERSIGHT.—The Secretary shall ensure that each grant provided to a State or Indian Tribe under the program is allocated, pursuant to the applicable plan of the State or Indian Tribe, to eligible entities for projects within the State or on the land of the Indian Tribe.

(5) PRIORITY.—In making grants to eligible entities using funds made available to the applicable State or Indian Tribe under the program, the State or Indian Tribe shall give priority to projects that, in the determination of the State or Indian Tribe, will generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events.

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(6) **SMALL UTILITIES SET ASIDE.**—A State or Indian Tribe receiving a grant under the program shall ensure that, of the amounts made available to eligible entities from funds made available to the State or Indian Tribe under the program, the percentage made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year is not less than the percentage of all customers in the State or Indian Tribe that are served by those eligible entities.

(7) **TECHNICAL ASSISTANCE AND ADMINISTRATIVE EXPENSES.**—Of the amounts made available to a State or Indian Tribe under the program each fiscal year, the State or Indian Tribe may use not more than 5 percent for—

(A) providing technical assistance under subsection (g)(1)(A); and

(B) administrative expenses associated with the program.

(8) **MATCHING REQUIREMENT.**—Each State and Indian Tribe shall be required to match 15 percent of the amount of each grant provided to the State or Indian Tribe under the program.

(e) **USE OF GRANTS.**—

(1) **IN GENERAL.**—A grant awarded to an eligible entity under the program may be used for activities, technologies, equipment, and hardening measures to reduce the likelihood and consequences of disruptive events, including—

(A) weatherization technologies and equipment;

(B) fire-resistant technologies and fire prevention systems;

(C) monitoring and control technologies;

(D) the undergrounding of electrical equipment;

(E) utility pole management;

(F) the relocation of power lines or the reconductoring of power lines with low-sag, advanced conductors;

(G) vegetation and fuel-load management;

(H) the use or construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including—

(i) microgrids; and

(ii) battery-storage subcomponents;

(I) adaptive protection technologies;

(J) advanced modeling technologies;

(K) hardening of power lines, facilities, substations, of other systems; and

(L) the replacement of old overhead conductors and underground cables.

(2) **PROHIBITIONS AND LIMITATIONS.**—

(A) **IN GENERAL.**—A grant awarded to an eligible entity under the program may not be used for—

(i) construction of a new—

(I) electric generating facility; or

(II) large-scale battery-storage facility that is not used for enhancing system adaptive capacity during disruptive events; or

(ii) cybersecurity.

(B) **CERTAIN INVESTMENTS ELIGIBLE FOR RECOVERY.**—

(i) **IN GENERAL.**—An eligible entity may not seek cost recovery for the portion of the cost of any system,

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technology, or equipment that is funded through a grant awarded under the program.

(ii) SAVINGS PROVISION.—Nothing in this subparagraph prohibits an eligible entity from recovering through traditional or incentive-based ratemaking any portion of an investment in a system, technology, or equipment that is not funded by a grant awarded under the program.

(C) APPLICATION LIMITATIONS.—An eligible entity may not submit an application for a grant provided by the Secretary under subsection (c) and a grant provided by a State or Indian Tribe pursuant to subsection (d) during the same application cycle.

(f) DISTRIBUTION OF FUNDING.—Of the amounts made available to carry out the program for a fiscal year, the Secretary shall ensure that—

(1) 50 percent is used to award grants to eligible entities under subsection (c); and

(2) 50 percent is used to make grants to States and Indian Tribes under subsection (d).

(g) TECHNICAL AND OTHER ASSISTANCE.—

(1) IN GENERAL.—The Secretary, States, and Indian Tribes may—

(A) provide technical assistance and facilitate the distribution and sharing of information to reduce the likelihood and consequences of disruptive events; and

(B) promulgate consumer-facing information and resources to inform the public of best practices and resources relating to reducing the likelihood and consequences of disruptive events.

(2) USE OF FUNDS BY THE SECRETARY.—Of the amounts made available to the Secretary to carry out the program each fiscal year, the Secretary may use not more than 5 percent for—

(A) providing technical assistance under paragraph (1)(A); and

(B) administrative expenses associated with the program.

(h) MATCHING REQUIREMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), an eligible entity that receives a grant under this section shall be required to match 100 percent of the amount of the grant.

(2) EXCEPTION FOR SMALL UTILITIES.—An eligible entity that sells not more than 4,000,000 megawatt hours of electricity per year shall be required to match  $\frac{1}{3}$  of the amount of the grant.

(i) BIENNIAL REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter through 2026, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the program.

(2) REQUIREMENTS.—The report under paragraph (1) shall include information and data on—

(A) the costs of the projects for which grants are awarded to eligible entities;

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(B) the types of activities, technologies, equipment, and hardening measures funded by those grants; and  
 (C) the extent to which the ability of the power grid to withstand disruptive events has increased.

Time period. (j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out the program \$5,000,000,000 for the period of fiscal years 2022 through 2026.

**SEC. 40102. HAZARD MITIGATION USING DISASTER ASSISTANCE.**

Section 404(f)(12) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(f)(12)) is amended—

(1) by inserting “and wildfire” after “windstorm”;

(2) by striking “including replacing” and inserting the following: “including—

“(A) replacing”;

(3) in subparagraph (A) (as so designated)—

(A) by inserting “, wildfire,” after “extreme wind”; and

(B) by adding “and” after the semicolon at the end;

and

(4) by adding at the end the following:

“(B) the installation of fire-resistant wires and infrastructure and the undergrounding of wires;”.

42 USC 18712.

**SEC. 40103. ELECTRIC GRID RELIABILITY AND RESILIENCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION.**

(a) DEFINITION OF FEDERAL FINANCIAL ASSISTANCE.—In this section, the term “Federal financial assistance” has the meaning given the term in section 200.1 of title 2, Code of Federal Regulations.

(b) ENERGY INFRASTRUCTURE FEDERAL FINANCIAL ASSISTANCE PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE ENTITY.—The term “eligible entity” means each of—

(i) a State;

(ii) a combination of 2 or more States;

(iii) an Indian Tribe;

(iv) a unit of local government; and

(v) a public utility commission.

(B) PROGRAM.—The term “program” means the competitive Federal financial assistance program established under paragraph (2).

(2) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish a program, to be known as the “Program Upgrading Our Electric Grid and Ensuring Reliability and Resiliency”, to provide, on a competitive basis, Federal financial assistance to eligible entities to carry out the purpose described in paragraph (3).

(3) PURPOSE.—The purpose of the program is to coordinate and collaborate with electric sector owners and operators—

(A) to demonstrate innovative approaches to transmission, storage, and distribution infrastructure to harden and enhance resilience and reliability; and

(B) to demonstrate new approaches to enhance regional grid resilience, implemented through States by public and rural electric cooperative entities on a cost-shared basis.

(4) APPLICATIONS.—To be eligible to receive Federal financial assistance under the program, an eligible entity shall

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(d)(3), in expediting the permitting of activities that will increase exploration for, and development of, domestic critical minerals; and

(3) compares the United States to other countries in terms of permitting efficiency and any other criteria relevant to the globally competitive critical minerals industry.

(g) INDIVIDUAL PROJECTS.—Each year, using data contained in the reports submitted under subsection (f), the Director of the Office of Management and Budget shall prioritize inclusion of individual critical mineral projects on the website operated by the Office of Management and Budget in accordance with section 1122 of title 31, United States Code.

Data.  
Public  
information.  
Website.

**SEC. 40207. BATTERY PROCESSING AND MANUFACTURING.**

42 USC 18741.

(a) DEFINITIONS.—In this section:

(1) ADVANCED BATTERY.—The term “advanced battery” means a battery that consists of a battery cell that can be integrated into a module, pack, or system to be used in energy storage applications, including electric vehicles and the electric grid.

(2) ADVANCED BATTERY COMPONENT.—

(A) IN GENERAL.—The term “advanced battery component” means a component of an advanced battery.

(B) INCLUSIONS.—The term “advanced battery component” includes materials, enhancements, enclosures, anodes, cathodes, electrolytes, cells, and other associated technologies that comprise an advanced battery.

(3) BATTERY MATERIAL.—The term “battery material” means the raw and processed form of a mineral, metal, chemical, or other material used in an advanced battery component.

(4) ELIGIBLE ENTITY.—The term “eligible entity” means an entity described in any of paragraphs (1) through (5) of section 989(b) of the Energy Policy Act of 2005 (42 U.S.C. 16353(b)).

(5) FOREIGN ENTITY OF CONCERN.—The term “foreign entity of concern” means a foreign entity that is—

(A) designated as a foreign terrorist organization by the Secretary of State under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));

(B) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (commonly known as the “SDN list”);

(C) owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (as defined in section 2533c(d) of title 10, United States Code);

(D) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under—

(i) chapter 37 of title 18, United States Code (commonly known as the “Espionage Act”);

(ii) section 951 or 1030 of title 18, United States Code;

(iii) chapter 90 of title 18, United States Code (commonly known as the “Economic Espionage Act of 1996”);

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Consultation.

(iv) the Arms Export Control Act (22 U.S.C. 2751 et seq.);

(v) section 224, 225, 226, 227, or 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2276, 2277, and 2284);

(vi) the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.); or

(vii) the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); or

(E) determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.

(6) MANUFACTURING.—The term “manufacturing”, with respect to an advanced battery and an advanced battery component, means the industrial and chemical steps taken to produce that advanced battery or advanced battery component, respectively.

(7) PROCESSING.—The term “processing”, with respect to battery material, means the refining of materials, including the treating, baking, and coating processes used to convert raw products into constituent materials employed directly in advanced battery manufacturing.

(8) RECYCLING.—The term “recycling” means the recovery of materials from advanced batteries to be reused in similar applications, including the extracting, processing, and recoating of battery materials and advanced battery components.

(b) BATTERY MATERIAL PROCESSING GRANTS.—

Deadline.

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish within the Office of Fossil Energy a program, to be known as the “Battery Material Processing Grant Program” (referred to in this subsection as the “program”), under which the Secretary shall award grants in accordance with this subsection.

(2) PURPOSES.—The purposes of the program are—

(A) to ensure that the United States has a viable battery materials processing industry to supply the North American battery supply chain;

(B) to expand the capabilities of the United States in advanced battery manufacturing;

(C) to enhance national security by reducing the reliance of the United States on foreign competitors for critical materials and technologies; and

(D) to enhance the domestic processing capacity of minerals necessary for battery materials and advanced batteries.

(3) GRANTS.—

(A) IN GENERAL.—Under the program, the Secretary shall award grants to eligible entities—

(i) to carry out 1 or more demonstration projects in the United States for the processing of battery materials;

(ii) to construct 1 or more new commercial-scale battery material processing facilities in the United States; and

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(iii) to retool, retrofit, or expand 1 or more existing battery material processing facilities located in the United States and determined qualified by the Secretary.

(B) AMOUNT LIMITATION.—The amount of a grant awarded under the program shall be not less than—

(i) \$50,000,000 for an eligible entity carrying out 1 or more projects described in subparagraph (A)(i);

(ii) \$100,000,000 for an eligible entity carrying out 1 or more projects described in subparagraph (A)(ii); and

(iii) \$50,000,000 for an eligible entity carrying out 1 or more projects described in subparagraph (A)(iii).

(C) PRIORITY; CONSIDERATION.—In awarding grants to eligible entities under the program, the Secretary shall—

(i) give priority to an eligible entity that—

(I) is located and operates in the United States;

(II) is owned by a United States entity;

(III) deploys North American-owned intellectual property and content;

(IV) represents consortia or industry partnerships; and

(V) will not use battery material supplied by or originating from a foreign entity of concern; and

(ii) take into consideration whether a project—

(I) provides workforce opportunities in low- and moderate-income communities;

(II) encourages partnership with universities and laboratories to spur innovation and drive down costs;

(III) partners with Indian Tribes; and

(IV) takes into account—

(aa) greenhouse gas emissions reductions and energy efficient battery material processing opportunities throughout the manufacturing process; and

(bb) supply chain logistics.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out the program \$3,000,000,000 for the period of fiscal years 2022 through 2026, to remain available until expended.

Time period.

(c) BATTERY MANUFACTURING AND RECYCLING GRANTS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish within the Office of Energy Efficiency and Renewable Energy a battery manufacturing and recycling grant program (referred to in this subsection as the “program”).

Deadline.

(2) PURPOSE.—The purpose of the program is to ensure that the United States has a viable domestic manufacturing and recycling capability to support and sustain a North American battery supply chain.

(3) GRANTS.—

(A) IN GENERAL.—Under the program, the Secretary shall award grants to eligible entities—

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(i) to carry out 1 or more demonstration projects for advanced battery component manufacturing, advanced battery manufacturing, and recycling;

(ii) to construct 1 or more new commercial-scale advanced battery component manufacturing, advanced battery manufacturing, or recycling facilities in the United States; and

(iii) to retool, retrofit, or expand 1 or more existing facilities located in the United States and determined qualified by the Secretary for advanced battery component manufacturing, advanced battery manufacturing, and recycling.

(B) AMOUNT LIMITATION.—The amount of a grant awarded under the program shall be not less than—

(i) \$50,000,000 for an eligible entity carrying out 1 or more projects described in subparagraph (A)(i);

(ii) \$100,000,000 for an eligible entity carrying out 1 or more projects described in subparagraph (A)(ii); and

(iii) \$50,000,000 for an eligible entity carrying out 1 or more projects described in subparagraph (A)(iii).

(C) PRIORITY; CONSIDERATION.—In awarding grants to eligible entities under the program, the Secretary shall—

(i) give priority to an eligible entity that—

(I) is located and operates in the United States;

(II) is owned by a United States entity;

(III) deploys North American-owned intellectual property and content;

(IV) represents consortia or industry partnerships; and

(V)(aa) if the eligible entity will use the grant for advanced battery component manufacturing, will not use battery material supplied by or originating from a foreign entity of concern; or

(bb) if the eligible entity will use the grant for battery recycling, will not export recovered critical materials to a foreign entity of concern; and

(ii) take into consideration whether a project—

(I) provides workforce opportunities in low- and moderate-income or rural communities;

(II) provides workforce opportunities in communities that have lost jobs due to the displacements of fossil energy jobs;

(III) encourages partnership with universities and laboratories to spur innovation and drive down costs;

(IV) partners with Indian Tribes;

(V) takes into account—

(aa) greenhouse gas emissions reductions and energy efficient battery material processing opportunities throughout the manufacturing process; and

(bb) supply chain logistics; and

(VI) utilizes feedstock produced in the United States.

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(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out the program \$3,000,000,000 for the period of fiscal years 2022 through 2026, to remain available until expended. Time period.

(d) REPORTING REQUIREMENTS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the grant programs established under subsections (b) and (c), including, with respect to each grant program, a description of—

- (1) the number of grant applications received;
- (2) the number of grants awarded and the amount of each award;
- (3) the purpose and status of each project carried out using a grant; and
- (4) any other information the Secretary determines necessary.

(e) LITHIUM-ION BATTERY RECYCLING PRIZE COMPETITION.—

(1) IN GENERAL.—The Secretary shall continue to carry out the Lithium-Ion Battery Recycling Prize Competition of the Department established pursuant to section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) (referred to in this subsection as the “competition”).

(2) AUTHORIZATION OF APPROPRIATIONS FOR PILOT PROJECTS.—

(A) IN GENERAL.—There is authorized to be appropriated to the Secretary to carry out Phase III of the competition, \$10,000,000 for fiscal year 2022, to remain available until expended.

(B) USE OF FUNDS.—The Secretary may use amounts made available under subparagraph (A)—

- (i) to increase the number of winners of Phase III of the competition;
- (ii) to increase the amount awarded to each winner of Phase III of the competition; and
- (iii) to carry out any other activity that is consistent with the goals of Phase III of the competition, as determined by the Secretary.

(f) BATTERY AND CRITICAL MINERAL RECYCLING.—

(1) DEFINITIONS.—In this subsection:

(A) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(B) BATTERY.—The term “battery” means a device that—

- (i) consists of 1 or more electrochemical cells that are electrically connected; and
- (ii) is designed to store and deliver electric energy.

(C) BATTERY PRODUCER.—The term “battery producer” means, with respect to a covered battery or covered battery-containing product that is sold, offered for sale, or distributed for sale in the United States, including through retail, wholesale, business-to-business, and online sale, the following applicable entity:

(i) A person who—

- (I) manufactures the covered battery or covered battery-containing product; and

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(II) sells or offers for sale the covered battery or covered battery-containing product under the brand of that person.

(ii) If there is no person described in clause (i) with respect to the covered battery or covered battery-containing product, the owner or licensee of the brand under which the covered battery or covered battery-containing product is sold, offered for sale, or distributed, regardless of whether the trademark of the brand is registered.

(iii) If there is no person described in clause (i) or (ii) with respect to the covered battery or covered battery-containing product, a person that imports the covered battery or covered battery-containing product into the United States for sale or distribution.

(D) COVERED BATTERY.—The term “covered battery” means a new or unused primary battery or rechargeable battery.

(E) COVERED BATTERY-CONTAINING PRODUCT.—The term “covered battery-containing product” means a new or unused product that contains or is packaged with a primary battery or rechargeable battery.

(F) CRITICAL MINERAL.—The term “critical mineral” has the meaning given the term in section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a)).

(G) PRIMARY BATTERY.—The term “primary battery” means a nonrechargeable battery that weighs not more than 4.4 pounds, including an alkaline, carbon-zinc, and lithium metal battery.

(H) RECHARGEABLE BATTERY.—

(i) IN GENERAL.—The term “rechargeable battery” means a battery that—

(I) contains 1 or more voltaic or galvanic cells that are electrically connected to produce electric energy;

(II) is designed to be recharged;

(III) weighs not more than 11 pounds; and

(IV) has a watt-hour rating of not more than 300 watt-hours.

(ii) EXCLUSIONS.—The term “rechargeable battery” does not include a battery that—

(I) contains electrolyte as a free liquid; or

(II) employs lead-acid technology, unless that battery is sealed and does not contain electrolyte as a free liquid.

(I) RECYCLING.—The term “recycling” means the series of activities—

(i) during which recyclable materials are processed into specification-grade commodities, and consumed as raw-material feedstock, in lieu of virgin materials, in the manufacturing of new products;

(ii) that may include collection, processing, and brokering; and

(iii) that result in subsequent consumption by a materials manufacturer, including for the manufacturing of new products.

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## (2) BATTERY RECYCLING RESEARCH, DEVELOPMENT, AND DEMONSTRATION GRANTS.—

(A) IN GENERAL.—The Secretary, in coordination with the Administrator, shall award multiyear grants to eligible entities for research, development, and demonstration projects to create innovative and practical approaches to increase the reuse and recycling of batteries, including by addressing—

- (i) recycling activities;
- (ii) the development of methods to promote the design and production of batteries that take into full account and facilitate the dismantling, reuse, recovery, and recycling of battery components and materials;
- (iii) strategies to increase consumer acceptance of, and participation in, the recycling of batteries;
- (iv) the extraction or recovery of critical minerals from batteries that are recycled;
- (v) the integration of increased quantities of recycled critical minerals in batteries and other products to develop markets for recycled battery materials and critical minerals;
- (vi) safe disposal of waste materials and components recovered during the recycling process;
- (vii) the protection of the health and safety of all persons involved in, or in proximity to, recycling and reprocessing activities, including communities located near recycling and materials reprocessing facilities;
- (viii) mitigation of environmental impacts that arise from recycling batteries, including disposal of toxic reagents and byproducts related to recycling processes;
- (ix) protection of data privacy associated with collected covered battery-containing products;
- (x) the optimization of the value of material derived from recycling batteries; and
- (xi) the cost-effectiveness and benefits of the reuse and recycling of batteries and critical minerals.

(B) ELIGIBLE ENTITIES.—The Secretary, in coordination with the Administrator, may award a grant under subparagraph (A) to—

- (i) an institution of higher education;
- (ii) a National Laboratory;
- (iii) a Federal research agency;
- (iv) a State research agency;
- (v) a nonprofit organization;
- (vi) an industrial entity;
- (vii) a manufacturing entity;
- (viii) a private battery-collection entity;
- (ix) an entity operating 1 or more battery recycling activities;
- (x) a State or municipal government entity;
- (xi) a battery producer;
- (xii) a battery retailer; or
- (xiii) a consortium of 2 or more entities described in clauses (i) through (xii).

(C) APPLICATIONS.—

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(i) IN GENERAL.—To be eligible to receive a grant under subparagraph (A), an eligible entity described in subparagraph (B) shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(ii) CONTENTS.—An application submitted under clause (i) shall describe how the project will promote collaboration among—

(I) battery producers and manufacturers;

(II) battery material and equipment manufacturers;

(III) battery recyclers, collectors, and refiners; and

(IV) retailers.

Time period.

(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this paragraph \$60,000,000 for the period of fiscal years 2022 through 2026.

(3) STATE AND LOCAL PROGRAMS.—

(A) IN GENERAL.—The Secretary, in coordination with the Administrator, shall establish a program under which the Secretary shall award grants, on a competitive basis, to States and units of local government to assist in the establishment or enhancement of State battery collection, recycling, and reprocessing programs.

(B) NON-FEDERAL COST SHARE.—The non-Federal share of the cost of a project carried out using a grant under this paragraph shall be 50 percent of the cost of the project.

(C) REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report that describes the number of battery collection points established or enhanced, an estimate of jobs created, and the quantity of material collected as a result of the grants awarded under subparagraph (A).

Time period.

(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this paragraph \$50,000,000 for the period of fiscal years 2022 through 2026.

(4) RETAILERS AS COLLECTION POINTS.—

Grants.

(A) IN GENERAL.—The Secretary shall award grants, on a competitive basis, to retailers that sell covered batteries or covered battery-containing products to establish and implement a system for the acceptance and collection of covered batteries and covered battery-containing products, as applicable, for reuse, recycling, or proper disposal.

(B) COLLECTION SYSTEM.—A system described in subparagraph (A) shall include take-back of covered batteries—

(i) at no cost to the consumer; and

(ii) on a regular, convenient, and accessible basis.

Time period.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this paragraph \$15,000,000 for the period of fiscal years 2022 through 2026.

(5) TASK FORCE ON PRODUCER RESPONSIBILITIES.—

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(A) **IN GENERAL.**—The Secretary, in coordination with the Administrator, shall convene a task force to develop an extended battery producer responsibility framework that—

(i) addresses battery recycling goals, cost structures for mandatory recycling, reporting requirements, product design, collection models, and transportation of collected materials;

(ii) provides sufficient flexibility to allow battery producers to determine cost-effective strategies for compliance with the framework; and

(iii) outlines regulatory pathways for effective recycling.

(B) **TASK FORCE MEMBERS.**—Members of the task force convened under subparagraph (A) shall include—

(i) battery producers, manufacturers, retailers, recyclers, and collectors or processors;

(ii) States and municipalities; and

(iii) other relevant stakeholders, such as environmental, energy, or consumer organizations, as determined by the Secretary.

(C) **REPORT.**—Not later than 1 year after the date on which the Secretary, in coordination with Administrator, convenes the task force under subparagraph (A), the Secretary shall submit to Congress a report that—

(i) describes the extended producer responsibility framework developed by the task force;

(ii) includes the recommendations of the task force on how best to implement a mandatory pay-in or other enforcement mechanism to ensure that battery producers and sellers are contributing to the recycling of batteries; and

(iii) suggests regulatory pathways for effective recycling.

(6) **EFFECT ON MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT.**—Nothing in this subsection, or any regulation, guideline, framework, or policy adopted or promulgated pursuant to this subsection, shall modify or otherwise affect the provisions of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14301 et seq.).

Recommendations.

**SEC. 40208. ELECTRIC DRIVE VEHICLE BATTERY RECYCLING AND SECOND-LIFE APPLICATIONS PROGRAM.**

Section 641 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17231) is amended—

(1) by striking subsection (k) and inserting the following:

“(k) **ELECTRIC DRIVE VEHICLE BATTERY SECOND-LIFE APPLICATIONS AND RECYCLING.**—

“(1) **DEFINITIONS.**—In this subsection:

“(A) **BATTERY RECYCLING AND SECOND-LIFE APPLICATIONS PROGRAM.**—The term ‘battery recycling and second-life applications program’ means the electric drive vehicle battery recycling and second-life applications program established under paragraph (3).

“(B) **CRITICAL MATERIAL.**—The term ‘critical material’ has the meaning given the term in section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a)).

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(c) DEPARTMENT OF ENERGY CONTRACTS.—Section 646(g)(5) of the Department of Energy Organization Act (42 U.S.C. 7256(g)(5)) is amended—

(1) by striking “(5) The Secretary” and inserting the following:

“(5) PROTECTION FROM DISCLOSURE.—

“(A) IN GENERAL.—The Secretary”; and

(2) in subparagraph (A) (as so designated)—

(A) by striking “, for up to 5 years after the date on which the information is developed,”; and

(B) by striking “agency.” and inserting the following: “agency—

“(i) for up to 5 years after the date on which the information is developed; or

“(ii) for up to 30 years after the date on which the information is developed, if the Secretary determines that the nature of the technology under the transaction, including nuclear technology, could reasonably require an extended period of protection from disclosure to reach commercialization.

“(B) EXTENSION DURING TERM.—The Secretary may extend the period of protection from disclosure during the term of any transaction described in subparagraph (A) in accordance with that subparagraph.”.

Time periods.

Determination.

**SEC. 40323. CIVIL NUCLEAR CREDIT PROGRAM.**

42 USC 18753.

(a) DEFINITIONS.—In this section:

(1) CERTIFIED NUCLEAR REACTOR.—The term “certified nuclear reactor” means a nuclear reactor that—

(A) competes in a competitive electricity market; and

(B) is certified under subsection (c)(2)(A)(i) to submit a sealed bid in accordance with subsection (d).

(2) CREDIT.—The term “credit” means a credit allocated to a certified nuclear reactor under subsection (e)(2).

(b) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a civil nuclear credit program—

(1) to evaluate nuclear reactors that are projected to cease operations due to economic factors; and

(2) to allocate credits to certified nuclear reactors that are selected under paragraph (1)(B) of subsection (e) to receive credits under paragraph (2) of that subsection.

Evaluation.

Allocation.

(c) CERTIFICATION.—

(1) APPLICATION.—

(A) IN GENERAL.—In order to be certified under paragraph (2)(A)(i), the owner or operator of a nuclear reactor that is projected to cease operations due to economic factors shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary determines to be appropriate, including—

(i) information on the operating costs necessary to make the determination described in paragraph (2)(A)(ii)(I), including—

(I) the average projected annual operating loss in dollars per megawatt-hour, inclusive of the cost of operational and market risks, expected to be incurred by the nuclear reactor over the 4-year period for which credits would be allocated;

Time period.

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- (II) any private or publicly available data with respect to current or projected bulk power market prices;
- (III) out-of-market revenue streams;
- (IV) operations and maintenance costs;
- (V) capital costs, including fuel; and
- (VI) operational and market risks;
- Estimate. (ii) an estimate of the potential incremental air pollutants that would result if the nuclear reactor were to cease operations;
- Time period. (iii) known information on the source of produced uranium and the location where the uranium is converted, enriched, and fabricated into fuel assemblies for the nuclear reactor for the 4-year period for which credits would be allocated; and
- Plan. (iv) a detailed plan to sustain operations at the conclusion of the applicable 4-year period for which credits would be allocated—
- Time period. (I) without receiving additional credits; or  
(II) with the receipt of additional credits of a lower amount than the credits allocated during that 4-year credit period.
- (B) TIMELINE.—The Secretary shall accept applications described in subparagraph (A)—
- Deadline. (i) until the date that is 120 days after the date of enactment of this Act; and  
(ii) not less frequently than every year thereafter.
- (C) PAYMENTS FROM STATE PROGRAMS.—
- Time period. (i) IN GENERAL.—The owner or operator of a nuclear reactor that receives a payment from a State zero-emission credit, a State clean energy contract, or any other State program with respect to that nuclear reactor shall be eligible to submit an application under subparagraph (A) with respect to that nuclear reactor during any application period beginning after the 120-day period beginning on the date of enactment of this Act.  
(ii) REQUIREMENT.—An application submitted by an owner or operator described in clause (i) with respect to a nuclear reactor described in that clause shall include all projected payments from State programs in determining the average projected annual operating loss described in subparagraph (A)(i)(I), unless the credits allocated to the nuclear reactor pursuant to that application will be used to reduce those payments.
- (2) DETERMINATION TO CERTIFY.—
- (A) DETERMINATION.—
- Deadline. (i) IN GENERAL.—Not later than 60 days after the applicable date under subparagraph (B) of paragraph (1), the Secretary shall determine whether to certify, in accordance with clauses (ii) and (iii), each nuclear reactor for which an application is submitted under subparagraph (A) of that paragraph.  
(ii) MINIMUM REQUIREMENTS.—To the maximum extent practicable, the Secretary shall only certify a nuclear reactor under clause (i) if—

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(I) after considering the information submitted under paragraph (1)(A)(i), the Secretary determines that the nuclear reactor is projected to cease operations due to economic factors;

(II) after considering the estimate submitted under paragraph (1)(A)(ii), the Secretary determines that pollutants would increase if the nuclear reactor were to cease operations and be replaced with other types of power generation; and

(III) the Nuclear Regulatory Commission has reasonable assurance that the nuclear reactor—

(aa) will continue to be operated in accordance with the current licensing basis (as defined in section 54.3 of title 10, Code of Federal Regulations (or successor regulations) of the nuclear reactor; and

(bb) poses no significant safety hazards.

(iii) PRIORITY.—In determining whether to certify a nuclear reactor under clause (i), the Secretary shall give priority to a nuclear reactor that uses, to the maximum extent available, uranium that is produced, converted, enriched, and fabricated into fuel assemblies in the United States.

(B) NOTICE.—For each application received under paragraph (1)(A), the Secretary shall provide to the applicable owner or operator, as applicable—

(i) a notice of the certification of the applicable nuclear reactor; or

(ii) a notice that describes the reasons why the certification of the applicable nuclear reactor was denied.

(d) BIDDING PROCESS.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall establish a deadline by which each certified nuclear reactor shall submit to the Secretary a sealed bid that—

Deadline.

(A) describes the price per megawatt-hour of the credits desired by the certified nuclear reactor, which shall not exceed the average projected annual operating loss described in subsection (c)(1)(A)(i)(I); and

(B) includes a commitment, subject to the receipt of credits, to provide a specific number of megawatt-hours of generation during the 4-year period for which credits would be allocated.

Time period.

(2) REQUIREMENT.—The deadline established under paragraph (1) shall be not later than 30 days after the first date on which the Secretary has made the determination described in paragraph (2)(A)(i) of subsection (c) with respect to each application submitted under paragraph (1)(A) of that subsection.

Deadline.

(e) ALLOCATION.—

(1) AUCTION.—Notwithstanding section 169 of the Atomic Energy Act of 1954 (42 U.S.C. 2209), the Secretary shall—

(A) in consultation with the heads of applicable Federal agencies, establish a process for evaluating bids submitted under subsection (d)(1) through an auction process; and

(B) select certified nuclear reactors to be allocated credits.

Consultation.

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Time period.	(2) CREDITS.—Subject to subsection (f)(2), on selection under paragraph (1), a certified nuclear reactor shall be allocated credits for a 4-year period beginning on the date of the selection.
	(3) REQUIREMENT.—To the maximum extent practicable, the Secretary shall use the amounts made available for credits under this section to allocate credits to as many certified nuclear reactors as possible.
	(f) RENEWAL.—
	(1) IN GENERAL.—The owner or operator of a certified nuclear reactor may seek to recertify the nuclear reactor in accordance with this section.
Termination date.	(2) LIMITATION.—Notwithstanding any other provision of this section, the Secretary may not allocate any credits after September 30, 2031.
	(g) ADDITIONAL REQUIREMENTS.—
Time period.	(1) AUDIT.—During the 4-year period beginning on the date on which a certified nuclear reactor first receives a credit, the Secretary shall periodically audit the certified nuclear reactor.
Regulations.	(2) RECAPTURE.—The Secretary shall, by regulation, provide for the recapture of the allocation of any credit to a certified nuclear reactor that, during the period described in paragraph (1)—
	(A) terminates operations; or
	(B) does not operate at an annual loss in the absence of an allocation of credits to the certified nuclear reactor.
Procedures.	(3) CONFIDENTIALITY.—The Secretary shall establish procedures to ensure that any confidential, private, proprietary, or privileged information that is included in a sealed bid submitted under this section is not publicly disclosed or otherwise improperly used.
	(h) REPORT.—Not later than January 1, 2024, the Comptroller General of the United States shall submit to Congress a report with respect to the credits allocated to certified nuclear reactors, which shall include—
Evaluation.	(1) an evaluation of the effectiveness of the credits in avoiding air pollutants while ensuring grid reliability;
	(2) a quantification of the ratepayer savings achieved under this section; and
	(3) any recommendations to renew or expand the credits.
Recommendations. Time period.	(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section \$6,000,000,000 for the period of fiscal years 2022 through 2026.

## Subtitle D—Hydropower

### SEC. 40331. HYDROELECTRIC PRODUCTION INCENTIVES.

Section 242 of the Energy Policy Act of 2005 (42 U.S.C. 15881) is amended—

(1) in subsection (b)(2), by striking “before the date of the enactment of this section” and inserting “before the date of enactment of the Infrastructure Investment and Jobs Act”;

(2) in the undesignated matter following subsection (b)(3), by striking “the date of the enactment of this section” and

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Public Law 117–169  
117th Congress

An Act

Aug. 16, 2022  
[H.R. 5376]

To provide for reconciliation pursuant to title II of S. Con. Res. 14.

Appropriations  
authorizations.

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

**TITLE I—COMMITTEE ON FINANCE**

**Subtitle A—Deficit Reduction**

**SECTION 10001. AMENDMENT OF 1986 CODE.**

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**PART 1—CORPORATE TAX REFORM**

**SEC. 10101. CORPORATE ALTERNATIVE MINIMUM TAX.**

(a) IMPOSITION OF TAX.—

26 USC 55.

(1) IN GENERAL.—Paragraph (2) of section 55(b) is amended to read as follows:

“(2) CORPORATIONS.—

“(A) APPLICABLE CORPORATIONS.—In the case of an applicable corporation, the tentative minimum tax for the taxable year shall be the excess of—

“(i) 15 percent of the adjusted financial statement income for the taxable year (as determined under section 56A), over

“(ii) the corporate AMT foreign tax credit for the taxable year.

“(B) OTHER CORPORATIONS.—In the case of any corporation which is not an applicable corporation, the tentative minimum tax for the taxable year shall be zero.”.

(2) APPLICABLE CORPORATION.—Section 59 is amended by adding at the end the following new subsection:

Determinations.

“(k) APPLICABLE CORPORATION.—For purposes of this part—

“(1) APPLICABLE CORPORATION DEFINED.—

“(A) IN GENERAL.—The term ‘applicable corporation’ means, with respect to any taxable year, any corporation (other than an S corporation, a regulated investment company, or a real estate investment trust) which meets the

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- (2) \$670,000,000, to remain available through September 30, 2029, to carry out activities under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 through 6326) in accordance with subsection (c).
- Grants. (b) **LATEST BUILDING ENERGY CODE.**—The Secretary shall use funds made available under subsection (a)(1) for grants to assist States, and units of local government that have authority to adopt building codes—
- (1) to adopt—
- (A) a building energy code (or codes) for residential buildings that meets or exceeds the 2021 International Energy Conservation Code, or achieves equivalent or greater energy savings;
- (B) a building energy code (or codes) for commercial buildings that meets or exceeds the ANSI/ASHRAE/IES Standard 90.1-2019, or achieves equivalent or greater energy savings; or
- (C) any combination of building energy codes described in subparagraph (A) or (B); and
- Plan. (2) to implement a plan for the jurisdiction to achieve full compliance with any building energy code adopted under paragraph (1) in new and renovated residential or commercial buildings, as applicable, which plan shall include active training and enforcement programs and measurement of the rate of compliance each year.
- Grants. (c) **ZERO ENERGY CODE.**—The Secretary shall use funds made available under subsection (a)(2) for grants to assist States, and units of local government that have authority to adopt building codes—
- (1) to adopt a building energy code (or codes) for residential and commercial buildings that meets or exceeds the zero energy provisions in the 2021 International Energy Conservation Code or an equivalent stretch code; and
- Plan. (2) to implement a plan for the jurisdiction to achieve full compliance with any building energy code adopted under paragraph (1) in new and renovated residential and commercial buildings, which plan shall include active training and enforcement programs and measurement of the rate of compliance each year.
- (d) **STATE MATCH.**—The State cost share requirement under the item relating to “Department of Energy—Energy Conservation” in title II of the Department of the Interior and Related Agencies Appropriations Act, 1985 (42 U.S.C. 6323a; 98 Stat. 1861), shall not apply to assistance provided under this section.
- (e) **ADMINISTRATIVE COSTS.**—Of the amounts made available under this section, the Secretary shall reserve not more than 5 percent for administrative costs necessary to carry out this section.

## **PART 4—DOE LOAN AND GRANT PROGRAMS**

### **SEC. 50141. FUNDING FOR DEPARTMENT OF ENERGY LOAN PROGRAMS OFFICE.**

(a) **COMMITMENT AUTHORITY.**—In addition to commitment authority otherwise available and previously provided, the Secretary may make commitments to guarantee loans for eligible projects under section 1703 of the Energy Policy Act of 2005 (42 U.S.C.

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16513), up to a total principal amount of \$40,000,000,000, to remain available through September 30, 2026.

(b) APPROPRIATION.—In addition to amounts otherwise available and previously provided, there is appropriated to the Secretary for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$3,600,000,000, to remain available through September 30, 2026, for the costs of guarantees made under section 1703 of the Energy Policy Act of 2005 (42 U.S.C. 16513), using the loan guarantee authority provided under subsection (a) of this section.

(c) ADMINISTRATIVE EXPENSES.—Of the amount made available under subsection (b), the Secretary shall reserve not more than 3 percent for administrative expenses to carry out title XVII of the Energy Policy Act of 2005 and for carrying out section 1702(h)(3) of such Act (42 U.S.C. 16512(h)(3)).

(d) LIMITATIONS.—

(1) CERTIFICATION.—None of the amounts made available under this section for loan guarantees shall be available for any project unless the President has certified in advance in writing that the loan guarantee and the project comply with the provisions under this section.

President.  
Compliance.

(2) DENIAL OF DOUBLE BENEFIT.—Except as provided in paragraph (3), none of the amounts made available under this section for loan guarantees shall be available for commitments to guarantee loans for any projects under which funds, personnel, or property (tangible or intangible) of any Federal agency, instrumentality, personnel, or affiliated entity are expected to be used (directly or indirectly) through acquisitions, contracts, demonstrations, exchanges, grants, incentives, leases, procurements, sales, other transaction authority, or other arrangements to support the project or to obtain goods or services from the project.

(3) EXCEPTION.—Paragraph (2) shall not preclude the use of the loan guarantee authority provided under this section for commitments to guarantee loans for—

(A) projects benefitting from otherwise allowable Federal tax benefits;

(B) projects benefitting from being located on Federal land pursuant to a lease or right-of-way agreement for which all consideration for all uses is—

(i) paid exclusively in cash;

(ii) deposited in the Treasury as offsetting receipts;

and

(iii) equal to the fair market value;

(C) projects benefitting from the Federal insurance program under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210); or

(D) electric generation projects using transmission facilities owned or operated by a Federal Power Marketing Administration or the Tennessee Valley Authority that have been authorized, approved, and financed independent of the project receiving the guarantee.

(e) GUARANTEE.—Section 1701(4)(A) of the Energy Policy Act of 2005 (42 U.S.C. 16511(4)(A)) is amended by inserting “, except that a loan guarantee may guarantee any debt obligation of a non-Federal borrower to any Eligible Lender (as defined in section

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609.2 of title 10, Code of Federal Regulations)” before the period at the end.

(f) SOURCE OF PAYMENTS.—Section 1702(b) of the Energy Policy Act of 2005 (42 U.S.C. 16512(b)(2)) is amended by adding at the end the following:

“(3) SOURCE OF PAYMENTS.—The source of a payment received from a borrower under subparagraph (A) or (B) of paragraph (2) may not be a loan or other debt obligation that is made or guaranteed by the Federal Government.”.

**SEC. 50142. ADVANCED TECHNOLOGY VEHICLE MANUFACTURING.**

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$3,000,000,000, to remain available through September 30, 2028, for the costs of providing direct loans under section 136(d) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17013(d)): *Provided*, That funds appropriated by this section may be used for the costs of providing direct loans for reequipping, expanding, or establishing a manufacturing facility in the United States to produce, or for engineering integration performed in the United States of, advanced technology vehicles described in subparagraph (C), (D), (E), or (F) of section 136(a)(1) of such Act (42 U.S.C. 17013(a)(1)) only if such advanced technology vehicles emit, under any possible operational mode or condition, low or zero exhaust emissions of greenhouse gases.

(b) ADMINISTRATIVE COSTS.—The Secretary shall reserve not more than \$25,000,000 of amounts made available under subsection (a) for administrative costs of providing loans as described in subsection (a).

(c) ELIMINATION OF LOAN PROGRAM CAP.—Section 136(d)(1) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17013(d)(1)) is amended by striking “a total of not more than \$25,000,000,000 in”.

**SEC. 50143. DOMESTIC MANUFACTURING CONVERSION GRANTS.**

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$2,000,000,000, to remain available through September 30, 2031, to provide grants for domestic production of efficient hybrid, plug-in electric hybrid, plug-in electric drive, and hydrogen fuel cell electric vehicles, in accordance with section 712 of the Energy Policy Act of 2005 (42 U.S.C. 16062).

Requirement.

(b) COST SHARE.—The Secretary shall require a recipient of a grant provided under subsection (a) to provide not less than 50 percent of the cost of the project carried out using the grant.

(c) ADMINISTRATIVE COSTS.—The Secretary shall reserve not more than 3 percent of amounts made available under subsection (a) for administrative costs of making grants described in such subsection (a) pursuant to section 712 of the Energy Policy Act of 2005 (42 U.S.C. 16062).

**SEC. 50144. ENERGY INFRASTRUCTURE REINVESTMENT FINANCING.**

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$5,000,000,000, to remain available through September 30, 2026,