

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 451

To encourage production of oil and gas within the United States by providing tax incentives and easing regulatory burdens, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 16 (legislative day, JANUARY 30), 1995

Mr. NICKLES (for himself, Mr. INHOFE, and Mr. DOLE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To encourage production of oil and gas within the United States by providing tax incentives and easing regulatory burdens, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Domestic Oil and Gas Production and Preservation Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—TAX INCENTIVES FOR OIL AND GAS PRODUCTION

Sec. 100. Amendment of 1986 Code.

### Subtitle A—Production Credit

Sec. 101. Tax credit for marginal and new domestic oil and natural gas production.

### Subtitle B—Modifications to Percentage Depletion

Sec. 111. Elimination of net income limitation on percentage depletion for oil and gas.

Sec. 112. All marginal production eligible for percentage depletion.

Sec. 113. Allocation of depletable quantities.

Sec. 114. Percentage depletion rate for marginal production.

### Subtitle C—Other Provisions

Sec. 121. Election to expense geological and geophysical expenditures.

Sec. 122. Enhanced oil recovery credit.

Sec. 123. Election for optional 5-year writeoff of intangible drilling costs.

Sec. 124. Allocation of deductions in determining net income.

## TITLE II—REGULATORY REFORM

### Subtitle A—Oil Pollution Act Amendments

Sec. 201. Definition of responsible party.

Sec. 202. Amount of financial responsibility.

### Subtitle B—Oil and Gas Royalties

Sec. 221. Period of limitation for collection of oil and gas royalties.

Sec. 222. Reduction of royalties.

### Subtitle C—Private Property Rights

Sec. 231. Short title.

Sec. 232. Findings and purpose.

Sec. 233. Definitions.

Sec. 234. Protection of private property rights.

Sec. 235. Property owner consent for entry.

Sec. 236. Right to review and dispute data collected from private property.

Sec. 237. Right to an administrative appeal of wetlands decisions.

Sec. 238. Right to administrative appeal under the Endangered Species Act of 1973.

Sec. 239. Compensation for taking of private property.

Sec. 240. Private property owner participation in cooperative agreements.

### Subtitle D—Risk Assessments

Sec. 251. Risk assessments.

## TITLE III—REPEAL OF LIMITATIONS ON EXPORTS

Sec. 301. Repeal of limitations on exports.

1     **TITLE I—TAX INCENTIVES FOR**  
 2             **OIL AND GAS PRODUCTION**

3     **SEC. 100. AMENDMENT OF 1986 CODE.**

4             Except as otherwise expressly provided, whenever in  
 5 this title an amendment or repeal is expressed in terms  
 6 of an amendment to, or repeal of, a section or other provi-  
 7 sion, the reference shall be considered to be made to a  
 8 section or other provision of the Internal Revenue Code  
 9 of 1986.

10            **Subtitle A—Production Credit**

11     **SEC. 101. TAX CREDIT FOR MARGINAL AND NEW DOMESTIC**  
 12                     **OIL AND NATURAL GAS PRODUCTION.**

13            (a) CREDIT FOR PRODUCING OIL AND GAS FROM  
 14 NEW WELLS AND MARGINAL WELLS.—Subpart D of part  
 15 IV of subchapter A of chapter 1 (relating to business cred-  
 16 its) is amended by adding at the end the following new  
 17 section:

18     **“SEC. 45C. CREDIT FOR PRODUCING OIL AND GAS FROM**  
 19                     **NEW WELLS AND MARGINAL WELLS.**

20            “(a) GENERAL RULE.—For purposes of section 38,  
 21 the new and marginal well production credit for any tax-  
 22 able year is an amount equal to the product of—

23                     “(1) the credit amount, and

1           “(2) the qualified crude oil production and the  
2 qualified natural gas production which is attrib-  
3 utable to the taxpayer.

4           “(b) CREDIT AMOUNT.—For purposes of this sec-  
5 tion—

6           “(1) IN GENERAL.—The credit amount is—

7                   “(A) \$3 per barrel of qualified crude oil  
8 production, and

9                   “(B) 50 cents per 1,000 cubic feet of  
10 qualified natural gas production.

11           “(2) REDUCTION AS OIL AND GAS PRICES IN-  
12 CREASE.—

13                   “(A) IN GENERAL.—The \$3 and 50 cents  
14 amounts under paragraph (1) shall each be re-  
15 duced (but not below zero) by an amount which  
16 bears the same ratio to such amount (deter-  
17 mined without regard to this paragraph) as—

18                           “(i) the excess of the applicable ref-  
19 erence price over \$14 (\$2.49 for qualified  
20 natural gas production), bears to

21                           “(ii) \$6 (\$1.06 for qualified natural  
22 gas production).

23           The applicable reference price for a taxable  
24 year is the reference price for the calendar year

1 preceding the calendar year in which the tax-  
2 able year begins.

3 “(B) INFLATION ADJUSTMENT.—In the  
4 case of any taxable year beginning in a calendar  
5 year after 1995, each of the dollar amounts  
6 contained in subparagraph (A) shall be in-  
7 creased to an amount equal to such dollar  
8 amount multiplied by the inflation adjustment  
9 factor for such calendar year (determined under  
10 section 43(b)(3)(B) by substituting ‘1994’ for  
11 ‘1990’).

12 “(C) REFERENCE PRICE.—For purposes of  
13 this paragraph, the term ‘reference price’  
14 means, with respect to any calendar year—

15 “(i) in the case of qualified crude oil  
16 production, the reference price determined  
17 under section 29(d)(2)(C), and

18 “(ii) in the case of qualified natural  
19 gas production, the Secretary’s estimate of  
20 the annual average wellhead price per  
21 1,000 cubic feet for all domestic natural  
22 gas.

23 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS  
24 PRODUCTION.—For purposes of this section—

1           “(1) IN GENERAL.—The terms ‘qualified crude  
2 oil production’ and ‘qualified natural gas production’  
3 mean domestic crude oil or natural gas which is pro-  
4 duced from—

5                   “(A) a marginal well, or

6                   “(B) a new well.

7           “(2) LIMITATION ON AMOUNT OF PRODUCTION  
8 WHICH MAY QUALIFY.—

9                   “(A) IN GENERAL.—Crude oil or natural  
10 gas produced during any taxable year from any  
11 well shall not be treated as qualified crude oil  
12 production or qualified natural gas production  
13 to the extent production from the well during  
14 the taxable year exceeds—

15                           “(i) in the case of a marginal well,

16                                   1,095 barrels or barrel equivalents, or

17                           “(ii) in the case of a new well—

18                                   “(I) 5,475 barrels in the case of  
19 crude oil, or

20                                   “(II) 109,500,000 cubic feet in  
21 the case of natural gas.

22                   “(B) SPECIAL RULE WHERE WELL PRO-  
23 DUCES BOTH.—In the case of a new well which  
24 produces crude oil and natural gas, the limita-  
25 tion for any taxable year applicable to natural

1 gas produced from the well shall be reduced by  
2 the barrel equivalents (expressed in cubic feet)  
3 of the crude oil produced from the well during  
4 the taxable year.

5 “(C) PROPORTIONATE REDUCTIONS.—

6 “(i) SHORT TAXABLE YEARS.—In the  
7 case of a short taxable year, the limitations  
8 under this paragraph shall be proportion-  
9 ately reduced to reflect the ratio which the  
10 number of days in the year bears to 365.

11 “(ii) WELLS NOT IN PRODUCTION EN-  
12 TIRE YEAR.—In the case of a well which is  
13 not capable of production during each day  
14 of a taxable year, the limitations under  
15 this paragraph applicable to the well shall  
16 be proportionately reduced to reflect the  
17 ratio which the number of days of produc-  
18 tion bears to the total number of days in  
19 the taxable year.

20 “(3) DEFINITIONS.—

21 “(A) MARGINAL WELL.—The term ‘mar-  
22 ginal well’ means a domestic well (other than a  
23 new well)—

1           “(i) which during the taxable year has  
2           marginal production (as defined in section  
3           613A(c)(6)), or

4           “(ii) which, during the taxable year—

5                 “(I) has average daily production  
6                 of not more than 25 barrel equiva-  
7                 lents, and

8                 “(II) produces water at a rate  
9                 not less than 95 percent of total well  
10                effluent.

11           “(B) NEW WELL.—The term ‘new well’  
12           means a domestic well drilled after December  
13           31, 1994.

14           “(C) CRUDE OIL, ETC.—The terms ‘crude  
15           oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have  
16           the meanings given such terms by section  
17           613A(e).

18           “(D) BARREL EQUIVALENT.—The term  
19           ‘barrel equivalent’ means, with respect to natu-  
20           ral gas, a conversion ratio of 6,000 cubic feet  
21           of natural gas to 1 barrel of crude oil.

22           “(d) OTHER RULES.—

23                 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-  
24                 PAYER.—In the case of a marginal well or new well  
25                 in which there is more than one owner of operating



1 interests in the well and the crude oil or natural gas  
2 production exceeds the limitation under subsection  
3 (c)(2), qualifying crude oil production or qualifying  
4 natural gas production attributable to the taxpayer  
5 shall be determined on the basis of the ratio which  
6 taxpayer's revenue interest in the production bears  
7 to the aggregate of the revenue interests of all oper-  
8 ating interest owners in the production.

9 “(2) OPERATING INTEREST REQUIRED.—Any  
10 credit under this section may be claimed only on  
11 production which is attributable to the holder of an  
12 operating interest.

13 “(3) PRODUCTION FROM NONCONVENTIONAL  
14 SOURCES EXCLUDED.—In the case of production  
15 from a marginal well which is eligible for the credit  
16 allowed under section 29 for the taxable year, no  
17 credit shall be allowable under this section unless  
18 the taxpayer elects not to claim the credit under sec-  
19 tion 29 with respect to the well.”

20 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
21 tion 38(b) is amended by striking “plus” at the end of  
22 paragraph (10), by striking the period at the end of para-  
23 graph (11) and inserting “, plus”, and by adding at the  
24 end the following new paragraph:

1           “(12) the new and marginal oil and gas well  
2           production credit determined under section 45C(a).”

3           (c) CREDIT ALLOWED AGAINST REGULAR AND MINI-  
4 MUM TAX.—

5           (1) IN GENERAL.—Subsection (c) of section 38  
6           (relating to limitation based on amount of tax) is  
7           amended by redesignating paragraph (3) as para-  
8           graph (4) and by inserting after paragraph (2) the  
9           following new paragraph:

10           “(3) SPECIAL RULES FOR OIL AND GAS PRO-  
11           DUCTION CREDIT.—

12           “(A) IN GENERAL.—In the case of the oil  
13           and gas production credit—

14           “(i) this section and section 39 shall  
15           be applied separately with respect to the  
16           credit, and

17           “(ii) in applying paragraph (1) to the  
18           credit—

19           “(I) subparagraph (A) shall not  
20           apply, and

21           “(II) the limitation under para-  
22           graph (1) (as modified by subclause  
23           (I)) shall be reduced by the credit al-  
24           lowed under subsection (a) for the

1 taxable year (other than the oil and  
2 gas production credit).

3 “(B) OIL AND GAS PRODUCTION CRED-  
4 IT.—For purposes of this subsection, the term  
5 ‘oil and gas production credit’ means the credit  
6 allowable under subsection (a) by reason of sec-  
7 tion 45C(a).”

8 (2) CONFORMING AMENDMENT.—Subclause (II)  
9 of section 38(c)(2)(A)(ii) of such Code is amended  
10 by inserting “or the oil and gas production credit”  
11 after “employment credit”.

12 (d) COORDINATION WITH SECTION 29.—Section  
13 29(a) is amended by striking “There” and inserting “At  
14 the election of the taxpayer, there”.

15 (e) CLERICAL AMENDMENT.—The table of sections  
16 for subpart D of part IV of subchapter A of chapter 1  
17 is amended by adding at the end the following item:

“45C. Credit for producing oil and gas from new wells and marginal wells.”

18 (f) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to production after the date of the  
20 enactment of this Act.

21 **Subtitle B—Modifications to**  
22 **Percentage Depletion**

23 **SEC. 111. ELIMINATION OF NET INCOME LIMITATION ON**  
24 **PERCENTAGE DEPLETION FOR OIL AND GAS.**

25 (a) ELIMINATION.—

1 (1) IN GENERAL.—Paragraph (1) of subsection  
2 (d) of section 613A (relating to the limitation based  
3 on taxable income for percentage depletion in the  
4 case of oil and gas wells) is repealed.

5 (2) OTHER PRODUCTION.—The second sentence  
6 of subsection (a) of section 613 of the Internal Reve-  
7 nue Code of 1986 (relating to percentage depletion)  
8 is amended to read as follows: “Except in the case  
9 of oil and gas wells, such allowance shall not exceed  
10 50 percent of the taxpayer’s taxable income from the  
11 property (computed without allowance for deple-  
12 tion).”

13 (b) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 1994.

16 **SEC. 112. ALL MARGINAL PRODUCTION ELIGIBLE FOR PER-**  
17 **CENTAGE DEPLETION.**

18 (a) IN GENERAL.—Paragraph (6) of section 613A(c)  
19 (relating to marginal production) is amended to read as  
20 follows:

21 “(6) SEPARATE APPLICATION TO MARGINAL  
22 PRODUCTION.—

23 “(A) IN GENERAL.—Except as provided in  
24 subsection (d)—

1           “(i) the allowance for depletion under  
2           section 611 with respect to all of a tax-  
3           payer’s marginal production of domestic  
4           crude oil and domestic natural gas shall be  
5           computed in accordance with section 613,  
6           except that, for purposes of section 613(a),  
7           the applicable percentage shall be sub-  
8           stituted for the percentage specified in sec-  
9           tion 613(b), and

10           “(ii) such marginal production shall  
11           not be taken into account under paragraph  
12           (1), including for purposes of determining  
13           the taxpayer’s average daily production of  
14           domestic crude oil or domestic natural gas  
15           eligible for application of paragraph (1).

16           “(B) APPLICABLE PERCENTAGE.—For  
17           purposes of subparagraph (A), the term ‘appli-  
18           cable percentage’ means the percentage (not  
19           greater than 25 percent) equal to the sum of—

20           “(i) 15 percent, plus

21           “(ii) 1 percentage point for each  
22           whole dollar by which \$20 exceeds the ref-  
23           erence price for crude oil for the calendar  
24           year preceding the calendar year in which  
25           the taxable year begins.

1 For purposes of this paragraph, the term ‘ref-  
2 erence price’ means, with respect to any cal-  
3 endar year, the reference price determined for  
4 such calendar year under section 29(d)(2)(C).

5 “(C) MARGINAL PRODUCTION.—The term  
6 ‘marginal production’ means domestic crude oil  
7 or domestic natural gas which is produced dur-  
8 ing any taxable year from a property which—

9 “(i) is a stripper well property for the  
10 calendar year in which the taxable year be-  
11 gins, or

12 “(ii) is a property substantially all of  
13 the production of which during such cal-  
14 endar year is heavy oil.

15 “(D) STRIPPER WELL PROPERTY.—For  
16 purposes of this paragraph, the term ‘stripper  
17 well property’ means, with respect to any cal-  
18 endar year, any property with respect to which  
19 the amount determined by dividing—

20 “(i) the average daily production of  
21 domestic crude oil and domestic natural  
22 gas from producing wells on such property  
23 for such calendar year, by

24 “(ii) the number of such wells,  
25 is 15-barrel equivalents or less.

1           “(E) HEAVY OIL.—For purposes of this  
2           paragraph, the term ‘heavy oil’ means domestic  
3           crude oil produced from any property if such  
4           crude oil had a weighted average gravity of 20  
5           degrees API or less (corrected to 60 degrees  
6           Fahrenheit).”

7           (b) CONFORMING AMENDMENT.—Paragraph (3) of  
8           section 613A(c) (defining depletable oil quantity) is  
9           amended to read as follows:

10           “(3) DEPLETABLE OIL QUANTITY.—For pur-  
11           poses of paragraph (1), the taxpayer’s depletable oil  
12           quantity is 1,000 barrels.”

13           (c) EFFECTIVE DATE.—The amendments made by  
14           this section shall apply to taxable years beginning after  
15           December 31, 1994.

16           **SEC. 113. ALLOCATION OF DEPLETABLE QUANTITIES.**

17           (a) IN GENERAL.—Subparagraphs (A) and (B) of  
18           section 613A(c)(7) (relating to special rules for production  
19           in excess of depletable quantities) are each amended by  
20           inserting “of such quantity allocated to the property by  
21           the taxpayer, or, if the taxpayer elects not to make the  
22           allocation, that amount” after “shall be that amount”.

23           (b) EFFECTIVE DATE.—The amendments made by  
24           this section shall apply to taxable years beginning after  
25           December 31, 1994.

1 **SEC. 114. PERCENTAGE DEPLETION RATE FOR MARGINAL**  
 2 **PRODUCTION.**

3 (a) IN GENERAL.—Subparagraph (B) of section  
 4 613A(c)(6), as amended by section 112(a), is amended to  
 5 read as follows:

6 “(B) APPLICABLE PERCENTAGE.—For  
 7 purposes of this paragraph, the term ‘applicable  
 8 percentage’ means the percentage (not greater  
 9 than 25 percent) equal to the sum of—

10 “(i) 15 percent, plus

11 “(ii) 1 percentage point for each  
 12 whole dollar by which \$20 exceeds the ref-  
 13 erence price for crude oil for calendar year  
 14 1994 (determined under section  
 15 29(d)(2)(C)).”

16 (b) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to taxable years beginning after  
 18 December 31, 1994.

19 **Subtitle C—Other Provisions**

20 **SEC. 121. ELECTION TO EXPENSE GEOLOGICAL AND GEO-**  
 21 **PHYSICAL EXPENDITURES.**

22 (a) IN GENERAL.—Section 263 (relating to capital  
 23 expenditures) is amended by adding at the end the follow-  
 24 ing new subsection:

25 “(j) GEOLOGICAL AND GEOPHYSICAL EXPENDI-  
 26 TURES FOR DOMESTIC OIL AND GAS WELLS.—Notwith-



1 standing subsection (a), a taxpayer may elect to treat geo-  
2 logical and geophysical expenses incurred in connection  
3 with the exploration for, or development of, oil or gas with-  
4 in the United States (as defined in section 638) as ex-  
5 penses which are not chargeable to capital account. Any  
6 expenses so treated shall be allowed as a deduction in the  
7 taxable year in which paid or incurred.”

8 (b) CONFORMING AMENDMENT.—Section 263A(c)(3)  
9 is amended by inserting “263(j),” after “263(i),”.

10 (c) EFFECTIVE DATE.—

11 (1) IN GENERAL.—The amendments made by  
12 this section shall apply to expenses paid or incurred  
13 after the date of the enactment of this Act.

14 (2) TRANSITION RULE.—In the case of any ex-  
15 penses described in section 263(j) of the Internal  
16 Revenue Code of 1986 which were paid or incurred  
17 on or before the date of the enactment of this Act,  
18 the taxpayer may elect, at such time and in such  
19 manner as the Secretary of the Treasury may pre-  
20 scribe, to amortize the unamortized portion of such  
21 expenses over the 36-month period beginning with  
22 the month in which the date of the enactment of this  
23 Act occurs. For purposes of this paragraph, the  
24 unamortized portion of any expense is the amount

1 remaining unamortized as of the first day of the 36-  
2 month period.

3 **SEC. 122. ENHANCED OIL RECOVERY CREDIT.**

4 (a) EXPANSION OF PROJECTS ELIGIBLE FOR CRED-  
5 IT.—

6 (1) IN GENERAL.—Clause (i) of section  
7 43(c)(2)(A) (defining qualified enhanced oil recovery  
8 project) is amended to read as follows:

9 “(i) which involves the application (in  
10 accordance with sound engineering prin-  
11 ciples) of 1 or more secondary or tertiary  
12 recovery methods which can reasonably be  
13 expected to result in more than an insig-  
14 nificant increase in the amount of crude oil  
15 or natural gas which ultimately will be re-  
16 covered.”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) Subparagraph (C) of section 43(c)(1)  
19 is amended to read as follows:

20 “(C) Any cost paid or incurred (whether or  
21 not chargeable to capital account) for any  
22 injectant or other costs which are used as part  
23 of a qualified enhanced oil recovery project,  
24 other than a recoverable hydrocarbon injectant  
25 described in section 193(b)(2).”

1 (B) Section 43(c)(4) is amended to read as  
2 follows:

3 “(4) SECONDARY AND TERTIARY RECOVERY  
4 METHODS.—For purposes of paragraph (2), second-  
5 ary and tertiary recovery methods shall include—

6 “(A) tertiary recovery methods described  
7 in section 193(b)(3),

8 “(B) immiscible nonhydrocarbon gas dis-  
9 placement, and

10 “(C) other secondary and tertiary recovery  
11 methods certified in accordance with paragraph  
12 (2)(B).”

13 (b) CREDIT ALLOWABLE AGAINST MINIMUM TAX.—

14 (1) IN GENERAL.—Subsection (c) of section 38  
15 (relating to limitation based on amount of tax), as  
16 amended by section 101(c), is amended by redesignig-  
17 nating paragraph (4) as paragraph (5) and by in-  
18 sserting after paragraph (3) the following new para-  
19 graph:

20 “(4) SPECIAL RULES FOR ENHANCED OIL RE-  
21 COVERY CREDIT.—

22 “(A) IN GENERAL.—In the case of the en-  
23 hanced oil recovery credit—

1           “(i) this section and section 39 shall  
2           be applied separately with respect to the  
3           credit, and

4           “(ii) in applying paragraph (1) to the  
5           credit—

6                   “(I) subparagraph (A) shall not  
7                   apply, and

8                   “(II) the limitation under para-  
9                   graph (1) (as modified by subclause  
10                   (I)) shall be reduced by the credit al-  
11                   lowed under subsection (a) for the  
12                   taxable year (other than the enhanced  
13                   oil recovery credit).

14           “(B) ENHANCED OIL RECOVERY CRED-  
15           IT.—For purposes of this subsection, the term  
16           ‘enhanced oil recovery credit’ means the credit  
17           allowable under subsection (a) by reason of sec-  
18           tion 43(a).”

19           (2) CONFORMING AMENDMENTS.—

20                   (A) Subclause (II) of section  
21                   38(c)(2)(A)(ii), as amended by section 101(c),  
22                   is amended by striking “or the oil and gas pro-  
23                   duction credit” and inserting “, the oil and gas  
24                   production credit, or the enhanced oil recovery  
25                   credit”.

1           (B) Subclause (II) of section  
2           38(c)(3)(A)(ii) is amended by inserting “or the  
3           enhanced oil recovery credit” after “production  
4           credit”.

5           (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to taxable years beginning after  
7 December 31, 1994.

8 **SEC. 123. ELECTION FOR OPTIONAL 5-YEAR WRITEOFF OF**  
9 **INTANGIBLE DRILLING COSTS.**

10          (a) OPTIONAL ELECTION FOR MINIMUM TAX PUR-  
11 POSES.—

12           (1) IN GENERAL.—Section 56(a) is amended by  
13 adding at the end the following new paragraph:

14           “(9) INTANGIBLE DRILLING COSTS.—If the tax-  
15 payer elects to have this paragraph apply, the tax-  
16 payer may disregard, for purposes of computing the  
17 taxpayer’s alternative minimum taxable income, an  
18 election under section 59(e) with respect to any por-  
19 tion of any qualified expenditure described in section  
20 59(e)(2)(C).”

21           (2) CONFORMING AMENDMENT.—Section 59(e)  
22 is amended by adding at the end the following new  
23 paragraph:

1           “(7) EXCEPTION FOR INTANGIBLE DRILLING  
2 COSTS.—

**“For election not to have this subsection apply in  
computing alternative minimum taxable income, see  
section 56(a)(9).”**

3           (b) TIME FOR MAKING ELECTIONS.—Subparagraph  
4 (B) of section 59(e)(4) is amended to read as follows:

5           “(B) TIME FOR MAKING ELECTION.—

6                   “(i) IN GENERAL.—An election under  
7 this subsection may be made or revoked at  
8 any time before the period for filing a  
9 claim for credit or refund (determined  
10 after any extension) expires.

11                   “(ii) PERIOD OF LIMITATION FOR AS-  
12 SESSMENT.—The period for assessing a  
13 deficiency attributable to any election  
14 under clause (i) (or any revocation thereof)  
15 shall not expire before the date 1 year  
16 after the date the Secretary is notified of  
17 the election (or revocation).”

18           (c) EFFECT OF ELECTION.—Paragraph (6) of section  
19 59(e) is amended by adding at the end the following: “Any  
20 deductions with respect to such portion shall not be treat-  
21 ed as directly attributable to oil and gas properties for  
22 purposes of section 57(a)(2)(C).”

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 1994.

4 **SEC. 124. ALLOCATION OF DEDUCTIONS IN DETERMINING**  
5 **NET INCOME.**

6 (a) IN GENERAL.—Clause (ii) of section 57(a)(2)(C)  
7 is amended by striking “allocable” and inserting “directly  
8 attributable”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 1994.

12 **TITLE II—REGULATORY REFORM**  
13 **Subtitle A—Oil Pollution Act**  
14 **Amendments**

15 **SEC. 201. DEFINITION OF RESPONSIBLE PARTY.**

16 Section 1001(32)(C) of the Oil Pollution Act of 1990  
17 (33 U.S.C. 2701(32)(C)) is amended—

18 (1) by striking “applicable State law or” and  
19 inserting “applicable State law relating to exploring  
20 for, drilling for, producing, or transporting oil on  
21 submerged lands on the Outer Continental Shelf in  
22 accordance with a license or permit issued for such  
23 purpose, or under”; and

24 (2) by striking “43 U.S.C. 1301–1356” and in-  
25 serting “(43 U.S.C. 1301 et seq.),”.

1 **SEC. 202. AMOUNT OF FINANCIAL RESPONSIBILITY.**

2 Section 1016(c)(1) of the Oil Pollution Act of 1990  
3 (33 U.S.C. 2716(c)(1)) is amended to read as follows:

4 “(1) IN GENERAL.—

5 “(A) EVIDENCE OF FINANCIAL RESPON-  
6 SIBILITY REQUIRED.—Except as provided in  
7 paragraph (2), each responsible party with re-  
8 spect to an offshore facility described in section  
9 1001(32)(C) located seaward of the United  
10 States coastline that is—

11 “(i) used for drilling for, producing,  
12 or processing oil; and

13 “(ii) has the capacity to transport,  
14 store, transfer, or otherwise handle more  
15 than 1,000 barrels of oil at any one time,  
16 shall establish and maintain evidence of finan-  
17 cial responsibility in the amount required under  
18 subparagraph (B) or (C), as applicable.

19 “(B) AMOUNT REQUIRED GENERALLY.—  
20 Except as provided in subparagraph (C), for  
21 purposes of subparagraph (A) the amount of fi-  
22 nancial responsibility required is \$35,000,000.

23 “(C) GREATER AMOUNT.—If the President  
24 determines that an amount of financial respon-  
25 sibility greater than the amount required by  
26 subparagraph (B) is appropriate for an offshore



1 facility, based on an assessment of the risk  
2 posed by the facility that includes consideration  
3 of the relative operational, environmental,  
4 human health, and other risks posed by the  
5 quantity and quality of oil that is transported,  
6 stored, transferred, or otherwise handled by the  
7 facility, for purposes of subparagraph (A) the  
8 amount of financial responsibility required shall  
9 be some amount not exceeding \$150,000,000,  
10 determined by the Secretary on the basis of  
11 clear and convincing evidence that the risks  
12 posed justify the greater amount.

13 “(D) MULTIPLE FACILITIES.—In a case in  
14 which a person is the responsible party for  
15 more than one facility subject to this sub-  
16 section, evidence of financial responsibility need  
17 be established only to meet the maximum liabil-  
18 ity applicable to the facility having the greatest  
19 maximum liability.”.

## 20 **Subtitle B—Oil and Gas Royalties**

### 21 **SEC. 221. PERIOD OF LIMITATION FOR COLLECTION OF OIL** 22 **AND GAS ROYALTIES.**

23 (a) IN GENERAL.—Except as provided in subsection  
24 (b), no administrative proceeding or court action may be  
25 commenced by the United States for recovery of a royalty

1 due under an oil or gas lease entered into under the Act  
2 entitled “An Act to promote the mining of coal, phosphate,  
3 oil, oil shale, gas, and sodium on the public domain”, ap-  
4 proved February 25, 1920 (commonly known as the Min-  
5 eral Lands Leasing Act) (30 U.S.C. 181 et seq.), the  
6 Outer Continental Shelf Lands Act (43 U.S.C. 1331 et  
7 seq.), or any other law, after the date that is 6 years after  
8 the date on which payment of the royalty becomes due.

9 (b) FALSE OR FRAUDULENT STATEMENTS.—If the  
10 lessee under a lease described in subsection (a) makes a  
11 false or fraudulent statement to an officer or employee of  
12 the United States with intent to evade, in whole or in part,  
13 the payment of a royalty, payment of the royalty shall be  
14 deemed to become due, for the purpose of subsection (a),  
15 on the date on which the United States discovers that the  
16 statement was false or fraudulent.

17 **SEC. 222. REDUCTION OF ROYALTIES.**

18 Notwithstanding any other law, the Secretary of the  
19 Interior may reduce the amount of any royalty that will  
20 be payable after the date of enactment of this Act under  
21 an oil or gas lease entered into under the Act entitled “An  
22 Act to promote the mining of coal, phosphate, oil, oil shale,  
23 gas, and sodium on the public domain”, approved Feb-  
24 ruary 25, 1920 (commonly known as the Mineral Lands  
25 Leasing Act) (30 U.S.C. 181 et seq.), the Outer Continen-

1 tal Shelf Lands Act (43 U.S.C. 1331 et seq.), or any other  
2 law.

3           **Subtitle C—Private Property**  
4                           **Rights**

5 **SEC. 231. SHORT TITLE.**

6           This subtitle may be cited as the “Private Property  
7 Owners Bill of Rights”.

8 **SEC. 232. FINDINGS AND PURPOSE.**

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

10                   (1) Our democracy was founded on principles of  
11 ownership, use, and control of private property.  
12 These principles are embodied in the fifth amend-  
13 ment to the Constitution, which prohibits the taking  
14 of private property without the payment of just com-  
15 pensation.

16                   (2) A number of Federal environmental pro-  
17 grams, specifically the Endangered Species Act of  
18 1973 (16 U.S.C. 1531 et seq.) and section 404 of  
19 the Federal Water Pollution Control Act (33 U.S.C.  
20 1344), have been implemented by employees, agents,  
21 and representatives of the Federal Government in a  
22 manner that deprives private property owners of the  
23 use and control of their property.

24                   (3) As new Federal programs are proposed that  
25 would limit and restrict the use of private property

1 to provide habitat for plant and animal species, the  
2 rights of private property owners must be recognized  
3 and respected.

4 (4) Private property owners are being forced by  
5 Federal policy to resort to extensive, lengthy, and  
6 expensive litigation to protect certain basic civil  
7 rights guaranteed by the Constitution.

8 (5) Since many private property owners do not  
9 have the financial resources or the extensive commit-  
10 ment of time to proceed in litigation against the  
11 Federal Government, a clear Federal policy is need-  
12 ed to guide and direct Federal agencies with respect  
13 to the implementation by the agencies of environ-  
14 mental laws that directly impact private property.

15 (6) While all private property owners should  
16 and must abide by nuisance laws and should not use  
17 their property in a manner that harms their neigh-  
18 bors, these laws have traditionally been enacted, im-  
19 plemented, and enforced at the State and local levels  
20 where the laws are best able to protect the rights of  
21 all private property owners and local citizens.

22 (7) While traditional pollution control laws are  
23 intended to protect the health and physical welfare  
24 of the general public, habitat protection programs in  
25 effect on the date of enactment of this Act are in-

1 tended to protect the welfare of plant and animal  
2 species, while allowing recreational and aesthetic op-  
3 portunities for the public.

4 (b) PURPOSE.—The purpose of this subtitle is to pro-  
5 vide a consistent Federal policy to—

6 (1) encourage, support, and promote the private  
7 ownership of property; and

8 (2) ensure that the constitutional and legal  
9 rights of private property owners are protected by  
10 the Federal Government and employees, agents, and  
11 representatives of the Federal Government.

12 **SEC. 233. DEFINITIONS.**

13 As used in this subtitle:

14 (1) AGENCY HEAD.—The term “agency head”  
15 means the Secretary or Administrator with jurisdic-  
16 tion or authority to take a final agency action under  
17 1 or more of the applicable provisions of law.

18 (2) APPLICABLE PROVISIONS OF LAW.—The  
19 term “applicable provisions of law” means the En-  
20 dangered Species Act of 1973 (16 U.S.C. 1531 et  
21 seq.) and section 404 of the Federal Water Pollution  
22 Control Act (33 U.S.C. 1344).

23 (3) NON-FEDERAL PERSON.—The term “non-  
24 Federal person” means a person other than an offi-

1 cer, employee, agent, department, or instrumentality  
2 of—

3 (A) the Federal Government; or

4 (B) a foreign government.

5 (4) PRIVATE PROPERTY OWNER.—The term  
6 “private property owner” means a non-Federal per-  
7 son (other than an officer, employee, agent, depart-  
8 ment, or instrumentality of a State, municipality, or  
9 political subdivision of a State, or a State, munici-  
10 pality, or political subdivision of a State) that—

11 (A) owns property referred to in subpara-  
12 graph (A) or (B) of paragraph (5); or

13 (B) holds property referred to in para-  
14 graph (5)(C).

15 (5) PROPERTY.—The term “property” means—

16 (A) land;

17 (B) any interest in land; and

18 (C) any proprietary water right.

19 (6) QUALIFIED AGENCY ACTION.—The term  
20 “qualified agency action” means an agency action  
21 (as defined in section 551(13) of title 5, United  
22 States Code) that is taken under 1 or more of the  
23 applicable provisions of law.

1 **SEC. 234. PROTECTION OF PRIVATE PROPERTY RIGHTS.**

2 (a) IN GENERAL.—In implementing and enforcing  
3 the applicable provisions of law, each agency head shall—

4 (1) comply with applicable State and tribal gov-  
5 ernment laws, including laws relating to private  
6 property rights and privacy; and

7 (2) implement and enforce the applicable provi-  
8 sions of law in a manner that has the least impact  
9 on the constitutional and other legal rights of pri-  
10 vate property owners.

11 (b) REGULATIONS.—Each agency head shall develop  
12 and implement regulations for ensuring that the constitu-  
13 tional and other legal rights of private property owners  
14 are protected in any case in which the agency head makes,  
15 or participates with other agencies in the making of, any  
16 final decision that restricts the use of private property.

17 **SEC. 235. PROPERTY OWNER CONSENT FOR ENTRY.**

18 (a) IN GENERAL.—Subject to subsection (b), an  
19 agency head may not enter privately owned property to  
20 collect information regarding the property, unless the pri-  
21 vate property owner has—

22 (1) consented in writing to the entry;

23 (2) after providing the consent, been provided  
24 notice of the entry; and

25 (3) been notified that any raw data collected  
26 from the property must be made available to the pri-

1 vate property owner at no cost, if requested by the  
2 private property owner.

3 (b) ENTRY FOR CONSENT OR NOTICE.—Subsection  
4 (a) shall not prohibit entry onto property for the purpose  
5 of obtaining consent or providing notice required under  
6 subsection (a).

7 **SEC. 236. RIGHT TO REVIEW AND DISPUTE DATA COL-**  
8 **LECTED FROM PRIVATE PROPERTY.**

9 An agency head may not use data that is collected  
10 from privately owned property to implement or enforce  
11 any of the applicable provisions of law, unless the agency  
12 head has—

13 (1) provided to the private property owner—

14 (A) access to the information;

15 (B) a detailed description of the manner in  
16 which the information was collected; and

17 (C) an opportunity to dispute the accuracy  
18 of the information; and

19 (2) determined that the information is accurate,  
20 if the private property owner disputes the accuracy  
21 of the information pursuant to paragraph (1)(C).



1 **SEC. 237. RIGHT TO AN ADMINISTRATIVE APPEAL OF WET-**  
2 **LANDS DECISIONS.**

3 Section 404 of the Federal Water Pollution Control  
4 Act (33 U.S.C. 1344) is amended by adding at the end  
5 the following:

6 “(u) ADMINISTRATIVE APPEALS.—

7 “(1) IN GENERAL.—The Secretary or the Ad-  
8 ministrator, after notice and opportunity for public  
9 comment, shall issue rules to establish procedures to  
10 provide private property owners, or authorized rep-  
11 resentatives of the owners, an opportunity for an ad-  
12 ministrative appeal of the following actions under  
13 this section:

14 “(A) A determination of regulatory juris-  
15 diction over a particular parcel of property.

16 “(B) The denial of a permit.

17 “(C) The terms and conditions of a permit.

18 “(D) The imposition of an administrative  
19 penalty.

20 “(E) The imposition of an order requiring  
21 the private property owner to restore or other-  
22 wise alter the property.

23 “(2) DECISION.—The rules issued under para-  
24 graph (1) shall provide that any administrative ap-  
25 peal of an action described in paragraph (1) shall be  
26 heard and decided by an official other than the offi-

1       cial who took the action, and shall be conducted at  
2       a location that is in the vicinity of the property in-  
3       volved in the action.

4           “(3) DEFINITIONS.—In this subsection:

5           “(A) NON-FEDERAL PERSON.—The term  
6       ‘non-Federal person’ means a person other than  
7       an officer, employee, agent, department, or in-  
8       strumentality of—

9           “(i) the Federal Government; or

10          “(ii) a foreign government.

11          “(B) PRIVATE PROPERTY OWNER.—The  
12       term ‘private property owner’ means a non-Fed-  
13       eral person (other than an officer, employee,  
14       agent, department, or instrumentality of a  
15       State, municipality, or political subdivision of a  
16       State, or a State, municipality, or political sub-  
17       division of a State) that—

18          “(i) owns property referred to in  
19       clause (i) or (ii) of subparagraph (C); or

20          “(ii) holds property referred to in sub-  
21       paragraph (C)(iii).

22          “(C) PROPERTY.—The term ‘property’  
23       means—

24          “(i) land;

25          “(ii) any interest in land; and

1 “(iii) any proprietary water right.”.

2 **SEC. 238. RIGHT TO ADMINISTRATIVE APPEAL UNDER THE**  
3 **ENDANGERED SPECIES ACT OF 1973.**

4 Section 11 of the Endangered Species Act of 1973  
5 (16 U.S.C. 1540) is amended by adding at the end the  
6 following:

7 “(i) ADMINISTRATIVE APPEALS.—

8 “(1) IN GENERAL.—The Secretary, after notice  
9 and opportunity for public comment, shall issue  
10 rules to establish procedures to provide private prop-  
11 erty owners, or authorized representatives of the  
12 owners, an opportunity for an administrative appeal  
13 of the following actions under this Act:

14 “(A) A determination that a particular  
15 parcel of property is critical habitat of a species  
16 listed under section 4.

17 “(B) The denial of a permit for an inciden-  
18 tal take.

19 “(C) The terms and conditions of a permit  
20 for an incidental take.

21 “(D) The imposition of an administrative  
22 penalty.

23 “(E) The imposition of an order prohibit-  
24 ing or substantially limiting the use of the prop-  
25 erty.

1           “(2) DECISION.—The rules issued under para-  
2 graph (1) shall provide that any administrative ap-  
3 peal of an action described in paragraph (1) shall be  
4 heard and decided by an official other than the offi-  
5 cial who took the action, and shall be conducted at  
6 a location that is in the vicinity of the parcel of  
7 property involved in the action.

8           “(3) DEFINITIONS.—In this subsection:

9           “(A) NON-FEDERAL PERSON.—The term  
10 ‘non-Federal person’ means a person other than  
11 an officer, employee, agent, department, or in-  
12 strumentality of—

13                   “(i) the Federal Government; or

14                   “(ii) a foreign government.

15           “(B) PRIVATE PROPERTY OWNER.—The  
16 term ‘private property owner’ means a non-Fed-  
17 eral person (other than an officer, employee,  
18 agent, department, or instrumentality of a  
19 State, municipality, or political subdivision of a  
20 State, or a State, municipality, or political sub-  
21 division of a State) that—

22                   “(i) owns property referred to in  
23 clause (i) or (ii) of subparagraph (C); or

24                   “(ii) holds property referred to in sub-  
25 paragraph (C)(iii).

1                   “(C) PROPERTY.—The term ‘property’  
2                   means—  
3                   “(i) land;  
4                   “(ii) any interest in land; and  
5                   “(iii) any proprietary water right.”.

6 **SEC. 239. COMPENSATION FOR TAKING OF PRIVATE PROP-**  
7                   **ERTY.**

8           (a) ELIGIBILITY.—A private property owner that, as  
9 a consequence of a final qualified agency action of an  
10 agency head, is deprived of 33 percent or more of the fair  
11 market value, or the economically viable use, of the af-  
12 fected portion of the property of the owner, as determined  
13 by a qualified appraisal expert, shall be entitled to receive  
14 compensation in accordance with this section.

15           (b) DEADLINE.—Not later than 90 days after receipt  
16 of a final decision of an agency head that deprives a pri-  
17 vate property owner of the fair market value or viable use  
18 of property for which compensation is required under sub-  
19 section (a), the private property owner may submit in writ-  
20 ing a request to the agency head for compensation in ac-  
21 cordance with subsection (c).

22           (c) AGENCY HEAD’S OFFER.—Not later than 180  
23 days after the receipt of a request for compensation under  
24 subsection (b), the agency head shall stay the decision and  
25 provide to the private property owner—

1 (1) an offer to purchase the affected property  
2 of the private property owner at the fair market  
3 value that would apply if there were no use restric-  
4 tions under the applicable provisions of law; and

5 (2) an offer to compensate the private property  
6 owner for the difference between the fair market  
7 value of the property without the restrictions and  
8 the fair market value of the property with the re-  
9 strictions.

10 (d) PRIVATE PROPERTY OWNER'S RESPONSE.—

11 (1) IN GENERAL.—A private property owner  
12 shall have 60 days after the date of receipt of the  
13 offers of the agency head under subsection (c) to ac-  
14 cept 1 of the offers or to reject both offers.

15 (2) SUBMISSION TO ARBITRATION.—If the pri-  
16 vate property owner rejects both offers, the private  
17 property owner may submit the matter for arbitra-  
18 tion to an arbitrator appointed by the agency head  
19 from a list of arbitrators submitted to the agency  
20 head by the American Arbitration Association. The  
21 arbitration shall be conducted in accordance with the  
22 real estate valuation arbitration rules of the associa-  
23 tion. For the purposes of this section, an arbitration  
24 shall be binding on the agency head and a private  
25 property owner as to the amount, if any, of com-

1       pensation owed to the private property owner and  
2       whether for the purposes of this section the private  
3       property owner has been deprived of the fair market  
4       value or viable use of property for which compensa-  
5       tion is required under subsection (a).

6       (e) JUDGMENT.—A qualified agency action of an  
7       agency head that deprives a private property owner of  
8       property as described in subsection (a), shall be deemed,  
9       at the option of the private property owner, to be a taking  
10      under the Constitution and a judgment against the United  
11      States if the private property owner—

12             (1) accepts an offer of the agency head under  
13             subsection (c); or

14             (2) submits to arbitration under subsection (d).

15       (f) PAYMENT.—An agency head shall pay a private  
16       property owner any compensation required under the  
17       terms of an offer of the agency head that is accepted by  
18       the private property owner in accordance with subsection  
19       (d), or under a decision of an arbitrator under that sub-  
20       section, by not later than 60 days after the date of the  
21       acceptance or the date of the issuance of the decision, re-  
22       spectively.

23       (g) FORM OF PAYMENT.—Payment under this sec-  
24       tion shall be in a form agreed to by the agency head and  
25       the private property owner and may be in the form of—

1           (1) payment of an amount that is equal to the  
2           fair market value of the property on the day before  
3           the date of the final qualified agency action with re-  
4           spect to which the property or interest is acquired;

5           (2) payment of an amount that is equal to the  
6           reduction in value of the property; or

7           (3) conveyance of real property or an interest in  
8           real property that has a fair market value equal to  
9           the amount referred to in paragraph (1) or (2).

10          (h) OTHER RIGHTS PRESERVED.—This section shall  
11         not preempt, alter, or limit the availability of any remedy  
12         for the taking of property or an interest in property that  
13         is available under the Constitution or any other law.

14          (i) FINAL JUDGMENTS.—If a private property owner  
15         unsuccessfully seeks compensation under this section and  
16         thereafter files a claim for compensation under the fifth  
17         amendment to the Constitution and is successful in ob-  
18         taining a final judgment ordering compensation from the  
19         United States Court of Federal Claims for the claim, the  
20         agency head who made the final agency decision that re-  
21         sults in the taking shall reimburse, from funds appro-  
22         priated to the agency for the 2 fiscal years following pay-  
23         ment of the compensation, the Treasury of the United  
24         States for amounts appropriated under section 1304 of



1 title 31, United States Code, to pay the judgment against  
2 the United States.

3 **SEC. 240. PRIVATE PROPERTY OWNER PARTICIPATION IN**  
4 **COOPERATIVE AGREEMENTS.**

5 Section 6(b) of the Endangered Species Act of 1973  
6 (16 U.S.C. 1535(b)) is amended—

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

9 “(1) IN GENERAL.—The Secretary”; and

10 (2) by adding at the end the following:

11 “(2) PARTICIPATION BY PRIVATE PROPERTY  
12 OWNERS.—

13 “(A) IN GENERAL.—Notwithstanding any  
14 other provision of this section, in any case in  
15 which the Secretary enters into a management  
16 agreement under paragraph (1) that establishes  
17 restrictions on the use of property, the Sec-  
18 retary shall notify all private property owners  
19 or lessees of the property that is subject to the  
20 management agreement and shall provide an  
21 opportunity for each private property owner or  
22 lessee to participate in the management agree-  
23 ment.

24 “(B) DEFINITIONS.—In this paragraph:

1           “(i) NON-FEDERAL PERSON.—The  
2 term ‘non-Federal person’ means a person  
3 other than an officer, employee, agent, de-  
4 partment, or instrumentality of—

5                   “(I) the Federal Government; or

6                   “(II) a foreign government.

7           “(ii) PRIVATE PROPERTY OWNER.—  
8 The term ‘private property owner’ means a  
9 non-Federal person (other than an officer,  
10 employee, agent, department, or instru-  
11 mentality of a State, municipality, or polit-  
12 ical subdivision of a State, or a State, mu-  
13 nicipality, or political subdivision of a  
14 State) that—

15                   “(I) owns property referred to in  
16 subclause (I) or (II) of clause (iii); or

17                   “(II) holds property referred to  
18 in clause (iii)(III).

19           “(iii) PROPERTY.—The term ‘prop-  
20 erty’ means—

21                   “(I) land;

22                   “(II) any interest in land; and

23                   “(III) any proprietary water  
24 right.”.

## 1       **Subtitle D—Risk Assessments**

### 2       **SEC. 251. RISK ASSESSMENTS.**

3       (a) IN GENERAL.—Chapter 6 of title 5, United  
4 States Code, is amended by adding at the end the follow-  
5 ing:

#### 6           “SUBCHAPTER II—RISK ASSESSMENTS

#### 7       **“§ 621. Definitions**

8           “In this subchapter—

9               “(1) AGENCY.—The term ‘agency’ has the  
10 meaning stated in section 551(1).

11               “(2) BENEFIT.—The term ‘benefit’ means the  
12 reasonably identifiable significant benefits, including  
13 social and economic benefits, that are expected to re-  
14 sult directly or indirectly from implementation of a  
15 rule or an alternative to a rule.

16               “(3) BEST ESTIMATE.—The term ‘best esti-  
17 mate’ means an estimate that, to the extent feasible  
18 and scientifically appropriate, is based on one or  
19 more of the following:

20                       “(A) Central estimates of risk using the  
21 most plausible assumptions.

22                       “(B) An approach that combines multiple  
23 estimates based on different scenarios and  
24 weighs the probability of each scenario.

1           “(C) Any other methodology designed to  
2           provide the most unbiased representation of the  
3           most plausible level of risk, given the current  
4           scientific information available to the agency  
5           concerned.

6           “(4) COST.—The term ‘cost’ means the reason-  
7           ably identifiable significant costs and adverse effects,  
8           including social and economic costs, reduced  
9           consumer choice, substitution effects, and impeded  
10          technological advancement, that are expected to re-  
11          sult directly or indirectly from implementation of, or  
12          compliance with, a rule or an alternative to a rule.

13          “(5) EMERGENCY.—The term ‘emergency’  
14          means a clearly imminent and substantial  
15          endangerment to public health, safety, or natural re-  
16          sources.

17          “(6) MAJOR RULE.—The term ‘major rule’—

18                  “(A) means—

19                          “(i) a rule or a group of closely relat-  
20                          ed rules that the agency proposing the rule  
21                          or the President reasonably determines is  
22                          likely to have a gross annual effect on the  
23                          economy of \$50,000,000 or more in rea-  
24                          sonably quantifiable increased direct and

1 indirect costs, or has a significant impact  
2 on a sector of the economy; or

3 “(ii) a rule or a group of closely relat-  
4 ed rules that is otherwise designated a  
5 major rule by the agency proposing the  
6 rule, or by the President on the ground  
7 that the rule is likely to result in—

8 “(I) a substantial increase in  
9 costs or prices for wage earners, con-  
10 sumers, individual industries, non-  
11 profit organizations, Federal, State,  
12 or local government agencies, or geo-  
13 graphic regions; or

14 “(II) significant adverse effects  
15 on competition, employment, invest-  
16 ment, productivity, innovation, the en-  
17 vironment, public health or safety, or  
18 the ability of enterprises whose prin-  
19 cipal places of business are in the  
20 United States to compete in domestic  
21 or export markets; but

22 “(B) does not include—

23 “(i) a rule that involves the internal  
24 revenue laws of the United States; or

1           “(ii) a rule that authorizes the intro-  
2           duction into commerce, or recognizes the  
3           marketable status, of a product.

4           “(7) PERSON.—The term ‘person’ has the  
5           meaning stated in section 551(2).

6           “(8) PLAUSIBLE.—The term ‘plausible’ means  
7           realistic and scientifically probable.

8           “(9) RISK ASSESSMENT.—The term ‘risk as-  
9           sessment’ means—

10           “(A) the process of identifying hazards,  
11           and quantifying (to the extent practicable) or  
12           describing the degree of toxicity, exposure, or  
13           other risk the hazards pose for exposed individ-  
14           uals, populations, or resources; and

15           “(B) the document containing the expla-  
16           nation of how the assessment process has been  
17           applied to an individual substance, activity, or  
18           condition.

19           “(10) RISK CHARACTERIZATION.—The term  
20           ‘risk characterization’—

21           “(A) means the element of a risk assess-  
22           ment that involves presentation of the degree of  
23           risk to individuals and populations expected to  
24           be protected, as presented in any regulatory  
25           proposal or decision, report to Congress, or

1 other document that is made available to the  
2 public; and

3 “(B) includes discussions of uncertainties,  
4 conflicting data, estimates, extrapolations, in-  
5 ferences, and opinions.

6 “(11) RULE.—The term ‘rule’ has the meaning  
7 stated in section 551(4).

8 “(12) SUBSTITUTION RISK.—The term ‘substi-  
9 tution risk’ means a potential increased risk to  
10 human health, safety, or the environment from a  
11 regulatory option designed to decrease other risks.

12 **“§ 622. Applicability**

13 “(a) Except as provided in subsection (b), this sub-  
14 chapter shall apply to all risk assessments and risk charac-  
15 terizations prepared by, or on behalf of, or prepared by  
16 others and adopted by, any agency in connection with  
17 health, safety, and risk to natural resources.

18 “(b)(1) This subchapter shall not apply to risk as-  
19 sessments or risk characterizations performed with respect  
20 to—

21 “(A) a situation that the head of the agency  
22 considers to be an emergency;

23 “(B) a rule that authorizes the introduction  
24 into commerce, or recognizes the marketable status  
25 of a product; or

1           “(C) a screening analysis.

2           “(2)(A) An analysis shall not be treated as screening  
3 analysis for the purposes of paragraph (1)(B) if the result  
4 of the analysis is used—

5           “(i) as the basis for imposing a restriction on  
6 a substance or activity; or

7           “(ii) to characterize a positive finding of risks  
8 from a substance or activity in any agency document  
9 or other communication made available to the public,  
10 the media, or Congress.

11          “(B) Among the analyses that may be treated as a  
12 screening analysis for the purposes of paragraph (1)(B)  
13 are product registrations, reregistrations, tolerance set-  
14 tings, and reviews of premanufacture notices and existing  
15 chemicals under the Federal Insecticide, Fungicide and  
16 Rodenticide Act (7 U.S.C. 136 et seq.) and the Toxic Sub-  
17 stances Control Act (15 U.S.C. 2601 et seq.).

18          “(3) This subchapter shall not apply to any food,  
19 drug, or other product label or to any risk characterization  
20 appearing on any such label.

21       **“§ 623. Rule of construction**

22          “Nothing in this subchapter shall be construed to—

23               “(1) preclude the consideration of any data or  
24 the calculation of any estimate to more fully describe



1 risk or provide examples of scientific uncertainty or  
2 variability; or

3 “(2) require the disclosure of any trade secret  
4 or other confidential information.

5 **“§ 624. Requirement to prepare risk assessments**

6 “(a) Except as provided in section 622, the head of  
7 each agency shall prepare for each major rule relating to  
8 human health, safety, or natural resources that is pro-  
9 posed by the agency after the date of enactment of this  
10 subchapter, is pending on the date of enactment of this  
11 subchapter, or is subject to a granted petition for review  
12 pursuant to section 627—

13 “(1) a risk assessment in accordance with this  
14 subchapter;

15 “(2) for each such proposed or final rule, an as-  
16 sessment, quantified to the extent feasible, of incre-  
17 mental risk reduction or other benefits associated  
18 with each significant regulatory alternative to the  
19 rule or proposed rule; and

20 “(3) for each such proposed or final rule, quan-  
21 tified to the extent feasible, a comparison of any  
22 human health, safety, or natural resource risks ad-  
23 dressed by the regulatory alternatives to other rel-  
24 evant risks chosen by the head of the agency, includ-  
25 ing at least 3 other risks regulated by the agency

1 and to at least 3 other risks with which the public  
2 is familiar.

3 “(b) A risk assessment prepared pursuant to this  
4 subchapter shall be a component of and used to develop  
5 the cost-benefit analysis required by subchapter II, and  
6 shall be made part of the administrative record for judicial  
7 review of any final agency action.

8 **“§ 625. Principles for risk assessment**

9 “(a)(1) The head of each agency shall apply the prin-  
10 ciples set forth in subsection (b) when preparing any risk  
11 assessment, whether or not required by section 624, to en-  
12 sure that the risk assessment and all of its components—

13 “(A) distinguish scientific findings and best es-  
14 timates of risk from other considerations;

15 “(B) are, to the maximum extent practicable  
16 scientifically objective, unbiased and inclusive of all  
17 relevant data; and

18 “(C) rely, to the extent available and prac-  
19 ticable, on scientific findings.

20 “(2) Discussions or explanations required under this  
21 section need not be repeated in each risk assessment docu-  
22 ment as long as there is a reference to the relevant discus-  
23 sion or explanation in another agency document.

24 “(b) The principles to be applied when preparing risk  
25 assessments are as follows:

1           “(1)(A) When assessing human health risks, a  
2 risk assessment shall be based on the most reliable  
3 laboratory, epidemiological, and exposure assessment  
4 data that finds, or fails to find, a correlation be-  
5 tween a health risk and a potential toxin or activity.  
6 Other relevant data may be summarized.

7           “(B) When conflicts among such data appear to  
8 exist, or when animal data are used as a basis to as-  
9 sess human health, the assessment shall include dis-  
10 cussion of possible reconciliation of conflicting infor-  
11 mation, and, as appropriate, differences in study de-  
12 signs, comparative physiology, routes of exposure,  
13 bioavailability, pharmacokinetics, and any other rel-  
14 evant factor, including the availability of raw data  
15 for review. Greatest emphasis shall be placed on  
16 data that indicates a biological basis of the resulting  
17 harm in humans. Animal data shall be reviewed with  
18 regard to relevancy to humans.

19           “(2) When a risk assessment involves selection  
20 of any significant assumption, inference, or model,  
21 the agency shall—

22                   “(A) describe the plausible and alternative  
23 assumptions, inferences, or models;

24                   “(B) explain the basis for any choices  
25 among such assumptions, inferences, or models;

1           “(C) identify any policy or value judgments  
2 involved in choosing from among such alter-  
3 native assumptions, inferences, or models;

4           “(D) fully describe any model used in the  
5 risk assessment and make explicit the assump-  
6 tions incorporated in the model; and

7           “(E) indicate the extent to which any sig-  
8 nificant model has been validated by, or con-  
9 flicts with, empirical data.

10          “(3) A risk assessment shall be prepared at the  
11 level of detail appropriate and practicable for rea-  
12 soned decisionmaking on the matter involved, taking  
13 into consideration the significance and complexity of  
14 the decision and any need for expedition.

15 **“§ 626. Principles for risk characterization and com-  
16 munication**

17          “‘In characterizing risk in any risk assessment docu-  
18 ment, regulatory proposal or decision, report to Congress,  
19 or other document that is made available to the public,  
20 each agency characterizing the risk shall comply with each  
21 of the following:

22           “(1)(A) The head of the agency shall describe  
23 the populations or natural resources that are the  
24 subject of the risk characterization.

1           “(B) If a numerical estimate of risk is provided,  
2           the head of the agency, to the extent feasible and  
3           scientifically appropriate—

4           “(i) shall provide—

5           “(I) the best estimate or estimates for  
6           the specific populations or natural re-  
7           sources which are the subject of the char-  
8           acterization (based on the information  
9           available to the department, agency, or in-  
10          strumentality) or, in lieu of a single best  
11          estimate, an array of multiple estimates  
12          (showing the distribution of estimates and  
13          the best estimate) based on assumptions,  
14          inferences, or models which are equally  
15          plausible, given current scientific under-  
16          standing;

17          “(II) a statement of the reasonable  
18          range of scientific uncertainties; and

19          “(III) to the extent practicable and  
20          appropriate, descriptions of the distribu-  
21          tion and probability of risk estimates to re-  
22          flect differences in exposure variability in  
23          populations and uncertainties;

24          “(ii) in addition to a best estimate or esti-  
25          mates, may present plausible upper-bound or

1 conservative estimates, but only in conjunction  
2 with equally plausible lower-bound estimates;  
3 and

4 “(iii) shall ensure that, where a safety fac-  
5 tor, as distinguished from inherent quantitative  
6 or qualitative uncertainties, is used, such factor  
7 shall be similar in degree to safety factors used  
8 to ensure safety in human activities.

9 “(2) The head of the agency shall explain the  
10 exposure scenarios used in any risk assessment, and,  
11 to the extent feasible, provide a statement of the size  
12 of the corresponding population or natural resource  
13 at risk and the likelihood of such exposure scenarios.

14 “(3)(A) To the extent feasible, the head of the  
15 agency shall provide a statement that places the na-  
16 ture and magnitude of individual and population  
17 risks to human health in context.

18 “(B) A statement under subparagraph (A)  
19 shall—

20 “(i) include appropriate comparisons with  
21 estimates of risks that are familiar to and rou-  
22 tinely encountered by the general public as well  
23 as other risks; and

1           “(ii) identify relevant distinctions among  
2           categories of risk and limitations to compari-  
3           sons.

4           “(4) When an agency provides a risk assess-  
5           ment or risk characterization for a proposed or final  
6           regulatory action, such assessment or characteriza-  
7           tion shall include a statement of any significant sub-  
8           stitution risks to human health identified by the  
9           agency or contained in information provided to the  
10          agency by a commenter.

11          “(5) If—

12           “(A) an agency provides a public comment  
13           period with respect to a risk assessment or reg-  
14           ulation;

15           “(B) a commenter provides a risk assess-  
16           ment, and a summary of results of such risk as-  
17           sessment; and

18           “(C) such risk assessment is reasonably  
19           consistent with the principles and the guidance  
20           provided under this subtitle,

21          the agency shall present such summary in connec-  
22          tion with the presentation of the agency’s risk as-  
23          sessment or the regulation.

1 **“§ 627. Regulations; plan for assessing new informa-**  
2 **tion**

3 “(a)(1) Not later than 1 year after the date of enact-  
4 ment of this subchapter, the President shall issue a final  
5 regulation that has been subject to notice and comment  
6 under section 553 for agencies to implement the risk as-  
7 sessment and characterization principles set forth in sec-  
8 tions 625 and 626 and shall provide a format for summa-  
9 rizing risk assessment results.

10 “(2) The regulation under paragraph (1) shall be suf-  
11 ficiently specific to ensure that risk assessments are con-  
12 ducted consistently by the various agencies.

13 “(b)(1) Review of the risk assessment for any major  
14 rule shall be conducted by the head of the agency on the  
15 written petition of a person showing a reasonable likeli-  
16 hood that—

17 “(A) the risk assessment is inconsistent with  
18 the principles set forth in section 625 and 626;

19 “(B) the risk assessment produces substantially  
20 different results;

21 “(C) the risk assessment is inconsistent with a  
22 rule issued under subsection (a); or

23 “(D) the risk assessment does not take into ac-  
24 count material significant new scientific data or sci-  
25 entific understanding.



1       “(2) Not later than 90 days after receiving a petition  
2 under paragraph (1), the head of the agency shall respond  
3 to the petition by agreeing or declining to review the risk  
4 assessment referred to in the petition, and shall state the  
5 basis for the decision.

6       “(3) If the head of the agency agrees to review the  
7 petition, the agency shall complete its review within 180  
8 days, unless the Director of the Office of Management and  
9 Budget agrees in writing with an agency determination  
10 that an extension is necessary in view of limitations on  
11 agency resources.

12       “(4) Denial of a petition by the agency head shall  
13 be subject to judicial review in accordance with chapter  
14 7 of title 5, United States Code.

15       “(c) The regulations under this section shall be devel-  
16 oped after notice and opportunity for public comment, and  
17 after consultation with representatives of appropriate  
18 State agencies and local governments, and such other de-  
19 partments and agencies, offices, organizations, or persons  
20 as may be advisable.

21       “(d) At least every 4 years, the President shall re-  
22 view, and when appropriate, revise the regulations pub-  
23 lished under this section.

1 **“§ 628. Decisional criteria**

2 “For each major rule subject to this subchapter, the  
3 head of the agency, subject to review by the President,  
4 shall make a determination that—

5 “(1) the risk assessment under section 624 is  
6 based on a scientific and unbiased evaluation, re-  
7 flecting realistic exposure scenarios, of the risk ad-  
8 dressed by the major rule and is supported by the  
9 best available scientific data, as determined by a  
10 peer review panel in accordance with section 640;  
11 and

12 “(2) there is no alternative that is allowed by  
13 the statute under which the major rule is promul-  
14 gated that would provide greater net benefits or that  
15 would achieve an equivalent reduction in risk in a  
16 more cost-effective and flexible manner.

17 **“§ 629. Regulatory priorities**

18 “(a) In exercising authority under any laws protect-  
19 ing human health and safety or the environment, the head  
20 of an agency shall prioritize the use of the resources avail-  
21 able under such laws to address the risks to human health,  
22 safety, and natural resources that—

23 “(1) the agency determines are the most seri-  
24 ous; and

25 “(2) can be addressed in a cost-effective man-  
26 ner, with the goal of achieving the greatest overall

1 net reduction in risks with the public and private  
2 sector resources to be expended.

3 “(b) In identifying the sources of the most serious  
4 risks under subsection (a), the head of the agency shall  
5 consider, at a minimum—

6 “(1) the plausible likelihood and severity of the  
7 effect; and

8 “(2) the plausible number and groups of indi-  
9 viduals potentially affected.

10 “(c) The head of the agency shall incorporate the pri-  
11 orities identified in subsection (a) into the budget, strate-  
12 gic planning, and research activities of the agency by, in  
13 the agency’s annual budget request to Congress—

14 “(1) identifying which risks the agency has de-  
15 termined are the most serious and can be addressed  
16 in a cost-effective manner under subsection (a), and  
17 the basis for that determination;

18 “(2) explicitly identifying how the agency’s re-  
19 quested funds will be used to address those risks;

20 “(3) identifying any statutory, regulatory, or  
21 administrative obstacles to allocating agency re-  
22 sources in accordance with the priorities established  
23 under subsection (a); and

24 “(4) explicitly considering the requirements of  
25 subsection (a) when preparing the agency’s regu-

1 latory agenda or other strategic plan, and providing  
2 an explanation of how the agenda or plan reflects  
3 those requirements and the comparative risk analy-  
4 sis when publishing any such agenda or strategic  
5 plan.

6 “(d) In March of each year, the head of each agency  
7 shall submit to Congress specific recommendations for re-  
8 pealing or modifying laws that would better enable the  
9 agency to prioritize its activities to address the risks to  
10 human health, safety, and the environment that are the  
11 most serious and can be addressed in a cost-effective man-  
12 ner consistent with the requirements of subsection (a).

13 **“§ 630. Establishment of program**

14 “(a) The President shall develop a systematic pro-  
15 gram for the peer review of work products covered by sub-  
16 section (c), which program shall be used uniformly across  
17 the agencies.

18 “(b) The program under subsection (a)—

19 “(1) shall provide for the creation of peer re-  
20 view panels consisting of independent and external  
21 experts who are broadly representative and balanced  
22 to the extent feasible;

23 “(2) shall not exclude peer reviewers merely be-  
24 cause they represent entities that may have a poten-

1 tial interest in the outcome, if that interest is fully  
2 disclosed;

3 “(3) shall exclude, to the maximum extent prac-  
4 ticable, any peer reviewer who has been involved in  
5 any previous analysis of the tests and evidence pre-  
6 sented for certification by the peer review panel; and

7 “(4) shall provide for a timely completed peer  
8 review, meeting agency deadlines, which contains a  
9 balanced presentation of all considerations, including  
10 minority reports and an agency response to all sig-  
11 nificant peer review comments.

12 “(c) The peer review and the agency’s responses shall  
13 be made available to the public and shall be made part  
14 of the administrative record for purposes of judicial review  
15 of any final agency action.

16 “(d) The proceedings of peer review panels under this  
17 section shall be subject to the applicable provisions of the  
18 Federal Advisory Committee Act (5 U.S.C. App.).”.

19 (b) CONFORMING AMENDMENT AND TECHNICAL  
20 CORRECTIONS.—

21 (1) CONFORMING AMENDMENTS.—Part I of  
22 title 5, United States Code, is amended by striking  
23 the chapter analysis for chapter 6 and inserting the  
24 following:

1           **“CHAPTER 6—THE ANALYSIS OF**  
2                           **REGULATORY FUNCTIONS**

                          “SUBCHAPTER I—REGULATORY ANALYSIS

- “Sec.
- “601. Definitions.
- “602. Regulatory agenda.
- “603. Initial regulatory flexibility analysis.
- “604. Final regulatory flexibility analysis.
- “605. Avoidance of duplicative or unnecessary analyses.
- “606. Effect on other law.
- “607. Preparation of analyses.
- “608. Procedure for waiver or delay of completion.
- “609. Procedures for gathering comments.
- “610. Periodic review of rules.
- “611. Judicial review.
- “612. Reports and intervention rights.

                          “SUBCHAPTER II—RISK ASSESSMENTS

- “621. Definitions.
- “622. Applicability.
- “623. Rule of construction.
- “624. Requirement to prepare risk assessments.
- “625. Principles for risk assessment.
- “626. Principles for risk characterization and communication.
- “627. Regulations; plan for assessing new information.
- “628. Decisional criteria.
- “629. Regulatory priorities.
- “640. Establishment of program.

3           “SUBCHAPTER I—REGULATORY ANALYSIS”.

4                   (2) TECHNICAL CORRECTIONS.—The part anal-  
5           ysis for part I of title 5, United States Code, is  
6           amended—

7                   (A) in the item relating to chapter 5 by  
8                   striking “**501**” and inserting “**500**”; and

9                   (B) by inserting after the item relating to  
10           chapter 5 the following:

**“6. The Analysis of Regulatory Functions ..... 601”.**

1                   **TITLE III—REPEAL OF**  
2                   **LIMITATIONS ON EXPORTS**

3   **SEC. 301. REPEAL OF LIMITATIONS ON EXPORTS.**

4           (a) REPEAL.—Section 7 of the Export Administra-  
5   tion Act of 1979 (50 U.S.C. App. 2406) is amended—

6                   (1) in subsection (a), by adding at the end the  
7   following new paragraph:

8           “(4) Notwithstanding paragraph (1) and any other  
9   law, the President may not prohibit or curtail the export  
10 of domestically produced crude oil other than crude oil  
11 produced from the naval petroleum reserves (as defined  
12 in section 7420 of title 10, United States Code).”;

13                  (2) by striking subsection (d) and inserting the  
14 following:

15           “(d) [Reserved].”

16           (b) CONFORMING AMENDMENTS.—

17                  (1) MINERAL LANDS LEASING ACT.—Section 28  
18 of the Act entitled “An Act to promote the mining  
19 of coal, phosphate, oil, oil shale, gas, and sodium or  
20 the public domain”, approved February 25, 1920  
21 (30 U.S.C. 185) is amended by striking subsection  
22 (u) and inserting the following:

23           “(u) [Reserved].”

1           (2) ENERGY POLICY AND CONSERVATION  
 2 ACT.—Section 103 of the Energy Policy and Con-  
 3 servation Act (42 U.S.C. 6212) is amended—

4           (A) in subsection (a) by inserting “(not in-  
 5 cluding crude oil)” after “feedstocks”; and

6           (B) in subsection (b)—

7           (i) in paragraph (1)—

8           (I) by striking “crude oil and”;

9           and

10           (II) by striking “crude oil or”;

11           and

12           (ii) in paragraph (2) by striking

13           “crude oil or”.

14           (3) OUTER CONTINENTAL SHELF LANDS ACT.—

15           Section 28 of the Outer Continental Shelf Lands Act

16           (43 U.S.C. 1354) is repealed.

○

S 451 IS—2

S 451 IS—3

S 451 IS—4

S 451 IS—5