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1 “(f) (1) The Secretary may, by rule, from time to time,
2 amend any average fuel economy standard prescribed under
3 subsection (a) (3), (b), or (c), so long as such standard, as
4 amended, meets the requirements of subsection (a) (3), (b),
5 or (c), as the case may be.

6 “(2) Any amendment prescribed under this section
7 which has the effect of making any average fuel economy
8 standard more stringent shall be—

9 “(A) promulgated, and

10 “(B) if required by paragraph (4) of subsection
11 (a), submitted to the Congress,
12 at least 18 months prior to the beginning of the model year
13 to which such amendment will apply.

14 “DETERMINATION OF AVERAGE FUEL ECONOMY

15 “SEC. 503. (a) (1) Average fuel economy for purposes
16 of section 502 (a) and (c) shall be calculated by the EPA
17 Administrator by dividing—

18 “(A) the total number of passenger automobiles
19 manufactured in a given model year by a manufacturer,
20 by

21 “(B) a sum of terms, each term of which is a
22 fraction created by dividing—

23 “(i) the number of passenger automobiles of a
24 given model type manufactured in such model year,
25 by

1 “(ii) the fuel economy measured for such model
2 type.

3 “(2) Average fuel economy for purposes of section 502
4 (b) shall be calculated in accordance with rules of the EPA
5 Administrator.

6 “(b)(1) In calculating average fuel economy under
7 subsection (a)(1), the EPA Administrator shall separate the
8 total number of passenger automobiles manufactured by a
9 manufacturer into two categories:

10 “(A) Passenger automobiles which are domestically
11 manufactured by such manufacturer (plus, in the case of
12 model year 1978 and model year 1979, passenger auto-
13 mobiles which are within the includable base import vol-
14 ume of such manufacturer.)

15 “(B) Passenger automobiles which are not domes-
16 tically manufactured by such manufacturer (and which,
17 in the case of model year 1978 and model year 1979,
18 are not within the includable base import volume of
19 such manufacturer.)

20 The EPA Administrator shall calculate the average fuel
21 economy of each such separate category, and each such cate-
22 gory shall be treated as if manufactured by a separate manu-
23 facturer for purposes of this part.

24 “(2) For purposes of this subsection:

25 “(A) The term “includable base import volume”,

1 with respect to any manufacturer in model year 1978 or
2 1979, as the case may be, is a number of passenger auto-
3 mobiles which is the lesser of (i) the manufacturer's base
4 import volume, or (ii) the number of passenger automo-
5 biles calculated by multiplying—

6 “(I) the quotient obtained by dividing such
7 manufacturer's base import volume by such manu-
8 facturer's base production volume, times

9 “(II) the total number of passenger automo-
10 biles manufactured by such manufacturer during
11 such model year.

12 “(B) The term “base import volume” means one-
13 half the sum of—

14 “(i) the total number of passenger automobiles
15 which were not domestically manufactured by such
16 manufacturer during model year 1974 and which
17 were imported by such manufacturer during such
18 model year, plus

19 “(ii) 133 percent of the total number of pas-
20 senger automobiles which were not domestically
21 manufactured by such manufacturer during the
22 first 9 months of model year 1975 and which were
23 imported by such manufacturer during such 9-month
24 period.

1 “(C) The term ‘base production volume’ means
2 one-half the sum of—

3 “(i) the total number of passenger automobiles
4 manufactured by such manufacturer during model
5 year 1974, plus

6 “(ii) 133 percent of the total number of pas-
7 senger automobiles manufactured by such manu-
8 facturer during the first 9 months of model year
9 1975.

10 “(D) For purposes of subparagraphs (B) and
11 (C) of this paragraph any passenger automobile im-
12 ported during model year 1976, but prior to July 1,
13 1975, shall be deemed to have been manufactured (and
14 imported) during the first 9 months of model year 1975.

15 “(E) An automobile shall be considered domes-
16 tically manufactured in any model year if at least 75
17 percent of the cost to the manufacturer of such automo-
18 bile is attributable to value added in the United States
19 or Canada, unless the assembly of such automobile is
20 completed in Canada and such automobile is not
21 imported into the United States prior to the expiration
22 of 30 days at the end of such model year.

23 “(F) The fuel economy of each passenger automobile
24 which is imported by a manufacturer in model year

1 1978 or 1979, as the case may be, and which is not
2 domestically manufactured by such manufacturer, shall
3 be deemed to be equal to the average fuel economy of
4 all such passenger automobiles.

5 “(c) Any reference under this part to automobiles manu-
6 factured by a manufacturer shall be deemed—

7 “(1) to include all automobiles manufactured by
8 persons who control, are controlled by, or are under
9 common control with, such manufacturer; and

10 “(2) to exclude all automobiles manufactured (with-
11 in the meaning of paragraph (1)) during a model
12 year by such manufacturer which are exported prior
13 to the expiration of 30 days after the end of such
14 model year.

15 “(d) (1) Fuel economy for any model type shall be meas-
16 ured, and average fuel economy of a manufacturer shall be
17 calculated, in accordance with testing and calculation pro-
18 cedures established by the EPA Administrator, by rule.
19 Procedures so established with respect to passenger auto-
20 mobiles (other than for purposes of section 506) shall be the
21 procedures utilized by the EPA Administrator for model year
22 1975 (weighed 55 percent urban cycle, and 45 percent high-
23 way cycle), or procedures which yield comparable results.
24 Procedures under this subsection, to the extent practicable,
25 shall require that fuel economy tests be conducted in conjunc-

1 tion with emissions tests conducted under section 206 of the
2 Clean Air Act. The EPA Administrator shall report any
3 measurements of fuel economy and any calculations of aver-
4 age fuel economy to the Secretary.

5 “(2) The EPA Administrator shall, by rule, determine
6 that quantity of any other fuel which is the equivalent of
7 one gallon of gasoline.

8 “(3) Testing and calculation procedures applicable to
9 a model year, and any amendment to such procedures (other
10 than a technical or clerical amendment), shall be promul-
11 gated not less than 12 months prior to the model year to
12 which such procedures apply.

13 “(e) For purposes of this part (other than section 506),
14 any measurement of fuel economy of a model type, and any
15 calculation of average fuel economy of a manufacturer, shall
16 be rounded off to the nearest one-tenth mile per gallon (in
17 accordance with rules of the EPA Administrator).

18 “(f) The EPA Administrator shall consult and coordi-
19 nate with the Secretary in carrying out his duties under this
20 section.

21 “JUDICIAL REVIEW

22 “SEC. 504. (a) Any person who may be adversely af-
23 fected by any rule prescribed under section 501, 502, 503,
24 or 506 may, at any time prior to 60 days after such rule is
25 promulgated (or in the case of an amendment submitted

1 to each House of the Congress under section 502(a)(4),
2 at any time prior to 60 days after the expiration of the
3 60-day period specified in section 502(a)(5)) file a petition
4 in the United States Court of Appeals for the District of
5 Columbia, or for any circuit wherein such person resides or
6 has his principal place of business, for judicial review of
7 such rule. A copy of the petition shall be forthwith trans-
8 mitted by the clerk of such court to the officer who prescribed
9 the rule. Such officer shall thereupon cause to be filed in such
10 court the written submissions and other materials in the pro-
11 ceeding upon which such rule was based. Upon the filing of
12 such petition, the court shall have jurisdiction to review the
13 rule in accordance with chapter 7 of title 5, United States
14 Code, and to grant appropriate relief as provided in such
15 chapter. Findings of the Secretary under section 502(d) shall
16 be set aside by the court on review unless such findings are
17 supported by substantial evidence.

18 “(b) If the petitioner applies to the court in a proceed-
19 ing under subsection (a) for leave to make additional sub-
20 missions, and shows to the satisfaction of the court that such
21 additional submissions are material and that there were rea-
22 sonable grounds for the failure to make such submissions in
23 the administrative proceeding, the court may order the Secre-
24 tary or the EPA Administrator, as the case may be, to pro-
25 vide additional opportunity to make such submissions. The

1 Secretary or the EPA Administrator, as the case may be,
2 may modify or set aside the rule involved or make a new
3 rule by reason of the additional submissions, and shall file
4 any such modified or new rule in the court, together with
5 such additional submissions. The court shall thereafter review
6 such new or modified rule.

7 “(c) The judgment of the court affirming or setting aside,
8 in whole or in part, any such rule shall be final, subject to
9 review by the Supreme Court of the United States upon
10 certiorari or certification as provided in section 1254 of title
11 28, United States Code.

12 “(d) The remedies provided for in this section shall be
13 in addition to, and not in lieu of, any other remedies provided
14 by law.

15 “INFORMATION AND REPORTS

16 “SEC. 505. (a) (1) Each manufacturer shall submit a
17 report to the Secretary during the 30-day period preceding
18 the beginning of each model year after model year 1977,
19 and during the 30-day period beginning on the 180th day
20 of each such model year. Each such report shall contain (A)
21 a statement as to whether such manufacturer will comply
22 with average fuel economy standards under section 502
23 applicable to the model year for which such report is made;
24 (B) a plan which describes the steps the manufacturer has
25 taken or intends to take in order to comply with such stand-

1 ards; and (C) such other information as the Secretary may
2 require.

3 “(2) Whenever a manufacturer determines that a plan
4 submitted under paragraph (1) which he stated was sufficient
5 to insure compliance with applicable average fuel economy
6 standards is not sufficient to insure such compliance, he shall
7 submit a report containing a revised plan which specifies any
8 additional measures which he intends to take in order to com-
9 ply with such standards, and a statement as to whether such
10 revised plan is sufficient to insure such compliance.

11 “(3) The Secretary shall prescribe rules setting forth
12 the form and content of the reports required under para-
13 graphs (1) and (2).

14 “(b)(1) For the purpose of carrying out the provi-
15 sions of this part, the Secretary or the EPA Administra-
16 tor, or their duly designated agents, may hold such hear-
17 ings, take such testimony, sit and act at such times and
18 places, administer such oaths, and require, by subpoena or
19 otherwise, the attendance and testimony of such witnesses
20 and the production of such books, papers, correspondence,
21 memorandums, contracts, agreements, or other records as
22 the Secretary, the EPA Administrator, or such agents deem
23 advisable. The Secretary or the EPA Administrator may
24 require, by general or special orders that any person—

25 “(A) file, in such form as the Secretary or EPA

1 Administrator may prescribe, reports or answers in writ-
2 ing to specific questions relating to any function of the
3 Secretary or EPA Administrator under this part, and

4 “(B) provide the Secretary, the EPA Administra-
5 tor, or their duly designated agents, access to (and for the
6 purpose of examination, the right to copy) any documen-
7 tary evidence of such person which is relevant to any
8 function of the Secretary or the EPA Administrator
9 under this part.

10 Such reports and answers shall be made under oath or other-
11 wise, and shall be filed with the Secretary or the EPA Admin-
12 istrator within such reasonable period as either may prescribe.

13 “(2) The district courts of the United States for a judi-
14 cial district in the jurisdiction of which an inquiry is carried
15 on may, in the case of contumacy or refusal to obey a duly
16 authorized subpoena or order of the Secretary, the EPA Ad-
17 ministrator, or their duly designated agents, issued under
18 paragraph (1) of this subsection, issue an order requiring
19 compliance with such subpoena or order. Any failure to obey
20 such an order of the court may be punished by such court
21 as a contempt thereof.

22 “(3) Witnesses summoned pursuant to this subsection
23 shall be paid the same fees and mileage that are paid wit-
24 nesses in the courts of the United States.

25 “(c) (1) Every manufacturer shall establish and main-

1 *tain such records, make such reports, conduct such tests, and*
2 *provide such items and information as the Secretary or the*
3 *EPA Administrator may, by rule, reasonably require to en-*
4 *able the Secretary or the EPA Administrator to carry out*
5 *their duties under this part and under any rules promulgated*
6 *under this part. Such manufacturer shall, upon request*
7 *of a duly designated agent of the Secretary or the EPA*
8 *Administrator who presents appropriate credentials, permit*
9 *such agent, at reasonable times and in a reasonable manner,*
10 *to enter the premises of such manufacturer to inspect auto-*
11 *mobiles and appropriate books, papers, records, and docu-*
12 *ments. Such manufacturer shall make available all of such*
13 *items and information in accordance with such reasonable*
14 *rules as the Secretary or the EPA Administrator may pre-*
15 *scribe.*

16 “(2) *The district courts of the United States may, if a*
17 *manufacturer refuses to accede to any rule or reasonable*
18 *request made under paragraph (1) of this subsection, issue*
19 *an order requiring compliance with such requirement or*
20 *request. Any failure to obey such an order of the court may*
21 *be punished by such court as a contempt thereof.*

22 “(d)(1) *The Secretary and the EPA Administrator*
23 *shall each disclose any information obtained under this part*
24 *(other than section 503(d)) to the public in accordance with*
25 *section 552 of title 5, United States Code, except that infor-*

1 mation may be withheld from disclosure under subsection (b)
2 (4) of such section only if the Secretary or the EPA Ad-
3 ministrator, as the case may be, determines that such infor-
4 mation, if disclosed, would result in significant competitive
5 damage. Any matter described in section 552(b)(4) relevant
6 to any administrative or judicial proceeding under this part
7 may be disclosed in such proceeding.

8 “(2) Measurements and calculations under section 503
9 (d) shall be made available to the public in accordance with
10 section 552 of title 5, United States Code, without regard to
11 subsection (b) of such section.

12 “LABELING

13 “SEC. 506. (a)(1) Except as otherwise provided in
14 paragraph (2), each manufacturer shall cause to be affixed,
15 and each dealer shall cause to be maintained, on each auto-
16 mobile manufactured in any model year after model year
17 1976, in a prominent place, a label—

18 “(A) indicating—

19 “(i) the fuel economy of such automobile,

20 “(ii) the estimated annual fuel cost associated
21 with the operation of such automobile, and

22 “(iii) the range of fuel economy of comparable
23 automobiles (whether or not manufactured by such
24 manufacturer),

1 *as determined in accordance with rules of the EPA*
2 *Administrator,*

3 *“(B) containing a statement that written informa-*
4 *tion (as described in subsection (b)(1)) with respect*
5 *to the fuel economy of other automobiles manufactured*
6 *in such model year (whether or not manufactured by*
7 *such manufacturer) is available from the dealer in order*
8 *to facilitate comparison among the various model types,*
9 *and*

10 *“(C) containing any other information authorized*
11 *or required by the EPA Administrator which relates to*
12 *information described in subparagraph (A) or (B).*

13 *“(2) With respect to automobiles—*

14 *“(A) for which procedures established in the EPA*
15 *and FEA Voluntary Fuel Labeling Program for Au-*
16 *tomobiles exist on the date of the enactment of this title,*
17 *and*

18 *“(B) which are manufactured in model year 1976*
19 *and at least 90 days after such date of enactment,*
20 *each manufacturer shall cause to be affixed, and each dealer*
21 *shall cause to be maintained, in a prominent place, a label*
22 *indicating the fuel economy of such automobile, in accordance*
23 *with such procedures.*

24 *“(3) The form and content of the labels required*
25 *under paragraphs (1) and (2), and the manner in which*

1 such labels shall be affixed, shall be prescribed by the EPA
2 Administrator by rule. The EPA Administrator may permit
3 a manufacturer to comply with this paragraph by permitting
4 such manufacturer to disclose the information required under
5 this subsection on the label required by section 3 of the Auto-
6 mobile Information Disclosure Act (15 U.S.C. 1232).

7 “(b)(1) The EPA Administrator shall compile and
8 prepare a simple and readily understandable booklet con-
9 taining data on fuel economy of automobiles manufactured
10 in each model year. Such booklet shall also contain informa-
11 tion with respect to estimated annual fuel costs, and may
12 contain information with respect to geographical or other
13 differences in estimated annual fuel costs. The Federal
14 Energy Administrator shall publish and distribute such
15 booklets.

16 “(2) The EPA Administrator, not later than July 31,
17 1976, shall prescribe rules requiring dealers to make avail-
18 able to prospective purchasers information compiled by the
19 EPA Administrator under paragraph (1).

20 “(c)(1) A violation of subsection (a) shall be treated
21 as a violation of section 3 of the Automobile Information
22 Disclosure Act (15 U.S.C. 1232). For purposes of the Fed-
23 eral Trade Commission Act (other than sections 5(m) and
24 (18)), a violation of subsection (a) shall be treated as an un-
25 fair or deceptive act or practice in or affecting commerce.

1 “(2) As used in this section, the term ‘dealer’ has the
2 same meaning as such term has in section 2(e) of the Auto-
3 mobile Information Disclosure Act (15 U.S.C. 1231(e)).

4 “(d) Any disclosure with respect to fuel economy or
5 estimated annual fuel cost which is required to be made under
6 the provisions of this section shall not create an express or
7 implied warranty under State or Federal law that such fuel
8 economy will be achieved, or that such cost will not be ex-
9 ceeded, under conditions of actual use.

10 “(e) In carrying out his duties under this section, the
11 EPA Administrator shall consult with the Federal Trade
12 Commission, the Secretary, and the Federal Energy Admin-
13 istrator.

14 “UNLAWFUL CONDUCT

15 “SEC. 507. The following conduct is unlawful:

16 “(1) the failure of any manufacturer to comply
17 with any average fuel economy standard applicable
18 under section 502 (other than section 502(b)),

19 “(2) the failure of any manufacturer to comply
20 with any average fuel economy standard applicable
21 to such manufacturer under section 502(b), or

22 “(3) the failure of any person (A) to comply with
23 any provision of this part applicable to such person (other
24 than section 502, 506(a), 510, or 511), or (B) to com-

1 *ply with any standard, rule, or order applicable to such*
2 *person which is issued pursuant to such a provision.*

3 **“CIVIL PENALTY**

4 *“SEC. 508. (a) (1) If average fuel economy calculations*
5 *reported under section 503(d) indicate that any manufac-*
6 *turer has violated section 507 (1) or (2), then (unless*
7 *further measurements of the average fuel economy or other*
8 *information indicates there is no violation of section 507*
9 *(1) or (2)) the Secretary shall commence a proceeding*
10 *under paragraph (2) of this subsection. The results of such*
11 *further measurements, and any such other information, shall*
12 *be published in the Federal Register.*

13 *“(2) If, on the record after opportunity for agency*
14 *hearing, the Secretary determines that such manufacturer*
15 *has violated section 507 (1) or (2), or that any person has*
16 *violated section 507(3), the Secretary shall assess the penal-*
17 *ties provided for under subsection (b). Any interested person*
18 *may participate in any proceeding under this paragraph.*

19 *“(3) (A) (i) Whenever the average fuel economy of the*
20 *passenger automobiles manufactured by a manufacturer in*
21 *a particular model year exceeds an applicable average fuel*
22 *economy standard established under section 502 (a) or (c)*
23 *(determined without regard to any adjustment under section*

1 502(d)), such manufacturer shall be entitled to a credit,
2 calculated under clause (ii), which shall be—

3 “(I) deducted from the amount of any civil penalty
4 which is or may be assessed against such manufacturer
5 for a violation of section 507(1) occurring in the model
6 year immediately prior to the model year in which such
7 manufacturer exceeds such applicable average fuel econ-
8 omy standard, and

9 “(II) to the extent that such credit is not deducted
10 pursuant to subclause (I), deducted from the amount of
11 any civil penalty so assessed against such manufacturer
12 for a violation of section 507(1) occurring in the model
13 year immediately following the model year in which such
14 manufacturer exceeds such applicable average fuel econ-
15 omy standard.

16 “(ii) The amount of credit to which a manufacturer is
17 entitled under clause (i) shall be equal to—

18 “(i) \$5 for each tenth of a mile per gallon by which
19 the average fuel economy of the passenger automobiles
20 manufactured by such manufacturer in the model year
21 in which the credit is earned pursuant to clause (i)
22 exceeds the applicable average fuel economy standard
23 established under section 502 (a) or (c), multiplied by

24 “(ii) the total number of passenger automobiles man-
25 ufactured by such manufacturer during such model year.

1 “(B) (i) Whenever the average fuel economy of a class
2 of automobiles which are not passenger automobiles and
3 which are manufactured by a manufacturer in a particular
4 model year exceeds an average fuel economy standard appli-
5 cable to automobiles of such class under section 502(b), such
6 manufacturer shall be entitled to a credit, calculated under
7 clause (ii), which shall be—

8 “(I) deducted from the amount of any civil penalty
9 which is or may be assessed against such manufacturer
10 for a violation of section 507(2) occurring in the model
11 year immediately prior to the model year in which such
12 manufacturer exceeds such applicable average fuel econ-
13 omy standard, and

14 “(II) to the extent that such credit is not deducted
15 pursuant to subclause (I), deducted from the amount
16 of any such civil penalty so assessed against such manu-
17 facturer for a violation of section 507(2) occurring in
18 the model year immediately following the model year in
19 which such manufacturer exceeds such applicable average
20 fuel economy standard.

21 “(ii) The amount of credit to which a manufacturer is
22 entitled under clause (i) shall be equal to—

23 “(I) \$5 for each tenth of a mile per gallon by
24 which the average fuel economy of the automobiles of
25 such class manufactured by such manufacturer in the

1 *model year in which the credit is earned pursuant to*
2 *clause (i) exceeds the applicable average fuel economy*
3 *standard established under section 502(b), multiplied by*

4 *“(II) the total number of automobiles of such class*
5 *manufactured by such manufacturer during such model*
6 *year.*

7 *“(C) Whenever a civil penalty has been assessed and*
8 *collected under this section from a manufacturer who is en-*
9 *titled to a credit under this paragraph with respect to such*
10 *civil penalty, the Secretary of the Treasury shall refund to*
11 *such manufacturer the amount of credit to which such manu-*
12 *facturer is so entitled, except that the amount of such refund*
13 *shall not exceed the amount of the civil penalty so collected.*

14 *“(D) The Secretary may prescribe rules for purposes of*
15 *carrying out the provisions of this paragraph.*

16 *“(b)(1)(A) Any manufacturer whom the Secretary*
17 *determines under subsection (a) to have violated a provision*
18 *of section 507(1), shall be liable to the United States for a*
19 *civil penalty equal to (i) \$5 for each tenth of a mile per*
20 *gallon by which the average fuel economy of the passenger*
21 *automobiles manufactured by such manufacturer during*
22 *such model year is exceeded by the applicable average fuel*
23 *economy standard established under section 502 (a) or (c),*
24 *multiplied by (ii) the total number of passenger automobiles*

1 *manufactured by such manufacturer during such model*
2 *year.*

3 “(B) *Any manufacturer whom the Secretary determines*
4 *under subsection (a) to have violated section 507(2) shall be*
5 *liable to the United States for a civil penalty equal to (i) \$5*
6 *for each tenth of a mile per gallon by which the applicable*
7 *average fuel economy standard exceeds the average fuel econ-*
8 *omy of automobiles to which such standard applies, and which*
9 *are manufactured by such manufacturer during the model*
10 *year in which the violation occurs, multiplied by (ii) the total*
11 *number of automobiles to which such standard applies and*
12 *which are manufactured by such manufacturer during such*
13 *model year.*

14 “(2) *Any person whom the Secretary determines under*
15 *subsection (a) to have violated a provision of section 507(3)*
16 *shall be liable to the United States for a civil penalty of not*
17 *more than \$10,000 for each violation. Each day of a con-*
18 *tinuing violation shall constitute a separate violation for*
19 *purposes of this paragraph.*

20 “(3) *The amount of such civil penalty shall be assessed*
21 *by the Secretary by written notice. The Secretary shall have*
22 *the discretion to compromise, modify, or remit, with or with-*
23 *out conditions, any civil penalty assessed under this subsec-*
24 *tion against any person, except that any civil penalty*

1 *assessed for a violation of section 507(1) or (2) may be*
2 *so compromised, modified, or remitted only to the extent—*

3 *“(A) necessary to prevent the insolvency or bank-*
4 *ruptcy of such manufacturer,*

5 *“(B) such manufacturer shows that the violation of*
6 *section 507 (1) or (2) resulted from an act of God, a*
7 *strike, or a fire, or*

8 *“(C) the Federal Trade Commission has certified*
9 *that modification of such penalty is necessary to prevent*
10 *a substantial lessening of competition, as determined*
11 *under paragraph (4).*

12 *The Attorney General shall collect any civil penalty for*
13 *which a manufacturer is liable under this subsection in a civil*
14 *action under subsection (c)(2) (unless the manufacturer*
15 *pays such penalty to the Secretary).*

16 *“(4) Not later than 30 days after a determination by*
17 *the Secretary under subsection (a)(2) that a manufacturer*
18 *has violated section 507 (1) or (2), such manufacturer may*
19 *apply to the Federal Trade Commission for a certification*
20 *under this paragraph. If the manufacturer shows and the*
21 *Federal Trade Commission determines that modification of*
22 *the civil penalty for which such manufacturer is otherwise*
23 *liable is necessary to prevent a substantial lessening of com-*
24 *petition in that segment of the automobile industry subject to*
25 *the standard with respect to which such penalty was assessed,*

1 the Commission shall so certify. The certification shall specify
2 the maximum amount that such penalty may be reduced. To
3 the maximum extent practicable, the Commission shall render
4 a decision with respect to an application under this para-
5 graph not later than 90 days after the application is filed
6 with the Commission. A proceeding under this paragraph
7 shall not have the effect of delaying the manufacturer's lia-
8 bility under this section for a civil penalty for more than
9 90 days after such application is filed, but any payment made
10 before a decision of the Commission under this paragraph be-
11 comes final shall be paid to the court in which the penalty is
12 collected, and shall (except as otherwise provided in para-
13 graph (5)), be held by such court, until 90 days after such
14 decision becomes final (at which time it shall be paid into the
15 general fund of the Treasury).

16 “(5) Whenever a civil penalty has been assessed and
17 collected from a manufacturer under this section, and is
18 being held by a court in accordance with paragraph (4),
19 and the Secretary subsequently determines to modify such
20 civil penalty pursuant to paragraph (3)(C) the Secretary
21 shall direct the court to remit the appropriate amount of such
22 penalty to such manufacturer.

23 “(6) Any claim of a creditor of a manufacturer which
24 arises before the date on which a judgment in a collection
25 action under this section becomes final (without regard to

1 paragraph (4)) shall take priority over any claim of the
2 United States for a civil penalty under this section. For pur-
3 poses of the preceding sentence, a claim of a creditor arises on
4 the date on which the creditor extends credit to the manu-
5 facturer.

6 “(c)(1) Any interested person may obtain review of a
7 determination (A) of the Secretary pursuant to which a
8 civil penalty has been assessed under subsection (b), or (B)
9 of the Federal Trade Commission under subsection (b)(4),
10 in the United States Court of Appeals for the District of
11 Columbia, or for any circuit wherein such person resides or
12 has his principal place of business. Such review may be ob-
13 tained by filing a notice of appeal in such court within 30
14 days after the date of such determination, and by simulta-
15 neously sending a copy of such notice by certified mail to the
16 Secretary or the Federal Trade Commission, as the case
17 may be. The Secretary or the Commission, as the case may
18 be, shall promptly file in such court a certified copy of the
19 record upon which failure to comply or violation was found
20 and such penalty imposed. Any such determination shall be
21 reviewed in accordance with chapter 7 of title 5, United
22 States Code.

23 “(2) If any person fails to pay an assessment of a civil
24 penalty after it has become a final and unappealable order, or

1 *after the appropriate court of appeals has entered final judg-*
2 *ment in favor of the Secretary, the Attorney General shall*
3 *recover the amount assessed in any appropriate district court*
4 *of the United States. In such action, the validity and appro-*
5 *priateness of the final order imposing the civil penalty shall*
6 *not be subject to review.*

7 *“EFFECT ON STATE LAW*

8 *“SEC. 509. (a) Whenever an average fuel economy*
9 *standard established under this part is in effect, no State or*
10 *political subdivision of a State shall have authority to adopt*
11 *or enforce any law or regulation relating to fuel economy*
12 *standards or average fuel economy standards applicable to*
13 *automobiles covered by such Federal standard.*

14 *“(b) Whenever any requirement under section 506 is*
15 *in effect with respect to any automobile, no State or political*
16 *subdivision of a State shall have authority to adopt or enforce*
17 *any law or regulation with respect to the disclosure of fuel*
18 *economy of such automobile, or of fuel cost associated with the*
19 *operation of such automobile, if such law or regulation is not*
20 *identical with such requirement.*

21 *“(c) Nothing in this section shall be construed to pre-*
22 *vent any State or political subdivision thereof from establish-*
23 *ing requirements with respect to fuel economy of automobiles*
24 *procured for its own use.*

1 "USE OF FUEL EFFICIENT PASSENGER AUTOMOBILES BY
2 THE FEDERAL GOVERNMENT

3 "SEC. 510. (a) The President shall, within 120 days
4 after the date of enactment of this title, promulgate rules
5 which shall require that all passenger automobiles acquired
6 by all executive agencies in each fiscal year which begins after
7 such date of enactment achieve a fleet average fuel economy
8 for such year not less than—

9 "(1) 18 miles per gallon, or

10 "(2) the average fuel economy standard applicable
11 under section 502(a) for the model year which includes
12 January 1 of such fiscal year,
13 whichever is greater.

14 "(b) As used in this section:

15 "(1) The term 'fleet average fuel economy' means
16 (A) the total number of passenger automobiles ac-
17 quired in a fiscal year to which this section applies by all
18 executive agencies (excluding passenger automobiles de-
19 signed to perform combat related missions for the Armed
20 Forces or designed to be used in law enforcement work
21 or emergency rescue work), divided by (B) a sum of
22 terms, each term of which is a fraction created by
23 dividing—

24 "(i) the number of passenger automobiles so
25 acquired of a given model type, by

1 “(ii) the fuel economy of such model type.

2 “(2) The term ‘executive agency’ has the same
3 meaning as such term has for purposes of section 105
4 of title 5, United States Code.

5 “(3) The term ‘acquired’ means leased for a period
6 of 60 continuous days or more, or purchased.

7 “RETROFIT DEVICES

8 “SEC. 511. (a) The Federal Trade Commission shall
9 establish a program for systematically examining fuel econ-
10 omy representations made with respect to retrofit devices.
11 Whenever the Commission has reason to believe that any such
12 representation may be inaccurate, it shall request the EPA
13 Administrator to evaluate such retrofit device in accordance
14 with subsection (b).

15 “(b) (1) Upon application of any manufacturer of a
16 retrofit device (or prototype thereof), upon the request of
17 the Federal Trade Commission pursuant to subsection (a),
18 or upon his own motion, the EPA Administrator shall
19 evaluate, in accordance with rules prescribed under sub-
20 section (d), any retrofit device to determine whether the
21 retrofit device increases fuel economy and to determine
22 whether the representations (if any) made with respect to
23 such retrofit device are accurate.

24 “(2) If under paragraph (1) the EPA Administrator
25 tests, or causes to be tested, any retrofit device upon the appli-

1 cation of a manufacturer of such device, such manufacturer
2 shall supply, at his own expense, one or more samples of
3 such device to the Administrator and shall be liable for the
4 costs of testing which are incurred by the Administrator.
5 The procedures for testing retrofit devices so supplied may
6 include a requirement for preliminary testing by a quali-
7 fied independent testing laboratory, at the expense of the
8 manufacturer of such device.

9 “(c) The EPA Administrator shall publish in the Fed-
10 eral Register a summary of the results of all tests conducted
11 under this section, together with the EPA Administrator’s
12 conclusions as to—

13 “(1) the effect of any retrofit device on fuel econ-
14 omy;

15 “(2) the effect of any such device on emissions of air
16 pollutants; and

17 “(3) any other information which the Administra-
18 tor determines to be relevant in evaluating such device.

19 Such summary and conclusions shall also be submitted to the
20 Secretary and the Federal Trade Commission.

21 “(d) Within 180 days after the date of enactment of
22 this title, the EPA Administrator shall, by rule, establish—

23 “(1) testing and other procedures for evaluating the
24 extent to which retrofit devices affect fuel economy and
25 emissions of air pollutants, and

1 “(2) criteria for evaluating the accuracy of fuel
2 economy representations made with respect to retrofit
3 devices.

4 “(e) For purposes of this section the term ‘retrofit de-
5 vice’ means any component, equipment, or other device—

6 “(1) which is designed to be installed in or on a
7 motor vehicle (as an addition to, as a replacement for,
8 or through alteration or modification of, any original
9 component, equipment, or other device); and

10 “(2) any manufacturer, dealer, or distributor of
11 which represents will provide higher fuel economy than
12 would have resulted with the vehicle as originally
13 equipped,

14 as determined under rules of the Administrator. Such term
15 also includes a fuel additive for use in an automobile.

16 “REPORTS TO CONGRESS

17 “SEC. 512. (a) Within 180 days after the date of
18 enactment of this title, the Secretary shall prepare and sub-
19 mit to the Congress and the President a comprehensive report
20 setting forth findings and containing conclusions and recom-
21 mendations with respect to (1) a requirement that each new
22 automobile be equipped with a fuel flow instrument reading
23 directly in miles per gallon, and (2) the most feasible means
24 of equipping used automobiles with such instruments. Such
25 report shall include an examination of the effectiveness of

1 *such instruments in promoting voluntary reductions in fuel*
2 *consumption, the cost of such instruments, means of encour-*
3 *aging automobile purchasers to voluntarily purchase automo-*
4 *biles equipped with such instruments, and any other factor*
5 *bearing on the cost and effectiveness of such instruments and*
6 *their use.*

7 “(b)(1) *Within 180 days after the date of enactment*
8 *of this title, the Secretary shall prepare and submit to the*
9 *Congress and the President a comprehensive report setting*
10 *forth findings and containing conclusions and recommenda-*
11 *tions with respect to whether or not electric vehicles and*
12 *other vehicles not consuming fuel (as defined in the first sen-*
13 *tence of section 501(5)) should be covered by this part.*
14 *Such report shall include an examination of the extent to*
15 *which such vehicles should be included under the provisions*
16 *of this part, the manner in which energy requirements of*
17 *such vehicles may be compared with that of fuel-consuming*
18 *vehicles, the extent to which inclusion of such vehicles would*
19 *stimulate their production and introduction into commerce,*
20 *and any recommendations for legislative action.*

21 “(2) *As used in this subsection, the term ‘electric ve-*
22 *hicle’ means a vehicle powered primarily by an electric motor*
23 *drawing current from rechargeable batteries, fuel cells, or*
24 *other portable sources of electrical current.*

1 "PART B—APPLICATION OF ADVANCED AUTOMOTIVE
2 TECHNOLOGY

3 "PURPOSE

4 "SEC. 541. It is the purpose of this part to—

5 "(1) develop and evaluate advanced automotive
6 technologies, and promote the expeditious commercial
7 application of such technologies, and

8 "(2) establish an advanced automotive technology
9 program designed to (A) optimize automobile perform-
10 ance with respect to fuel economy, environmental impact,
11 safety, damage susceptibility, reliability, and other posi-
12 tive characteristics of automobiles, and (B) insure that
13 information respecting advanced automotive technology
14 will be available to manufacturers and other persons,
15 and to the Federal Government in order to carry out
16 its regulatory functions with respect to automobiles.

17 "DEFINITIONS

18 "SEC. 542. For purposes of this part:

19 "(1) The term 'ERDA Administrator' means the
20 Administrator of the Energy Research and Development
21 Administration.

22 "(2) The term 'advanced automobile' means an
23 automobile which—

24 "(A) minimizes the total amount of energy

1 to be consumed with respect to its fabrication, opera-
2 tion, and disposal, and represents a substantial
3 improvement over existing automobiles with respect
4 to such total amount of energy consumed;

5 “(B) is capable of being mass produced, and
6 operated, at a cost which is sufficiently competitive
7 to enable such automobile to be produced and sold
8 in numbers representing a significant portion of the
9 automobile market;

10 “(C) at a minimum, can be produced, dis-
11 tributed, operated, and disposed of in compliance
12 with applicable requirements of Federal law, includ-
13 ing requirements with respect to fuel economy, emis-
14 sions, noise control, safety, and damage susceptibility;

15 “(D) to the extent consistent with subpara-
16 graphs (A), (B), and (C), maximizes safety and
17 reliability, minimizes emissions, noise, and damage
18 susceptibility, and operates with sufficient perform-
19 ance with respect to acceleration, cold weather start-
20 ing, cruising speed, and other performance factors;
21 and

22 “(E) to the extent practicable, is capable of
23 intermodal adaptability.

24 “(3) The term ‘automobile’ means an automobile

1 as defined in section 501(1), except that for purposes of
2 this part such term shall be applied—

3 “(A) without regard to whether or not the
4 vehicle is a 4-wheeled vehicle; and

5 “(B) without regard to the energy source used
6 to propel such vehicle.

7 “(4) The term ‘intermodal adaptability’ refers to
8 any characteristic of an automobile which enables it to be
9 operated or carried, or which facilitates such operation
10 or carriage, by or on an alternate mode or other system
11 of transportation.


12 “(5) The term ‘person’ includes any individual,
13 corporation, company, association, firm, partnership, so-
14 ciety, trust, joint venture, joint stock company, and the
15 government and any agency of the United States or
16 any State or political subdivision thereof.

17 “(6) The term ‘production prototype’ means an
18 automobile which is capable of being placed into produc-
19 tion, for sale at retail, in significant quantities.

20 “ESTABLISHMENT OF PROGRAM

21 “SEC. 543. (a) The Secretary shall establish within
22 the Department of Transportation a program designed—

23 “(1) to develop and evaluate advanced automotive



1 *technologies, and to promote the expeditious commer-*
2 *cial application of such technologies;*

3 “(2) to insure—

4 “(A) through developmental programs con-

5 *ducted within the Department and through as-*
6 *stance authorized under sections 545 and 546, and*

7 “(B) subject to the limitations of subsection (c),

8 *that governmental and nongovernmental efforts will lead*
9 *to the development of one or more production prototypes*
10 *of an advanced automobile or automobiles within the*
11 *shortest practicable time; and*

12 “(3) to insure that adequate information respecting

13 *advanced automotive technology is available (A) to*
14 *manufacturers and other persons, (B) to the Congress,*
15 *and (C) to Federal agencies to carry out the regulatory*
16 *responsibilities respecting automobiles under this and*
17 *other Acts (including the Clean Air Act, the National*
18 *Traffic and Motor Vehicle Safety Act of 1966, and*
19 *the Noise Control Act of 1972).*

20 “(b) In carrying out this part, the Secretary shall—

21 “(1) have authority, in addition to any other author-

22 *ity under this part, to collect, analyze, and disseminate*
23 *information, data, and materials which are relevant to*
24 *the program established under subsection (a), and*

25 “(2) in coordination with the Administrator of the

26 *Environmental Protection Agency and the ERDA Ad-*

1 *ministrator, and utilizing their facilities or personnel*
2 *where appropriate and in accordance with section 544,*
3 *evaluate any reasonable new or improved automotive*
4 *technology, a description of which is submitted to the*
5 *Secretary in writing, which could lead or contribute*
6 *to the development of an advanced automobile or auto-*
7 *mobiles under the authority of this part.*

8 *“(c) Not later than 2 years after the date of enactment*
9 *of this title, the Secretary shall submit a report to the Con-*
10 *gress with respect to the need for Federal support for con-*
11 *struction of production prototypes of an advanced automobile*
12 *or automobiles under the authority of this part, together with*
13 *such legislative recommendations as the Secretary considers*
14 *appropriate. Until such time as the Congress otherwise pro-*
15 *vides by law, sums authorized by section 550 to be appropri-*
16 *ated to carry out this part shall not be available for construc-*
17 *tion of such production prototypes. This subsection shall not*
18 *be considered a limitation on authority to construct any vehi-*
19 *cle which is not a production prototype.*

20 *“COORDINATION BETWEEN THE SECRETARY AND OTHER*
21 *AGENCIES*

22 *“SEC. 544. (a) The Secretary shall have overall man-*
23 *agement responsibility for carrying out the program under*
24 *this part. In carrying out such program, the Secretary, con-*
25 *sistent with such overall management responsibility—*

1 “(1) shall utilize the Energy Research and Devel-
2 opment Administration, to the maximum extent practi-
3 cable and in accordance with subsection (c), in carrying
4 out any activities under this part with respect to ad-
5 vanced propulsion systems; and

6 “(2) may utilize the Energy Research and Develop-
7 ment Administration or any other Federal agency (ex-
8 cept as provided in paragraph (1)), in accordance with
9 subsection (c), in carrying out any duties under this
10 part, to the extent that the Secretary determines that any
11 such agency has capabilities which would allow such
12 agency to contribute to the attainment of the purposes of
13 this part.

14 “(b) The ERDA Administrator, whenever the Energy
15 Research and Development Administration is utilized under
16 subsection (a), may exercise the powers granted to the Sec-
17 retary under subsection (c) and under sections 545 and 546,
18 subject to the overall management responsibility of the Secre-
19 tary.

20 “(c) In addition to the powers specifically enumerated
21 in any other provision of this part, the Secretary may, in
22 order to carry out this part, obtain the assistance of any de-
23 partment, agency, or instrumentality of the executive branch
24 of the Federal Government upon written request, on a reim-
25 bursable basis or otherwise and with the consent of such de-

1 *partment, agency, or instrumentality, identifying the as-*
2 *sistance the Secretary deems necessary to carry out any duty*
3 *under this part.*

4 *“CONTRACTS AND GRANTS*

5 *“SEC. 545. (a) The Secretary may enter into contracts*
6 *with, and make grants to, any person for purposes of carry-*
7 *ing out the provisions of section 543.*

8 *“(b) In addition to the requirements of section 544, the*
9 *Secretary, in the exercise of his duties and responsibilities*
10 *under this section, shall consult with the Administrator of*
11 *the Environmental Protection Agency, the ERDA Admin-*
12 *istrator, the Administrator of the Federal Energy Admin-*
13 *istration, and representatives of other appropriate Federal*
14 *agencies, and shall establish procedures for periodic consul-*
15 *tation with representatives of science, industry, and such*
16 *other groups as may have special expertise in the areas of*
17 *advanced automotive technology.*

18 *“(c)(1) Each grant under this section shall be made*
19 *in accordance with such rules as the Secretary shall prescribe*
20 *in accordance with the provisions of this section. Each appli-*
21 *cation for such a grant shall be made in writing in such*
22 *form and with such content and other submissions as the*
23 *Secretary shall require.*

24 *“(2) The Secretary may enter into contracts under*

1 *this section, without regard to section 3709 of the Revised*
2 *Statutes (41 U.S.C. 5).*

3 "OBLIGATION GUARANTEES

4 "SEC. 546. (a) (1) *The Secretary may, in accordance*
5 *with the provisions of this section and such rules as the Sec-*
6 *retary shall prescribe, guarantee the payment of not more*
7 *than 90 per centum of the outstanding principal balance of*
8 *any obligation incurred by any person, if the Secretary de-*
9 *termines that such obligation is, or will be, entered into in*
10 *order to assist in carrying out the program established under*
11 *section 543.*

12 "(2) *Each application for an obligation guarantee un-*
13 *der this section shall be made in writing to the Secretary in*
14 *such form and with such content and other submissions as*
15 *the Secretary shall require, in order reasonably to protect the*
16 *interests of the United States. Each guarantee shall be ex-*
17 *tended in accordance with subsection (b) and—*

18 "(A) *under such terms and conditions as the Sec-*
19 *retary, in consultation with the Secretary of the Treas-*
20 *ury, considers appropriate;*

21 "(B) *with such provisions with respect to the timing*
22 *of such guarantee as the Secretary, with the concurrence*
23 *of the Secretary of the Treasury, considers appropriate,*
24 *except that the required concurrence of the Secretary of*
25 *the Treasury may not, without the consent of the Sec-*

1 retary, result in a delay in the issuance of such guaran-
2 tee for more than 60 days; and

3 “(C) in such form and pursuant to such rules as
4 the Secretary considers appropriate.

5 “(3) Each guarantee shall inure to the benefit of the
6 holder of the obligation to which such guarantee applies. The
7 Secretary may approve any modification of any provision
8 of a guarantee of an obligation, upon a finding by the Secre-
9 tary that such modification is equitable, not prejudicial to the
10 interests of the United States, and has been consented to by
11 the holder of such obligation.

12 “(4) All guarantees issued by the Secretary under this
13 section shall constitute general obligations of the United
14 States backed by the full faith and credit of the Government
15 of the United States.

16 “(b) No obligation shall be guaranteed by the Secretary
17 under subsection (a) unless the Secretary finds that—

18 “(1) there is a reasonable prospect for the repay-
19 ment of such obligation;

20 “(2) such obligation is adequately secured;

21 “(3) such obligation constitutes a general obligation
22 of the applicant for such guarantee; and

23 “(4) no other reasonable means of financing or re-
24 financing is reasonably available to such applicant.

25 “(c)(1) The Secretary shall charge and collect such

1 amounts as the Secretary may deem reasonable for the in-
2 vestigation of applications for the guarantee of an obligation,
3 or for the appraisal of properties offered as security for such
4 a guarantee.

5 “(2) The Secretary shall set an annual premium charge
6 of not more than 1 per centum of the outstanding principal
7 balance of each obligation guaranteed under this section.

8 “(d) No obligation guarantee issued by the Secretary
9 under this section shall be terminated, canceled, or otherwise
10 revoked, except in accordance with reasonable terms and
11 conditions prescribed by the Secretary which were in effect
12 on the date on which such guarantee was issued by the
13 Secretary.

14 “(e)(1) If there is a default in any payment by the
15 obligor of principal due under an obligation guaranteed by
16 the Secretary under this section, and such default has con-
17 tinued for 60 days, the holder of such obligation shall have
18 the right to demand payment by the Secretary. The Secretary
19 shall promptly pay to the holder of such obligation, from
20 amounts appropriated for such purpose, that portion of such
21 unpaid amount which was guaranteed under this section,
22 unless the Secretary finds that there was no default by the
23 obligor in the payment of principal or that such default has
24 been remedied.

25 “(2) If a payment is made by the Secretary under para-

1 graph (1) of this subsection, the Secretary, in addition to
2 rights otherwise provided by law, shall be subrogated to all
3 rights of the holder against the obligor and shall have
4 all rights specified in the guarantee or related agreements with
5 respect to any security which the Secretary held with respect
6 to the guarantee of such obligation, including the authority to
7 complete, maintain, operate, lease, sell, or otherwise dispose of
8 any property acquired pursuant to such guarantee or related
9 agreements.

10 “(3) If there is a default under any obligation guaran-
11 tee, the Secretary shall notify the Attorney General who shall
12 take such action against the obligor or any other parties liable
13 thereunder as is necessary to protect the interests of the United
14 States. The holder of such obligation shall make available to
15 the United States all records and evidence necessary to prose-
16 cute any such suit.

17 “(f) The Secretary may issue commitments to guarantee
18 an obligation under this section. An obligation may be guar-
19 anteed pursuant to such a commitment only if the require-
20 ments of this section are met at the time such obligation is
21 issued.

22 “(g) The aggregate amount of guarantees issued by the
23 Secretary under this section before July 30, 1976, shall not
24 exceed \$20,000,000, and the aggregate amount of guarantees

1 issued by the Secretary under this section before September
2 30, 1977, shall not exceed \$55,000,000.

3 "PATENTS

4 "SEC. 547. (a) Section 9 of the Federal Nonnuclear
5 Energy Research and Development Act of 1974 shall apply
6 to any contract (including any assignment, substitution of
7 parties, or subcontract thereunder), grant, or obligation
8 guarantee entered into, made, or issued by the Secretary
9 under this part to the same extent that such section applies to
10 contracts of the Energy Research and Development Admin-
11 istration under the Federal Nonnuclear Energy Research
12 and Development Act of 1974. For purposes of applying such
13 section with respect to this part, any reference to the 'Adminis-
14 trator' or to the 'Administration' shall be deemed to be a
15 reference to the 'Secretary' or to the 'Department of Trans-
16 portation', respectively.

17 "(b) (1) Whenever the Secretary determines, on his own
18 motion or upon application of any person and after oppor-
19 tunity for interested persons to present views, that—

20 "(A) a right under any United States letters patent,
21 which is not otherwise reasonably available, is reasonably
22 necessary to—

23 "(i) contribute to the development of advanced
24 automotive technology pursuant to any contract
25 entered into, grant made, or obligation guarantee

1 *issued under this part, or to the commercial applica-*
2 *tion of technology developed pursuant to such a con-*
3 *tract, grant, or guarantee, or*

4 “(ii) *provide for the expeditious commercial*
5 *application of advanced automotive technology in*
6 *order to comply with average fuel economy stand-*
7 *ards under part A of this title, or other Federal*
8 *automobile standards, and*

9 “(B) *there are no other reasonable methods to*
10 *achieve such development or commercial application,*
11 *the Secretary shall (subject to paragraph (2)) certify such*
12 *determination to a district court of the United States, for*
13 *proceedings pursuant to paragraph (3).*

14 “(2) *No determination may be made by the Secretary*
15 *under subparagraphs (A)(ii) and (B) of paragraph (1),*
16 *unless the Secretary determines, after opportunity for in-*
17 *terested persons to present views, that—*

18 “(i) *the unavailability of the right under such*
19 *patent may result in a substantial lessening of competi-*
20 *tion or a tendency to create a monopoly in any line of*
21 *commerce in any section of the country, or*

22 “(ii) *the availability of such right may result in a*
23 *substantial increase in competition or a tendency to re-*
24 *duce a monopoly in any line of commerce in any section*
25 *of the country, and such right is not being significantly*

1 utilized in the production of automobiles for commercial
2 purposes.

3 “(3) Whenever a district court of the United States
4 receives a certification of the Secretary pursuant to para-
5 graph (2), such district court may, after a de novo hear-
6 ing, issue an order requiring the person owning or con-
7 trolling the patent which is the subject of such certifica-
8 tion to license such patent at such reasonable royalty and on
9 such terms and conditions as the court may determine. If a
10 right under such patent is made available by such district
11 court pursuant to certification by the Secretary under sub-
12 paragraph (A) of paragraph (2), the order may also
13 provide that such right shall also be available, at such reason-
14 able royalty and on such terms and conditions as the court
15 may prescribe, to any other person, if the court determines
16 that such person is engaged in fostering the expeditious devel-
17 opment or commercial application of advanced automotive
18 technology, and that such right will contribute to such devel-
19 opment or application.

20 “RECORDS, AUDIT, AND EXAMINATION

21 “SEC. 548. (a) Each recipient of financial assistance
22 or guarantees under this part, whether in the form of
23 grants, subgrants, contracts, subcontracts, obligation guar-
24 antees, or other arrangements, shall keep such records as
25 the Secretary or the ERDA Administrator, as the case

1 may be, shall prescribe, including records which fully dis-
2 close the amount and disposition by such recipient of the
3 proceeds of such assistance, the total cost of the project or
4 undertaking in connection with which such assistance was
5 given or used, the amount of that portion of such total cost
6 which was supplied by other sources, and such other records
7 as will facilitate an effective audit.

8 “(b) The Secretary or the ERDA Administrator, as
9 the case may be, and the Comptroller General of the United
10 States, or any of their duly authorized representatives shall,
11 until the expiration of 3 years after completion of the project
12 or undertaking referred to in subsection (a) of this section,
13 have access for the purpose of audit and examination to any
14 books, documents, papers, and records of such receipts
15 which in the opinion of the Secretary, the ERDA Ad-
16 ministrator, or the Comptroller General may be related or
17 pertinent to the grants, subgrants, contracts, subcontracts,
18 obligation guarantees, or other arrangements referred to in
19 such subsection.

20 “REPORTS

21 “SEC. 549. On or before July 1 of each year, the Sec-
22 retary shall submit to Congress an annual report of activities
23 under this part. Such report shall include—

24 “(1) the number and amount of contracts and grants
25 made and of obligations guaranteed;

1 “(2) the progress made in developing advanced
2 automobiles within the shortest practicable time after
3 the date of enactment of this title;

4 “(3) the extent to which commercial application
5 of the technology developed under this part may take
6 place; and

7 “(4) suggestions for improvements in the program
8 established under this part, including recommendations
9 for legislation.

10 “AUTHORIZATION OF APPROPRIATIONS

11 “SEC. 550. There are authorized to be appropriated
12 to the Secretary to carry out the purposes of this part, other
13 than section 546 of this part, not to exceed \$50,000,000 for
14 the fiscal year ending June 30, 1976, and not to exceed
15 \$80,000,000 for the fiscal year ending September
16 30, 1977.”.

17 PART B—ENERGY CONSERVATION PROGRAM FOR CON-
18 SUMER PRODUCTS OTHER THAN AUTOMOBILES

19 DEFINITIONS

20 SEC. 321. (a) For purposes of this part:

21 (1) The term “consumer product” means any arti-
22 cle (other than an automobile, as defined in section
23 501(1) of the Motor Vehicle Information and Cost Sav-
24 ings Act) of a type—

1 (A) which in operation consumes, or is de-
2 signed to consume, energy; and

3 (B) which, to any significant extent, is dis-
4 tributed in commerce for personal use or consump-
5 tion by individuals;

6 without regard to whether such article of such type is
7 in fact distributed in commerce for personal use or con-
8 sumption by an individual.

9 (2) The term "covered product" means a consumer
10 product of a type specified in section 322.

11 (3) The term "energy" means electricity, or fossil
12 fuels. The Administrator may, by rule, include other
13 fuels within the meaning of the term "energy" if he
14 determines that such inclusion is necessary or appro-
15 priate to carry out the purposes of this Act.

16 (4) The term "energy use" means the quantity of
17 energy directly consumed by a consumer product at
18 point of use, determined in accordance with test pro-
19 cedures under section 323.

20 (5) The term "energy efficiency" means the ratio
21 of the useful output of services from a consumer product
22 to the energy use of such product, determined in ac-
23 cordance with test procedures under section 323.

1 (6) The term "energy efficiency standard" means
2 a performance standard—

3 (A) which prescribes a minimum level of en-
4 ergy efficiency for a covered product, determined
5 in accordance with test procedures prescribed under
6 section 323, and

7 (B) which includes any other requirements
8 which the Administrator may prescribe under sec-
9 tion 325(c).

10 (7) The term "estimated annual operating cost"
11 means the aggregate retail cost of the energy which is
12 likely to be consumed annually in representative use of a
13 consumer product, determined in accordance with section
14 323.

15 (8) The term "measure of energy consumption"
16 means energy use, energy efficiency, or estimated annual
17 operating cost, or other measure of energy consumption.

18 (9) The term "class of covered products" means
19 a group of covered products, the functions or intended
20 uses of which are similar (as determined by the
21 Administrator).

22 (10) The term "manufacture" means to manufac-
23 ture, produce, assemble or import.

24 (11) The terms "import" and "importation" mean
25 to import into the customs territory of the United States.

1 (12) The term "manufacturer" means any person
2 who manufactures a consumer product.

3 (13) The term "retailer" means a person to whom
4 a consumer product is delivered or sold, if such de-
5 livery or sale is for purposes of sale or distribution in
6 commerce to purchasers who buy such product for pur-
7 poses other than resale.

8 (14) The term "distributor" means a person (other
9 than a manufacturer or retailer) to whom a consumer
10 product is delivered or sold for purposes of distribution
11 in commerce.

12 (15)(A) The term "private labeler" means an
13 owner of a brand or trademark on the label of a con-
14 sumer product which bears a private label.

15 (B) A consumer product bears a private label if
16 (i) such product (or its container) is labeled with the
17 brand or trademark of a person other than a manu-
18 facturer of such product, (ii) the person with whose
19 brand or trademark such product (or container) is
20 labeled has authorized or caused such product to be so
21 labeled, and (iii) the brand or trademark of a manu-
22 facturer of such product does not appear on such label.

23 (16) The terms "to distribute in commerce" and
24 "distribution in commerce" mean to sell in commerce,
25 to import, to introduce or deliver for introduction into

1 commerce, or to hold for sale or distribution after intro-
2 duction into commerce.

3 (17) The term "commerce" means trade, traffic,
4 commerce, or transportation—

5 (A) between a place in a State and any place
6 outside thereof, or

7 (B) which affects trade, traffic, commerce, or
8 transportation described in subparagraph (A).

9 (18) The term "Commission" means the Federal
10 Trade Commission.

11 COVERAGE

12 SEC. 322. (a) A consumer product is a covered product
13 if it is one of the following types (or is designed to perform a
14 function which is the principal function of any of the follow-
15 ing types):

16 (1) Refrigerators and refrigerator-freezers.

17 (2) Freezers.

18 (3) Dishwashers.

19 (4) Clothes dryers.

20 (5) Water heaters.

21 (6) Room air conditioners.

22 (7) Home heating equipment, not including fur-
23 naces.

24 (8) Television sets.

25 (9) Kitchen ranges and ovens.

1 (10) *Clothes washers.*

2 (11) *Humidifiers and dehumidifiers.*

3 (12) *Central air conditioners.*

4 (13) *Furnaces.*

5 (14) *Any other type of consumer product which the*
6 *Administrator classifies as a covered product under*
7 *subsection (b).*

8 (b)(1) *The Administrator may classify a type of con-*
9 *sumer product as a covered product if he determines that—*

10 (A) *classifying products of such type as covered*
11 *products is necessary or appropriate to carry out the*
12 *purposes of this Act, and*

13 (B) *average annual per-household energy use by*
14 *products of such type is likely to exceed 100 kilowatt-*
15 *hours (or its Btu equivalent) per year.*

16 (2) *For purposes of this subsection—*

17 (A) *the term “average annual per-household*
18 *energy use” with respect to a type of product means*
19 *the estimated aggregate annual energy use (in kilowatt-*
20 *hours or the Btu equivalent) of consumer products of*
21 *such type which are used by households in the United*
22 *States, divided by the number of such households which*
23 *use products of such type,*

24 (B) *the Btu equivalent of one kilowatt-hour is 3,412*
25 *British thermal units, and*

1 (C) the term "household" shall be defined under
2 rules of the Administrator.

3 **TEST PROCEDURES**

4 SEC. 323. (a)(1) The Administrator shall afford,
5 during the 30-day period which begins on the date of enact-
6 ment of this Act, interested persons an opportunity to present
7 written data, views, and arguments with respect to test pro-
8 cedures to be developed for all covered products of each of
9 the types specified in paragraphs (1) through (9) of section
10 322(a).

11 (2) The Administrator shall direct the National Bureau
12 of Standards to develop test procedures for the determina-
13 tion of (A) estimated annual operating costs of covered
14 products of the types specified in paragraphs (1) through
15 (9) of section 322(a), and (B) at least one other measure
16 of energy consumption of such products which the Adminis-
17 trator determines is likely to assist consumers in making
18 purchasing decisions.

19 (3) The Administrator shall publish proposed test pro-
20 cedures with respect to all covered products of each of the
21 types specified in paragraphs (1) through (9) of section
22 322(a) not later than June 30, 1976, and shall afford
23 interested persons an opportunity to present oral and written
24 data, views, and arguments with respect to such proposed

1 test procedures. Such comment period shall not be less than
2 45 days.

3 (4) Not later than September 30, 1976, the Adminis-
4 trator shall prescribe test procedures for the determination
5 of (A) estimated annual operating costs of all covered
6 products of each of the types specified in paragraphs (1)
7 through (9) of section 322(a), and (B) at least one other
8 measure of energy consumption of such products which the
9 Administrator determines is likely to assist consumers in
10 making purchasing decisions.

11 (5) With respect to covered products of the types speci-
12 fied in paragraphs (7) and (9) of section 322(a), the Ad-
13 ministrator may delay the publication of proposed test pro-
14 cedures until September 30, 1976, and he may delay the
15 prescription of test procedures until December 31, 1976.

16 (6) Paragraphs (1) through (4) shall apply to covered
17 products of the types specified in paragraphs (10) through
18 (13) of section 322(a), except that "June 30, 1977" shall
19 be substituted for "June 30, 1976" in paragraph (3), and
20 "September 30, 1977" shall be substituted for "September 30,
21 1976" in paragraphs (3) and (4).

22 (7) If the Administrator determines that application
23 of labeling rules to a type of covered product specified in
24 paragraph (14) of section 322(a) (or class thereof) is likely

1 to assist consumers in making purchasing decisions, the Ad-
2 ministrator may, after affording interested persons an oppor-
3 tunity to comment, direct the National Bureau of Standards
4 to develop, and may publish proposed test procedures in
5 accordance with subsection (b) for such type of covered prod-
6 uct (or class thereof). The Administrator shall afford inter-
7 ested persons an opportunity to present oral and written
8 data, views, and arguments with respect to such proposed
9 test procedures. Such comment period shall not be less than
10 45 days, and the Administrator may thereafter prescribe
11 test procedures in accordance with subsection (b) of this
12 section with respect to such type of product.

13 (8) The Administrator may delay the publication of pro-
14 posed test procedures or the prescription of test procedures
15 for a type of covered product (or class thereof) beyond the
16 dates specified in paragraph (3), (4), (5), or (6), if he de-
17 termines that he cannot, within the applicable time period,
18 publish proposed test procedures or prescribe test procedures
19 applicable to such type (or class thereof) which meet the
20 requirements of subsection (b) (1), and publishes such deter-
21 mination in the Federal Register. In any such case he shall
22 publish proposed test procedures or prescribe test procedures
23 for covered products of such type (or class thereof) as soon
24 as practicable, unless he determines that test procedures can-
25 not be developed which meet the requirements of subsection

1 (b)(1) and publishes such determination in the Federal
2 Register.

3 (b)(1) Any test procedures prescribed under this section
4 shall be reasonably designed to produce test results which
5 reflect energy efficiency, energy use, or estimated annual oper-
6 ating cost of a covered product during a representative aver-
7 age use cycle (as determined by the Administrator), and
8 shall not be unduly burdensome to conduct.

9 (2) If the test procedure is a procedure for determining
10 estimated annual operating costs, such procedure shall pro-
11 vide that such costs shall be calculated from measurements of
12 energy use in a representative average-use cycle (as deter-
13 mined by the Administrator), and from representative aver-
14 age unit costs of the energy needed to operate such product
15 during such cycle. The Administrator shall provide informa-
16 tion to manufacturers respecting representative average unit
17 costs of energy.

18 (c) At any time after February 1, 1977, the Adminis-
19 trator, at the request of the Commission—

20 (1) may direct the National Bureau of Standards
21 to develop, and

22 (2) may prescribe,
23 test procedures with respect to any covered product of a
24 type (or class thereof) for which the Administrator has not
25 directed the National Bureau of Standards to develop a test

1 procedure under subsection (a), if the Commission determines
2 that disclosure of information developed under uniform test-
3 ing procedures for such type of covered product (or class
4 thereof) will assist consumers in making purchasing decisions.

5 (d) Effective 90 days after a test procedure rule appli-
6 cable to a covered product is prescribed under this section, no
7 manufacturer, distributor, retailer, or private labeler may
8 make any representation—

9 (1) in writing (including a representation on a
10 label), or

11 (2) in any broadcast advertisement,
12 respecting the energy consumption of such product or aggre-
13 gate cost of energy consumed by such product, unless such
14 product has been tested in accordance with such test proce-
15 dure and such representation fairly discloses the results of
16 such testing.

17 LABELING

18 SEC. 324. (a) (1) The Commission shall prescribe label-
19 ing rules under this section applicable to all covered products
20 of each of the types specified in paragraphs (1) through (9)
21 of section 322(a), except to the extent that with respect to
22 any such type (or class thereof)—

23 (A) the Administrator determines under section 323
24 (a)(8) that test procedures cannot be developed which
25 meet the requirements of section 323(b)(1); or

1 (B) the Commission determines that labeling in
2 accordance with this section is not technologically or
3 economically feasible, and

4 (2) The Commission shall prescribe labeling rules under
5 this section applicable to all covered products of each of the
6 types specified in paragraphs (10) through (13) of section
7 322(a), except to the extent that with respect to any such
8 type (or class thereof)—

9 (A) the Administrator determines under section 323
10 (a)(8) that test procedures cannot be developed which
11 meet the requirements of section 323(b)(1); or

12 (B) the Commission determines that labeling in
13 accordance with this section is not technologically or
14 economically feasible or is not likely to assist consumers
15 in making purchasing decisions.

16 (3) The Commission may prescribe a labeling rule un-
17 der this section applicable to covered products of a type
18 specified in paragraph (14) of section 322(a) (or a class
19 thereof) if—

20 (A) the Commission has made a determination with
21 respect to such type (or class thereof) under section 323
22 (a)(7),

23 (B) the Administrator has prescribed test procedures
24 under section 323(a)(7) for such type (or class there-
25 of), and

1 (C) the Commission determines with respect to such
2 type (or class thereof) that application of labeling rules
3 under this section to such type (or class thereof) is eco-
4 nomically and technologically feasible.

5 (4) Any determination under this subsection shall be
6 published in the *Federal Register*.

7 (b)(1) Not later than 30 days after the date on which
8 a proposed test procedure applicable to a covered product
9 of any of the types specified in paragraphs (1) through
10 (13) of section 322(a) (or class thereof) is published under
11 section 323(a), the Commission shall publish a proposed
12 labeling rule applicable to such type (or class thereof).

13 (2) The Commission shall afford interested persons an
14 opportunity to present written or oral data, views, and com-
15 ments with respect to the proposed labeling rules published
16 under paragraph (1). The period for such presentations
17 shall not be less than 45 days.

18 (3) Not earlier than 45 days nor later than 60 days
19 after the dates on which test procedures are prescribed
20 under section 323 with respect to covered products of any
21 type (or class thereof) specified in paragraphs (1) through
22 (13) of section 322(a), the Commission shall prescribe
23 labeling rules with respect to covered products of such type
24 (or class thereof).

25 (4) A labeling rule prescribed under paragraph (3)

1 shall take effect not later than 3 months after the date of
2 prescription of such rule except that such rules may take
3 effect not later than 9 months after such date of prescrip-
4 tion if the Commission determines that such extension is
5 necessary to allow persons subject to such rules adequate
6 time to come into compliance with such rules.

7 (5) The Commission may delay the publication of a
8 proposed labeling rule, or the prescription of a labeling rule,
9 beyond the dates specified in paragraph (1) or (3), if it
10 determines that it cannot prescribe labeling rules which meet
11 the requirements of this section on or prior to the date speci-
12 fied in the applicable paragraph and publishes such deter-
13 mination in the Federal Register. In any such case it shall
14 prescribe labeling rules for covered products of such type
15 (or class thereof) as soon as practicable unless it determines
16 (A) under subsection (a)(1)(B) or (d)(2)(B) that label-
17 ing in accordance with this section is not economically or
18 technically feasible or (B) under subsection (a)(2)(B) that
19 labeling in accordance with this section is not likely to assist
20 consumers in purchasing decisions; and publishes such deter-
21 mination in the Federal Register.

22 (c)(1) Subject to paragraph (6), a rule prescribed
23 under this section shall require that each covered product in
24 the type or class of covered products to which the rule applies
25 bear a label which discloses—

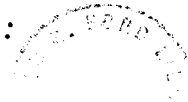
1 (A) the estimated annual operating cost of such
2 product (determined in accordance with test procedures
3 prescribed under section 323), except that if—

4 (i) the Administrator determines that disclosure
5 of estimated annual operating cost is not technologi-
6 cally feasible, or

7 (ii) the Commission determines that such dis-
8 closure is not likely to assist consumers in making
9 purchasing decisions or is not economically feasible,
10 the Commission shall require disclosure of a different
11 measure of energy consumption (determined in accord-
12 ance with test procedures prescribed under section 33);
13 and

14 (B) information respecting the range of estimated
15 annual operating costs for covered products to which the
16 rule applies (as determined by the Commission); except
17 that if the Commission requires disclosure under sub-
18 paragraph (A) of a measure of energy consumption
19 different from estimated annual operating cost (and does
20 not require disclosure of estimated annual operating
21 cost), then the label shall disclose the range of such
22 measure of energy consumption of such product and simi-
23 lar covered products to which such rule applies (as deter-
24 mined by the Commission).

25 (2) A rule under this section shall include the following:



1 (A) A description of the type or class of covered
2 products to which such rule applies.

3 (B) Subject to paragraph (6), information respect-
4 ing the range of estimated annual operating costs or
5 other measure of energy consumption for such type or
6 class of covered products, as determined by the
7 Commission.

8 (C) A description of the test procedures under sec-
9 tion 323 used in determining the estimated annual oper-
10 ating costs or other measure of energy consumption of the
11 type or class of covered products.

12 (D) A prototype label and directions for displaying
13 such label.

14 (3) A rule under this section shall require that the label
15 be displayed in a manner that the Commission determines is
16 likely to be useful to consumers in making purchasing deci-
17 sions and is appropriate to carry out this part. The Com-
18 mission may permit a tag to be used in lieu of a label in any
19 case in which the Commission finds that a tag will carry out
20 the purposes for which the label was intended.

21 (4) A rule under this section applicable to a covered
22 product may require disclosure, in any printed matter dis-
23 played at the point of sale of such product, of any informa-
24 tion which may be required under this section to be disclosed
25 on the label of such product. Requirements under this para-

1 *graph shall not apply to any broadcast advertisement or any*
2 *advertisement in any newspaper, magazine, or other peri-*
3 *odical.*

4 (5) *The Commission may require that a manufacturer*
5 *of a covered product to which a rule under this section*
6 *applies—*

7 (A) *include on the label,*

8 (B) *separately attach to the product, or*

9 (C) *ship with the product,*

10 *additional information relating to energy consumption, if the*
11 *Commission determines that such additional information would*
12 *assist consumers in making purchasing decisions and that*
13 *such requirement would not be unduly burdensome to manu-*
14 *facturers.*

15 (6) *The Commission may delay the effective date of the*
16 *requirement specified in paragraph (1)(B) of this sub-*
17 *section, insofar as it requires the disclosure on the label of*
18 *information respecting range of a measure of energy con-*
19 *sumption, for not more than 12 months after the date on*
20 *which such requirements would otherwise take effect, if the*
21 *Commission determines that such information will not be*
22 *available within an adequate period of time before such date.*

23 (d) *A rule under this section (or an amendment thereto)*
24 *shall not apply to any covered product the manufacture of*

1 which was completed prior to the effective date of such rule
2 or amendment, as the case may be.

3 (e) The Administrator, in consultation with the Com-
4 mission, shall study consumer products for which labeling
5 rules under this section have not been proposed, in order to
6 determine the aggregate energy consumption of such products
7 and to determine whether the imposition of labeling require-
8 ments under this section would be feasible and useful to con-
9 sumers in making purchasing decisions. The Administrator
10 shall include the results of such study in the annual report
11 under section 338.

12 (f) The Administrator and the Commission shall con-
13 sult with each other on a continuing basis as may be necessary
14 or appropriate to carry out their respective responsibilities
15 under this part. Before the Commission makes any deter-
16 mination under subsection (a) (1) or (2), it shall obtain
17 the views of the Administrator and shall take such views into
18 account in making such determination.

19 (g) Until such time as labeling rules under this section
20 take effect with respect to a covered product, this section shall
21 not affect any authority of the Commission under the Federal
22 Trade Commission Act to require labeling with respect to
23 energy consumption of such covered product.

ENERGY EFFICIENCY STANDARDS

1
2 *SEC. 325. (a)(1)(A) Not later than 180 days after the*
3 *date of enactment of this Act, the Administrator shall, by*
4 *rule, prescribe an energy efficiency improvement target for*
5 *each type of covered product specified in paragraphs (1)*
6 *through (10) of section 322(a).*

7 *(B) The targets prescribed under subparagraph (A)*
8 *shall be designed so that, if met, aggregate energy efficiency*
9 *of covered products of all types specified in paragraphs (1)*
10 *through (10) of section 322(a) which are manufactured*
11 *in calendar year 1980 will represent an improvement over*
12 *the aggregate energy efficiency achieved by products of all*
13 *such types manufactured in calendar year 1972 by the*
14 *percentage which is the maximum percentage improvement*
15 *which the Administrator determines is economically and tech-*
16 *nologically feasible, but which in any case is not less than*
17 *20 percent.*

18 *(2) Not later than one year after the date of enactment*
19 *of this Act, the Administrator shall, by rule, prescribe an*
20 *energy efficiency improvement target for each type of covered*
21 *products specified in paragraphs (11), (12), and (13) of*
22 *section 322(a). Each such target shall be designed to achieve*
23 *the maximum improvement in energy efficiency which the Ad-*
24 *ministrator determines is economically and technologically*

1 *feasible to attain for each such type manufactured in calen-*
2 *dar year 1980.*

3 (3) *The Administrator may, from time to time, by rule,*
4 *modify any energy efficiency improvement target prescribed*
5 *under paragraph (1) or (2) so long as such target, as modi-*
6 *fied, meets the applicable requirements of paragraph (1) or*
7 *(2).*

8 (4)(A) *The Administrator shall require each manufac-*
9 *turer of covered products of the types specified in paragraphs*
10 *(1) through (13) of section 332(a) to submit such reports,*
11 *with respect to improvement of energy efficiency of such prod-*
12 *ucts, as the Administrator determines may be necessary to*
13 *establish targets under this subsection or to ascertain whether*
14 *covered products of any such type will achieve the percentage*
15 *improvement prescribed by the energy efficiency improvement*
16 *target for such type.*

17 (B) *If, on the basis of the reports received under sub-*
18 *paragraph (A) or other information available to the Admin-*
19 *istrator, he determines that an energy efficiency improvement*
20 *target applicable to any type of covered products specified in*
21 *paragraphs (1) through (13) of section 322(a) is not likely*
22 *to be achieved, the Administrator shall commence a proceed-*
23 *ing under subsection (b) to prescribe an energy efficiency*
24 *standard for such type. He shall prescribe such a standard*

1 in such proceeding for such type (or for one or more classes
2 thereof) if he determines that—

3 (i) improvement of energy efficiency of covered
4 products of such type (or class) is technologically fea-
5 sible and economically justified, and

6 (ii) the application of the labeling rule applicable to
7 such type (or class) is not sufficient to induce manufac-
8 turers to produce, and consumers and other persons to
9 purchase, covered products of such type (or class) which
10 achieve the maximum energy efficiency which it is tech-
11 nologically feasible to attain, and which is economically
12 justified.

13 (C) For purposes of subparagraph (B), improvement
14 of energy efficiency is economically justified if the benefits of
15 reduced energy consumption, and savings in operating costs
16 throughout the estimated average life of the covered product,
17 outweigh—

18 (i) the additional costs to purchasers of any result-
19 ing increase in initial charges for, or maintenance ex-
20 penses of, the covered product.

21 (ii) any lessening of the utility or the performance
22 of the covered product, and

23 (iii) any negative effects on competition.

24 (D) For purposes of subparagraph (C) (iii), the Ad-
25 ministratoꝛ shall not determine that there are any negative

1 effects on competition, unless (on request of the Adminis-
2 trator, the Commission, or any person, or on his own motion)
3 the Attorney General makes such determination and submits
4 it in writing to the Administrator, together with his analysis
5 of the nature and extent of such negative effects. The deter-
6 mination of the Attorney General shall be available for pub-
7 lic inspection.

8 (5) The Administrator may (without regard to para-
9 graphs (1) through (4)) commence a proceeding to pre-
10 scribe an energy efficiency standard applicable to any type
11 or class of covered product (other than a consumer product
12 classified as a covered product under section 322(b)). In
13 such proceeding he may prescribe such a standard if he
14 makes the determination specified in clauses (i) and (ii) of
15 paragraph (4)(B) of this subsection.

16 (b) Any energy efficiency standard shall be prescribed in
17 accordance with the following procedure:

18 (1) The Administrator shall (A) publish an ad-
19 vance notice of proposed rulemaking which specifies (i)
20 the type or class of covered products to which the rule will
21 apply, and (ii) the energy efficiency level which the Ad-
22 ministrator proposes to require by such energy efficiency
23 standard, and (B) invite interested persons to make
24 within 90 days after the date of publication of such
25 advance notice—

1 (i) written or oral presentations of data, views,
2 and argument as to the proposed level of energy effi-
3 ciency, and

4 (ii) a proposed energy efficiency standard appli-
5 cable to such type or class of covered product.

6 (2) A proposed rule which prescribes an energy
7 efficiency standard for a type or class of covered prod-
8 ucts may not be prescribed earlier than 120 days after
9 the date of publication of advance notice of proposed
10 rulemaking for such type or class.

11 (3) A rule prescribing an energy efficiency stand-
12 ard for a class or type may not be published earlier
13 than 60 days after the date of publication of the pro-
14 posed rule for such type or class. Such rule shall take
15 effect not earlier than 180 days after the date of its
16 publication in the Federal Register. Such rule (or any
17 amendment thereto) shall not apply to any covered prod-
18 uct the manufacture of which was completed prior to
19 the effective date of the rule or amendment as the case
20 may be.

21 (c) An energy efficiency standard prescribed under this
22 section shall include test procedures prescribed in accordance
23 with section 3.23, and may include any requirement which the
24 Administrator determines is necessary to assure that each
25 covered product to which such standard applies meets the

1 *required minimum level of energy efficiency specified in such*
2 *standard.*

3 *(d) A rule with respect to any type or class of covered*
4 *products prescribed under this section may not take effect*
5 *unless a rule with respect to such type or class of covered*
6 *products prescribed under section 324 has been in effect at*
7 *least 18 months prior to the effective date of the rule under*
8 *this section.*

9 *REQUIREMENTS OF MANUFACTURERS AND PRIVATE*
10 *LABELERS*

11 *SEC. 326. (a) Each manufacturer of a covered product*
12 *to which a rule under section 324 applies shall provide*
13 *a label which meets, and is displayed in accordance with,*
14 *the requirements of such rule. If such manufacturer or any*
15 *distributor, retailer, or private labeler of such product ad-*
16 *vertises such product in a catalog from which it may be pur-*
17 *chased, such catalog shall contain all information required*
18 *to be displayed on the label, except as otherwise provided*
19 *by rule of the Commission. The preceding sentence shall not*
20 *require that a catalog contain information respecting a*
21 *covered product if the distribution of such catalog com-*
22 *menced before the effective date of the labeling rule under sec-*
23 *tion 324 applicable to such product.*

24 *(b)(1) Each manufacturer of a covered product to*
25 *which a rule under section 324 applies shall notify the*

1 Commission, not later than 60 days after the date such
2 rule takes effect, of the models in current production (and
3 starting serial numbers of those models) to which such rule
4 applies.

5 (2) If requested by the Administrator or Commission,
6 the manufacturer of a covered product to which a rule under
7 section 324 applies shall provide, within 30 days of the date
8 of the request, the data from which the information included
9 on the label and required by the rule was derived. Data shall
10 be kept on file by the manufacturer for a period provided in
11 the rule.

12 (3) When requested by the Commission, the manufac-
13 turer of covered products to which a rule under section 324
14 applies shall supply at his expense a reasonable number of
15 such covered products to any laboratory designated by the
16 Commission for the purpose of ascertaining whether the
17 information set out on the label, as required under section 324,
18 is accurate. Any reasonable charge levied by the laboratory
19 for such testing shall be borne by the United States.

20 (4) Each manufacturer of a covered product to which
21 a rule under section 324 applies shall annually, at a time
22 specified by the Commission, supply to the Commission rele-
23 vant data respecting energy consumption developed in accord-
24 ance with the test procedures applicable to such product
25 under section 323.

1 (5) A rule under section 323, 324, or 325 may require
2 the manufacturer or his agent to permit a representative
3 designated by the Commission to observe any testing required
4 by this part and inspect the results of such testing.

5 (c) Each manufacturer shall use labels reflecting the
6 range data required to be disclosed under section 324(c)
7 (1)(B) after the expiration of 60 days following the date
8 of publication of any revised table of ranges unless the rule
9 under section 324 provides for a later date. The Commission
10 may not require labels be changed to reflect revised tables of
11 ranges more often than annually.

12 EFFECT ON OTHER LAW

13 SEC. 327. (a) This part supersedes any State regulation
14 insofar as such State regulation—

15 (1) may now or hereafter provide for the disclosure
16 of information with respect to any measure of energy
17 consumption of any covered product—

18 (A) if there is any rule under section 323
19 applicable to such covered product, and such State
20 regulation requires testing in any manner other than
21 that prescribed in such rule under section 323, or

22 (B) if there is a rule under section 324 appli-
23 cable to such covered product and such State regula-
24 tion requires disclosure of information other than

1 information disclosed in accordance with such rule
2 under section 324; or

3 (2) may now or hereafter provide for any energy
4 efficiency standard or similar requirement with respect
5 to energy efficiency or energy use of a covered product—

6 (A) if there is a standard under section 325
7 applicable to such product, and such State regula-
8 tion is not identical to such standard, or

9 (B) if there is a rule under section 323 or 324
10 applicable to such product and compliance with such
11 State regulation cannot be determined from testing
12 in accordance with the testing procedures specified
13 in such rule.

14 (b) (1) If a State regulation provides for an energy effi-
15 ciency standard or similar requirement respecting energy use
16 or energy efficiency of a covered product and if such State
17 regulation is not superseded by subsection (a) (2), then any
18 person subject to such State regulation may petition the Ad-
19 ministrator for the prescription of a rule under this subsection
20 which supersedes such State regulation in whole or in part.
21 The Administrator shall, within 6 months after the date such
22 a petition is filed, either deny such petition or prescribe a rule
23 under this subsection superseding such State regulation. The
24 Administrator shall issue such a rule with respect to a State

1 regulation if and only if the petitioner demonstrates to the
2 satisfaction of the Administrator that—

3 (A) there is no significant State or local interest suffi-
4 cient to justify such State regulation; and

5 (B) such State regulation unduly burdens interstate
6 commerce.

7 (2) Notwithstanding the provisions of subsection (a),
8 any State regulation which provides for an energy efficiency
9 standard or similar requirement respecting energy use or
10 energy efficiency of a covered product and compliance with
11 such standard can be determined by testing in accordance
12 with Federal test procedures shall not be superseded by the
13 provisions of this part if the State prescribing such standard
14 demonstrates and the Administrator finds, by rule, that—

15 (A) such State regulation contains a more stringent
16 energy efficiency standard than the corresponding Fed-
17 eral standard;

18 (B) there is a substantial State or local need which
19 is sufficient to justify such State regulation; and

20 (C) such State regulation does not unduly burden
21 interstate commerce.

22 (c) Notwithstanding the provisions of subsection (a),
23 any State regulation which sets forth procurement standards
24 for a State (or political subdivision thereof) shall not be

1 *superseded by the provisions of this part if such State stand-*
2 *ards are more stringent than the corresponding Federal*
3 *standards.*

4 *(d) For purposes of this section, the term "State regu-*
5 *lation" means a law or regulation of a State or political*
6 *subdivision thereof.*

7 *(e) Any disclosure with respect to energy use, energy*
8 *efficiency, or estimated annual operating cost, which is*
9 *required to be made under the provisions of this part, shall*
10 *not create an express or implied warranty under State or*
11 *Federal law that such energy efficiency will be achieved, or*
12 *that such energy use or estimated annual operating cost will*
13 *not be exceeded, under conditions of actual use.*

14

RULES

15 *SEC. 328. The Commission and the Administrator may*
16 *each issue such rules as each deems necessary to carry out*
17 *the provisions of this part.*

18

AUTHORITY TO OBTAIN INFORMATION

19 *SEC. 329. For purposes of carrying out this part, the*
20 *Commission and the Administrator may each sign and issue*
21 *subpenas for the attendance and testimony of witnesses and*
22 *the production of relevant books, records, papers, and other*
23 *documents and may administer oaths. Witnesses summoned*
24 *under the provisions of this section shall be paid the same*
25 *fees and mileage as are paid to witnesses in the courts of the*

1 *United States. In case of contumacy by, or refusal to obey*
2 *a subpoena served upon any persons subject to this part, the*
3 *Commission and the Administrator may each seek an order*
4 *from the district court of the United States for any district*
5 *in which such person is found or resides or transacts busi-*
6 *ness requiring such person to appear and give testimony, or*
7 *to appear and produce documents.*

8 *EXPORTS*

9 *SEC. 330. This part shall not apply to any covered*
10 *product if (1) such covered product is manufactured, sold,*
11 *or held for sale for export from the United States (or*
12 *such product was imported for export), unless such product*
13 *is in fact distributed in commerce for use in the United*
14 *States, and (2) such covered product when distributed in*
15 *commerce, or any container in which it is enclosed when so*
16 *distributed, bears a stamp or label stating that such covered*
17 *product is intended for export.*

18 *IMPORTS*

19 *SEC. 331. Any covered product offered for importa-*
20 *tion in violation of section 332 shall be refused admission*
21 *into the customs territory of the United States under rules*
22 *issued by the Secretary of the Treasury, except that the Secre-*
23 *tary of the Treasury may, by such rules, authorize the im-*
24 *portation of such covered product upon such terms and*
25 *conditions (including the furnishing of a bond) as may*

1 appear to him appropriate to ensure that such covered
2 product will not violate section 332, or will be exported or
3 abandoned to the United States. The Secretary of the Treas-
4 ury shall prescribe rules under this section not later than
5 180 days after the date of enactment of this Act.

6 PROHIBITED ACTS

7 SEC. 332. (a) It shall be unlawful—

8 (1) for any manufacturer or private labeler to dis-
9 tribute in commerce any new covered product to which
10 a rule under section 324 applies, unless such covered
11 product is labeled in accordance with such rule;

12 (2) for any manufacturer, distributor, retailer, or
13 private labeler to remove from any new covered prod-
14 uct or render illegible any label required to be provided
15 with such product under a rule under section 324;

16 (3) for any manufacturer to fail to permit access
17 to, or copying of, records required to be supplied under
18 this part, or fail to make reports or provide other infor-
19 mation required to be supplied under this part;

20 (4) for any person to fail to comply with an applica-
21 ble requirement of section 326 (a), (b) (2), (b) (3), or
22 (b) (5); or

23 (5) for any manufacturer or private labeler to dis-
24 tribute in commerce any new covered product which is

1 *act, and each day of violation of section 332(a) (3) or (4)*
2 *shall constitute a separate violation.*

3 *(b) As used in subsection (a), the term "knowingly"*
4 *means (1) the having of actual knowledge, or (2) the pre-*
5 *sumed having of knowledge deemed to be possessed by a rea-*
6 *sonable man who acts in the circumstances, including knowl-*
7 *edge obtainable upon the exercise of due care.*

8 *(c) It shall be an unfair or deceptive act or practice in*
9 *or affecting commerce (within the meaning of section 5(a)*
10 *(1) of the Federal Trade Commission Act) for any person*
11 *to violate section 323(d)(2).*

12 *INJUNCTIVE ENFORCEMENT*

13 *SEC. 334. The United States district courts shall have*
14 *jurisdiction to restrain (1) any violation of section 332 and*
15 *(2) any person from distributing in commerce any covered*
16 *product which does not comply with an applicable rule under*
17 *section 324 or 325. Such action may be brought in any*
18 *United States district court for a district wherein any act,*
19 *omission, or transactions constituting the violation occurred,*
20 *or in such court for the district wherein the defendant is*
21 *found or transacts business. In any action under this section,*
22 *process may be served on a defendant in any other district*
23 *in which the defendant resides or may be found.*

CITIZEN SUITS

1
2 *SEC. 335. (a) Except as otherwise provided in subsec-*
3 *tion (b), any person may commence a civil action against—*

4 *(1) any manufacturer or private labeler who is*
5 *alleged to be in violation of any provision of this part*
6 *or any rule under this part (excluding sections 325 and*
7 *332(a)(5), and rules thereunder); or*

8 *(2) any Federal agency which has a responsibility*
9 *under this part where there is an alleged failure of*
10 *such agency to perform any act or duty under this*
11 *part which is not discretionary (excluding any act or*
12 *duty under section 325 or 332(a)(5)).*

13 *The United States district courts shall have jurisdiction, with-*
14 *out regard to the amount in controversy or the citizenship of*
15 *the parties, to enforce such provision or rule, as the case may*
16 *be.*

17 *(b) No action may be commenced—*

18 *(1) under subsection (a)(1)—*

19 *(A) prior to 60 days after the date on which*
20 *the plaintiff has given notice of the violation (i)*
21 *to the Administrator, (ii) the Commission, and*
22 *(iii) to any alleged violator of such provision or*
23 *rule, or*

1 (B) if the Commission has commenced and is
2 diligently prosecuting a civil action to require com-
3 pliance with such provision or rule, but, in any such
4 action, any person may intervene as a matter of
5 right.

6 (2) under subsection (a)(2) prior to 60 days after
7 the date on which the plaintiff has given notice of such
8 action to the Administrator and Commission.

9 Notice under this subsection shall be given in such manner as
10 the Commission shall prescribe by rule.

11 (c) In such action under this section, the Administrator
12 or the Commission (or both), if not a party, may intervene
13 as a matter of right.

14 (d) The court, in issuing any final order in any action
15 brought pursuant to subsection (a) of this section, may award
16 costs of litigation (including reasonable attorney and expert
17 witness fees) to any party, whenever the court determines
18 such award is appropriate.

19 (e) Nothing in this section shall restrict any right which
20 any person (or class of persons) may have under any statute
21 or common law to seek enforcement of this part or any rule
22 thereunder, or to seek any other relief (including relief
23 against the Administrator or the Commission).

24 (f) For purposes of this section, if a manufacturer or
25 private labeler complied in good faith with a rule under this

1 part, then he shall not be deemed to have violated any pro-
2 vision of this part by reason of the alleged invalidity of such
3 rule.

4 ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

5 SEC. 336. (a)(1) Rules under sections 323, 324, 325
6 (a)(1), (2), (3), and (4)(A), 327(b), or 328 shall be
7 prescribed in accordance with section 553 of title 5, United
8 States Code, except that interested persons shall be afforded
9 an opportunity to present written and oral data, views, and
10 arguments with respect to any proposed rule. A transcript
11 shall be kept of any oral presentation under this paragraph.

12 (2) Subsections (c) and (d) of section 18 of the
13 Federal Trade Commission Act shall apply to rules under
14 section 325 other than subsections (a)(1), (2), (3), and
15 (4)(A) to the same extent that such subsections apply to
16 rules under section 18(a)(1)(B) of such Act.

17 (b)(1) Any person who will be adversely affected by a
18 rule promulgated under section 323 or 324 when it is effective
19 may at any time prior to the sixtieth day after the date such
20 rule is promulgated file a petition with the United States court
21 of appeals for the circuit wherein such person resides or has
22 his principal place of business, for a judicial review thereof.
23 A copy of the petition shall be forthwith transmitted by the
24 clerk of the court to the agency which prescribed the rule.
25 Such agency thereupon shall file in the court the written

1 *submissions to, and transcript of, the proceedings on which*
2 *the rule was based as provided in section 2112 of title 28,*
3 *United States Code.*

4 (2) *Upon the filing of the petition referred to in para-*
5 *graph (1), the court shall have jurisdiction to review the rule*
6 *in accordance with chapter 7 of title 5, United States Code,*
7 *and to grant appropriate relief as provided in such chapter.*
8 *No rule under section 323 or 324 may be affirmed unless sup-*
9 *ported by substantial evidence.*

10 (3) *The judgment of the court affirming or setting*
11 *aside, in whole or in part, any such rule shall be final, sub-*
12 *ject to review by the Supreme Court of the United States*
13 *upon certiorari or certification as provided in section 1254 of*
14 *title 28, United States Code.*

15 (4) *The remedies provided for in this subsection shall be*
16 *in addition to, and not in substitution for, any other remedies*
17 *provided by law.*

18 (5) *Section 18(e) of the Federal Trade Commission*
19 *Act shall apply to rules under section 325 other than sub-*
20 *sections (a) (1), (2), (3), and (4)(A) to the same extent*
21 *that it applies to rules under section 18(a)(1)(B) of such*
22 *Act.*

23 **CONSUMER EDUCATION**

24 *SEC. 337. The Administrator shall, in close cooperation*
25 *and coordination with the Commission and appropriate in-*

1 *dustry trade associations and industry members, including*
2 *retailers, and interested consumer and environmental organi-*
3 *zations, carry out a program to educate consumers and other*
4 *persons with respect to—*

5 *(1) the significance of estimated annual operating*
6 *costs;*

7 *(2) the way in which comparative shopping, in-*
8 *cluding comparisons of estimated annual operating costs,*
9 *can save energy for the Nation and money for consumers;*
10 *and*

11 *(3) such other matters as the Administrator deter-*
12 *mines may encourage the conservation of energy in the*
13 *use of consumer products.*

14 *Such steps to educate consumers may include publications,*
15 *audiovisual presentations, demonstrations, and the sponsor-*
16 *ship of national and regional conferences involving manu-*
17 *facturers, distributors, retailers, and consumers, and State,*
18 *local, and Federal Government representatives. Nothing in*
19 *this section may be construed to require the compilation of*
20 *lists which compare the estimated annual operating costs of*
21 *consumer products by model or manufacturer's name.*

22 *ANNUAL REPORT*

23 *SEC. 338. The Administrator shall report to the Con-*
24 *gress and the President either (1) as part of his annual re-*

1 port, or (2) in a separate report submitted annually, on the
2 progress of the program undertaken pursuant to this part and
3 on the energy savings impact of this part.

4 AUTHORIZATION OF APPROPRIATIONS

5 SEC. 339. (a) There are authorized to be appropriated
6 to the Administrator not more than the following amounts
7 to carry out its responsibilities under this part—

8 (1) \$1,700,000 for fiscal year 1976;

9 (2) \$1,500,000 for fiscal year 1977; and

10 (3) \$1,500,000 for fiscal year year 1978.

11 (b) There are authorized to be appropriated to the
12 Commission not more than the following amounts to carry
13 out its responsibilities under this part—

14 (1) \$650,000 for fiscal year 1976;

15 (2) \$700,000 for fiscal year 1977; and

16 (3) \$700,000 for fiscal year 1978.

17 (c) There are authorized to be appropriated to the Ad-
18 ministrator to be allocated to the National Bureau of Stand-
19 ards to carry out its responsibilities under this part, not more
20 than the following amounts—

21 (1) \$1,100,000 for fiscal year 1976;

22 (2) \$700,000 for fiscal year 1977; and

23 (3) \$700,000 for fiscal year 1978.

1 *PART C—STATE ENERGY CONSERVATION PLANS*

2 *FINDINGS AND PURPOSE*

3 *SEC. 361. (a) The Congress finds that—*

4 *(1) the development and implementation by States*
5 *of laws, policies, programs, and procedures to conserve*
6 *and to improve efficiency in the use of energy will have an*
7 *immediate and substantial effect in reducing the rate of*
8 *growth of energy demand and in minimizing the adverse*
9 *social, economic, political, and environmental impacts of*
10 *increasing energy consumption;*

11 *(2) the development and implementation of energy*
12 *conservation programs by States will most efficiently and*
13 *effectively minimize any adverse economic or employment*
14 *impacts of changing patterns of energy use and meet local*
15 *economic, climatic, geographic, and other unique condi-*
16 *tions and requirements of each State; and*

17 *(3) the Federal Government has a responsibility to*
18 *foster and promote comprehensive energy conservation*
19 *programs and practices by establishing guidelines for*
20 *such programs and providing overall coordination, tech-*
21 *nical assistance, and financial support for specific State*
22 *initiatives in energy conservation.*

23 *(b) It is the purpose of this part to promote the con-*

1 *ervation of energy and reduce the rate of growth of energy*
2 *demand by authorizing the Administrator to establish proce-*
3 *dures and guidelines for the development and implementa-*
4 *tion of specific State energy conservation programs and to*
5 *provide Federal financial and technical assistance to States*
6 *in support of such programs.*

7 *STATE ENERGY CONSERVATION PLANS*

8 *SEC. 362. (a) The Administrator shall, by rule, within*
9 *60 days after the date of enactment of this Act, prescribe*
10 *guidelines for the preparation of a State energy conserva-*
11 *tion feasibility report. The Administrator shall invite the*
12 *Governor of each State to submit, within 3 months after the*
13 *effective date of such guidelines, such a report. Such report*
14 *shall include:*

15 *(1) an assessment of the feasibility of establishing a*
16 *State energy conservation goal, which goal shall consist*
17 *of a reduction, as a result of the implementation the State*
18 *energy conservation plan described in this section, of 5*
19 *percent or more in the total amount of energy consumed*
20 *in such State in the year 1980 from the projected energy*
21 *consumption for such State in the year 1980, and*

22 *(2) a proposal by such State for the development of*
23 *a State energy conservation plan to achieve such goal.*

24 *(b) The Administrator shall, by rule, within 6 months*
25 *after the date of enactment of this Act, prescribe guidelines*