H. R.  

To amend the Federal Power Act to protect the bulk-power system and electric infrastructure critical to the defense and well-being of the United States against natural and manmade electromagnetic pulse ("EMP") threats and vulnerabilities.

IN THE HOUSE OF REPRESENTATIVES

Mr. Franks of Arizona introduced the following bill; which was referred to the Committee on ____________________________

A BILL

To amend the Federal Power Act to protect the bulk-power system and electric infrastructure critical to the defense and well-being of the United States against natural and manmade electromagnetic pulse ("EMP") threats and vulnerabilities.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Secure High-voltage
6 Infrastructure for Electricity from Lethal Damage Act”
7 or the “SHIELD Act”.

(Original Signature of Member)
SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) According to the Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack (in this Act referred to as the “EMP Commission Report”), the society and economy of the United States are “critically dependent upon the availability of electricity.”.

(2) According to the EMP Commission Report, “continued electrical supply is necessary for sustaining water supplies, production and distribution of food, fuel, communications, and everything else that is part of our economy”.

(3) According to the EMP Commission Report, “contemporary U.S. society is not structured, nor does it have the means, to provide for the needs of nearly 300 million Americans without electricity.”.

(4) According to the EMP Commission Report, due to the existing electrical system operating at or near its physical capacity, “a relatively modest upset to the system can cause functional collapse.”.

(5) According to the EMP Commission Report, electromagnetic pulse (in this Act referred to as “EMP”) is a threat to the overall electrical power system.
(6) According to the EMP Commission Report, EMP occurs both naturally, such as geomagnetic storms, and via manmade devices.

(7) According to the EMP Commission Report, while the electric infrastructure “has a degree of durability against . . . the failure of one or a small number of [electric] components,” the current strategy for recovery leaves the United States ill-prepared to respond effectively to an EMP attack that would potentially result in damage to vast numbers of components nearly simultaneously over an unprecedented geographic scale.

(8) According to the EMP Commission Report, EMP “may couple ultimately unmanageable currents and voltages into an electrical system routinely operated with little margin and cause the collapse of large portions of the electrical system.”.

(9) According to the EMP Commission Report, a collapse of large portions of the electrical system will result in significant periods of power-outage and “restoration from collapse or loss of significant portions of the system [will be] exceedingly difficult.”.

(10) According to the EMP Commission Report, “should the electrical power system be lost for
any substantial period of time . . . the consequences are likely to be catastrophic to civilian society.”.

(11) According to the EMP Commission Report, “the Commission is deeply concerned that [negative] impacts [on the electric infrastructure] are certain in an EMP event unless practical steps are taken to provide protection for critical elements of the electric system.”.

SEC. 3. AMENDMENT TO THE FEDERAL POWER ACT.

(a) Critical Electric Infrastructure Security.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding after section 215 the following new section:

“SEC. 215A. CRITICAL ELECTRIC INFRASTRUCTURE SECURITY.

“(a) Definitions.—For purposes of this section:

“(1) Bulk-power system; electric reliability organization; regional entity.—The terms ‘bulk-power system’, ‘Electric Reliability Organization’, and ‘regional entity’ have the meanings given such terms in paragraphs (1), (2), and (7) of section 215(a), respectively.

“(2) Defense critical electric infrastructure.—The term ‘defense critical electric infrastructure’ means any infrastructure located in the
United States (including the territories) used for the
generation, transmission, or distribution of electric
energy that—

“(A) is not part of the bulk-power system;

and

“(B) serves a facility designated by the

President pursuant to subsection (d)(1), but is

not owned or operated by the owner or operator

of such facility.

“(3) Defense Critical Electric Infrastructure Vulnerability.—The term ‘defense
critical electric infrastructure vulnerability’ means a

weakness in defense critical electric infrastructure

that, in the event of a malicious act using an electro-
magnetic pulse, would pose a substantial risk of dis-

ruption of those electrical or electronic devices or

communications networks, including hardware, soft-

ware, and data, that are essential to the reliability

of defense critical electric infrastructure.

“(4) Electromagnetic Pulse.—The term

‘electromagnetic pulse’ means 1 or more pulses of

electromagnetic energy generated or emitted by a de-

vice capable of disabling, disrupting, or destroying

electronic equipment by means of such a pulse.
“(5) GEOMAGNETIC STORM.—The term ‘geomagnetic storm’ means a temporary disturbance of the Earth’s magnetic field resulting from solar activity.

“(6) GRID SECURITY THREAT.—The term ‘grid security threat’ means a substantial likelihood of—

“(A) a malicious act using an electromagnetic pulse, or a geomagnetic storm event, that could disrupt the operation of those electrical or electronic devices or communications networks, including hardware, software, and data, that are essential to the reliability of the bulk-power system or of defense critical electric infrastructure; and

“(B) disruption of the operation of such devices or networks, with significant adverse effects on the reliability of the bulk-power system or of defense critical electric infrastructure, as a result of such act or event.

“(7) GRID SECURITY VULNERABILITY.—The term ‘grid security vulnerability’ means a weakness that, in the event of a malicious act using an electromagnetic pulse, would pose a substantial risk of disruption to the operation of those electrical or electronic devices or communications networks, includ-
ing hardware, software, and data, that are essential
to the reliability of the bulk-power system.

“(8) LARGE TRANSFORMER.—The term ‘large
transformer’ means an electric transformer that is
part of the bulk-power system.

“(9) PROTECTED INFORMATION.—The term
‘protected information’ means information, other
than classified national security information, des-
ignated as protected information by the Commission
under subsection (e)(2)—

“(A) that was developed or submitted in
connection with the implementation of this sec-
tion;

“(B) that specifically discusses grid secu-
rity threats, grid security vulnerabilities, de-
fense critical electric infrastructure
vulnerabilities, or plans, procedures, or meas-
ures to address such threats or vulnerabilities;
and

“(C) the unauthorized disclosure of which
could be used in a malicious manner to impair
the reliability of the bulk-power system or of
defense critical electric infrastructure.

“(10) SECRETARY.—The term ‘Secretary’
means the Secretary of Energy.
“(11) Security.—The definition of ‘security’ in section 3(16) shall not apply to the provisions in this section.

“(b) Emergency Response Measures.—

“(1) Authority to address grid security threats.—Whenever the President issues and provides to the Commission (either directly or through the Secretary) a written directive or determination identifying an imminent grid security threat, the Commission may, with or without notice, hearing, or report, issue such orders for emergency measures as are necessary in its judgment to protect the reliability of the bulk-power system or of defense critical electric infrastructure against such threat. As soon as practicable, but not later than 180 days after the date of enactment of this section, the Commission shall, after notice and opportunity for comment, establish rules of procedure that ensure that such authority can be exercised expeditiously.

“(2) Notification of Congress.—Whenever the President issues and provides to the Commission (either directly or through the Secretary) a written directive or determination under paragraph (1), the President (or the Secretary, as the case may be) shall promptly notify congressional committees of
relevant jurisdiction, including the Committee on Energy and Commerce of the House of Representa-
tives and the Committee on Energy and Natural Re-
sources of the Senate, of the contents of, and jus-
tification for, such directive or determination.

“(3) CONSULTATION.—Before issuing an order for emergency measures under paragraph (1), the Commission shall, to the extent practicable in light of the nature of the grid security threat and the ur-

geency of the need for such emergency measures, con-

sult with the Secretary, other appropriate Federal agencies, appropriate governmental authorities in Canada and Mexico, the Electric Reliability Organi-

zation, and entities described in paragraph (4).

“(4) APPLICATION.—An order for emergency measures under this subsection may apply to—

“(A) a regional entity; or

“(B) any owner, user, or operator of the bulk-power system or of defense critical electric infrastructure within the United States.

“(5) DISCONTINUANCE.—The Commission shall issue an order discontinuing any emergency meas-

ures ordered under this subsection, effective not later than 30 days after the earliest of the following:
“(A) The date upon which the President issues and provides to the Commission (either directly or through the Secretary) a written directive or determination that the grid security threat identified under paragraph (1) no longer exists.

“(B) The date upon which the Commission issues a written determination that the emergency measures are no longer needed to address the grid security threat identified under paragraph (1), including by means of Commission approval of a reliability standard under section 215 that the Commission determines adequately addresses such threat.

“(C) The date that is 1 year after the issuance of an order under paragraph (1).

“(6) COST RECOVERY.—If the Commission determines that owners, operators, or users of the bulk-power system or of defense critical electric infrastructure have incurred substantial costs to comply with an order under this subsection or subsection (c) and that such costs were prudently incurred and cannot reasonably be recovered through regulated rates or market prices for the electric energy or services sold by such owners, operators, or users, the
Commission shall, after notice and an opportunity for comment, establish a mechanism that permits such owners, operators, or users to recover such costs.

“(c) Measures to Address Grid Security Vulnerabilities.—

“(1) Commission authority.—

“(A) Reliability standards.—If the Commission, in consultation with appropriate Federal agencies, identifies a grid security vulnerability that the Commission determines has not adequately been addressed through a reliability standard developed and approved under section 215, the Commission shall, after notice and opportunity for comment and after consultation with the Secretary, other appropriate Federal agencies, and appropriate governmental authorities in Canada and Mexico, issue an order directing the Electric Reliability Organization to submit to the Commission for approval under section 215, not later than 30 days after the issuance of such order, a reliability standard requiring implementation, by any owner, operator, or user of the bulk-power system in the United States, of measures to
protect the bulk-power system against such vulnerabili-
ty. Any such standard shall include a protection plan, in-
cluding automated hardware-based solutions. The Com-
mission shall approve a reliability standard submitted pursuant to this subparagraph, unless the Commission de-
determines that such reliability standard does not ade-
quately protect against such vulnerability or otherwise does not satisfy the requirements of section 215.

“(B) Measures to address grid security vulnerabilities.—If the Commission, after notice and opportunity for comment and after consultation with the Secretary, other appropriate Federal agencies, and appropriate governmental authorities in Canada and Mexico, determines that the reliability standard submitted by the Electric Reliability Organization to address a grid security vulnerability identified under subparagraph (A) does not adequately protect the bulk-power system against such vulnerability, the Commission shall promulgate a rule or issue an order requiring implementation, by any owner, operator, or user of the bulk-power system in the United States,
of measures to protect the bulk-power system against such vulnerability. Any such rule or order shall include a protection plan, including automated hardware-based solutions. Before promulgating a rule or issuing an order under this subparagraph, the Commission shall, to the extent practicable in light of the urgency of the need for action to address the grid security vulnerability, request and consider recommendations from the Electric Reliability Organization regarding such rule or order. The Commission may establish an appropriate deadline for the submission of such recommendations.

“(2) RESCISSION.—The Commission shall approve a reliability standard developed under section 215 that addresses a grid security vulnerability that is the subject of a rule or order under paragraph (1)(B), unless the Commission determines that such reliability standard does not adequately protect against such vulnerability or otherwise does not satisfy the requirements of section 215. Upon such approval, the Commission shall rescind the rule promulgated or order issued under paragraph (1)(B) addressing such vulnerability, effective upon the ef-
effective date of the newly approved reliability standard.

“(3) GEOMAGNETIC STORMS AND ELECTROMAGNETIC PULSE.—Not later than 6 months after the date of enactment of this section, the Commission shall, after notice and an opportunity for comment and after consultation with the Secretary and other appropriate Federal agencies, issue an order directing the Electric Reliability Organization to submit to the Commission for approval under section 215, not later than 6 months after the issuance of such order, reliability standards adequate to protect the bulk-power system from any reasonably foreseeable geomagnetic storm or electromagnetic pulse event. The Commission’s order shall specify the nature and magnitude of the reasonably foreseeable events against which such standards must protect. Such standards shall appropriately balance the risks to the bulk-power system associated with such events, including any regional variation in such risks, the costs of mitigating such risks, and the priorities and timing associated with implementation. If the Commission determines that the reliability standards submitted by the Electric Reliability Organization pursuant to this paragraph are inad-
equate, the Commission shall promulgate a rule or
issue an order adequate to protect the bulk-power
system from geomagnetic storms or electromagnetic
pulse as required under paragraph (1)(B).

“(4) LARGE TRANSFORMER AVAILABILITY.—
Not later than 1 year after the date of enactment
of this section, the Commission shall, after notice
and an opportunity for comment and after consulta-
tion with the Secretary and other appropriate Fed-
eral agencies, issue an order directing the Electric
Reliability Organization to submit to the Commis-
ion for approval under section 215, not later than
1 year after the issuance of such order, reliability
standards addressing availability of large trans-
formers. Such standards shall require entities that
own or operate large transformers to ensure, individ-
ually or jointly, adequate availability of large trans-
formers to promptly restore the reliable operation of
the bulk-power system in the event that any such
transformer is destroyed or disabled as a result of
a geomagnetic storm event or electromagnetic pulse
event. The Commission’s order shall specify the na-
ture and magnitude of the reasonably foreseeable
events that shall provide the basis for such stand-
ards. Such standards shall—
“(A) provide entities subject to the standards with the option of meeting such standards individually or jointly; and

“(B) appropriately balance the risks associated with a reasonably foreseeable event, including any regional variation in such risks, and the costs of ensuring adequate availability of spare transformers.

“(d) CRITICAL DEFENSE FACILITIES.—

“(1) DESIGNATION.—Not later than 180 days after the date of enactment of this section, the President shall designate, in a written directive or determination provided to the Commission, facilities located in the United States (including the territories) that are—

“(A) critical to the defense of the United States; and

“(B) vulnerable to a disruption of the supply of electric energy provided to such facility by an external provider.

The number of facilities designated by such directive or determination shall not exceed 100. The President may periodically revise the list of designated facilities through a subsequent written directive or determination provided to the Commission, provided
that the total number of designated facilities at any
time shall not exceed 100.

“(2) COMMISSION AUTHORITY.—If the Commis-

sion identifies a defense critical electric infrastruc-
ture vulnerability that the Commission, in consulta-
tion with owners and operators of any facility or fa-
cilities designated by the President pursuant to
paragraph (1), determines has not adequately been
addressed through measures undertaken by owners
or operators of defense critical electric infrastruc-
ture, the Commission shall, after notice and an op-
portunity for comment and after consultation with
the Secretary and other appropriate Federal agen-
cies, promulgate a rule or issue an order requiring
implementation, by any owner or operator of defense
critical electric infrastructure, of measures to protect
the defense critical electric infrastructure against
such vulnerability. The Commission shall exempt
from any such rule or order any specific defense
critical electric infrastructure that the Commission
determines already has been adequately protected
against the identified vulnerability. The Commission
shall make any such determination in consultation
with the owner or operator of the facility designated
by the President pursuant to paragraph (1) that relies upon such defense critical electric infrastructure.

“(3) COST RECOVERY.—An owner or operator of defense critical electric infrastructure shall be required to take measures under paragraph (2) only to the extent that the owners or operators of a facility or facilities designated by the President pursuant to paragraph (1) that rely upon such infrastructure agree to bear the full incremental costs of compliance with a rule promulgated or order issued under paragraph (2).

“(e) PROTECTION OF INFORMATION.—

“(1) PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.—Protected information shall—

“(A) be exempt from disclosure under section 552(b)(3) of title 5, United States Code; and

“(B) not be made available pursuant to any State, local, or tribal law requiring disclosure of information or records.

“(2) INFORMATION SHARING.—

“(A) IN GENERAL.—Consistent with the Controlled Unclassified Information framework established by the President, the Commission
shall promulgate such regulations and issue such orders as necessary to designate protected information and to prohibit the unauthorized disclosure of such protected information.

“(B) SHARING OF PROTECTED INFORMATION.—The regulations promulgated and orders issued pursuant to subparagraph (A) shall provide standards for and facilitate the appropriate sharing of protected information with, between, and by Federal, State, local, and tribal authorities, the Electric Reliability Organization, regional entities, and owners, operators, and users of the bulk-power system in the United States and of defense critical electric infrastructure. In promulgating such regulations and issuing such orders, the Commission shall take account of the role of State commissions in reviewing the prudence and cost of investments within their respective jurisdictions. The Commission shall consult with appropriate Canadian and Mexican authorities to develop protocols for the sharing of protected information with, between, and by appropriate Canadian and Mexican authorities and owners, operators, and
users of the bulk-power system outside the United States.

“(3) Submission of information to Congress.—Nothing in this section shall permit or authorize the withholding of information from Congress, any committee or subcommittee thereof, or the Comptroller General.

“(4) Disclosure of nonprotected information.—In implementing this section, the Commission shall protect from disclosure only the minimum amount of information necessary to protect the reliability of the bulk-power system and of defense critical electric infrastructure. The Commission shall segregate protected information within documents and electronic communications, wherever feasible, to facilitate disclosure of information that is not designated as protected information.

“(5) Duration of designation.—Information may not be designated as protected information for longer than 5 years, unless specifically redesignated by the Commission.

“(6) Removal of designation.—The Commission may remove the designation of protected information, in whole or in part, from a document or electronic communication if the unauthorized disclo-
sure of such information could no longer be used to
impair the reliability of the bulk-power system or of
defense critical electric infrastructure.

“(7) JUDICIAL REVIEW OF DESIGNATIONS.—
Notwithstanding subsection (f) of this section or sec-
tion 313, a person or entity may seek judicial review
of a determination by the Commission concerning
the designation of protected information under this
subsection exclusively in the district court of the
United States in the district in which the complain-
ant resides, or has his principal place of business, or
in the District of Columbia. In such a case the court
shall determine the matter de novo, and may exam-
ine the contents of documents or electronic commu-
ications designated as protected information in
camera to determine whether such documents or any
part thereof were improperly designated as protected
information. The burden is on the Commission to
sustain its designation.

“(f) JUDICIAL REVIEW.—The Commission shall act
expeditiously to resolve all applications for rehearing of
orders issued pursuant to this section that are filed under
section 313(a). Any party seeking judicial review pursuant
to section 313 of an order issued under this section may
obtain such review only in the United States Court of Appeals for the District of Columbia Circuit.

“(g) Provision of Assistance to Industry in Meeting Grid Security Protection Needs.—

“(1) Expertise and Resources.—The Secretary shall establish a program, in consultation with other appropriate Federal agencies, to develop technical expertise in the protection of systems for the generation, transmission, and distribution of electric energy against geomagnetic storms or malicious acts using electromagnetic pulse that would pose a substantial risk of disruption to the operation of those electronic devices or communications networks, including hardware, software, and data, that are essential to the reliability of such systems. Such program shall include the identification and development of appropriate technical and electronic resources, including hardware, software, and system equipment.

“(2) Sharing Expertise.—As appropriate, the Secretary shall offer to share technical expertise developed under the program under paragraph (1), through consultation and assistance, with owners, operators, or users of systems for the generation, transmission, or distribution of electric energy
located in the United States and with State commissions. In offering such support, the Secretary shall assign higher priority to systems serving facilities designated by the President pursuant to subsection (d)(1) and other critical-infrastructure facilities, which the Secretary shall identify in consultation with the Commission and other appropriate Federal agencies.

“(3) SECURITY CLEARANCES AND COMMUNICATION.—The Secretary shall facilitate and, to the extent practicable, expedite the acquisition of adequate security clearances by key personnel of any entity subject to the requirements of this section to enable optimum communication with Federal agencies regarding grid security threats, grid security vulnerabilities, and defense critical electric infrastructure vulnerabilities. The Secretary, the Commission, and other appropriate Federal agencies shall, to the extent practicable and consistent with their obligations to protect classified and protected information, share timely actionable information regarding grid security threats, grid security vulnerabilities, and defense critical electric infrastructure vulnerabilities with appropriate key personnel of owners, operators, and users of the bulk-
power system and of defense critical electric infra-
structure.”.

(b) Conforming Amendments.—

(1) Jurisdiction.—Section 201(b)(2) of the
Federal Power Act (16 U.S.C. 824(b)(2)) is amend-
ed by inserting “215A,” after “215,” each place it
appears.

(2) Public Utility.—Section 201(e) of the
Federal Power Act (16 U.S.C. 824(e)) is amended
by inserting “215A,” after “215,”.

SEC. 4. BUDGETARY COMPLIANCE.

The budgetary effects of this Act, for the purpose of
complying with the Statutory Pay-As-You-Go Act of 2010,
shall be determined by reference to the latest statement
titled “Budgetary Effects of PAYGO Legislation” for this
Act, submitted for printing in the Congressional Record
by the Chairman of the House Budget Committee, pro-
vided that such statement has been submitted prior to the
vote on passage.