

108TH CONGRESS
2D SESSION

S. 2095

To enhance energy conservation and research and development and to provide for security and diversity in the energy supply for the American people.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2004

Mr. DOMENICI introduced the following bill; which was read the first time

A BILL

To enhance energy conservation and research and development and to provide for security and diversity in the energy supply for the American people.

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 “Energy Policy Act of 2003”.

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

TITLE I—ENERGY EFFICIENCY

Subtitle A—Federal Programs

- Sec. 101. Energy and water saving measures in congressional buildings.
- Sec. 102. Energy management requirements.
- Sec. 103. Energy use measurement and accountability.

- Sec. 104. Procurement of energy efficient products.
- Sec. 105. Voluntary commitments to reduce industrial energy intensity.
- Sec. 106. Advanced Building Efficiency Testbed.
- Sec. 107. Federal building performance standards.
- Sec. 108. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.

Subtitle B—Energy Assistance and State Programs

- Sec. 121. Low Income Home Energy Assistance Program.
- Sec. 122. Weatherization assistance.
- Sec. 123. State energy programs.
- Sec. 124. Energy efficient appliance rebate programs.
- Sec. 125. Energy efficient public buildings.
- Sec. 126. Low income community energy efficiency pilot program.

Subtitle C—Energy Efficient Products

- Sec. 131. Energy Star program.
- Sec. 132. HVAC maintenance consumer education program.
- Sec. 133. Energy conservation standards for additional products.
- Sec. 134. Energy labeling.

Subtitle D—Public Housing

- Sec. 141. Capacity building for energy-efficient, affordable housing.
- Sec. 142. Increase of CDBG public services cap for energy conservation and efficiency activities.
- Sec. 143. FHA mortgage insurance incentives for energy efficient housing.
- Sec. 144. Public Housing Capital Fund.
- Sec. 145. Grants for energy-conserving improvements for assisted housing.
- Sec. 146. North American Development Bank.
- Sec. 147. Energy-efficient appliances.
- Sec. 148. Energy efficiency standards.
- Sec. 149. Energy strategy for HUD.

TITLE II—RENEWABLE ENERGY

Subtitle A—General Provisions

- Sec. 201. Assessment of renewable energy resources.
- Sec. 202. Renewable energy production incentive.
- Sec. 203. Federal purchase requirement.
- Sec. 204. Insular areas energy security.
- Sec. 205. Use of photovoltaic energy in public buildings.
- Sec. 206. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, petroleum-based product substitutes, and other commercial purposes.
- Sec. 207. Biobased products.

Subtitle B—Geothermal Energy

- Sec. 211. Short title.
- Sec. 212. Competitive lease sale requirements.
- Sec. 213. Direct use.
- Sec. 214. Royalties and near-term production incentives.
- Sec. 215. Geothermal leasing and permitting on Federal lands.
- Sec. 216. Review and report to Congress.

- Sec. 217. Reimbursement for costs of NEPA analyses, documentation, and studies.
- Sec. 218. Assessment of geothermal energy potential.
- Sec. 219. Cooperative or unit plans.
- Sec. 220. Royalty on byproducts.
- Sec. 221. Repeal of authorities of Secretary to readjust terms, conditions, rentals, and royalties.
- Sec. 222. Crediting of rental toward royalty.
- Sec. 223. Lease duration and work commitment requirements.
- Sec. 224. Advanced royalties required for suspension of production.
- Sec. 225. Annual rental.
- Sec. 226. Leasing and permitting on Federal lands withdrawn for military purposes.
- Sec. 227. Technical amendments.

Subtitle C—Hydroelectric

PART I—ALTERNATIVE CONDITIONS

- Sec. 231. Alternative conditions and fishways.

PART II—ADDITIONAL HYDROPOWER

- Sec. 241. Hydroelectric production incentives.
- Sec. 242. Hydroelectric efficiency improvement.
- Sec. 243. Small hydroelectric power projects.
- Sec. 244. Increased hydroelectric generation at existing Federal facilities.
- Sec. 245. Shift of project loads to off-peak periods.
- Sec. 246. Limitation on certain charges assessed to the Flint Creek Project, Montana.
- Sec. 247. Reinstatement and transfer.

TITLE III—OIL AND GAS

Subtitle A—Petroleum Reserve and Home Heating Oil

- Sec. 301. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs.
- Sec. 302. National Oilheat Research Alliance.

Subtitle B—Production Incentives

- Sec. 311. Definition of Secretary.
- Sec. 312. Program on oil and gas royalties in-kind.
- Sec. 313. Marginal property production incentives.
- Sec. 314. Incentives for natural gas production from deep wells in the shallow waters of the Gulf of Mexico.
- Sec. 315. Royalty relief for deep water production.
- Sec. 316. Alaska offshore royalty suspension.
- Sec. 317. Oil and gas leasing in the National Petroleum Reserve in Alaska.
- Sec. 318. Orphaned, abandoned, or idled wells on Federal land.
- Sec. 319. Combined hydrocarbon leasing.
- Sec. 320. Liquified natural gas.
- Sec. 321. Alternate energy-related uses on the Outer Continental Shelf.
- Sec. 322. Preservation of geological and geophysical data.
- Sec. 323. Oil and gas lease acreage limitations.
- Sec. 324. Assessment of dependence of State of Hawaii on oil.

- Sec. 325. Deadline for decision on appeals of consistency determination under the Coastal Zone Management Act of 1972.
- Sec. 326. Reimbursement for costs of NEPA analyses, documentation, and studies.
- Sec. 327. Hydraulic fracturing.
- Sec. 328. Oil and gas exploration and production defined.
- Sec. 329. Outer Continental Shelf provisions.
- Sec. 330. Appeals relating to pipeline construction or offshore mineral development projects.
- Sec. 331. Bilateral international oil supply agreements.
- Sec. 332. Natural gas market reform.
- Sec. 333. Natural gas market transparency.

Subtitle C—Access to Federal Land

- Sec. 341. Office of Federal Energy Project Coordination.
- Sec. 342. Federal onshore oil and gas leasing and permitting practices.
- Sec. 343. Management of Federal oil and gas leasing programs.
- Sec. 344. Consultation regarding oil and gas leasing on public land.
- Sec. 345. Estimates of oil and gas resources underlying onshore Federal land.
- Sec. 346. Compliance with Executive Order 13211; actions concerning regulations that significantly affect energy supply, distribution, or use.
- Sec. 347. Pilot project to improve Federal permit coordination.
- Sec. 348. Deadline for consideration of applications for permits.
- Sec. 349. Clarification of fair market rental value determinations for public land and Forest Service rights-of-way.
- Sec. 350. Energy facility rights-of-way and corridors on Federal land.
- Sec. 351. Consultation regarding energy rights-of-way on public land.
- Sec. 352. Renewable energy on Federal land.
- Sec. 353. Electricity transmission line right-of-way, Cleveland National Forest and adjacent public land, California.
- Sec. 354. Sense of Congress regarding development of minerals under Padre Island National Seashore.
- Sec. 355. Encouraging prohibition of off-shore drilling in the Great Lakes.
- Sec. 356. Finger Lakes National Forest withdrawal.
- Sec. 357. Study on lease exchanges in the Rocky Mountain Front.
- Sec. 358. Federal coalbed methane regulation.
- Sec. 359. Livingston Parish mineral rights transfer.

Subtitle D—Alaska Natural Gas Pipeline

- Sec. 371. Short title.
- Sec. 372. Definitions.
- Sec. 373. Issuance of certificate of public convenience and necessity.
- Sec. 374. Environmental reviews.
- Sec. 375. Pipeline expansion.
- Sec. 376. Federal Coordinator.
- Sec. 377. Judicial review.
- Sec. 378. State jurisdiction over in-State delivery of natural gas.
- Sec. 379. Study of alternative means of construction.
- Sec. 380. Clarification of ANGTA status and authorities.
- Sec. 381. Sense of Congress concerning use of steel manufactured in North America negotiation of a project labor agreement.
- Sec. 382. Sense of Congress and study concerning participation by small business concerns.

- Sec. 383. Alaska pipeline construction training program.
- Sec. 384. Sense of Congress concerning natural gas demand.
- Sec. 385. Sense of Congress concerning Alaskan ownership.
- Sec. 386. Loan guarantees.

TITLE IV—COAL

Subtitle A—Clean Coal Power Initiative

- Sec. 401. Authorization of appropriations.
- Sec. 402. Project criteria.
- Sec. 403. Report.
- Sec. 404. Clean coal Centers of Excellence.

Subtitle B—Clean Power Projects

- Sec. 411. Coal technology loan.
- Sec. 412. Coal gasification.
- Sec. 413. Integrated gasification combined cycle technology.
- Sec. 414. Petroleum coke gasification.
- Sec. 415. Integrated coal/renewable energy system.
- Sec. 416. Electron scrubbing demonstration.

Subtitle C—Federal Coal Leases

- Sec. 421. Repeal of the 160-acre limitation for coal leases.
- Sec. 422. Mining plans.
- Sec. 423. Payment of advance royalties under coal leases.
- Sec. 424. Elimination of deadline for submission of coal lease operation and reclamation plan.
- Sec. 425. Amendment relating to financial assurances with respect to bonus bids.
- Sec. 426. Inventory requirement.
- Sec. 427. Application of amendments.

Subtitle D—Coal and Related Programs

- Sec. 441. Clean air coal program.

TITLE V—INDIAN ENERGY

- Sec. 501. Short title.
- Sec. 502. Office of Indian Energy Policy and Programs.
- Sec. 503. Indian energy.
- Sec. 504. Four Corners transmission line project.
- Sec. 505. Energy efficiency in federally assisted housing.
- Sec. 506. Consultation with Indian tribes.

TITLE VI—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

- Sec. 601. Short title.
- Sec. 602. Extension of indemnification authority.
- Sec. 603. Maximum assessment.
- Sec. 604. Department of Energy liability limit.
- Sec. 605. Incidents outside the United States.
- Sec. 606. Reports.

- Sec. 607. Inflation adjustment.
- Sec. 608. Treatment of modular reactors.
- Sec. 609. Applicability.
- Sec. 610. Prohibition on assumption by United States Government of liability for certain foreign incidents.
- Sec. 611. Civil penalties.

Subtitle B—General Nuclear Matters

- Sec. 621. Licenses.
- Sec. 622. NRC training program.
- Sec. 623. Cost recovery from Government agencies.
- Sec. 624. Elimination of pension offset.
- Sec. 625. Antitrust review.
- Sec. 626. Decommissioning.
- Sec. 627. Limitation on legal fee reimbursement.
- Sec. 628. Decommissioning pilot program.
- Sec. 629. Report on feasibility of developing commercial nuclear energy generation facilities at existing Department of Energy sites.
- Sec. 630. Uranium sales.
- Sec. 631. Cooperative research and development and special demonstration projects for the uranium mining industry.
- Sec. 632. Whistleblower protection.
- Sec. 633. Medical isotope production.
- Sec. 634. Fernald byproduct material.
- Sec. 635. Safe disposal of greater-than-class C radioactive waste.
- Sec. 636. Prohibition on nuclear exports to countries that sponsor terrorism.
- Sec. 637. Uranium enrichment facilities.
- Sec. 638. National uranium stockpile.

Subtitle C—Advanced Reactor Hydrogen Cogeneration Project

- Sec. 651. Project establishment.
- Sec. 652. Project definition.
- Sec. 653. Project management.
- Sec. 654. Project requirements.
- Sec. 655. Authorization of appropriations.

Subtitle D—Nuclear Security

- Sec. 661. Nuclear facility threats.
- Sec. 662. Fingerprinting for criminal history record checks.
- Sec. 663. Use of firearms by security personnel of licensees and certificate holders of the Commission.
- Sec. 664. Unauthorized introduction of dangerous weapons.
- Sec. 665. Sabotage of nuclear facilities or fuel.
- Sec. 666. Secure transfer of nuclear materials.
- Sec. 667. Department of Homeland Security consultation.
- Sec. 668. Authorization of appropriations.

TITLE VII—VEHICLES AND FUELS

Subtitle A—Existing Programs

- Sec. 701. Use of alternative fuels by dual-fueled vehicles.
- Sec. 702. Neighborhood electric vehicles.
- Sec. 703. Credits for medium and heavy duty dedicated vehicles.

- Sec. 704. Incremental cost allocation.
- Sec. 705. Alternative compliance and flexibility.
- Sec. 706. Review of Energy Policy Act of 1992 programs.
- Sec. 707. Report concerning compliance with alternative fueled vehicle purchasing requirements.

Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses

PART 1—HYBRID VEHICLES

- Sec. 711. Hybrid vehicles.

PART 2—ADVANCED VEHICLES

- Sec. 721. Definitions.
- Sec. 722. Pilot program.
- Sec. 723. Reports to Congress.
- Sec. 724. Authorization of appropriations.

PART 3—FUEL CELL BUSES

- Sec. 731. Fuel cell transit bus demonstration.

Subtitle C—Clean School Buses

- Sec. 741. Definitions.
- Sec. 742. Program for replacement of certain school buses with clean school buses.
- Sec. 743. Diesel retrofit program.
- Sec. 744. Fuel cell school buses.

Subtitle D—Miscellaneous

- Sec. 751. Railroad efficiency.
- Sec. 752. Mobile emission reductions trading and crediting.
- Sec. 753. Aviation fuel conservation and emissions.
- Sec. 754. Diesel fueled vehicles.
- Sec. 755. Conserve by bicycling program.
- Sec. 756. Reduction of engine idling of heavy-duty vehicles.
- Sec. 757. Biodiesel engine testing program.
- Sec. 758. High occupancy vehicle exception.

Subtitle E—Automobile Efficiency

- Sec. 771. Authorization of appropriations for implementation and enforcement of fuel economy standards.
- Sec. 772. Revised considerations for decisions on maximum feasible average fuel economy.
- Sec. 773. Extension of maximum fuel economy increase for alternative fueled vehicles.
- Sec. 774. Study of feasibility and effects of reducing use of fuel for automobiles.

TITLE VIII—HYDROGEN

- Sec. 801. Definitions.
- Sec. 802. Plan.
- Sec. 803. Programs.
- Sec. 804. Interagency task force.

- Sec. 805. Advisory Committee.
- Sec. 806. External review.
- Sec. 807. Miscellaneous provisions.
- Sec. 808. Savings clause.
- Sec. 809. Authorization of appropriations.

TITLE IX—RESEARCH AND DEVELOPMENT

- Sec. 901. Goals.
- Sec. 902. Definitions.

Subtitle A—Energy Efficiency

- Sec. 904. Energy efficiency.
- Sec. 905. Next Generation Lighting Initiative.
- Sec. 906. National Building Performance Initiative.
- Sec. 907. Secondary electric vehicle battery use program.
- Sec. 908. Energy Efficiency Science Initiative.
- Sec. 909. Electric motor control technology.
- Sec. 910. Advanced Energy Technology Transfer Centers.

Subtitle B—Distributed Energy and Electric Energy Systems

- Sec. 911. Distributed energy and electric energy systems.
- Sec. 912. Hybrid distributed power systems.
- Sec. 913. High power density industry program.
- Sec. 914. Micro-cogeneration energy technology.
- Sec. 915. Distributed energy technology demonstration program.
- Sec. 916. Reciprocating power.

Subtitle C—Renewable Energy

- Sec. 918. Renewable energy.
- Sec. 919. Bioenergy programs.
- Sec. 920. Concentrating solar power research and development program.
- Sec. 921. Miscellaneous projects.
- Sec. 922. Renewable energy in public buildings.
- Sec. 923. Study of marine renewable energy options.

Subtitle D—Nuclear Energy

- Sec. 924. Nuclear energy.
- Sec. 925. Nuclear energy research and development programs.
- Sec. 926. Advanced fuel cycle initiative.
- Sec. 927. University nuclear science and engineering support.
- Sec. 928. Security of reactor designs.
- Sec. 929. Alternatives to industrial radioactive sources.
- Sec. 930. Geological isolation of spent fuel.

Subtitle E—Fossil Energy

PART I—RESEARCH PROGRAMS

- Sec. 931. Fossil energy.
- Sec. 932. Oil and gas research programs.
- Sec. 933. Technology transfer.
- Sec. 934. Research and development for coal mining technologies.
- Sec. 935. Coal and related technologies program.

- Sec. 936. Complex well technology testing facility.
- Sec. 937. Fischer-Tropsch diesel fuel loan guarantee program.

PART II—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND
OTHER PETROLEUM RESOURCES

- Sec. 941. Program authority.
- Sec. 942. Ultra-deepwater program.
- Sec. 943. Unconventional natural gas and other petroleum resources program.
- Sec. 944. Additional requirements for awards.
- Sec. 945. Advisory Committees.
- Sec. 946. Limits on participation.
- Sec. 947. Sunset.
- Sec. 948. Definitions.
- Sec. 949. Funding.

Subtitle F—Science

- Sec. 951. Science.
- Sec. 952. United States participation in ITER.
- Sec. 953. Plan for fusion energy sciences program.
- Sec. 954. Spallation Neutron Source.
- Sec. 955. Support for science and energy facilities and infrastructure.
- Sec. 956. Catalysis research and development program.
- Sec. 957. Nanoscale science and engineering research, development, demonstration, and commercial application.
- Sec. 958. Advanced scientific computing for energy missions.
- Sec. 959. Genomes to Life program.
- Sec. 960. Fission and fusion energy materials research program.
- Sec. 961. Energy-Water Supply Program.
- Sec. 962. Nitrogen fixation.

Subtitle G—Energy and Environment

- Sec. 964. United States-Mexico energy technology cooperation.
- Sec. 965. Western Hemisphere energy cooperation.
- Sec. 966. Waste reduction and use of alternatives.
- Sec. 967. Report on fuel cell test center.
- Sec. 968. Arctic Engineering Research Center.
- Sec. 969. Barrow Geophysical Research Facility.
- Sec. 970. Western Michigan demonstration project.

Subtitle H—Management

- Sec. 971. Availability of funds.
- Sec. 972. Cost sharing.
- Sec. 973. Merit review of proposals.
- Sec. 974. External technical review of departmental programs.
- Sec. 975. Improved coordination of technology transfer activities.
- Sec. 976. Federal laboratory educational partners.
- Sec. 977. Interagency cooperation.
- Sec. 978. Technology infrastructure program.
- Sec. 979. Reprogramming.
- Sec. 980. Construction with other laws.
- Sec. 981. Report on research and development program evaluation methodologies.
- Sec. 982. Department of Energy Science and Technology Scholarship Program.

- Sec. 983. Report on equal employment opportunity practices.
- Sec. 984. Small business advocacy and assistance.
- Sec. 985. Report on mobility of scientific and technical personnel.
- Sec. 986. National Academy of Sciences report.
- Sec. 987. Outreach.
- Sec. 988. Competitive award of management contracts.
- Sec. 989. Educational programs in science and mathematics.

TITLE X—DEPARTMENT OF ENERGY MANAGEMENT

- Sec. 1001. Additional Assistant Secretary position.
- Sec. 1002. Other transactions authority.

TITLE XI—PERSONNEL AND TRAINING

- Sec. 1101. Training guidelines for electric energy industry personnel.
- Sec. 1102. Improved access to energy-related scientific and technical careers.
- Sec. 1103. National Power Plant Operations Technology and Education Center.
- Sec. 1104. International energy training.

TITLE XII—ELECTRICITY

- Sec. 1201. Short title.

Subtitle A—Reliability Standards

- Sec. 1211. Electric reliability standards.

Subtitle B—Transmission Infrastructure Modernization

- Sec. 1221. Siting of interstate electric transmission facilities.
- Sec. 1222. Third-party finance.
- Sec. 1223. Transmission system monitoring.
- Sec. 1224. Advanced transmission technologies.
- Sec. 1225. Electric transmission and distribution programs.
- Sec. 1226. Advanced Power System Technology Incentive Program.
- Sec. 1227. Office of Electric Transmission and Distribution.

Subtitle C—Transmission Operation Improvements

- Sec. 1231. Open nondiscriminatory access.
- Sec. 1232. Sense of the Congress on Regional Transmission Organizations.
- Sec. 1233. Regional Transmission Organization applications progress report.
- Sec. 1234. Federal utility participation in Regional Transmission Organizations.
- Sec. 1235. Standard market design.
- Sec. 1236. Native load service obligation.
- Sec. 1237. Study on the benefits of economic dispatch.

Subtitle D—Transmission Rate Reform

- Sec. 1241. Transmission infrastructure investment.
- Sec. 1242. Voluntary transmission pricing plans.

Subtitle E—Amendments to PURPA

- Sec. 1251. Net metering and additional standards.
- Sec. 1252. Smart metering.

Sec. 1253. Cogeneration and small power production purchase and sale requirements.

Subtitle F—Repeal of PUHCA

Sec. 1261. Short title.
 Sec. 1262. Definitions.
 Sec. 1263. Repeal of the Public Utility Holding Company Act of 1935.
 Sec. 1264. Federal access to books and records.
 Sec. 1265. State access to books and records.
 Sec. 1266. Exemption authority.
 Sec. 1267. Affiliate transactions.
 Sec. 1268. Applicability.
 Sec. 1269. Effect on other regulations.
 Sec. 1270. Enforcement.
 Sec. 1271. Savings provisions.
 Sec. 1272. Implementation.
 Sec. 1273. Transfer of resources.
 Sec. 1274. Effective date.
 Sec. 1275. Service allocation.
 Sec. 1276. Authorization of appropriations.
 Sec. 1277. Conforming amendments to the Federal Power Act.

Subtitle G—Market Transparency, Enforcement, and Consumer Protection

Sec. 1281. Market transparency rules.
 Sec. 1282. Market manipulation.
 Sec. 1283. Enforcement.
 Sec. 1284. Refund effective date.
 Sec. 1285. Refund authority.
 Sec. 1286. Sanctity of contract.
 Sec. 1287. Consumer privacy and unfair trade practices.

Subtitle H—Merger Reform

Sec. 1291. Merger review reform and accountability.
 Sec. 1292. Electric utility mergers.

Subtitle I—Definitions

Sec. 1295. Definitions.

Subtitle J—Technical and Conforming Amendments

Sec. 1297. Conforming amendments.

TITLE XIII—ENERGY TAX INCENTIVES

Sec. 1300. Short title; etc.

Subtitle A—Renewable Electricity Production Tax Credit

Sec. 1301. Extension and expansion of credit for electricity produced from certain renewable resources.

Subtitle B—Alternative Motor Vehicles and Fuels Incentives

Sec. 1311. Alternative motor vehicle credit.
 Sec. 1312. Modification of credit for qualified electric vehicles.

- Sec. 1313. Credit for installation of alternative fueling stations.
- Sec. 1314. Credit for retail sale of alternative fuels as motor vehicle fuel.
- Sec. 1315. Small ethanol producer credit.
- Sec. 1316. Incentives for biodiesel.
- Sec. 1317. Alcohol fuel and biodiesel mixtures excise tax credit.
- Sec. 1318. Sale of gasoline and diesel fuel at duty-free sales enterprises.

Subtitle C—Conservation and Energy Efficiency Provisions

- Sec. 1321. Credit for construction of new energy efficient home.
- Sec. 1322. Credit for energy efficient appliances.
- Sec. 1323. Credit for residential energy efficient property.
- Sec. 1324. Credit for business installation of qualified fuel cells and stationary microturbine power plants.
- Sec. 1325. Energy efficient commercial buildings deduction.
- Sec. 1326. Three-year applicable recovery period for depreciation of qualified energy management devices.
- Sec. 1327. Three-year applicable recovery period for depreciation of qualified water submetering devices.
- Sec. 1328. Energy credit for combined heat and power system property.
- Sec. 1329. Credit for energy efficiency improvements to existing homes.

Subtitle D—Clean Coal Incentives

PART I—CREDIT FOR EMISSION REDUCTIONS AND EFFICIENCY IMPROVEMENTS IN EXISTING COAL-BASED ELECTRICITY GENERATION FACILITIES

- Sec. 1341. Credit for production from a qualifying clean coal technology unit.

PART II—INCENTIVES FOR EARLY COMMERCIAL APPLICATIONS OF ADVANCED CLEAN COAL TECHNOLOGIES

- Sec. 1342. Credit for investment in qualifying advanced clean coal technology.
- Sec. 1343. Credit for production from a qualifying advanced clean coal technology unit.

PART III—TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT

- Sec. 1344. Treatment of persons not able to use entire credit.

Subtitle E—Oil and Gas Provisions

- Sec. 1351. Oil and gas from marginal wells.
- Sec. 1352. Natural gas gathering lines treated as 7-year property.
- Sec. 1353. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
- Sec. 1354. Environmental tax credit.
- Sec. 1355. Determination of small refiner exception to oil depletion deduction.
- Sec. 1356. Marginal production income limit extension.
- Sec. 1357. Amortization of delay rental payments.
- Sec. 1358. Amortization of geological and geophysical expenditures.
- Sec. 1359. Extension and modification of credit for producing fuel from a non-conventional source.
- Sec. 1360. Natural gas distribution lines treated as 15-year property.
- Sec. 1361. Credit for Alaska natural gas.
- Sec. 1362. Certain Alaska natural gas pipeline property treated as 7-year property.
- Sec. 1363. Arbitrage rules not to apply to prepayments for natural gas.

Sec. 1364. Extension of enhanced oil recovery credit to certain Alaska facilities.

Subtitle F—Electric Utility Restructuring Provisions

Sec. 1371. Modifications to special rules for nuclear decommissioning costs.

Sec. 1372. Treatment of certain income of cooperatives.

Sec. 1373. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.

Subtitle G—Additional Provisions

Sec. 1381. Extension of accelerated depreciation and wage credit benefits on Indian reservations.

Sec. 1382. Study of effectiveness of certain provisions by GAO.

Sec. 1383. Repeal of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.

Sec. 1384. Expansion of research credit.

Subtitle H—Revenue Provisions

PART I—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

Sec. 1385. Penalty for failing to disclose reportable transaction.

Sec. 1386. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.

Sec. 1387. Tax shelter exception to confidentiality privileges relating to taxpayer communications.

Sec. 1388. Disclosure of reportable transactions.

Sec. 1389. Modifications to penalty for failure to register tax shelters.

Sec. 1390. Modification of penalty for failure to maintain lists of investors.

Sec. 1391. Penalty on promoters of tax shelters.

PART II—PROVISIONS TO DISCOURAGE CORPORATE EXPATRIATION

Sec. 1392. Tax treatment of inverted corporate entities.

Sec. 1393. Excise tax on stock compensation of insiders in inverted corporations.

Sec. 1394. Reinsurance of United States risks in foreign jurisdictions.

PART III—OTHER REVENUE PROVISIONS

Sec. 1395. Extension of Internal Revenue Service user fees.

Sec. 1396. Addition of vaccines against hepatitis A to list of taxable vaccines.

Sec. 1397. Individual expatriation to avoid tax.

TITLE XIV—MISCELLANEOUS

Subtitle A—Rural and Remote Electricity Construction

Sec. 1401. Denali Commission programs.

Sec. 1402. Rural and remote community assistance.

Subtitle B—Coastal Programs

Sec. 1411. Royalty payments under leases under the Outer Continental Shelf Lands Act.

Sec. 1412. Domestic offshore energy reinvestment.

Subtitle C—Reforms to the Board of Directors of the Tennessee Valley Authority

- Sec. 1431. Change in composition, operation, and duties of the board of directors of the Tennessee Valley Authority.
- Sec. 1432. Change in manner of appointment of staff.
- Sec. 1433. Conforming amendments.
- Sec. 1434. Appointments; effective date; transition.

Subtitle D—Other Provisions

- Sec. 1441. Continuation of transmission security order.
- Sec. 1442. Review of agency determinations.
- Sec. 1443. Attainment dates for downwind ozone nonattainment areas.
- Sec. 1444. Energy production incentives.
- Sec. 1445. Use of granular mine tailings.

TITLE XV—ETHANOL AND MOTOR FUELS

Subtitle A—General Provisions

- Sec. 1501. Renewable content of motor vehicle fuel.
- Sec. 1502. Findings and MTBE transition assistance.
- Sec. 1503. Use of MTBE.
- Sec. 1504. National Academy of Sciences review and presidential determination.
- Sec. 1505. Elimination of oxygen content requirement for reformulated gasoline.
- Sec. 1506. Analyses of motor vehicle fuel changes.
- Sec. 1507. Data collection.
- Sec. 1508. Reducing the proliferation of State fuel controls.
- Sec. 1509. Fuel system requirements harmonization study.
- Sec. 1510. Commercial byproducts from municipal solid waste and cellulosic biomass loan guarantee program.
- Sec. 1511. Resource center.
- Sec. 1512. Cellulosic biomass and waste-derived ethanol conversion assistance.
- Sec. 1513. Blending of compliant reformulated gasolines.

Subtitle B—Underground Storage Tank Compliance

- Sec. 1521. Short title.
- Sec. 1522. Leaking underground storage tanks.
- Sec. 1523. Inspection of underground storage tanks.
- Sec. 1524. Operator training.
- Sec. 1525. Remediation from oxygenated fuel additives.
- Sec. 1526. Release prevention, compliance, and enforcement.
- Sec. 1527. Delivery prohibition.
- Sec. 1528. Federal facilities.
- Sec. 1529. Tanks on tribal lands.
- Sec. 1530. Future release containment technology.
- Sec. 1531. Authorization of appropriations.
- Sec. 1532. Conforming amendments.
- Sec. 1533. Technical amendments.

TITLE XVI—STUDIES

- Sec. 1601. Study on inventory of petroleum and natural gas storage.

- Sec. 1602. Natural gas supply shortage report.
 Sec. 1603. Split-estate Federal oil and gas leasing and development practices.
 Sec. 1604. Resolution of Federal resource development conflicts in the Powder River Basin.
 Sec. 1605. Study of energy efficiency standards.
 Sec. 1606. Telecommuting study.
 Sec. 1607. LIHEAP report.
 Sec. 1608. Oil bypass filtration technology.
 Sec. 1609. Total integrated thermal systems.
 Sec. 1610. University collaboration.
 Sec. 1611. Reliability and consumer protection assessment.

1 **TITLE I—ENERGY EFFICIENCY**

2 **Subtitle A—Federal Programs**

3 **SEC. 101. ENERGY AND WATER SAVING MEASURES IN CON-**
 4 **GRESSIONAL BUILDINGS.**

5 (a) IN GENERAL.—Part 3 of title V of the National
 6 Energy Conservation Policy Act (42 U.S.C. 8251 et seq.)
 7 is amended by adding at the end the following:

8 **“SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN**
 9 **CONGRESSIONAL BUILDINGS.**

10 “(a) IN GENERAL.—The Architect of the Capitol—

11 “(1) shall develop, update, and implement a
 12 cost-effective energy conservation and management
 13 plan (referred to in this section as the ‘plan’) for all
 14 facilities administered by Congress (referred to in
 15 this section as ‘congressional buildings’) to meet the
 16 energy performance requirements for Federal build-
 17 ings established under section 543(a)(1); and

18 “(2) shall submit the plan to Congress, not
 19 later than 180 days after the date of enactment of
 20 this section.

1 “(b) PLAN REQUIREMENTS.—The plan shall in-
2 clude—

3 “(1) a description of the life cycle cost analysis
4 used to determine the cost-effectiveness of proposed
5 energy efficiency projects;

6 “(2) a schedule of energy surveys to ensure
7 complete surveys of all congressional buildings every
8 5 years to determine the cost and payback period of
9 energy and water conservation measures;

10 “(3) a strategy for installation of life cycle cost-
11 effective energy and water conservation measures;

12 “(4) the results of a study of the costs and ben-
13 efits of installation of submetering in congressional
14 buildings; and

15 “(5) information packages and ‘how-to’ guides
16 for each Member and employing authority of Con-
17 gress that detail simple, cost-effective methods to
18 save energy and taxpayer dollars in the workplace.

19 “(c) ANNUAL REPORT.—The Architect of the Capitol
20 shall submit to Congress annually a report on congres-
21 sional energy management and conservation programs re-
22 quired under this section that describes in detail—

23 “(1) energy expenditures and savings estimates
24 for each facility;

1 “(2) energy management and conservation
2 projects; and

3 “(3) future priorities to ensure compliance with
4 this section.”.

5 (b) TABLE OF CONTENTS AMENDMENT.—The table
6 of contents of the National Energy Conservation Policy
7 Act is amended by adding at the end of the items relating
8 to part 3 of title V the following new item:

“Sec. 552. Energy and water savings measures in congressional buildings.”.

9 (c) REPEAL.—Section 310 of the Legislative Branch
10 Appropriations Act, 1999 (2 U.S.C. 1815), is repealed.

11 (d) ENERGY INFRASTRUCTURE.—The Architect of
12 the Capitol, building on the Master Plan Study completed
13 in July 2000, shall commission a study to evaluate the
14 energy infrastructure of the Capital Complex to determine
15 how the infrastructure could be augmented to become
16 more energy efficient, using unconventional and renewable
17 energy resources, in a way that would enable the Complex
18 to have reliable utility service in the event of power fluc-
19 tuations, shortages, or outages.

20 (e) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Architect of the
22 Capitol to carry out subsection (d), \$2,000,000 for each
23 of fiscal years 2004 through 2008.

24 **SEC. 102. ENERGY MANAGEMENT REQUIREMENTS.**

25 (a) ENERGY REDUCTION GOALS.—

1 (1) AMENDMENT.—Section 543(a)(1) of the
 2 National Energy Conservation Policy Act (42 U.S.C.
 3 8253(a)(1)) is amended by striking “its Federal
 4 buildings so that” and all that follows through the
 5 end and inserting “the Federal buildings of the
 6 agency (including each industrial or laboratory facil-
 7 ity) so that the energy consumption per gross square
 8 foot of the Federal buildings of the agency in fiscal
 9 years 2004 through 2013 is reduced, as compared
 10 with the energy consumption per gross square foot
 11 of the Federal buildings of the agency in fiscal year
 12 2001, by the percentage specified in the following
 13 table:

“Fiscal Year	Percentage reduction
2004	2
2005	4
2006	6
2007	8
2008	10
2009	12
2010	14
2011	16
2012	18
2013	20.”.

14 (2) REPORTING BASELINE.—The energy reduc-
 15 tion goals and baseline established in paragraph (1)
 16 of section 543(a) of the National Energy Conserva-
 17 tion Policy Act (42 U.S.C. 8253(a)(1)), as amended
 18 by this subsection, supersede all previous goals and
 19 baselines under such paragraph, and related report-
 20 ing requirements.

1 (b) REVIEW AND REVISION OF ENERGY PERFORM-
2 ANCE REQUIREMENT.—Section 543(a) of the National
3 Energy Conservation Policy Act (42 U.S.C. 8253(a)) is
4 further amended by adding at the end the following:

5 “(3) Not later than December 31, 2012, the Sec-
6 retary shall review the results of the implementation of
7 the energy performance requirement established under
8 paragraph (1) and submit to Congress recommendations
9 concerning energy performance requirements for fiscal
10 years 2014 through 2023.”.

11 (c) EXCLUSIONS.—Section 543(c)(1) of the National
12 Energy Conservation Policy Act (42 U.S.C. 8253(c)(1))
13 is amended by striking “An agency may exclude” and all
14 that follows through the end and inserting “(A) An agency
15 may exclude, from the energy performance requirement
16 for a fiscal year established under subsection (a) and the
17 energy management requirement established under sub-
18 section (b), any Federal building or collection of Federal
19 buildings, if the head of the agency finds that—

20 “(i) compliance with those requirements would
21 be impracticable;

22 “(ii) the agency has completed and submitted
23 all federally required energy management reports;

24 “(iii) the agency has achieved compliance with
25 the energy efficiency requirements of this Act, the

1 Energy Policy Act of 1992, Executive orders, and
2 other Federal law; and

3 “(iv) the agency has implemented all prac-
4 ticable, life cycle cost-effective projects with respect
5 to the Federal building or collection of Federal
6 buildings to be excluded.

7 “(B) A finding of impracticability under subpara-
8 graph (A)(i) shall be based on—

9 “(i) the energy intensiveness of activities car-
10 ried out in the Federal building or collection of Fed-
11 eral buildings; or

12 “(ii) the fact that the Federal building or col-
13 lection of Federal buildings is used in the perform-
14 ance of a national security function.”.

15 (d) REVIEW BY SECRETARY.—Section 543(c)(2) of
16 the National Energy Conservation Policy Act (42 U.S.C.
17 8253(c)(2)) is amended—

18 (1) by striking “impracticability standards” and
19 inserting “standards for exclusion”;

20 (2) by striking “a finding of impracticability”
21 and inserting “the exclusion”; and

22 (3) by striking “energy consumption require-
23 ments” and inserting “requirements of subsections
24 (a) and (b)(1)”.

1 (e) CRITERIA.—Section 543(c) of the National En-
2 ergy Conservation Policy Act (42 U.S.C. 8253(c)) is fur-
3 ther amended by adding at the end the following:

4 “(3) Not later than 180 days after the date of enact-
5 ment of this paragraph, the Secretary shall issue guide-
6 lines that establish criteria for exclusions under paragraph
7 (1).”.

8 (f) RETENTION OF ENERGY AND WATER SAVINGS.—
9 Section 546 of the National Energy Conservation Policy
10 Act (42 U.S.C. 8256) is amended by adding at the end
11 the following new subsection:

12 “(e) RETENTION OF ENERGY AND WATER SAV-
13 INGS.—An agency may retain any funds appropriated to
14 that agency for energy expenditures, water expenditures,
15 or wastewater treatment expenditures, at buildings subject
16 to the requirements of section 543(a) and (b), that are
17 not made because of energy savings or water savings. Ex-
18 cept as otherwise provided by law, such funds may be used
19 only for energy efficiency, water conservation, or uncon-
20 ventional and renewable energy resources projects.”.

21 (g) REPORTS.—Section 548(b) of the National En-
22 ergy Conservation Policy Act (42 U.S.C. 8258(b)) is
23 amended—

24 (1) in the subsection heading, by inserting
25 “THE PRESIDENT AND” before “CONGRESS”; and

1 (2) by inserting “President and” before “Con-
2 gress”.

3 (h) CONFORMING AMENDMENT.—Section 550(d) of
4 the National Energy Conservation Policy Act (42 U.S.C.
5 8258b(d)) is amended in the second sentence by striking
6 “the 20 percent reduction goal established under section
7 543(a) of the National Energy Conservation Policy Act
8 (42 U.S.C. 8253(a)).” and inserting “each of the energy
9 reduction goals established under section 543(a).”.

10 **SEC. 103. ENERGY USE MEASUREMENT AND ACCOUNT-**
11 **ABILITY.**

12 Section 543 of the National Energy Conservation
13 Policy Act (42 U.S.C. 8253) is further amended by adding
14 at the end the following:

15 “(e) METERING OF ENERGY USE.—

16 “(1) DEADLINE.—By October 1, 2010, in ac-
17 cordance with guidelines established by the Sec-
18 retary under paragraph (2), all Federal buildings
19 shall, for the purposes of efficient use of energy and
20 reduction in the cost of electricity used in such
21 buildings, be metered or submetered. Each agency
22 shall use, to the maximum extent practicable, ad-
23 vanced meters or advanced metering devices that
24 provide data at least daily and that measure at least
25 hourly consumption of electricity in the Federal

1 buildings of the agency. Such data shall be incor-
2 porated into existing Federal energy tracking sys-
3 tems and made available to Federal facility energy
4 managers.

5 “(2) GUIDELINES.—

6 “(A) IN GENERAL.—Not later than 180
7 days after the date of enactment of this sub-
8 section, the Secretary, in consultation with the
9 Department of Defense, the General Services
10 Administration, representatives from the meter-
11 ing industry, utility industry, energy services in-
12 dustry, energy efficiency industry, energy effi-
13 ciency advocacy organizations, national labora-
14 tories, universities, and Federal facility energy
15 managers, shall establish guidelines for agencies
16 to carry out paragraph (1).

17 “(B) REQUIREMENTS FOR GUIDELINES.—

18 The guidelines shall—

19 “(i) take into consideration—

20 “(I) the cost of metering and
21 submetering and the reduced cost of
22 operation and maintenance expected
23 to result from metering and sub-
24 metering;

1 “(II) the extent to which meter-
2 ing and submetering are expected to
3 result in increased potential for en-
4 ergy management, increased potential
5 for energy savings and energy effi-
6 ciency improvement, and cost and en-
7 ergy savings due to utility contract
8 aggregation; and

9 “(III) the measurement and
10 verification protocols of the Depart-
11 ment of Energy;

12 “(ii) include recommendations con-
13 cerning the amount of funds and the num-
14 ber of trained personnel necessary to gath-
15 er and use the metering information to
16 track and reduce energy use;

17 “(iii) establish priorities for types and
18 locations of buildings to be metered and
19 submetered based on cost-effectiveness and
20 a schedule of 1 or more dates, not later
21 than 1 year after the date of issuance of
22 the guidelines, on which the requirements
23 specified in paragraph (1) shall take effect;
24 and

1 “(iv) establish exclusions from the re-
2 quirements specified in paragraph (1)
3 based on the de minimis quantity of energy
4 use of a Federal building, industrial proc-
5 ess, or structure.

6 “(3) PLAN.—Not later than 6 months after the
7 date guidelines are established under paragraph (2),
8 in a report submitted by the agency under section
9 548(a), each agency shall submit to the Secretary a
10 plan describing how the agency will implement the
11 requirements of paragraph (1), including (A) how
12 the agency will designate personnel primarily respon-
13 sible for achieving the requirements and (B) dem-
14 onstration by the agency, complete with documenta-
15 tion, of any finding that advanced meters or ad-
16 vanced metering devices, as defined in paragraph
17 (1), are not practicable.”.

18 **SEC. 104. PROCUREMENT OF ENERGY EFFICIENT PROD-**
19 **UCTS.**

20 (a) REQUIREMENTS.—Part 3 of title V of the Na-
21 tional Energy Conservation Policy Act (42 U.S.C. 8251
22 et seq.), as amended by section 101 of this Act, is amend-
23 ed by adding at the end the following:

1 **“SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFI-**
2 **CIENT PRODUCTS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) ENERGY STAR PRODUCT.—The term ‘En-
5 ergy Star product’ means a product that is rated for
6 energy efficiency under an Energy Star program.

7 “(2) ENERGY STAR PROGRAM.—The term ‘En-
8 ergy Star program’ means the program established
9 by section 324A of the Energy Policy and Conserva-
10 tion Act.

11 “(3) EXECUTIVE AGENCY.—The term ‘executive
12 agency’ has the meaning given the term in section
13 4 of the Office of Federal Procurement Policy Act
14 (41 U.S.C. 403).

15 “(4) FEMP DESIGNATED PRODUCT.—The term
16 ‘FEMP designated product’ means a product that is
17 designated under the Federal Energy Management
18 Program of the Department of Energy as being
19 among the highest 25 percent of equivalent products
20 for energy efficiency.

21 “(b) PROCUREMENT OF ENERGY EFFICIENT PROD-
22 UCTS.—

23 “(1) REQUIREMENT.—To meet the require-
24 ments of an executive agency for an energy con-
25 suming product, the head of the executive agency
26 shall, except as provided in paragraph (2), procure—

1 “(A) an Energy Star product; or

2 “(B) a FEMP designated product.

3 “(2) EXCEPTIONS.—The head of an executive
4 agency is not required to procure an Energy Star
5 product or FEMP designated product under para-
6 graph (1) if the head of the executive agency finds
7 in writing that—

8 “(A) an Energy Star product or FEMP
9 designated product is not cost-effective over the
10 life of the product taking energy cost savings
11 into account; or

12 “(B) no Energy Star product or FEMP
13 designated product is reasonably available that
14 meets the functional requirements of the execu-
15 tive agency.

16 “(3) PROCUREMENT PLANNING.—The head of
17 an executive agency shall incorporate into the speci-
18 fications for all procurements involving energy con-
19 suming products and systems, including guide speci-
20 fications, project specifications, and construction,
21 renovation, and services contracts that include provi-
22 sion of energy consuming products and systems, and
23 into the factors for the evaluation of offers received
24 for the procurement, criteria for energy efficiency
25 that are consistent with the criteria used for rating

1 Energy Star products and for rating FEMP des-
2 ignated products.

3 “(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN
4 FEDERAL CATALOGS.—Energy Star products and FEMP
5 designated products shall be clearly identified and promi-
6 nently displayed in any inventory or listing of products
7 by the General Services Administration or the Defense Lo-
8 gistics Agency. The General Services Administration or
9 the Defense Logistics Agency shall supply only Energy
10 Star products or FEMP designated products for all prod-
11 uct categories covered by the Energy Star program or the
12 Federal Energy Management Program, except in cases
13 where the agency ordering a product specifies in writing
14 that no Energy Star product or FEMP designated product
15 is available to meet the buyer’s functional requirements,
16 or that no Energy Star product or FEMP designated
17 product is cost-effective for the intended application over
18 the life of the product, taking energy cost savings into ac-
19 count.

20 “(d) SPECIFIC PRODUCTS.—(1) In the case of elec-
21 tric motors of 1 to 500 horsepower, agencies shall select
22 only premium efficient motors that meet a standard des-
23 ignated by the Secretary. The Secretary shall designate
24 such a standard not later than 120 days after the date
25 of the enactment of this section, after considering the rec-

1 ommendations of associated electric motor manufacturers
2 and energy efficiency groups.

3 “(2) All Federal agencies are encouraged to take ac-
4 tions to maximize the efficiency of air conditioning and
5 refrigeration equipment, including appropriate cleaning
6 and maintenance, including the use of any system treat-
7 ment or additive that will reduce the electricity consumed
8 by air conditioning and refrigeration equipment. Any such
9 treatment or additive must be—

10 “(A) determined by the Secretary to be effective
11 in increasing the efficiency of air conditioning and
12 refrigeration equipment without having an adverse
13 impact on air conditioning performance (including
14 cooling capacity) or equipment useful life;

15 “(B) determined by the Administrator of the
16 Environmental Protection Agency to be environ-
17 mentally safe; and

18 “(C) shown to increase seasonal energy effi-
19 ciency ratio (SEER) or energy efficiency ratio
20 (EER) when tested by the National Institute of
21 Standards and Technology according to Department
22 of Energy test procedures without causing any ad-
23 verse impact on the system, system components, the
24 refrigerant or lubricant, or other materials in the
25 system.

1 Results of testing described in subparagraph (C) shall be
2 published in the Federal Register for public review and
3 comment. For purposes of this section, a hardware device
4 or primary refrigerant shall not be considered an additive.

5 “(e) REGULATIONS.—Not later than 180 days after
6 the date of the enactment of this section, the Secretary
7 shall issue guidelines to carry out this section.”.

8 (b) CONFORMING AMENDMENT.—The table of con-
9 tents of the National Energy Conservation Policy Act is
10 further amended by inserting after the item relating to
11 section 552 the following new item:

“Sec. 553. Federal procurement of energy efficient products.”.

12 **SEC. 105. VOLUNTARY COMMITMENTS TO REDUCE INDUS-**
13 **TRIAL ENERGY INTENSITY.**

14 (a) VOLUNTARY AGREEMENTS.—The Secretary of
15 Energy is authorized to enter into voluntary agreements
16 with 1 or more persons in industrial sectors that consume
17 significant amounts of primary energy per unit of physical
18 output to reduce the energy intensity of their production
19 activities by a significant amount relative to improvements
20 in each sector in recent years.

21 (b) RECOGNITION.—The Secretary of Energy, in co-
22 operation with the Administrator of the Environmental
23 Protection Agency and other appropriate Federal agen-
24 cies, shall recognize and publicize the achievements of par-
25 ticipants in voluntary agreements under this section.

1 (c) DEFINITION.—In this section, the term “energy
2 intensity” means the primary energy consumed per unit
3 of physical output in an industrial process.

4 **SEC. 106. ADVANCED BUILDING EFFICIENCY TESTBED.**

5 (a) ESTABLISHMENT.—The Secretary of Energy, in
6 consultation with the Administrator of General Services,
7 shall establish an Advanced Building Efficiency Testbed
8 program for the development, testing, and demonstration
9 of advanced engineering systems, components, and mate-
10 rials to enable innovations in building technologies. The
11 program shall evaluate efficiency concepts for government
12 and industry buildings, and demonstrate the ability of
13 next generation buildings to support individual and orga-
14 nizational productivity and health (including by improving
15 indoor air quality) as well as flexibility and technological
16 change to improve environmental sustainability. Such pro-
17 gram shall complement and not duplicate existing national
18 programs.

19 (b) PARTICIPANTS.—The program established under
20 subsection (a) shall be led by a university with the ability
21 to combine the expertise from numerous academic fields
22 including, at a minimum, intelligent workplaces and ad-
23 vanced building systems and engineering, electrical and
24 computer engineering, computer science, architecture,
25 urban design, and environmental and mechanical engi-

1 neering. Such university shall partner with other univer-
 2 sities and entities who have established programs and the
 3 capability of advancing innovative building efficiency tech-
 4 nologies.

5 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 6 are authorized to be appropriated to the Secretary of En-
 7 ergy to carry out this section \$6,000,000 for each of the
 8 fiscal years 2004 through 2006, to remain available until
 9 expended. For any fiscal year in which funds are expended
 10 under this section, the Secretary shall provide $\frac{1}{3}$ of the
 11 total amount to the lead university described in subsection
 12 (b), and provide the remaining $\frac{2}{3}$ to the other participants
 13 referred to in subsection (b) on an equal basis.

14 **SEC. 107. FEDERAL BUILDING PERFORMANCE STANDARDS.**

15 Section 305(a) of the Energy Conservation and Pro-
 16 duction Act (42 U.S.C. 6834(a)) is amended—

17 (1) in paragraph (2)(A), by striking “CABO
 18 Model Energy Code, 1992” and inserting “the 2003
 19 International Energy Conservation Code”; and

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

21 “(3) REVISED FEDERAL BUILDING ENERGY EFFI-
 22 CIENCY PERFORMANCE STANDARDS.—

23 “(A) IN GENERAL.—Not later than 1 year after
 24 the date of enactment of this paragraph, the Sec-
 25 retary of Energy shall establish, by rule, revised

1 Federal building energy efficiency performance
2 standards that require that—

3 “(i) if life-cycle cost-effective, for new Fed-
4 eral buildings—

5 “(I) such buildings be designed so as
6 to achieve energy consumption levels at
7 least 30 percent below those of the version
8 current as of the date of enactment of this
9 paragraph of the ASHRAE Standard or
10 the International Energy Conservation
11 Code, as appropriate; and

12 “(II) sustainable design principles are
13 applied to the siting, design, and construc-
14 tion of all new and replacement buildings;
15 and

16 “(ii) where water is used to achieve energy
17 efficiency, water conservation technologies shall
18 be applied to the extent they are life-cycle cost
19 effective.

20 “(B) ADDITIONAL REVISIONS.—Not later than
21 1 year after the date of approval of each subsequent
22 revision of the ASHRAE Standard or the Inter-
23 national Energy Conservation Code, as appropriate,
24 the Secretary of Energy shall determine, based on
25 the cost-effectiveness of the requirements under the

1 amendments, whether the revised standards estab-
2 lished under this paragraph should be updated to re-
3 flect the amendments.

4 “(C) STATEMENT ON COMPLIANCE OF NEW
5 BUILDINGS.—In the budget request of the Federal
6 agency for each fiscal year and each report sub-
7 mitted by the Federal agency under section 548(a)
8 of the National Energy Conservation Policy Act (42
9 U.S.C. 8258(a)), the head of each Federal agency
10 shall include—

11 “(i) a list of all new Federal buildings
12 owned, operated, or controlled by the Federal
13 agency; and

14 “(ii) a statement concerning whether the
15 Federal buildings meet or exceed the revised
16 standards established under this paragraph.”.

17 **SEC. 108. INCREASED USE OF RECOVERED MINERAL COM-**
18 **PONENT IN FEDERALLY FUNDED PROJECTS**
19 **INVOLVING PROCUREMENT OF CEMENT OR**
20 **CONCRETE.**

21 (a) AMENDMENT.—Subtitle F of the Solid Waste
22 Disposal Act (42 U.S.C. 6961 et seq.) is amended by add-
23 ing at the end the following new section:

1 “INCREASED USE OF RECOVERED MINERAL COMPONENT
2 IN FEDERALLY FUNDED PROJECTS INVOLVING PRO-
3 CUREMENT OF CEMENT OR CONCRETE

4 “SEC. 6005. (a) DEFINITIONS.—In this section:

5 “(1) AGENCY HEAD.—The term ‘agency head’
6 means—

7 “(A) the Secretary of Transportation; and

8 “(B) the head of each other Federal agen-
9 cy that on a regular basis procures, or provides
10 Federal funds to pay or assist in paying the
11 cost of procuring, material for cement or con-
12 crete projects.

13 “(2) CEMENT OR CONCRETE PROJECT.—The
14 term ‘cement or concrete project’ means a project
15 for the construction or maintenance of a highway or
16 other transportation facility or a Federal, State, or
17 local government building or other public facility
18 that—

19 “(A) involves the procurement of cement
20 or concrete; and

21 “(B) is carried out in whole or in part
22 using Federal funds.

23 “(3) RECOVERED MINERAL COMPONENT.—The
24 term ‘recovered mineral component’ means—

25 “(A) ground granulated blast furnace slag;

1 “(B) coal combustion fly ash; and

2 “(C) any other waste material or byprod-
3 uct recovered or diverted from solid waste that
4 the Administrator, in consultation with an
5 agency head, determines should be treated as
6 recovered mineral component under this section
7 for use in cement or concrete projects paid for,
8 in whole or in part, by the agency head.

9 “(b) IMPLEMENTATION OF REQUIREMENTS.—

10 “(1) IN GENERAL.—Not later than 1 year after
11 the date of enactment of this section, the Adminis-
12 trator and each agency head shall take such actions
13 as are necessary to implement fully all procurement
14 requirements and incentives in effect as of the date
15 of enactment of this section (including guidelines
16 under section 6002) that provide for the use of ce-
17 ment and concrete incorporating recovered mineral
18 component in cement or concrete projects.

19 “(2) PRIORITY.—In carrying out paragraph (1)
20 an agency head shall give priority to achieving great-
21 er use of recovered mineral component in cement or
22 concrete projects for which recovered mineral compo-
23 nents historically have not been used or have been
24 used only minimally.

1 “(3) CONFORMANCE.—The Administrator and
2 each agency head shall carry out this subsection in
3 accordance with section 6002.

4 “(c) FULL IMPLEMENTATION STUDY.—

5 “(1) IN GENERAL.—The Administrator, in co-
6 operation with the Secretary of Transportation and
7 the Secretary of Energy, shall conduct a study to de-
8 termine the extent to which current procurement re-
9 quirements, when fully implemented in accordance
10 with subsection (b), may realize energy savings and
11 environmental benefits attainable with substitution
12 of recovered mineral component in cement used in
13 cement or concrete projects.

14 “(2) MATTERS TO BE ADDRESSED.—The study
15 shall—

16 “(A) quantify the extent to which recov-
17 ered mineral components are being substituted
18 for Portland cement, particularly as a result of
19 current procurement requirements, and the en-
20 ergy savings and environmental benefits associ-
21 ated with that substitution;

22 “(B) identify all barriers in procurement
23 requirements to greater realization of energy
24 savings and environmental benefits, including

1 barriers resulting from exceptions from current
2 law; and

3 “(C)(i) identify potential mechanisms to
4 achieve greater substitution of recovered min-
5 eral component in types of cement or concrete
6 projects for which recovered mineral compo-
7 nents historically have not been used or have
8 been used only minimally;

9 “(ii) evaluate the feasibility of establishing
10 guidelines or standards for optimized substi-
11 tution rates of recovered mineral component in
12 those cement or concrete projects; and

13 “(iii) identify any potential environmental
14 or economic effects that may result from great-
15 er substitution of recovered mineral component
16 in those cement or concrete projects.

17 “(3) REPORT.—Not later than 30 months after
18 the date of enactment of this section, the Adminis-
19 trator shall submit to Congress a report on the
20 study.

21 “(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—
22 Unless the study conducted under subsection (c) identifies
23 any effects or other problems described in subsection
24 (c)(2)(C)(iii) that warrant further review or delay, the Ad-
25 ministrator and each agency head shall, not later than 1

1 year after the release of the report in accordance with sub-
2 section (c)(3), take additional actions authorized under
3 this Act to establish procurement requirements and incen-
4 tives that provide for the use of cement and concrete with
5 increased substitution of recovered mineral component in
6 the construction and maintenance of cement or concrete
7 projects, so as to—

8 “(1) realize more fully the energy savings and
9 environmental benefits associated with increased
10 substitution; and

11 “(2) eliminate barriers identified under sub-
12 section (c).

13 “(e) EFFECT OF SECTION.—Nothing in this section
14 affects the requirements of section 6002 (including the
15 guidelines and specifications for implementing those re-
16 quirements).”.

17 (b) TABLE OF CONTENTS AMENDMENT.—The table
18 of contents of the Solid Waste Disposal Act is amended
19 by adding after the item relating to section 6004 the fol-
20 lowing new item:

“Sec. 6005. Increased use of recovered mineral component in federally funded
projects involving procurement of cement or concrete.”.

1 **Subtitle B—Energy Assistance and**
2 **State Programs**

3 **SEC. 121. LOW INCOME HOME ENERGY ASSISTANCE PRO-**
4 **GRAM.**

5 Section 2602(b) of the Low-Income Home Energy
6 Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended
7 by striking “and \$2,000,000,000 for each of fiscal years
8 2002 through 2004” and inserting “\$2,000,000,000 for
9 fiscal years 2002 and 2003, and \$3,400,000,000 for each
10 of fiscal years 2004 through 2006”.

11 **SEC. 122. WEATHERIZATION ASSISTANCE.**

12 Section 422 of the Energy Conservation and Produc-
13 tion Act (42 U.S.C. 6872) is amended by striking “for
14 fiscal years 1999 through 2003 such sums as may be nec-
15 essary” and inserting “\$325,000,000 for fiscal year 2004,
16 \$400,000,000 for fiscal year 2005, and \$500,000,000 for
17 fiscal year 2006”.

18 **SEC. 123. STATE ENERGY PROGRAMS.**

19 (a) STATE ENERGY CONSERVATION PLANS.—Section
20 362 of the Energy Policy and Conservation Act (42 U.S.C.
21 6322) is amended by inserting at the end the following
22 new subsection:

23 “(g) The Secretary shall, at least once every 3 years,
24 invite the Governor of each State to review and, if nec-
25 essary, revise the energy conservation plan of such State

1 submitted under subsection (b) or (e). Such reviews should
2 consider the energy conservation plans of other States
3 within the region, and identify opportunities and actions
4 carried out in pursuit of common energy conservation
5 goals.”.

6 (b) STATE ENERGY EFFICIENCY GOALS.—Section
7 364 of the Energy Policy and Conservation Act (42 U.S.C.
8 6324) is amended to read as follows:

9 “STATE ENERGY EFFICIENCY GOALS
10 “SEC. 364. Each State energy conservation plan with
11 respect to which assistance is made available under this
12 part on or after the date of enactment of the Energy Pol-
13 icy Act of 2003 shall contain a goal, consisting of an im-
14 provement of 25 percent or more in the efficiency of use
15 of energy in the State concerned in calendar year 2010
16 as compared to calendar year 1990, and may contain in-
17 terim goals.”.

18 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
19 365(f) of the Energy Policy and Conservation Act (42
20 U.S.C. 6325(f)) is amended by striking “for fiscal years
21 1999 through 2003 such sums as may be necessary” and
22 inserting “\$100,000,000 for each of the fiscal years 2004
23 and 2005 and \$125,000,000 for fiscal year 2006”.

24 **SEC. 124. ENERGY EFFICIENT APPLIANCE REBATE PRO-**
25 **GRAMS.**

26 (a) DEFINITIONS.—In this section:

1 (1) ELIGIBLE STATE.—The term “eligible
2 State” means a State that meets the requirements
3 of subsection (b).

4 (2) ENERGY STAR PROGRAM.—The term “En-
5 ergy Star program” means the program established
6 by section 324A of the Energy Policy and Conserva-
7 tion Act.

8 (3) RESIDENTIAL ENERGY STAR PRODUCT.—
9 The term “residential Energy Star product” means
10 a product for a residence that is rated for energy ef-
11 ficiency under the Energy Star program.

12 (4) SECRETARY.—The term “Secretary” means
13 the Secretary of Energy.

14 (5) STATE ENERGY OFFICE.—The term “State
15 energy office” means the State agency responsible
16 for developing State energy conservation plans under
17 section 362 of the Energy Policy and Conservation
18 Act (42 U.S.C. 6322).

19 (6) STATE PROGRAM.—The term “State pro-
20 gram” means a State energy efficient appliance re-
21 bate program described in subsection (b)(1).

22 (b) ELIGIBLE STATES.—A State shall be eligible to
23 receive an allocation under subsection (c) if the State—

24 (1) establishes (or has established) a State en-
25 ergy efficient appliance rebate program to provide

1 rebates to residential consumers for the purchase of
2 residential Energy Star products to replace used ap-
3 pliances of the same type;

4 (2) submits an application for the allocation at
5 such time, in such form, and containing such infor-
6 mation as the Secretary may require; and

7 (3) provides assurances satisfactory to the Sec-
8 retary that the State will use the allocation to sup-
9 plement, but not supplant, funds made available to
10 carry out the State program.

11 (c) AMOUNT OF ALLOCATIONS.—

12 (1) IN GENERAL.—Subject to paragraph (2),
13 for each fiscal year, the Secretary shall allocate to
14 the State energy office of each eligible State to carry
15 out subsection (d) an amount equal to the product
16 obtained by multiplying the amount made available
17 under subsection (f) for the fiscal year by the ratio
18 that the population of the State in the most recent
19 calendar year for which data are available bears to
20 the total population of all eligible States in that cal-
21 endar year.

22 (2) MINIMUM ALLOCATIONS.—For each fiscal
23 year, the amounts allocated under this subsection
24 shall be adjusted proportionately so that no eligible

1 State is allocated a sum that is less than an amount
2 determined by the Secretary.

3 (d) USE OF ALLOCATED FUNDS.—The allocation to
4 a State energy office under subsection (c) may be used
5 to pay up to 50 percent of the cost of establishing and
6 carrying out a State program.

7 (e) ISSUANCE OF REBATES.—Rebates may be pro-
8 vided to residential consumers that meet the requirements
9 of the State program. The amount of a rebate shall be
10 determined by the State energy office, taking into consid-
11 eration—

12 (1) the amount of the allocation to the State
13 energy office under subsection (c);

14 (2) the amount of any Federal or State tax in-
15 centive available for the purchase of the residential
16 Energy Star product; and

17 (3) the difference between the cost of the resi-
18 dential Energy Star product and the cost of an ap-
19 pliance that is not a residential Energy Star prod-
20 uct, but is of the same type as, and is the nearest
21 capacity, performance, and other relevant character-
22 istics (as determined by the State energy office) to,
23 the residential Energy Star product.

24 (f) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Secretary to carry

1 out this section \$50,000,000 for each of the fiscal years
2 2004 through 2008.

3 **SEC. 125. ENERGY EFFICIENT PUBLIC BUILDINGS.**

4 (a) GRANTS.—The Secretary of Energy may make
5 grants to the State agency responsible for developing State
6 energy conservation plans under section 362 of the Energy
7 Policy and Conservation Act (42 U.S.C. 6322), or, if no
8 such agency exists, a State agency designated by the Gov-
9 ernor of the State, to assist units of local government in
10 the State in improving the energy efficiency of public
11 buildings and facilities—

12 (1) through construction of new energy efficient
13 public buildings that use at least 30 percent less en-
14 ergy than a comparable public building constructed
15 in compliance with standards prescribed in the most
16 recent version of the International Energy Conserva-
17 tion Code, or a similar State code intended to
18 achieve substantially equivalent efficiency levels; or

19 (2) through renovation of existing public build-
20 ings to achieve reductions in energy use of at least
21 30 percent as compared to the baseline energy use
22 in such buildings prior to renovation, assuming a 3-
23 year, weather-normalized average for calculating
24 such baseline.

1 (b) ADMINISTRATION.—State energy offices receiving
2 grants under this section shall—

3 (1) maintain such records and evidence of com-
4 pliance as the Secretary may require; and

5 (2) develop and distribute information and ma-
6 terials and conduct programs to provide technical
7 services and assistance to encourage planning, fi-
8 nancing, and design of energy efficient public build-
9 ings by units of local government.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
11 purposes of this section, there are authorized to be appro-
12 priated to the Secretary of Energy \$30,000,000 for each
13 of fiscal years 2004 through 2008. Not more than 10 per-
14 cent of appropriated funds shall be used for administra-
15 tion.

16 **SEC. 126. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
17 **PILOT PROGRAM.**

18 (a) GRANTS.—The Secretary of Energy is authorized
19 to make grants to units of local government, private, non-
20 profit community development organizations, and Indian
21 tribe economic development entities to improve energy effi-
22 ciency; identify and develop alternative, renewable, and
23 distributed energy supplies; and increase energy conserva-
24 tion in low income rural and urban communities.

1 (b) PURPOSE OF GRANTS.—The Secretary may make
2 grants on a competitive basis for—

3 (1) investments that develop alternative, renew-
4 able, and distributed energy supplies;

5 (2) energy efficiency projects and energy con-
6 servation programs;

7 (3) studies and other activities that improve en-
8 ergy efficiency in low income rural and urban com-
9 munities;

10 (4) planning and development assistance for in-
11 creasing the energy efficiency of buildings and facili-
12 ties; and

13 (5) technical and financial assistance to local
14 government and private entities on developing new
15 renewable and distributed sources of power or com-
16 bined heat and power generation.

17 (c) DEFINITION.—For purposes of this section, the
18 term “Indian tribe” means any Indian tribe, band, nation,
19 or other organized group or community, including any
20 Alaskan Native village or regional or village corporation
21 as defined in or established pursuant to the Alaska Native
22 Claims Settlement Act (43 U.S.C. 1601 et seq.), that is
23 recognized as eligible for the special programs and services
24 provided by the United States to Indians because of their
25 status as Indians.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
2 purposes of this section there are authorized to be appro-
3 priated to the Secretary of Energy \$20,000,000 for each
4 of fiscal years 2004 through 2006.

5 **Subtitle C—Energy Efficient**
6 **Products**

7 **SEC. 131. ENERGY STAR PROGRAM.**

8 (a) AMENDMENT.—The Energy Policy and Conserva-
9 tion Act (42 U.S.C. 6201 et seq.) is amended by inserting
10 the following after section 324:

11 **“SEC. 324A. ENERGY STAR PROGRAM.**

12 “There is established at the Department of Energy
13 and the Environmental Protection Agency a voluntary
14 program to identify and promote energy-efficient products
15 and buildings in order to reduce energy consumption, im-
16 prove energy security, and reduce pollution through vol-
17 untary labeling of or other forms of communication about
18 products and buildings that meet the highest energy effi-
19 ciency standards. Responsibilities under the program shall
20 be divided between the Department of Energy and the En-
21 vironmental Protection Agency consistent with the terms
22 of agreements between the 2 agencies. The Administrator
23 and the Secretary shall—

24 “(1) promote Energy Star compliant tech-
25 nologies as the preferred technologies in the market-

1 place for achieving energy efficiency and to reduce
2 pollution;

3 “(2) work to enhance public awareness of the
4 Energy Star label, including special outreach to
5 small businesses;

6 “(3) preserve the integrity of the Energy Star
7 label;

8 “(4) solicit comments from interested parties
9 prior to establishing or revising an Energy Star
10 product category, specification, or criterion (or effective
11 dates for any of the foregoing);

12 “(5) upon adoption of a new or revised product
13 category, specification, or criterion, provide reasonable
14 notice to interested parties of any changes (including
15 effective dates) in product categories, specifications,
16 or criteria along with an explanation of
17 such changes and, where appropriate, responses to
18 comments submitted by interested parties; and

19 “(6) provide appropriate lead time (which shall
20 be 9 months, unless the Agency or Department determines
21 otherwise) prior to the effective date for a
22 new or a significant revision to a product category,
23 specification, or criterion, taking into account the
24 timing requirements of the manufacturing, product

1 marketing, and distribution process for the specific
2 product addressed.”.

3 (b) TABLE OF CONTENTS AMENDMENT.—The table
4 of contents of the Energy Policy and Conservation Act is
5 amended by inserting after the item relating to section
6 324 the following new item:

“Sec. 324A. Energy Star program.”.

7 **SEC. 132. HVAC MAINTENANCE CONSUMER EDUCATION**
8 **PROGRAM.**

9 Section 337 of the Energy Policy and Conservation
10 Act (42 U.S.C. 6307) is amended by adding at the end
11 the following:

12 “(c) HVAC MAINTENANCE.—For the purpose of en-
13 suring that installed air conditioning and heating systems
14 operate at their maximum rated efficiency levels, the Sec-
15 retary shall, not later than 180 days after the date of en-
16 actment of this subsection, carry out a program to educate
17 homeowners and small business owners concerning the en-
18 ergy savings resulting from properly conducted mainte-
19 nance of air conditioning, heating, and ventilating sys-
20 tems. The Secretary shall carry out the program in a cost-
21 shared manner in cooperation with the Administrator of
22 the Environmental Protection Agency and such other enti-
23 ties as the Secretary considers appropriate, including in-
24 dustry trade associations, industry members, and energy
25 efficiency organizations.

1 “(d) SMALL BUSINESS EDUCATION AND ASSIST-
2 ANCE.—The Administrator of the Small Business Admin-
3 istration, in consultation with the Secretary of Energy and
4 the Administrator of the Environmental Protection Agen-
5 cy, shall develop and coordinate a Government-wide pro-
6 gram, building on the existing Energy Star for Small
7 Business Program, to assist small businesses to become
8 more energy efficient, understand the cost savings obtain-
9 able through efficiencies, and identify financing options
10 for energy efficiency upgrades. The Secretary and the Ad-
11 ministrator of the Small Business Administration shall
12 make the program information available directly to small
13 businesses and through other Federal agencies, including
14 the Federal Emergency Management Program and the
15 Department of Agriculture.”.

16 **SEC. 133. ENERGY CONSERVATION STANDARDS FOR ADDI-**
17 **TIONAL PRODUCTS.**

18 (a) DEFINITIONS.—Section 321 of the Energy Policy
19 and Conservation Act (42 U.S.C. 6291) is amended—

20 (1) in paragraph (30)(S), by striking the period
21 and adding at the end the following: “but does not
22 include any lamp specifically designed to be used for
23 special purpose applications and that is unlikely to
24 be used in general purpose applications such as
25 those described in subparagraph (D), and also does

1 not include any lamp not described in subparagraph
2 (D) that is excluded by the Secretary, by rule, be-
3 cause the lamp is designed for special applications
4 and is unlikely to be used in general purpose appli-
5 cations.”; and

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

7 “(32) The term ‘battery charger’ means a de-
8 vice that charges batteries for consumer products
9 and includes battery chargers embedded in other
10 consumer products.

11 “(33) The term ‘commercial refrigerators,
12 freezers, and refrigerator-freezers’ means refrig-
13 erators, freezers, or refrigerator-freezers that—

14 “(A) are not consumer products regulated
15 under this Act; and

16 “(B) incorporate most components involved
17 in the vapor-compression cycle and the refrig-
18 erated compartment in a single package.

19 “(34) The term ‘external power supply’ means
20 an external power supply circuit that is used to con-
21 vert household electric current into either DC cur-
22 rent or lower-voltage AC current to operate a con-
23 sumer product.

24 “(35) The term ‘illuminated exit sign’ means a
25 sign that—

1 “(A) is designed to be permanently fixed in
2 place to identify an exit; and

3 “(B) consists of an electrically powered in-
4 tegral light source that illuminates the legend
5 ‘EXIT’ and any directional indicators and pro-
6 vides contrast between the legend, any direc-
7 tional indicators, and the background.

8 “(36)(A) Except as provided in subparagraph
9 (B), the term ‘distribution transformer’ means a
10 transformer that—

11 “(i) has an input voltage of 34.5 kilovolts
12 or less;

13 “(ii) has an output voltage of 600 volts or
14 less; and

15 “(iii) is rated for operation at a frequency
16 of 60 Hertz.

17 “(B) The term ‘distribution transformer’ does
18 not include—

19 “(i) transformers with multiple voltage
20 taps, with the highest voltage tap equaling at
21 least 20 percent more than the lowest voltage
22 tap;

23 “(ii) transformers, such as those commonly
24 known as drive transformers, rectifier trans-
25 formers, auto-transformers, Uninterruptible

1 Power System transformers, impedance trans-
2 formers, harmonic transformers, regulating
3 transformers, sealed and nonventilating trans-
4 formers, machine tool transformers, welding
5 transformers, grounding transformers, or test-
6 ing transformers, that are designed to be used
7 in a special purpose application and are unlikely
8 to be used in general purpose applications; or

9 “(iii) any transformer not listed in clause
10 (ii) that is excluded by the Secretary by rule be-
11 cause—

12 “(I) the transformer is designed for a
13 special application;

14 “(II) the transformer is unlikely to be
15 used in general purpose applications; and

16 “(III) the application of standards to
17 the transformer would not result in signifi-
18 cant energy savings.

19 “(37) The term ‘low-voltage dry-type distribu-
20 tion transformer’ means a distribution transformer
21 that—

22 “(A) has an input voltage of 600 volts or
23 less;

24 “(B) is air-cooled; and

25 “(C) does not use oil as a coolant.

1 “(38) The term ‘standby mode’ means the low-
2 est power consumption mode that—

3 “(A) cannot be switched off or influenced
4 by the user; and

5 “(B) may persist for an indefinite time
6 when an appliance is connected to the main
7 electricity supply and used in accordance with
8 the manufacturer’s instructions,

9 as defined on an individual product basis by the Sec-
10 retary.

11 “(39) The term ‘torchiere’ means a portable
12 electric lamp with a reflector bowl that directs light
13 upward so as to give indirect illumination.

14 “(40) The term ‘traffic signal module’ means a
15 standard 8-inch (200mm) or 12-inch (300mm) traf-
16 fic signal indication, consisting of a light source, a
17 lens, and all other parts necessary for operation,
18 that communicates movement messages to drivers
19 through red, amber, and green colors.

20 “(41) The term ‘transformer’ means a device
21 consisting of 2 or more coils of insulated wire that
22 transfers alternating current by electromagnetic in-
23 duction from 1 coil to another to change the original
24 voltage or current value.

1 “(42) The term ‘unit heater’ means a self-con-
2 tained fan-type heater designed to be installed with-
3 in the heated space, except that such term does not
4 include a warm air furnace.”.

5 (b) TEST PROCEDURES.—Section 323 of the Energy
6 Policy and Conservation Act (42 U.S.C. 6293) is amend-
7 ed—

8 (1) in subsection (b), by adding at the end the
9 following:

10 “(9) Test procedures for illuminated exit signs
11 shall be based on the test method used under
12 Version 2.0 of the Energy Star program of the Envi-
13 ronmental Protection Agency for illuminated exit
14 signs.

15 “(10) Test procedures for distribution trans-
16 formers and low voltage dry-type distribution trans-
17 formers shall be based on the ‘Standard Test Meth-
18 od for Measuring the Energy Consumption of Dis-
19 tribution Transformers’ prescribed by the National
20 Electrical Manufacturers Association (NEMA TP 2–
21 1998). The Secretary may review and revise this test
22 procedure. For purposes of section 346(a), this test
23 procedure shall be deemed to be testing require-
24 ments prescribed by the Secretary under section
25 346(a)(1) for distribution transformers for which the

1 Secretary makes a determination that energy con-
2 servation standards would be technologically feasible
3 and economically justified, and would result in sig-
4 nificant energy savings.

5 “(11) Test procedures for traffic signal modules
6 shall be based on the test method used under the
7 Energy Star program of the Environmental Protec-
8 tion Agency for traffic signal modules, as in effect
9 on the date of enactment of this paragraph.

10 “(12) Test procedures for medium base com-
11 pact fluorescent lamps shall be based on the test
12 methods used under the August 9, 2001, version of
13 the Energy Star program of the Environmental Pro-
14 tection Agency and Department of Energy for com-
15 pact fluorescent lamps. Covered products shall meet
16 all test requirements for regulated parameters in
17 section 325(bb). However, covered products may be
18 marketed prior to completion of lamp life and lumen
19 maintenance at 40 percent of rated life testing pro-
20 vided manufacturers document engineering pre-
21 dictions and analysis that support expected attain-
22 ment of lumen maintenance at 40 percent rated life
23 and lamp life time.”; and

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

1 “(f) ADDITIONAL CONSUMER AND COMMERCIAL
2 PRODUCTS.—The Secretary shall, not later than 24
3 months after the date of enactment of this subsection, pre-
4 scribe testing requirements for suspended ceiling fans, re-
5 frigerated bottled or canned beverage vending machines,
6 and commercial refrigerators, freezers, and refrigerator-
7 freezers. Such testing requirements shall be based on ex-
8 isting test procedures used in industry to the extent prac-
9 tical and reasonable. In the case of suspended ceiling fans,
10 such test procedures shall include efficiency at both max-
11 imum output and at an output no more than 50 percent
12 of the maximum output.”.

13 (c) NEW STANDARDS.—Section 325 of the Energy
14 Policy and Conservation Act (42 U.S.C. 6295) is amended
15 by adding at the end the following:

16 “(u) BATTERY CHARGER AND EXTERNAL POWER
17 SUPPLY ELECTRIC ENERGY CONSUMPTION.—

18 “(1) INITIAL RULEMAKING.—(A) The Secretary
19 shall, within 18 months after the date of enactment
20 of this subsection, prescribe by notice and comment,
21 definitions and test procedures for the power use of
22 battery chargers and external power supplies. In es-
23 tablishing these test procedures, the Secretary shall
24 consider, among other factors, existing definitions
25 and test procedures used for measuring energy con-

1 sumption in standby mode and other modes and as-
2 sess the current and projected future market for
3 battery chargers and external power supplies. This
4 assessment shall include estimates of the significance
5 of potential energy savings from technical improve-
6 ments to these products and suggested product
7 classes for standards. Prior to the end of this time
8 period, the Secretary shall hold a scoping workshop
9 to discuss and receive comments on plans for devel-
10 oping energy conservation standards for energy use
11 for these products.

12 “(B) The Secretary shall, within 3 years after
13 the date of enactment of this subsection, issue a
14 final rule that determines whether energy conserva-
15 tion standards shall be issued for battery chargers
16 and external power supplies or classes thereof. For
17 each product class, any such standards shall be set
18 at the lowest level of energy use that—

19 “(i) meets the criteria and procedures of
20 subsections (o), (p), (q), (r), (s), and (t); and

21 “(ii) will result in significant overall an-
22 nual energy savings, considering both standby
23 mode and other operating modes.

24 “(2) REVIEW OF STANDBY ENERGY USE IN
25 COVERED PRODUCTS.—In determining pursuant to

1 section 323 whether test procedures and energy con-
2 servation standards pursuant to this section should
3 be revised, the Secretary shall consider, for covered
4 products that are major sources of standby mode en-
5 ergy consumption, whether to incorporate standby
6 mode into such test procedures and energy conserva-
7 tion standards, taking into account, among other
8 relevant factors, standby mode power consumption
9 compared to overall product energy consumption.

10 “(3) RULEMAKING.—The Secretary shall not
11 propose a standard under this section unless the
12 Secretary has issued applicable test procedures for
13 each product pursuant to section 323.

14 “(4) EFFECTIVE DATE.—Any standard issued
15 under this subsection shall be applicable to products
16 manufactured or imported 3 years after the date of
17 issuance.

18 “(5) VOLUNTARY PROGRAMS.—The Secretary
19 and the Administrator shall collaborate and develop
20 programs, including programs pursuant to section
21 324A (relating to Energy Star Programs) and other
22 voluntary industry agreements or codes of conduct,
23 that are designed to reduce standby mode energy
24 use.

1 “(v) SUSPENDED CEILING FANS, VENDING MA-
2 CHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS,
3 AND REFRIGERATOR-FREEZERS.—The Secretary shall not
4 later than 36 months after the date on which testing re-
5 quirements are prescribed by the Secretary pursuant to
6 section 323(f), prescribe, by rule, energy conservation
7 standards for suspended ceiling fans, refrigerated bottled
8 or canned beverage vending machines, and commercial re-
9 frigerators, freezers, and refrigerator-freezers. In estab-
10 lishing standards under this subsection, the Secretary
11 shall use the criteria and procedures contained in sub-
12 sections (o) and (p). Any standard prescribed under this
13 subsection shall apply to products manufactured 3 years
14 after the date of publication of a final rule establishing
15 such standard.

16 “(w) ILLUMINATED EXIT SIGNS.—Illuminated exit
17 signs manufactured on or after January 1, 2005, shall
18 meet the Version 2.0 Energy Star Program performance
19 requirements for illuminated exit signs prescribed by the
20 Environmental Protection Agency.

21 “(x) TORCHIERES.—Torchieres manufactured on or
22 after January 1, 2005—

23 “(1) shall consume not more than 190 watts of
24 power; and

1 “(2) shall not be capable of operating with
2 lamps that total more than 190 watts.

3 “(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION
4 TRANSFORMERS.—The efficiency of low voltage dry-type
5 distribution transformers manufactured on or after Janu-
6 ary 1, 2005, shall be the Class I Efficiency Levels for dis-
7 tribution transformers specified in Table 4–2 of the ‘Guide
8 for Determining Energy Efficiency for Distribution Trans-
9 formers’ published by the National Electrical Manufactur-
10 ers Association (NEMA TP–1–2002).

11 “(z) TRAFFIC SIGNAL MODULES.—Traffic signal
12 modules manufactured on or after January 1, 2006, shall
13 meet the performance requirements used under the En-
14 ergy Star program of the Environmental Protection Agen-
15 cy for traffic signals, as in effect on the date of enactment
16 of this subsection, and shall be installed with compatible,
17 electrically connected signal control interface devices and
18 conflict monitoring systems.

19 “(aa) UNIT HEATERS.—Unit heaters manufactured
20 on or after the date that is 3 years after the date of enact-
21 ment of this subsection shall be equipped with an intermit-
22 tent ignition device and shall have either power venting
23 or an automatic flue damper.

24 “(bb) MEDIUM BASE COMPACT FLUORESCENT
25 LAMPS.—Bare lamp and covered lamp (no reflector) me-

1 dium base compact fluorescent lamps manufactured on or
2 after January 1, 2005, shall meet the following require-
3 ments prescribed by the August 9, 2001, version of the
4 Energy Star Program Requirements for Compact Fluores-
5 cent Lamps, Energy Star Eligibility Criteria, Energy-Effi-
6 ciency Specification issued by the Environmental Protec-
7 tion Agency and Department of Energy: minimum initial
8 efficacy; lumen maintenance at 1000 hours; lumen mainte-
9 nance at 40 percent of rated life; rapid cycle stress test;
10 and lamp life. The Secretary may, by rule, establish re-
11 quirements for color quality (CRI); power factor; oper-
12 ating frequency; and maximum allowable start time based
13 on the requirements prescribed by the August 9, 2001,
14 version of the Energy Star Program Requirements for
15 Compact Fluorescent Lamps. The Secretary may, by rule,
16 revise these requirements or establish other requirements
17 considering energy savings, cost effectiveness, and con-
18 sumer satisfaction.

19 “(cc) EFFECTIVE DATE.—Section 327 shall apply—

20 “(1) to products for which standards are to be
21 established under subsections (u) and (v) on the
22 date on which a final rule is issued by the Depart-
23 ment of Energy, except that any State or local
24 standards prescribed or enacted for any such prod-
25 uct prior to the date on which such final rule is

1 issued shall not be preempted until the standard es-
2 tablished under subsection (u) or (v) for that prod-
3 uct takes effect; and

4 “(2) to products for which standards are estab-
5 lished under subsections (w) through (bb) on the
6 date of enactment of those subsections, except that
7 any State or local standards prescribed or enacted
8 prior to the date of enactment of those subsections
9 shall not be preempted until the standards estab-
10 lished under subsections (w) through (bb) take ef-
11 fect.”.

12 (d) RESIDENTIAL FURNACE FANS.—Section
13 325(f)(3) of the Energy Policy and Conservation Act (42
14 U.S.C. 6295(f)(3)) is amended by adding the following
15 new subparagraph at the end:

16 “(D) Notwithstanding any provision of this Act, the
17 Secretary may consider, and prescribe, if the requirements
18 of subsection (o) of this section are met, energy efficiency
19 or energy use standards for electricity used for purposes
20 of circulating air through duct work.”.

21 **SEC. 134. ENERGY LABELING.**

22 (a) RULEMAKING ON EFFECTIVENESS OF CONSUMER
23 PRODUCT LABELING.—Section 324(a)(2) of the Energy
24 Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is
25 amended by adding at the end the following:

1 “(F) Not later than 3 months after the date of enact-
2 ment of this subparagraph, the Commission shall initiate
3 a rulemaking to consider the effectiveness of the current
4 consumer products labeling program in assisting con-
5 sumers in making purchasing decisions and improving en-
6 ergy efficiency and to consider changes to the labeling
7 rules that would improve the effectiveness of consumer
8 product labels. Such rulemaking shall be completed not
9 later than 2 years after the date of enactment of this sub-
10 paragraph.”.

11 (b) RULEMAKING ON LABELING FOR ADDITIONAL
12 PRODUCTS.—Section 324(a) of the Energy Policy and
13 Conservation Act (42 U.S.C. 6294(a)) is further amended
14 by adding at the end the following:

15 “(5) The Secretary or the Commission, as appro-
16 priate, may, for covered products referred to in sub-
17 sections (u) through (aa) of section 325, prescribe, by rule,
18 pursuant to this section, labeling requirements for such
19 products after a test procedure has been set pursuant to
20 section 323. In the case of products to which TP–1 stand-
21 ards under section 325(y) apply, labeling requirements
22 shall be based on the ‘Standard for the Labeling of Dis-
23 tribution Transformer Efficiency’ prescribed by the Na-
24 tional Electrical Manufacturers Association (NEMA TP–

1 3) as in effect upon the date of enactment of this para-
 2 graph.”.

3 **Subtitle D—Public Housing**

4 **SEC. 141. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AF-** 5 **FORDABLE HOUSING.**

6 Section 4(b) of the HUD Demonstration Act of 1993
 7 (42 U.S.C. 9816 note) is amended—

8 (1) in paragraph (1), by inserting before the
 9 semicolon at the end the following: “, including ca-
 10 pabilities regarding the provision of energy efficient,
 11 affordable housing and residential energy conserva-
 12 tion measures”; and

13 (2) in paragraph (2), by inserting before the
 14 semicolon the following: “, including such activities
 15 relating to the provision of energy efficient, afford-
 16 able housing and residential energy conservation
 17 measures that benefit low-income families”.

18 **SEC. 142. INCREASE OF CDBG PUBLIC SERVICES CAP FOR** 19 **ENERGY CONSERVATION AND EFFICIENCY** 20 **ACTIVITIES.**

21 Section 105(a)(8) of the Housing and Community
 22 Development Act of 1974 (42 U.S.C. 5305(a)(8)) is
 23 amended—

24 (1) by inserting “or efficiency” after “energy
 25 conservation”;

1 (2) by striking “, and except that” and insert-
2 ing “; except that”; and

3 (3) by inserting before the semicolon at the end
4 the following: “; and except that each percentage
5 limitation under this paragraph on the amount of
6 assistance provided under this title that may be used
7 for the provision of public services is hereby in-
8 creased by 10 percent, but such percentage increase
9 may be used only for the provision of public services
10 concerning energy conservation or efficiency”.

11 **SEC. 143. FHA MORTGAGE INSURANCE INCENTIVES FOR**
12 **ENERGY EFFICIENT HOUSING.**

13 (a) SINGLE FAMILY HOUSING MORTGAGE INSUR-
14 ANCE.—Section 203(b)(2) of the National Housing Act
15 (12 U.S.C. 1709(b)(2)) is amended, in the first undesig-
16 nated paragraph beginning after subparagraph (B)(ii)(IV)
17 (relating to solar energy systems), by striking “20 per-
18 cent” and inserting “30 percent”.

19 (b) MULTIFAMILY HOUSING MORTGAGE INSUR-
20 ANCE.—Section 207(c) of the National Housing Act (12
21 U.S.C. 1713(c)) is amended, in the last undesignated
22 paragraph beginning after paragraph (3) (relating to solar
23 energy systems and residential energy conservation meas-
24 ures), by striking “20 percent” and inserting “30 per-
25 cent”.

1 (c) COOPERATIVE HOUSING MORTGAGE INSUR-
2 ANCE.—Section 213(p) of the National Housing Act (12
3 U.S.C. 1715e(p)) is amended by striking “20 per centum”
4 and inserting “30 percent”.

5 (d) REHABILITATION AND NEIGHBORHOOD CON-
6 SERVATION HOUSING MORTGAGE INSURANCE.—Section
7 220(d)(3)(B)(iii)(IV) of the National Housing Act (12
8 U.S.C. 1715k(d)(3)(B)(iii)(IV)) is amended—

9 (1) by striking “with respect to rehabilitation
10 projects involving not more than five family units,”;
11 and

12 (2) by striking “20 per centum” and inserting
13 “30 percent”.

14 (e) LOW-INCOME MULTIFAMILY HOUSING MORT-
15 GAGE INSURANCE.—Section 221(k) of the National Hous-
16 ing Act (12 U.S.C. 1715l(k)) is amended by striking “20
17 per centum” and inserting “30 percent”.

18 (f) ELDERLY HOUSING MORTGAGE INSURANCE.—
19 Section 231(c)(2)(C) of the National Housing Act (12
20 U.S.C. 1715v(c)(2)(C)) is amended by striking “20 per
21 centum” and inserting “30 percent”.

22 (g) CONDOMINIUM HOUSING MORTGAGE INSUR-
23 ANCE.—Section 234(j) of the National Housing Act (12
24 U.S.C. 1715y(j)) is amended by striking “20 per centum”
25 and inserting “30 percent”.

1 **SEC. 144. PUBLIC HOUSING CAPITAL FUND.**

2 Section 9 of the United States Housing Act of 1937
3 (42 U.S.C. 1437g) is amended—

4 (1) in subsection (d)(1)—

5 (A) in subparagraph (I), by striking “and”
6 at the end;

7 (B) in subparagraph (J), by striking the
8 period at the end and inserting a semicolon;
9 and

10 (C) by adding at the end the following new
11 subparagraphs:

12 “(K) improvement of energy and water-use
13 efficiency by installing fixtures and fittings that
14 conform to the American Society of Mechanical
15 Engineers/American National Standards Insti-
16 tute standards A112.19.2–1998 and
17 A112.18.1–2000, or any revision thereto, appli-
18 cable at the time of installation, and by increas-
19 ing energy efficiency and water conservation by
20 such other means as the Secretary determines
21 are appropriate; and

22 “(L) integrated utility management and
23 capital planning to maximize energy conserva-
24 tion and efficiency measures.”; and

25 (2) in subsection (e)(2)(C)—

1 (A) by striking “The” and inserting the
2 following:

3 “(i) IN GENERAL.—The”; and

4 (B) by adding at the end the following:

5 “(ii) THIRD PARTY CONTRACTS.—
6 Contracts described in clause (i) may in-
7 clude contracts for equipment conversions
8 to less costly utility sources, projects with
9 resident-paid utilities, and adjustments to
10 frozen base year consumption, including
11 systems repaired to meet applicable build-
12 ing and safety codes and adjustments for
13 occupancy rates increased by rehabilita-
14 tion.

15 “(iii) TERM OF CONTRACT.—The total
16 term of a contract described in clause (i)
17 shall not exceed 20 years to allow longer
18 payback periods for retrofits, including
19 windows, heating system replacements,
20 wall insulation, site-based generation, ad-
21 vanced energy savings technologies, includ-
22 ing renewable energy generation, and other
23 such retrofits.”.

1 **SEC. 145. GRANTS FOR ENERGY-CONSERVING IMPROVE-**
2 **MENTS FOR ASSISTED HOUSING.**

3 Section 251(b)(1) of the National Energy Conserva-
4 tion Policy Act (42 U.S.C. 8231(1)) is amended—

5 (1) by striking “financed with loans” and in-
6 serting “assisted”;

7 (2) by inserting after “1959,” the following:
8 “which are eligible multifamily housing projects (as
9 such term is defined in section 512 of the Multi-
10 family Assisted Housing Reform and Affordability
11 Act of 1997 (42 U.S.C. 1437f note)) and are subject
12 to mortgage restructuring and rental assistance suf-
13 ficiency plans under such Act,”; and

14 (3) by inserting after the period at the end of
15 the first sentence the following new sentence: “Such
16 improvements may also include the installation of
17 energy and water conserving fixtures and fittings
18 that conform to the American Society of Mechanical
19 Engineers/American National Standards Institute
20 standards A112.19.2–1998 and A112.18.1–2000, or
21 any revision thereto, applicable at the time of instal-
22 lation.”.

23 **SEC. 146. NORTH AMERICAN DEVELOPMENT BANK.**

24 Part 2 of subtitle D of title V of the North American
25 Free Trade Agreement Implementation Act (22 U.S.C.

1 290m–290m–3) is amended by adding at the end the fol-
 2 lowing:

3 **“SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.**

4 “Consistent with the focus of the Bank’s Charter on
 5 environmental infrastructure projects, the Board members
 6 representing the United States should use their voice and
 7 vote to encourage the Bank to finance projects related to
 8 clean and efficient energy, including energy conservation,
 9 that prevent, control, or reduce environmental pollutants
 10 or contaminants.”.

11 **SEC. 147. ENERGY-EFFICIENT APPLIANCES.**

12 In purchasing appliances, a public housing agency
 13 shall purchase energy-efficient appliances that are Energy
 14 Star products or FEMP-designated products, as such
 15 terms are defined in section 553 of the National Energy
 16 Conservation Policy Act (as amended by this title), unless
 17 the purchase of energy-efficient appliances is not cost-ef-
 18 fective to the agency.

19 **SEC. 148. ENERGY EFFICIENCY STANDARDS.**

20 Section 109 of the Cranston-Gonzalez National Af-
 21 fordable Housing Act (42 U.S.C. 12709) is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (1)—

24 (i) by striking “1 year after the date
 25 of the enactment of the Energy Policy Act

1 of 1992” and inserting “September 30,
2 2004”;

3 (ii) in subparagraph (A), by striking
4 “and” at the end;

5 (iii) in subparagraph (B), by striking
6 the period at the end and inserting “;
7 and”; and

8 (iv) by adding at the end the fol-
9 lowing:

10 “(C) rehabilitation and new construction of
11 public and assisted housing funded by HOPE
12 VI revitalization grants under section 24 of the
13 United States Housing Act of 1937 (42 U.S.C.
14 1437v), where such standards are determined
15 to be cost effective by the Secretary of Housing
16 and Urban Development.”; and

17 (B) in paragraph (2), by striking “Council
18 of American” and all that follows through
19 “90.1–1989’”)” and inserting “2003 Inter-
20 national Energy Conservation Code”;

21 (2) in subsection (b)—

22 (A) by striking “within 1 year after the
23 date of the enactment of the Energy Policy Act
24 of 1992” and inserting “by September 30,
25 2004”; and

1 (B) by striking “CABO” and all that fol-
2 lows through “1989” and inserting “the 2003
3 International Energy Conservation Code”; and
4 (3) in subsection (c)—

5 (A) in the heading, by striking “MODEL
6 ENERGY CODE” and inserting “THE INTER-
7 NATIONAL ENERGY CONSERVATION CODE”;
8 and

9 (B) by striking “CABO” and all that fol-
10 lows through “1989” and inserting “the 2003
11 International Energy Conservation Code”.

12 **SEC. 149. ENERGY STRATEGY FOR HUD.**

13 The Secretary of Housing and Urban Development
14 shall develop and implement an integrated strategy to re-
15 duce utility expenses through cost-effective energy con-
16 servation and efficiency measures and energy efficient de-
17 sign and construction of public and assisted housing. The
18 energy strategy shall include the development of energy
19 reduction goals and incentives for public housing agencies.
20 The Secretary shall submit a report to Congress, not later
21 than 1 year after the date of the enactment of this Act,
22 on the energy strategy and the actions taken by the De-
23 partment of Housing and Urban Development to monitor
24 the energy usage of public housing agencies and shall sub-

1 mit an update every 2 years thereafter on progress in im-
2 plementing the strategy.

3 **TITLE II—RENEWABLE ENERGY**

4 **Subtitle A—General Provisions**

5 **SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RE-** 6 **SOURCES.**

7 (a) RESOURCE ASSESSMENT.—Not later than 6
8 months after the date of enactment of this Act, and each
9 year thereafter, the Secretary of Energy shall review the
10 available assessments of renewable energy resources with-
11 in the United States, including solar, wind, biomass, ocean
12 (tidal, wave, current, and thermal), geothermal, and hy-
13 droelectric energy resources, and undertake new assess-
14 ments as necessary, taking into account changes in market
15 conditions, available technologies, and other relevant fac-
16 tors.

17 (b) CONTENTS OF REPORTS.—Not later than 1 year
18 after the date of enactment of this Act, and each year
19 thereafter, the Secretary shall publish a report based on
20 the assessment under subsection (a). The report shall con-
21 tain—

22 (1) a detailed inventory describing the available
23 amount and characteristics of the renewable energy
24 resources; and

1 (2) such other information as the Secretary be-
2 lieves would be useful in developing such renewable
3 energy resources, including descriptions of sur-
4 rounding terrain, population and load centers, near-
5 by energy infrastructure, location of energy and
6 water resources, and available estimates of the costs
7 needed to develop each resource, together with an
8 identification of any barriers to providing adequate
9 transmission for remote sources of renewable energy
10 resources to current and emerging markets, rec-
11 ommendations for removing or addressing such bar-
12 riers, and ways to provide access to the grid that do
13 not unfairly disadvantage renewable or other energy
14 producers.

15 (c) **AUTHORIZATION OF APPROPRIATIONS.**—For the
16 purposes of this section, there are authorized to be appro-
17 priated to the Secretary of Energy \$10,000,000 for each
18 of fiscal years 2004 through 2008.

19 **SEC. 202. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

20 (a) **INCENTIVE PAYMENTS.**—Section 1212(a) of the
21 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is
22 amended by striking “and which satisfies” and all that
23 follows through “Secretary shall establish.” and inserting
24 “. If there are insufficient appropriations to make full pay-
25 ments for electric production from all qualified renewable

1 energy facilities in any given year, the Secretary shall as-
2 sign 60 percent of appropriated funds for that year to fa-
3 cilities that use solar, wind, geothermal, or closed-loop
4 (dedicated energy crops) biomass technologies to generate
5 electricity, and assign the remaining 40 percent to other
6 projects. The Secretary may, after transmitting to Con-
7 gress an explanation of the reasons therefor, alter the per-
8 centage requirements of the preceding sentence.”.

9 (b) QUALIFIED RENEWABLE ENERGY FACILITY.—
10 Section 1212(b) of the Energy Policy Act of 1992 (42
11 U.S.C. 13317(b)) is amended—

12 (1) by striking “a State or any political” and
13 all that follows through “nonprofit electrical cooper-
14 ative” and inserting “a not-for-profit electric cooper-
15 ative, a public utility described in section 115 of the
16 Internal Revenue Code of 1986, a State, Common-
17 wealth, territory, or possession of the United States
18 or the District of Columbia, or a political subdivision
19 thereof, or an Indian tribal government or subdivi-
20 sion thereof,”; and

21 (2) by inserting “landfill gas,” after “wind, bio-
22 mass,”.

23 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the
24 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is
25 amended by striking “during the 10-fiscal year period be-

1 ginning with the first full fiscal year occurring after the
2 enactment of this section” and inserting “after October
3 1, 2003, and before October 1, 2013”.

4 (d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of
5 the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))
6 is amended by inserting “landfill gas,” after “wind, bio-
7 mass,”.

8 (e) SUNSET.—Section 1212(f) of the Energy Policy
9 Act of 1992 (42 U.S.C. 13317(f)) is amended by striking
10 “the expiration of” and all that follows through “of this
11 section” and inserting “September 30, 2023”.

12 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
13 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.
14 13317(g)) is amended to read as follows:

15 “(g) AUTHORIZATION OF APPROPRIATIONS.—

16 “(1) IN GENERAL.—Subject to paragraph (2),
17 there are authorized to be appropriated such sums
18 as may be necessary to carry out this section for fis-
19 cal years 2003 through 2023.

20 “(2) AVAILABILITY OF FUNDS.—Funds made
21 available under paragraph (1) shall remain available
22 until expended.”.

23 **SEC. 203. FEDERAL PURCHASE REQUIREMENT.**

24 (a) REQUIREMENT.—The President, acting through
25 the Secretary of Energy, shall seek to ensure that, to the

1 extent economically feasible and technically practicable, of
2 the total amount of electric energy the Federal Govern-
3 ment consumes during any fiscal year, the following
4 amounts shall be renewable energy:

5 (1) Not less than 3 percent in fiscal years 2005
6 through 2007.

7 (2) Not less than 5 percent in fiscal years 2008
8 through 2010.

9 (3) Not less than 7.5 percent in fiscal year
10 2011 and each fiscal year thereafter.

11 (b) DEFINITIONS.—In this section:

12 (1) BIOMASS.—The term “biomass” means any
13 solid, nonhazardous, cellulosic material that is de-
14 rived from—

15 (A) any of the following forest-related re-
16 sources: mill residues, precommercial thinnings,
17 slash, and brush, or nonmerchantable material;

18 (B) solid wood waste materials, including
19 waste pallets, crates, dunnage, manufacturing
20 and construction wood wastes (other than pres-
21 sure-treated, chemically-treated, or painted
22 wood wastes), and landscape or right-of-way
23 tree trimmings, but not including municipal
24 solid waste (garbage), gas derived from the bio-

1 degradation of solid waste, or paper that is
2 commonly recycled;

3 (C) agriculture wastes, including orchard
4 tree crops, vineyard, grain, legumes, sugar, and
5 other crop by-products or residues, and live-
6 stock waste nutrients; or

7 (D) a plant that is grown exclusively as a
8 fuel for the production of electricity.

9 (2) RENEWABLE ENERGY.—The term “renew-
10 able energy” means electric energy generated from
11 solar, wind, biomass, landfill gas, geothermal, munic-
12 ipal solid waste, or new hydroelectric generation ca-
13 pacity achieved from increased efficiency or addi-
14 tions of new capacity at an existing hydroelectric
15 project.

16 (c) CALCULATION.—For purposes of determining
17 compliance with the requirement of this section, the
18 amount of renewable energy shall be doubled if—

19 (1) the renewable energy is produced and used
20 on-site at a Federal facility;

21 (2) the renewable energy is produced on Fed-
22 eral lands and used at a Federal facility; or

23 (3) the renewable energy is produced on Indian
24 land as defined in title XXVI of the Energy Policy

1 Act of 1992 (25 U.S.C. 3501 et seq.) and used at
2 a Federal facility.

3 (d) REPORT.—Not later than April 15, 2005, and
4 every 2 years thereafter, the Secretary of Energy shall
5 provide a report to Congress on the progress of the Fed-
6 eral Government in meeting the goals established by this
7 section.

8 **SEC. 204. INSULAR AREAS ENERGY SECURITY.**

9 Section 604 of the Act entitled “An Act to authorize
10 appropriations for certain insular areas of the United
11 States, and for other purposes”, approved December 24,
12 1980 (48 U.S.C. 1492), is amended—

13 (1) in subsection (a)(4) by striking the period
14 and inserting a semicolon;

15 (2) by adding at the end of subsection (a) the
16 following new paragraphs:

17 “(5) electric power transmission and distribu-
18 tion lines in insular areas are inadequate to with-
19 stand damage caused by the hurricanes and ty-
20 phoons which frequently occur in insular areas and
21 such damage often costs millions of dollars to repair;
22 and

23 “(6) the refinement of renewable energy tech-
24 nologies since the publication of the 1982 Territorial
25 Energy Assessment prepared pursuant to subsection

1 (c) reveals the need to reassess the state of energy
2 production, consumption, infrastructure, reliance on
3 imported energy, opportunities for energy conserva-
4 tion and increased energy efficiency, and indigenous
5 sources in regard to the insular areas.”;

6 (3) by amending subsection (e) to read as fol-
7 lows:

8 “(e)(1) The Secretary of the Interior, in consultation
9 with the Secretary of Energy and the head of government
10 of each insular area, shall update the plans required under
11 subsection (e) by—

12 “(A) updating the contents required by sub-
13 section (c);

14 “(B) drafting long-term energy plans for such
15 insular areas with the objective of reducing, to the
16 extent feasible, their reliance on energy imports by
17 the year 2010, increasing energy conservation and
18 energy efficiency, and maximizing, to the extent fea-
19 sible, use of indigenous energy sources; and

20 “(C) drafting long-term energy transmission
21 line plans for such insular areas with the objective
22 that the maximum percentage feasible of electric
23 power transmission and distribution lines in each in-
24 sular area be protected from damage caused by hur-
25 ricanes and typhoons.

1 “(2) Not later than December 31, 2005, the Sec-
2 retary of the Interior shall submit to Congress the updated
3 plans for each insular area required by this subsection.”;
4 and

5 (4) by amending subsection (g)(4) to read as
6 follows:

7 “(4) POWER LINE GRANTS FOR INSULAR
8 AREAS.—

9 “(A) IN GENERAL.—The Secretary of the
10 Interior is authorized to make grants to govern-
11 ments of insular areas of the United States to
12 carry out eligible projects to protect electric
13 power transmission and distribution lines in
14 such insular areas from damage caused by hur-
15 ricanes and typhoons.

16 “(B) ELIGIBLE PROJECTS.—The Secretary
17 may award grants under subparagraph (A) only
18 to governments of insular areas of the United
19 States that submit written project plans to the
20 Secretary for projects that meet the following
21 criteria:

22 “(i) The project is designed to protect
23 electric power transmission and distribu-
24 tion lines located in 1 or more of the insu-

1 lar areas of the United States from dam-
2 age caused by hurricanes and typhoons.

3 “(ii) The project is likely to substan-
4 tially reduce the risk of future damage,
5 hardship, loss, or suffering.

6 “(iii) The project addresses 1 or more
7 problems that have been repetitive or that
8 pose a significant risk to public health and
9 safety.

10 “(iv) The project is not likely to cost
11 more than the value of the reduction in di-
12 rect damage and other negative impacts
13 that the project is designed to prevent or
14 mitigate. The cost benefit analysis required
15 by this criterion shall be computed on a
16 net present value basis.

17 “(v) The project design has taken into
18 consideration long-term changes to the
19 areas and persons it is designed to protect
20 and has manageable future maintenance
21 and modification requirements.

22 “(vi) The project plan includes an
23 analysis of a range of options to address
24 the problem it is designed to prevent or

1 mitigate and a justification for the selec-
2 tion of the project in light of that analysis.

3 “(vii) The applicant has demonstrated
4 to the Secretary that the matching funds
5 required by subparagraph (D) are avail-
6 able.

7 “(C) PRIORITY.—When making grants
8 under this paragraph, the Secretary shall give
9 priority to grants for projects which are likely
10 to—

11 “(i) have the greatest impact on re-
12 ducing future disaster losses; and

13 “(ii) best conform with plans that
14 have been approved by the Federal Govern-
15 ment or the government of the insular area
16 where the project is to be carried out for
17 development or hazard mitigation for that
18 insular area.

19 “(D) MATCHING REQUIREMENT.—The
20 Federal share of the cost for a project for which
21 a grant is provided under this paragraph shall
22 not exceed 75 percent of the total cost of that
23 project. The non-Federal share of the cost may
24 be provided in the form of cash or services.

1 “(E) TREATMENT OF FUNDS FOR CERTAIN
 2 PURPOSES.—Grants provided under this para-
 3 graph shall not be considered as income, a re-
 4 source, or a duplicative program when deter-
 5 mining eligibility or benefit levels for Federal
 6 major disaster and emergency assistance.

7 “(F) AUTHORIZATION OF APPROPRIA-
 8 TIONS.—There are authorized to be appro-
 9 priated to carry out this paragraph \$5,000,000
 10 for each fiscal year beginning after the date of
 11 the enactment of this paragraph.”.

12 **SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**
 13 **BUILDINGS.**

14 (a) IN GENERAL.—Subchapter VI of chapter 31 of
 15 title 40, United States Code, is amended by adding at the
 16 end the following:

17 **“§ 3177. Use of photovoltaic energy in public build-**
 18 **ings**

19 “(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION
 20 PROGRAM.—

21 “(1) IN GENERAL.—The Administrator of Gen-
 22 eral Services may establish a photovoltaic energy
 23 commercialization program for the procurement and
 24 installation of photovoltaic solar electric systems for

1 electric production in new and existing public build-
2 ings.

3 “(2) PURPOSES.—The purposes of the program
4 shall be to accomplish the following:

5 “(A) To accelerate the growth of a com-
6 mercially viable photovoltaic industry to make
7 this energy system available to the general pub-
8 lic as an option which can reduce the national
9 consumption of fossil fuel.

10 “(B) To reduce the fossil fuel consumption
11 and costs of the Federal Government.

12 “(C) To attain the goal of installing solar
13 energy systems in 20,000 Federal buildings by
14 2010, as contained in the Federal Government’s
15 Million Solar Roof Initiative of 1997.

16 “(D) To stimulate the general use within
17 the Federal Government of life-cycle costing
18 and innovative procurement methods.

19 “(E) To develop program performance
20 data to support policy decisions on future incen-
21 tive programs with respect to energy.

22 “(3) ACQUISITION OF PHOTOVOLTAIC SOLAR
23 ELECTRIC SYSTEMS.—

24 “(A) IN GENERAL.—The program shall
25 provide for the acquisition of photovoltaic solar

1 electric systems and associated storage capa-
2 bility for use in public buildings.

3 “(B) ACQUISITION LEVELS.—The acquisi-
4 tion of photovoltaic electric systems shall be at
5 a level substantial enough to allow use of low-
6 cost production techniques with at least 150
7 megawatts (peak) cumulative acquired during
8 the 5 years of the program.

9 “(4) ADMINISTRATION.—The Administrator
10 shall administer the program and shall—

11 “(A) issue such rules and regulations as
12 may be appropriate to monitor and assess the
13 performance and operation of photovoltaic solar
14 electric systems installed pursuant to this sub-
15 section;

16 “(B) develop innovative procurement strat-
17 egies for the acquisition of such systems; and

18 “(C) transmit to Congress an annual re-
19 port on the results of the program.

20 “(b) PHOTOVOLTAIC SYSTEMS EVALUATION PRO-
21 GRAM.—

22 “(1) IN GENERAL.—Not later than 60 days
23 after the date of enactment of this section, the Ad-
24 ministrator, in consultation with the Secretary of
25 Energy, shall establish a photovoltaic solar energy

1 systems evaluation program to evaluate such photo-
2 voltaic solar energy systems as are required in public
3 buildings.

4 “(2) PROGRAM REQUIREMENT.—In evaluating
5 photovoltaic solar energy systems under the pro-
6 gram, the Administrator shall ensure that such sys-
7 tems reflect the most advanced technology.

8 “(c) AUTHORIZATION OF APPROPRIATIONS.—

9 “(1) PHOTOVOLTAIC ENERGY COMMERCIALIZA-
10 TION PROGRAM.—There are authorized to be appro-
11 priated to carry out subsection (a) \$50,000,000 for
12 each of fiscal years 2004 through 2008. Such sums
13 shall remain available until expended.

14 “(2) PHOTOVOLTAIC SYSTEMS EVALUATION
15 PROGRAM.—There are authorized to be appropriated
16 to carry out subsection (b) \$10,000,000 for each of
17 fiscal years 2004 through 2008. Such sums shall re-
18 main available until expended.”.

19 (b) CONFORMING AMENDMENT.—The section anal-
20 ysis for such chapter is amended by inserting after the
21 item relating to section 3176 the following:

“3177. Use of photovoltaic energy in public buildings.”.

1 **SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE**
2 **OF FOREST BIOMASS FOR ELECTRIC ENERGY,**
3 **USEFUL HEAT, TRANSPORTATION FUELS, PE-**
4 **TROLEUM-BASED PRODUCT SUBSTITUTES,**
5 **AND OTHER COMMERCIAL PURPOSES.**

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

7 (1) Thousands of communities in the United
8 States, many located near Federal lands, are at risk
9 to wildfire. Approximately 190,000,000 acres of land
10 managed by the Secretary of Agriculture and the
11 Secretary of the Interior are at risk of catastrophic
12 fire in the near future. The accumulation of heavy
13 forest fuel loads continues to increase as a result of
14 disease, insect infestations, and drought, further
15 raising the risk of fire each year.

16 (2) In addition, more than 70,000,000 acres
17 across all land ownerships are at risk to higher than
18 normal mortality over the next 15 years from insect
19 infestation and disease. High levels of tree mortality
20 from insects and disease result in increased fire risk,
21 loss of old growth, degraded watershed conditions,
22 and changes in species diversity and productivity, as
23 well as diminished fish and wildlife habitat and de-
24 creased timber values.

25 (3) Preventive treatments such as removing fuel
26 loading, ladder fuels, and hazard trees, planting

1 proper species mix and restoring and protecting
2 early successional habitat, and other specific restora-
3 tion treatments designed to reduce the susceptibility
4 of forest land, woodland, and rangeland to insect
5 outbreaks, disease, and catastrophic fire present the
6 greatest opportunity for long-term forest health by
7 creating a mosaic of species-mix and age distribu-
8 tion. Such prevention treatments are widely acknowl-
9 edged to be more successful and cost effective than
10 suppression treatments in the case of insects, dis-
11 ease, and fire.

12 (4) The byproducts of preventive treatment
13 (wood, brush, thinnings, chips, slash, and other haz-
14 ardous fuels) removed from forest lands, woodlands
15 and rangelands represent an abundant supply of bio-
16 mass for biomass-to-energy facilities and raw mate-
17 rial for business. There are currently few markets
18 for the extraordinary volumes of byproducts being
19 generated as a result of the necessary large-scale
20 preventive treatment activities.

21 (5) The United States should—

22 (A) promote economic and entrepreneurial
23 opportunities in using byproducts removed
24 through preventive treatment activities related

1 to hazardous fuels reduction, disease, and insect
2 infestation; and

3 (B) develop and expand markets for tradi-
4 tionally underused wood and biomass as an out-
5 let for byproducts of preventive treatment ac-
6 tivities.

7 (b) DEFINITIONS.—In this section:

8 (1) BIOMASS.—The term “biomass” means
9 trees and woody plants, including limbs, tops, nee-
10 dles, and other woody parts, and byproducts of pre-
11 ventive treatment, such as wood, brush, thinnings,
12 chips, and slash, that are removed—

13 (A) to reduce hazardous fuels; or

14 (B) to reduce the risk of or to contain dis-
15 ease or insect infestation.

16 (2) INDIAN TRIBE.—The term “Indian tribe”
17 has the meaning given the term in section 4(e) of
18 the Indian Self-Determination and Education Assist-
19 ance Act (25 U.S.C. 450b(e)).

20 (3) PERSON.—The term “person” includes—

21 (A) an individual;

22 (B) a community (as determined by the
23 Secretary concerned);

24 (C) an Indian tribe;

1 (D) a small business, micro-business, or a
2 corporation that is incorporated in the United
3 States; and

4 (E) a nonprofit organization.

5 (4) PREFERRED COMMUNITY.—The term “pre-
6 ferred community” means—

7 (A) any town, township, municipality, or
8 other similar unit of local government (as deter-
9 mined by the Secretary concerned) that—

10 (i) has a population of not more than
11 50,000 individuals; and

12 (ii) the Secretary concerned, in the
13 sole discretion of the Secretary concerned,
14 determines contains or is located near
15 land, the condition of which is at signifi-
16 cant risk of catastrophic wildfire, disease,
17 or insect infestation or which suffers from
18 disease or insect infestation; or

19 (B) any county that—

20 (i) is not contained within a metro-
21 politan statistical area; and

22 (ii) the Secretary concerned, in the
23 sole discretion of the Secretary concerned,
24 determines contains or is located near
25 land, the condition of which is at signifi-

1 cant risk of catastrophic wildfire, disease,
2 or insect infestation or which suffers from
3 disease or insect infestation.

4 (5) SECRETARY CONCERNED.—The term “Sec-
5 retary concerned” means—

6 (A) the Secretary of Agriculture with re-
7 spect to National Forest System lands; and

8 (B) the Secretary of the Interior with re-
9 spect to Federal lands under the jurisdiction of
10 the Secretary of the Interior and Indian lands.

11 (c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

12 (1) IN GENERAL.—The Secretary concerned
13 may make grants to any person that owns or oper-
14 ates a facility that uses biomass as a raw material
15 to produce electric energy, sensible heat, transpor-
16 tation fuels, or substitutes for petroleum-based prod-
17 ucts to offset the costs incurred to purchase biomass
18 for use by such facility.

19 (2) GRANT AMOUNTS.—A grant under this sub-
20 section may not exceed \$20 per green ton of biomass
21 delivered.

22 (3) MONITORING OF GRANT RECIPIENT ACTIVI-
23 TIES.—As a condition of a grant under this sub-
24 section, the grant recipient shall keep such records
25 as the Secretary concerned may require to fully and

1 correctly disclose the use of the grant funds and all
2 transactions involved in the purchase of biomass.
3 Upon notice by a representative of the Secretary
4 concerned, the grant recipient shall afford the rep-
5 resentative reasonable access to the facility that pur-
6 chases or uses biomass and an opportunity to exam-
7 ine the inventory and records of the facility.

8 (d) IMPROVED BIOMASS USE GRANT PROGRAM.—

9 (1) IN GENERAL.—The Secretary concerned
10 may make grants to persons to offset the cost of
11 projects to develop or research opportunities to im-
12 prove the use of, or add value to, biomass. In mak-
13 ing such grants, the Secretary concerned shall give
14 preference to persons in preferred communities.

15 (2) SELECTION.—The Secretary concerned shall
16 select a grant recipient under paragraph (1) after
17 giving consideration to the anticipated public bene-
18 fits of the project, including the potential to develop
19 thermal or electric energy resources or affordable en-
20 ergy, opportunities for the creation or expansion of
21 small businesses and micro-businesses, and the po-
22 tential for new job creation.

23 (3) GRANT AMOUNT.—A grant under this sub-
24 section may not exceed \$500,000.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated \$50,000,000 for each
3 of the fiscal years 2004 through 2014 to carry out this
4 section.

5 (f) REPORT.—Not later than October 1, 2010, the
6 Secretary of Agriculture, in consultation with the Sec-
7 retary of the Interior, shall submit to the Committee on
8 Energy and Natural Resources and the Committee on Ag-
9 riculture, Nutrition, and Forestry of the Senate and the
10 Committee on Resources, the Committee on Energy and
11 Commerce, and the Committee on Agriculture of the
12 House of Representatives a report describing the results
13 of the grant programs authorized by this section. The re-
14 port shall include the following:

15 (1) An identification of the size, type, and the
16 use of biomass by persons that receive grants under
17 this section.

18 (2) The distance between the land from which
19 the biomass was removed and the facility that used
20 the biomass.

21 (3) The economic impacts, particularly new job
22 creation, resulting from the grants to and operation
23 of the eligible operations.

1 **SEC. 207. BIOBASED PRODUCTS.**

2 Section 9002(c)(1) of the Farm Security and Rural
3 Investment Act of 2002 (7 U.S.C. 8102(c)(1)) is amended
4 by inserting “or such items that comply with the regula-
5 tions issued under section 103 of Public Law 100–556 (42
6 U.S.C. 6914b–1)” after “practicable”.

7 **Subtitle B—Geothermal Energy**

8 **SEC. 211. SHORT TITLE.**

9 This subtitle may be cited as the “John Rishel Geo-
10 thermal Steam Act Amendments of 2003”.

11 **SEC. 212. COMPETITIVE LEASE SALE REQUIREMENTS.**

12 Section 4 of the Geothermal Steam Act of 1970 (30
13 U.S.C. 1003) is amended to read as follows:

14 **“SEC. 4. LEASING PROCEDURES.**

15 “(a) **NOMINATIONS.**—The Secretary shall accept
16 nominations of lands to be leased at any time from quali-
17 fied companies and individuals under this Act.

18 “(b) **COMPETITIVE LEASE SALE REQUIRED.**—The
19 Secretary shall hold a competitive lease sale at least once
20 every 2 years for lands in a State which has nominations
21 pending under subsection (a) if such lands are otherwise
22 available for leasing.

23 “(c) **NONCOMPETITIVE LEASING.**—The Secretary
24 shall make available for a period of 2 years for non-
25 competitive leasing any tract for which a competitive lease

1 sale is held, but for which the Secretary does not receive
2 any bids in a competitive lease sale.

3 “(d) LEASES SOLD AS A BLOCK.—If information is
4 available to the Secretary indicating a geothermal resource
5 that could be produced as 1 unit can reasonably be ex-
6 pected to underlie more than 1 parcel to be offered in a
7 competitive lease sale, the parcels for such a resource may
8 be offered for bidding as a block in the competitive lease
9 sale.

10 “(e) PENDING LEASE APPLICATIONS ON APRIL 1,
11 2003.—It shall be a priority for the Secretary of the Inte-
12 rior, and for the Secretary of Agriculture with respect to
13 National Forest Systems lands, to ensure timely comple-
14 tion of administrative actions necessary to process applica-
15 tions for geothermal leasing pending on April 1, 2003.
16 Such an application, and any lease issued pursuant to
17 such an application—

18 “(1) except as provided in paragraph (2), shall
19 be subject to this section as in effect on April 1,
20 2003; or

21 “(2) at the election of the applicant, shall be
22 subject to this section as in effect on the effective
23 date of this paragraph.”.

1 **SEC. 213. DIRECT USE.**

2 (a) FEES FOR DIRECT USE.—Section 5 of the Geo-
3 thermal Steam Act of 1970 (30 U.S.C. 1004) is amend-
4 ed—

5 (1) in paragraph (c) by redesignating subpara-
6 graphs (1) and (2) as subparagraphs (A) and (B);

7 (2) by redesignating paragraphs (a) through (d)
8 in order as paragraphs (1) through (4);

9 (3) by inserting “(a) IN GENERAL.—” after
10 “SEC. 5.”; and

11 (4) by adding at the end the following:

12 “(b) DIRECT USE.—Notwithstanding subsection
13 (a)(1), with respect to the direct use of geothermal re-
14 sources for purposes other than the commercial generation
15 of electricity, the Secretary of the Interior shall establish
16 a schedule of fees and collect fees pursuant to such a
17 schedule in lieu of royalties based upon the total amount
18 of the geothermal resources used. The schedule of fees
19 shall ensure that there is a fair return to the public for
20 the use of a geothermal resource based upon comparable
21 fees charged for direct use of geothermal resources by
22 States or private persons. For direct use by a State or
23 local government for public purposes there shall be no roy-
24 alty and the fee charged shall be nominal. Leases in exist-
25 ence on the date of enactment of the Energy Policy Act

1 of 2003 shall be modified in order to reflect the provisions
2 of this subsection.”.

3 (b) LEASING FOR DIRECT USE.—Section 4 of the
4 Geothermal Steam Act of 1970 (30 U.S.C. 1003) is fur-
5 ther amended by adding at the end the following:

6 “(f) LEASING FOR DIRECT USE OF GEOTHERMAL
7 RESOURCES.—Lands leased under this Act exclusively for
8 direct use of geothermal resources shall be leased to any
9 qualified applicant who first applies for such a lease under
10 regulations issued by the Secretary, if—

11 “(1) the Secretary publishes a notice of the
12 lands proposed for leasing 60 days before the date
13 of the issuance of the lease; and

14 “(2) the Secretary does not receive in the 60-
15 day period beginning on the date of such publication
16 any nomination to include the lands concerned in the
17 next competitive lease sale.

18 “(g) AREA SUBJECT TO LEASE FOR DIRECT USE.—
19 A geothermal lease for the direct use of geothermal re-
20 sources shall embrace not more than the amount of acre-
21 age determined by the Secretary to be reasonably nec-
22 essary for such proposed utilization.”.

23 (c) EXISTING LEASES WITH A DIRECT USE FACIL-
24 ITY.—

1 (1) APPLICATION TO CONVERT.—Any lessee
2 under a lease under the Geothermal Steam Act of
3 1970 that was issued before the date of the enact-
4 ment of this Act may apply to the Secretary of the
5 Interior, by not later than 18 months after the date
6 of the enactment of this Act, to convert such lease
7 to a lease for direct utilization of geothermal re-
8 sources in accordance with the amendments made by
9 this section.

10 (2) CONVERSION.—The Secretary shall approve
11 such an application and convert such a lease to a
12 lease in accordance with the amendments by not
13 later than 180 days after receipt of such application,
14 unless the Secretary determines that the applicant is
15 not a qualified applicant with respect to the lease.

16 (3) APPLICATION OF NEW LEASE TERMS.—The
17 amendment made by subsection (a)(4) shall apply
18 with respect to payments under a lease converted
19 under this subsection that are due and owing to the
20 United States on or after July 16, 2003.

21 **SEC. 214. ROYALTIES AND NEAR-TERM PRODUCTION IN-**
22 **CENTIVES.**

23 (a) ROYALTY.—Section 5 of the Geothermal Steam
24 Act of 1970 (30 U.S.C. 1004) is further amended—

1 (1) in subsection (a) by striking paragraph (1)
2 and inserting the following:

3 “(1) a royalty on electricity produced using geo-
4 thermal steam and associated geothermal resources,
5 other than direct use of geothermal resources, that
6 shall be—

7 “(A) not less than 1 percent and not more
8 than 2.5 percent of the gross proceeds from the
9 sale of electricity produced from such resources
10 during the first 10 years of production under
11 the lease; and

12 “(B) not less than 2 and not more than 5
13 percent of the gross proceeds from the sale of
14 electricity produced from such resources during
15 each year after such 10-year period;” and

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

17 “(c) FINAL REGULATION ESTABLISHING ROYALTY
18 RATES.—In issuing any final regulation establishing roy-
19 alty rates under this section, the Secretary shall seek—

20 “(1) to provide lessees a simplified administra-
21 tive system;

22 “(2) to encourage new development; and

23 “(3) to achieve the same long-term level of roy-
24 alty revenues to States and counties as the regula-

1 tion in effect on the date of enactment of this sub-
2 section.

3 “(d) CREDITS FOR IN-KIND PAYMENTS OF ELEC-
4 TRICITY.—The Secretary may provide to a lessee a credit
5 against royalties owed under this Act, in an amount equal
6 to the value of electricity provided under contract to a
7 State or county government that is entitled to a portion
8 of such royalties under section 20 of this Act, section 35
9 of the Mineral Leasing Act (30 U.S.C. 191), or section
10 6 of the Mineral Leasing Act for Acquired Lands (30
11 U.S.C. 355), if—

12 “(1) the Secretary has approved in advance the
13 contract between the lessee and the State or county
14 government for such in-kind payments;

15 “(2) the contract establishes a specific method-
16 ology to determine the value of such credits; and

17 “(3) the maximum credit will be equal to the
18 royalty value owed to the State or county that is a
19 party to the contract and the electricity received will
20 serve as the royalty payment from the Federal Gov-
21 ernment to that entity.”.

22 (b) DISPOSAL OF MONEYS FROM SALES, BONUSES,
23 ROYALTIES, AND RENTALS.—Section 20 of the Geo-
24 thermal Steam Act of 1970 (30 U.S.C. 1019) is amended
25 to read as follows:

1 **“SEC. 20. DISPOSAL OF MONEYS FROM SALES, BONUSES,**
2 **RENTALS, AND ROYALTIES.**

3 “(a) IN GENERAL.—Except with respect to lands in
4 the State of Alaska, all monies received by the United
5 States from sales, bonuses, rentals, and royalties under
6 this Act shall be paid into the Treasury of the United
7 States. Of amounts deposited under this subsection, sub-
8 ject to the provisions of section 35 of the Mineral Leasing
9 Act (30 U.S.C. 191(b)) and section 5(a)(2) of this Act—

10 “(1) 50 percent shall be paid to the State with-
11 in the boundaries of which the leased lands or geo-
12 thermal resources are or were located; and

13 “(2) 25 percent shall be paid to the County
14 within the boundaries of which the leased lands or
15 geothermal resources are or were located.

16 “(b) USE OF PAYMENTS.—Amounts paid to a State
17 or county under subsection (a) shall be used consistent
18 with the terms of section 35 of the Mineral Leasing Act
19 (30 U.S.C. 191).”.

20 (c) NEAR-TERM PRODUCTION INCENTIVE FOR EX-
21 ISTING LEASES.—

22 (1) IN GENERAL.—Notwithstanding section
23 5(a) of the Geothermal Steam Act of 1970, the roy-
24 alty required to be paid shall be 50 percent of the
25 amount of the royalty otherwise required, on any
26 lease issued before the date of enactment of this Act

1 that does not convert to new royalty terms under
2 subsection (e)—

3 (A) with respect to commercial production
4 of energy from a facility that begins such pro-
5 duction in the 6-year period beginning on the
6 date of the enactment of this Act; or

7 (B) on qualified expansion geothermal en-
8 ergy.

9 (2) 4-YEAR APPLICATION.—Paragraph (1) ap-
10 plies only to new commercial production of energy
11 from a facility in the first 4 years of such produc-
12 tion.

13 (3) EFFECTIVE DATE.—This subsection takes
14 effect on October 1, 2004.

15 (d) DEFINITION OF QUALIFIED EXPANSION GEO-
16 THERMAL ENERGY.—In this section, the term “qualified
17 expansion geothermal energy” means geothermal energy
18 produced from a generation facility for which—

19 (1) the production is increased by more than 10
20 percent as a result of expansion of the facility car-
21 ried out in the 6-year period beginning on the date
22 of the enactment of this Act; and

23 (2) such production increase is greater than 10
24 percent of the average production by the facility dur-

1 ing the 5-year period preceding the expansion of the
2 facility.

3 (e) ROYALTY UNDER EXISTING LEASES.—

4 (1) IN GENERAL.—Any lessee under a lease
5 issued under the Geothermal Steam Act of 1970 be-
6 fore the date of the enactment of this Act may mod-
7 ify the terms of the lease relating to payment of roy-
8 alties to comply with the amendment made by sub-
9 section (a), by applying to the Secretary of the Inte-
10 rior by not later than 18 months after the date of
11 the enactment of this Act.

12 (2) APPLICATION OF MODIFICATION.—Such
13 modification shall apply to any use of geothermal
14 steam and any associated geothermal resources to
15 which the amendment applies that occurs after the
16 date of that application.

17 (3) CONSULTATION.—The Secretary—

18 (A) shall consult with the State and local
19 governments affected by any proposed changes
20 in lease royalty terms under this subsection;
21 and

22 (B) may establish a gross proceeds per-
23 centage within the range specified in the
24 amendment made by subsection (a)(1) and with
25 the concurrence of the lessee and the State.

1 **SEC. 215. GEOTHERMAL LEASING AND PERMITTING ON**
2 **FEDERAL LANDS.**

3 (a) **IN GENERAL.**—Not later than 180 days after the
4 date of the enactment of this section, the Secretary of the
5 Interior and the Secretary of Agriculture shall enter into
6 and submit to Congress a memorandum of understanding
7 in accordance with this section regarding leasing and per-
8 mitting for geothermal development of public lands and
9 National Forest System lands under their respective juris-
10 dictions.

11 (b) **LEASE AND PERMIT APPLICATIONS.**—The memo-
12 randum of understanding shall—

13 (1) identify areas with geothermal potential on
14 lands included in the National Forest System and,
15 when necessary, require review of management plans
16 to consider leasing under the Geothermal Steam Act
17 of 1970 (30 U.S.C. 1001 et seq.) as a land use; and

18 (2) establish an administrative procedure for
19 processing geothermal lease applications, including
20 lines of authority, steps in application processing,
21 and time limits for application procession.

22 (c) **DATA RETRIEVAL SYSTEM.**—The memorandum
23 of understanding shall establish a joint data retrieval sys-
24 tem that is capable of tracking lease and permit applica-
25 tions and providing to the applicant information as to
26 their status within the Departments of the Interior and

1 Agriculture, including an estimate of the time required for
2 administrative action.

3 **SEC. 216. REVIEW AND REPORT TO CONGRESS.**

4 The Secretary of the Interior shall promptly review
5 and report to Congress not later than 3 years after the
6 date of the enactment of this Act regarding the status of
7 all withdrawals from leasing under the Geothermal Steam
8 Act of 1970 (30 U.S.C. 1001 et seq.) of Federal lands,
9 specifying for each such area whether the basis for such
10 withdrawal still applies.

11 **SEC. 217. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**
12 **YSES, DOCUMENTATION, AND STUDIES.**

13 (a) IN GENERAL.—The Geothermal Steam Act of
14 1970 (30 U.S.C. 1001 et seq.) is amended by adding at
15 the end the following:

16 **“SEC. 30. REIMBURSEMENT FOR COSTS OF CERTAIN ANAL-**
17 **YSES, DOCUMENTATION, AND STUDIES.**

18 “(a) IN GENERAL.—The Secretary of the Interior
19 may reimburse a person that is a lessee, operator, oper-
20 ating rights owner, or applicant for any lease under this
21 Act for reasonable amounts paid by the person for prepa-
22 ration for the Secretary by a contractor or other person
23 selected by the Secretary of any project-level analysis, doc-
24 umentation, or related study required pursuant to the Na-

1 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
2 et seq.) with respect to the lease.

3 “(b) CONDITIONS.—The Secretary may provide reim-
4 bursement under subsection (a) only if—

5 “(1) adequate funding to enable the Secretary
6 to timely prepare the analysis, documentation, or re-
7 lated study is not appropriated;

8 “(2) the person paid the costs voluntarily;

9 “(3) the person maintains records of its costs
10 in accordance with regulations issued by the Sec-
11 retary;

12 “(4) the reimbursement is in the form of a re-
13 duction in the Federal share of the royalty required
14 to be paid for the lease for which the analysis, docu-
15 mentation, or related study is conducted, and is
16 agreed to by the Secretary and the person reim-
17 bursed prior to commencing the analysis, docu-
18 mentation, or related study; and

19 “(5) the agreement required under paragraph
20 (4) contains provisions—

21 “(A) reducing royalties owed on lease pro-
22 duction based on market prices;

23 “(B) stipulating an automatic termination
24 of the royalty reduction upon recovery of docu-
25 mented costs; and

1 “(C) providing a process by which the les-
2 see may seek reimbursement for circumstances
3 in which production from the specified lease is
4 not possible.”.

5 (b) APPLICATION.—The amendment made by this
6 section shall apply with respect to an analysis, documenta-
7 tion, or a related study conducted on or after October 1,
8 2004, for any lease entered into before, on, or after the
9 date of enactment of this Act.

10 (c) DEADLINE FOR REGULATIONS.—The Secretary
11 shall issue regulations implementing the amendment made
12 by this section by not later than 1 year after the date
13 of enactment of this Act.

14 **SEC. 218. ASSESSMENT OF GEOTHERMAL ENERGY POTEN-**
15 **TIAL.**

16 The Secretary of Interior, acting through the Direc-
17 tor of the United States Geological Survey and in coopera-
18 tion with the States, shall update the 1978 Assessment
19 of Geothermal Resources, and submit that updated assess-
20 ment to Congress—

21 (1) not later than 3 years after the date of en-
22 actment of this Act; and

23 (2) thereafter as the availability of data and de-
24 velopments in technology warrant.

1 **SEC. 219. COOPERATIVE OR UNIT PLANS.**

2 Section 18 of the Geothermal Steam Act of 1970 (30
3 U.S.C. 1017) is amended to read as follows:

4 **“SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.**

5 “(a) **ADOPTION OF UNITS BY LESSEES.—**

6 “(1) **IN GENERAL.—**For the purpose of more
7 properly conserving the natural resources of any
8 geothermal reservoir, field, or like area, or any part
9 thereof (whether or not any part of the geothermal
10 field, or like area, is then subject to any Unit Agree-
11 ment (cooperative plan of development or oper-
12 ation)), lessees thereof and their representatives may
13 unite with each other, or jointly or separately with
14 others, in collectively adopting and operating under
15 a Unit Agreement for such field, or like area, or any
16 part thereof including direct use resources, if deter-
17 mined and certified by the Secretary to be necessary
18 or advisable in the public interest. A majority inter-
19 est of owners of any single lease shall have the au-
20 thority to commit that lease to a Unit Agreement.
21 The Secretary of the Interior may also initiate the
22 formation of a Unit Agreement if in the public inter-
23 est.

24 “(2) **MODIFICATION OF LEASE REQUIREMENTS**
25 **BY SECRETARY.—**The Secretary may, in the discre-
26 tion of the Secretary, and with the consent of the

1 holders of leases involved, establish, alter, change, or
2 revoke rates of operations (including drilling, oper-
3 ations, production, and other requirements) of such
4 leases and make conditions with reference to such
5 leases, with the consent of the lessees, in connection
6 with the creation and operation of any such Unit
7 Agreement as the Secretary may deem necessary or
8 proper to secure the proper protection of the public
9 interest. Leases with unlike lease terms or royalty
10 rates do not need to be modified to be in the same
11 unit.

12 “(b) REQUIREMENT OF PLANS UNDER NEW
13 LEASES.—The Secretary—

14 “(1) may provide that geothermal leases issued
15 under this Act shall contain a provision requiring
16 the lessee to operate under such a reasonable Unit
17 Agreement; and

18 “(2) may prescribe such an Agreement under
19 which such lessee shall operate, which shall ade-
20 quately protect the rights of all parties in interest,
21 including the United States.

22 “(c) MODIFICATION OF RATE OF PROSPECTING, DE-
23 VELOPMENT, AND PRODUCTION.—The Secretary may re-
24 quire that any Agreement authorized by this section that
25 applies to lands owned by the United States contain a pro-

1 vision under which authority is vested in the Secretary,
2 or any person, committee, or State or Federal officer or
3 agency as may be designated in the Agreement to alter
4 or modify from time to time the rate of prospecting and
5 development and the quantity and rate of production
6 under such an Agreement.

7 “(d) EXCLUSION FROM DETERMINATION OF HOLD-
8 ING OR CONTROL.—Any lands that are subject to any
9 Agreement approved or prescribed by the Secretary under
10 this section shall not be considered in determining hold-
11 ings or control under any provision of this Act.

12 “(e) POOLING OF CERTAIN LANDS.—If separate
13 tracts of lands cannot be independently developed and op-
14 erated to use geothermal steam and associated geothermal
15 resources pursuant to any section of this Act—

16 “(1) such lands, or a portion thereof, may be
17 pooled with other lands, whether or not owned by
18 the United States, for purposes of development and
19 operation under a Communitization Agreement pro-
20 viding for an apportionment of production or royal-
21 ties among the separate tracts of land comprising
22 the production unit, if such pooling is determined by
23 the Secretary to be in the public interest; and

24 “(2) operation or production pursuant to such
25 an Agreement shall be treated as operation or pro-

1 duction with respect to each tract of land that is
2 subject to the agreement.

3 “(f) UNIT AGREEMENT REVIEW.—No more than 5
4 years after approval of any cooperative or Unit Agreement
5 and at least every 5 years thereafter, the Secretary shall
6 review each such Agreement and, after notice and oppor-
7 tunity for comment, eliminate from inclusion in such
8 Agreement any lands that the Secretary determines are
9 not reasonably necessary for Unit operations under the
10 Agreement. Such elimination shall be based on scientific
11 evidence, and shall occur only if it is determined by the
12 Secretary to be for the purpose of conserving and properly
13 managing the geothermal resource. Any land so eliminated
14 shall be eligible for an extension under subsection (g) of
15 section 6 if it meets the requirements for such an exten-
16 sion.

17 “(g) DRILLING OR DEVELOPMENT CONTRACTS.—
18 The Secretary may, on such conditions as the Secretary
19 may prescribe, approve drilling or development contracts
20 made by 1 or more lessees of geothermal leases, with 1
21 or more persons, associations, or corporations if, in the
22 discretion of the Secretary, the conservation of natural re-
23 sources or the public convenience or necessity may require
24 or the interests of the United States may be best served
25 thereby. All leases operated under such approved drilling

1 or development contracts, and interests thereunder, shall
2 be excepted in determining holdings or control under sec-
3 tion 7.

4 “(h) COORDINATION WITH STATE GOVERNMENTS.—
5 The Secretary shall coordinate unitization and pooling ac-
6 tivities with the appropriate State agencies and shall en-
7 sure that State leases included in any unitization or pool-
8 ing arrangement are treated equally with Federal leases.”.

9 **SEC. 220. ROYALTY ON BYPRODUCTS.**

10 Section 5 of the Geothermal Steam Act of 1970 (30
11 U.S.C. 1004) is further amended in subsection (a) by
12 striking paragraph (2) and inserting the following:

13 “(2) a royalty on any byproduct that is a min-
14 eral named in the first section of the Mineral Leas-
15 ing Act (30 U.S.C. 181), and that is derived from
16 production under the lease, at the rate of the royalty
17 that applies under that Act to production of such
18 mineral under a lease under that Act;”.

19 **SEC. 221. REPEAL OF AUTHORITIES OF SECRETARY TO RE-**
20 **ADJUST TERMS, CONDITIONS, RENTALS, AND**
21 **ROYALTIES.**

22 Section 8 of the Geothermal Steam Act of 1970 (30
23 U.S.C. 1007) is amended by repealing subsection (b), and
24 by redesignating subsection (c) as subsection (b).

1 **SEC. 222. CREDITING OF RENTAL TOWARD ROYALTY.**

2 Section 5 of the Geothermal Steam Act of 1970 (30
3 U.S.C. 1004) is further amended—

4 (1) in subsection (a)(2) by inserting “and”
5 after the semicolon at the end;

6 (2) in subsection (a)(3) by striking “; and” and
7 inserting a period;

8 (3) by striking paragraph (4) of subsection (a);
9 and

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

11 “(e) CREDITING OF RENTAL TOWARD ROYALTY.—

12 Any annual rental under this section that is paid with re-
13 spect to a lease before the first day of the year for which
14 the annual rental is owed shall be credited to the amount
15 of royalty that is required to be paid under the lease for
16 that year.”.

17 **SEC. 223. LEASE DURATION AND WORK COMMITMENT RE-**
18 **QUIREMENTS.**

19 Section 6 of the Geothermal Steam Act of 1970 (30
20 U.S.C. 1005) is amended—

21 (1) by striking so much as precedes subsection
22 (e), and striking subsections (e), (g), (h), (i), and
23 (j);

24 (2) by redesignating subsections (c), (d), and
25 (f) in order as subsections (g), (h), and (i); and

1 (3) by inserting before subsection (g), as so re-
2 designated, the following:

3 **“SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIRE-**
4 **MENTS.**

5 “(a) IN GENERAL.—

6 “(1) PRIMARY TERM.—A geothermal lease shall
7 be for a primary term of 10 years.

8 “(2) INITIAL EXTENSION.—The Secretary shall
9 extend the primary term of a geothermal lease for
10 5 years if, for each year after the fifth year of the
11 lease—

12 “(A) the Secretary determined under sub-
13 section (c) that the lessee satisfied the work
14 commitment requirements that applied to the
15 lease for that year; or

16 “(B) the lessee paid in accordance with
17 subsection (d) the value of any work that was
18 not completed in accordance with those require-
19 ments.

20 “(3) ADDITIONAL EXTENSION.—The Secretary
21 shall extend the primary term of a geothermal lease
22 (after an initial extension under paragraph (2)) for
23 an additional 5 years if, for each year of the initial
24 extension under paragraph (2), the Secretary deter-
25 mined under subsection (c) that the lessee satisfied

1 the work commitment requirements that applied to
2 the lease for that year.

3 “(b) REQUIREMENT TO SATISFY ANNUAL WORK
4 COMMITMENT REQUIREMENT.—

5 “(1) IN GENERAL.—The lessee for a geothermal
6 lease shall, for each year after the fifth year of the
7 lease, satisfy work commitment requirements pre-
8 scribed by the Secretary that apply to the lease for
9 that year.

10 “(2) PRESCRIPTION OF WORK COMMITMENT RE-
11 QUIREMENTS.—The Secretary shall issue regulations
12 prescribing minimum equivalent dollar value work
13 commitment requirements for geothermal leases,
14 that—

15 “(A) require that a lessee, in each year
16 after the fifth year of the primary term of a
17 geothermal lease, diligently work to achieve
18 commercial production or utilization of steam
19 under the lease;

20 “(B) require that in each year to which
21 work commitment requirements under the regu-
22 lations apply, the lessee shall significantly re-
23 duce the amount of work that remains to be
24 done to achieve such production or utilization;

1 “(C) describe specific work that must be
2 completed by a lessee by the end of each year
3 to which the work commitment requirements
4 apply and factors, such as force majeure events,
5 that suspend or modify the work commitment
6 obligation;

7 “(D) carry forward and apply to work
8 commitment requirements for a year, work
9 completed in any year in the preceding 3-year
10 period that was in excess of the work required
11 to be performed in that preceding year;

12 “(E) establish transition rules for leases
13 issued before the date of the enactment of this
14 subsection, including terms under which a lease
15 that is near the end of its term on the date of
16 enactment of this subsection may be extended
17 for up to 2 years—

18 “(i) to allow achievement of produc-
19 tion under the lease; or

20 “(ii) to allow the lease to be included
21 in a producing unit; and

22 “(F) establish an annual payment that, at
23 the option of the lessee, may be exercised in lieu
24 of meeting any work requirement for a limited
25 number of years that the Secretary determines

1 will not impair achieving diligent development
2 of the geothermal resource.

3 “(3) TERMINATION OF APPLICATION OF RE-
4 QUIREMENTS.—Work commitment requirements pre-
5 scribed under this subsection shall not apply to a
6 geothermal lease after the date on which geothermal
7 steam is produced or utilized under the lease in com-
8 mercial quantities.

9 “(c) DETERMINATION OF WHETHER REQUIREMENTS
10 SATISFIED.—The Secretary shall, by not later than 90
11 days after the end of each year for which work commit-
12 ment requirements under subsection (b) apply to a geo-
13 thermal lease—

14 “(1) determine whether the lessee has satisfied
15 the requirements that apply for that year;

16 “(2) notify the lessee of that determination; and

17 “(3) in the case of a notification that the lessee
18 did not satisfy work commitment requirements for
19 the year, include in the notification—

20 “(A) a description of the specific work that
21 was not completed by the lessee in accordance
22 with the requirements; and

23 “(B) the amount of the dollar value of
24 such work that was not completed, reduced by
25 the amount of expenditures made for work com-

1 pleted in a prior year that is carried forward
2 pursuant to subsection (b)(2)(D).

3 “(d) PAYMENT OF VALUE OF UNCOMPLETED
4 WORK.—

5 “(1) IN GENERAL.—If the Secretary notifies a
6 lessee that the lessee failed to satisfy work commit-
7 ment requirements under subsection (b), the lessee
8 shall pay to the Secretary, by not later than the end
9 of the 60-day period beginning on the date of the
10 notification, the dollar value of work that was not
11 completed by the lessee, in the amount stated in the
12 notification (as reduced under subsection (c)(3)(B)).

13 “(2) FAILURE TO PAY VALUE OF
14 UNCOMPLETED WORK.—If a lessee fails to pay such
15 amount to the Secretary before the end of that pe-
16 riod, the lease shall terminate upon the expiration of
17 the period.

18 “(e) CONTINUATION AFTER COMMERCIAL PRODUC-
19 TION OR UTILIZATION.—If geothermal steam is produced
20 or utilized in commercial quantities within the primary
21 term of the lease under subsection (a) (including any ex-
22 tension of the lease under subsection (a)), such lease shall
23 continue until the date on which geothermal steam is no
24 longer produced or utilized in commercial quantities.

1 “(f) CONVERSION OF GEOTHERMAL LEASE TO MIN-
 2 ERAL LEASE.—The lessee under a lease that has produced
 3 geothermal steam for electrical generation, has been deter-
 4 mined by the Secretary to be incapable of any further com-
 5 mercial production or utilization of geothermal steam, and
 6 that is producing any valuable byproduct in payable quan-
 7 tities may, within 6 months after such determination—

8 “(1) convert the lease to a mineral lease under
 9 the Mineral Leasing Act (30 U.S.C. 181 et seq.) or
 10 under the Mineral Leasing Act for Acquired Lands
 11 (30 U.S.C. 351 et seq.), if the lands that are subject
 12 to the lease can be leased under that Act for the
 13 production of such byproduct; or

14 “(2) convert the lease to a mining claim under
 15 the general mining laws, if the byproduct is a
 16 locatable mineral.”.

17 **SEC. 224. ADVANCED ROYALTIES REQUIRED FOR SUSPEN-**
 18 **SION OF PRODUCTION.**

19 Section 5 of the Geothermal Steam Act of 1970 (30
 20 U.S.C. 1004) is further amended by adding at the end
 21 the following:

22 “(f) ADVANCED ROYALTIES REQUIRED FOR SUSPEN-
 23 SION OF PRODUCTION.—

24 “(1) CONTINUATION OF LEASE FOLLOWING
 25 CESSATION OF PRODUCTION.—If, at any time after

1 commercial production under a lease is achieved,
2 production ceases for any cause the lease shall re-
3 main in full force and effect—

4 “(A) during the 1-year period beginning on
5 the date production ceases; and

6 “(B) after such period if, and so long as,
7 the lessee commences and continues diligently
8 and in good faith until such production is re-
9 sumed the steps, operations, or procedures nec-
10 essary to cause a resumption of such produc-
11 tion.

12 “(2) If production of heat or energy under a
13 geothermal lease is suspended after the date of any
14 such production for which royalty is required under
15 subsection (a) and the terms of paragraph (1) are
16 not met, the Secretary shall require the lessee, until
17 the end of such suspension, to pay royalty in ad-
18 vance at the monthly pro-rata rate of the average
19 annual rate at which such royalty was paid each
20 year in the 5-year-period preceding the date of sus-
21 pension.

22 “(3) Paragraph (2) shall not apply if the sus-
23 pension is required or otherwise caused by the Sec-
24 retary, the Secretary of a military department, a
25 State or local government, or a force majeure.”.

1 **SEC. 225. ANNUAL RENTAL.**

2 (a) ANNUAL RENTAL RATE.—Section 5 of the Geo-
3 thermal Steam Act of 1970 (30 U.S.C. 1004) is further
4 amended in subsection (a) in paragraph (3) by striking
5 “\$1 per acre or fraction thereof for each year of the lease”
6 and all that follows through the end of the paragraph and
7 inserting “\$1 per acre or fraction thereof for each year
8 of the lease through the tenth year in the case of a lease
9 awarded in a noncompetitive lease sale; or \$2 per acre or
10 fraction thereof for the first year, \$3 per acre or fraction
11 thereof for each of the second through tenth years, in the
12 case of a lease awarded in a competitive lease sale; and
13 \$5 per acre or fraction thereof for each year after the 10th
14 year thereof for all leases.”.

15 (b) TERMINATION OF LEASE FOR FAILURE TO PAY
16 RENTAL.—Section 5 of the Geothermal Steam Act of
17 1970 (30 U.S.C. 1004) is further amended by adding at
18 the end the following:

19 “(g) TERMINATION OF LEASE FOR FAILURE TO PAY
20 RENTAL.—

21 “(1) IN GENERAL.—The Secretary shall termi-
22 nate any lease with respect to which rental is not
23 paid in accordance with this Act and the terms of
24 the lease under which the rental is required, upon
25 the expiration of the 45-day period beginning on the
26 date of the failure to pay such rental.

1 “(2) NOTIFICATION.—The Secretary shall
2 promptly notify a lessee that has not paid rental re-
3 quired under the lease that the lease will be termi-
4 nated at the end of the period referred to in para-
5 graph (1).

6 “(3) REINSTATEMENT.—A lease that would
7 otherwise terminate under paragraph (1) shall not
8 terminate under that paragraph if the lessee pays to
9 the Secretary, before the end of the period referred
10 to in paragraph (1), the amount of rental due plus
11 a late fee equal to 10 percent of such amount.”.

12 **SEC. 226. LEASING AND PERMITTING ON FEDERAL LANDS**
13 **WITHDRAWN FOR MILITARY PURPOSES.**

14 Not later than 2 years after the date of enactment
15 of this Act, the Secretary of the Interior and the Secretary
16 of Defense, in consultation with each military service and
17 with interested States, counties, representatives of the
18 geothermal industry, and other persons, shall submit to
19 Congress a joint report concerning leasing and permitting
20 activities for geothermal energy on Federal lands with-
21 drawn for military purposes. Such report shall include the
22 following:

23 (1) A description of the Military Geothermal
24 Program, including any differences between it and
25 the non-Military Geothermal Program, including re-

1 quired security procedures, and operational consider-
2 ations, and discussions as to the differences, and
3 why they are important. Further, the report shall
4 describe revenues or energy provided to the Depart-
5 ment of Defense and its facilities, royalty structures,
6 where applicable, and any revenue sharing with
7 States and counties or other benefits between—

8 (A) the implementation of the Geothermal
9 Steam Act of 1970 (30 U.S.C 1001 et seq.) and
10 other applicable Federal law by the Secretary of
11 the Interior; and

12 (B) the administration of geothermal leas-
13 ing under section 2689 of title 10, United
14 States Code, by the Secretary of Defense.

15 (2) If appropriate, a description of the current
16 methods and procedures used to ensure interagency
17 coordination, where needed, in developing renewable
18 energy sources on Federal lands withdrawn for mili-
19 tary purposes, and an identification of any new pro-
20 cedures that might be required in the future for the
21 improvement of interagency coordination to ensure
22 efficient processing and administration of leases or
23 contracts for geothermal energy on Federal lands
24 withdrawn for military purposes, consistent with the
25 defense purposes of such withdrawals.

1 (3) Recommendations for any legislative or ad-
2 ministrative actions that might better achieve in-
3 creased geothermal production, including a common
4 royalty structure, leasing procedures, or other
5 changes that increase production, offset military op-
6 eration costs, or enhance the Federal agencies' abil-
7 ity to develop geothermal resources.

8 Except as provided in this section, nothing in this subtitle
9 shall affect the legal status of the Department of the Inte-
10 rior and the Department of the Defense with respect to
11 each other regarding geothermal leasing and development
12 until such status is changed by law.

13 **SEC. 227. TECHNICAL AMENDMENTS.**

14 The Geothermal Steam Act of 1970 (30 U.S.C. 1001
15 et seq.) is further amended as follows:

16 (1) By striking “geothermal steam and associ-
17 ated geothermal resources” each place it appears
18 and inserting “geothermal resources”.

19 (2) Section 2(e) (30 U.S.C. 1001(e)) is amend-
20 ed to read as follows:

21 “(e) ‘direct use’ means utilization of geothermal
22 resources for commercial, residential, agricultural,
23 public facilities, or other energy needs other than the
24 commercial production of electricity; and”.

1 (3) Section 21 (30 U.S.C. 1020) is amended by
2 striking “(a) Within one hundred” and all that fol-
3 lows through “(b) Geothermal” and inserting “Geo-
4 thermal”.

5 (4) The first section (30 U.S.C. 1001 note) is
6 amended by striking “That this” and inserting the
7 following:

8 **“SECTION 1. SHORT TITLE.**

9 “This”.

10 (5) Section 2 (30 U.S.C. 1001) is amended by
11 striking “SEC. 2. As” and inserting the following:

12 **“SEC. 2. DEFINITIONS.**

13 “As”.

14 (6) Section 3 (30 U.S.C. 1002) is amended by
15 striking “SEC. 3. Subject” and inserting the fol-
16 lowing:

17 **“SEC. 3. LANDS SUBJECT TO GEOTHERMAL LEASING.**

18 “Subject”.

19 (7) Section 5 (30 U.S.C. 1004) is further
20 amended by striking “SEC. 5.”, and by inserting im-
21 mediately before and above subsection (a) the fol-
22 lowing:

1 **“SEC. 5. RENTS AND ROYALTIES.”**

2 (8) Section 7 (30 U.S.C. 1006) is amended by
3 striking “SEC. 7. A geothermal” and inserting the
4 following:

5 **“SEC. 7. ACREAGE OF GEOTHERMAL LEASE.**

6 “A geothermal”.

7 (9) Section 8 (30 U.S.C. 1007) is amended by
8 striking “SEC. 8. (a) The” and inserting the fol-
9 lowing:

10 **“SEC. 8. READJUSTMENT OF LEASE TERMS AND CONDI-**
11 **TIONS.**

12 “(a) The”.

13 (10) Section 9 (30 U.S.C. 1008) is amended by
14 striking “SEC. 9. If” and inserting the following:

15 **“SEC. 9. BYPRODUCTS.**

16 “If”.

17 (11) Section 10 (30 U.S.C. 1009) is amended
18 by striking “SEC. 10. The” and inserting the fol-
19 lowing:

20 **“SEC. 10. RELINQUISHMENT OF GEOTHERMAL RIGHTS.**

21 “The”.

22 (12) Section 11 (30 U.S.C. 1010) is amended
23 by striking “SEC. 11. The” and inserting the fol-
24 lowing:

25 **“SEC. 11. SUSPENSION OF OPERATIONS AND PRODUCTION.**

26 “The”.

1 (13) Section 12 (30 U.S.C. 1011) is amended
2 by striking “SEC. 12. Leases” and inserting the fol-
3 lowing:

4 **“SEC. 12. TERMINATION OF LEASES.**

5 “Leases”.

6 (14) Section 13 (30 U.S.C. 1012) is amended
7 by striking “SEC. 13. The” and inserting the fol-
8 lowing:

9 **“SEC. 13. WAIVER, SUSPENSION, OR REDUCTION OF RENT-**
10 **AL OR ROYALTY.**

11 “The”.

12 (15) Section 14 (30 U.S.C. 1013) is amended
13 by striking “SEC. 14. Subject” and inserting the fol-
14 lowing:

15 **“SEC. 14. SURFACE LAND USE.**

16 “Subject”.

17 (16) Section 15 (30 U.S.C. 1014) is amended
18 by striking “SEC. 15. (a) Geothermal” and inserting
19 the following:

20 **“SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.**

21 “(a) Geothermal”.

22 (17) Section 16 (30 U.S.C. 1015) is amended
23 by striking “SEC. 16. Leases” and inserting the fol-
24 lowing:

1 **“SEC. 16. REQUIREMENT FOR LESSEES.**

2 “Leases”.

3 (18) Section 17 (30 U.S.C. 1016) is amended
4 by striking “SEC. 17. Administration” and inserting
5 the following:

6 **“SEC. 17. ADMINISTRATION.**

7 “Administration”.

8 (19) Section 19 (30 U.S.C. 1018) is amended
9 by striking “SEC. 19. Upon” and inserting the fol-
10 lowing:

11 **“SEC. 19. DATA FROM FEDERAL AGENCIES.**

12 “Upon”.

13 (20) Section 21 (30 U.S.C. 1020) is further
14 amended by striking “SEC. 21.”, and by inserting
15 immediately before and above the remainder of that
16 section the following:

17 **“SEC. 21. PUBLICATION IN FEDERAL REGISTER; RESERVA-**
18 **TION OF MINERAL RIGHTS.”.**

19 (21) Section 22 (30 U.S.C. 1021) is amended
20 by striking “SEC. 22. Nothing” and inserting the
21 following:

22 **“SEC. 22. FEDERAL EXEMPTION FROM STATE WATER LAWS.**

23 “Nothing”.

24 (22) Section 23 (30 U.S.C. 1022) is amended
25 by striking “SEC. 23. (a) All” and inserting the fol-
26 lowing:

1 **“SEC. 23. PREVENTION OF WASTE; EXCLUSIVITY.**

2 “(a) All”.

3 (23) Section 24 (30 U.S.C. 1023) is amended
4 by striking “SEC. 24. The” and inserting the fol-
5 lowing:

6 **“SEC. 24. RULES AND REGULATIONS.**

7 “The”.

8 (24) Section 25 (30 U.S.C. 1024) is amended
9 by striking “SEC. 25. As” and inserting the fol-
10 lowing:

11 **“SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER
12 CERTAIN OTHER LAWS.**

13 “As”.

14 (25) Section 26 is amended by striking “SEC.
15 26. The” and inserting the following:

16 **“SEC. 26. AMENDMENT.**

17 “The”.

18 (26) Section 27 (30 U.S.C. 1025) is amended
19 by striking “SEC. 27. The” and inserting the fol-
20 lowing:

21 **“SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL
22 RIGHTS.**

23 “The”.

24 (27) Section 28 (30 U.S.C. 1026) is amended
25 by striking “SEC. 28. (a)(1) The” and inserting the
26 following:

1 **“SEC. 28. SIGNIFICANT THERMAL FEATURES.**

2 “(a)(1) The”.

3 (28) Section 29 (30 U.S.C. 1027) is amended
4 by striking “SEC. 29. The” and inserting the fol-
5 lowing:

6 **“SEC. 29. LAND SUBJECT TO PROHIBITION ON LEASING.**

7 “The”.

8 **Subtitle C—Hydroelectric**

9 **PART I—ALTERNATIVE CONDITIONS**

10 **SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.**

11 (a) FEDERAL RESERVATIONS.—Section 4(e) of the
12 Federal Power Act (16 U.S.C. 797(e)) is amended by in-
13 serting after “adequate protection and utilization of such
14 reservation.” at the end of the first proviso the following:
15 “The license applicant shall be entitled to a determination
16 on the record, after opportunity for an expedited agency
17 trial-type hearing of any disputed issues of material fact,
18 with respect to such conditions. Such hearing may be con-
19 ducted in accordance with procedures established by agen-
20 cy regulation in consultation with the Federal Energy
21 Regulatory Commission.”.

22 (b) FISHWAYS.—Section 18 of the Federal Power Act
23 (16 U.S.C. 811) is amended by inserting after “and such
24 fishways as may be prescribed by the Secretary of Com-
25 merce.” the following: “The license applicant shall be enti-
26 tled to a determination on the record, after opportunity

1 for an expedited agency trial-type hearing of any disputed
2 issues of material fact, with respect to such fishways. Such
3 hearing may be conducted in accordance with procedures
4 established by agency regulation in consultation with the
5 Federal Energy Regulatory Commission.”.

6 (c) ALTERNATIVE CONDITIONS AND PRESCRIP-
7 TIONS.—Part I of the Federal Power Act (16 U.S.C. 791a
8 et seq.) is amended by adding the following new section
9 at the end thereof:

10 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

11 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any
12 person applies for a license for any project works within
13 any reservation of the United States, and the Secretary
14 of the department under whose supervision such reserva-
15 tion falls (referred to in this subsection as ‘the Secretary’)
16 deems a condition to such license to be necessary under
17 the first proviso of section 4(e), the license applicant may
18 propose an alternative condition.

19 “(2) Notwithstanding the first proviso of section 4(e),
20 the Secretary shall accept the proposed alternative condi-
21 tion referred to in paragraph (1), and the Commission
22 shall include in the license such alternative condition, if
23 the Secretary determines, based on substantial evidence
24 provided by the license applicant or otherwise available to
25 the Secretary, that such alternative condition—

1 “(A) provides for the adequate protection and
2 utilization of the reservation; and

3 “(B) will either—

4 “(i) cost less to implement; or

5 “(ii) result in improved operation of the
6 project works for electricity production—

7 as compared to the condition initially deemed nec-
8 essary by the Secretary.

9 “(3) The Secretary shall submit into the public
10 record of the Commission proceeding with any condition
11 under section 4(e) or alternative condition it accepts under
12 this section, a written statement explaining the basis for
13 such condition, and reason for not accepting any alter-
14 native condition under this section. The written statement
15 must demonstrate that the Secretary gave equal consider-
16 ation to the effects of the condition adopted and alter-
17 natives not accepted on energy supply, distribution, cost,
18 and use; flood control; navigation; water supply; and air
19 quality (in addition to the preservation of other aspects
20 of environmental quality); based on such information as
21 may be available to the Secretary, including information
22 voluntarily provided in a timely manner by the applicant
23 and others. The Secretary shall also submit, together with
24 the aforementioned written statement, all studies, data,

1 and other factual information available to the Secretary
2 and relevant to the Secretary's decision.

3 “(4) Nothing in this section shall prohibit other inter-
4 ested parties from proposing alternative conditions.

5 “(5) If the Secretary does not accept an applicant's
6 alternative condition under this section, and the Commis-
7 sion finds that the Secretary's condition would be incon-
8 sistent with the purposes of this part, or other applicable
9 law, the Commission may refer the dispute to the Commis-
10 sion's Dispute Resolution Service. The Dispute Resolution
11 Service shall consult with the Secretary and the Commis-
12 sion and issue a non-binding advisory within 90 days. The
13 Secretary may accept the Dispute Resolution Service advi-
14 sory unless the Secretary finds that the recommendation
15 will not provide for the adequate protection and utilization
16 of the reservation. The Secretary shall submit the advisory
17 and the Secretary's final written determination into the
18 record of the Commission's proceeding.

19 “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever
20 the Secretary of the Interior or the Secretary of Commerce
21 prescribes a fishway under section 18, the license appli-
22 cant or licensee may propose an alternative to such pre-
23 scription to construct, maintain, or operate a fishway.

24 “(2) Notwithstanding section 18, the Secretary of the
25 Interior or the Secretary of Commerce, as appropriate,

1 shall accept and prescribe, and the Commission shall re-
2 quire, the proposed alternative referred to in paragraph
3 (1), if the Secretary of the appropriate department deter-
4 mines, based on substantial evidence provided by the li-
5 censee or otherwise available to the Secretary, that such
6 alternative—

7 “(A) will be no less protective than the fishway
8 initially prescribed by the Secretary; and

9 “(B) will either—

10 “(i) cost less to implement; or

11 “(ii) result in improved operation of the
12 project works for electricity production,

13 as compared to the fishway initially deemed nec-
14 essary by the Secretary.

15 “(3) The Secretary concerned shall submit into the
16 public record of the Commission proceeding with any pre-
17 scription under section 18 or alternative prescription it ac-
18 cepts under this section, a written statement explaining
19 the basis for such prescription, and reason for not accept-
20 ing any alternative prescription under this section. The
21 written statement must demonstrate that the Secretary
22 gave equal consideration to the effects of the condition
23 adopted and alternatives not accepted on energy supply,
24 distribution, cost, and use; flood control; navigation; water
25 supply; and air quality (in addition to the preservation of

1 other aspects of environmental quality); based on such in-
2 formation as may be available to the Secretary, including
3 information voluntarily provided in a timely manner by the
4 applicant and others. The Secretary shall also submit, to-
5 gether with the aforementioned written statement, all
6 studies, data, and other factual information available to
7 the Secretary and relevant to the Secretary's decision.

8 “(4) Nothing in this section shall prohibit other inter-
9 ested parties from proposing alternative prescriptions.

10 “(5) If the Secretary concerned does not accept an
11 applicant's alternative prescription under this section, and
12 the Commission finds that the Secretary's prescription
13 would be inconsistent with the purposes of this part, or
14 other applicable law, the Commission may refer the dis-
15 pute to the Commission's Dispute Resolution Service. The
16 Dispute Resolution Service shall consult with the Sec-
17 retary and the Commission and issue a non-binding advi-
18 sory within 90 days. The Secretary may accept the Dis-
19 pute Resolution Service advisory unless the Secretary
20 finds that the recommendation will be less protective than
21 the fishway initially prescribed by the Secretary. The Sec-
22 retary shall submit the advisory and the Secretary's final
23 written determination into the record of the Commission's
24 proceeding.”.

1 **PART II—ADDITIONAL HYDROPOWER**

2 **SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.**

3 (a) **INCENTIVE PAYMENTS.**—For electric energy gen-
4 erated and sold by a qualified hydroelectric facility during
5 the incentive period, the Secretary of Energy (referred to
6 in this section as the “Secretary”) shall make, subject to
7 the availability of appropriations, incentive payments to
8 the owner or operator of such facility. The amount of such
9 payment made to any such owner or operator shall be as
10 determined under subsection (e) of this section. Payments
11 under this section may only be made upon receipt by the
12 Secretary of an incentive payment application which estab-
13 lishes that the applicant is eligible to receive such payment
14 and which satisfies such other requirements as the Sec-
15 retary deems necessary. Such application shall be in such
16 form, and shall be submitted at such time, as the Sec-
17 retary shall establish.

18 (b) **DEFINITIONS.**—For purposes of this section:

19 (1) **QUALIFIED HYDROELECTRIC FACILITY.**—
20 The term “qualified hydroelectric facility” means a
21 turbine or other generating device owned or solely
22 operated by a non-Federal entity which generates
23 hydroelectric energy for sale and which is added to
24 an existing dam or conduit.

25 (2) **EXISTING DAM OR CONDUIT.**—The term
26 “existing dam or conduit” means any dam or con-

1 duit the construction of which was completed before
2 the date of the enactment of this section and which
3 does not require any construction or enlargement of
4 impoundment or diversion structures (other than re-
5 pair or reconstruction) in connection with the instal-
6 lation of a turbine or other generating device.

7 (3) CONDUIT.—The term “conduit” has the
8 same meaning as when used in section 30(a)(2) of
9 the Federal Power Act (16 U.S.C. 823a(a)(2)).

10 The terms defined in this subsection shall apply without
11 regard to the hydroelectric kilowatt capacity of the facility
12 concerned, without regard to whether the facility uses a
13 dam owned by a governmental or nongovernmental entity,
14 and without regard to whether the facility begins oper-
15 ation on or after the date of the enactment of this section.

16 (c) ELIGIBILITY WINDOW.—Payments may be made
17 under this section only for electric energy generated from
18 a qualified hydroelectric facility which begins operation
19 during the period of 10 fiscal years beginning with the
20 first full fiscal year occurring after the date of enactment
21 of this subtitle.

22 (d) INCENTIVE PERIOD.—A qualified hydroelectric
23 facility may receive payments under this section for a pe-
24 riod of 10 fiscal years (referred to in this section as the
25 “incentive period”). Such period shall begin with the fiscal

1 year in which electric energy generated from the facility
2 is first eligible for such payments.

3 (e) AMOUNT OF PAYMENT.—

4 (1) IN GENERAL.—Payments made by the Sec-
5 retary under this section to the owner or operator of
6 a qualified hydroelectric facility shall be based on
7 the number of kilowatt hours of hydroelectric energy
8 generated by the facility during the incentive period.
9 For any such facility, the amount of such payment
10 shall be 1.8 cents per kilowatt hour (adjusted as
11 provided in paragraph (2)), subject to the avail-
12 ability of appropriations under subsection (g), except
13 that no facility may receive more than \$750,000 in
14 1 calendar year.

15 (2) ADJUSTMENTS.—The amount of the pay-
16 ment made to any person under this section as pro-
17 vided in paragraph (1) shall be adjusted for inflation
18 for each fiscal year beginning after calendar year
19 2003 in the same manner as provided in the provi-
20 sions of section 29(d)(2)(B) of the Internal Revenue
21 Code of 1986, except that in applying such provi-
22 sions the calendar year 2003 shall be substituted for
23 calendar year 1979.

24 (f) SUNSET.—No payment may be made under this
25 section to any qualified hydroelectric facility after the ex-

1 piration of the period of 20 fiscal years beginning with
2 the first full fiscal year occurring after the date of enact-
3 ment of this subtitle, and no payment may be made under
4 this section to any such facility after a payment has been
5 made with respect to such facility for a period of 10 fiscal
6 years.

7 (g) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary to carry
9 out the purposes of this section \$10,000,000 for each of
10 the fiscal years 2004 through 2013.

11 **SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

12 (a) INCENTIVE PAYMENTS.—The Secretary of En-
13 ergy shall make incentive payments to the owners or oper-
14 ators of hydroelectric facilities at existing dams to be used
15 to make capital improvements in the facilities that are di-
16 rectly related to improving the efficiency of such facilities
17 by at least 3 percent.

18 (b) LIMITATIONS.—Incentive payments under this
19 section shall not exceed 10 percent of the costs of the cap-
20 ital improvement concerned and not more than 1 payment
21 may be made with respect to improvements at a single
22 facility. No payment in excess of \$750,000 may be made
23 with respect to improvements at a single facility.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to carry out this section

1 not more than \$10,000,000 for each of the fiscal years
2 2004 through 2013.

3 **SEC. 243. SMALL HYDROELECTRIC POWER PROJECTS.**

4 Section 408(a)(6) of the Public Utility Regulatory
5 Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended
6 by striking “April 20, 1977” and inserting “March 4,
7 2003”.

8 **SEC. 244. INCREASED HYDROELECTRIC GENERATION AT**
9 **EXISTING FEDERAL FACILITIES.**

10 (a) IN GENERAL.—The Secretary of the Interior and
11 the Secretary of Energy, in consultation with the Sec-
12 retary of the Army, shall jointly conduct a study of the
13 potential for increasing electric power production capa-
14 bility at federally owned or operated water regulation,
15 storage, and conveyance facilities.

16 (b) CONTENT.—The study under this section shall in-
17 clude identification and description in detail of each facil-
18 ity that is capable, with or without modification, of pro-
19 ducing additional hydroelectric power, including esti-
20 mation of the existing potential for the facility to generate
21 hydroelectric power.

22 (c) REPORT.—The Secretaries shall submit to the
23 Committees on Energy and Commerce, Resources, and
24 Transportation and Infrastructure of the House of Rep-
25 resentatives and the Committee on Energy and Natural

1 Resources of the Senate a report on the findings, conclu-
2 sions, and recommendations of the study under this sec-
3 tion by not later than 18 months after the date of the
4 enactment of this Act. The report shall include each of
5 the following:

6 (1) The identifications, descriptions, and esti-
7 mations referred to in subsection (b).

8 (2) A description of activities currently con-
9 ducted or considered, or that could be considered, to
10 produce additional hydroelectric power from each
11 identified facility.

12 (3) A summary of prior actions taken by the
13 Secretaries to produce additional hydroelectric power
14 from each identified facility.

15 (4) The costs to install, upgrade, or modify
16 equipment or take other actions to produce addi-
17 tional hydroelectric power from each identified facil-
18 ity and the level of Federal power customer involve-
19 ment in the determination of such costs.

20 (5) The benefits that would be achieved by such
21 installation, upgrade, modification, or other action,
22 including quantified estimates of any additional en-
23 ergy or capacity from each facility identified under
24 subsection (b).

1 (6) A description of actions that are planned,
2 underway, or might reasonably be considered to in-
3 crease hydroelectric power production by replacing
4 turbine runners, by performing generator upgrades
5 or rewinds, or construction of pumped storage facili-
6 ties.

7 (7) The impact of increased hydroelectric power
8 production on irrigation, fish, wildlife, Indian tribes,
9 river health, water quality, navigation, recreation,
10 fishing, and flood control.

11 (8) Any additional recommendations to increase
12 hydroelectric power production from, and reduce
13 costs and improve efficiency at, federally owned or
14 operated water regulation, storage, and conveyance
15 facilities.

16 **SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**
17 **ODS.**

18 (a) IN GENERAL.—The Secretary of the Interior
19 shall—

20 (1) review electric power consumption by Bu-
21 reau of Reclamation facilities for water pumping
22 purposes; and

23 (2) make such adjustments in such pumping as
24 possible to minimize the amount of electric power
25 consumed for such pumping during periods of peak

1 electric power consumption, including by performing
2 as much of such pumping as possible during off-
3 peak hours at night.

4 (b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS
5 REQUIRED.—The Secretary may not under this section
6 make any adjustment in pumping at a facility without the
7 consent of each person that has contracted with the
8 United States for delivery of water from the facility for
9 use for irrigation and that would be affected by such ad-
10 justment.

11 (c) EXISTING OBLIGATIONS NOT AFFECTED.—This
12 section shall not be construed to affect any existing obliga-
13 tion of the Secretary to provide electric power, water, or
14 other benefits from Bureau of Reclamation facilities, in-
15 cluding recreational releases.

16 **SEC. 246. LIMITATION ON CERTAIN CHARGES ASSESSED TO**
17 **THE FLINT CREEK PROJECT, MONTANA.**

18 Notwithstanding section 10(e)(1) of the Federal
19 Power Act (16 U.S.C. 803(e)(1)) or any other provision
20 of Federal law providing for the payment to the United
21 States of charges for the use of Federal land for the pur-
22 poses of operating and maintaining a hydroelectric devel-
23 opment licensed by the Federal Energy Regulatory Com-
24 mission (referred to in this section as the “Commission”),
25 any political subdivision of the State of Montana that

1 holds a license for Commission Project No. 1473 in Gran-
2 ite and Deer Lodge Counties, Montana, shall be required
3 to pay to the United States for the use of that land for
4 each year during which the political subdivision continues
5 to hold the license for the project, the lesser of—

6 (1) \$25,000; or

7 (2) such annual charge as the Commission or
8 any other department or agency of the Federal Gov-
9 ernment may assess.

10 **SEC. 247. REINSTATEMENT AND TRANSFER.**

11 (a) REINSTATEMENT AND TRANSFER OF FEDERAL
12 LICENSE FOR PROJECT NUMBERED 2696.—Notwith-
13 standing section 8 of the Federal Power Act (16 U.S.C.
14 801) or any other provision of such Act, the Federal En-
15 ergy Regulatory Commission shall reinstate the license for
16 Project No. 2696 and transfer the license, without delay
17 or the institution of any proceedings, to the Town of
18 Stuyvesant, New York, holder of Federal Energy Regu-
19 latory Commission Preliminary Permit No. 11787, within
20 30 days after the date of enactment of this Act.

21 (b) HYDROELECTRIC INCENTIVES.—Project No.
22 2696 shall be entitled to the full benefit of any Federal
23 legislation that promotes hydroelectric development that
24 is enacted within 2 years either before or after the date
25 of enactment of this Act.

1 (c) PROJECT DEVELOPMENT AND FINANCING.—The
 2 Federal Energy Regulatory Commission shall permit the
 3 Town of Stuyvesant to add as a colicensee any private or
 4 public entity or entities to the reinstated license at any
 5 time, notwithstanding the issuance of a preliminary permit
 6 to the Town of Stuyvesant and any consideration of mu-
 7 nicipal preference. The town shall be entitled, to the extent
 8 that funds are available or shall be made available, to re-
 9 ceive loans under sections 402 and 403 of the Public Util-
 10 ity Regulatory Policies Act of 1978 (16 U.S.C. 2702 and
 11 2703), or similar programs, for the reimbursement of fea-
 12 sibility studies or development costs, or both, incurred
 13 since January 1, 2001, through and including December
 14 31, 2006. All power produced by the project shall be
 15 deemed incremental hydropower for purpose of qualifying
 16 for any energy credit or similar benefits.

17 **TITLE III—OIL AND GAS**

18 **Subtitle A—Petroleum Reserve and** 19 **Home Heating Oil**

20 **SEC. 301. PERMANENT AUTHORITY TO OPERATE THE STRA-**
 21 **TEGIC PETROLEUM RESERVE AND OTHER**
 22 **ENERGY PROGRAMS.**

23 (a) AMENDMENT TO TITLE I OF THE ENERGY POL-
 24 ICY AND CONSERVATION ACT.—Title I of the Energy Pol-

1 icy and Conservation Act (42 U.S.C. 6211 et seq.) is
2 amended—

3 (1) by striking section 166 (42 U.S.C. 6246)
4 and inserting the following:

5 “AUTHORIZATION OF APPROPRIATIONS

6 “SEC. 166. There are authorized to be appropriated
7 to the Secretary such sums as may be necessary to carry
8 out this part and part D, to remain available until ex-
9 pended.”;

10 (2) by striking section 186 (42 U.S.C. 6250e);
11 and

12 (3) by striking part E (42 U.S.C. 6251; relat-
13 ing to the expiration of title I of the Act).

14 (b) AMENDMENT TO TITLE II OF THE ENERGY POL-
15 ICY AND CONSERVATION ACT.—Title II of the Energy
16 Policy and Conservation Act (42 U.S.C. 6271 et seq.) is
17 amended—

18 (1) by inserting before section 273 (42 U.S.C.
19 6283) the following:

20 “PART C—SUMMER FILL AND FUEL BUDGETING
21 PROGRAMS”;

22 (2) by striking section 273(e) (42 U.S.C.
23 6283(e); relating to the expiration of summer fill
24 and fuel budgeting programs); and

25 (3) by striking part D (42 U.S.C. 6285; relat-
26 ing to the expiration of title II of the Act).

1 (c) TECHNICAL AMENDMENTS.—The table of con-
 2 tents for the Energy Policy and Conservation Act is
 3 amended—

4 (1) by inserting after the items relating to part
 5 C of title I the following:

“PART D—NORTHEAST HOME HEATING OIL RESERVE

“Sec. 181. Establishment.

“Sec. 182. Authority.

“Sec. 183. Conditions for release; plan.

“Sec. 184. Northeast Home Heating Oil Reserve Account.

“Sec. 185. Exemptions.”;

6 (2) by amending the items relating to part C of
 7 title II to read as follows:

“PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

“Sec. 273. Summer fill and fuel budgeting programs.”;

8 and

9 (3) by striking the items relating to part D of
 10 title II.

11 (d) AMENDMENT TO THE ENERGY POLICY AND CON-
 12 SERVATION ACT.—Section 183(b)(1) of the Energy Policy
 13 and Conservation Act (42 U.S.C. 6250(b)(1)) is amended
 14 by striking all after “increases” through to “mid-October
 15 through March” and inserting “by more than 60 percent
 16 over its 5-year rolling average for the months of mid-October
 17 through March (considered as a heating season aver-
 18 age)”.

19 (e) FILL STRATEGIC PETROLEUM RESERVE TO CA-
 20 PACITY.—The Secretary of Energy shall, as expeditiously

1 as practicable, acquire petroleum in amounts sufficient to
2 fill the Strategic Petroleum Reserve to the 1,000,000,000
3 barrel capacity authorized under section 154(a) of the En-
4 ergy Policy and Conservation Act (42 U.S.C. 6234(a)),
5 consistent with the provisions of sections 159 and 160 of
6 such Act (42 U.S.C. 6239, 6240).

7 **SEC. 302. NATIONAL OILHEAT RESEARCH ALLIANCE.**

8 Section 713 of the Energy Act of 2000 (42 U.S.C.
9 6201 note) is amended by striking “4” and inserting “9”.

10 **Subtitle B—Production Incentives**

11 **SEC. 311. DEFINITION OF SECRETARY.**

12 In this subtitle, the term “Secretary” means the Sec-
13 retary of the Interior.

14 **SEC. 312. PROGRAM ON OIL AND GAS ROYALTIES IN-KIND.**

15 (a) **APPLICABILITY OF SECTION.**—Notwithstanding
16 any other provision of law, this section applies to all roy-
17 alty in-kind accepted by the Secretary on or after October
18 1, 2004, under any Federal oil or gas lease or permit
19 under section 36 of the Mineral Leasing Act (30 U.S.C.
20 192), section 27 of the Outer Continental Shelf Lands Act
21 (43 U.S.C. 1353), or any other Federal law governing
22 leasing of Federal land for oil and gas development.

23 (b) **TERMS AND CONDITIONS.**—All royalty accruing
24 to the United States shall, on the demand of the Sec-

1 retary, be paid in oil or gas. If the Secretary makes such
2 a demand, the following provisions apply to such payment:

3 (1) SATISFACTION OF ROYALTY OBLIGATION.—

4 Delivery by, or on behalf of, the lessee of the royalty
5 amount and quality due under the lease satisfies the
6 lessee's royalty obligation for the amount delivered,
7 except that transportation and processing reimburse-
8 ments paid to, or deductions claimed by, the lessee
9 shall be subject to review and audit.

10 (2) MARKETABLE CONDITION.—

11 (A) IN GENERAL.—Royalty production
12 shall be placed in marketable condition by the
13 lessee at no cost to the United States.

14 (B) DEFINITION OF MARKETABLE CONDI-
15 TION.—In this paragraph, the term “in market-
16 able condition” means sufficiently free from im-
17 purities and otherwise in a condition that the
18 royalty production will be accepted by a pur-
19 chaser under a sales contract typical of the field
20 or area in which the royalty production was
21 produced.

22 (3) DISPOSITION BY THE SECRETARY.—The
23 Secretary may—

24 (A) sell or otherwise dispose of any royalty
25 production taken in-kind (other than oil or gas

1 transferred under section 27(a)(3) of the Outer
2 Continental Shelf Lands Act (43 U.S.C.
3 1353(a)(3)) for not less than the market price;
4 and

5 (B) transport or process (or both) any roy-
6 alty production taken in-kind.

7 (4) RETENTION BY THE SECRETARY.—The Sec-
8 retary may, notwithstanding section 3302 of title 31,
9 United States Code, retain and use a portion of the
10 revenues from the sale of oil and gas taken in-kind
11 that otherwise would be deposited to miscellaneous
12 receipts, without regard to fiscal year limitation, or
13 may use oil or gas received as royalty taken in-kind
14 (in this paragraph referred to as “royalty produc-
15 tion”) to pay the cost of—

16 (A) transporting the royalty production;

17 (B) processing the royalty production;

18 (C) disposing of the royalty production; or

19 (D) any combination of transporting, proc-
20 essing, and disposing of the royalty production.

21 (5) LIMITATION.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the Secretary may not use
24 revenues from the sale of oil and gas taken in-

1 kind to pay for personnel, travel, or other ad-
2 ministrative costs of the Federal Government.

3 (B) EXCEPTION.—Notwithstanding sub-
4 paragraph (A), the Secretary may use a portion
5 of the revenues from the sale of oil taken in-
6 kind, without fiscal year limitation, to pay
7 transportation costs, salaries, and other admin-
8 istrative costs directly related to filling the
9 Strategic Petroleum Reserve.

10 (c) REIMBURSEMENT OF COST.—If the lessee, pursu-
11 ant to an agreement with the United States or as provided
12 in the lease, processes the royalty gas or delivers the roy-
13 alty oil or gas at a point not on or adjacent to the lease
14 area, the Secretary shall—

15 (1) reimburse the lessee for the reasonable costs
16 of transportation (not including gathering) from the
17 lease to the point of delivery or for processing costs;
18 or

19 (2) allow the lessee to deduct the transportation
20 or processing costs in reporting and paying royalties
21 in-value for other Federal oil and gas leases.

22 (d) BENEFIT TO THE UNITED STATES REQUIRED.—
23 The Secretary may receive oil or gas royalties in-kind only
24 if the Secretary determines that receiving royalties in-kind
25 provides benefits to the United States that are greater

1 than or equal to the benefits that are likely to have been
2 received had royalties been taken in-value.

3 (e) REPORTS.—

4 (1) IN GENERAL.—Not later than September
5 30, 2005, the Secretary shall submit to Congress a
6 report that addresses—

7 (A) actions taken to develop businesses
8 processes and automated systems to fully sup-
9 port the royalty-in-kind capability to be used in
10 tandem with the royalty-in-value approach in
11 managing Federal oil and gas revenue; and

12 (B) future royalty-in-kind businesses oper-
13 ation plans and objectives.

14 (2) REPORTS ON OIL OR GAS ROYALTIES TAKEN
15 IN-KIND.—For each of fiscal years 2004 through
16 2013 in which the United States takes oil or gas
17 royalties in-kind from production in any State or
18 from the Outer Continental Shelf, excluding royal-
19 ties taken in-kind and sold to refineries under sub-
20 section (h), the Secretary shall submit to Congress
21 a report that describes—

22 (A) the methodology or methodologies used
23 by the Secretary to determine compliance with
24 subsection (d), including the performance
25 standard for comparing amounts received by

1 the United States derived from royalties in-kind
2 to amounts likely to have been received had roy-
3 alties been taken in-value;

4 (B) an explanation of the evaluation that
5 led the Secretary to take royalties in-kind from
6 a lease or group of leases, including the ex-
7 pected revenue effect of taking royalties in-kind;

8 (C) actual amounts received by the United
9 States derived from taking royalties in-kind and
10 costs and savings incurred by the United States
11 associated with taking royalties in-kind, includ-
12 ing, but not limited to, administrative savings
13 and any new or increased administrative costs;
14 and

15 (D) an evaluation of other relevant public
16 benefits or detriments associated with taking
17 royalties in-kind.

18 (f) DEDUCTION OF EXPENSES.—

19 (1) IN GENERAL.—Before making payments
20 under section 35 of the Mineral Leasing Act (30
21 U.S.C. 191) or section 8(g) of the Outer Continental
22 Shelf Lands Act (43 U.S.C. 1337(g)) of revenues
23 derived from the sale of royalty production taken in-
24 kind from a lease, the Secretary shall deduct
25 amounts paid or deducted under subsections (b)(4)

1 and (c) and deposit the amount of the deductions in
2 the miscellaneous receipts of the United States
3 Treasury.

4 (2) ACCOUNTING FOR DEDUCTIONS.—When the
5 Secretary allows the lessee to deduct transportation
6 or processing costs under subsection (c), the Sec-
7 retary may not reduce any payments to recipients of
8 revenues derived from any other Federal oil and gas
9 lease as a consequence of that deduction.

10 (g) CONSULTATION WITH STATES.—The Sec-
11 retary—

12 (1) shall consult with a State before conducting
13 a royalty in-kind program under this subtitle within
14 the State, and may delegate management of any
15 portion of the Federal royalty in-kind program to
16 the State except as otherwise prohibited by Federal
17 law; and

18 (2) shall consult annually with any State from
19 which Federal oil or gas royalty is being taken in-
20 kind to ensure, to the maximum extent practicable,
21 that the royalty in-kind program provides revenues
22 to the State greater than or equal to those likely to
23 have been received had royalties been taken in-value.

24 (h) SMALL REFINERIES.—

1 (1) PREFERENCE.—If the Secretary finds that
2 sufficient supplies of crude oil are not available in
3 the open market to refineries that do not have their
4 own source of supply for crude oil, the Secretary
5 may grant preference to such refineries in the sale
6 of any royalty oil accruing or reserved to the United
7 States under Federal oil and gas leases issued under
8 any mineral leasing law, for processing or use in
9 such refineries at private sale at not less than the
10 market price.

11 (2) PRORATION AMONG REFINERIES IN PRO-
12 Duction AREA.—In disposing of oil under this sub-
13 section, the Secretary of Energy may, at the discre-
14 tion of the Secretary, prorate the oil among refin-
15 eries described in paragraph (1) in the area in which
16 the oil is produced.

17 (i) DISPOSITION TO FEDERAL AGENCIES.—

18 (1) ONSHORE ROYALTY.—Any royalty oil or gas
19 taken by the Secretary in-kind from onshore oil and
20 gas leases may be sold at not less than the market
21 price to any Federal agency.

22 (2) OFFSHORE ROYALTY.—Any royalty oil or
23 gas taken in-kind from a Federal oil or gas lease on
24 the Outer Continental Shelf may be disposed of only

1 under section 27 of the Outer Continental Shelf
2 Lands Act (43 U.S.C. 1353).

3 (j) FEDERAL LOW-INCOME ENERGY ASSISTANCE
4 PROGRAMS.—

5 (1) PREFERENCE.—In disposing of royalty oil
6 or gas taken in-kind under this section, the Sec-
7 retary may grant a preference to any person, includ-
8 ing any Federal or State agency, for the purpose of
9 providing additional resources to any Federal low-in-
10 come energy assistance program.

11 (2) REPORT.—Not later than 3 years after the
12 date of enactment of this Act, the Secretary shall
13 transmit a report to Congress, assessing the effec-
14 tiveness of granting preferences specified in para-
15 graph (1) and providing a specific recommendation
16 on the continuation of authority to grant pref-
17 erences.

18 (k) EFFECTIVE DATE.—This section takes effect on
19 October 1, 2004.

20 **SEC. 313. MARGINAL PROPERTY PRODUCTION INCENTIVES.**

21 (a) DEFINITION OF MARGINAL PROPERTY.—Until
22 such time as the Secretary issues regulations under sub-
23 section (e) that prescribe a different definition, in this sec-
24 tion the term “marginal property” means an onshore unit,
25 communitization agreement, or lease not within a unit or

1 communitization agreement, that produces on average the
2 combined equivalent of less than 15 barrels of oil per well
3 per day or 90 million British thermal units of gas per well
4 per day calculated based on the average over the 3 most
5 recent production months, including only wells that
6 produce on more than half of the days during those 3 pro-
7 duction months.

8 (b) CONDITIONS FOR REDUCTION OF ROYALTY
9 RATE.—Until such time as the Secretary issues regula-
10 tions under subsection (e) that prescribe different thresh-
11 olds or standards, the Secretary shall reduce the royalty
12 rate on—

13 (1) oil production from marginal properties as
14 prescribed in subsection (e) when the spot price of
15 West Texas Intermediate crude oil at Cushing, Okla-
16 homa, is, on average, less than \$15 per barrel for 90
17 consecutive trading days; and

18 (2) gas production from marginal properties as
19 prescribed in subsection (e) when the spot price of
20 natural gas delivered at Henry Hub, Louisiana, is,
21 on average, less than \$2.00 per million British ther-
22 mal units for 90 consecutive trading days.

23 (c) REDUCED ROYALTY RATE.—

1 (1) IN GENERAL.—When a marginal property
2 meets the conditions specified in subsection (b), the
3 royalty rate shall be the lesser of—

4 (A) 5 percent; or

5 (B) the applicable rate under any other
6 statutory or regulatory royalty relief provision
7 that applies to the affected production.

8 (2) PERIOD OF EFFECTIVENESS.—The reduced
9 royalty rate under this subsection shall be effective
10 beginning on the first day of the production month
11 following the date on which the applicable condition
12 specified in subsection (b) is met.

13 (d) TERMINATION OF REDUCED ROYALTY RATE.—
14 A royalty rate prescribed in subsection (d)(1)(A) shall ter-
15minate—

16 (1) with respect to oil production from a mar-
17 ginal property, on the first day of the production
18 month following the date on which—

19 (A) the spot price of West Texas Inter-
20 mediate crude oil at Cushing, Oklahoma, on av-
21 erage, exceeds \$15 per barrel for 90 consecutive
22 trading days; or

23 (B) the property no longer qualifies as a
24 marginal property; and

1 (2) with respect to gas production from a mar-
2 ginal property, on the first day of the production
3 month following the date on which—

4 (A) the spot price of natural gas delivered
5 at Henry Hub, Louisiana, on average, exceeds
6 \$2.00 per million British thermal units for 90
7 consecutive trading days; or

8 (B) the property no longer qualifies as a
9 marginal property.

10 (e) REGULATIONS PRESCRIBING DIFFERENT RE-
11 LIEF.—

12 (1) DISCRETIONARY REGULATIONS.—The Sec-
13 retary may by regulation prescribe different param-
14 eters, standards, and requirements for, and a dif-
15 ferent degree or extent of, royalty relief for marginal
16 properties in lieu of those prescribed in subsections
17 (a) through (d).

18 (2) MANDATORY REGULATIONS.—Not later
19 than 18 months after the date of enactment of this
20 Act, the Secretary shall by regulation—

21 (A) prescribe standards and requirements
22 for, and the extent of royalty relief for, mar-
23 ginal properties for oil and gas leases on the
24 Outer Continental Shelf; and

1 (B) define what constitutes a marginal
2 property on the Outer Continental Shelf for
3 purposes of this section.

4 (3) CONSIDERATIONS.—In promulgating regu-
5 lations under this subsection, the Secretary may con-
6 sider—

7 (A) oil and gas prices and market trends;

8 (B) production costs;

9 (C) abandonment costs;

10 (D) Federal and State tax provisions and
11 the effects of those provisions on production ec-
12 onomics;

13 (E) other royalty relief programs;

14 (F) regional differences in average well-
15 head prices;

16 (G) national energy security issues; and

17 (H) other relevant matters.

18 (f) SAVINGS PROVISION.—Nothing in this section
19 prevents a lessee from receiving royalty relief or a royalty
20 reduction pursuant to any other law (including a regula-
21 tion) that provides more relief than the amounts provided
22 by this section.

23 (g) EFFECTIVE DATE.—This section takes effect on
24 October 1, 2004.

1 **SEC. 314. INCENTIVES FOR NATURAL GAS PRODUCTION**
2 **FROM DEEP WELLS IN THE SHALLOW WA-**
3 **TERS OF THE GULF OF MEXICO.**

4 (a) **ROYALTY INCENTIVE REGULATIONS.**—The Sec-
5 retary shall publish a final regulation to complete the rule-
6 making begun by the Notice of Proposed Rulemaking enti-
7 tled “Relief or Reduction in Royalty Rates—Deep Gas
8 Provisions”, published in the Federal Register on March
9 26, 2003 (Federal Register, volume 68, number 58,
10 14868-14886).

11 (b) **ROYALTY INCENTIVE REGULATIONS FOR ULTRA**
12 **DEEP GAS WELLS.**—

13 (1) **IN GENERAL.**—Not later than 180 days
14 after the date of enactment of this section, in addi-
15 tion to any other regulations that may provide roy-
16 alty incentives for natural gas produced from deep
17 wells on oil and gas leases issued pursuant to the
18 Outer Continental Shelf Lands Act (43 U.S.C. 1331
19 et seq.), the Secretary shall issue regulations, in ac-
20 cordance with the regulations published pursuant to
21 subsection (a), granting royalty relief suspension vol-
22 umes of not less than 35,000,000,000 cubic feet
23 with respect to the production of natural gas from
24 ultra deep wells on leases issued before January 1,
25 2001, in shallow waters less than 200 meters deep
26 located in the Gulf of Mexico wholly west of 87 de-

1 grees, 30 minutes West longitude. Regulations
2 issued under this subsection shall be retroactive to
3 the date that the Notice of Proposed Rulemaking is
4 published in the Federal Register.

5 (2) DEFINITION OF ULTRA DEEP WELL.—In
6 this subsection, the term “ultra deep well” means a
7 well drilled with a perforated interval, the top of
8 which is at least 20,000 feet true vertical depth
9 below the datum at mean sea level.

10 (c) EFFECTIVE DATE.—This section takes effect on
11 October 1, 2004.

12 **SEC. 315. ROYALTY RELIEF FOR DEEP WATER PRODUC-**
13 **TION.**

14 (a) IN GENERAL.—For all tracts located in water
15 depths of greater than 400 meters in the Western and
16 Central Planning Area of the Gulf of Mexico, including
17 the portion of the Eastern Planning Area of the Gulf of
18 Mexico encompassing whole lease blocks lying west of 87
19 degrees, 30 minutes West longitude, any oil or gas lease
20 sale under the Outer Continental Shelf Lands Act (43
21 U.S.C. 1331 et seq.) occurring within 5 years after the
22 date of enactment of this Act shall use the bidding system
23 authorized in section 8(a)(1)(H) of the Outer Continental
24 Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)), except that

1 the suspension of royalties shall be set at a volume of not
2 less than—

3 (1) 5,000,000 barrels of oil equivalent for each
4 lease in water depths of 400 to 800 meters;

5 (2) 9,000,000 barrels of oil equivalent for each
6 lease in water depths of 800 to 1,600 meters; and

7 (3) 12,000,000 barrels of oil equivalent for each
8 lease in water depths greater than 1,600 meters.

9 (b) LIMITATION.—The Secretary may place limita-
10 tions on the suspension of royalty relief granted based on
11 market price.

12 **SEC. 316. ALASKA OFFSHORE ROYALTY SUSPENSION.**

13 Section 8(a)(3)(B) of the Outer Continental Shelf
14 Lands Act (43 U.S.C. 1337(a)(3)(B)) is amended by in-
15 serting “and in the Planning Areas offshore Alaska” after
16 “West longitude”.

17 **SEC. 317. OIL AND GAS LEASING IN THE NATIONAL PETRO-**
18 **LEUM RESERVE IN ALASKA.**

19 (a) TRANSFER OF AUTHORITY.—

20 (1) REDESIGNATION.—The Naval Petroleum
21 Reserves Production Act of 1976 (42 U.S.C. 6501
22 et seq.) is amended by redesignating section 107 (42
23 U.S.C. 6507) as section 108.

24 (2) TRANSFER.—The matter under the heading
25 “EXPLORATION OF NATIONAL PETROLEUM RESERVE

1 IN ALASKA” under the heading “ENERGY AND
2 MINERALS” of title I of Public Law 96–514 (42
3 U.S.C. 6508) is—

4 (A) transferred to the Naval Petroleum
5 Reserves Production Act of 1976 (42 U.S.C.
6 6501 et seq.);

7 (B) redesignated as section 107 of that
8 Act; and

9 (C) moved so as to appear after section
10 106 of that Act (42 U.S.C. 6506).

11 (b) COMPETITIVE LEASING.—Section 107 of the
12 Naval Petroleum Reserves Production Act of 1976 (as
13 amended by subsection (a) of this section) is amended—

14 (1) by striking the heading and all that follows
15 through “*Provided, That* (1) activities” and insert-
16 ing the following:

17 **“SEC. 107. COMPETITIVE LEASING OF OIL AND GAS.**

18 “(a) IN GENERAL.—Notwithstanding any other pro-
19 vision of law and pursuant to regulations issued by the
20 Secretary, the Secretary shall conduct an expeditious pro-
21 gram of competitive leasing of oil and gas in the National
22 Petroleum Reserve in Alaska (referred to in this section
23 as the ‘Reserve’).

24 “(b) MITIGATION OF ADVERSE EFFECTS.—Activi-
25 ties”;

1 (2) by striking “Alaska (the Reserve); (2) the”
2 and inserting “Alaska.

3 “(c) LAND USE PLANNING; BLM WILDERNESS
4 STUDY.—The”;

5 (3) by striking “Reserve; (3) the” and inserting
6 “Reserve.

7 “(d) FIRST LEASE SALE.—The”;

8 (4) by striking “4332); (4) the” and inserting
9 “4321 et seq.).

10 “(e) WITHDRAWALS.—The”;

11 (5) by striking “herein; (5) bidding” and insert-
12 ing “under this section.

13 “(f) BIDDING SYSTEMS.—Bidding”;

14 (6) by striking “629); (6) lease” and inserting
15 “629).

16 “(g) GEOLOGICAL STRUCTURES.—Lease”;

17 (7) by striking “structures; (7) the” and insert-
18 ing “structures.

19 “(h) SIZE OF LEASE TRACTS.—The”;

20 (8) by striking “Secretary; (8)” and all that fol-
21 lows through “Drilling, production,” and inserting

22 “Secretary.

23 “(i) TERMS.—

24 “(1) IN GENERAL.—Each lease shall be—

1 “(A) issued for an initial period of not
2 more than 10 years; and

3 “(B) renewed for successive 10-year terms
4 if—

5 “(i) oil or gas is produced from the
6 lease in paying quantities;

7 “(ii) oil or gas is capable of being pro-
8 duced in paying quantities; or

9 “(iii) drilling or reworking operations,
10 as approved by the Secretary, are con-
11 ducted on the leased land.

12 “(2) RENEWAL OF NONPRODUCING LEASES.—
13 The Secretary shall renew for an additional 10-year
14 term a lease that does not meet the requirements of
15 paragraph (1)(B) if the lessee submits to the Sec-
16 retary an application for renewal not later than 60
17 days before the expiration of the primary lease
18 and—

19 “(A) the lessee certifies, and the Secretary
20 agrees, that hydrocarbon resources were discov-
21 ered on 1 or more wells drilled on the leased
22 land in such quantities that a prudent operator
23 would hold the lease for potential future devel-
24 opment;

25 “(B) the lessee—

1 “(i) pays the Secretary a renewal fee
2 of \$100 per acre of leased land; and

3 “(ii) provides evidence, and the Sec-
4 retary agrees that, the lessee has diligently
5 pursued exploration that warrants continu-
6 ation with the intent of continued explo-
7 ration or future development of the leased
8 land; or

9 “(C) all or part of the lease—

10 “(i) is part of a unit agreement cov-
11 ering a lease described in subparagraph
12 (A) or (B); and

13 “(ii) has not been previously con-
14 tracted out of the unit.

15 “(3) APPLICABILITY.—This subsection applies
16 to a lease that—

17 “(A) is entered into before, on, or after the
18 date of enactment of the Energy Policy Act of
19 2003; and

20 “(B) is effective on or after the date of en-
21 actment of that Act.

22 “(j) UNIT AGREEMENTS.—

23 “(1) IN GENERAL.—For the purpose of con-
24 servation of the natural resources of all or part of
25 any oil or gas pool, field, reservoir, or like area, les-

1 sees (including representatives) of the pool, field,
2 reservoir, or like area may unite with each other, or
3 jointly or separately with others, in collectively
4 adopting and operating under a unit agreement for
5 all or part of the pool, field, reservoir, or like area
6 (whether or not any other part of the oil or gas pool,
7 field, reservoir, or like area is already subject to any
8 cooperative or unit plan of development or oper-
9 ation), if the Secretary determines the action to be
10 necessary or advisable in the public interest.

11 “(2) PARTICIPATION BY STATE OF ALASKA.—
12 The Secretary shall ensure that the State of Alaska
13 is provided the opportunity for active participation
14 concerning creation and management of units
15 formed or expanded under this subsection that in-
16 clude acreage in which the State of Alaska has an
17 interest in the mineral estate.

18 “(3) PARTICIPATION BY REGIONAL CORPORA-
19 TIONS.—The Secretary shall ensure that any Re-
20 gional Corporation (as defined in section 3 of the
21 Alaska Native Claims Settlement Act (43 U.S.C.
22 1602)) is provided the opportunity for active partici-
23 pation concerning creation and management of units
24 that include acreage in which the Regional Corpora-
25 tion has an interest in the mineral estate.

1 “(4) PRODUCTION ALLOCATION METHODOLOGY.—The Secretary may use a production allocation methodology for each participating area within a unit created for land in the Reserve, State of Alaska land, or Regional Corporation land shall, when appropriate, be based on the characteristics of each specific oil or gas pool, field, reservoir, or like area to take into account reservoir heterogeneity and a real variation in reservoir producibility across diverse leasehold interests.

11 “(5) BENEFIT OF OPERATIONS.—Drilling, production,”;

13 (9) by striking “When separate” and inserting the following:

15 “(6) POOLING.—If separate”;

16 (10) by inserting “(in consultation with the owners of the other land)” after “determined by the Secretary of the Interior”;

19 (11) by striking “thereto; (10) to” and all that follows through “the terms provided therein” and inserting “to the agreement.

22 “(k) EXPLORATION INCENTIVES.—

23 “(1) IN GENERAL.—

24 “(A) WAIVER, SUSPENSION, OR REDUCTION.—To encourage the greatest ultimate re-

1 covery of oil or gas or in the interest of con-
2 servation, the Secretary may waive, suspend, or
3 reduce the rental fees or minimum royalty, or
4 reduce the royalty on an entire leasehold (in-
5 cluding on any lease operated pursuant to a
6 unit agreement), if (after consultation with the
7 State of Alaska and the North Slope Borough
8 of Alaska and the concurrence of any Regional
9 Corporation for leases that include lands avail-
10 able for acquisition by the Regional Corporation
11 under the provisions of section 1431(o) of the
12 Alaska National Interest Lands Conservation
13 Act (16 U.S.C. 3101 et seq.)) the Secretary de-
14 termines that the waiver, suspension, or reduc-
15 tion is in the public interest.

16 “(B) APPLICABILITY.—This paragraph ap-
17 plies to a lease that—

18 “(i) is entered into before, on, or after
19 the date of enactment of the Energy Policy
20 Act of 2003; and

21 “(ii) is effective on or after the date
22 of enactment of that Act.”;

23 (12) by striking “The Secretary is authorized
24 to” and inserting the following:

1 “(2) SUSPENSION OF OPERATIONS AND PRO-
2 DUCTION.—The Secretary may”;

3 (13) by striking “In the event” and inserting
4 the following:

5 “(3) SUSPENSION OF PAYMENTS.—If”;

6 (14) by striking “thereto; and (11) all” and in-
7 serting “to the lease.

8 “(1) RECEIPTS.—All”;

9 (15) by redesignating clauses (A), (B), and (C)
10 as clauses (1), (2), and (3), respectively;

11 (16) by striking “Any agency” and inserting
12 the following:

13 “(m) EXPLORATIONS.—Any agency”;

14 (17) by striking “Any action” and inserting the
15 following:

16 “(n) ENVIRONMENTAL IMPACT STATEMENTS.—

17 “(1) JUDICIAL REVIEW.—Any action”;

18 (18) by striking “The detailed” and inserting
19 the following:

20 “(2) INITIAL LEASE SALES.—The detailed”;

21 (19) by striking “of the Naval Petroleum Re-
22 serves Production Act of 1976 (90 Stat. 304; 42
23 U.S.C. 6504)”;

24 (20) by adding at the end the following:

1 “(o) WAIVER OF ADMINISTRATION FOR CONVEYED
2 LANDS.—Notwithstanding section 14(g) of the Alaska
3 Native Claims Settlement Act (43 U.S.C. 1613(g)) or any
4 other provision of law—

5 “(1) the Secretary of the Interior shall waive
6 administration of any oil and gas lease insofar as
7 such lease covers any land in the National Petro-
8 leum Reserve in Alaska in which the subsurface es-
9 tate is conveyed to the Arctic Slope Regional Cor-
10 poration; and

11 “(2) if any such conveyance of such subsurface
12 estate does not cover all the land embraced within
13 any such oil and gas lease—

14 “(A) the person who owns the subsurface
15 estate in any particular portion of the land cov-
16 ered by such lease shall be entitled to all of the
17 revenues reserved under such lease as to such
18 portion, including, without limitation, all the
19 royalty payable with respect to oil or gas pro-
20 duced from or allocated to such particular por-
21 tion of the land covered by such lease; and

22 “(B) the Secretary of the Interior shall
23 segregate such lease into 2 leases, 1 of which
24 shall cover only the subsurface estate conveyed
25 to the Arctic Slope Regional Corporation, and

1 operations, production, or other circumstances
2 (other than payment of rentals or royalties)
3 that satisfy obligations of the lessee under, or
4 maintain, either of the segregated leases shall
5 likewise satisfy obligations of the lessee under,
6 or maintain, the other segregated lease to the
7 same extent as if such segregated leases re-
8 mained a part of the original unsegregated
9 lease.”.

10 **SEC. 318. ORPHANED, ABANDONED, OR IDLED WELLS ON**
11 **FEDERAL LAND.**

12 (a) IN GENERAL.—The Secretary, in cooperation
13 with the Secretary of Agriculture, shall establish a pro-
14 gram not later than 1 year after the date of enactment
15 of this Act to remediate, reclaim, and close orphaned,
16 abandoned, or idled oil and gas wells located on land ad-
17 ministered by the land management agencies within the
18 Department of the Interior and the Department of Agri-
19 culture.

20 (b) ACTIVITIES.—The program under subsection (a)
21 shall—

22 (1) include a means of ranking orphaned, aban-
23 doned, or idled wells sites for priority in remedi-
24 ation, reclamation, and closure, based on public

1 health and safety, potential environmental harm,
2 and other land use priorities;

3 (2) provide for identification and recovery of
4 the costs of remediation, reclamation, and closure
5 from persons or other entities currently providing a
6 bond or other financial assurance required under
7 State or Federal law for an oil or gas well that is
8 orphaned, abandoned, or idled; and

9 (3) provide for recovery from the persons or en-
10 tities identified under paragraph (2), or their sure-
11 ties or guarantors, of the costs of remediation, rec-
12 lamation, and closure of such wells.

13 (c) COOPERATION AND CONSULTATIONS.—In car-
14 rying out the program under subsection (a), the Secretary
15 shall—

16 (1) work cooperatively with the Secretary of Ag-
17 riculture and the States within which Federal land
18 is located; and

19 (2) consult with the Secretary of Energy and
20 the Interstate Oil and Gas Compact Commission.

21 (d) PLAN.—Not later than 1 year after the date of
22 enactment of this Act, the Secretary, in cooperation with
23 the Secretary of Agriculture, shall submit to Congress a
24 plan for carrying out the program under subsection (a).

1 (e) IDLED WELL.—For the purposes of this section,
2 a well is idled if—

3 (1) the well has been nonoperational for at least
4 7 years; and

5 (2) there is no anticipated beneficial use for the
6 well.

7 (f) TECHNICAL ASSISTANCE PROGRAM FOR NON-
8 FEDERAL LAND.—

9 (1) IN GENERAL.—The Secretary of Energy
10 shall establish a program to provide technical and fi-
11 nancial assistance to oil and gas producing States to
12 facilitate State efforts over a 10-year period to en-
13 sure a practical and economical remedy for environ-
14 mental problems caused by orphaned or abandoned
15 oil and gas exploration or production well sites on
16 State or private land.

17 (2) ASSISTANCE.—The Secretary of Energy
18 shall work with the States, through the Interstate
19 Oil and Gas Compact Commission, to assist the
20 States in quantifying and mitigating environmental
21 risks of onshore orphaned or abandoned oil or gas
22 wells on State and private land.

23 (3) ACTIVITIES.—The program under para-
24 graph (1) shall include—

1 (A) mechanisms to facilitate identification,
2 if feasible, of the persons currently providing a
3 bond or other form of financial assurance re-
4 quired under State or Federal law for an oil or
5 gas well that is orphaned or abandoned;

6 (B) criteria for ranking orphaned or aban-
7 doned well sites based on factors such as public
8 health and safety, potential environmental
9 harm, and other land use priorities;

10 (C) information and training programs on
11 best practices for remediation of different types
12 of sites; and

13 (D) funding of State mitigation efforts on
14 a cost-shared basis.

15 (g) FEDERAL REIMBURSEMENT FOR ORPHANED
16 WELL RECLAMATION PILOT PROGRAM.—

17 (1) REIMBURSEMENT FOR REMEDIATING, RE-
18 CLAIMING, AND CLOSING WELLS ON LAND SUBJECT
19 TO A NEW LEASE.—The Secretary shall carry out a
20 pilot program under which, in issuing a new oil and
21 gas lease on federally owned land on which 1 or
22 more orphaned wells are located, the Secretary—

23 (A) may require, but not as a condition of
24 the lease, that the lessee remediate, reclaim,
25 and close in accordance with standards estab-

1 lished by the Secretary, all orphaned wells on
2 the land leased; and

3 (B) shall develop a program to reimburse
4 a lessee, through a royalty credit against the
5 Federal share of royalties owed or other means,
6 for the reasonable actual costs of remediating,
7 reclaiming, and closing the orphaned well pur-
8 suant to that requirement.

9 (2) REIMBURSEMENT FOR RECLAIMING OR-
10 PHANED WELLS ON OTHER LAND.—In carrying out
11 this subsection, the Secretary—

12 (A) may authorize any lessee under an oil
13 and gas lease on federally owned land to re-
14 claim in accordance with the Secretary's stand-
15 ards—

16 (i) an orphaned well on unleased fed-
17 erally owned land; or

18 (ii) an orphaned well located on an ex-
19 isting lease on federally owned land for the
20 reclamation of which the lessee is not le-
21 gally responsible; and

22 (B) shall develop a program to provide re-
23 imbursement of 115 percent of the reasonable
24 actual costs of remediating, reclaiming, and
25 closing the orphaned well, through credits

1 against the Federal share of royalties or other
2 means.

3 (3) EFFECT OF REMEDIATION, RECLAMATION,
4 OR CLOSURE OF WELL PURSUANT TO AN APPROVED
5 REMEDICATION PLAN.—

6 (A) DEFINITION OF REMEDIATING
7 PARTY.—In this paragraph the term “remedi-
8 ating party” means a person who remediates,
9 reclaims, or closes an abandoned, orphaned, or
10 idled well pursuant to this subsection.

11 (B) GENERAL RULE.—A remediating party
12 who remediates, reclaims, or closes an aban-
13 doned, orphaned, or idled well in accordance
14 with a detailed written remediation plan ap-
15 proved by the Secretary under this subsection,
16 shall be immune from civil liability under Fed-
17 eral environmental laws, for—

18 (i) pre-existing environmental condi-
19 tions at or associated with the well, unless
20 the remediating party owns or operates, in
21 the past owned or operated, or is related to
22 a person that owns or operates or in the
23 past owned or operated, the well or the
24 land on which the well is located; or

1 (ii) any remaining releases of pollut-
2 ants from the well during or after comple-
3 tion of the remediation, reclamation, or
4 closure of the well, unless the remediating
5 party causes increased pollution as a result
6 of activities that are not in accordance
7 with the approved remediation plan.

8 (C) LIMITATIONS.—Nothing in this section
9 shall limit in any way the liability of a remedi-
10 ating party for injury, damage, or pollution re-
11 sulting from the remediating party's acts or
12 omissions that are not in accordance with the
13 approved remediation plan, are reckless or will-
14 ful, constitute gross negligence or wanton mis-
15 conduct, or are unlawful.

16 (4) REGULATIONS.—The Secretary may issue
17 such regulations as are appropriate to carry out this
18 subsection.

19 (h) AUTHORIZATION OF APPROPRIATIONS.—

20 (1) IN GENERAL.—There are authorized to be
21 appropriated to carry out this section \$25,000,000
22 for each of fiscal years 2005 through 2009.

23 (2) USE.—Of the amounts authorized under
24 paragraph (1), \$5,000,000 are authorized for each
25 fiscal year for activities under subsection (f).

1 **SEC. 319. COMBINED HYDROCARBON LEASING.**

2 (a) SPECIAL PROVISIONS REGARDING LEASING.—

3 Section 17(b)(2) of the Mineral Leasing Act (30 U.S.C.
4 226(b)(2)) is amended—

5 (1) by inserting “(A)” after “(2)”; and

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

7 “(B) For any area that contains any combination of
8 tar sand and oil or gas (or both), the Secretary may issue
9 under this Act, separately—

10 “(i) a lease for exploration for and extraction of
11 tar sand; and

12 “(ii) a lease for exploration for and development
13 of oil and gas.

14 “(C) A lease issued for tar sand shall be issued using
15 the same bidding process, annual rental, and posting pe-
16 riod as a lease issued for oil and gas, except that the min-
17 imum acceptable bid required for a lease issued for tar
18 sand shall be \$2 per acre.

19 “(D) The Secretary may waive, suspend, or alter any
20 requirement under section 26 that a permittee under a
21 permit authorizing prospecting for tar sand must exercise
22 due diligence, to promote any resource covered by a com-
23 bined hydrocarbon lease.”.

24 (b) CONFORMING AMENDMENT.—Section
25 17(b)(1)(B) of the Mineral Leasing Act (30 U.S.C.
26 226(b)(1)(B)) is amended in the second sentence by in-

1 serting “, subject to paragraph (2)(B),” after “Sec-
2 retary”.

3 (c) REGULATIONS.—Not later than 45 days after the
4 date of enactment of this Act, the Secretary shall issue
5 final regulations to implement this section.

6 **SEC. 320. LIQUIFIED NATURAL GAS.**

7 Section 3 of the Natural Gas Act (15 U.S.C. 717b)
8 is amended by adding at the end the following:

9 “(d) LIMITATION ON COMMISSION AUTHORITY.—If
10 an applicant under this section proposes to construct or
11 expand a liquified natural gas terminal either onshore or
12 in State waters for the purpose of importing liquified nat-
13 ural gas into the United States, the Commission shall not
14 deny or condition the application solely on the basis that
15 the applicant proposes to utilize the terminal exclusively
16 or partially for gas that the applicant or any affiliate
17 thereof will supply thereto. In all other respects, sub-
18 section (a) shall remain applicable to any such proposal.”.

19 **SEC. 321. ALTERNATE ENERGY-RELATED USES ON THE**
20 **OUTER CONTINENTAL SHELF.**

21 (a) AMENDMENT TO OUTER CONTINENTAL SHELF
22 LANDS ACT.—Section 8 of the Outer Continental Shelf
23 Lands Act (43 U.S.C. 1337) is amended by adding at the
24 end the following:

1 “(p) LEASES, EASEMENTS, OR RIGHTS-OF-WAY FOR
2 ENERGY AND RELATED PURPOSES.—

3 “(1) IN GENERAL.—The Secretary, in consulta-
4 tion with the Secretary of the Department in which
5 the Coast Guard is operating and other relevant de-
6 partments and agencies of the Federal Government,
7 may grant a lease, easement, or right-of-way on the
8 Outer Continental Shelf for activities not otherwise
9 authorized in this Act, the Deepwater Port Act of
10 1974 (33 U.S.C. 1501 et seq.), or the Ocean Ther-
11 mal Energy Conversion Act of 1980 (42 U.S.C.
12 9101 et seq.), or other applicable law, if those activi-
13 ties—

14 “(A) support exploration, development,
15 production, transportation, or storage of oil,
16 natural gas, or other minerals;

17 “(B) produce or support production, trans-
18 portation, or transmission of energy from
19 sources other than oil and gas; or

20 “(C) use, for energy-related or marine-re-
21 lated purposes, facilities currently or previously
22 used for activities authorized under this Act.

23 “(2) PAYMENTS.—The Secretary shall establish
24 reasonable forms of payments for any easement or
25 right-of-way granted under this subsection. Such

1 payments shall not be assessed on the basis of
2 throughput or production. The Secretary may estab-
3 lish fees, rentals, bonus, or other payments by rule
4 or by agreement with the party to which the lease,
5 easement, or right-of-way is granted.

6 “(3) CONSULTATION.—Before exercising au-
7 thority under this subsection, the Secretary shall
8 consult with the Secretary of Defense and other ap-
9 propriate agencies concerning issues related to na-
10 tional security and navigational obstruction.

11 “(4) COMPETITIVE OR NONCOMPETITIVE
12 BASIS.—

13 “(A) IN GENERAL.—The Secretary may
14 issue a lease, easement, or right-of-way for en-
15 ergy and related purposes as described in para-
16 graph (1) on a competitive or noncompetitive
17 basis.

18 “(B) CONSIDERATIONS.—In determining
19 whether a lease, easement, or right-of-way shall
20 be granted competitively or noncompetitively,
21 the Secretary shall consider such factors as—

22 “(i) prevention of waste and conserva-
23 tion of natural resources;

24 “(ii) the economic viability of an en-
25 ergy project;

- 1 “(iii) protection of the environment;
- 2 “(iv) the national interest and na-
- 3 tional security;
- 4 “(v) human safety;
- 5 “(vi) protection of correlative rights;
- 6 and
- 7 “(vii) potential return for the lease,
- 8 easement, or right-of-way.

9 “(5) REGULATIONS.—Not later than 270 days

10 after the date of enactment of the Energy Policy Act

11 of 2003, the Secretary, in consultation with the Sec-

12 retary of the Department in which the Coast Guard

13 is operating and other relevant agencies of the Fed-

14 eral Government and affected States, shall issue any

15 necessary regulations to ensure safety, protection of

16 the environment, prevention of waste, and conserva-

17 tion of the natural resources of the Outer Conti-

18 nental Shelf, protection of national security inter-

19 ests, and protection of correlative rights in the Outer

20 Continental Shelf.

21 “(6) SECURITY.—The Secretary shall require

22 the holder of a lease, easement, or right-of-way

23 granted under this subsection to furnish a surety

24 bond or other form of security, as prescribed by the

25 Secretary, and to comply with such other require-

1 ments as the Secretary considers necessary to pro-
2 tect the interests of the United States.

3 “(7) EFFECT OF SUBSECTION.—Nothing in this
4 subsection displaces, supersedes, limits, or modifies
5 the jurisdiction, responsibility, or authority of any
6 Federal or State agency under any other Federal
7 law.

8 “(8) APPLICABILITY.—This subsection does not
9 apply to any area on the Outer Continental Shelf
10 designated as a National Marine Sanctuary.”.

11 (b) CONFORMING AMENDMENT.—Section 8 of the
12 Outer Continental Shelf Lands Act (43 U.S.C. 1337) is
13 amended by striking the section heading and inserting the
14 following: “LEASES, EASEMENTS, AND RIGHTS-OF-WAY
15 ON THE OUTER CONTINENTAL SHELF.—”.

16 (c) SAVINGS PROVISION.—Nothing in the amendment
17 made by subsection (a) requires, with respect to any
18 project—

19 (1) for which offshore test facilities have been
20 constructed before the date of enactment of this Act;
21 or

22 (2) for which a request for proposals has been
23 issued by a public authority,

24 any resubmittal of documents previously submitted or any
25 reauthorization of actions previously authorized.

1 **SEC. 322. PRESERVATION OF GEOLOGICAL AND GEO-**
2 **PHYSICAL DATA.**

3 (a) **SHORT TITLE.**—This section may be cited as the
4 “National Geological and Geophysical Data Preservation
5 Program Act of 2003”.

6 (b) **PROGRAM.**—The Secretary shall carry out a Na-
7 tional Geological and Geophysical Data Preservation Pro-
8 gram in accordance with this section—

9 (1) to archive geologic, geophysical, and engi-
10 neering data, maps, well logs, and samples;

11 (2) to provide a national catalog of such archi-
12 val material; and

13 (3) to provide technical and financial assistance
14 related to the archival material.

15 (c) **PLAN.**—Not later than 1 year after the date of
16 enactment of this Act, the Secretary shall submit to Con-
17 gress a plan for the implementation of the Program.

18 (d) **DATA ARCHIVE SYSTEM.**—

19 (1) **ESTABLISHMENT.**—The Secretary shall es-
20 tablish, as a component of the Program, a data ar-
21 chive system to provide for the storage, preservation,
22 and archiving of subsurface, surface, geological, geo-
23 physical, and engineering data and samples. The
24 Secretary, in consultation with the Advisory Com-
25 mittee, shall develop guidelines relating to the data

1 archive system, including the types of data and sam-
2 ples to be preserved.

3 (2) SYSTEM COMPONENTS.—The system shall
4 be comprised of State agencies that elect to be part
5 of the system and agencies within the Department
6 of the Interior that maintain geological and geo-
7 physical data and samples that are designated by
8 the Secretary in accordance with this subsection.
9 The Program shall provide for the storage of data
10 and samples through data repositories operated by
11 such agencies.

12 (3) LIMITATION OF DESIGNATION.—The Sec-
13 retary may not designate a State agency as a com-
14 ponent of the data archive system unless that agency
15 is the agency that acts as the geological survey in
16 the State.

17 (4) DATA FROM FEDERAL LAND.—The data ar-
18 chive system shall provide for the archiving of rel-
19 evant subsurface data and samples obtained from
20 Federal land—

21 (A) in the most appropriate repository des-
22 igned under paragraph (2), with preference
23 being given to archiving data in the State in
24 which the data were collected; and

1 (B) consistent with all applicable law and
2 requirements relating to confidentiality and pro-
3 prietary data.

4 (e) NATIONAL CATALOG.—

5 (1) IN GENERAL.—As soon as practicable after
6 the date of enactment of this Act, the Secretary
7 shall develop and maintain, as a component of the
8 Program, a national catalog that identifies—

9 (A) data and samples available in the data
10 archive system established under subsection (d);

11 (B) the repository for particular material
12 in the system; and

13 (C) the means of accessing the material.

14 (2) AVAILABILITY.—The Secretary shall make
15 the national catalog accessible to the public on the
16 site of the Survey on the Internet, consistent with all
17 applicable requirements related to confidentiality
18 and proprietary data.

19 (f) ADVISORY COMMITTEE.—

20 (1) IN GENERAL.—The Advisory Committee
21 shall advise the Secretary on planning and imple-
22 mentation of the Program.

23 (2) NEW DUTIES.—In addition to its duties
24 under the National Geologic Mapping Act of 1992

1 (43 U.S.C. 31a et seq.), the Advisory Committee
2 shall perform the following duties:

3 (A) Advise the Secretary on developing
4 guidelines and procedures for providing assist-
5 ance for facilities under subsection (g)(1).

6 (B) Review and critique the draft imple-
7 mentation plan prepared by the Secretary under
8 subsection (c).

9 (C) Identify useful studies of data archived
10 under the Program that will advance under-
11 standing of the Nation's energy and mineral re-
12 sources, geologic hazards, and engineering geol-
13 ogy.

14 (D) Review the progress of the Program in
15 archiving significant data and preventing the
16 loss of such data, and the scientific progress of
17 the studies funded under the Program.

18 (E) Include in the annual report to the
19 Secretary required under section 5(b)(3) of the
20 National Geologic Mapping Act of 1992 (43
21 U.S.C. 31d(b)(3)) an evaluation of the progress
22 of the Program toward fulfilling the purposes of
23 the Program under subsection (b).

24 (g) FINANCIAL ASSISTANCE.—

1 (1) ARCHIVE FACILITIES.—Subject to the avail-
2 ability of appropriations, the Secretary shall provide
3 financial assistance to a State agency that is des-
4 ignated under subsection (d)(2) for providing facili-
5 ties to archive energy material.

6 (2) STUDIES.—Subject to the availability of ap-
7 propriations, the Secretary shall provide financial as-
8 sistance to any State agency designated under sub-
9 section (d)(2) for studies and technical assistance
10 activities that enhance understanding, interpreta-
11 tion, and use of materials archived in the data ar-
12 chive system established under subsection (d).

13 (3) FEDERAL SHARE.—The Federal share of
14 the cost of an activity carried out with assistance
15 under this subsection shall be not more than 50 per-
16 cent of the total cost of the activity.

17 (4) PRIVATE CONTRIBUTIONS.—The Secretary
18 shall apply to the non-Federal share of the cost of
19 an activity carried out with assistance under this
20 subsection the value of private contributions of prop-
21 erty and services used for that activity.

22 (h) REPORT.—The Secretary shall include in each re-
23 port under section 8 of the National Geologic Mapping Act
24 of 1992 (43 U.S.C. 31g)—

25 (1) a description of the status of the Program;

1 (2) an evaluation of the progress achieved in
2 developing the Program during the period covered by
3 the report; and

4 (3) any recommendations for legislative or other
5 action the Secretary considers necessary and appro-
6 priate to fulfill the purposes of the Program under
7 subsection (b).

8 (i) MAINTENANCE OF STATE EFFORT.—It is the in-
9 tent of Congress that the States not use this section as
10 an opportunity to reduce State resources applied to the
11 activities that are the subject of the Program.

12 (j) DEFINITIONS.—In this section:

13 (1) ADVISORY COMMITTEE.—The term “Advi-
14 sory Committee” means the advisory committee es-
15 tablished under section 5 of the National Geologic
16 Mapping Act of 1992 (43 U.S.C. 31d).

17 (2) PROGRAM.—The term “Program” means
18 the National Geological and Geophysical Data Pres-
19 ervation Program carried out under this section.

20 (3) SECRETARY.—The term “Secretary” means
21 the Secretary of the Interior, acting through the Di-
22 rector of the United States Geological Survey.

23 (4) SURVEY.—The term “Survey” means the
24 United States Geological Survey.

1 (k) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated to carry out this section
 3 \$30,000,000 for each of fiscal years 2004 through 2008.

4 **SEC. 323. OIL AND GAS LEASE ACREAGE LIMITATIONS.**

5 Section 27(d)(1) of the Mineral Leasing Act (30
 6 U.S.C. 184(d)(1)) is amended by inserting after “acreage
 7 held in special tar sand areas” the following: “, and acre-
 8 age under any lease any portion of which has been com-
 9 mitted to a federally approved unit or cooperative plan or
 10 communitization agreement or for which royalty (includ-
 11 ing compensatory royalty or royalty in-kind) was paid in
 12 the preceding calendar year,”.

13 **SEC. 324. ASSESSMENT OF DEPENDENCE OF STATE OF HA-**
 14 **WAI ON OIL.**

15 (a) ASSESSMENT.—The Secretary of Energy shall as-
 16 sess the economic implication of the dependence of the
 17 State of Hawaii on oil as the principal source of energy
 18 for the State, including—

19 (1) the short- and long-term prospects for crude
 20 oil supply disruption and price volatility and poten-
 21 tial impacts on the economy of Hawaii;

22 (2) the economic relationship between oil-fired
 23 generation of electricity from residual fuel and re-
 24 fined petroleum products consumed for ground, ma-
 25 rine, and air transportation;

1 (3) the technical and economic feasibility of in-
2 creasing the contribution of renewable energy re-
3 sources for generation of electricity, on an island-by-
4 island basis, including—

5 (A) siting and facility configuration;

6 (B) environmental, operational, and safety
7 considerations;

8 (C) the availability of technology;

9 (D) effects on the utility system including
10 reliability;

11 (E) infrastructure and transport require-
12 ments;

13 (F) community support; and

14 (G) other factors affecting the economic
15 impact of such an increase and any effect on
16 the economic relationship described in para-
17 graph (2);

18 (4) the technical and economic feasibility of
19 using liquified natural gas to displace residual fuel
20 oil for electric generation, including neighbor island
21 opportunities, and the effect of the displacement on
22 the economic relationship described in paragraph
23 (2), including—

24 (A) the availability of supply;

1 (B) siting and facility configuration for on-
2 shore and offshore liquified natural gas receiv-
3 ing terminals;

4 (C) the factors described in subparagraphs
5 (B) through (F) of paragraph (3); and

6 (D) other economic factors;

7 (5) the technical and economic feasibility of
8 using renewable energy sources (including hydrogen)
9 for ground, marine, and air transportation energy
10 applications to displace the use of refined petroleum
11 products, on an island-by-island basis, and the eco-
12 nomic impact of the displacement on the relationship
13 described in (2); and

14 (6) an island-by-island approach to—

15 (A) the development of hydrogen from re-
16 newable resources; and

17 (B) the application of hydrogen to the en-
18 ergy needs of Hawaii

19 (b) CONTRACTING AUTHORITY.—The Secretary of
20 Energy may carry out the assessment under subsection
21 (a) directly or, in whole or in part, through 1 or more
22 contracts with qualified public or private entities.

23 (c) REPORT.—Not later than 300 days after the date
24 of enactment of this Act, the Secretary of Energy shall
25 prepare, in consultation with agencies of the State of Ha-

1 waii and other stakeholders, as appropriate, and submit
 2 to Congress, a report detailing the findings, conclusions,
 3 and recommendations resulting from the assessment.

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

7 **SEC. 325. DEADLINE FOR DECISION ON APPEALS OF CON-**
 8 **SISTENCY DETERMINATION UNDER THE**
 9 **COASTAL ZONE MANAGEMENT ACT OF 1972.**

10 (a) IN GENERAL.—Section 319 of the Coastal Zone
 11 Management Act of 1972 (16 U.S.C. 1465) is amended
 12 to read as follows:

13 “APPEALS TO THE SECRETARY

14 “SEC. 319. (a) NOTICE.—The Secretary shall publish
 15 an initial notice in the Federal Register not later than 30
 16 days after the date of the filing of any appeal to the Sec-
 17 retary of a consistency determination under section 307.

18 “(b) CLOSURE OF RECORD.—

19 “(1) IN GENERAL.—Not later than the end of
 20 the 120-day period beginning on the date of publica-
 21 tion of an initial notice under subsection (a), the
 22 Secretary shall receive no more filings on the appeal
 23 and the administrative record regarding the appeal
 24 shall be closed.

25 “(2) NOTICE.—Upon the closure of the admin-
 26 istrative record, the Secretary shall immediately

1 publish a notice that the administrative record has
2 been closed.

3 “(c) DEADLINE FOR DECISION.—The Secretary shall
4 issue a decision in any appeal filed under section 307 not
5 later than 120 days after the closure of the administrative
6 record.

7 “(d) APPLICATION.—This section applies to appeals
8 initiated by the Secretary and appeals filed by an appli-
9 cant.”.

10 (b) APPLICATION.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendment made by subsection (a)
13 shall apply with respect to any appeal initiated or
14 filed before, on, or after the date of enactment of
15 this Act.

16 (2) LIMITATION.—Subsection (a) of section 319
17 of the Coastal Zone Management Act of 1972 (as
18 amended by subsection (a)) shall not apply with re-
19 spect to an appeal initiated or filed before the date
20 of enactment of this Act.

21 (c) CLOSURE OF RECORD FOR APPEAL FILED BE-
22 FORE DATE OF ENACTMENT.—Notwithstanding section
23 319(b)(1) of the Coastal Zone Management Act of 1972
24 (as amended by this section), in the case of an appeal of
25 a consistency determination under section 307 of that Act

1 initiated or filed before the date of enactment of this Act,
2 the Secretary of Commerce shall receive no more filings
3 on the appeal and the administrative record regarding the
4 appeal shall be closed not later than 120 days after the
5 date of enactment of this Act.

6 **SEC. 326. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**
7 **YSES, DOCUMENTATION, AND STUDIES.**

8 (a) IN GENERAL.—The Mineral Leasing Act is
9 amended by inserting after section 37 (30 U.S.C. 193)
10 the following:

11 “REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES,
12 DOCUMENTATION, AND STUDIES

13 “SEC. 38. (a) IN GENERAL.—The Secretary of the
14 Interior may reimburse a person that is a lessee, operator,
15 operating rights owner, or applicant for any lease under
16 this Act for reasonable amounts paid by the person for
17 preparation for the Secretary by a contractor or other per-
18 son selected by the Secretary of any project-level analysis,
19 documentation, or related study required pursuant to the
20 National Environmental Policy Act of 1969 (42 U.S.C.
21 4321 et seq.) with respect to the lease.

22 “(b) CONDITIONS.—The Secretary may provide reim-
23 bursement under subsection (a) only if—

24 “(1) adequate funding to enable the Secretary
25 to timely prepare the analysis, documentation, or re-
26 lated study is not appropriated;

1 “(2) the person paid the costs voluntarily;

2 “(3) the person maintains records of its costs
3 in accordance with regulations issued by the Sec-
4 retary;

5 “(4) the reimbursement is in the form of a re-
6 duction in the Federal share of the royalty required
7 to be paid for the lease for which the analysis, docu-
8 mentation, or related study is conducted, and is
9 agreed to by the Secretary and the person reim-
10 bursed prior to commencing the analysis, docu-
11 mentation, or related study; and

12 “(5) the agreement required under paragraph
13 (4) contains provisions—

14 “(A) reducing royalties owed on lease pro-
15 duction based on market prices;

16 “(B) stipulating an automatic termination
17 of the royalty reduction upon recovery of docu-
18 mented costs; and

19 “(C) providing a process by which the les-
20 see may seek reimbursement for circumstances
21 in which production from the specified lease is
22 not possible.”.

23 (b) APPLICATION.—The amendment made by this
24 section shall apply with respect to an analysis, documenta-
25 tion, or a related study conducted on or after October 1,

1 2008, for any lease entered into before, on, or after the
2 date of enactment of this Act.

3 (c) DEADLINE FOR REGULATIONS.—The Secretary
4 shall issue regulations implementing the amendment made
5 by this section by not later than 1 year after the date
6 of enactment of this Act.

7 **SEC. 327. HYDRAULIC FRACTURING.**

8 Paragraph (1) of section 1421(d) of the Safe Drink-
9 ing Water Act (42 U.S.C. 300h(d)) is amended to read
10 as follows:

11 “(1) UNDERGROUND INJECTION.—The term
12 ‘underground injection’—

13 “(A) means the subsurface emplacement of
14 fluids by well injection; and

15 “(B) excludes—

16 “(i) the underground injection of nat-
17 ural gas for purposes of storage; and

18 “(ii) the underground injection of
19 fluids or propping agents pursuant to hy-
20 draulic fracturing operations related to oil
21 or gas production activities.”.

1 **SEC. 328. OIL AND GAS EXPLORATION AND PRODUCTION**

2 **DEFINED.**

3 Section 502 of the Federal Water Pollution Control
4 Act (33 U.S.C. 1362) is amended by adding at the end
5 the following:

6 “(24) OIL AND GAS EXPLORATION AND PRO-
7 Duction.—The term ‘oil and gas exploration, pro-
8 duction, processing, or treatment operations or
9 transmission facilities’ means all field activities or
10 operations associated with exploration, production,
11 processing, or treatment operations, or transmission
12 facilities, including activities necessary to prepare a
13 site for drilling and for the movement and placement
14 of drilling equipment, whether or not such field ac-
15 tivities or operations may be considered to be con-
16 struction activities.”.

17 **SEC. 329. OUTER CONTINENTAL SHELF PROVISIONS.**

18 (a) STORAGE ON THE OUTER CONTINENTAL
19 SHELF.—Section 5(a)(5) of the Outer Continental Shelf
20 Lands Act (43 U.S.C. 1334(a)(5)) is amended by insert-
21 ing “from any source” after “oil and gas”.

22 (b) DEEPWATER PROJECTS.—Section 6 of the Deep-
23 water Port Act of 1974 (33 U.S.C. 1505) is amended by
24 adding at the end the following:

25 “(d) RELIANCE ON ACTIVITIES OF OTHER AGEN-
26 CIES.—In fulfilling the requirements of section 5(f)—

1 “(1) to the extent that other Federal agencies
2 have prepared environmental impact statements, are
3 conducting studies, or are monitoring the affected
4 human, marine, or coastal environment, the Sec-
5 retary may use the information derived from those
6 activities in lieu of directly conducting such activi-
7 ties; and

8 “(2) the Secretary may use information ob-
9 tained from any State or local government or from
10 any person.”.

11 (c) NATURAL GAS DEFINED.—Section 3(13) of the
12 Deepwater Port Act of 1974 (33 U.S.C. 1502(13)) is
13 amended to read as follows:

14 “(13) natural gas means—

15 “(A) natural gas unmixed; or

16 “(B) any mixture of natural or artificial
17 gas, including compressed or liquefied natural
18 gas, natural gas liquids, liquefied petroleum
19 gas, and condensate recovered from natural
20 gas;”.

21 **SEC. 330. APPEALS RELATING TO PIPELINE CONSTRUC-**
22 **TION OR OFFSHORE MINERAL DEVELOP-**
23 **MENT PROJECTS.**

24 (a) AGENCY OF RECORD, PIPELINE CONSTRUCTION
25 PROJECTS.—Any Federal administrative agency pro-

1 ceeding that is an appeal or review under section 319 of
2 the Coastal Zone Management Act of 1972 (16 U.S.C.
3 1465), as amended by this Act, related to Federal author-
4 ity for an interstate natural gas pipeline construction
5 project, including construction of natural gas storage and
6 liquefied natural gas facilities, shall use as its exclusive
7 record for all purposes the record compiled by the Federal
8 Energy Regulatory Commission pursuant to the Commis-
9 sion's proceeding under sections 3 and 7 of the Natural
10 Gas Act (15 U.S.C. 717b, 717f).

11 (b) SENSE OF CONGRESS.—It is the sense of Con-
12 gress that all Federal and State agencies with jurisdiction
13 over interstate natural gas pipeline construction activities
14 should coordinate their proceedings within the timeframes
15 established by the Federal Energy Regulatory Commission
16 when the Commission is acting under sections 3 and 7
17 of the Natural Gas Act (15 U.S.C. 717b, 717f) to deter-
18 mine whether a certificate of public convenience and neces-
19 sity should be issued for a proposed interstate natural gas
20 pipeline.

21 (c) AGENCY OF RECORD, OFFSHORE MINERAL DE-
22 VELOPMENT PROJECTS.—Any Federal administrative
23 agency proceeding that is an appeal or review under sec-
24 tion 319 of the Coastal Zone Management Act of 1972
25 (16 U.S.C. 1465), as amended by this Act, related to Fed-

1 eral authority for the permitting, approval, or other au-
2 thorization of energy projects, including projects to ex-
3 plore, develop, or produce mineral resources in or under-
4 lying the Outer Continental Shelf shall use as its exclusive
5 record for all purposes (except for the filing of pleadings)
6 the record compiled by the relevant Federal permitting
7 agency.

8 **SEC. 331. BILATERAL INTERNATIONAL OIL SUPPLY AGREE-**
9 **MENTS.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of law, the President may export oil to, or secure oil
12 for, any country pursuant to a bilateral international oil
13 supply agreement entered into by the United States with
14 the country before June 25, 1979, or to any country pur-
15 suant to the International Emergency Oil Sharing Plan
16 of the International Energy Agency.

17 (b) MEMORANDUM OF AGREEMENT.—The following
18 agreements are deemed to have entered into force by oper-
19 ation of law and are deemed to have no termination date:

20 (1) The agreement entitled “Agreement amend-
21 ing and extending the memorandum of agreement of
22 June 22, 1979”, entered into force November 13,
23 1994 (TIAS 12580).

24 (2) The agreement entitled “Agreement amend-
25 ing the contingency implementing arrangements of

1 October 17, 1980”, entered into force June 27,
2 1995 (TIAS 12670).

3 **SEC. 332. NATURAL GAS MARKET REFORM.**

4 (a) CLARIFICATION OF EXISTING CFTC AUTHOR-
5 ITY.—

6 (1) FALSE REPORTING.—Section 9(a)(2) of the
7 Commodity Exchange Act (7 U.S.C. 13(a)(2)) is
8 amended by striking “false or misleading or know-
9 ingly inaccurate reports” and inserting “knowingly
10 false or knowingly misleading or knowingly inac-
11 curate reports”.

12 (2) COMMISSION ADMINISTRATIVE AND CIVIL
13 AUTHORITY.—Section 9 of the Commodity Ex-
14 change Act (7 U.S.C. 13) is amended by redesign-
15 nating subsection (f) as subsection (e), and adding:
16 “(f) COMMISSION ADMINISTRATIVE AND CIVIL AU-
17 THORITY.—The Commission may bring administrative or
18 civil actions as provided in this Act against any person
19 for a violation of any provision of this section including,
20 but not limited to, false reporting under subsection
21 (a)(2).”.

22 (3) EFFECT OF AMENDMENTS.—The amend-
23 ments made by paragraphs (1) and (2) restate, with-
24 out substantive change, existing burden of proof pro-
25 visions and existing Commission civil enforcement

1 authority, respectively. These clarifying changes do
2 not alter any existing burden of proof or grant any
3 new statutory authority. The provisions of this sec-
4 tion, as restated herein, continue to apply to any ac-
5 tion pending on or commenced after the date of en-
6 actment of this Act for any act, omission, or viola-
7 tion occurring before, on, or after, such date of en-
8 actment.

9 (b) FRAUD AUTHORITY.—Section 4b of the Com-
10 modity Exchange Act (7 U.S.C. 6b) is amended—

11 (1) by redesignating subsections (b) and (c) as
12 subsections (c) and (d), respectively; and

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

15 “(a) It shall be unlawful—

16 “(1) for any person, in or in connection with
17 any order to make, or the making of, any contract
18 of sale of any commodity for future delivery or in
19 interstate commerce, that is made, or to be made, on
20 or subject to the rules of a designated contract mar-
21 ket, for or on behalf of any other person; or

22 “(2) for any person, in or in connection with
23 any order to make, or the making of, any contract
24 of sale of any commodity for future delivery, or
25 other agreement, contract, or transaction subject to

1 section 5a(g) (1) and (2) of this Act, that is made,
2 or to be made, for or on behalf of, or with, any other
3 person, other than on or subject to the rules of a
4 designated contract market—

5 “(A) to cheat or defraud or attempt to
6 cheat or defraud such other person;

7 “(B) willfully to make or cause to be made
8 to such other person any false report or state-
9 ment or willfully to enter or cause to be entered
10 for such other person any false record;

11 “(C) willfully to deceive or attempt to de-
12 ceive such other person by any means whatso-
13 ever in regard to any order or contract or the
14 disposition or execution of any order or con-
15 tract, or in regard to any act of agency per-
16 formed, with respect to any order or contract
17 for or, in the case of subsection (a)(2), with
18 such other person; or

19 “(D)(i) to bucket an order if such order is
20 either represented by such person as an order
21 to be executed, or required to be executed, on
22 or subject to the rules of a designated contract
23 market; or

24 “(ii) to fill an order by offset against the
25 order or orders of any other person, or willfully

1 and knowingly and without the prior consent of
2 such other person to become the buyer in re-
3 spect to any selling order of such other person,
4 or become the seller in respect to any buying
5 order of such other person, if such order is ei-
6 ther represented by such person as an order to
7 be executed, or required to be executed, on or
8 subject to the rules of a designated contract
9 market.

10 “(b) Subsection (a)(2) shall not obligate any person,
11 in connection with a transaction in a contract of sale of
12 a commodity for future delivery, or other agreement, con-
13 tract or transaction subject to section 5a(g) (1) and (2)
14 of this Act, with another person, to disclose to such other
15 person nonpublic information that may be material to the
16 market price of such commodity or transaction, except as
17 necessary to make any statement made to such other per-
18 son in connection with such transaction, not misleading
19 in any material respect.”.

20 (c) JURISDICTION OF THE CFTC.—The Natural Gas
21 Act (15 U.S.C. 717 et seq.) is amended by adding at the
22 end:

23 **“SEC. 26. JURISDICTION.**

24 “This Act shall not affect the exclusive jurisdiction
25 of the Commodity Futures Trading Commission with re-

1 spect to accounts, agreements, contracts, or transactions
2 in commodities under the Commodity Exchange Act (7
3 U.S.C. 1 et seq.). Any request for information by the Com-
4 mission to a designated contract market, registered deriva-
5 tives transaction execution facility, board of trade, ex-
6 change, or market involving accounts, agreements, con-
7 tracts, or transactions in commodities (including natural
8 gas, electricity, and other energy commodities) within the
9 exclusive jurisdiction of the Commodity Futures Trading
10 Commission shall be directed to the Commodity Futures
11 Trading Commission, which shall cooperate in responding
12 to any information request by the Commission.”.

13 (d) INCREASED PENALTIES.—Section 21 of the Nat-
14 ural Gas Act (15 U.S.C. 717t) is amended—

15 (1) in subsection (a)—

16 (A) by striking “\$5,000” and inserting
17 “\$1,000,000”; and

18 (B) by striking “two years” and inserting
19 “5 years”; and

20 (2) in subsection (b), by striking “\$500” and
21 inserting “\$50,000”.

22 **SEC. 333. NATURAL GAS MARKET TRANSPARENCY.**

23 The Natural Gas Act (15 U.S.C 717 et seq.) is
24 amended—

1 (1) by redesignating section 24 as section 25;
2 and

3 (2) by inserting after section 23 the following:

4 **“SEC. 24. NATURAL GAS MARKET TRANSPARENCY.**

5 “(a) AUTHORIZATION.—(1) Not later than 180 days
6 after the date of enactment of the Energy Policy Act of
7 2003, the Federal Energy Regulatory Commission shall
8 issue rules directing all entities subject to the Commis-
9 sion’s jurisdiction as provided under this Act to timely re-
10 port information about the availability and prices of nat-
11 ural gas sold at wholesale in interstate commerce to the
12 Commission and price publishers.

13 “(2) The Commission shall evaluate the data for ade-
14 quate price transparency and accuracy.

15 “(3) Rules issued under this subsection requiring the
16 reporting of information to the Commission that may be-
17 come publicly available shall be limited to aggregate data
18 and transaction-specific data that are otherwise required
19 by the Commission to be made public.

20 “(4) In exercising its authority under this section, the
21 Commission shall not—

22 “(A) compete with, or displace from the market
23 place, any price publisher; or

24 “(B) regulate price publishers or impose any re-
25 quirements on the publication of information.

1 “(b) **TIMELY ENFORCEMENT.**—No person shall be
2 subject to any penalty under this section with respect to
3 a violation occurring more than 3 years before the date
4 on which the Federal Energy Regulatory Commission
5 seeks to assess a penalty.

6 “(c) **LIMITATION ON COMMISSION AUTHORITY.**—(1)
7 The Commission shall not condition access to interstate
8 pipeline transportation upon the reporting requirements
9 authorized under this section.

10 “(2) Natural gas sales by a producer that are attrib-
11 utable to volumes of natural gas produced by such pro-
12 ducer shall not be subject to the rules issued pursuant to
13 this section.

14 “(3) The Commission shall not require natural gas
15 producers, processors, or users who have a de minimis
16 market presence to participate in the reporting require-
17 ments provided in this section.”.

18 **Subtitle C—Access to Federal Land**

19 **SEC. 341. OFFICE OF FEDERAL ENERGY PROJECT COORDI-** 20 **NATION.**

21 (a) **ESTABLISHMENT.**—The President shall establish
22 the Office of Federal Energy Project Coordination (re-
23 ferred to in this section as the “Office”) within the Execu-
24 tive Office of the President in the same manner and with
25 the same mission as the White House Energy Projects

1 Task Force established by Executive Order No. 13212 (42
2 U.S.C. 13201 note).

3 (b) STAFFING.—The Office shall be staffed by func-
4 tional experts from relevant Federal agencies on a non-
5 reimbursable basis to carry out the mission of the Office.

6 (c) REPORT.—The Office shall transmit an annual
7 report to Congress that describes the activities put in place
8 to coordinate and expedite Federal decisions on energy
9 projects. The report shall list accomplishments in improv-
10 ing the Federal decisionmaking process and shall include
11 any additional recommendations or systemic changes
12 needed to establish a more effective and efficient Federal
13 permitting process.

14 **SEC. 342. FEDERAL ONSHORE OIL AND GAS LEASING AND**
15 **PERMITTING PRACTICES.**

16 (a) REVIEW OF ONSHORE OIL AND GAS LEASING
17 PRACTICES.—

18 (1) IN GENERAL.—The Secretary of the Inte-
19 rior, in consultation with the Secretary of Agri-
20 culture with respect to National Forest System lands
21 under the jurisdiction of the Department of Agri-
22 culture, shall perform an internal review of current
23 Federal onshore oil and gas leasing and permitting
24 practices.

1 (2) INCLUSIONS.—The review shall include the
2 process for—

3 (A) accepting or rejecting offers to lease;

4 (B) administrative appeals of decisions or
5 orders of officers or employees of the Bureau of
6 Land Management with respect to a Federal oil
7 or gas lease;

8 (C) considering surface use plans of oper-
9 ation, including the timeframes in which the
10 plans are considered, and any recommendations
11 for improving and expediting the process; and

12 (D) identifying stipulations to address site-
13 specific concerns and conditions, including those
14 stipulations relating to the environment and re-
15 source use conflicts.

16 (b) REPORT.—Not later than 180 days after the date
17 of enactment of this Act, the Secretary of the Interior and
18 the Secretary of Agriculture shall transmit a report to
19 Congress that describes—

20 (1) actions taken under section 3 of Executive
21 Order No. 13212 (42 U.S.C. 13201 note); and

22 (2) actions taken or any plans to improve the
23 Federal onshore oil and gas leasing program.

1 **SEC. 343. MANAGEMENT OF FEDERAL OIL AND GAS LEAS-**
2 **ING PROGRAMS.**

3 (a) **TIMELY ACTION ON LEASES AND PERMITS.**—To
4 ensure timely action on oil and gas leases and applications
5 for permits to drill on land otherwise available for leasing,
6 the Secretary of the Interior (in this section referred to
7 as the “Secretary”) shall—

8 (1) ensure expeditious compliance with section
9 102(2)(C) of the National Environmental Policy Act
10 of 1969 (42 U.S.C. 4332(2)(C));

11 (2) improve consultation and coordination with
12 the States and the public; and

13 (3) improve the collection, storage, and retrieval
14 of information relating to the leasing activities.

15 (b) **BEST MANAGEMENT PRACTICES.**—

16 (1) **IN GENERAL.**—Not later than 18 months
17 after the date of enactment of this Act, the Sec-
18 retary shall develop and implement best manage-
19 ment practices to—

20 (A) improve the administration of the on-
21 shore oil and gas leasing program under the
22 Mineral Leasing Act (30 U.S.C. 181 et seq.);
23 and

24 (B) ensure timely action on oil and gas
25 leases and applications for permits to drill on
26 lands otherwise available for leasing.

1 (2) CONSIDERATIONS.—In developing the best
2 management practices under paragraph (1), the Sec-
3 retary shall consider any recommendations from the
4 review under section 342.

5 (3) REGULATIONS.—Not later than 180 days
6 after the development of best management practices
7 under paragraph (1), the Secretary shall publish, for
8 public comment, proposed regulations that set forth
9 specific timeframes for processing leases and appli-
10 cations in accordance with the practices, including
11 deadlines for—

12 (A) approving or disapproving resource
13 management plans and related documents, lease
14 applications, and surface use plans; and

15 (B) related administrative appeals.

16 (c) IMPROVED ENFORCEMENT.—The Secretary shall
17 improve inspection and enforcement of oil and gas activi-
18 ties, including enforcement of terms and conditions in per-
19 mits to drill.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
21 tion to amounts authorized to be appropriated to carry
22 out section 17 of the Mineral Leasing Act (30 U.S.C.
23 226), there are authorized to be appropriated to the Sec-
24 retary for each of fiscal years 2004 through 2007—

1 (1) \$40,000,000 to carry out subsections (a)
2 and (b); and

3 (2) \$20,000,000 to carry out subsection (c).

4 **SEC. 344. CONSULTATION REGARDING OIL AND GAS LEAS-**
5 **ING ON PUBLIC LAND.**

6 (a) **IN GENERAL.**—Not later than 180 days after the
7 date of enactment of this Act, the Secretary of the Interior
8 and the Secretary of Agriculture shall enter into a memo-
9 randum of understanding regarding oil and gas leasing
10 on—

11 (1) public lands under the jurisdiction of the
12 Secretary of the Interior; and

13 (2) National Forest System lands under the ju-
14 risdiction of the Secretary of Agriculture.

15 (b) **CONTENTS.**—The memorandum of understanding
16 shall include provisions that—

17 (1) establish administrative procedures and
18 lines of authority that ensure timely processing of oil
19 and gas lease applications, surface use plans of oper-
20 ation, and applications for permits to drill, including
21 steps for processing surface use plans and applica-
22 tions for permits to drill consistent with the
23 timelines established by the amendment made by
24 section 348;

1 (2) eliminate duplication of effort by providing
2 for coordination of planning and environmental com-
3 pliance efforts; and

4 (3) ensure that lease stipulations are—

5 (A) applied consistently;

6 (B) coordinated between agencies; and

7 (C) only as restrictive as necessary to pro-
8 tect the resource for which the stipulations are
9 applied.

10 (c) DATA RETRIEVAL SYSTEM.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of this Act, the Secretary of
13 the Interior and the Secretary of Agriculture shall
14 establish a joint data retrieval system that is capable
15 of—

16 (A) tracking applications and formal re-
17 quests made in accordance with procedures of
18 the Federal onshore oil and gas leasing pro-
19 gram; and

20 (B) providing information regarding the
21 status of the applications and requests within
22 the Department of the Interior and the Depart-
23 ment of Agriculture.

24 (2) RESOURCE MAPPING.—Not later than 2
25 years after the date of enactment of this Act, the

1 Secretary of the Interior and the Secretary of Agri-
2 culture shall establish a joint Geographic Informa-
3 tion System mapping system for use in—

4 (A) tracking surface resource values to aid
5 in resource management; and

6 (B) processing surface use plans of oper-
7 ation and applications for permits to drill.

8 **SEC. 345. ESTIMATES OF OIL AND GAS RESOURCES UNDER-**
9 **LYING ONSHORE FEDERAL LAND.**

10 (a) ASSESSMENT.—Section 604 of the Energy Act of
11 2000 (42 U.S.C. 6217) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (1)—

14 (i) by striking “reserve”; and

15 (ii) by striking “and” after the semi-
16 colon; and

17 (B) by striking paragraph (2) and insert-
18 ing the following:

19 “(2) the extent and nature of any restrictions
20 or impediments to the development of the resources,
21 including—

22 “(A) impediments to the timely granting of
23 leases;

24 “(B) post-lease restrictions, impediments,
25 or delays on development for conditions of ap-

1 proval, applications for permits to drill, or proc-
2 essing of environmental permits; and

3 “(C) permits or restrictions associated with
4 transporting the resources for entry into com-
5 merce; and

6 “(3) the quantity of resources not produced or
7 introduced into commerce because of the restric-
8 tions.”;

9 (2) in subsection (b)—

10 (A) by striking “reserve” and inserting
11 “resource”; and

12 (B) by striking “publically” and inserting
13 “publicly”; and

14 (3) by striking subsection (d) and inserting the
15 following:

16 “(d) ASSESSMENTS.—Using the inventory, the Sec-
17 retary of Energy shall make periodic assessments of eco-
18 nomically recoverable resources accounting for a range of
19 parameters such as current costs, commodity prices, tech-
20 nology, and regulations.”.

21 (b) METHODOLOGY.—The Secretary of the Interior
22 shall use the same assessment methodology across all geo-
23 logical provinces, areas, and regions in preparing and
24 issuing national geological assessments to ensure accurate
25 comparisons of geological resources.

1 **SEC. 346. COMPLIANCE WITH EXECUTIVE ORDER 13211; AC-**
2 **TIONS CONCERNING REGULATIONS THAT**
3 **SIGNIFICANTLY AFFECT ENERGY SUPPLY,**
4 **DISTRIBUTION, OR USE.**

5 (a) REQUIREMENT.—The head of each Federal agen-
6 cy shall require that before the Federal agency takes any
7 action that could have a significant adverse effect on the
8 supply of domestic energy resources from Federal public
9 land, the Federal agency taking the action shall comply
10 with Executive Order No. 13211 (42 U.S.C. 13201 note).

11 (b) GUIDANCE.—Not later than 180 days after the
12 date of enactment of this Act, the Secretary of Energy
13 shall publish guidance for purposes of this section describ-
14 ing what constitutes a significant adverse effect on the
15 supply of domestic energy resources under Executive
16 Order No. 13211 (42 U.S.C. 13201 note).

17 (c) MEMORANDUM OF UNDERSTANDING.—The Sec-
18 retary of the Interior and the Secretary of Agriculture
19 shall include in the memorandum of understanding under
20 section 344 provisions for implementing subsection (a) of
21 this section.

22 **SEC. 347. PILOT PROJECT TO IMPROVE FEDERAL PERMIT**
23 **COORDINATION.**

24 (a) ESTABLISHMENT.—The Secretary of the Interior
25 (in this section referred to as the “Secretary”) shall estab-

1 lish a Federal Permit Streamlining Pilot Project (in this
2 section referred to as the “Pilot Project”).

3 (b) MEMORANDUM OF UNDERSTANDING.—

4 (1) IN GENERAL.—Not later than 90 days after
5 the date of enactment of this Act, the Secretary
6 shall enter into a memorandum of understanding
7 with the Secretary of Agriculture, the Administrator
8 of the Environmental Protection Agency, and the
9 Chief of Engineers of the Army Corps of Engineers
10 for purposes of this section.

11 (2) STATE PARTICIPATION.—The Secretary
12 may request that the Governors of Wyoming, Mon-
13 tana, Colorado, Utah, and New Mexico be signato-
14 ries to the memorandum of understanding.

15 (c) DESIGNATION OF QUALIFIED STAFF.—

16 (1) IN GENERAL.—Not later than 30 days after
17 the date of the signing of the memorandum of un-
18 derstanding under subsection (b), all Federal signa-
19 tory parties shall assign to each of the field offices
20 identified in subsection (d), on a nonreimbursable
21 basis, an employee who has expertise in the regu-
22 latory issues relating to the office in which the em-
23 ployee is employed, including, as applicable, par-
24 ticular expertise in—

1 (A) the consultations and the preparation
2 of biological opinions under section 7 of the En-
3 dangered Species Act of 1973 (16 U.S.C.
4 1536);

5 (B) permits under section 404 of Federal
6 Water Pollution Control Act (33 U.S.C. 1344);

7 (C) regulatory matters under the Clean Air
8 Act (42 U.S.C. 7401 et seq.);

9 (D) planning under the National Forest
10 Management Act of 1976 (16 U.S.C. 472a et
11 seq.); and

12 (E) the preparation of analyses under the
13 National Environmental Policy Act of 1969 (42
14 U.S.C. 4321 et seq.).

15 (2) DUTIES.—Each employee assigned under
16 paragraph (1) shall—

17 (A) not later than 90 days after the date
18 of assignment, report to the Bureau of Land
19 Management Field Managers in the office to
20 which the employee is assigned;

21 (B) be responsible for all issues relating to
22 the jurisdiction of the home office or agency of
23 the employee; and

1 (C) participate as part of the team of per-
2 sonnel working on proposed energy projects,
3 planning, and environmental analyses.

4 (d) FIELD OFFICES.—The following Bureau of Land
5 Management Field Offices shall serve as the Pilot Project
6 offices:

7 (1) Rawlins, Wyoming.

8 (2) Buffalo, Wyoming.

9 (3) Miles City, Montana.

10 (4) Farmington, New Mexico.

11 (5) Carlsbad, New Mexico.

12 (6) Glenwood Springs, Colorado.

13 (7) Vernal, Utah.

14 (e) REPORTS.—Not later than 3 years after the date
15 of enactment of this Act, the Secretary shall transmit to
16 Congress a report that—

17 (1) outlines the results of the Pilot Project to
18 date; and

19 (2) makes a recommendation to the President
20 regarding whether the Pilot Project should be imple-
21 mented throughout the United States.

22 (f) ADDITIONAL PERSONNEL.—The Secretary shall
23 assign to each field office identified in subsection (d) any
24 additional personnel that are necessary to ensure the ef-
25 fective implementation of—

1 (1) the Pilot Project; and

2 (2) other programs administered by the field of-
3 fices, including inspection and enforcement relating
4 to energy development on Federal land, in accord-
5 ance with the multiple use mandate of the Federal
6 Land Policy and Management Act of 1976 (43
7 U.S.C. 1701 et seq).

8 (g) SAVINGS PROVISION.—Nothing in this section af-
9 fects—

10 (1) the operation of any Federal or State law;

11 or

12 (2) any delegation of authority made by the
13 head of a Federal agency whose employees are par-
14 ticipating in the Pilot Project.

15 **SEC. 348. DEADLINE FOR CONSIDERATION OF APPLICA-**
16 **TIONS FOR PERMITS.**

17 Section 17 of the Mineral Leasing Act (30 U.S.C.
18 226) is amended by adding at the end the following:

19 “(p) DEADLINES FOR CONSIDERATION OF APPLICA-
20 TIONS FOR PERMITS.—

21 “(1) IN GENERAL.—Not later than 10 days
22 after the date on which the Secretary receives an ap-
23 plication for any permit to drill, the Secretary
24 shall—

1 “(A) notify the applicant that the applica-
2 tion is complete; or

3 “(B) notify the applicant that information
4 is missing and specify any information that is
5 required to be submitted for the application to
6 be complete.

7 “(2) ISSUANCE OR DEFERRAL.—Not later than
8 30 days after the applicant for a permit has sub-
9 mitted a complete application, the Secretary shall—

10 “(A) issue the permit; or

11 “(B)(i) defer decision on the permit; and

12 “(ii) provide to the applicant a notice that
13 specifies any steps that the applicant could take
14 for the permit to be issued.

15 “(3) REQUIREMENTS FOR DEFERRED APPLICA-
16 TIONS.—

17 “(A) IN GENERAL.—If the Secretary pro-
18 vides notice under paragraph (2)(B)(ii), the ap-
19 plicant shall have a period of 2 years from the
20 date of receipt of the notice in which to com-
21 plete all requirements specified by the Sec-
22 retary, including providing information needed
23 for compliance with the National Environmental
24 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

1 “(B) ISSUANCE OF DECISION ON PER-
 2 MIT.—If the applicant completes the require-
 3 ments within the period specified in subpara-
 4 graph (A), the Secretary shall issue a decision
 5 on the permit not later than 10 days after the
 6 date of completion of the requirements de-
 7 scribed in subparagraph (A).

8 “(C) DENIAL OF PERMIT.—If the appli-
 9 cant does not complete the requirements within
 10 the period specified in subparagraph (A), the
 11 Secretary shall deny the permit.

12 “(q) REPORT.—On a quarterly basis, each field office
 13 of the Bureau of Land Management and the Forest Serv-
 14 ice shall transmit to the Secretary of the Interior or the
 15 Secretary of Agriculture, respectively, a report that—

16 “(1) specifies the number of applications for
 17 permits to drill received by the field office in the pe-
 18 riod covered by the report; and

19 “(2) describes how each of the applications was
 20 disposed of by the field office.”.

21 **SEC. 349. CLARIFICATION OF FAIR MARKET RENTAL VALUE**
 22 **DETERMINATIONS FOR PUBLIC LAND AND**
 23 **FOREST SERVICE RIGHTS-OF-WAY.**

24 (a) LINEAR RIGHTS-OF-WAY UNDER FEDERAL
 25 LAND POLICY AND MANAGEMENT ACT OF 1976.—Section

1 504 of the Federal Land Policy and Management Act of
2 1976 (43 U.S.C. 1764) is amended by adding at the end
3 the following:

4 “(k) DETERMINATION OF FAIR MARKET VALUE OF
5 LINEAR RIGHTS-OF-WAY.—

6 “(1) IN GENERAL.—Effective beginning on the
7 date of the issuance of the rules required by para-
8 graph (2), for purposes of subsection (g), the Sec-
9 retary concerned shall determine the fair market
10 value for the use of land encumbered by a linear
11 right-of-way granted, issued, or renewed under this
12 title using the valuation method described in para-
13 graphs (2), (3), and (4).

14 “(2) REVISIONS.—Not later than 1 year after
15 the date of enactment of this subsection—

16 “(A) the Secretary of the Interior shall
17 amend section 2803.1–2 of title 43, Code of
18 Federal Regulations, as in effect on the date of
19 enactment of this subsection, to revise the per
20 acre rental fee zone value schedule by State,
21 county, and type of linear right-of-way use to
22 reflect current values of land in each zone; and

23 “(B) the Secretary of Agriculture shall
24 make the same revision for linear rights-of-way

1 granted, issued, or renewed under this title on
2 National Forest System land.

3 “(3) UPDATES.—The Secretary concerned shall
4 annually update the schedule revised under para-
5 graph (2) by multiplying the current year’s rental
6 per acre by the annual change, second quarter to
7 second quarter (June 30 to June 30) in the Gross
8 National Product Implicit Price Deflator Index pub-
9 lished in the Survey of Current Business of the De-
10 partment of Commerce, Bureau of Economic Anal-
11 ysis.

12 “(4) REVIEW.—If the cumulative change in the
13 index referred to in paragraph (3) exceeds 30 per-
14 cent, or the change in the 3-year average of the 1-
15 year Treasury interest rate used to determine per
16 acre rental fee zone values exceeds plus or minus 50
17 percent, the Secretary concerned shall conduct a re-
18 view of the zones and rental per acre figures to de-
19 termine whether the value of Federal land has dif-
20 fered sufficiently from the index referred to in para-
21 graph (3) to warrant a revision in the base zones
22 and rental per acre figures. If, as a result of the re-
23 view, the Secretary concerned determines that such
24 a revision is warranted, the Secretary concerned
25 shall revise the base zones and rental per acre fig-

1 ures accordingly. Any revision of base zones and
 2 rental per acre figure shall only affect lease rental
 3 rates at inception or renewal.”.

4 (b) RIGHTS-OF-WAY UNDER MINERAL LEASING
 5 ACT.—Section 28(*l*) of the Mineral Leasing Act (30
 6 U.S.C. 185(*l*)) is amended by inserting before the period
 7 at the end the following: “using the valuation method de-
 8 scribed in section 2803.1–2 of title 43, Code of Federal
 9 Regulations, as revised in accordance with section 504(k)
 10 of the Federal Land Policy and Management Act of 1976
 11 (43 U.S.C. 1764(k))”.

12 **SEC. 350. ENERGY FACILITY RIGHTS-OF-WAY AND COR-**
 13 **RIDORS ON FEDERAL LAND.**

14 (a) REPORT TO CONGRESS.—

15 (1) IN GENERAL.—Not later than 1 year after
 16 the date of enactment of this Act, the Secretary of
 17 Agriculture and the Secretary of the Interior, in con-
 18 sultation with the Secretary of Commerce, the Sec-
 19 retary of Defense, the Secretary of Energy, and the
 20 Federal Energy Regulatory Commission, shall sub-
 21 mit to Congress a joint report—

22 (A) that addresses—

23 (i) the location of existing rights-of-
 24 way and designated and de facto corridors
 25 for oil and gas pipelines and electric trans-

1 mission and distribution facilities on Fed-
2 eral land; and

3 (ii) opportunities for additional oil
4 and gas pipeline and electric transmission
5 capacity within those rights-of-way and
6 corridors; and

7 (B) that includes a plan for making avail-
8 able, on request, to the appropriate Federal,
9 State, and local agencies, tribal governments,
10 and other persons involved in the siting of oil
11 and gas pipelines and electricity transmission
12 facilities Geographic Information System-based
13 information regarding the location of the exist-
14 ing rights-of-way and corridors and any planned
15 rights-of-way and corridors.

16 (2) CONSULTATIONS AND CONSIDERATIONS.—

17 In preparing the report, the Secretary of the Interior
18 and the Secretary of Agriculture shall consult
19 with—

20 (A) other agencies of Federal, State, tribal,
21 or local units of government, as appropriate;

22 (B) persons involved in the siting of oil
23 and gas pipelines and electric transmission fa-
24 cilities; and

25 (C) other interested members of the public.

1 (3) LIMITATION.—The Secretary of the Interior
2 and the Secretary of Agriculture shall limit the dis-
3 tribution of the report and Geographic Information
4 System-based information referred to in paragraph
5 (1) as necessary for national and infrastructure se-
6 curity reasons, if either Secretary determines that
7 the information may be withheld from public disclo-
8 sure under a national security or other exception
9 under section 552(b) of title 5, United States Code.

10 (b) CORRIDOR DESIGNATIONS.—

11 (1) 11 CONTIGUOUS WESTERN STATES.—Not
12 later than 2 years after the date of enactment of
13 this Act, the Secretary of Agriculture, the Secretary
14 of Commerce, the Secretary of Defense, the Sec-
15 retary of Energy, and the Secretary of the Interior,
16 in consultation with the Federal Energy Regulatory
17 Commission and the affected utility industries, shall
18 jointly—

19 (A) designate, under title V of the Federal
20 Land Policy and Management Act of 1976 (43
21 U.S.C. 1761 et seq.) and other applicable Fed-
22 eral laws, corridors for oil and gas pipelines and
23 electricity transmission and facilities on Federal
24 land in the eleven contiguous Western States
25 (as defined in section 103 of the Federal Land

1 Policy and Management Act of 1976 (43 U.S.C.
2 1702));

3 (B) perform any environmental reviews
4 that may be required to complete the designa-
5 tions of corridors for the facilities on Federal
6 land in the eleven contiguous Western States;
7 and

8 (C) incorporate the designated corridors
9 into—

10 (i) the relevant departmental and
11 agency land use and resource management
12 plans; or

13 (ii) equivalent plans.

14 (2) OTHER STATES.—Not later than 4 years
15 after the date of enactment of this Act, the Sec-
16 retary of Agriculture, the Secretary of Commerce,
17 the Secretary of Defense, the Secretary of Energy,
18 and the Secretary of the Interior, in consultation
19 with the Federal Energy Regulatory Commission
20 and the affected utility industries, shall jointly—

21 (A) identify corridors for oil and gas pipe-
22 lines and electricity transmission and distribu-
23 tion facilities on Federal land in the States
24 other than those described in paragraph (1);
25 and

1 (B) schedule prompt action to identify,
2 designate, and incorporate the corridors into
3 the land use plan.

4 (3) ONGOING RESPONSIBILITIES.—After com-
5 pleting the requirements under paragraphs (1) and
6 (2), the Secretary of Agriculture, the Secretary of
7 Commerce, the Secretary of Defense, the Secretary
8 of Energy, and the Secretary of the Interior, with
9 respect to lands under their respective jurisdictions,
10 in consultation with the Federal Energy Regulatory
11 Commission and the affected utility industries, shall
12 establish procedures that—

13 (A) ensure that additional corridors for oil
14 and gas pipelines and electricity transmission
15 and distribution facilities on Federal land are
16 promptly identified and designated; and

17 (B) expedite applications to construct or
18 modify oil and gas pipelines and electricity
19 transmission and distribution facilities within
20 the corridors, taking into account prior analyses
21 and environmental reviews undertaken during
22 the designation of corridors.

23 (c) CONSIDERATIONS.—In carrying out this section,
24 the Secretaries shall take into account the need for up-

1 graded and new electricity transmission and distribution
2 facilities to—

3 (1) improve reliability;

4 (2) relieve congestion; and

5 (3) enhance the capability of the national grid
6 to deliver electricity.

7 (d) DEFINITION OF CORRIDOR.—

8 (1) IN GENERAL.—In this section and title V of
9 the Federal Land Policy and Management Act of
10 1976 (43 U.S.C. 1761 et seq.), the term “corridor”
11 means—

12 (A) a linear strip of land—

13 (i) with a width determined with con-
14 sideration given to technological, environ-
15 mental, and topographical factors; and

16 (ii) that contains, or may in the fu-
17 ture contain, 1 or more utility, communica-
18 tion, or transportation facilities;

19 (B) a land use designation that is estab-
20 lished—

21 (i) by law;

22 (ii) by Secretarial Order;

23 (iii) through the land use planning
24 process; or

1 (iv) by other management decision;

2 and

3 (C) a designation made for the purpose of
4 establishing the preferred location of compatible
5 linear facilities and land uses.

6 (2) SPECIFICATIONS OF CORRIDOR.—On des-
7 ignation of a corridor under this section, the center-
8 line, width, and compatible uses of a corridor shall
9 be specified.

10 **SEC. 351. CONSULTATION REGARDING ENERGY RIGHTS-OF-**
11 **WAY ON PUBLIC LAND.**

12 (a) MEMORANDUM OF UNDERSTANDING.—

13 (1) IN GENERAL.—Not later than 6 months
14 after the date of enactment of this Act, the Sec-
15 retary of Energy, in consultation with the Secretary
16 of the Interior, the Secretary of Agriculture, and the
17 Secretary of Defense with respect to lands under
18 their respective jurisdictions, shall enter into a
19 memorandum of understanding to coordinate all ap-
20 plicable Federal authorizations and environmental
21 reviews relating to a proposed or existing utility fa-
22 cility. To the maximum extent practicable under ap-
23 plicable law, the Secretary of Energy shall, to ensure
24 timely review and permit decisions, coordinate such
25 authorizations and reviews with any Indian tribes,

1 multi-State entities, and State agencies that are re-
2 sponsible for conducting any separate permitting
3 and environmental reviews of the affected utility fa-
4 cility.

5 (2) CONTENTS.—The memorandum of under-
6 standing shall include provisions that—

7 (A) establish—

8 (i) a unified right-of-way application
9 form; and

10 (ii) an administrative procedure for
11 processing right-of-way applications, in-
12 cluding lines of authority, steps in applica-
13 tion processing, and timeframes for appli-
14 cation processing;

15 (B) provide for coordination of planning
16 relating to the granting of the rights-of-way;

17 (C) provide for an agreement among the
18 affected Federal agencies to prepare a single
19 environmental review document to be used as
20 the basis for all Federal authorization decisions;
21 and

22 (D) provide for coordination of use of
23 right-of-way stipulations to achieve consistency.

24 (b) NATURAL GAS PIPELINES.—

1 (1) IN GENERAL.—With respect to permitting
2 activities for interstate natural gas pipelines, the
3 May 2002 document entitled “Interagency Agree-
4 ment On Early Coordination Of Required Environ-
5 mental And Historic Preservation Reviews Con-
6 ducted In Conjunction With The Issuance Of Au-
7 thorizations To Construct And Operate Interstate
8 Natural Gas Pipelines Certificated By The Federal
9 Energy Regulatory Commission” shall constitute
10 compliance with subsection (a).

11 (2) REPORT.—

12 (A) IN GENERAL.—Not later than 1 year
13 after the date of enactment of this Act, and
14 every 2 years thereafter, agencies that are sig-
15 natories to the document referred to in para-
16 graph (1) shall transmit to Congress a report
17 on how the agencies under the jurisdiction of
18 the Secretaries are incorporating and imple-
19 menting the provisions of the document referred
20 to in paragraph (1).

21 (B) CONTENTS.—The report shall ad-
22 dress—

23 (i) efforts to implement the provisions
24 of the document referred to in paragraph
25 (1);

1 (ii) whether the efforts have had a
2 streamlining effect;

3 (iii) further improvements to the per-
4 mitting process of the agency; and

5 (iv) recommendations for inclusion of
6 State and tribal governments in a coordi-
7 nated permitting process.

8 (c) DEFINITION OF UTILITY FACILITY.—In this sec-
9 tion, the term “utility facility” means any privately, pub-
10 licly, or cooperatively owned line, facility, or system—

11 (1) for the transportation of—

12 (A) oil, natural gas, synthetic liquid fuel,
13 or gaseous fuel;

14 (B) any refined product produced from oil,
15 natural gas, synthetic liquid fuel, or gaseous
16 fuel; or

17 (C) products in support of the production
18 of material referred to in subparagraph (A) or
19 (B);

20 (2) for storage and terminal facilities in connec-
21 tion with the production of material referred to in
22 paragraph (1); or

23 (3) for the generation, transmission, and dis-
24 tribution of electric energy.

1 **SEC. 352. RENEWABLE ENERGY ON FEDERAL LAND.**

2 (a) REPORT.—

3 (1) IN GENERAL.—Not later than 24 months
4 after the date of enactment of this Act, the Sec-
5 retary of the Interior, in cooperation with the Sec-
6 retary of Agriculture, shall develop and transmit to
7 Congress a report that includes recommendations on
8 opportunities to develop renewable energy on—

9 (A) public lands under the jurisdiction of
10 the Secretary of the Interior; and

11 (B) National Forest System lands under
12 the jurisdiction of the Secretary of Agriculture.

13 (2) CONTENTS.—The report shall include—

14 (A) 5-year plans developed by the Sec-
15 retary of the Interior and the Secretary of Agri-
16 culture, respectively, for encouraging the devel-
17 opment of renewable energy consistent with ap-
18 plicable law and management plans;

19 (B) an analysis of—

20 (i) the use of rights-of-way, leases, or
21 other methods to develop renewable energy
22 on such lands;

23 (ii) the anticipated benefits of grants,
24 loans, tax credits, or other provisions to
25 promote renewable energy development on
26 such lands; and

1 (iii) any issues that the Secretary of
2 the Interior or the Secretary of Agriculture
3 have encountered in managing renewable
4 energy projects on such lands, believe are
5 likely to arise in relation to the develop-
6 ment of renewable energy on such lands;

7 (C) a list, developed in consultation with
8 the Secretary of Energy and the Secretary of
9 Defense, of lands under the jurisdiction of the
10 Department of Energy or the Department of
11 Defense that would be suitable for development
12 for renewable energy, and any recommended
13 statutory and regulatory mechanisms for such
14 development; and

15 (D) any recommendations relating to the
16 issues addressed in the report.

17 (b) NATIONAL ACADEMY OF SCIENCES STUDY.—

18 (1) IN GENERAL.—Not later than 90 days after
19 the date of enactment of this Act, the Secretary of
20 the Interior shall contract with the National Acad-
21 emy of Sciences to—

22 (A) study the potential for the development
23 of wind, solar, and ocean energy (including
24 tidal, wave, and thermal energy) on the Outer
25 Continental Shelf;

1 (B) assess existing Federal authorities for
2 the development of such resources; and

3 (C) recommend statutory and regulatory
4 mechanisms for such development.

5 (2) TRANSMITTAL.—The results of the study
6 shall be transmitted to Congress not later than 2
7 years after the date of enactment of this Act.

8 (c) GENERATION CAPACITY OF ELECTRICITY FROM
9 RENEWABLE ENERGY RESOURCES ON PUBLIC LAND.—
10 The Secretary of the Interior shall, not later than 10 years
11 after the date of enactment of this Act, seek to approve
12 renewable energy projects located (or to be located) on
13 public lands with a generation capacity of at least 10,000
14 megawatts of electricity.

15 **SEC. 353. ELECTRICITY TRANSMISSION LINE RIGHT-OF-**
16 **WAY, CLEVELAND NATIONAL FOREST AND**
17 **ADJACENT PUBLIC LAND, CALIFORNIA.**

18 (a) ISSUANCE.—

19 (1) IN GENERAL.—Not later than 60 days after
20 the completion of the environmental reviews under
21 subsection (c), the Secretary of the Interior and the
22 Secretary of Agriculture shall issue all necessary
23 grants, easements, permits, plan amendments, and
24 other approvals to allow for the siting and construc-
25 tion of a high-voltage electricity transmission line

1 right-of-way running approximately north to south
2 through the Trabuco Ranger District of the Cleve-
3 land National Forest in the State of California and
4 adjacent lands under the jurisdiction of the Bureau
5 of Land Management and the Forest Service.

6 (2) INCLUSIONS.—The right-of-way approvals
7 under paragraph (1) shall provide all necessary Fed-
8 eral authorization from the Secretary of the Interior
9 and the Secretary of Agriculture for the routing,
10 construction, operation, and maintenance of a 500-
11 kilovolt transmission line capable of meeting the
12 long-term electricity transmission needs of the region
13 between the existing Valley-Serrano transmission
14 line to the north and the Telega-Escondido trans-
15 mission line to the south, and for connecting to fu-
16 ture generating capacity that may be developed in
17 the region.

18 (b) PROTECTION OF WILDERNESS AREAS.—The Sec-
19 retary of the Interior and the Secretary of Agriculture
20 shall not allow any portion of a transmission line right-
21 of-way corridor identified in subsection (a) to enter any
22 identified wilderness area in existence as of the date of
23 enactment of this Act.

24 (c) ENVIRONMENTAL AND ADMINISTRATIVE RE-
25 VIEWS.—

1 (1) DEPARTMENT OF INTERIOR OR LOCAL
2 AGENCY.—The Secretary of the Interior, acting
3 through the Director of the Bureau of Land Man-
4 agement, shall be the lead Federal agency with over-
5 all responsibility to ensure completion of required
6 environmental and other reviews of the approvals to
7 be issued under subsection (a).

8 (2) NATIONAL FOREST SYSTEM LAND.—For the
9 portions of the corridor on National Forest System
10 lands, the Secretary of Agriculture shall complete all
11 required environmental reviews and administrative
12 actions in coordination with the Secretary of the In-
13 terior.

14 (3) EXPEDITIOUS COMPLETION.—The reviews
15 required for issuance of the approvals under sub-
16 section (a) shall be completed not later than 1 year
17 after the date of the enactment of this Act.

18 (d) OTHER TERMS AND CONDITIONS.—The trans-
19 mission line right-of-way shall be subject to such terms
20 and conditions as the Secretary of the Interior and the
21 Secretary of Agriculture consider necessary, based on the
22 environmental reviews under subsection (c), to protect the
23 value of historic, cultural, and natural resources under the
24 jurisdiction of the Secretary of the Interior or the Sec-
25 retary of Agriculture.

1 (e) PREFERENCE AMONG PROPOSALS.—The Sec-
2 retary of the Interior and the Secretary of Agriculture
3 shall give a preference to any application or preapplication
4 proposal for a transmission line right-of-way referred to
5 in subsection (a) that was submitted before December 31,
6 2002, over all other applications and proposals for the
7 same or a similar right-of-way submitted on or after that
8 date.

9 **SEC. 354. SENSE OF CONGRESS REGARDING DEVELOPMENT**
10 **OF MINERALS UNDER PADRE ISLAND NA-**
11 **TIONAL SEASHORE.**

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

13 (1) Pursuant to Public Law 87–712 (16 U.S.C.
14 459d et seq.; popularly known as the “Federal Ena-
15 bling Act”) and various deeds and actions under
16 that Act, the United States is the owner of only the
17 surface estate of certain lands constituting the
18 Padre Island National Seashore.

19 (2) Ownership of the oil, gas, and other min-
20 erals in the subsurface estate of the lands consti-
21 tuting the Padre Island National Seashore was never
22 acquired by the United States, and ownership of
23 those interests is held by the State of Texas and pri-
24 vate parties.

1 (3) Public Law 87–712 (16 U.S.C. 459d et
2 seq.)—

3 (A) expressly contemplated that the United
4 States would recognize the ownership and fu-
5 ture development of the oil, gas, and other min-
6 erals in the subsurface estate of the lands con-
7 stituting the Padre Island National Seashore by
8 the owners and their mineral lessees; and

9 (B) recognized that approval of the State
10 of Texas was required to create Padre Island
11 National Seashore.

12 (4) Approval was given for the creation of
13 Padre Island National Seashore by the State of
14 Texas through Tex. Rev. Civ. Stat. Ann. Art.
15 6077(t) (Vernon 1970), which expressly recognized
16 that development of the oil, gas, and other minerals
17 in the subsurface of the lands constituting Padre Is-
18 land National Seashore would be conducted with full
19 rights of ingress and egress under the laws of the
20 State of Texas.

21 (b) SENSE OF CONGRESS.—It is the sense of Con-
22 gress that with regard to Federal law, any regulation of
23 the development of oil, gas, or other minerals in the sub-
24 surface of the lands constituting Padre Island National

1 Seashore should be made as if those lands retained the
2 status that the lands had on September 27, 1962.

3 **SEC. 355. ENCOURAGING PROHIBITION OF OFF-SHORE**
4 **DRILLING IN THE GREAT LAKES.**

5 Congress encourages—

6 (1) the States of Illinois, Michigan, New York,
7 Pennsylvania, and Wisconsin to continue to prohibit
8 offshore drilling in the Great Lakes for oil and gas;
9 and

10 (2) the States of Indiana, Minnesota, and Ohio
11 to enact a prohibition of such drilling.

12 **SEC. 356. FINGER LAKES NATIONAL FOREST WITHDRAWAL.**

13 All Federal land within the boundary of Finger Lakes
14 National Forest in the State of New York is withdrawn
15 from—

16 (1) all forms of entry, appropriation, or disposal
17 under the public land laws; and

18 (2) disposition under all laws relating to oil and
19 gas leasing.

20 **SEC. 357. STUDY ON LEASE EXCHANGES IN THE ROCKY**
21 **MOUNTAIN FRONT.**

22 (a) DEFINITIONS.—For the purposes of this section:

23 (1) BADGER-TWO MEDICINE AREA.—The term
24 “Badger-Two Medicine Area” means the Forest
25 Service land located in—

1 (A) T. 31 N., R. 12–13 W.;

2 (B) T. 30 N., R. 11–13 W.;

3 (C) T. 29 N., R. 10–16 W.; and

4 (D) T. 28 N., R. 10–14 W.

5 (2) BLACKLEAF AREA.—The term “Blackleaf
6 Area” means the Federal land owned by the Forest
7 Service and Bureau of Land Management that is lo-
8 cated in—

9 (A) T. 27 N., R. 9 W.;

10 (B) T. 26 N., R. 9–10 W.;

11 (C) T. 25 N., R. 8–10 W.; and

12 (D) T. 24 N., R. 8–9 W.

13 (3) ELIGIBLE LESSEE.—The term “eligible les-
14 see” means a lessee under a nonproducing lease.

15 (4) NONPRODUCING LEASE.—The term “non-
16 producing lease” means a Federal oil or gas lease—

17 (A) that is in existence and in good stand-
18 ing on the date of enactment of this Act; and

19 (B) that is located in the Badger-Two
20 Medicine Area or the Blackleaf Area.

21 (5) SECRETARY.—The term “Secretary” means
22 the Secretary of the Interior.

23 (6) STATE.—The term “State” means the State
24 of Montana.

25 (b) EVALUATION.—

1 (1) IN GENERAL.—The Secretary, in consulta-
2 tion with the Governor of the State, and the eligible
3 lessees, shall evaluate opportunities for domestic oil
4 and gas production through the exchange of the
5 nonproducing leases.

6 (2) REQUIREMENTS.—In carrying out the eval-
7 uation under subsection (a), the Secretary shall—

8 (A) consider opportunities for domestic
9 production of oil and gas through—

10 (i) the exchange of the nonproducing
11 leases for oil and gas lease tracts of com-
12 parable value in the State; and

13 (ii) the issuance of bidding, royalty, or
14 rental credits for Federal oil and gas leases
15 in the State in exchange for the cancella-
16 tion of the nonproducing leases;

17 (B) consider any other appropriate means
18 to exchange, or provide compensation for the
19 cancellation of, nonproducing leases, subject to
20 the consent of the eligible lessees;

21 (C) consider the views of any interested
22 persons, including the State;

23 (D) determine the level of interest of the
24 eligible lessees in exchanging the nonproducing
25 leases;

1 (E) assess the economic impact on the les-
2 sees and the State of lease exchange, lease can-
3 cellation, and final judicial or administrative de-
4 cisions related to the nonproducing leases; and

5 (F) provide recommendations on—

6 (i) whether to pursue an exchange of
7 the nonproducing leases;

8 (ii) any changes in laws (including
9 regulations) that are necessary for the Sec-
10 retary to carry out the exchange; and

11 (iii) any other appropriate means to
12 exchange or provide compensation for the
13 cancellation of a nonproducing lease, sub-
14 ject to the consent of the eligible lessee.

15 (c) VALUATION OF NONPRODUCING LEASES.—For
16 the purpose of the evaluation under subsection (a), the
17 value of a nonproducing lease shall be an amount equal
18 to the difference between—

19 (1) the sum of—

20 (A) the amount paid by the eligible lessee
21 for the nonproducing lease;

22 (B) any direct expenditures made by the
23 eligible lessee before the transmittal of the re-
24 port in subsection (c) associated with the explo-

1 ration and development of the nonproducing
2 lease; and

3 (C) interest on any amounts under sub-
4 paragraphs (A) and (B) during the period be-
5 ginning on the date on which the amount was
6 paid and ending on the date on which credits
7 are issued under subsection (b)(2)(A)(ii); and

8 (2) the sum of the revenues from the nonpro-
9 ducing lease.

10 (d) REPORT TO CONGRESS.—Not later than 2 years
11 after the date of the enactment of this Act, the Secretary
12 shall initiate the evaluation in subsection (b) and transmit
13 to Congress a report on the evaluation.

14 **SEC. 358. FEDERAL COALBED METHANE REGULATION.**

15 Any State currently on the list of Affected States es-
16 tablished under section 1339(b) of the Energy Policy Act
17 of 1992 (42 U.S.C. 13368(b)) shall be removed from the
18 list if, not later than 3 years after the date of enactment
19 of this Act, the State takes, or prior to the date of enact-
20 ment has taken, any of the actions required for removal
21 from the list under such section 1339(b).

22 **SEC. 359. LIVINGSTON PARISH MINERAL RIGHTS TRANS-**
23 **FER.**

24 (a) AMENDMENTS.—Section 102 of Public Law 102–
25 562 (106 Stat. 4234) is amended—

1 (1) by striking “(a) IN GENERAL.—

2 (2) by striking “and subject to the reservation
3 in subsection (b),”; and

4 (3) by striking subsection (b).

5 (b) IMPLEMENTATION OF AMENDMENT.—The Sec-
6 retary of the Interior shall execute the legal instruments
7 necessary to effectuate the amendment made by sub-
8 section (a)(3).

9 **Subtitle D—Alaska Natural Gas**
10 **Pipeline**

11 **SEC. 371. SHORT TITLE.**

12 This subtitle may be cited as the “Alaska Natural
13 Gas Pipeline Act”.

14 **SEC. 372. DEFINITIONS.**

15 In this subtitle:

16 (1) ALASKA NATURAL GAS.—The term “Alaska
17 natural gas” means natural gas derived from the
18 area of the State of Alaska lying north of 64 degrees
19 north latitude.

20 (2) ALASKA NATURAL GAS TRANSPORTATION
21 PROJECT.—The term “Alaska natural gas transpor-
22 tation project” means any natural gas pipeline sys-
23 tem that carries Alaska natural gas to the border
24 between Alaska and Canada (including related facili-

1 ties subject to the jurisdiction of the Commission)
2 that is authorized under—

3 (A) the Alaska Natural Gas Transpor-
4 tation Act of 1976 (15 U.S.C. 719 et seq.); or

5 (B) section 373.

6 (3) ALASKA NATURAL GAS TRANSPORTATION
7 SYSTEM.—The term “Alaska natural gas transpor-
8 tation system” means the Alaska natural gas trans-
9 portation project authorized under the Alaska Nat-
10 ural Gas Transportation Act of 1976 (15 U.S.C.
11 719 et seq.) and designated and described in section
12 2 of the President’s decision.

13 (4) COMMISSION.—The term “Commission”
14 means the Federal Energy Regulatory Commission.

15 (5) FEDERAL COORDINATOR.—The term “Fed-
16 eral Coordinator” means the head of the Office of
17 the Federal Coordinator for Alaska Natural Gas
18 Transportation Projects established by section
19 376(a).

20 (6) PRESIDENT’S DECISION.—The term “Presi-
21 dent’s decision” means the decision and report to
22 Congress on the Alaska natural gas transportation
23 system—

24 (A) issued by the President on September
25 22, 1977, in accordance with section 7 of the

1 Alaska Natural Gas Transportation Act of
2 1976 (15 U.S.C. 719e); and

3 (B) approved by Public Law 95–158 (15
4 U.S.C. 719f note; 91 Stat. 1268).

5 (7) SECRETARY.—The term “Secretary” means
6 the Secretary of Energy.

7 (8) STATE.—The term “State” means the State
8 of Alaska.

9 **SEC. 373. ISSUANCE OF CERTIFICATE OF PUBLIC CONVEN-**
10 **IENCE AND NECESSITY.**

11 (a) AUTHORITY OF THE COMMISSION.—Notwith-
12 standing the Alaska Natural Gas Transportation Act of
13 1976 (15 U.S.C. 719 et seq.), the Commission may, in
14 accordance with section 7(c) of the Natural Gas Act (15
15 U.S.C. 717f(c)), consider and act on an application for
16 the issuance of a certificate of public convenience and ne-
17 cessity authorizing the construction and operation of an
18 Alaska natural gas transportation project other than the
19 Alaska natural gas transportation system.

20 (b) ISSUANCE OF CERTIFICATE.—

21 (1) IN GENERAL.—The Commission shall issue
22 a certificate of public convenience and necessity au-
23 thORIZING the construction and operation of an Alas-
24 ka natural gas transportation project under this sec-
25 tion if the applicant has satisfied the requirements

1 of section 7(e) of the Natural Gas Act (15 U.S.C.
2 717f(e)).

3 (2) CONSIDERATIONS.—In considering an appli-
4 cation under this section, the Commission shall pre-
5 sume that—

6 (A) a public need exists to construct and
7 operate the proposed Alaska natural gas trans-
8 portation project; and

9 (B) sufficient downstream capacity will
10 exist to transport the Alaska natural gas mov-
11 ing through the project to markets in the con-
12 tiguous United States.

13 (c) EXPEDITED APPROVAL PROCESS.—Not later
14 than 60 days after the date of issuance of the final envi-
15 ronmental impact statement under section 374 for an
16 Alaska natural gas transportation project, the Commission
17 shall issue a final order granting or denying any applica-
18 tion for a certificate of public convenience and necessity
19 for the project under section 7(c) of the Natural Gas Act
20 (15 U.S.C. 717f(c)) and this section.

21 (d) PROHIBITION OF CERTAIN PIPELINE ROUTE.—
22 No license, permit, lease, right-of-way, authorization, or
23 other approval required under Federal law for the con-
24 struction of any pipeline to transport natural gas from

1 land within the Prudhoe Bay oil and gas lease area may
2 be granted for any pipeline that follows a route that—

3 (1) traverses land beneath navigable waters (as
4 defined in section 2 of the Submerged Lands Act
5 (43 U.S.C. 1301)) beneath, or the adjacent shoreline
6 of, the Beaufort Sea; and

7 (2) enters Canada at any point north of 68 de-
8 grees north latitude.

9 (e) OPEN SEASON.—

10 (1) IN GENERAL.—Not later than 120 days
11 after the date of enactment of this Act, the Commis-
12 sion shall issue regulations governing the conduct of
13 open seasons for Alaska natural gas transportation
14 projects (including procedures for the allocation of
15 capacity).

16 (2) REGULATIONS.—The regulations referred to
17 in paragraph (1) shall—

18 (A) include the criteria for and timing of
19 any open seasons;

20 (B) promote competition in the explo-
21 ration, development, and production of Alaska
22 natural gas; and

23 (C) for any open season for capacity ex-
24 ceeding the initial capacity, provide the oppor-
25 tunity for the transportation of natural gas

1 other than from the Prudhoe Bay and Point
2 Thomson units.

3 (3) APPLICABILITY.—Except in a case in which
4 an expansion is ordered in accordance with section
5 375, initial or expansion capacity on any Alaska nat-
6 ural gas transportation project shall be allocated in
7 accordance with procedures to be established by the
8 Commission in regulations issued under paragraph
9 (1).

10 (f) PROJECTS IN THE CONTIGUOUS UNITED
11 STATES.—

12 (1) IN GENERAL.—An application for additional
13 or expanded pipeline facilities that may be required
14 to transport Alaska natural gas from Canada to
15 markets in the contiguous United States may be
16 made in accordance with the Natural Gas Act (15
17 U.S.C. 717a et seq.).

18 (2) EXPANSION.—To the extent that a pipeline
19 facility described in paragraph (1) includes the ex-
20 pansion of any facility constructed in accordance
21 with the Alaska Natural Gas Transportation Act of
22 1976 (15 U.S.C. 719 et seq.), that Act shall con-
23 tinue to apply.

24 (g) STUDY OF IN-STATE NEEDS.—The holder of the
25 certificate of public convenience and necessity issued,

1 modified, or amended by the Commission for an Alaska
2 natural gas transportation project shall demonstrate that
3 the holder has conducted a study of Alaska in-State needs,
4 including tie-in points along the Alaska natural gas trans-
5 portation project for in-State access.

6 (h) ALASKA ROYALTY GAS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the Commission, on a request by the
9 State and after a hearing, may provide for reason-
10 able access to the Alaska natural gas transportation
11 project by the State (or State designee) for the
12 transportation of royalty gas of the State for the
13 purpose of meeting local consumption needs within
14 the State.

15 (2) EXCEPTION.—The rates of shippers of sub-
16 scribed capacity on an Alaska natural gas transpor-
17 tation project described in paragraph (1), as in ef-
18 fect as of the date on which access under that para-
19 graph is granted, shall not be increased as a result
20 of such access.

21 (i) REGULATIONS.—The Commission may issue such
22 regulations as are necessary to carry out this section.

23 **SEC. 374. ENVIRONMENTAL REVIEWS.**

24 (a) COMPLIANCE WITH NEPA.—The issuance of a
25 certificate of public convenience and necessity authorizing

1 the construction and operation of any Alaska natural gas
2 transportation project under section 373 shall be treated
3 as a major Federal action significantly affecting the qual-
4 ity of the human environment within the meaning of sec-
5 tion 102(2)(C) of the National Environmental Policy Act
6 of 1969 (42 U.S.C. 4332(2)(C)).

7 (b) DESIGNATION OF LEAD AGENCY.—

8 (1) IN GENERAL.—The Commission—

9 (A) shall be the lead agency for purposes
10 of complying with the National Environmental
11 Policy Act of 1969 (42 U.S.C. 4321 et seq.);
12 and

13 (B) shall be responsible for preparing the
14 environmental impact statement required by
15 section 102(2)(c) of that Act (42 U.S.C.
16 4332(2)(c)) with respect to an Alaska natural
17 gas transportation project under section 373.

18 (2) CONSOLIDATION OF STATEMENTS.—In car-
19 rying out paragraph (1), the Commission shall pre-
20 pare a single environmental impact statement, which
21 shall consolidate the environmental reviews of all
22 Federal agencies considering any aspect of the Alas-
23 ka natural gas transportation project covered by the
24 environmental impact statement.

25 (c) OTHER AGENCIES.—

1 (1) IN GENERAL.—Each Federal agency consid-
2 ering an aspect of the construction and operation of
3 an Alaska natural gas transportation project under
4 section 373 shall—

5 (A) cooperate with the Commission; and

6 (B) comply with deadlines established by
7 the Commission in the preparation of the envi-
8 ronmental impact statement under this section.

9 (2) SATISFACTION OF NEPA REQUIREMENTS.—

10 The environmental impact statement prepared under
11 this section shall be adopted by each Federal agency
12 described in paragraph (1) in satisfaction of the re-
13 sponsibilities of the Federal agency under section
14 102(2)(C) of the National Environmental Policy Act
15 of 1969 (42 U.S.C. 4332(2)(C)) with respect to the
16 Alaska natural gas transportation project covered by
17 the environmental impact statement.

18 (d) EXPEDITED PROCESS.—The Commission shall—

19 (1) not later than 1 year after the Commission
20 determines that the application under section 373
21 with respect to an Alaska natural gas transportation
22 project is complete, issue a draft environmental im-
23 pact statement under this section; and

24 (2) not later than 180 days after the date of
25 issuance of the draft environmental impact state-

1 ment, issue a final environmental impact statement,
2 unless the Commission for good cause determines
3 that additional time is needed.

4 **SEC. 375. PIPELINE EXPANSION.**

5 (a) **AUTHORITY.**—With respect to any Alaska natural
6 gas transportation project, on a request by 1 or more per-
7 sons and after giving notice and an opportunity for a hear-
8 ing, the Commission may order the expansion of the Alas-
9 ka natural gas project if the Commission determines that
10 such an expansion is required by the present and future
11 public convenience and necessity.

12 (b) **RESPONSIBILITIES OF COMMISSION.**—Before or-
13 dering an expansion under subsection (a), the Commission
14 shall—

15 (1) approve or establish rates for the expansion
16 service that are designed to ensure the recovery, on
17 an incremental or rolled-in basis, of the cost associ-
18 ated with the expansion (including a reasonable rate
19 of return on investment);

20 (2) ensure that the rates do not require existing
21 shippers on the Alaska natural gas transportation
22 project to subsidize expansion shippers;

23 (3) find that a proposed shipper will comply
24 with, and the proposed expansion and the expansion
25 of service will be undertaken and implemented based

1 on, terms and conditions consistent with the tariff of
2 the Alaska natural gas transportation project in ef-
3 fect as of the date of the expansion;

4 (4) find that the proposed facilities will not ad-
5 versely affect the financial or economic viability of
6 the Alaska natural gas transportation project;

7 (5) find that the proposed facilities will not ad-
8 versely affect the overall operations of the Alaska
9 natural gas transportation project;

10 (6) find that the proposed facilities will not di-
11 minish the contract rights of existing shippers to
12 previously subscribed certificated capacity;

13 (7) ensure that all necessary environmental re-
14 views have been completed; and

15 (8) find that adequate downstream facilities
16 exist or are expected to exist to deliver incremental
17 Alaska natural gas to market.

18 (c) REQUIREMENT FOR A FIRM TRANSPORTATION
19 AGREEMENT.—Any order of the Commission issued in ac-
20 cordance with this section shall be void unless the person
21 requesting the order executes a firm transportation agree-
22 ment with the Alaska natural gas transportation project
23 within such reasonable period of time as the order may
24 specify.

1 (d) LIMITATION.—Nothing in this section expands or
2 otherwise affects any authority of the Commission with
3 respect to any natural gas pipeline located outside the
4 State.

5 (e) REGULATIONS.—The Commission may issue such
6 regulations as are necessary to carry out this section.

7 **SEC. 376. FEDERAL COORDINATOR.**

8 (a) ESTABLISHMENT.—There is established, as an
9 independent office in the executive branch, the Office of
10 the Federal Coordinator for Alaska Natural Gas Trans-
11 portation Projects.

12 (b) FEDERAL COORDINATOR.—

13 (1) APPOINTMENT.—The Office shall be headed
14 by a Federal Coordinator for Alaska Natural Gas
15 Transportation Projects, who shall be appointed by
16 the President, by and with the advice and consent
17 of the Senate, to serve a term to last until 1 year
18 following the completion of the project referred to in
19 section 373.

20 (2) COMPENSATION.—The Federal Coordinator
21 shall be compensated at the rate prescribed for level
22 III of the Executive Schedule (5 U.S.C. 5314).

23 (c) DUTIES.—The Federal Coordinator shall be re-
24 sponsible for—

1 (1) coordinating the expeditious discharge of all
2 activities by Federal agencies with respect to an
3 Alaska natural gas transportation project; and

4 (2) ensuring the compliance of Federal agencies
5 with the provisions of this subtitle.

6 (d) REVIEWS AND ACTIONS OF OTHER FEDERAL
7 AGENCIES.—

8 (1) EXPEDITED REVIEWS AND ACTIONS.—All
9 reviews conducted and actions taken by any Federal
10 agency relating to an Alaska natural gas transpor-
11 tation project authorized under this section shall be
12 expedited, in a manner consistent with completion of
13 the necessary reviews and approvals by the deadlines
14 under this subtitle.

15 (2) PROHIBITION OF CERTAIN TERMS AND CON-
16 DITIONS.—No Federal agency may include in any
17 certificate, right-of-way, permit, lease, or other au-
18 thorization issued to an Alaska natural gas trans-
19 portation project any term or condition that may be
20 permitted, but is not required, by any applicable law
21 if the Federal Coordinator determines that the term
22 or condition would prevent or impair in any signifi-
23 cant respect the expeditious construction and oper-
24 ation, or an expansion, of the Alaska natural gas
25 transportation project.

1 (3) PROHIBITION OF CERTAIN ACTIONS.—Un-
2 less required by law, no Federal agency shall add to,
3 amend, or abrogate any certificate, right-of-way, per-
4 mit, lease, or other authorization issued to an Alas-
5 ka natural gas transportation project if the Federal
6 Coordinator determines that the action would pre-
7 vent or impair in any significant respect the expedi-
8 tious construction and operation, or an expansion, of
9 the Alaska natural gas transportation project.

10 (4) LIMITATION.—The Federal Coordinator
11 shall not have authority to—

12 (A) override—

13 (i) the implementation or enforcement
14 of regulations issued by the Commission
15 under section 373; or

16 (ii) an order by the Commission to ex-
17 pand the project under section 375; or

18 (B) impose any terms, conditions, or re-
19 quirements in addition to those imposed by the
20 Commission or any agency with respect to con-
21 struction and operation, or an expansion of, the
22 project.

23 (e) STATE COORDINATION.—

24 (1) IN GENERAL.—The Federal Coordinator
25 and the State shall enter into a joint surveillance

1 and monitoring agreement similar to the agreement
2 in effect during construction of the Trans-Alaska
3 Pipeline, to be approved by the President and the
4 Governor of the State, for the purpose of monitoring
5 the construction of the Alaska natural gas transpor-
6 tation project.

7 (2) PRIMARY RESPONSIBILITY.—With respect
8 to an Alaska natural gas transportation project—

9 (A) the Federal Government shall have pri-
10 mary surveillance and monitoring responsibility
11 in areas where the Alaska natural gas transpor-
12 tation project crosses Federal land or private
13 land; and

14 (B) the State government shall have pri-
15 mary surveillance and monitoring responsibility
16 in areas where the Alaska natural gas transpor-
17 tation project crosses State land.

18 (f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS
19 AND AUTHORITY.—On appointment of the Federal Coor-
20 dinator by the President, all of the functions and authority
21 of the Office of Federal Inspector of Construction for the
22 Alaska Natural Gas Transportation System vested in the
23 Secretary under section 3012(b) of the Energy Policy Act
24 of 1992 (15 U.S.C. 719e note; Public Law 102–486), in-
25 cluding all functions and authority described and enumer-

1 ated in the Reorganization Plan No. 1 of 1979 (44 Fed.
2 Reg. 33663), Executive Order No. 12142 of June 21,
3 1979 (44 Fed. Reg. 36927), and section 5 of the Presi-
4 dent's decision, shall be transferred to the Federal Coordi-
5 nator.

6 (g) TEMPORARY AUTHORITY.—The functions, au-
7 thorities, duties, and responsibilities of the Federal Coor-
8 dinator shall be vested in the Secretary until the later of
9 the appointment of the Federal Coordinator by the Presi-
10 dent, or 18 months after the date of enactment of this
11 Act.

12 **SEC. 377. JUDICIAL REVIEW.**

13 (a) EXCLUSIVE JURISDICTION.—Except for review by
14 the Supreme Court on writ of certiorari, the United States
15 Court of Appeals for the District of Columbia Circuit shall
16 have original and exclusive jurisdiction to determine—

17 (1) the validity of any final order or action (in-
18 cluding a failure to act) of any Federal agency or of-
19 ficer under this subtitle;

20 (2) the constitutionality of any provision of this
21 subtitle, or any decision made or action taken under
22 this subtitle; or

23 (3) the adequacy of any environmental impact
24 statement prepared under the National Environ-

1 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
2 with respect to any action under this subtitle.

3 (b) DEADLINE FOR FILING CLAIM.—A claim arising
4 under this subtitle may be brought not later than 60 days
5 after the date of the decision or action giving rise to the
6 claim.

7 (c) EXPEDITED CONSIDERATION.—The United
8 States Court of Appeals for the District of Columbia Cir-
9 cuit shall set any action brought under subsection (a) for
10 expedited consideration, taking into account the national
11 interest of enhancing national energy security by providing
12 access to the significant gas reserves in Alaska needed to
13 meet the anticipated demand for natural gas.

14 (d) AMENDMENT OF THE ALASKA NATURAL GAS
15 TRANSPORTATION ACT OF 1976.—Section 10(c) of the
16 Alaska Natural Gas Transportation Act of 1976 (15
17 U.S.C. 719h) is amended—

18 (1) by striking “(c)(1) A claim” and inserting
19 the following:

20 “(c) JURISDICTION.—

21 “(1) SPECIAL COURTS.—

22 “(A) IN GENERAL.—A claim”;

23 (2) by striking “Such court shall have” and in-
24 serting the following:

1 “(B) EXCLUSIVE JURISDICTION.—The
2 Special Court shall have”;

3 (3) by inserting after paragraph (1) the fol-
4 lowing:

5 “(2) EXPEDITED CONSIDERATION.—The Spe-
6 cial Court shall set any action brought under this
7 section for expedited consideration, taking into ac-
8 count the national interest described in section 2.”;
9 and

10 (4) in paragraph (3), by striking “(3) The en-
11 actment” and inserting the following:

12 “(3) ENVIRONMENTAL IMPACT STATEMENTS.—
13 The enactment”.

14 **SEC. 378. STATE JURISDICTION OVER IN-STATE DELIVERY**
15 **OF NATURAL GAS.**

16 (a) LOCAL DISTRIBUTION.—Any facility receiving
17 natural gas from an Alaska natural gas transportation
18 project for delivery to consumers within the State—

19 (1) shall be deemed to be a local distribution fa-
20 cility within the meaning of section 1(b) of the Nat-
21 ural Gas Act (15 U.S.C. 717(b)); and

22 (2) shall not be subject to the jurisdiction of the
23 Commission.

24 (b) ADDITIONAL PIPELINES.—Except as provided in
25 section 373(d), nothing in this subtitle shall preclude or

1 otherwise affect a future natural gas pipeline that may
2 be constructed to deliver natural gas to Fairbanks, An-
3 chorage, Matanuska-Susitna Valley, or the Kenai penin-
4 sula or Valdez or any other site in the State for consump-
5 tion within or distribution outside the State.

6 (c) RATE COORDINATION.—

7 (1) IN GENERAL.—In accordance with the Nat-
8 ural Gas Act (15 U.S.C. 717a et seq.), the Commis-
9 sion shall establish rates for the transportation of
10 natural gas on any Alaska natural gas transpor-
11 tation project.

12 (2) CONSULTATION.—In carrying out para-
13 graph (1), the Commission, in accordance with sec-
14 tion 17(b) of the Natural Gas Act (15 U.S.C.
15 717p(b)), shall consult with the State regarding
16 rates (including rate settlements) applicable to nat-
17 ural gas transported on and delivered from the Alas-
18 ka natural gas transportation project for use within
19 the State.

20 **SEC. 379. STUDY OF ALTERNATIVE MEANS OF CONSTRUC-**
21 **TION.**

22 (a) REQUIREMENT OF STUDY.—If no application for
23 the issuance of a certificate or amended certificate of pub-
24 lic convenience and necessity authorizing the construction
25 and operation of an Alaska natural gas transportation

1 project has been filed with the Commission by the date
2 that is 18 months after the date of enactment of this Act,
3 the Secretary shall conduct a study of alternative ap-
4 proaches to the construction and operation of such an
5 Alaska natural gas transportation project.

6 (b) SCOPE OF STUDY.—The study under subsection
7 (a) shall take into consideration the feasibility of—

8 (1) establishing a Federal Government corpora-
9 tion to construct an Alaska natural gas transpor-
10 tation project; and

11 (2) securing alternative means of providing
12 Federal financing and ownership (including alter-
13 native combinations of Government and private cor-
14 porate ownership) of the Alaska natural gas trans-
15 portation project.

16 (c) CONSULTATION.—In conducting the study under
17 subsection (a), the Secretary shall consult with the Sec-
18 retary of the Treasury and the Secretary of the Army (act-
19 ing through the Chief of Engineers).

20 (d) REPORT.—On completion of any study under sub-
21 section (a), the Secretary shall submit to Congress a re-
22 port that describes—

23 (1) the results of the study; and

1 (2) any recommendations of the Secretary (in-
2 cluding proposals for legislation to implement the
3 recommendations).

4 **SEC. 380. CLARIFICATION OF ANGTA STATUS AND AU-**
5 **THORITIES.**

6 (a) SAVINGS CLAUSE.—Nothing in this subtitle af-
7 fects—

8 (1) any decision, certificate, permit, right-of-
9 way, lease, or other authorization issued under sec-
10 tion 9 of the Alaska Natural Gas Transportation Act
11 of 1976 (15 U.S.C. 719g); or

12 (2) any Presidential finding or waiver issued in
13 accordance with that Act.

14 (b) CLARIFICATION OF AUTHORITY TO AMEND
15 TERMS AND CONDITIONS TO MEET CURRENT PROJECT
16 REQUIREMENTS.—Any Federal agency responsible for
17 granting or issuing any certificate, permit, right-of-way,
18 lease, or other authorization under section 9 of the Alaska
19 Natural Gas Transportation Act of 1976 (15 U.S.C.
20 719g) may add to, amend, or rescind any term or condi-
21 tion included in the certificate, permit, right-of-way, lease,
22 or other authorization to meet current project require-
23 ments (including the physical design, facilities, and tariff
24 specifications), if the addition, amendment, or rescission—

1 (1) would not compel any change in the basic
2 nature and general route of the Alaska natural gas
3 transportation system as designated and described in
4 section 2 of the President’s decision; or

5 (2) would not otherwise prevent or impair in
6 any significant respect the expeditious construction
7 and initial operation of the Alaska natural gas
8 transportation system.

9 (c) UPDATED ENVIRONMENTAL REVIEWS.—The Sec-
10 retary shall require the sponsor of the Alaska natural gas
11 transportation system to submit such updated environ-
12 mental data, reports, permits, and impact analyses as the
13 Secretary determines are necessary to develop detailed
14 terms, conditions, and compliance plans required by sec-
15 tion 5 of the President’s decision.

16 **SEC. 381. SENSE OF CONGRESS CONCERNING USE OF**
17 **STEEL MANUFACTURED IN NORTH AMERICA**
18 **NEGOTIATION OF A PROJECT LABOR AGREE-**
19 **MENT.**

20 It is the sense of Congress that—

21 (1) an Alaska natural gas transportation
22 project would provide significant economic benefits
23 to the United States and Canada; and

1 (2) to maximize those benefits, the sponsors of
2 the Alaska natural gas transportation project should
3 make every effort to—

4 (A) use steel that is manufactured in
5 North America; and

6 (B) negotiate a project labor agreement to
7 expedite construction of the pipeline.

8 **SEC. 382. SENSE OF CONGRESS AND STUDY CONCERNING**
9 **PARTICIPATION BY SMALL BUSINESS CON-**
10 **CERNS.**

11 (a) DEFINITION OF SMALL BUSINESS CONCERN.—
12 In this section, the term “small business concern” has the
13 meaning given the term in section 3(a) of the Small Busi-
14 ness Act (15 U.S.C. 632(a)).

15 (b) SENSE OF CONGRESS.—It is the sense of Con-
16 gress that—

17 (1) an Alaska natural gas transportation
18 project would provide significant economic benefits
19 to the United States and Canada; and

20 (2) to maximize those benefits, the sponsors of
21 the Alaska natural gas transportation project should
22 maximize the participation of small business con-
23 cerns in contracts and subcontracts awarded in car-
24 rying out the project.

25 (c) STUDY.—

1 (1) IN GENERAL.—The Comptroller General of
2 the United States shall conduct a study to determine
3 the extent to which small business concerns partici-
4 pate in the construction of oil and gas pipelines in
5 the United States.

6 (2) REPORT.—Not later than 1 year after the
7 date of enactment of this Act, the Comptroller Gen-
8 eral shall submit to Congress a report that describes
9 results of the study under paragraph (1).

10 (3) UPDATES.—The Comptroller General
11 shall—

12 (A) update the study at least once every 5
13 years until construction of an Alaska natural
14 gas transportation project is completed; and

15 (B) on completion of each update, submit
16 to Congress a report containing the results of
17 the update.

18 **SEC. 383. ALASKA PIPELINE CONSTRUCTION TRAINING**
19 **PROGRAM.**

20 (a) PROGRAM.—

21 (1) ESTABLISHMENT.—The Secretary of Labor
22 (in this section referred to as the “Secretary”) shall
23 make grants to the Alaska Workforce Investment
24 Board—

1 (A) to recruit and train adult and dis-
2 located workers in Alaska, including Alaska Na-
3 tives, in the skills required to construct and op-
4 erate an Alaska gas pipeline system; and

5 (B) for the design and construction of a
6 training facility to be located in Fairbanks,
7 Alaska, to support an Alaska gas pipeline train-
8 ing program.

9 (2) COORDINATION WITH EXISTING PRO-
10 GRAMS.—The training program established with the
11 grants authorized under paragraph (1) shall be con-
12 sistent with the vision and goals set forth in the
13 State of Alaska Unified Plan, as developed pursuant
14 to the Workforce Investment Act of 1998 (29 U.S.C.
15 2801 et seq.).

16 (b) REQUIREMENTS FOR GRANTS.—The Secretary
17 shall make a grant under subsection (a) only if—

18 (1) the Governor of the State of Alaska re-
19 quests the grant funds and certifies in writing to the
20 Secretary that there is a reasonable expectation that
21 the construction of the Alaska natural gas pipeline
22 system will commence by the date that is 2 years
23 after the date of the certification; and

1 (2) the Secretary of Energy concurs in writing
 2 to the Secretary with the certification made under
 3 paragraph (1) after considering—

4 (A) the status of necessary Federal and
 5 State permits;

6 (B) the availability of financing for the
 7 Alaska natural gas pipeline project; and

8 (C) other relevant factors.

9 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
 10 are authorized to be appropriated to the Secretary to carry
 11 out this section \$20,000,000. Not more than 15 percent
 12 of the funds may be used for the facility described in sub-
 13 section (a)(1)(B).

14 **SEC. 384. SENSE OF CONGRESS CONCERNING NATURAL**
 15 **GAS DEMAND.**

16 It is the sense of Congress that—

17 (1) North American demand for natural gas
 18 will increase dramatically over the course of the next
 19 several decades;

20 (2) both the Alaska Natural Gas Pipeline and
 21 the Mackenzie Delta Natural Gas project in Canada
 22 will be necessary to help meet the increased demand
 23 for natural gas in North America;

24 (3) Federal and State officials should work to-
 25 gether with officials in Canada to ensure both

1 projects can move forward in a mutually beneficial
2 fashion;

3 (4) Federal and State officials should acknowl-
4 edge that the smaller scope, fewer permitting re-
5 quirements, and lower cost of the Mackenzie Delta
6 project means it will most likely be completed before
7 the Alaska Natural Gas Pipeline;

8 (5) natural gas production in the 48 contiguous
9 States and Canada will not be able to meet all do-
10 mestic demand in the coming decades; and

11 (6) as a result, natural gas delivered from Alas-
12 kan North Slope will not displace or reduce the com-
13 mercial viability of Canadian natural gas produced
14 from the Mackenzie Delta or production from the 48
15 contiguous States.

16 **SEC. 385. SENSE OF CONGRESS CONCERNING ALASKAN**
17 **OWNERSHIP.**

18 It is the sense of Congress that—

19 (1) Alaska Native Regional Corporations, com-
20 panies owned and operated by Alaskans, and indi-
21 vidual Alaskans should have the opportunity to own
22 shares of the Alaska natural gas pipeline in a way
23 that promotes economic development for the State;
24 and

1 (2) to facilitate economic development in the
2 State, all project sponsors should negotiate in good
3 faith with any willing Alaskan person that desires to
4 be involved in the project.

5 **SEC. 386. LOAN GUARANTEES.**

6 (a) **AUTHORITY.**—(1) The Secretary may enter into
7 agreements with 1 or more holders of a certificate of pub-
8 lic convenience and necessity issued under section 373(b)
9 or section 9 of the Alaska Natural Gas Transportation Act
10 of 1976 (15 U.S.C. 719g) to issue Federal guarantee in-
11 struments with respect to loans and other debt obligations
12 for a qualified infrastructure project.

13 (2) Subject to the requirements of this section, the
14 Secretary may also enter into agreements with 1 or more
15 owners of the Canadian portion of a qualified infrastruc-
16 ture project to issue Federal guarantee instruments with
17 respect to loans and other debt obligations for a qualified
18 infrastructure project as though such owner were a holder
19 described in paragraph (1).

20 (3) The authority of the Secretary to issue Federal
21 guarantee instruments under this section for a qualified
22 infrastructure project shall expire on the date that is 2
23 years after the date on which the final certificate of public
24 convenience and necessity (including any Canadian certifi-
25 cates of public convenience and necessity) is issued for the

1 project. A final certificate shall be considered to have been
2 issued when all certificates of public convenience and ne-
3 cessity have been issued that are required for the initial
4 transportation of commercially economic quantities of nat-
5 ural gas from Alaska to the continental United States.

6 (b) CONDITIONS.—(1) The Secretary may issue a
7 Federal guarantee instrument for a qualified infrastruc-
8 ture project only after a certificate of public convenience
9 and necessity under section 373(b) or an amended certifi-
10 cate under section 9 of the Alaska Natural Gas Transpor-
11 tation Act of 1976 (15 U.S.C. 719g) has been issued for
12 the project.

13 (2) The Secretary may issue a Federal guarantee in-
14 strument under this section for a qualified infrastructure
15 project only if the loan or other debt obligation guaranteed
16 by the instrument has been issued by an eligible lender.

17 (3) The Secretary shall not require as a condition of
18 issuing a Federal guarantee instrument under this section
19 any contractual commitment or other form of credit sup-
20 port of the sponsors (other than equity contribution com-
21 mitments and completion guarantees), or any throughput
22 or other guarantee from prospective shippers greater than
23 such guarantees as shall be required by the project own-
24 ers.

1 (c) LIMITATIONS ON AMOUNTS.—(1) The amount of
2 loans and other debt obligations guaranteed under this
3 section for a qualified infrastructure project shall not ex-
4 ceed 80 percent of the total capital costs of the project,
5 including interest during construction.

6 (2) The principal amount of loans and other debt ob-
7 ligations guaranteed under this section shall not exceed,
8 in the aggregate, \$18,000,000,000, which amount shall be
9 indexed for United States dollar inflation from the date
10 of enactment of this Act, as measured by the Consumer
11 Price Index.

12 (d) LOAN TERMS AND FEES.—(1) The Secretary
13 may issue Federal guarantee instruments under this sec-
14 tion that take into account repayment profiles and grace
15 periods justified by project cash flows and project-specific
16 considerations. The term of any loan guaranteed under
17 this section shall not exceed 30 years.

18 (2) An eligible lender may assess and collect from the
19 borrower such other fees and costs associated with the ap-
20 plication and origination of the loan or other debt obliga-
21 tion as are reasonable and customary for a project finance
22 transaction in the oil and gas sector.

23 (e) REGULATIONS.—The Secretary may issue regula-
24 tions to carry out this section.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to cover the cost of loan guarantees under this
4 section, as defined by section 502(5) of the Federal Credit
5 Reform Act of 1990 (2 U.S.C. 661a(5)). Such sums shall
6 remain available until expended.

7 (g) DEFINITIONS.—In this section, the following defi-
8 nitions apply:

9 (1) The term “Consumer Price Index” means
10 the Consumer Price Index for all-urban consumers,
11 United States city average, as published by the Bu-
12 reau of Labor Statistics, or if such index shall cease
13 to be published, any successor index or reasonable
14 substitute thereof.

15 (2) The term “eligible lender” means any non-
16 Federal qualified institutional buyer (as defined by
17 section 230.144A(a) of title 17, Code of Federal
18 Regulations (or any successor regulation), known as
19 Rule 144A(a) of the Securities and Exchange Com-
20 mission and issued under the Securities Act of
21 1933), including—

22 (A) a qualified retirement plan (as defined
23 in section 4974(c) of the Internal Revenue Code
24 of 1986 (26 U.S.C. 4974(c)) that is a qualified
25 institutional buyer; and

1 (B) a governmental plan (as defined in
2 section 414(d) of the Internal Revenue Code of
3 1986 (26 U.S.C. 414(d)) that is a qualified in-
4 stitutional buyer.

5 (3) The term “Federal guarantee instrument”
6 means any guarantee or other pledge by the Sec-
7 retary to pledge the full faith and credit of the
8 United States to pay all of the principal and interest
9 on any loan or other debt obligation entered into by
10 a holder of a certificate of public convenience and
11 necessity.

12 (4) The term “qualified infrastructure project”
13 means an Alaskan natural gas transportation project
14 consisting of the design, engineering, finance, con-
15 struction, and completion of pipelines and related
16 transportation and production systems (including
17 gas treatment plants), and appurtenances thereto,
18 that are used to transport natural gas from the
19 Alaska North Slope to the continental United
20 States.

1 **TITLE IV—COAL**
2 **Subtitle A—Clean Coal Power**
3 **Initiative**

4 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) CLEAN COAL POWER INITIATIVE.—There are au-
6 thORIZED to be appropriated to the Secretary of Energy (re-
7 ferred to in this title as the “Secretary”) to carry out the
8 activities authorized by this subtitle \$200,000,000 for
9 each of fiscal years 2004 through 2012, to remain avail-
10 able until expended.

11 (b) REPORT.—The Secretary shall submit to Con-
12 gress the report required by this subsection not later than
13 March 31, 2005. The report shall include, with respect
14 to subsection (a), a 10-year plan containing—

15 (1) a detailed assessment of whether the aggre-
16 gate funding levels provided under subsection (a) are
17 the appropriate funding levels for that program;

18 (2) a detailed description of how proposals will
19 be solicited and evaluated, including a list of all ac-
20 tivities expected to be undertaken;

21 (3) a detailed list of technical milestones for
22 each coal and related technology that will be pur-
23 sued; and

24 (4) a detailed description of how the program
25 will avoid problems enumerated in General Account-

1 ing Office reports on the Clean Coal Technology
2 Program, including problems that have resulted in
3 unspent funds and projects that failed either finan-
4 cially or scientifically.

5 **SEC. 402. PROJECT CRITERIA.**

6 (a) IN GENERAL.—The Secretary shall not provide
7 funding under this subtitle for any project that does not
8 advance efficiency, environmental performance, and cost
9 competitiveness well beyond the level of technologies that
10 are in commercial service or have been demonstrated on
11 a scale that the Secretary determines is sufficient to dem-
12 onstrate that commercial service is viable as of the date
13 of enactment of this Act.

14 (b) TECHNICAL CRITERIA FOR CLEAN COAL POWER
15 INITIATIVE.—

16 (1) GASIFICATION PROJECTS.—

17 (A) IN GENERAL.—In allocating the funds
18 made available under section 401(a), the Sec-
19 retary shall ensure that at least 60 percent of
20 the funds are used only for projects on coal-
21 based gasification technologies, including gasifi-
22 cation combined cycle, gasification fuel cells,
23 gasification coproduction, and hybrid gasifi-
24 cation/combustion.

1 (B) TECHNICAL MILESTONES.—The Sec-
2 retary shall periodically set technical milestones
3 specifying the emission and thermal efficiency
4 levels that coal gasification projects under this
5 subtitle shall be designed, and reasonably ex-
6 pected, to achieve. The technical milestones
7 shall become more restrictive during the life of
8 the program. The Secretary shall set the peri-
9 odic milestones so as to achieve by 2020 coal
10 gasification projects able—

11 (i) to remove 99 percent of sulfur di-
12 oxide;

13 (ii) to emit not more than .05 lbs of
14 NO_x per million Btu;

15 (iii) to achieve substantial reductions
16 in mercury emissions; and

17 (iv) to achieve a thermal efficiency
18 of—

19 (I) 60 percent for coal of more
20 than 9,000 Btu;

21 (II) 59 percent for coal of 7,000
22 to 9,000 Btu; and

23 (III) 50 percent for coal of less
24 than 7,000 Btu.

1 (2) OTHER PROJECTS.—The Secretary shall pe-
2 riodically set technical milestones and ensure that up
3 to 40 percent of the funds appropriated pursuant to
4 section 401(a) are used for projects not described in
5 paragraph (1). The milestones shall specify the
6 emission and thermal efficiency levels that projects
7 funded under this paragraph shall be designed to
8 and reasonably expected to achieve. The technical
9 milestones shall become more restrictive during the
10 life of the program. The Secretary shall set the peri-
11 odic milestones so as to achieve by 2010 projects
12 able—

13 (A) to remove 97 percent of sulfur dioxide;

14 (B) to emit no more than .08 lbs of NO_x
15 per million Btu;

16 (C) to achieve substantial reductions in
17 mercury emissions; and

18 (D) to achieve a thermal efficiency of—

19 (i) 45 percent for coal of more than
20 9,000 Btu;

21 (ii) 44 percent for coal of 7,000 to
22 9,000 Btu; and

23 (iii) 40 percent for coal of less than
24 7,000 Btu.

1 (3) CONSULTATION.—Before setting the tech-
2 nical milestones under paragraphs (1)(B) and (2),
3 the Secretary shall consult with the Administrator of
4 the Environmental Protection Agency and interested
5 entities, including coal producers, industries using
6 coal, organizations to promote coal or advanced coal
7 technologies, environmental organizations, and orga-
8 nizations representing workers.

9 (4) EXISTING UNITS.—In the case of projects
10 at units in existence on the date of enactment of this
11 Act, in lieu of the thermal efficiency requirements
12 set forth in paragraph (1)(B)(iv) and (2)(D), the
13 milestones shall be designed to achieve an overall
14 thermal design efficiency improvement, compared to
15 the efficiency of the unit as operated, of not less
16 than—

17 (A) 7 percent for coal of more than 9,000

18 Btu;

19 (B) 6 percent for coal of 7,000 to 9,000

20 Btu; or

21 (C) 4 percent for coal of less than 7,000

22 Btu.

23 (5) PERMITTED USES.—In carrying out this
24 subtitle, the Secretary may fund projects that in-

1 clude, as part of the project, the separation and cap-
2 ture of carbon dioxide.

3 (c) FINANCIAL CRITERIA.—The Secretary shall not
4 provide a funding award under this subtitle unless the re-
5 cipient documents to the satisfaction of the Secretary
6 that—

7 (1) the award recipient is financially viable
8 without the receipt of additional Federal funding;

9 (2) the recipient will provide sufficient informa-
10 tion to the Secretary to enable the Secretary to en-
11 sure that the award funds are spent efficiently and
12 effectively; and

13 (3) a market exists for the technology being
14 demonstrated or applied, as evidenced by statements
15 of interest in writing from potential purchasers of
16 the technology.

17 (d) FINANCIAL ASSISTANCE.—The Secretary shall
18 provide financial assistance to projects that meet the re-
19 quirements of subsections (a), (b), and (c) and are likely
20 to—

21 (1) achieve overall cost reductions in the utiliza-
22 tion of coal to generate useful forms of energy;

23 (2) improve the competitiveness of coal among
24 various forms of energy in order to maintain a diver-

1 sity of fuel choices in the United States to meet elec-
2 tricity generation requirements; and

3 (3) demonstrate methods and equipment that
4 are applicable to 25 percent of the electricity gener-
5 ating facilities, using various types of coal, that use
6 coal as the primary feedstock as of the date of en-
7 actment of this Act.

8 (e) FEDERAL SHARE.—The Federal share of the cost
9 of a coal or related technology project funded by the Sec-
10 retary under this subtitle shall not exceed 50 percent.

11 (f) APPLICABILITY.—No technology, or level of emis-
12 sion reduction, shall be treated as adequately dem-
13 onstrated for purposes of section 111 of the Clean Air Act
14 (42 U.S.C. 7411), achievable for purposes of section 169
15 of that Act (42 U.S.C. 7479), or achievable in practice
16 for purposes of section 171 of that Act (42 U.S.C. 7501)
17 solely by reason of the use of such technology, or the
18 achievement of such emission reduction, by 1 or more fa-
19 cilities receiving assistance under this subtitle.

20 **SEC. 403. REPORT.**

21 Not later than 1 year after the date of enactment
22 of this Act, and once every 2 years thereafter through
23 2012, the Secretary, in consultation with other appro-
24 priate Federal agencies, shall submit to Congress a report
25 describing—

1 (1) the technical milestones set forth in section
2 402 and how those milestones ensure progress to-
3 ward meeting the requirements of subsections
4 (b)(1)(B) and (b)(2) of section 402; and
5 (2) the status of projects funded under this
6 subtitle.

7 **SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.**

8 As part of the program authorized in section 401,
9 the Secretary shall award competitive, merit-based grants
10 to universities for the establishment of Centers of Excel-
11 lence for Energy Systems of the Future. The Secretary
12 shall provide grants to universities that show the greatest
13 potential for advancing new clean coal technologies.

14 **Subtitle B—Clean Power Projects**

15 **SEC. 411. COAL TECHNOLOGY LOAN.**

16 There are authorized to be appropriated to the Sec-
17 retary \$125,000,000 to provide a loan to the owner of the
18 experimental plant constructed under United States De-
19 partment of Energy cooperative agreement number DE-
20 FC-22-91PC90544 on such terms and conditions as the
21 Secretary determines, including interest rates and upfront
22 payments.

23 **SEC. 412. COAL GASIFICATION.**

24 The Secretary is authorized to provide loan guaran-
25 tees for a project to produce energy from a plant using

1 integrated gasification combined cycle technology of at
2 least 400 megawatts in capacity that produces power at
3 competitive rates in deregulated energy generation mar-
4 kets and that does not receive any subsidy (direct or indi-
5 rect) from ratepayers.

6 **SEC. 413. INTEGRATED GASIFICATION COMBINED CYCLE**
7 **TECHNOLOGY.**

8 The Secretary is authorized to provide loan guaran-
9 tees for a project to produce energy from a plant using
10 integrated gasification combined cycle technology located
11 in a taconite-producing region of the United States that
12 is entitled under the law of the State in which the plant
13 is located to enter into a long-term contract approved by
14 a State Public Utility Commission to sell at least 450
15 megawatts of output to a utility.

16 **SEC. 414. PETROLEUM COKE GASIFICATION.**

17 The Secretary is authorized to provide loan guaran-
18 tees for at least 1 petroleum coke gasification
19 polygeneration project.

20 **SEC. 415. INTEGRATED COAL/RENEWABLE ENERGY SYS-**
21 **TEM.**

22 The Secretary is authorized, subject to the avail-
23 ability of appropriations, to provide loan guarantees for
24 a project to produce energy from coal of less than 7,000
25 btu/lb using appropriate advanced integrated gasification

1 combined cycle technology, including repowering of exist-
2 ing facilities, that is combined with wind and other renew-
3 able sources, minimizes and offers the potential to seques-
4 ter carbon dioxide emissions, and provides a ready source
5 of hydrogen for near-site fuel cell demonstrations. The fa-
6 cility may be built in stages, combined output shall be at
7 least 200 megawatts at successively more competitive
8 rates, and the facility shall be located in the Upper Great
9 Plains. Section 402(b) technical criteria apply, and the
10 Federal cost share shall not exceed 50 percent. The loan
11 guarantees provided under this section do not preclude the
12 facility from receiving an allocation for investment tax
13 credits under section 48A of the Internal Revenue Code
14 of 1986. Utilizing this investment tax credit does not pro-
15 hibit the use of other Clean Coal Program funding.

16 **SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.**

17 The Secretary shall use \$5,000,000 from amounts
18 appropriated to initiate, through the Chicago Operations
19 Office, a project to demonstrate the viability of high-en-
20 ergy electron scrubbing technology on commercial-scale
21 electrical generation using high-sulfur coal.

1 **Subtitle C—Federal Coal Leases**

2 **SEC. 421. REPEAL OF THE 160-ACRE LIMITATION FOR COAL** 3 **LEASES.**

4 Section 3 of the Mineral Leasing Act (30 U.S.C. 203)
5 is amended—

6 (1) in the first sentence—

7 (A) by striking “Any person” and inserting
8 “(a) Any person”;

9 (B) by inserting a comma after “may”;

10 and

11 (C) by striking “upon” and all that follows
12 through the period and inserting the following:

13 “upon a finding by the Secretary that the
14 lease—

15 “(1) would be in the interest of the United
16 States;

17 “(2) would not displace a competitive interest
18 in the land; and

19 “(3) would not include land or deposits that can
20 be developed as part of another potential or existing
21 operation;

22 secure modifications of the original coal lease by including
23 additional coal land or coal deposits contiguous or cor-
24 nering to those embraced in the lease, but in no event shall
25 the total area added by any modifications to an existing

1 coal lease exceed 1,280 acres, or add acreage larger than
2 the acreage in the original lease.”;

3 (2) in the second sentence, by striking “The
4 Secretary” and inserting the following:

5 “(b) The Secretary”; and

6 (3) in the third sentence, by striking “The min-
7 imum” and inserting the following:

8 “(c) The minimum”.

9 **SEC. 422. MINING PLANS.**

10 Section 2(d)(2) of the Mineral Leasing Act (30
11 U.S.C. 202a(2)) is amended—

12 (1) by inserting “(A)” after “(2)”; and

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

14 “(B) The Secretary may establish a period of more
15 than 40 years if the Secretary determines that the longer
16 period—

17 “(i) will ensure the maximum economic recovery
18 of a coal deposit; or

19 “(ii) the longer period is in the interest of the
20 orderly, efficient, or economic development of a coal
21 resource.”.

22 **SEC. 423. PAYMENT OF ADVANCE ROYALTIES UNDER COAL**
23 **LEASES.**

24 Section 7(b) of the Mineral Leasing Act (30 U.S.C.
25 207(b)) is amended to read as follows:

1 “(b)(1) Each lease shall be subjected to the condition
2 of diligent development and continued operation of the
3 mine or mines, except in a case in which operations under
4 the lease are interrupted by strikes, the elements, or cas-
5 ualties not attributable to the lessee.

6 “(2)(A) The Secretary of the Interior may suspend
7 the condition of continued operation upon the payment of
8 advance royalties, if the Secretary determines that the
9 public interest will be served by the suspension.

10 “(B) Advance royalties required under subparagraph
11 (A) shall be computed based on—

12 “(i) the average price for coal sold in the spot
13 market from the same region during the last month
14 of each applicable continued operation year; or

15 “(ii) by using other methods established by the
16 Secretary of the Interior to capture the commercial
17 value of coal,

18 and based on commercial quantities, as defined by regula-
19 tion by the Secretary of the Interior.

20 “(C) The aggregate number of years during the ini-
21 tial and any extended term of any lease for which advance
22 royalties may be accepted in lieu of the condition of contin-
23 ued operation shall not exceed 20.

24 “(3) The amount of any production royalty paid for
25 any year shall be reduced (but not below 0) by the amount

1 of any advance royalties paid under the lease, to the extent
2 that the advance royalties have not been used to reduce
3 production royalties for a prior year.

4 “(4) The Secretary may, upon 6 months’ notice to
5 a lessee, cease to accept advance royalties in lieu of the
6 requirement of continued operation.

7 “(5) Nothing in this subsection affects the require-
8 ment contained in the second sentence of subsection (a)
9 relating to commencement of production at the end of 10
10 years.”.

11 **SEC. 424. ELIMINATION OF DEADLINE FOR SUBMISSION OF**
12 **COAL LEASE OPERATION AND RECLAMATION**
13 **PLAN.**

14 Section 7(c) of the Mineral Leasing Act (30 U.S.C.
15 207(e)) is amended in the first sentence by striking “and
16 not later than three years after a lease is issued,”.

17 **SEC. 425. AMENDMENT RELATING TO FINANCIAL ASSUR-**
18 **ANCES WITH RESPECT TO BONUS BIDS.**

19 Section 2(a) of the Mineral Leasing Act (30 U.S.C.
20 201(a)) is amended by adding at the end the following:

21 “(4)(A) The Secretary shall not require a surety bond
22 or any other financial assurance to guarantee payment of
23 deferred bonus bid installments with respect to any coal
24 lease issued on a cash bonus bid to a lessee or successor
25 in interest having a history of a timely payment of noncon-

1 tested coal royalties and advanced coal royalties in lieu
2 of production (where applicable) and bonus bid installment
3 payments.

4 “(B) The Secretary may waive any requirement that
5 a lessee provide a surety bond or other financial assurance
6 for a coal lease issued before the date of the enactment
7 of the Energy Policy Act of 2003 only if the Secretary
8 determines that the lessee has a history of making timely
9 payments referred to in subparagraph (A).

10 “(5) Notwithstanding any other provision of law, if
11 the lessee under a coal lease fails to pay any installment
12 of a deferred cash bonus bid within 10 days after the Sec-
13 retary provides written notice that payment of the install-
14 ment is past due—

15 “(A) the lease shall automatically terminate;
16 and

17 “(B) any bonus payments already made to the
18 United States with respect to the lease shall not be
19 returned to the lessee or credited in any future lease
20 sale.”.

21 **SEC. 426. INVENTORY REQUIREMENT.**

22 (a) REVIEW OF ASSESSMENTS.—

23 (1) IN GENERAL.—The Secretary of the Inte-
24 rior, in consultation with the Secretary of Agri-

1 culture and the Secretary, shall review coal assess-
2 ments and other available data to identify—

3 (A) public lands, other than National Park
4 lands, with coal resources;

5 (B) the extent and nature of any restric-
6 tions or impediments to the development of coal
7 resources on public lands identified under sub-
8 paragraph (A); and

9 (C) with respect to areas of such lands for
10 which sufficient data exists, resources of com-
11 pliant coal and supercompliant coal.

12 (2) DEFINITIONS.—In this subsection:

13 (A) COMPLIANT COAL.—The term “compli-
14 ant coal” means coal that contains not less
15 than 1.0 and not more than 1.2 pounds of sul-
16 fur dioxide per million Btu.

17 (B) SUPERCOMPLIANT COAL.—The term
18 “supercompliant coal” means coal that contains
19 less than 1.0 pounds of sulfur dioxide per mil-
20 lion Btu.

21 (b) COMPLETION AND UPDATING OF THE INVEN-
22 TORY.—The Secretary of the Interior—

23 (1) shall complete the inventory under sub-
24 section (a)(1) by not later than 2 years after the
25 date of the enactment of this Act; and

1 (2) shall update the inventory as the availability
2 of data and developments in technology warrant.

3 (c) REPORT.—The Secretary of the Interior shall
4 submit to Congress, and make publicly available—

5 (1) a report containing the inventory under this
6 section by not later than 2 years after the effective
7 date of this section; and

8 (2) each update of that inventory.

9 **SEC. 427. APPLICATION OF AMENDMENTS.**

10 The amendments made by this subtitle apply—

11 (1) with respect to any coal lease issued on or
12 after the date of enactment of this Act; and

13 (2) with respect to any coal lease issued before
14 the date of enactment of this Act, upon the earlier
15 of—

16 (A) the date of readjustment of the lease
17 as provided for by section 7(a) of the Mineral
18 Leasing Act (30 U.S.C. 207(a)); or

19 (B) the date the lessee requests such appli-
20 cation.

1 **Subtitle D—Coal and Related**
2 **Programs**

3 **SEC. 441. CLEAN AIR COAL PROGRAM.**

4 (a) AMENDMENT.—The Energy Policy Act of 1992
5 is amended by adding the following new title at the end
6 thereof:

7 **“TITLE XXXI—CLEAN AIR COAL**
8 **PROGRAM**

9 **“SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.**

10 “(a) FINDINGS.—The Congress finds that—

11 “(1) new environmental regulations present ad-
12 ditional challenges for coal-fired electrical generation
13 in the private marketplace; and

14 “(2) the Department of Energy, in cooperation
15 with industry, has already fully developed and com-
16 mercialized several new clean-coal technologies that
17 will allow the clean use of coal.

18 “(b) PURPOSES.—The purposes of this title are to—

19 “(1) promote national energy policy and energy
20 security, diversity, and economic competitiveness
21 benefits that result from the increased use of coal;

22 “(2) mitigate financial risks, reduce the cost,
23 and increase the marketplace acceptance of the new
24 clean coal technologies; and

1 “(3) advance the deployment of pollution con-
2 trol equipment to meet the current and future obli-
3 gations of coal-fired generation units regulated
4 under the Clean Air Act (42 U.S.C. 7402 and fol-
5 lowing).

6 **“SEC. 3102. AUTHORIZATION OF PROGRAM.**

7 “The Secretary shall carry out a program to facilitate
8 production and generation of coal-based power and the in-
9 stallation of pollution control equipment.

10 **“SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.**

11 “(a) POLLUTION CONTROL PROJECTS.—There are
12 authorized to be appropriated to the Secretary
13 \$300,000,000 for fiscal year 2005, \$100,000,000 for fis-
14 cal year 2006, \$40,000,000 for fiscal year 2007,
15 \$30,000,000 for fiscal year 2008, and \$30,000,000 for fis-
16 cal year 2009, to remain available until expended, for car-
17 rying out the program for pollution control projects, which
18 may include—

19 “(1) pollution control equipment and processes
20 for the control of mercury air emissions;

21 “(2) pollution control equipment and processes
22 for the control of nitrogen dioxide air emissions or
23 sulfur dioxide emissions;

1 “(3) pollution control equipment and processes
2 for the mitigation or collection of more than one pol-
3 lutant;

4 “(4) advanced combustion technology for the
5 control of at least two pollutants, including mercury,
6 particulate matter, nitrogen oxides, and sulfur diox-
7 ide, which may also be designed to improve the en-
8 ergy efficiency of the unit; and

9 “(5) advanced pollution control equipment and
10 processes designed to allow use of the waste byprod-
11 ucts or other byproducts of the equipment or an
12 electrical generation unit designed to allow the use
13 of byproducts.

14 Funds appropriated under this subsection which are not
15 awarded before fiscal year 2011 may be applied to projects
16 under subsection (b), in addition to amounts authorized
17 under subsection (b).

18 “(b) GENERATION PROJECTS.—There are authorized
19 to be appropriated to the Secretary \$150,000,000 for fis-
20 cal year 2006, \$250,000,000 for each of the fiscal years
21 2007 through 2011, and \$100,000,000 for fiscal year
22 2012, to remain available until expended, for generation
23 projects and air pollution control projects. Such projects
24 may include—

1 “(1) coal-based electrical generation equipment
2 and processes, including gasification combined cycle
3 or other coal-based generation equipment and proc-
4 esses;

5 “(2) associated environmental control equip-
6 ment, that will be cost-effective and that is designed
7 to meet anticipated regulatory requirements;

8 “(3) coal-based electrical generation equipment
9 and processes, including gasification fuel cells, gas-
10 ification coproduction, and hybrid gasification/com-
11 bustion projects; and

12 “(4) advanced coal-based electrical generation
13 equipment and processes, including oxidation com-
14 bustion techniques, ultra-supercritical boilers, and
15 chemical looping, which the Secretary determines
16 will be cost-effective and could substantially con-
17 tribute to meeting anticipated environmental or en-
18 ergy needs.

19 “(c) LIMITATION.—Funds placed at risk during any
20 fiscal year for Federal loans or loan guarantees pursuant
21 to this title may not exceed 30 percent of the total funds
22 obligated under this title.

23 **“SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.**

24 “The Secretary shall pursuant to authorizations con-
25 tained in section 3103 provide funding for air pollution

1 control projects designed to facilitate compliance with
2 Federal and State environmental regulations, including
3 any regulation that may be established with respect to
4 mercury.

5 **“SEC. 3105. CRITERIA FOR GENERATION PROJECTS.**

6 “(a) CRITERIA.—The Secretary shall establish cri-
7 teria on which selection of individual projects described in
8 section 3103(b) should be based. The Secretary may mod-
9 ify the criteria as appropriate to reflect improvements in
10 equipment, except that the criteria shall not be modified
11 to be less stringent. These selection criteria shall include—

12 “(1) prioritization of projects whose installation
13 is likely to result in significant air quality improve-
14 ments in nonattainment air quality areas;

15 “(2) prioritization of projects that result in the
16 repowering or replacement of older, less efficient
17 units;

18 “(3) documented broad interest in the procure-
19 ment of the equipment and utilization of the proc-
20 esses used in the projects by electrical generator
21 owners or operators;

22 “(4) equipment and processes beginning in
23 2005 through 2010 that are projected to achieve an
24 thermal efficiency of—

1 “(A) 40 percent for coal of more than
2 9,000 Btu per pound based on higher heating
3 values;

4 “(B) 38 percent for coal of 7,000 to 9,000
5 Btu per pound based on higher heating values;
6 and

7 “(C) 36 percent for coal of less than 7,000
8 Btu per pound based on higher heating val-
9 ues—

10 except that energy used for coproduction or cogen-
11 eration shall not be counted in calculating the ther-
12 mal efficiency under this paragraph; and

13 “(5) equipment and processes beginning in
14 2011 and 2012 that are projected to achieve an
15 thermal efficiency of—

16 “(A) 45 percent for coal of more than
17 9,000 Btu per pound based on higher heating
18 values;

19 “(B) 44 percent for coal of 7,000 to 9,000
20 Btu per pound based on higher heating values;
21 and

22 “(C) 40 percent for coal of less than 7,000
23 Btu per pound based on higher heating val-
24 ues—

1 except that energy used for coproduction or cogen-
2 eration shall not be counted in calculating the ther-
3 mal efficiency under this paragraph.

4 “(b) SELECTION.—(1) In selecting the projects, up
5 to 25 percent of the projects selected may be either co-
6 production or cogeneration or other gasification projects,
7 but at least 25 percent of the projects shall be for the
8 sole purpose of electrical generation, and priority should
9 be given to equipment and projects less than 600 MW to
10 foster and promote standard designs.

11 “(2) The Secretary shall give priority to projects that
12 have been developed and demonstrated that are not yet
13 cost competitive, and for coal energy generation projects
14 that advance efficiency, environmental performance, or
15 cost competitiveness significantly beyond the level of pollu-
16 tion control equipment that is in operation on a full scale.

17 **“SEC. 3106. FINANCIAL CRITERIA.**

18 “(a) IN GENERAL.—The Secretary shall only provide
19 financial assistance to projects that meet the requirements
20 of sections 3103 and 3104 and are likely to—

21 “(1) achieve overall cost reductions in the utili-
22 zation of coal to generate useful forms of energy;
23 and

24 “(2) improve the competitiveness of coal in
25 order to maintain a diversity of domestic fuel choices

1 in the United States to meet electricity generation
2 requirements.

3 “(b) CONDITIONS.—The Secretary shall not provide
4 a funding award under this title unless—

5 “(1) the award recipient is financially viable
6 without the receipt of additional Federal funding;
7 and

8 “(2) the recipient provides sufficient informa-
9 tion to the Secretary for the Secretary to ensure
10 that the award funds are spent efficiently and effec-
11 tively.

12 “(c) EQUAL ACCESS.—The Secretary shall, to the ex-
13 tent practical, utilize cooperative agreement, loan guar-
14 antee, and direct Federal loan mechanisms designed to en-
15 sure that all electrical generation owners have equal access
16 to these technology deployment incentives. The Secretary
17 shall develop and direct a competitive solicitation process
18 for the selection of technologies and projects under this
19 title.

20 **“SEC. 3107. FEDERAL SHARE.**

21 “The Federal share of the cost of a coal or related
22 technology project funded by the Secretary under this title
23 shall not exceed 50 percent. For purposes of this title,
24 Federal funding includes only appropriated funds.

1 **“SEC. 3108. APPLICABILITY.**

2 “No technology, or level of emission reduction, shall
 3 be treated as adequately demonstrated for purposes of sec-
 4 tion 111 of the Clean Air Act (42 U.S.C. 7411), achievable
 5 for purposes of section 169 of the Clean Air Act (42
 6 U.S.C. 7479), or achievable in practice for purposes of
 7 section 171 of the Clean Air Act (42 U.S.C. 7501) solely
 8 by reason of the use of such technology, or the achieve-
 9 ment of such emission reduction, by one or more facilities
 10 receiving assistance under this title.”.

11 (b) **TABLE OF CONTENTS AMENDMENT.**—The table
 12 of contents of the Energy Policy Act of 1992 is amended
 13 by adding at the end the following:

“TITLE XXXI—CLEAN AIR COAL PROGRAM

“Sec. 3101. Findings; purposes; definitions.
 “Sec. 3102. Authorization of program.
 “Sec. 3103. Authorization of appropriations.
 “Sec. 3104. Air pollution control project criteria.
 “Sec. 3105. Criteria for generation projects.
 “Sec. 3106. Financial criteria.
 “Sec. 3107. Federal share.
 “Sec. 3108. Applicability.”.

14 **TITLE V—INDIAN ENERGY**15 **SEC. 501. SHORT TITLE.**

16 This title may be cited as the “Indian Tribal Energy
 17 Development and Self-Determination Act of 2003”.

1 **SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PRO-**
2 **GRAMS.**

3 (a) IN GENERAL.—Title II of the Department of En-
4 ergy Organization Act (42 U.S.C. 7131 et seq.) is amend-
5 ed by adding at the end the following:

6 “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

7 “SEC. 217. (a) ESTABLISHMENT.—There is estab-
8 lished within the Department an Office of Indian Energy
9 Policy and Programs (referred to in this section as the
10 ‘Office’). The Office shall be headed by a Director, who
11 shall be appointed by the Secretary and compensated at
12 a rate equal to that of level IV of the Executive Schedule
13 under section 5315 of title 5, United States Code.

14 “(b) DUTIES OF DIRECTOR.—The Director, in ac-
15 cordance with Federal policies promoting Indian self-de-
16 termination and the purposes of this Act, shall provide,
17 direct, foster, coordinate, and implement energy planning,
18 education, management, conservation, and delivery pro-
19 grams of the Department that—

20 “(1) promote Indian tribal energy development,
21 efficiency, and use;

22 “(2) reduce or stabilize energy costs;

23 “(3) enhance and strengthen Indian tribal en-
24 ergy and economic infrastructure relating to natural
25 resource development and electrification; and

1 “(4) bring electrical power and service to In-
 2 dian land and the homes of tribal members located
 3 on Indian lands or acquired, constructed, or im-
 4 proved (in whole or in part) with Federal funds.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) The table of contents of the Department of
 7 Energy Organization Act (42 U.S.C. prec. 7101) is
 8 amended—

9 (A) in the item relating to section 209, by
 10 striking “Section” and inserting “Sec.”; and

11 (B) by striking the items relating to sec-
 12 tions 213 through 216 and inserting the fol-
 13 lowing:

“Sec. 213. Establishment of policy for National Nuclear Security Adminis-
 tration.

“Sec. 214. Establishment of security, counterintelligence, and intelligence
 policies.

“Sec. 215. Office of Counterintelligence.

“Sec. 216. Office of Intelligence.

“Sec. 217. Office of Indian Energy Policy and Programs.”.

14 (2) Section 5315 of title 5, United States Code,
 15 is amended by inserting “Director, Office of Indian
 16 Energy Policy and Programs, Department of En-
 17 ergy.” after “Inspector General, Department of En-
 18 ergy.”.

19 **SEC. 503. INDIAN ENERGY.**

20 (a) IN GENERAL.—Title XXVI of the Energy Policy
 21 Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read
 22 as follows:

1 **“TITLE XXVI—INDIAN ENERGY**

2 **“SEC. 2601. DEFINITIONS.**

3 “For purposes of this title:

4 “(1) The term ‘Director’ means the Director of
5 the Office of Indian Energy Policy and Programs,
6 Department of Energy.

7 “(2) The term ‘Indian land’ means—

8 “(A) any land located within the bound-
9 aries of an Indian reservation, pueblo, or
10 rancheria;

11 “(B) any land not located within the
12 boundaries of an Indian reservation, pueblo, or
13 rancheria, the title to which is held—

14 “(i) in trust by the United States for
15 the benefit of an Indian tribe or an indi-
16 vidual Indian;

17 “(ii) by an Indian tribe or an indi-
18 vidual Indian, subject to restriction against
19 alienation under laws of the United States;
20 or

21 “(iii) by a dependent Indian commu-
22 nity; and

23 “(C) land that is owned by an Indian tribe
24 and was conveyed by the United States to a
25 Native Corporation pursuant to the Alaska Na-

1 tive Claims Settlement Act (43 U.S.C. 1601 et
2 seq.), or that was conveyed by the United
3 States to a Native Corporation in exchange for
4 such land.

5 “(3) The term ‘Indian reservation’ includes—

6 “(A) an Indian reservation in existence in
7 any State or States as of the date of enactment
8 of this paragraph;

9 “(B) a public domain Indian allotment;
10 and

11 “(C) a dependent Indian community lo-
12 cated within the borders of the United States,
13 regardless of whether the community is lo-
14 cated—

15 “(i) on original or acquired territory
16 of the community; or

17 “(ii) within or outside the boundaries
18 of any particular State.

19 “(4) The term ‘Indian tribe’ has the meaning
20 given the term in section 4 of the Indian Self-Deter-
21 mination and Education Assistance Act (25 U.S.C.
22 450b), except that the term ‘Indian tribe’, for the
23 purpose of paragraph (11) and sections 2603(b)(3)
24 and 2604, shall not include any Native Corporation.

1 “(5) The term ‘integration of energy resources’
2 means any project or activity that promotes the loca-
3 tion and operation of a facility (including any pipe-
4 line, gathering system, transportation system or fa-
5 cility, or electric transmission or distribution facility)
6 on or near Indian land to process, refine, generate
7 electricity from, or otherwise develop energy re-
8 sources on, Indian land.

9 “(6) The term ‘Native Corporation’ has the
10 meaning given the term in section 3 of the Alaska
11 Native Claims Settlement Act (43 U.S.C. 1602).

12 “(7) The term ‘organization’ means a partner-
13 ship, joint venture, limited liability company, or
14 other unincorporated association or entity that is es-
15 tablished to develop Indian energy resources.

16 “(8) The term ‘Program’ means the Indian en-
17 ergy resource development program established
18 under section 2602(a).

19 “(9) The term ‘Secretary’ means the Secretary
20 of the Interior.

21 “(10) The term ‘tribal energy resource develop-
22 ment organization’ means an organization of 2 or
23 more entities, at least 1 of which is an Indian tribe,
24 that has the written consent of the governing bodies
25 of all Indian tribes participating in the organization

1 to apply for a grant, loan, or other assistance au-
2 thorized by section 2602.

3 “(11) The term ‘tribal land’ means any land or
4 interests in land owned by any Indian tribe, title to
5 which is held in trust by the United States or which
6 is subject to a restriction against alienation under
7 laws of the United States.

8 **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**
9 **MENT.**

10 “(a) DEPARTMENT OF THE INTERIOR PROGRAM.—

11 “(1) To assist Indian tribes in the development
12 of energy resources and further the goal of Indian
13 self-determination, the Secretary shall establish and
14 implement an Indian energy resource development
15 program to assist consenting Indian tribes and tribal
16 energy resource development organizations in achiev-
17 ing the purposes of this title.

18 “(2) In carrying out the Program, the Sec-
19 retary shall—

20 “(A) provide development grants to Indian
21 tribes and tribal energy resource development
22 organizations for use in developing or obtaining
23 the managerial and technical capacity needed to
24 develop energy resources on Indian land, and to

1 properly account for resulting energy produc-
2 tion and revenues;

3 “(B) provide grants to Indian tribes and
4 tribal energy resource development organiza-
5 tions for use in carrying out projects to pro-
6 mote the integration of energy resources, and to
7 process, use, or develop those energy resources,
8 on Indian land; and

9 “(C) provide low-interest loans to Indian
10 tribes and tribal energy resource development
11 organizations for use in the promotion of en-
12 ergy resource development on Indian land and
13 integration of energy resources.

14 “(3) There are authorized to be appropriated to
15 carry out this subsection such sums as are necessary
16 for each of fiscal years 2004 through 2014.

17 “(b) DEPARTMENT OF ENERGY INDIAN ENERGY
18 EDUCATION PLANNING AND MANAGEMENT ASSISTANCE
19 PROGRAM.—

20 “(1) The Director shall establish programs to
21 assist consenting Indian tribes in meeting energy
22 education, research and development, planning, and
23 management needs.

24 “(2) In carrying out this subsection, the Direc-
25 tor may provide grants, on a competitive basis, to an

1 Indian tribe or tribal energy resource development
2 organization for use in carrying out—

3 “(A) energy, energy efficiency, and energy
4 conservation programs;

5 “(B) studies and other activities sup-
6 porting tribal acquisitions of energy supplies,
7 services, and facilities;

8 “(C) planning, construction, development,
9 operation, maintenance, and improvement of
10 tribal electrical generation, transmission, and
11 distribution facilities located on Indian land;
12 and

13 “(D) development, construction, and inter-
14 connection of electric power transmission facili-
15 ties located on Indian land with other electric
16 transmission facilities.

17 “(3)(A) The Director may develop, in consulta-
18 tion with Indian tribes, a formula for providing
19 grants under this subsection.

20 “(B) In providing a grant under this sub-
21 section, the Director shall give priority to an applica-
22 tion received from an Indian tribe with inadequate
23 electric service (as determined by the Director).

24 “(4) The Secretary of Energy may issue such
25 regulations as necessary to carry out this subsection.

1 “(5) There are authorized to be appropriated to
2 carry out this subsection \$20,000,000 for each of
3 fiscal years 2004 through 2014.

4 “(c) DEPARTMENT OF ENERGY LOAN GUARANTEE
5 PROGRAM.—

6 “(1) Subject to paragraph (3), the Secretary of
7 Energy may provide loan guarantees (as defined in
8 section 502 of the Federal Credit Reform Act of
9 1990 (2 U.S.C. 661a)) for not more than 90 percent
10 of the unpaid principal and interest due on any loan
11 made to any Indian tribe for energy development.

12 “(2) A loan guarantee under this subsection
13 shall be made by—

14 “(A) a financial institution subject to ex-
15 amination by the Secretary of Energy; or

16 “(B) an Indian tribe, from funds of the In-
17 dian tribe.

18 “(3) The aggregate outstanding amount guar-
19 anteed by the Secretary of Energy at any time under
20 this subsection shall not exceed \$2,000,000,000.

21 “(4) The Secretary of Energy may issue such
22 regulations as the Secretary of Energy determines
23 are necessary to carry out this subsection.

1 “(5) There are authorized to be appropriated
2 such sums as are necessary to carry out this sub-
3 section, to remain available until expended.

4 “(6) Not later than 1 year from the date of en-
5 actment of this section, the Secretary of Energy
6 shall report to Congress on the financing require-
7 ments of Indian tribes for energy development on In-
8 dian land.

9 “(d) FEDERAL AGENCIES—INDIAN ENERGY PREF-
10 ERENCE.—

11 “(1) In purchasing electricity or any other en-
12 ergy product or byproduct, a Federal agency or de-
13 partment may give preference to an energy and re-
14 source production enterprise, partnership, consor-
15 tium, corporation, or other type of business organi-
16 zation the majority of the interest in which is owned
17 and controlled by 1 or more Indian tribes.

18 “(2) In carrying out this subsection, a Federal
19 agency or department shall not—

20 “(A) pay more than the prevailing market
21 price for an energy product or byproduct; or

22 “(B) obtain less than prevailing market
23 terms and conditions.

1 **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**
2 **TION.**

3 “(a) GRANTS.—The Secretary may provide to Indian
4 tribes, on an annual basis, grants for use in accordance
5 with subsection (b).

6 “(b) USE OF FUNDS.—Funds from a grant provided
7 under this section may be used—

8 “(1) by an Indian tribe for the development of
9 a tribal energy resource inventory or tribal energy
10 resource on Indian land;

11 “(2) by an Indian tribe for the development of
12 a feasibility study or other report necessary to the
13 development of energy resources on Indian land;

14 “(3) by an Indian tribe (other than an Indian
15 Tribe in Alaska except the Metlakatla Indian Com-
16 munity) for the development and enforcement of
17 tribal laws (including regulations) relating to tribal
18 energy resource development and the development of
19 technical infrastructure to protect the environment
20 under applicable law; or

21 “(4) by a Native Corporation for the develop-
22 ment and implementation of corporate policies and
23 the development of technical infrastructure to pro-
24 tect the environment under applicable law; and

25 “(5) by an Indian tribe for the training of em-
26 ployees that—

1 “(A) exploration for, extraction of, proc-
2 essing of, or other development of the Indian
3 tribe’s energy mineral resources located on trib-
4 al land; and

5 “(B) construction or operation of an elec-
6 tric generation, transmission, or distribution fa-
7 cility located on tribal land or a facility to proc-
8 ess or refine energy resources developed on trib-
9 al land; and

10 “(2) such lease or business agreement described
11 in paragraph (1) shall not require the approval of
12 the Secretary under section 2103 of the Revised
13 Statutes (25 U.S.C. 81) or any other provision of
14 law, if—

15 “(A) the lease or business agreement is ex-
16 ecuted pursuant to a tribal energy resource
17 agreement approved by the Secretary under
18 subsection (e);

19 “(B) the term of the lease or business
20 agreement does not exceed—

21 “(i) 30 years; or

22 “(ii) in the case of a lease for the pro-
23 duction of oil resources, gas resources, or
24 both, 10 years and as long thereafter as oil

1 or gas is produced in paying quantities;
2 and

3 “(C) the Indian tribe has entered into a
4 tribal energy resource agreement with the Sec-
5 retary, as described in subsection (e), relating
6 to the development of energy resources on tribal
7 land (including the periodic review and evalua-
8 tion of the activities of the Indian tribe under
9 the agreement, to be conducted pursuant to the
10 provisions required by subsection (e)(2)(D)(i)).

11 “(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC
12 TRANSMISSION OR DISTRIBUTION LINES.—An Indian
13 tribe may grant a right-of-way over tribal land for a pipe-
14 line or an electric transmission or distribution line without
15 approval by the Secretary if—

16 “(1) the right-of-way is executed in accordance
17 with a tribal energy resource agreement approved by
18 the Secretary under subsection (e);

19 “(2) the term of the right-of-way does not ex-
20 ceed 30 years;

21 “(3) the pipeline or electric transmission or dis-
22 tribution line serves—

23 “(A) an electric generation, transmission,
24 or distribution facility located on tribal land; or

1 “(B) a facility located on tribal land that
2 processes or refines energy resources developed
3 on tribal land; and

4 “(4) the Indian tribe has entered into a tribal
5 energy resource agreement with the Secretary, as de-
6 scribed in subsection (e), relating to the development
7 of energy resources on tribal land (including the
8 periodic review and evaluation of the Indian tribe’s
9 activities under such agreement described in sub-
10 paragraphs (D) and (E) of subsection (e)(2)).

11 “(c) RENEWALS.—A lease or business agreement en-
12 tered into or a right-of-way granted by an Indian tribe
13 under this section may be renewed at the discretion of the
14 Indian tribe in accordance with this section.

15 “(d) VALIDITY.—No lease, business agreement, or
16 right-of-way relating to the development of tribal energy
17 resources pursuant to the provisions of this section shall
18 be valid unless the lease, business agreement, or right-of-
19 way is authorized by the provisions of a tribal energy re-
20 source agreement approved by the Secretary under sub-
21 section (e)(2).

22 “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

23 “(1) On issuance of regulations under para-
24 graph (8), an Indian tribe may submit to the Sec-
25 retary for approval a tribal energy resource agree-

1 ment governing leases, business agreements, and
2 rights-of-way under this section.

3 “(2)(A) Not later than 180 days after the date
4 on which the Secretary receives a tribal energy re-
5 source agreement submitted by an Indian tribe
6 under paragraph (1), or not later than 60 days after
7 the Secretary receives a revised tribal energy re-
8 source agreement submitted by an Indian tribe
9 under paragraph (4)(C), (or such later date as may
10 be agreed to by the Secretary and the Indian tribe),
11 the Secretary shall approve or disapprove the tribal
12 energy resource agreement.

13 “(B) The Secretary shall approve a tribal en-
14 ergy resource agreement submitted under paragraph
15 (1) if—

16 “(i) the Secretary determines that the In-
17 dian tribe has demonstrated that the Indian
18 tribe has sufficient capacity to regulate the de-
19 velopment of energy resources of the Indian
20 tribe;

21 “(ii) the tribal energy resource agreement
22 includes provisions required under subpara-
23 graph (D); and

24 “(iii) the tribal energy resource agreement
25 includes provisions that, with respect to a lease,

1 business agreement, or right-of-way under this
2 section—

3 “(I) ensure the acquisition of nec-
4 essary information from the applicant for
5 the lease, business agreement, or right-of-
6 way;

7 “(II) address the term of the lease or
8 business agreement or the term of convey-
9 ance of the right-of-way;

10 “(III) address amendments and re-
11 newals;

12 “(IV) address the economic return to
13 the Indian tribe under leases, business
14 agreements, and rights-of-way;

15 “(V) address technical or other rel-
16 evant requirements;

17 “(VI) establish requirements for envi-
18 ronmental review in accordance with sub-
19 paragraph (C);

20 “(VII) ensure compliance with all ap-
21 plicable environmental laws;

22 “(VIII) identify final approval author-
23 ity;

24 “(IX) provide for public notification of
25 final approvals;

1 “(X) establish a process for consulta-
2 tion with any affected States concerning
3 off-reservation impacts, if any, identified
4 pursuant to the provisions required under
5 subparagraph (C)(i);

6 “(XI) describe the remedies for
7 breach of the lease, business agreement, or
8 right-of-way;

9 “(XII) require each lease, business
10 agreement, and right-of-way to include a
11 statement that, in the event that any of its
12 provisions violates an express term or re-
13 quirement set forth in the tribal energy re-
14 source agreement pursuant to which it was
15 executed—

16 “(aa) such provision shall be null
17 and void; and

18 “(bb) if the Secretary determines
19 such provision to be material, the Sec-
20 retary shall have the authority to sus-
21 pend or rescind the lease, business
22 agreement, or right-of-way or take
23 other appropriate action that the Sec-
24 retary determines to be in the best in-
25 terest of the Indian tribe;

1 “(XIII) require each lease, business
2 agreement, and right-of-way to provide
3 that it will become effective on the date on
4 which a copy of the executed lease, busi-
5 ness agreement, or right-of-way is deliv-
6 ered to the Secretary in accordance with
7 regulations adopted pursuant to this sub-
8 section; and

9 “(XIV) include citations to tribal
10 laws, regulations, or procedures, if any,
11 that set out tribal remedies that must be
12 exhausted before a petition may be sub-
13 mitted to the Secretary pursuant to para-
14 graph (7)(B).

15 “(C) Tribal energy resource agreements sub-
16 mitted under paragraph (1) shall establish, and in-
17 clude provisions to ensure compliance with, an envi-
18 ronmental review process that, with respect to a
19 lease, business agreement, or right-of-way under this
20 section, provides for—

21 “(i) the identification and evaluation of all
22 significant environmental impacts (as compared
23 with a no-action alternative), including effects
24 on cultural resources;

1 “(ii) the identification of proposed mitiga-
2 tion;

3 “(iii) a process for ensuring that the public
4 is informed of and has an opportunity to com-
5 ment on the environmental impacts of the pro-
6 posed action before tribal approval of the lease,
7 business agreement, or right-of-way; and

8 “(iv) sufficient administrative support and
9 technical capability to carry out the environ-
10 mental review process.

11 “(D) A tribal energy resource agreement nego-
12 tiated between the Secretary and an Indian tribe in
13 accordance with this subsection shall include—

14 “(i) provisions requiring the Secretary to
15 conduct a periodic review and evaluation to
16 monitor the performance of the Indian tribe’s
17 activities associated with the development of en-
18 ergy resources under the tribal energy resource
19 agreement; and

20 “(ii) when such review and evaluation re-
21 sult in a finding by the Secretary of imminent
22 jeopardy to a physical trust asset arising from
23 a violation of the tribal energy resource agree-
24 ment or applicable Federal laws, provisions au-
25 thorizing the Secretary to take appropriate ac-

1 tions determined by the Secretary to be nec-
2 essary to protect such asset, which actions may
3 include reassumption of responsibility for activi-
4 ties associated with the development of energy
5 resources on tribal land until the violation and
6 conditions that gave rise to such jeopardy have
7 been corrected.

8 “(E) The periodic review and evaluation de-
9 scribed in subparagraph (D) shall be conducted on
10 an annual basis, except that, after the third such an-
11 nual review and evaluation, the Secretary and the
12 Indian tribe may mutually agree to amend the tribal
13 energy resource agreement to authorize the review
14 and evaluation required by subparagraph (D) to be
15 conducted once every 2 years.

16 “(3) The Secretary shall provide notice and op-
17 portunity for public comment on tribal energy re-
18 source agreements submitted for approval under
19 paragraph (1). The Secretary’s review of a tribal en-
20 ergy resource agreement under the National Envi-
21 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
22 seq.) shall be limited to the direct effects of that ap-
23 proval.

24 “(4) If the Secretary disapproves a tribal en-
25 ergy resource agreement submitted by an Indian

1 tribe under paragraph (1), the Secretary shall, not
2 later than 10 days after the date of disapproval—

3 “(A) notify the Indian tribe in writing of
4 the basis for the disapproval;

5 “(B) identify what changes or other ac-
6 tions are required to address the concerns of
7 the Secretary; and

8 “(C) provide the Indian tribe with an op-
9 portunity to revise and resubmit the tribal en-
10 ergy resource agreement.

11 “(5) If an Indian tribe executes a lease or busi-
12 ness agreement or grants a right-of-way in accord-
13 ance with a tribal energy resource agreement ap-
14 proved under this subsection, the Indian tribe shall,
15 in accordance with the process and requirements set
16 forth in the Secretary’s regulations adopted pursu-
17 ant to paragraph (8), provide to the Secretary—

18 “(A) a copy of the lease, business agree-
19 ment, or right-of-way document (including all
20 amendments to and renewals of the document);
21 and

22 “(B) in the case of a tribal energy resource
23 agreement or a lease, business agreement, or
24 right-of-way that permits payments to be made
25 directly to the Indian tribe, information and

1 documentation of those payments sufficient to
2 enable the Secretary to discharge the trust re-
3 sponsibility of the United States to enforce the
4 terms of, and protect the Indian tribe's rights
5 under, the lease, business agreement, or right-
6 of-way.

7 “(6)(A) For purposes of the activities to be un-
8 dertaken by the Secretary pursuant to this section,
9 the Secretary shall—

10 “(i) carry out such activities in a manner
11 consistent with the trust responsibility of the
12 United States relating to mineral and other
13 trust resources; and

14 “(ii) act in good faith and in the best in-
15 terests of the Indian tribes.

16 “(B) Subject to the provisions of subsections
17 (a)(2), (b), and (c) waiving the requirement of Sec-
18 retarial approval of leases, business agreements, and
19 rights-of-way executed pursuant to tribal energy re-
20 source agreements approved under this section, and
21 the provisions of subparagraph (D), nothing in this
22 section shall absolve the United States from any re-
23 sponsibility to Indians or Indian tribes, including,
24 but not limited to, those which derive from the trust
25 relationship or from any treaties, statutes, and other

1 laws of the United States, Executive Orders, or
2 agreements between the United States and any In-
3 dian tribe.

4 “(C) The Secretary shall continue to have a
5 trust obligation to ensure that the rights and inter-
6 ests of an Indian tribe are protected in the event
7 that—

8 “(i) any other party to any such lease,
9 business agreement, or right-of-way violates any
10 applicable provision of Federal law or the terms
11 of any lease, business agreement, or right-of-
12 way under this section; or

13 “(ii) any provision in such lease, business
14 agreement, or right-of-way violates any express
15 provision or requirement set forth in the tribal
16 energy resource agreement pursuant to which
17 the lease, business agreement, or right-of-way
18 was executed.

19 “(D) Notwithstanding subparagraph (B), the
20 United States shall not be liable to any party (in-
21 cluding any Indian tribe) for any of the negotiated
22 terms of, or any losses resulting from the negotiated
23 terms of, a lease, business agreement, or right-of-
24 way executed pursuant to and in accordance with a
25 tribal energy resource agreement approved by the

1 Secretary under paragraph (2). For the purpose of
2 this subparagraph, the term ‘negotiated terms’
3 means any terms or provisions that are negotiated
4 by an Indian tribe and any other party or parties to
5 a lease, business agreement, or right-of-way entered
6 into pursuant to an approved tribal energy resource
7 agreement.

8 “(7)(A) In this paragraph, the term ‘interested
9 party’ means any person or entity the interests of
10 which have sustained or will sustain a significant ad-
11 verse environmental impact as a result of the failure
12 of an Indian tribe to comply with a tribal energy re-
13 source agreement of the Indian tribe approved by
14 the Secretary under paragraph (2).

15 “(B) After exhaustion of tribal remedies, and in
16 accordance with the process and requirements set
17 forth in regulations adopted by the Secretary pursu-
18 ant to paragraph (8), an interested party may sub-
19 mit to the Secretary a petition to review compliance
20 of an Indian tribe with a tribal energy resource
21 agreement of the Indian tribe approved by the Sec-
22 retary under paragraph (2).

23 “(C)(i) Not later than 120 days after the date
24 on which the Secretary receives a petition under sub-
25 paragraph (B), the Secretary shall determine wheth-

1 er the Indian tribe is not in compliance with the
2 tribal energy resource agreement, as alleged in the
3 petition.

4 “(ii) The Secretary may adopt procedures
5 under paragraph (8) authorizing an extension of
6 time, not to exceed 120 days, for making the deter-
7 mination under clause (i) in any case in which the
8 Secretary determines that additional time is nec-
9 essary to evaluate the allegations of the petition.

10 “(iii) Subject to subparagraph (D), if the Sec-
11 retary determines that the Indian tribe is not in
12 compliance with the tribal energy resource agree-
13 ment as alleged in the petition, the Secretary shall
14 take such action as is necessary to ensure compli-
15 ance with the provisions of the tribal energy resource
16 agreement, which action may include—

17 “(I) temporarily suspending some or all ac-
18 tivities under a lease, business agreement, or
19 right-of-way under this section until the Indian
20 tribe or such activities are in compliance with
21 the provisions of the approved tribal energy re-
22 source agreement; or

23 “(II) rescinding approval of all or part of
24 the tribal energy resource agreement, and if all
25 of such agreement is rescinded, reassuming the

1 responsibility for approval of any future leases,
2 business agreements, or rights-of-way described
3 in subsections (a) and (b).

4 “(D) Prior to seeking to ensure compliance with
5 the provisions of the tribal energy resource agree-
6 ment of an Indian tribe under subparagraph (C)(iii),
7 the Secretary shall—

8 “(i) make a written determination that de-
9 scribes the manner in which the tribal energy
10 resource agreement has been violated;

11 “(ii) provide the Indian tribe with a writ-
12 ten notice of the violations together with the
13 written determination; and

14 “(iii) before taking any action described in
15 subparagraph (C)(iii) or seeking any other rem-
16 edy, provide the Indian tribe with a hearing and
17 a reasonable opportunity to attain compliance
18 with the tribal energy resource agreement.

19 “(E) An Indian tribe described in subparagraph
20 (D) shall retain all rights to appeal as provided in
21 regulations issued by the Secretary.

22 “(8) Not later than 1 year after the date of en-
23 actment of the Indian Tribal Energy Development
24 and Self-Determination Act of 2003, the Secretary

1 shall issue regulations that implement the provisions
2 of this subsection, including—

3 “(A) criteria to be used in determining the
4 capacity of an Indian tribe described in para-
5 graph (2)(B)(i), including the experience of the
6 Indian tribe in managing natural resources and
7 financial and administrative resources available
8 for use by the Indian tribe in implementing the
9 approved tribal energy resource agreement of
10 the Indian tribe;

11 “(B) a process and requirements in accord-
12 ance with which an Indian tribe may—

13 “(i) voluntarily rescind a tribal energy
14 resource agreement approved by the Sec-
15 retary under this subsection; and

16 “(ii) return to the Secretary the re-
17 sponsibility to approve any future leases,
18 business agreements, and rights-of-way de-
19 scribed in this subsection;

20 “(C) provisions setting forth the scope of,
21 and procedures for, the periodic review and
22 evaluation described in subparagraphs (D) and
23 (E) of paragraph (2), including provisions for
24 review of transactions, reports, site inspections,

1 and any other review activities the Secretary
2 determines to be appropriate; and

3 “(D) provisions defining final agency ac-
4 tions after exhaustion of administrative appeals
5 from determinations of the Secretary under
6 paragraph (7).

7 “(f) NO EFFECT ON OTHER LAW.—Nothing in this
8 section affects the application of—

9 “(1) any Federal environment law;

10 “(2) the Surface Mining Control and Reclama-
11 tion Act of 1977 (30 U.S.C. 1201 et seq.); or

12 “(3) except as otherwise provided in this title,
13 the Indian Mineral Development Act of 1982 (25
14 U.S.C. 2101 et seq.) and the National Environ-
15 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

16 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to the Secretary such
18 sums as are necessary for each of fiscal years 2004
19 through 2014 to implement the provisions of this section
20 and to make grants or provide other appropriate assist-
21 ance to Indian tribes to assist the Indian tribes in devel-
22 oping and implementing tribal energy resource agreements
23 in accordance with the provisions of this section.

1 **“SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.**

2 “(a) IN GENERAL.—The Secretary shall conduct a
3 review of all activities being conducted under the Indian
4 Mineral Development Act of 1982 (25 U.S.C. 2101 et
5 seq.) as of that date.

6 “(b) REPORT.—Not later than 1 year after the date
7 of enactment of the Indian Tribal Energy Development
8 and Self-Determination Act of 2003, the Secretary shall
9 submit to Congress a report that includes—

10 “(1) the results of the review;

11 “(2) recommendations to ensure that Indian
12 tribes have the opportunity to develop Indian energy
13 resources; and

14 “(3) an analysis of the barriers to the develop-
15 ment of energy resources on Indian land (including
16 legal, fiscal, market, and other barriers), along with
17 recommendations for the removal of those barriers.

18 **“SEC. 2606. FEDERAL POWER MARKETING ADMINISTRA-**
19 **TIONS.**

20 “(a) DEFINITIONS.—In this section:

21 “(1) The term “Administrator” means the Ad-
22 ministrator of the Bonneville Power Administration
23 and the Administrator of the Western Area Power
24 Administration.

25 “(2) The term “power marketing administra-
26 tion” means—

1 “(A) the Bonneville Power Administration;

2 “(B) the Western Area Power Administra-
3 tion; and

4 “(C) any other power administration the
5 power allocation of which is used by or for the
6 benefit of an Indian tribe located in the service
7 area of the administration.

8 “(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY
9 DEVELOPMENT.—Each Administrator shall encourage In-
10 dian tribal energy development by taking such actions as
11 are appropriate, including administration of programs of
12 the Bonneville Power Administration and the Western
13 Area Power Administration, in accordance with this sec-
14 tion.

15 “(c) ACTION BY THE ADMINISTRATOR.—In carrying
16 out this section, and in accordance with existing law—

17 “(1) each Administrator shall consider the
18 unique relationship that exists between the United
19 States and Indian tribes;

20 “(2) power allocations from the Western Area
21 Power Administration to Indian tribes may be used
22 to meet firming and reserve needs of Indian-owned
23 energy projects on Indian land;

24 “(3) the Administrator of the Western Area
25 Power Administration may purchase non-federally

1 generated power from Indian tribes to meet the
2 firming and reserve requirements of the Western
3 Area Power Administration; and

4 “(4) each Administrator shall not pay more
5 than the prevailing market price for an energy prod-
6 uct nor obtain less than prevailing market terms and
7 conditions.

8 “(d) ASSISTANCE FOR TRANSMISSION SYSTEM
9 USE.—(1) An Administrator may provide technical assist-
10 ance to Indian tribes seeking to use the high-voltage trans-
11 mission system for delivery of electric power.

12 “(2) The costs of technical assistance provided under
13 paragraph (1) shall be funded by the Secretary of Energy
14 using nonreimbursable funds appropriated for that pur-
15 pose, or by the applicable Indian tribes.

16 “(e) POWER ALLOCATION STUDY.—Not later than 2
17 years after the date of enactment of the Indian Tribal En-
18 ergy Development and Self-Determination Act of 2003,
19 the Secretary of Energy shall submit to Congress a report
20 that—

21 “(1) describes the use by Indian tribes of Fed-
22 eral power allocations of the Western Area Power
23 Administration (or power sold by the Southwestern
24 Power Administration) and the Bonneville Power

1 Administration to or for the benefit of Indian tribes
2 in service areas of those administrations; and

3 “(2) identifies—

4 “(A) the quantity of power allocated to, or
5 used for the benefit of, Indian tribes by the
6 Western Area Power Administration;

7 “(B) the quantity of power sold to Indian
8 tribes by other power marketing administra-
9 tions; and

10 “(C) barriers that impede tribal access to
11 and use of Federal power, including an assess-
12 ment of opportunities to remove those barriers
13 and improve the ability of power marketing ad-
14 ministrations to deliver Federal power.

15 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to carry out this section
17 \$750,000, which shall remain available until expended and
18 shall not be reimbursable.

19 **“SEC. 2607. WIND AND HYDROPOWER FEASIBILITY STUDY.**

20 “(a) STUDY.—The Secretary of Energy, in coordina-
21 tion with the Secretary of the Army and the Secretary,
22 shall conduct a study of the cost and feasibility of devel-
23 oping a demonstration project that would use wind energy
24 generated by Indian tribes and hydropower generated by
25 the Army Corps of Engineers on the Missouri River to

1 supply firming power to the Western Area Power Adminis-
2 tration.

3 “(b) SCOPE OF STUDY.—The study shall—

4 “(1) determine the feasibility of the blending of
5 wind energy and hydropower generated from the
6 Missouri River dams operated by the Army Corps of
7 Engineers;

8 “(2) review historical and projected require-
9 ments for firming power and the patterns of avail-
10 ability and use of firming power;

11 “(3) assess the wind energy resource potential
12 on tribal land and projected cost savings through a
13 blend of wind and hydropower over a 30-year period;

14 “(4) determine seasonal capacity needs and as-
15 sociated transmission upgrades for integration of
16 tribal wind generation; and

17 “(5) include an independent tribal engineer as
18 a study team member.

19 “(c) REPORT.—Not later than 1 year after the date
20 of enactment of the Energy Policy Act of 2003, the Sec-
21 retary and Secretary of the Army shall submit to Congress
22 a report that describes the results of the study, includ-
23 ing—

24 “(1) an analysis of the potential energy cost or
25 benefits to the customers of the Western Area Power

1 Administration through the use of combined wind
2 and hydropower;

3 “(2) an evaluation of whether a combined wind
4 and hydropower system can reduce reservoir fluctua-
5 tion, enhance efficient and reliable energy produc-
6 tion, and provide Missouri River management flexi-
7 bility;

8 “(3) recommendations for a demonstration
9 project that could be carried out by the Western
10 Area Power Administration in partnership with an
11 Indian tribal government or tribal energy resource
12 development organization to demonstrate the feasi-
13 bility and potential of using wind energy produced
14 on Indian land to supply firming energy to the
15 Western Area Power Administration or any other
16 Federal power marketing agency; and

17 “(4) an identification of—

18 “(A) the economic and environmental costs
19 or benefits to be realized through such a Fed-
20 eral-tribal partnership; and

21 “(B) the manner in which such a partner-
22 ship could contribute to the energy security of
23 the United States.

24 “(d) FUNDING.—

1 “(1) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated to carry out
3 this section \$500,000, to remain available until ex-
4 pended.

5 “(2) NONREIMBURSABILITY.—Costs incurred
6 by the Secretary in carrying out this section shall be
7 nonreimbursable.”.

8 (b) CONFORMING AMENDMENTS.—The table of con-
9 tents for the Energy Policy Act of 1992 is amended by
10 striking the items relating to title XXVI and inserting the
11 following:

 “Sec. 2601. Definitions.

 “Sec. 2602. Indian tribal energy resource development.

 “Sec. 2603. Indian tribal energy resource regulation.

 “Sec. 2604. Leases, business agreements, and rights-of-way involving energy
 development or transmission.

 “Sec. 2605. Indian mineral development review.

 “Sec. 2606. Federal Power Marketing Administrations.

 “Sec. 2607. Wind and hydropower feasibility study.”.

12 **SEC. 504. FOUR CORNERS TRANSMISSION LINE PROJECT.**

13 The Dine Power Authority, an enterprise of the Nav-
14 ajo Nation, shall be eligible to receive grants and other
15 assistance as authorized by section 217 of the Department
16 of Energy Organization Act, as added by section 502 of
17 this title, and section 2602 of the Energy Policy Act of
18 1992, as amended by this title, for activities associated
19 with the development of a transmission line from the Four
20 Corners Area to southern Nevada, including related power
21 generation opportunities.

1 **SEC. 505. ENERGY EFFICIENCY IN FEDERALLY ASSISTED**
2 **HOUSING.**

3 (a) IN GENERAL.—The Secretary of Housing and
4 Urban Development shall promote energy conservation in
5 housing that is located on Indian land and assisted with
6 Federal resources through—

7 (1) the use of energy-efficient technologies and
8 innovations (including the procurement of energy-ef-
9 ficient refrigerators and other appliances);

10 (2) the promotion of shared savings contracts;
11 and

12 (3) the use and implementation of such other
13 similar technologies and innovations as the Secretary
14 of Housing and Urban Development considers to be
15 appropriate.

16 (b) AMENDMENT.—Section 202(2) of the Native
17 American Housing and Self-Determination Act of 1996
18 (25 U.S.C. 4132(2)) is amended by inserting “improve-
19 ment to achieve greater energy efficiency,” after “plan-
20 ning,”.

21 **SEC. 506. CONSULTATION WITH INDIAN TRIBES.**

22 In carrying out this title and the amendments made
23 by this title, the Secretary of Energy and the Secretary
24 shall, as appropriate and to the maximum extent prac-
25 ticable, involve and consult with Indian tribes in a manner
26 that is consistent with the Federal trust and the govern-

1 ment-to-government relationships between Indian tribes
2 and the United States.

3 **TITLE VI—NUCLEAR MATTERS**
4 **Subtitle A—Price-Anderson Act**
5 **Amendments**

6 **SEC. 601. SHORT TITLE.**

7 This subtitle may be cited as the “Price-Anderson
8 Amendments Act of 2003”.

9 **SEC. 602. EXTENSION OF INDEMNIFICATION AUTHORITY.**

10 (a) INDEMNIFICATION OF NUCLEAR REGULATORY
11 COMMISSION LICENSEES.—Section 170 c. of the Atomic
12 Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

13 (1) in the subsection heading, by striking “LI-
14 CENSES” and inserting “LICENSEES”; and

15 (2) by striking “December 31, 2003” each
16 place it appears and inserting “December 31,
17 2023”.

18 (b) INDEMNIFICATION OF DEPARTMENT OF ENERGY
19 CONTRACTORS.—Section 170 d.(1)(A) of the Atomic En-
20 ergy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended
21 by striking “December 31, 2004” and inserting “Decem-
22 ber 31, 2023”.

23 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL
24 INSTITUTIONS.—Section 170 k. of the Atomic Energy Act
25 of 1954 (42 U.S.C. 2210(k)) is amended by striking “Au-

1 gust 1, 2002” each place it appears and inserting “Decem-
2 ber 31, 2023”.

3 **SEC. 603. MAXIMUM ASSESSMENT.**

4 Section 170 of the Atomic Energy Act of 1954 (42
5 U.S.C. 2210) is amended—

6 (1) in the second proviso of the third sentence
7 of subsection b.(1)—

8 (A) by striking “\$63,000,000” and insert-
9 ing “\$95,800,000”; and

10 (B) by striking “\$10,000,000 in any 1
11 year” and inserting “\$15,000,000 in any 1 year
12 (subject to adjustment for inflation under sub-
13 section t.)”; and

14 (2) in subsection t.(1)—

15 (A) by inserting “total and annual” after
16 “amount of the maximum”;

17 (B) by striking “the date of the enactment
18 of the Price-Anderson Amendments Act of
19 1988” and inserting “August 20, 2003”; and

20 (C) in subparagraph (A), by striking “such
21 date of enactment” and inserting “August 20,
22 2003”.

23 **SEC. 604. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

24 (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY
25 CONTRACTORS.—Section 170 d. of the Atomic Energy Act

1 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-
2 graph (2) and inserting the following:

3 “(2) In an agreement of indemnification entered into
4 under paragraph (1), the Secretary—

5 “(A) may require the contractor to provide and
6 maintain financial protection of such a type and in
7 such amounts as the Secretary shall determine to be
8 appropriate to cover public liability arising out of or
9 in connection with the contractual activity; and

10 “(B) shall indemnify the persons indemnified
11 against such liability above the amount of the finan-
12 cial protection required, in the amount of
13 \$10,000,000,000 (subject to adjustment for inflation
14 under subsection t.), in the aggregate, for all per-
15 sons indemnified in connection with the contract and
16 for each nuclear incident, including such legal costs
17 of the contractor as are approved by the Secretary.”.

18 (b) CONTRACT AMENDMENTS.—Section 170 d. of the
19 Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further
20 amended by striking paragraph (3) and inserting the fol-
21 lowing—

22 “(3) All agreements of indemnification under which
23 the Department of Energy (or its predecessor agencies)
24 may be required to indemnify any person under this sec-
25 tion shall be deemed to be amended, on the date of enact-

1 ment of the Price-Anderson Amendments Act of 2003, to
2 reflect the amount of indemnity for public liability and any
3 applicable financial protection required of the contractor
4 under this subsection.”.

5 (c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the
6 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is
7 amended—

8 (1) by striking “the maximum amount of finan-
9 cial protection required under subsection b. or”; and

10 (2) by striking “paragraph (3) of subsection d.,
11 whichever amount is more” and inserting “para-
12 graph (2) of subsection d.”.

13 **SEC. 605. INCIDENTS OUTSIDE THE UNITED STATES.**

14 (a) AMOUNT OF INDEMNIFICATION.—Section 170
15 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.
16 2210(d)(5)) is amended by striking “\$100,000,000” and
17 inserting “\$500,000,000”.

18 (b) LIABILITY LIMIT.—Section 170 e.(4) of the
19 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is
20 amended by striking “\$100,000,000” and inserting
21 “\$500,000,000”.

22 **SEC. 606. REPORTS.**

23 Section 170 p. of the Atomic Energy Act of 1954 (42
24 U.S.C. 2210(p)) is amended by striking “August 1, 1998”
25 and inserting “December 31, 2019”.

1 **SEC. 607. INFLATION ADJUSTMENT.**

2 Section 170 t. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210(t)) is amended—

4 (1) by redesignating paragraph (2) as para-
5 graph (3); and

6 (2) by inserting after paragraph (1) the fol-
7 lowing:

8 “(2) The Secretary shall adjust the amount of indem-
9 nification provided under an agreement of indemnification
10 under subsection d. not less than once during each 5-year
11 period following July 1, 2003, in accordance with the ag-
12 gregate percentage change in the Consumer Price Index
13 since—

14 “(A) that date, in the case of the first adjust-
15 ment under this paragraph; or

16 “(B) the previous adjustment under this para-
17 graph.”.

18 **SEC. 608. TREATMENT OF MODULAR REACTORS.**

19 Section 170 b. of the Atomic Energy Act of 1954 (42
20 U.S.C. 2210(b)) is amended by adding at the end the fol-
21 lowing:

22 “(5)(A) For purposes of this section only, the Com-
23 mission shall consider a combination of facilities described
24 in subparagraph (B) to be a single facility having a rated
25 capacity of 100,000 electrical kilowatts or more.

1 “(B) A combination of facilities referred to in sub-
2 paragraph (A) is 2 or more facilities located at a single
3 site, each of which has a rated capacity of 100,000 elec-
4 trical kilowatts or more but not more than 300,000 elec-
5 trical kilowatts, with a combined rated capacity of not
6 more than 1,300,000 electrical kilowatts.”.

7 **SEC. 609. APPLICABILITY.**

8 The amendments made by sections 603, 604, and 605
9 do not apply to a nuclear incident that occurs before the
10 date of the enactment of this Act.

11 **SEC. 610. PROHIBITION ON ASSUMPTION BY UNITED**
12 **STATES GOVERNMENT OF LIABILITY FOR**
13 **CERTAIN FOREIGN INCIDENTS.**

14 Section 170 of the Atomic Energy Act of 1954 (42
15 U.S.C. 2210) is amended by adding at the end the fol-
16 lowing new subsection:

17 “u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR
18 CERTAIN FOREIGN INCIDENTS.—Notwithstanding this
19 section or any other provision of law, no officer of the
20 United States or of any department, agency, or instrumen-
21 tality of the United States Government may enter into any
22 contract or other arrangement, or into any amendment or
23 modification of a contract or other arrangement, the pur-
24 pose or effect of which would be to directly or indirectly
25 impose liability on the United States Government, or any

1 department, agency, or instrumentality of the United
2 States Government, or to otherwise directly or indirectly
3 require an indemnity by the United States Government,
4 for nuclear incidents occurring in connection with the de-
5 sign, construction, or operation of a production facility or
6 utilization facility in any country whose government has
7 been identified by the Secretary of State as engaged in
8 state sponsorship of terrorist activities (specifically includ-
9 ing any country the government of which, as of September
10 11, 2001, had been determined by the Secretary of State
11 under section 620A(a) of the Foreign Assistance Act of
12 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export
13 Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)),
14 or section 40(d) of the Arms Export Control Act (22
15 U.S.C. 2780(d)) to have repeatedly provided support for
16 acts of international terrorism). This subsection shall not
17 apply to nuclear incidents occurring as a result of mis-
18 sions, carried out under the direction of the Secretary of
19 Energy, the Secretary of Defense, or the Secretary of
20 State, that are necessary to safely secure, store, transport,
21 or remove nuclear materials for nuclear safety or non-
22 proliferation purposes.”.

1 **SEC. 611. CIVIL PENALTIES.**

2 (a) **REPEAL OF AUTOMATIC REMISSION.**—Section
3 234A b.(2) of the Atomic Energy Act of 1954 (42 U.S.C.
4 2282a(b)(2)) is amended by striking the last sentence.

5 (b) **LIMITATION FOR NOT-FOR-PROFIT INSTITU-**
6 **TIONS.**—Subsection d. of section 234A of the Atomic En-
7 ergy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read
8 as follows:

9 “d.(1) Notwithstanding subsection a., in the case of
10 any not-for-profit contractor, subcontractor, or supplier,
11 the total amount of civil penalties paid under subsection
12 a. may not exceed the total amount of fees paid within
13 any 1-year period (as determined by the Secretary) under
14 the contract under which the violation occurs.

15 “(2) For purposes of this section, the term “not-for-
16 profit” means that no part of the net earnings of the con-
17 tractor, subcontractor, or supplier inures to the benefit of
18 any natural person or for-profit artificial person.”.

19 (c) **EFFECTIVE DATE.**—The amendments made by
20 this section shall not apply to any violation of the Atomic
21 Energy Act of 1954 (42 U.S.C. 2011 et seq.) occurring
22 under a contract entered into before the date of enactment
23 of this section.

1 **Subtitle B—General Nuclear**
2 **Matters**

3 **SEC. 621. LICENSES.**

4 Section 103 c. of the Atomic Energy Act of 1954 (42
5 U.S.C. 2133(c)) is amended by inserting “from the au-
6 thorization to commence operations” after “forty years”.

7 **SEC. 622. NRC TRAINING PROGRAM.**

8 (a) IN GENERAL.—In order to maintain the human
9 resource investment and infrastructure of the United
10 States in the nuclear sciences, health physics, and engi-
11 neering fields, in accordance with the statutory authorities
12 of the Nuclear Regulatory Commission relating to the ci-
13 vilian nuclear energy program, the Nuclear Regulatory
14 Commission shall carry out a training and fellowship pro-
15 gram to address shortages of individuals with critical nu-
16 clear safety regulatory skills.

17 (b) AUTHORIZATION OF APPROPRIATIONS.—

18 (1) IN GENERAL.—There are authorized to be
19 appropriated to the Nuclear Regulatory Commission
20 to carry out this section \$1,000,000 for each of fis-
21 cal years 2004 through 2008.

22 (2) AVAILABILITY.—Funds made available
23 under paragraph (1) shall remain available until ex-
24 pended.

1 **SEC. 623. COST RECOVERY FROM GOVERNMENT AGENCIES.**

2 Section 161 w. of the Atomic Energy Act of 1954
3 (42 U.S.C. 2201(w)) is amended—

4 (1) by striking “for or is issued” and all that
5 follows through “1702” and inserting “to the Com-
6 mission for, or is issued by the Commission, a li-
7 cense or certificate”;

8 (2) by striking “483a” and inserting “9701”;
9 and

10 (3) by striking “, of applicants for, or holders
11 of, such licenses or certificates”.

12 **SEC. 624. ELIMINATION OF PENSION OFFSET.**

13 Section 161 of the Atomic Energy Act of 1954 (42
14 U.S.C. 2201) is amended by adding at the end the fol-
15 lowing:

16 “y. Exempt from the application of sections 8344 and
17 8468 of title 5, United States Code, an annuitant who was
18 formerly an employee of the Commission who is hired by
19 the Commission as a consultant, if the Commission finds
20 that the annuitant has a skill that is critical to the per-
21 formance of the duties of the Commission.”.

22 **SEC. 625. ANTITRUST REVIEW.**

23 Section 105 c. of the Atomic Energy Act of 1954 (42
24 U.S.C. 2135(c)) is amended by adding at the end the fol-
25 lowing:

1 “(9) APPLICABILITY.—This subsection does not
2 apply to an application for a license to construct or oper-
3 ate a utilization facility or production facility under sec-
4 tion 103 or 104 b. that is filed on or after the date of
5 enactment of this paragraph.”.

6 **SEC. 626. DECOMMISSIONING.**

7 Section 161 i. of the Atomic Energy Act of 1954 (42
8 U.S.C. 2201(i)) is amended—

9 (1) by striking “and (3)” and inserting “(3)”;
10 and

11 (2) by inserting before the semicolon at the end
12 the following: “, and (4) to ensure that sufficient
13 funds will be available for the decommissioning of
14 any production or utilization facility licensed under
15 section 103 or 104 b., including standards and re-
16 strictions governing the control, maintenance, use,
17 and disbursement by any former licensee under this
18 Act that has control over any fund for the decom-
19 missioning of the facility”.

20 **SEC. 627. LIMITATION ON LEGAL FEE REIMBURSEMENT.**

21 The Department of Energy shall not, except as re-
22 quired under a contract entered into before the date of
23 enactment of this Act, reimburse any contractor or sub-
24 contractor of the Department for any legal fees or ex-

1 penses incurred with respect to a complaint subsequent
2 to—

3 (1) an adverse determination on the merits with
4 respect to such complaint against the contractor or
5 subcontractor by the Director of the Department of
6 Energy’s Office of Hearings and Appeals pursuant
7 to part 708 of title 10, Code of Federal Regulations,
8 or by a Department of Labor Administrative Law
9 Judge pursuant to section 211 of the Energy Reor-
10 ganization Act of 1974 (42 U.S.C. 5851); or

11 (2) an adverse final judgment by any State or
12 Federal court with respect to such complaint against
13 the contractor or subcontractor for wrongful termi-
14 nation or retaliation due to the making of disclo-
15 sures protected under chapter 12 of title 5, United
16 States Code, section 211 of the Energy Reorganiza-
17 tion Act of 1974 (42 U.S.C. 5851), or any com-
18 parable State law,

19 unless the adverse determination or final judgment is re-
20 versed upon further administrative or judicial review.

21 **SEC. 628. DECOMMISSIONING PILOT PROGRAM.**

22 (a) PILOT PROGRAM.—The Secretary of Energy shall
23 establish a decommissioning pilot program to decommis-
24 sion and decontaminate the sodium-cooled fast breeder ex-
25 perimental test-site reactor located in northwest Arkansas

1 in accordance with the decommissioning activities con-
2 tained in the August 31, 1998, Department of Energy re-
3 port on the reactor.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary of En-
6 ergy to carry out this section \$16,000,000.

7 **SEC. 629. REPORT ON FEASIBILITY OF DEVELOPING COM-**
8 **MERCIAL NUCLEAR ENERGY GENERATION**
9 **FACILITIES AT EXISTING DEPARTMENT OF**
10 **ENERGY SITES.**

11 Not later than 1 year after the date of the enactment
12 of this Act, the Secretary of Energy shall submit to Con-
13 gress a report on the feasibility of developing commercial
14 nuclear energy generation facilities at Department of En-
15 ergy sites in existence on the date of enactment of this
16 Act.

17 **SEC. 630. URANIUM SALES.**

18 (a) SALES, TRANSFERS, AND SERVICES.—Section
19 3112 of the USEC Privatization Act (42 U.S.C. 2297h-
20 10) is amended by striking subsections (d), (e), and (f)
21 and inserting the following:

22 “(d) INVENTORY SALES.—(1) In addition to the
23 transfers and sales authorized under subsections (b) and
24 (c) and under paragraph (5) of this subsection, the United

1 States Government may transfer or sell uranium in any
2 form subject to paragraphs (2), (3), and (4).

3 “(2) Except as provided in subsections (b) and (c)
4 and paragraph (5) of this subsection, no sale or transfer
5 of uranium shall be made under this subsection by the
6 United States Government unless—

7 “(A) the President determines that the material
8 is not necessary for national security needs and the
9 sale or transfer has no adverse impact on implemen-
10 tation of existing government-to-government agree-
11 ments;

12 “(B) the price paid to the appropriate Federal
13 agency, if the transaction is a sale, will not be less
14 than the fair market value of the material; and

15 “(C) the sale or transfer to commercial nuclear
16 power end users is made pursuant to a contract of
17 at least 3 years’ duration.

18 “(3) Except as provided in paragraph (5), the United
19 States Government shall not make any transfer or sale
20 of uranium in any form under this subsection that would
21 cause the total amount of uranium transferred or sold pur-
22 suant to this subsection that is delivered for consumption
23 by commercial nuclear power end users to exceed—

24 “(A) 3,000,000 pounds of U_3O_8 equivalent in
25 fiscal year 2004, 2005, 2006, 2007, 2008, or 2009;

1 “(B) 5,000,000 pounds of U₃O₈ equivalent in
2 fiscal year 2010 or 2011;

3 “(C) 7,000,000 pounds of U₃O₈ equivalent in
4 fiscal year 2012; and

5 “(D) 10,000,000 pounds of U₃O₈ equivalent in
6 fiscal year 2013 or any fiscal year thereafter.

7 “(4) Except for sales or transfers under paragraph
8 (5), for the purposes of this subsection, the recovery of
9 uranium from uranium bearing materials transferred or
10 sold by the United States Government to the domestic
11 uranium industry shall be the preferred method of making
12 uranium available. The recovered uranium shall be count-
13 ed against the annual maximum deliveries set forth in this
14 section, when such uranium is sold to end users.

15 “(5) The United States Government may make the
16 following sales and transfers:

17 “(A) Sales or transfers to a Federal agency if
18 the material is transferred for the use of the receiv-
19 ing agency without any resale or transfer to another
20 entity and the material does not meet commercial
21 specifications.

22 “(B) Sales or transfers to any person for na-
23 tional security purposes, as determined by the Sec-
24 retary.

1 “(C) Sales or transfers to any State or local
2 agency or nonprofit, charitable, or educational insti-
3 tution for use other than the generation of electricity
4 for commercial use.

5 “(D) Sales or transfers to the Department of
6 Energy research reactor sales program.

7 “(E) Sales or transfers, at fair market value,
8 for emergency purposes in the event of a disruption
9 in supply to commercial nuclear power end users in
10 the United States.

11 “(F) Sales or transfers, at fair market value,
12 for use in a commercial reactor in the United States
13 with nonstandard fuel requirements.

14 “(G) Sales or transfers provided for under law
15 for use by the Tennessee Valley Authority in relation
16 to the Department of Energy’s highly enriched ura-
17 nium or tritium programs.

18 “(6) For purposes of this subsection, the term
19 “United States Government” does not include the Ten-
20 nessee Valley Authority.

21 “(e) SAVINGS PROVISION.—Nothing in this sub-
22 chapter modifies the terms of the Russian HEU Agree-
23 ment.

24 “(f) SERVICES.—Notwithstanding any other provi-
25 sion of this section, if the Secretary determines that the

1 Corporation has failed, or may fail, to perform any obliga-
2 tion under the Agreement between the Department of En-
3 ergy and the Corporation dated June 17, 2002, and as
4 amended thereafter, which failure could result in termi-
5 nation of the Agreement, the Secretary shall notify Con-
6 gress, in such a manner that affords Congress an oppor-
7 tunity to comment, prior to a determination by the Sec-
8 retary whether termination, waiver, or modification of the
9 Agreement is required. The Secretary is authorized to take
10 such action as he determines necessary under the Agree-
11 ment to terminate, waive, or modify provisions of the
12 Agreement to achieve its purposes.”.

13 (b) REPORT.—Not later than 3 years after the date
14 of enactment of this Act, the Secretary of Energy shall
15 report to Congress on the implementation of this section.
16 The report shall include a discussion of available excess
17 uranium inventories; all sales or transfers made by the
18 United States Government; the impact of such sales or
19 transfers on the domestic uranium industry, the spot mar-
20 ket uranium price, and the national security interests of
21 the United States; and any steps taken to remediate any
22 adverse impacts of such sales or transfers.

1 **SEC. 631. COOPERATIVE RESEARCH AND DEVELOPMENT**
2 **AND SPECIAL DEMONSTRATION PROJECTS**
3 **FOR THE URANIUM MINING INDUSTRY.**

4 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
5 are authorized to be appropriated to the Secretary of En-
6 ergy \$10,000,000 for each of fiscal years 2004, 2005, and
7 2006 for—

8 (1) cooperative, cost-shared agreements between
9 the Department of Energy and domestic uranium
10 producers to identify, test, and develop improved in
11 situ leaching mining technologies, including low-cost
12 environmental restoration technologies that may be
13 applied to sites after completion of in situ leaching
14 operations; and

15 (2) funding for competitively selected dem-
16 onstration projects with domestic uranium producers
17 relating to—

18 (A) enhanced production with minimal en-
19 vironmental impacts;

20 (B) restoration of well fields; and

21 (C) decommissioning and decontamination
22 activities.

23 (b) **DOMESTIC URANIUM PRODUCER.**—For purposes
24 of this section, the term “domestic uranium producer” has
25 the meaning given that term in section 1018(4) of the En-
26 ergy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except

1 that the term shall not include any producer that has not
2 produced uranium from domestic reserves on or after July
3 30, 1998.

4 (c) LIMITATION.—No activities funded under this
5 section may be carried out in the State of New Mexico.

6 **SEC. 632. WHISTLEBLOWER PROTECTION.**

7 (a) DEFINITION OF EMPLOYER.—Section 211(a)(2)
8 of the Energy Reorganization Act of 1974 (42 U.S.C.
9 5851(a)(2)) is amended—

10 (1) in subparagraph (C), by striking “and” at
11 the end;

12 (2) in subparagraph (D), by striking the period
13 at the end and inserting “; and”; and

14 (3) by adding at the end the following:

15 “(E) a contractor or subcontractor of the
16 Commission.”.

17 (b) DE NOVO REVIEW.—Subsection (b) of such sec-
18 tion 211 is amended by adding at the end the following
19 new paragraph:

20 “(4) If the Secretary has not issued a final de-
21 cision within 540 days after the filing of a complaint
22 under paragraph (1), and there is no showing that
23 such delay is due to the bad faith of the person
24 seeking relief under this paragraph, such person
25 may bring an action at law or equity for de novo re-

1 view in the appropriate district court of the United
2 States, which shall have jurisdiction over such an ac-
3 tion without regard to the amount in controversy.”.

4 **SEC. 633. MEDICAL ISOTOPE PRODUCTION.**

5 Section 134 of the Atomic Energy Act of 1954 (42
6 U.S.C. 2160d) is amended—

7 (1) in subsection a., by striking “a. The Com-
8 mission” and inserting “a. IN GENERAL.—Except as
9 provided in subsection b., the Commission”;

10 (2) by redesignating subsection b. as subsection
11 c.; and

12 (3) by inserting after subsection a. the fol-
13 lowing:

14 “b. MEDICAL ISOTOPE PRODUCTION.—

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

16 “(A) HIGHLY ENRICHED URANIUM.—The
17 term ‘highly enriched uranium’ means uranium
18 enriched to include concentration of U-235
19 above 20 percent.

20 “(B) MEDICAL ISOTOPE.—The term ‘med-
21 ical isotope’ includes Molybdenum 99, Iodine
22 131, Xenon 133, and other radioactive mate-
23 rials used to produce a radiopharmaceutical for
24 diagnostic, therapeutic procedures or for re-
25 search and development.

1 “(C) **RADIOPHARMACEUTICAL.**—The term
2 ‘radiopharmaceutical’ means a radioactive iso-
3 tope that—

4 “(i) contains byproduct material com-
5 bined with chemical or biological material;
6 and

7 “(ii) is designed to accumulate tempo-
8 rarily in a part of the body for therapeutic
9 purposes or for enabling the production of
10 a useful image for use in a diagnosis of a
11 medical condition.

12 “(D) **RECIPIENT COUNTRY.**—The term ‘re-
13 cipient country’ means Canada, Belgium,
14 France, Germany, and the Netherlands.

15 “(2) **LICENSES.**—The Commission may issue a
16 license authorizing the export (including shipment to
17 and use at intermediate and ultimate consignees
18 specified in the license) to a recipient country of
19 highly enriched uranium for medical isotope produc-
20 tion if, in addition to any other requirements of this
21 Act (except subsection a.), the Commission deter-
22 mines that—

23 “(A) a recipient country that supplies an
24 assurance letter to the United States Govern-
25 ment in connection with the consideration by

1 the Commission of the export license applica-
2 tion has informed the United States Govern-
3 ment that any intermediate consignees and the
4 ultimate consignee specified in the application
5 are required to use the highly enriched uranium
6 solely to produce medical isotopes; and

7 “(B) the highly enriched uranium for med-
8 ical isotope production will be irradiated only in
9 a reactor in a recipient country that—

10 “(i) uses an alternative nuclear reac-
11 tor fuel; or

12 “(ii) is the subject of an agreement
13 with the United States Government to con-
14 vert to an alternative nuclear reactor fuel
15 when alternative nuclear reactor fuel can
16 be used in the reactor.

17 “(3) REVIEW OF PHYSICAL PROTECTION RE-
18 QUIREMENTS.—

19 “(A) IN GENERAL.—The Commission shall
20 review the adequacy of physical protection re-
21 quirements that, as of the date of an applica-
22 tion under paragraph (2), are applicable to the
23 transportation and storage of highly enriched
24 uranium for medical isotope production or con-

1 trol of residual material after irradiation and
2 extraction of medical isotopes.

3 “(B) IMPOSITION OF ADDITIONAL RE-
4 QUIREMENTS.—If the Commission determines
5 that additional physical protection requirements
6 are necessary (including a limit on the quantity
7 of highly enriched uranium that may be con-
8 tained in a single shipment), the Commission
9 shall impose such requirements as license condi-
10 tions or through other appropriate means.

11 “(4) FIRST REPORT TO CONGRESS.—

12 “(A) NAS STUDY.—The Secretary shall
13 enter into an arrangement with the National
14 Academy of Sciences to conduct a study to de-
15 termine—

16 “(i) the feasibility of procuring sup-
17 plies of medical isotopes from commercial
18 sources that do not use highly enriched
19 uranium;

20 “(ii) the current and projected de-
21 mand and availability of medical isotopes
22 in regular current domestic use;

23 “(iii) the progress that is being made
24 by the Department of Energy and others
25 to eliminate all use of highly enriched ura-

1 nium in reactor fuel, reactor targets, and
2 medical isotope production facilities; and

3 “(iv) the potential cost differential in
4 medical isotope production in the reactors
5 and target processing facilities if the prod-
6 ucts were derived from production systems
7 that do not involve fuels and targets with
8 highly enriched uranium.

9 “(B) FEASIBILITY.—For the purpose of
10 this subsection, the use of low enriched uranium
11 to produce medical isotopes shall be determined
12 to be feasible if—

13 “(i) low enriched uranium targets
14 have been developed and demonstrated for
15 use in the reactors and target processing
16 facilities that produce significant quantities
17 of medical isotopes to serve United States
18 needs for such isotopes;

19 “(ii) sufficient quantities of medical
20 isotopes are available from low enriched
21 uranium targets and fuel to meet United
22 States domestic needs; and

23 “(iii) the average anticipated total
24 cost increase from production of medical
25 isotopes in such facilities without use of

1 highly enriched uranium is less than 10
2 percent.

3 “(C) REPORT BY THE SECRETARY.—Not
4 later than 5 years after the date of enactment
5 of the Energy Policy Act of 2003, the Secretary
6 shall submit to Congress a report that—

7 “(i) contains the findings of the Na-
8 tional Academy of Sciences made in the
9 study under subparagraph (A); and

10 “(ii) discloses the existence of any
11 commitments from commercial producers
12 to provide domestic requirements for med-
13 ical isotopes without use of highly enriched
14 uranium consistent with the feasibility cri-
15 teria described in subparagraph (B) not
16 later than the date that is 4 years after
17 the date of submission of the report.

18 “(5) SECOND REPORT TO CONGRESS.—If the
19 study of the National Academy of Sciences deter-
20 mines under paragraph (4)(A)(i) that the procure-
21 ment of supplies of medical isotopes from commer-
22 cial sources that do not use highly enriched uranium
23 is feasible, but the Secretary is unable to report the
24 existence of commitments under paragraph
25 (4)(C)(ii), not later than the date that is 6 years

1 after the date of enactment of the Energy Policy Act
2 of 2003, the Secretary shall submit to Congress a
3 report that describes options for developing domestic
4 supplies of medical isotopes in quantities that are
5 adequate to meet domestic demand without the use
6 of highly enriched uranium consistent with the cost
7 increase described in paragraph (4)(B)(iii).

8 “(6) CERTIFICATION.—At such time as com-
9 mercial facilities that do not use highly enriched
10 uranium are capable of meeting domestic require-
11 ments for medical isotopes, within the cost increase
12 described in paragraph (4)(B)(iii) and without im-
13 pairing the reliable supply of medical isotopes for
14 domestic utilization, the Secretary shall submit to
15 Congress a certification to that effect.

16 “(7) SUNSET PROVISION.—After the Secretary
17 submits a certification under paragraph (6), the
18 Commission shall, by rule, terminate its review of
19 export license applications under this subsection.”.

20 **SEC. 634. FERNALD BYPRODUCT MATERIAL.**

21 Notwithstanding any other law, the material in the
22 concrete silos at the Fernald uranium processing facility
23 managed on the date of enactment of this Act by the De-
24 partment of Energy shall be considered byproduct mate-
25 rial (as defined by section 11 e.(2) of the Atomic Energy

1 Act of 1954 (42 U.S.C. 2014(e)(2))). The Department of
2 Energy may dispose of the material in a facility regulated
3 by the Nuclear Regulatory Commission or by an Agree-
4 ment State. If the Department of Energy disposes of the
5 material in such a facility, the Nuclear Regulatory Com-
6 mission or the Agreement State shall regulate the material
7 as byproduct material under that Act. This material shall
8 remain subject to the jurisdiction of the Department of
9 Energy until it is received at a commercial, Nuclear Regu-
10 latory Commission-licensed, or Agreement State-licensed
11 facility, at which time the material shall be subject to the
12 health and safety requirements of the Nuclear Regulatory
13 Commission or the Agreement State with jurisdiction over
14 the disposal site.

15 **SEC. 635. SAFE DISPOSAL OF GREATER-THAN-CLASS C RA-**
16 **DIOACTIVE WASTE.**

17 (a) DESIGNATION OF RESPONSIBILITY.—The Sec-
18 retary of Energy shall designate an Office within the De-
19 partment of Energy to have the responsibility for activities
20 needed to develop a new, or use an existing, facility for
21 safely disposing of all low-level radioactive waste with con-
22 centrations of radionuclides that exceed the limits estab-
23 lished by the Nuclear Regulatory Commission for Class
24 C radioactive waste (referred to in this section as “GTCC
25 waste”).

1 (b) COMPREHENSIVE PLAN.—The Secretary of En-
2 ergy shall develop a comprehensive plan for permanent
3 disposal of GTCC waste which includes plans for a dis-
4 posal facility. This plan shall be transmitted to Congress
5 in a series of reports, including the following:

6 (1) REPORT ON SHORT-TERM PLAN.—Not later
7 than 180 days after the date of enactment of this
8 Act, the Secretary of Energy shall submit to Con-
9 gress a plan describing the Secretary's operational
10 strategy for continued recovery and storage of
11 GTCC waste until a permanent disposal facility is
12 available.

13 (2) UPDATE OF 1987 REPORT.—

14 (A) IN GENERAL.—Not later than 1 year
15 after the date of enactment of this Act, the Sec-
16 retary of Energy shall submit to Congress an
17 update of the Secretary's February 1987 report
18 submitted to Congress that made comprehen-
19 sive recommendations for the disposal of GTCC
20 waste.

21 (B) CONTENTS.—The update under this
22 paragraph shall contain—

23 (i) a detailed description and identi-
24 fication of the GTCC waste that is to be
25 disposed;

1 (ii) a description of current domestic
2 and international programs, both Federal
3 and commercial, for management and dis-
4 position of GTCC waste;

5 (iii) an identification of the Federal
6 and private options and costs for the safe
7 disposal of GTCC waste;

8 (iv) an identification of the options for
9 ensuring that, wherever possible, genera-
10 tors and users of GTCC waste bear all rea-
11 sonable costs of waste disposal;

12 (v) an identification of any new statu-
13 tory authority required for disposal of
14 GTCC waste; and

15 (vi) in coordination with the Environ-
16 mental Protection Agency and the Nuclear
17 Regulatory Commission, an identification
18 of any new regulatory guidance needed for
19 the disposal of GTCC waste.

20 (3) REPORT ON COST AND SCHEDULE FOR
21 COMPLETION OF ENVIRONMENTAL IMPACT STATE-
22 MENT AND RECORD OF DECISION.—Not later than
23 180 days after the date of submission of the update
24 required under paragraph (2), the Secretary of En-
25 ergy shall submit to Congress a report containing an

1 estimate of the cost and schedule to complete a draft
2 and final environmental impact statement and to
3 issue a record of decision for a permanent disposal
4 facility, utilizing either a new or existing facility, for
5 GTCC waste.

6 **SEC. 636. PROHIBITION ON NUCLEAR EXPORTS TO COUN-**
7 **TRIES THAT SPONSOR TERRORISM.**

8 (a) IN GENERAL.—Section 129 of the Atomic Energy
9 Act of 1954 (42 U.S.C. 2158) is amended—

10 (1) by inserting “a.” before “No nuclear mate-
11 rials and equipment”; and

12 (2) by adding at the end the following new sub-
13 section:

14 “b.(1) Notwithstanding any other provision of law,
15 including specifically section 121 of this Act, and except
16 as provided in paragraphs (2) and (3), no nuclear mate-
17 rials and equipment or sensitive nuclear technology, in-
18 cluding items and assistance authorized by section 57 b.
19 of this Act and regulated under part 810 of title 10, Code
20 of Federal Regulations, and nuclear-related items on the
21 Commerce Control List maintained under part 774 of title
22 15 of the Code of Federal Regulations, shall be exported
23 or reexported, or transferred or retransferred whether di-
24 rectly or indirectly, and no Federal agency shall issue any
25 license, approval, or authorization for the export or reex-

1 port, or transfer, or retransfer, whether directly or indi-
2 rectly, of these items or assistance (as defined in this para-
3 graph) to any country whose government has been identi-
4 fied by the Secretary of State as engaged in state sponsor-
5 ship of terrorist activities (specifically including any coun-
6 try the government of which has been determined by the
7 Secretary of State under section 620A(a) of the Foreign
8 Assistance Act of 1961 (22 U.S.C. 2371(a)), section
9 6(j)(1) of the Export Administration Act of 1979 (50
10 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Ex-
11 port Control Act (22 U.S.C. 2780(d)) to have repeatedly
12 provided support for acts of international terrorism).

13 “(2) This subsection shall not apply to exports, reex-
14 ports, transfers, or retransfers of radiation monitoring
15 technologies, surveillance equipment, seals, cameras, tam-
16 per-indication devices, nuclear detectors, monitoring sys-
17 tems, or equipment necessary to safely store, transport,
18 or remove hazardous materials, whether such items, serv-
19 ices, or information are regulated by the Department of
20 Energy, the Department of Commerce, or the Nuclear
21 Regulatory Commission, except to the extent that such
22 technologies, equipment, seals, cameras, devices, detectors,
23 or systems are available for use in the design or construc-
24 tion of nuclear reactors or nuclear weapons.

1 “(3) The President may waive the application of
2 paragraph (1) to a country if the President determines
3 and certifies to Congress that the waiver will not result
4 in any increased risk that the country receiving the waiver
5 will acquire nuclear weapons, nuclear reactors, or any ma-
6 terials or components of nuclear weapons and—

7 “(A) the government of such country has not
8 within the preceding 12-month period willfully aided
9 or abetted the international proliferation of nuclear
10 explosive devices to individuals or groups or willfully
11 aided and abetted an individual or groups in acquir-
12 ing unsafeguarded nuclear materials;

13 “(B) in the judgment of the President, the gov-
14 ernment of such country has provided adequate,
15 verifiable assurances that it will cease its support for
16 acts of international terrorism;

17 “(C) the waiver of that paragraph is in the vital
18 national security interest of the United States; or

19 “(D) such a waiver is essential to prevent or re-
20 spond to a serious radiological hazard in the country
21 receiving the waiver that may or does threaten pub-
22 lic health and safety.”.

23 (b) APPLICABILITY TO EXPORTS APPROVED FOR
24 TRANSFER BUT NOT TRANSFERRED.—Subsection b. of
25 section 129 of Atomic Energy Act of 1954, as added by

1 subsection (a) of this section, shall apply with respect to
2 exports that have been approved for transfer as of the date
3 of the enactment of this Act but have not yet been trans-
4 ferred as of that date.

5 **SEC. 637. URANIUM ENRICHMENT FACILITIES.**

6 (a) NUCLEAR REGULATORY COMMISSION REVIEW OF
7 APPLICATIONS.—

8 (1) IN GENERAL.—In order to facilitate a time-
9 ly review and approval of an application in a pro-
10 ceeding for a license for the construction and oper-
11 ation of a uranium enrichment facility under sec-
12 tions 53 and 63 of the Atomic Energy Act of 1954
13 (42 U.S.C. 2073, 2093) (referred to in this sub-
14 section as a “covered proceeding”), the Nuclear Reg-
15 ulatory Commission shall, not later than 30 days
16 after the receipt of the application, establish, by
17 order, the schedule for the conduct of any hearing
18 that may be requested by any person whose interest
19 may be affected by the covered proceeding.

20 (2) FINAL AGENCY DECISION.—The schedule
21 shall provide that a final decision by the Commission
22 on the application shall be made not later than the
23 date that is 2 years after the date of submission of
24 the application by the applicant.

25 (3) COMPLIANCE WITH SCHEDULE.—

1 (A) IN GENERAL.—The Commission shall
2 establish a process to assess compliance with
3 the schedule established under paragraph (1)
4 on an ongoing basis during the course of the re-
5 view of the application, including ensuring com-
6 pliance with schedules and milestones that are
7 established for the conduct of any covered pro-
8 ceeding by the Atomic Safety and Licensing
9 Board.

10 (B) REPORT.—The Commission shall sub-
11 mit to Congress on a bimonthly basis a report
12 describing the status of compliance with the
13 schedule established under paragraph (1), in-
14 cluding a description of the status of actions re-
15 quired to be completed pursuant to the schedule
16 by officers and employees of—

17 (i) the Commission in undertaking the
18 safety and environmental review of applica-
19 tions; and

20 (ii) the Atomic Safety and Licensing
21 Board in the conduct of any covered pro-
22 ceeding.

23 (4) ENVIRONMENTAL REVIEW.—

24 (A) IN GENERAL.—In evaluating an appli-
25 cation under the National Environmental Policy

1 Act of 1969 (42 U.S.C. 4321 et seq.) for licens-
2 ing of a facility in a covered proceeding, the
3 Commission shall limit the consideration of
4 need to whether the licensing of the facility
5 would advance the national interest of encour-
6 aging in the United States—

7 (i) additional secure, reliable uranium
8 enrichment capacity;

9 (ii) diverse supplies and suppliers of
10 uranium enrichment capacity; and

11 (iii) the deployment of advanced cen-
12 trifuge enrichment technology.

13 (B) COMMENT.—In carrying out subpara-
14 graph (A), the Commission shall consider and
15 solicit the views of other affected Federal agen-
16 cies.

17 (C) ATOMIC SAFETY AND LICENSING
18 BOARD.—

19 (i) IN GENERAL.—Except as provided
20 in clause (ii), in any covered proceeding,
21 the Commission shall allow the litigation
22 and resolution by the Atomic Safety and
23 Licensing Board of issues arising under
24 the National Environmental Policy Act of
25 1969 (42 U.S.C. 4321 et seq.), on the

1 basis of information submitted by the ap-
2 plicant in its environmental report, prior to
3 publication of any required environmental
4 impact statement.

5 (ii) EXCEPTIONS.—On the publication
6 of any required environmental impact
7 statement, issues may be proffered for res-
8 olution by the Atomic Safety and Licensing
9 Board only if information or conclusions in
10 the environmental impact statement differ
11 significantly from the information or con-
12 clusions in the environmental report sub-
13 mitted by the applicant.

14 (D) ENVIRONMENTAL JUSTICE.—In a cov-
15 ered proceeding, the Commission shall apply the
16 criteria in Appendix C of the final report enti-
17 tled “Environmental Review Guidance for Li-
18 censing Actions Associated with NMSS Pro-
19 grams” (NUREG–1748), published in August
20 2003, in any required review of environmental
21 justice.

22 (5) LOW-LEVEL WASTE.—In any covered pro-
23 ceeding, the Commission shall—

24 (A) deem the obligation of the Secretary of
25 Energy pursuant to section 3113 of the USEC

1 Privitization Act (42 U.S.C. 2297 h–11) to con-
2 stitute a plausible strategy with regard to the
3 disposition of depleted uranium generated by
4 such facility; and

5 (B) treat any residual material that re-
6 mains following the extraction of any usable re-
7 source value from depleted uranium as low-level
8 radioactive waste under part 61 of title 10,
9 Code of Federal Regulations.

10 (6) ADJUDICATORY HEARING ON LICENSING OF
11 URANIUM ENRICHMENT FACILITIES.—Section 193(b)
12 of the Atomic Energy Act of 1954 (42 U.S.C.
13 2243(b)) is amended by striking paragraph (2) and
14 inserting the following:

15 “(2) TIMING.—On the issuance of a final deci-
16 sion on the application by the Atomic Safety and Li-
17 censing Board, the Commission shall issue and make
18 immediately effective any license for the construction
19 and operation of a uranium enrichment facility
20 under sections 53 and 63, on a determination by the
21 Commission that the issuance of the license would
22 not cause irreparable injury to the public health and
23 safety or the common defense and security, notwith-
24 standing the pendency before the Commission of any

1 appeal or petition for review of any decision of the
2 Atomic Safety and Licensing Board.”.

3 (b) DEPARTMENT OF ENERGY RESPONSIBILITIES.—

4 (1) IN GENERAL.—Not later than 180 days
5 after a request is made to the Secretary of Energy
6 by an applicant for or recipient of a license for a
7 uranium enrichment facility under section 53, 63, or
8 193 of the Atomic Energy Act of 1954 (42 U.S.C.
9 2073, 2093, 2243), the Secretary shall enter into a
10 memorandum of agreement with the applicant or li-
11 censee that provides a schedule for the transfer to
12 the Secretary, not later than 5 years after the gen-
13 eration of any depleted uranium hexafluoride, of title
14 and possession of the depleted uranium hexafluoride
15 to be generated by the applicant or licensee.

16 (2) COST.—

17 (A) IN GENERAL.—Subject to subpara-
18 graphs (B) and (C), the memorandum of agree-
19 ment shall specify the cost to be assessed by the
20 Secretary for the transfer to the Secretary of
21 the depleted uranium hexafluoride.

22 (B) NONDISCRIMINATORY BASIS.—The
23 cost shall be determined by the Secretary on a
24 nondiscriminatory basis.

1 (C) COST.—Taking into account the phys-
2 ical and chemical characteristics of such de-
3 pleted uranium hexafluoride, the cost shall not
4 exceed the cost assessed by the Secretary for
5 the acceptance of depleted uranium hexafluoride
6 under—

7 (i) the memorandum of agreement be-
8 tween the United States Department of
9 Energy and the United States Enrichment
10 Corporation Relating to Depleted Ura-
11 nium, dated June 30, 1998; and

12 (ii) the Agreement Between the U.S.
13 Department of Energy and USEC Inc.,
14 dated June 17, 2002.

15 **SEC. 638. NATIONAL URANIUM STOCKPILE.**

16 (a) STOCKPILE CREATION.—The Secretary of En-
17 ergy may create a national low-enriched uranium stockpile
18 with the goals to—

- 19 (1) enhance national energy security; and
20 (2) reduce global proliferation threats.

21 (b) SOURCE OF MATERIAL.—The Secretary shall ob-
22 tain material for the stockpile from—

- 23 (1) material derived from blend-down of Rus-
24 sian highly enriched uranium derived from weapons
25 materials; and

1 (2) domestically mined and enriched uranium.

2 (c) LIMITATION ON SALES OR TRANSFERS.—Sales or
3 transfer of materials in the stockpile shall occur pursuant
4 to section 3112 of the USEC Privatization Act (42 U.S.C.
5 2297h–10), as amended by section 630.

6 **Subtitle C—Advanced Reactor**
7 **Hydrogen Cogeneration Project**

8 **SEC. 651. PROJECT ESTABLISHMENT.**

9 The Secretary of Energy (in this subtitle referred to
10 as the “Secretary”) is directed to establish an Advanced
11 Reactor Hydrogen Cogeneration Project.

12 **SEC. 652. PROJECT DEFINITION.**

13 The project shall consist of the research, develop-
14 ment, design, construction, and operation of a hydrogen
15 production cogeneration research facility that, relative to
16 the current commercial reactors, enhances safety features,
17 reduces waste production, enhances thermal efficiencies,
18 increases proliferation resistance, and has the potential for
19 improved economics and physical security in reactor siting.
20 This facility shall be constructed so as to enable research
21 and development on advanced reactors of the type selected
22 and on alternative approaches for reactor-based produc-
23 tion of hydrogen.

1 **SEC. 653. PROJECT MANAGEMENT.**

2 (a) MANAGEMENT.—The project shall be managed
3 within the Department by the Office of Nuclear Energy,
4 Science, and Technology.

5 (b) LEAD LABORATORY.—The lead laboratory for the
6 project, providing the site for the reactor construction,
7 shall be the Idaho National Engineering and Environ-
8 mental Laboratory (in this subtitle referred to as
9 “INEEL”).

10 (c) STEERING COMMITTEE.—The Secretary shall es-
11 tablish a national steering committee with membership
12 from the national laboratories, universities, and industry
13 to provide advice to the Secretary and the Director of the
14 Office of Nuclear Energy, Science, and Technology on
15 technical and program management aspects of the project.

16 (d) COLLABORATION.—Project activities shall be con-
17 ducted at INEEL, other national laboratories, univer-
18 sities, domestic industry, and international partners.

19 **SEC. 654. PROJECT REQUIREMENTS.**

20 (a) RESEARCH AND DEVELOPMENT.—

21 (1) IN GENERAL.—The project shall include
22 planning, research and development, design, and
23 construction of an advanced, next-generation, nu-
24 clear energy system suitable for enabling further re-
25 search and development on advanced reactor tech-

1 nologies and alternative approaches for reactor-based
2 generation of hydrogen.

3 (2) REACTOR TEST CAPABILITIES AT INEEL.—

4 The project shall utilize, where appropriate, exten-
5 sive reactor test capabilities resident at INEEL.

6 (3) ALTERNATIVES.—The project shall be de-
7 signed to explore technical, environmental, and eco-
8 nomic feasibility of alternative approaches for reac-
9 tor-based hydrogen production.

10 (4) INDUSTRIAL LEAD.—The industrial lead for
11 the project shall be a company incorporated in the
12 United States.

13 (b) INTERNATIONAL COLLABORATION.—

14 (1) IN GENERAL.—The Secretary shall seek
15 international cooperation, participation, and finan-
16 cial contribution in this project.

17 (2) ASSISTANCE FROM INTERNATIONAL PART-
18 NERS.—The Secretary may contract for assistance
19 from specialists or facilities from member countries
20 of the Generation IV International Forum, the Rus-
21 sian Federation, or other international partners
22 where such specialists or facilities provide access to
23 cost-effective and relevant skills or test capabilities.

1 (3) GENERATION IV INTERNATIONAL FORUM.—
2 International activities shall be coordinated with the
3 Generation IV International Forum.

4 (4) GENERATION IV NUCLEAR ENERGY SYS-
5 TEMS PROGRAM.—The Secretary may combine this
6 project with the Generation IV Nuclear Energy Sys-
7 tems Program.

8 (c) DEMONSTRATION.—The overall project, which
9 may involve demonstration of selected project objectives
10 in a partner nation, must demonstrate both electricity and
11 hydrogen production and may provide flexibility, where
12 technically and economically feasible in the design and
13 construction, to enable tests of alternative reactor core
14 and cooling configurations.

15 (d) PARTNERSHIPS.—The Secretary shall establish
16 cost-shared partnerships with domestic industry or inter-
17 national participants for the research, development, de-
18 sign, construction, and operation of the research facility,
19 and preference in determining the final project structure
20 shall be given to an overall project which retains United
21 States leadership while maximizing cost sharing opportu-
22 nities and minimizing Federal funding responsibilities.

23 (e) TARGET DATE.—The Secretary shall select tech-
24 nologies and develop the project to provide initial testing
25 of either hydrogen production or electricity generation by

1 2010, or provide a report to Congress explaining why this
2 date is not feasible.

3 (f) WAIVER OF CONSTRUCTION TIMELINES.—The
4 Secretary is authorized to conduct the Advanced Reactor
5 Hydrogen Cogeneration Project without the constraints of
6 DOE Order 413.3, relating to program and project man-
7 agement for the acquisition of capital assets, as necessary
8 to meet the specified operational date.

9 (g) COMPETITION.—The Secretary may fund up to
10 2 teams for up to 1 year to develop detailed proposals for
11 competitive evaluation and selection of a single proposal
12 and concept for further progress. The Secretary shall de-
13 fine the format of the competitive evaluation of proposals.

14 (h) USE OF FACILITIES.—Research facilities in in-
15 dustry, national laboratories, or universities either within
16 the United States or with cooperating international part-
17 ners may be used to develop the enabling technologies for
18 the research facility. Utilization of domestic university-
19 based facilities shall be encouraged to provide educational
20 opportunities for student development.

21 (i) ROLE OF NUCLEAR REGULATORY COMMISSION.—

22 (1) IN GENERAL.—The Nuclear Regulatory
23 Commission shall have licensing and regulatory au-
24 thority for any reactor authorized under this sub-

1 title, pursuant to section 202 of the Energy Reorga-
2 nization Act of 1974 (42 U.S.C. 5842).

3 (2) RISK-BASED CRITERIA.—The Secretary
4 shall seek active participation of the Nuclear Regu-
5 latory Commission throughout the project to develop
6 risk-based criteria for any future commercial devel-
7 opment of a similar reactor architecture.

8 (j) REPORT—The Secretary shall develop and trans-
9 mit to Congress a comprehensive project plan not later
10 than April 30, 2004. The project plan shall be updated
11 annually with each annual budget submission.

12 **SEC. 655. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) RESEARCH, DEVELOPMENT, AND DESIGN PRO-
14 GRAMS.—The following sums are authorized to be appro-
15 priated to the Secretary for all activities under this sub-
16 title except for construction activities described in sub-
17 section (b):

18 (1) For fiscal year 2004, \$35,000,000.

19 (2) For each of fiscal years 2005 through 2008,
20 \$150,000,000.

21 (3) For fiscal years beyond 2008, such sums as
22 are necessary.

23 (b) CONSTRUCTION.—There are authorized to be ap-
24 propriated to the Secretary for all project-related con-

1 struction activities, to be available until expended,
2 \$500,000,000.

3 **Subtitle D—Nuclear Security**

4 **SEC. 661. NUCLEAR FACILITY THREATS.**

5 (a) STUDY.—The President, in consultation with the
6 Nuclear Regulatory Commission (referred to in this sub-
7 title as the “Commission”) and other appropriate Federal,
8 State, and local agencies and private entities, shall con-
9 duct a study to identify the types of threats that pose an
10 appreciable risk to the security of the various classes of
11 facilities licensed by the Commission under the Atomic
12 Energy Act of 1954 (42 U.S.C. 2011 et seq.). Such study
13 shall take into account, but not be limited to—

- 14 (1) the events of September 11, 2001;
- 15 (2) an assessment of physical, cyber, bio-
16 chemical, and other terrorist threats;
- 17 (3) the potential for attack on facilities by mul-
18 tiple coordinated teams of a large number of individ-
19 uals;
- 20 (4) the potential for assistance in an attack
21 from several persons employed at the facility;
- 22 (5) the potential for suicide attacks;
- 23 (6) the potential for water-based and air-based
24 threats;

1 (7) the potential use of explosive devices of con-
2 siderable size and other modern weaponry;

3 (8) the potential for attacks by persons with a
4 sophisticated knowledge of facility operations;

5 (9) the potential for fires, especially fires of
6 long duration;

7 (10) the potential for attacks on spent fuel
8 shipments by multiple coordinated teams of a large
9 number of individuals;

10 (11) the adequacy of planning to protect the
11 public health and safety at and around nuclear fa-
12 cilities, as appropriate, in the event of a terrorist at-
13 tack against a nuclear facility; and

14 (12) the potential for theft and diversion of nu-
15 clear materials from such facilities.

16 (b) SUMMARY AND CLASSIFICATION REPORT.—Not
17 later than 180 days after the date of the enactment of
18 this Act, the President shall transmit to Congress and the
19 Commission a report—

20 (1) summarizing the types of threats identified
21 under subsection (a); and

22 (2) classifying each type of threat identified
23 under subsection (a), in accordance with existing
24 laws and regulations, as either—

1 (A) involving attacks and destructive acts,
2 including sabotage, directed against the facility
3 by an enemy of the United States, whether a
4 foreign government or other person, or other-
5 wise falling under the responsibilities of the
6 Federal Government; or

7 (B) involving the type of risks that Com-
8 mission licensees should be responsible for
9 guarding against.

10 (c) FEDERAL ACTION REPORT.—Not later than 90
11 days after the date on which a report is transmitted under
12 subsection (b), the President shall transmit to Congress
13 a report on actions taken, or to be taken, to address the
14 types of threats identified under subsection (b)(2)(A), in-
15 cluding identification of the Federal, State, and local
16 agencies responsible for carrying out the obligations and
17 authorities of the United States. Such report may include
18 a classified annex, as appropriate.

19 (d) REGULATIONS.—Not later than 180 days after
20 the date on which a report is transmitted under subsection
21 (b), the Commission may revise, by rule, the design basis
22 threats issued before the date of enactment of this section
23 as the Commission considers appropriate based on the
24 summary and classification report.

1 (e) PHYSICAL SECURITY PROGRAM.—The Commis-
2 sion shall establish an operational safeguards response
3 evaluation program that ensures that the physical protec-
4 tion capability and operational safeguards response for
5 sensitive nuclear facilities, as determined by the Commis-
6 sion consistent with the protection of public health and
7 the common defense and security, shall be tested periodi-
8 cally through Commission approved or designed, observed,
9 and evaluated force-on-force exercises to determine wheth-
10 er the ability to defeat the design basis threat is being
11 maintained. For purposes of this subsection, the term
12 “sensitive nuclear facilities” includes at a minimum com-
13 mercial nuclear power plants and category I fuel cycle fa-
14 cilities.

15 (f) CONTROL OF INFORMATION.—Notwithstanding
16 any other provision of law, the Commission may undertake
17 any rulemaking under this subtitle in a manner that will
18 fully protect safeguards and classified national security in-
19 formation.

20 (g) FEDERAL SECURITY COORDINATORS.—

21 (1) REGIONAL OFFICES.—Not later than 18
22 months after the date of enactment of this Act, the
23 Commission shall assign a Federal security coordi-
24 nator, under the employment of the Commission, to
25 each region of the Commission.

1 (2) RESPONSIBILITIES.—The Federal security
2 coordinator shall be responsible for—

3 (A) communicating with the Commission
4 and other Federal, State, and local authorities
5 concerning threats, including threats against
6 such classes of facilities as the Commission de-
7 termines to be appropriate;

8 (B) ensuring that such classes of facilities
9 as the Commission determines to be appropriate
10 maintain security consistent with the security
11 plan in accordance with the appropriate threat
12 level; and

13 (C) assisting in the coordination of secu-
14 rity measures among the private security forces
15 at such classes of facilities as the Commission
16 determines to be appropriate and Federal,
17 State, and local authorities, as appropriate.

18 (h) TRAINING PROGRAM.—The President shall estab-
19 lish a program to provide technical assistance and training
20 to Federal agencies, the National Guard, and State and
21 local law enforcement and emergency response agencies in
22 responding to threats against a designated nuclear facility.

1 **SEC. 662. FINGERPRINTING FOR CRIMINAL HISTORY**
2 **RECORD CHECKS.**

3 (a) IN GENERAL.—Subsection a. of section 149 of
4 the Atomic Energy Act of 1954 (42 U.S.C. 2169(a)) is
5 amended—

6 (1) by striking “a. The Nuclear” and all that
7 follows through “section 147.” and inserting the fol-
8 lowing:

9 “a. IN GENERAL.—

10 “(1) REQUIREMENTS.—

11 “(A) IN GENERAL.— The Commission
12 shall require each individual or entity—

13 “(i) that is licensed or certified to en-
14 gage in an activity subject to regulation by
15 the Commission;

16 “(ii) that has filed an application for
17 a license or certificate to engage in an ac-
18 tivity subject to regulation by the Commis-
19 sion; or

20 “(iii) that has notified the Commis-
21 sion, in writing, of an intent to file an ap-
22 plication for licensing, certification, permit-
23 ting, or approval of a product or activity
24 subject to regulation by the Commission,
25 to fingerprint each individual described in sub-
26 paragraph (B) before the individual is per-

1 mitted unescorted access or access, whichever is
2 applicable, as described in subparagraph (B).

3 “(B) INDIVIDUALS REQUIRED TO BE
4 FINGERPRINTED.—The Commission shall re-
5 quire to be fingerprinted each individual who—

6 “(i) is permitted unescorted access
7 to—

8 “(I) a utilization facility; or

9 “(II) radioactive material or
10 other property subject to regulation
11 by the Commission that the Commis-
12 sion determines to be of such signifi-
13 cance to the public health and safety
14 or the common defense and security
15 as to warrant fingerprinting and back-
16 ground checks; or

17 “(ii) is permitted access to safeguards
18 information under section 147.”;

19 (2) by striking “All fingerprints obtained by a
20 licensee or applicant as required in the preceding
21 sentence” and inserting the following:

22 “(2) SUBMISSION TO THE ATTORNEY GEN-
23 ERAL.—All fingerprints obtained by an individual or
24 entity as required in paragraph (1)”;

1 (3) by striking “The costs of any identification
2 and records check conducted pursuant to the pre-
3 ceding sentence shall be paid by the licensee or ap-
4 plicant.” and inserting the following:

5 “(3) COSTS.—The costs of any identification
6 and records check conducted pursuant to paragraph
7 (1) shall be paid by the individual or entity required
8 to conduct the fingerprinting under paragraph
9 (1)(A).”; and

10 (4) by striking “Notwithstanding any other pro-
11 vision of law, the Attorney General may provide all
12 the results of the search to the Commission, and, in
13 accordance with regulations prescribed under this
14 section, the Commission may provide such results to
15 licensee or applicant submitting such fingerprints.”
16 and inserting the following:

17 “(4) PROVISION TO INDIVIDUAL OR ENTITY RE-
18 QUIRED TO CONDUCT FINGERPRINTING.—Notwith-
19 standing any other provision of law, the Attorney
20 General may provide all the results of the search to
21 the Commission, and, in accordance with regulations
22 prescribed under this section, the Commission may
23 provide such results to the individual or entity re-
24 quired to conduct the fingerprinting under para-
25 graph (1)(A).”.

1 (b) ADMINISTRATION.—Subsection c. of section 149
2 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(e))
3 is amended—

4 (1) by striking “, subject to public notice and
5 comment, regulations—” and inserting “require-
6 ments—”; and

7 (2) by striking, in paragraph (2)(B),
8 “unescorted access to the facility of a licensee or ap-
9 plicant” and inserting “unescorted access to a utili-
10 zation facility, radioactive material, or other prop-
11 erty described in subsection a.(1)(B)”.

12 (c) BIOMETRIC METHODS.—Subsection d. of section
13 149 of the Atomic Energy Act of 1954 (42 U.S.C.
14 2169(d)) is redesignated as subsection e., and the fol-
15 lowing is inserted after subsection c.:

16 “d. USE OF OTHER BIOMETRIC METHODS.—The
17 Commission may satisfy any requirement for a person to
18 conduct fingerprinting under this section using any other
19 biometric method for identification approved for use by
20 the Attorney General, after the Commission has approved
21 the alternative method by rule.”.

1 **SEC. 663. USE OF FIREARMS BY SECURITY PERSONNEL OF**
2 **LICENSEES AND CERTIFICATE HOLDERS OF**
3 **THE COMMISSION.**

4 Section 161 of the Atomic Energy Act of 1954 (42
5 U.S.C. 2201) is amended by adding at the end the fol-
6 lowing subsection:

7 “(z)(1) notwithstanding section 922(o), (v), and
8 (w) of title 18, United States Code, or any similar
9 provision of any State law or any similar rule or reg-
10 ulation of a State or any political subdivision of a
11 State prohibiting the transfer or possession of a
12 handgun, a rifle or shotgun, a short-barreled shot-
13 gun, a short-barreled rifle, a machinegun, a semi-
14 automatic assault weapon, ammunition for the fore-
15 going, or a large capacity ammunition feeding de-
16 vice, authorize security personnel of licensees and
17 certificate holders of the Commission (including em-
18 ployees of contractors of licensees and certificate
19 holders) to receive, possess, transport, import, and
20 use 1 or more of those weapons, ammunition, or de-
21 vices, if the Commission determines that—

22 “(A) such authorization is necessary to the
23 discharge of the security personnel’s official du-
24 ties; and

25 “(B) the security personnel—

1 “(i) are not otherwise prohibited from
2 possessing or receiving a firearm under
3 Federal or State laws pertaining to posses-
4 sion of firearms by certain categories of
5 persons;

6 “(ii) have successfully completed re-
7 quirements established through guidelines
8 implementing this subsection for training
9 in use of firearms and tactical maneuvers;

10 “(iii) are engaged in the protection
11 of—

12 “(I) facilities owned or operated
13 by a Commission licensee or certifi-
14 cate holder that are designated by the
15 Commission; or

16 “(II) radioactive material or
17 other property owned or possessed by
18 a person that is a licensee or certifi-
19 cate holder of the Commission, or that
20 is being transported to or from a fa-
21 cility owned or operated by such a li-
22 censee or certificate holder, and that
23 has been determined by the Commis-
24 sion to be of significance to the com-

1 mon defense and security or public
2 health and safety; and

3 “(iv) are discharging their official du-
4 ties.

5 “(2) Such receipt, possession, transportation,
6 importation, or use shall be subject to—

7 “(A) chapter 44 of title 18, United States
8 Code, except for section 922(a)(4), (o), (v), and
9 (w);

10 “(B) chapter 53 of title 26, United States
11 Code, except for section 5844; and

12 “(C) a background check by the Attorney
13 General, based on fingerprints and including a
14 check of the system established under section
15 103(b) of the Brady Handgun Violence Preven-
16 tion Act (18 U.S.C. 922 note) to determine
17 whether the person applying for the authority is
18 prohibited from possessing or receiving a fire-
19 arm under Federal or State law.

20 “(3) This subsection shall become effective
21 upon the issuance of guidelines by the Commission,
22 with the approval of the Attorney General, to govern
23 the implementation of this subsection.

24 “(4) In this subsection, the terms “handgun”,
25 “rifle”, “shotgun”, “firearm”, “ammunition”, “ma-

1 chinegun”, “semiautomatic assault weapon”, “large
2 capacity ammunition feeding device”, “short-bar-
3 reled shotgun”, and “short-barreled rifle” shall have
4 the meanings given those terms in section 921(a) of
5 title 18, United States Code.”.

6 **SEC. 664. UNAUTHORIZED INTRODUCTION OF DANGEROUS**
7 **WEAPONS.**

8 Section 229 a. of the Atomic Energy Act of 1954 (42
9 U.S.C. 2278a(a)) is amended in the first sentence by in-
10 serting “or subject to the licensing authority of the Com-
11 mission or to certification by the Commission under this
12 Act or any other Act” before the period at the end.

13 **SEC. 665. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.**

14 (a) IN GENERAL.—Section 236 a. of the Atomic En-
15 ergy Act of 1954 (42 U.S.C. 2284(a)) is amended—

16 (1) in paragraph (2), by striking “storage facil-
17 ity” and inserting “storage, treatment, or disposal
18 facility”;

19 (2) in paragraph (3)—

20 (A) by striking “such a utilization facility”
21 and inserting “a utilization facility licensed
22 under this Act”; and

23 (B) by striking “or” at the end;

24 (3) in paragraph (4)—

1 (A) by striking “facility licensed” and in-
2 serting “, uranium conversion, or nuclear fuel
3 fabrication facility licensed or certified”; and

4 (B) by striking the comma at the end and
5 inserting a semicolon; and

6 (4) by inserting after paragraph (4) the fol-
7 lowing:

8 “(5) any production, utilization, waste storage,
9 waste treatment, waste disposal, uranium enrich-
10 ment, uranium conversion, or nuclear fuel fabrica-
11 tion facility subject to licensing or certification
12 under this Act during construction of the facility, if
13 the destruction or damage caused or attempted to be
14 caused could adversely affect public health and safe-
15 ty during the operation of the facility;

16 “(6) any primary facility or backup facility
17 from which a radiological emergency preparedness
18 alert and warning system is activated; or

19 “(7) any radioactive material or other property
20 subject to regulation by the Nuclear Regulatory
21 Commission that, before the date of the offense, the
22 Nuclear Regulatory Commission determines, by
23 order or regulation published in the Federal Reg-
24 ister, is of significance to the public health and safe-
25 ty or to common defense and security,”.

1 (b) PENALTIES.—Section 236 of the Atomic Energy
2 Act of 1954 (42 U.S.C. 2284) is amended by striking
3 “\$10,000 or imprisoned for not more than 20 years, or
4 both, and, if death results to any person, shall be impris-
5 oned for any term of years or for life” both places it ap-
6 pears and inserting “\$1,000,000 or imprisoned for up to
7 life without parole”.

8 **SEC. 666. SECURE TRANSFER OF NUCLEAR MATERIALS.**

9 (a) AMENDMENT.—Chapter 14 of the Atomic Energy
10 Act of 1954 (42 U.S.C. 2201–2210b) is amended by add-
11 ing at the end the following new section:

12 **“SEC. 170C. SECURE TRANSFER OF NUCLEAR MATERIALS.**

13 “a. The Nuclear Regulatory Commission shall estab-
14 lish a system to ensure that materials described in sub-
15 section b., when transferred or received in the United
16 States by any party pursuant to an import or export li-
17 cense issued pursuant to this Act, are accompanied by a
18 manifest describing the type and amount of materials
19 being transferred or received. Each individual receiving or
20 accompanying the transfer of such materials shall be sub-
21 ject to a security background check conducted by appro-
22 priate Federal entities.

23 “b. Except as otherwise provided by the Commission
24 by regulation, the materials referred to in subsection a.
25 are byproduct materials, source materials, special nuclear

1 materials, high-level radioactive waste, spent nuclear fuel,
2 transuranic waste, and low-level radioactive waste (as de-
3 fined in section 2(16) of the Nuclear Waste Policy Act
4 of 1982 (42 U.S.C. 10101(16))).”.

5 (b) REGULATIONS.—Not later than 1 year after the
6 date of the enactment of this Act, and from time to time
7 thereafter as it considers necessary, the Nuclear Regu-
8 latory Commission shall issue regulations identifying ra-
9 dioactive materials or classes of individuals that, con-
10 sistent with the protection of public health and safety and
11 the common defense and security, are appropriate excep-
12 tions to the requirements of section 170C of the Atomic
13 Energy Act of 1954, as added by subsection (a) of this
14 section.

15 (c) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall take effect upon the issuance of regu-
17 lations under subsection (b), except that the background
18 check requirement shall become effective on a date estab-
19 lished by the Commission.

20 (d) EFFECT ON OTHER LAW.—Nothing in this sec-
21 tion or the amendment made by this section shall waive,
22 modify, or affect the application of chapter 51 of title 49,
23 United States Code, part A of subtitle V of title 49,
24 United States Code, part B of subtitle VI of title 49,
25 United States Code, and title 23, United States Code.

1 (e) TABLE OF SECTIONS AMENDMENT.—The table of
2 sections for chapter 14 of the Atomic Energy Act of 1954
3 is amended by adding at the end the following new item:

“Sec. 170C. Secure transfer of nuclear materials.”.

4 **SEC. 667. DEPARTMENT OF HOMELAND SECURITY CON-**
5 **SULTATION.**

6 Before issuing a license for a utilization facility, the
7 Nuclear Regulatory Commission shall consult with the De-
8 partment of Homeland Security concerning the potential
9 vulnerabilities of the location of the proposed facility to
10 terrorist attack.

11 **SEC. 668. AUTHORIZATION OF APPROPRIATIONS.**

12 (a) IN GENERAL.—There are authorized to be appro-
13 priated such sums as are necessary to carry out this sub-
14 title and the amendments made by this subtitle.

15 (b) AGGREGATE AMOUNT OF CHARGES.—Section
16 6101(c)(2)(A) of the Omnibus Budget Reconciliation Act
17 of 1990 (42 U.S.C. 2214(c)(2)(A)) is amended—

18 (1) in clause (i), by striking “and” at the end;

19 (2) in clause (ii), by striking the period at the
20 end and inserting “; and” and

21 (3) by adding at the end the following:

22 “(iii) amounts appropriated to the
23 Commission for homeland security activi-
24 ties of the Commission for the fiscal year,
25 except for the costs of fingerprinting and

1 background checks required by section 149
2 of the Atomic Energy Act of 1954 (42
3 U.S.C. 2169) and the costs of conducting
4 security inspections.”.

5 **TITLE VII—VEHICLES AND** 6 **FUELS**

7 **Subtitle A—Existing Programs**

8 **SEC. 701. USE OF ALTERNATIVE FUELS BY DUAL-FUELED** 9 **VEHICLES.**

10 Section 400AA(a)(3)(E) of the Energy Policy and
11 Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended
12 to read as follows:

13 “(E)(i) Dual fueled vehicles acquired pursuant to this
14 section shall be operated on alternative fuels unless the
15 Secretary determines that an agency qualifies for a waiver
16 of such requirement for vehicles operated by the agency
17 in a particular geographic area in which—

18 “(I) the alternative fuel otherwise required to
19 be used in the vehicle is not reasonably available to
20 retail purchasers of the fuel, as certified to the Sec-
21 retary by the head of the agency; or

22 “(II) the cost of the alternative fuel otherwise
23 required to be used in the vehicle is unreasonably
24 more expensive compared to gasoline, as certified to
25 the Secretary by the head of the agency.

1 “(ii) The Secretary shall monitor compliance with
2 this subparagraph by all such fleets and shall report annu-
3 ally to Congress on the extent to which the requirements
4 of this subparagraph are being achieved. The report shall
5 include information on annual reductions achieved from
6 the use of petroleum-based fuels and the problems, if any,
7 encountered in acquiring alternative fuels.”.

8 **SEC. 702. NEIGHBORHOOD ELECTRIC VEHICLES.**

9 (a) AMENDMENTS.—Section 301 of the Energy Pol-
10 icy Act of 1992 (42 U.S.C. 13211) is amended—

11 (1) in paragraph (3), by striking “or a dual
12 fueled vehicle” and inserting “, a dual fueled vehicle,
13 or a neighborhood electric vehicle”;

14 (2) in paragraph (13), by striking “and” at the
15 end;

16 (3) in paragraph (14), by striking the period at
17 the end and inserting “; and”; and

18 (4) by adding at the end the following:

19 “(15) the term ‘neighborhood electric vehicle’
20 means a motor vehicle that—

21 “(A) meets the definition of a low-speed
22 vehicle (as defined in part 571 of title 49, Code
23 of Federal Regulations);

1 “(B) meets the definition of a zero-emis-
2 sion vehicle (as defined in section 86.1702–99
3 of title 40, Code of Federal Regulations);

4 “(C) meets the requirements of Federal
5 Motor Vehicle Safety Standard No. 500; and

6 “(D) has a maximum speed of not greater
7 than 25 miles per hour.”.

8 (b) CREDITS.—Notwithstanding section 508 of the
9 Energy Policy Act of 1992 (42 U.S.C. 13258) or any other
10 provision of law, a neighborhood electric vehicle shall not
11 be allocated credit as more than 1 vehicle for purposes
12 of determining compliance with any requirement under
13 title III or title V of such Act.

14 **SEC. 703. CREDITS FOR MEDIUM AND HEAVY DUTY DEDI-**
15 **CATED VEHICLES.**

16 Section 508 of the Energy Policy Act of 1992 (42
17 U.S.C. 13258) is amended by adding at the end the fol-
18 lowing:

19 “(e) CREDIT FOR PURCHASE OF MEDIUM AND
20 HEAVY DUTY DEDICATED VEHICLES.—

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

22 “(A) HEAVY DUTY DEDICATED VEHI-
23 CLE.—The term ‘heavy duty dedicated vehicle’
24 means a dedicated vehicle that has a gross vehi-
25 cle weight rating of more than 14,000 pounds.

1 “(B) MEDIUM DUTY DEDICATED VEHI-
2 CLE.—The term ‘medium duty dedicated vehi-
3 cle’ means a dedicated vehicle that has a gross
4 vehicle weight rating of more than 8,500
5 pounds but not more than 14,000 pounds.

6 “(2) CREDITS FOR MEDIUM DUTY VEHICLES.—
7 The Secretary shall issue 2 full credits to a fleet or
8 covered person under this title, if the fleet or covered
9 person acquires a medium duty dedicated vehicle.

10 “(3) CREDITS FOR HEAVY DUTY VEHICLES.—
11 The Secretary shall issue 3 full credits to a fleet or
12 covered person under this title, if the fleet or covered
13 person acquires a heavy duty dedicated vehicle.

14 “(4) USE OF CREDITS.—At the request of a
15 fleet or covered person allocated a credit under this
16 subsection, the Secretary shall, for the year in which
17 the acquisition of the dedicated vehicle is made,
18 treat that credit as the acquisition of 1 alternative
19 fueled vehicle that the fleet or covered person is re-
20 quired to acquire under this title.”.

21 **SEC. 704. INCREMENTAL COST ALLOCATION.**

22 Section 303(c) of the Energy Policy Act of 1992 (42
23 U.S.C. 13212(c)) is amended by striking “may” and in-
24 serting “shall”.

1 **SEC. 705. ALTERNATIVE COMPLIANCE AND FLEXIBILITY.**

2 (a) ALTERNATIVE COMPLIANCE.—

3 (1) IN GENERAL.—Title V of the Energy Policy
4 Act of 1992 (42 U.S.C. 13251 et seq.) is amended—

5 (A) by redesignating section 514 as section
6 515; and

7 (B) by inserting after section 513 the fol-
8 lowing:

9 **“SEC. 514. ALTERNATIVE COMPLIANCE.**

10 “(a) APPLICATION FOR WAIVER.—Any covered per-
11 son subject to section 501 and any State subject to section
12 507(o) may petition the Secretary for a waiver of the ap-
13 plicable requirements of section 501 or 507(o).

14 “(b) GRANT OF WAIVER.—The Secretary may grant
15 a waiver of the requirements of section 501 or 507(o)
16 upon a showing that the fleet owned, operated, leased, or
17 otherwise controlled by the State or covered person—

18 “(1) will achieve a reduction in its annual con-
19 sumption of petroleum fuels equal to the reduction
20 in consumption of petroleum that would result from
21 100 percent compliance with fuel use requirements
22 in section 501, or, for entities covered under section
23 507(o), a reduction equal to the covered State enti-
24 ty’s consumption of alternative fuels if all its alter-
25 native fuel vehicles given credit under section 508

1 were to use alternative fuel 100 percent of the time;
2 and

3 “(2) is in compliance with all applicable vehicle
4 emission standards established by the Administrator
5 under the Clean Air Act (42 U.S.C. 7401 et seq.).

6 “(c) REVOCATION OF WAIVER.—The Secretary shall
7 revoke any waiver granted under this section if the State
8 or covered person fails to comply with subsection (b).”.

9 (2) TABLE OF CONTENTS AMENDMENT.—The
10 table of contents of the Energy Policy Act of 1992
11 (42 U.S.C. prec. 13201) is amended by striking the
12 item relating to section 514 and inserting the fol-
13 lowing:

“Sec. 514. Alternative compliance.

“Sec. 515. Authorization of appropriations.”.

14 (b) CREDITS.—Section 508 of the Energy Policy Act
15 of 1992 (42 U.S.C. 13258) (as amended by section 703)
16 is amended—

17 (1) by redesignating subsections (b) through (e)
18 as subsections (c) through (f), respectively;

19 (2) by striking subsection (a) and inserting the
20 following:

21 “(a) IN GENERAL.—The Secretary shall allocate a
22 credit to a fleet or covered person that is required to ac-
23 quire an alternative fueled vehicle under this title, if that
24 fleet or person acquires an alternative fueled vehicle—

1 “(1) in excess of the number that fleet or per-
2 son is required to acquire under this title;

3 “(2) before the date on which that fleet or per-
4 son is required to acquire an alternative fueled vehi-
5 cle under this title; or

6 “(3) that is eligible to receive credit under sub-
7 section (b).

8 “(b) MAXIMUM AVAILABLE POWER.—The Secretary
9 shall allocate credit to a fleet under subsection (a)(3) for
10 the acquisition by the fleet of a hybrid vehicle as follows:

11 “(1) For a hybrid vehicle with at least 4 per-
12 cent but less than 10 percent maximum available
13 power, the Secretary shall allocate 25 percent of 1
14 credit.

15 “(2) For a hybrid vehicle with at least 10 per-
16 cent but less than 20 percent maximum available
17 power, the Secretary shall allocate 50 percent of 1
18 credit.

19 “(3) For a hybrid vehicle with at least 20 per-
20 cent but less than 30 percent maximum available
21 power, the Secretary shall allocate 75 percent of 1
22 credit.

23 “(4) For a hybrid vehicle with 30 percent or
24 more maximum available power, the Secretary shall
25 allocate 1 credit.”; and

1 (3) by adding at the end the following:

2 “(g) CREDIT FOR INVESTMENT IN ALTERNATIVE
3 FUEL INFRASTRUCTURE.—

4 “(1) DEFINITION OF QUALIFYING INFRASTRUC-
5 TURE.—In this subsection, the term ‘qualifying in-
6 frastructure’ means—

7 “(A) equipment required to refuel or re-
8 charge alternative fueled vehicles;

9 “(B) facilities or equipment required to
10 maintain, repair, or operate alternative fueled
11 vehicles; and

12 “(C) such other activities as the Secretary
13 considers to constitute an appropriate expendi-
14 ture in support of the operation, maintenance,
15 or further widespread adoption of or utilization
16 of alternative fueled vehicles.

17 “(2) ISSUANCE OF CREDITS.—The Secretary
18 shall issue a credit to a fleet or covered person under
19 this title for investment in qualifying infrastructure
20 if the qualifying infrastructure is open to the general
21 public during regular business hours.

22 “(3) AMOUNT.—For the purpose of credits
23 under this subsection—

1 “(A) 1 credit shall be equal to a minimum
2 investment of \$25,000 in cash or equivalent ex-
3 penditure, as determined by the Secretary; and

4 “(B) except in the case of a Federal or
5 State fleet, no part of the investment may be
6 provided by Federal or State funds.

7 “(4) USE OF CREDITS.—At the request of a
8 fleet or covered person allocated a credit under this
9 subsection, the Secretary shall, for the year in which
10 the investment is made, treat that credit as the ac-
11 quisition of 1 alternative fueled vehicle that the fleet
12 or covered person is required to acquire under this
13 title.

14 “(h) DEFINITION OF MAXIMUM AVAILABLE
15 POWER.—In this section, the term ‘maximum available
16 power’ means the quotient obtained by dividing—

17 “(1) the maximum power available from the en-
18 ergy storage device of a hybrid vehicle, during a
19 standard 10-second pulse power or equivalent test;
20 by

21 “(2) the sum of—

22 “(A) the maximum power described in sub-
23 paragraph (A); and

24 “(B) the net power of the internal combus-
25 tion or heat engine, as determined in accord-

1 ance with standards established by the Society
2 of Automobile Engineers.”.

3 (c) LEASE CONDENSATE FUELS.—Section 301 of the
4 Energy Policy Act of 1992 (42 U.S.C. 13211) (as amend-
5 ed by section 702) is amended—

6 (1) in paragraph (2), by inserting “mixtures
7 containing 50 percent or more by volume of lease
8 condensate or fuels extracted from lease conden-
9 sate;” after “liquefied petroleum gas;”;

10 (2) in paragraph (14)—

11 (A) by inserting “mixtures containing 50
12 percent or more by volume of lease condensate
13 or fuels extracted from lease condensate,” after
14 “liquefied petroleum gas;” and

15 (B) by striking “and” at the end;

16 (3) in paragraph (15), by striking the period at
17 the end and inserting “; and”; and

18 (4) by adding at the end the following:

19 “(16) the term ‘lease condensate’ means a mix-
20 ture, primarily of pentanes and heavier hydro-
21 carbons, that is recovered as a liquid from natural
22 gas in lease separation facilities.”.

23 (d) LEASE CONDENSATE USE CREDITS.—

1 (1) IN GENERAL.—Title III of the Energy Pol-
2 icy Act of 1992 (42 U.S.C. 13211 et seq.) is amend-
3 ed by adding at the end the following:

4 **“SEC. 313. LEASE CONDENSATE USE CREDITS.**

5 “(a) IN GENERAL.—Subject to subsection (d), the
6 Secretary shall allocate 1 credit under this section to a
7 fleet or covered person for each qualifying volume of the
8 lease condensate component of fuel containing at least 50
9 percent lease condensate, or fuels extracted from lease
10 condensate, after the date of enactment of this section for
11 use by the fleet or covered person in vehicles owned or
12 operated by the fleet or covered person that weigh more
13 than 8,500 pounds gross vehicle weight rating.

14 “(b) REQUIREMENTS.—A credit allocated under this
15 section—

16 “(1) shall be subject to the same exceptions,
17 authority, documentation, and use of credits that are
18 specified for qualifying volumes of biodiesel in sec-
19 tion 312; and

20 “(2) shall not be considered a credit under sec-
21 tion 508.

22 “(c) REGULATION.—

23 “(1) IN GENERAL.—Subject to subsection (d),
24 not later than January 1, 2004, after the collection
25 of appropriate information and data that consider

1 usage options, uses in other industries, products, or
2 processes, potential volume capacities, costs, air
3 emissions, and fuel efficiencies, the Secretary shall
4 issue a regulation establishing requirements and pro-
5 cedures for the implementation of this section.

6 “(2) QUALIFYING VOLUME.—The regulation
7 shall include a determination of an appropriate
8 qualifying volume for lease condensate, except that
9 in no case shall the Secretary determine that the
10 qualifying volume for lease condensate is less than
11 1,125 gallons.

12 “(d) APPLICABILITY.—This section applies unless the
13 Secretary finds that the use of lease condensate as an al-
14 ternative fuel would adversely affect public health or safe-
15 ty or ambient air quality or the environment.”.

16 (2) TABLE OF CONTENTS AMENDMENT.—The
17 table of contents of the Energy Policy Act of 1992
18 (42 U.S.C. prec. 13201) is amended by adding at
19 the end of the items relating to title III the fol-
20 lowing:

“Sec. 313. Lease condensate use credits.”.

21 (e) EMERGENCY EXEMPTION.—Section 301 of the
22 Energy Policy Act of 1992 (42 U.S.C. 13211) (as amend-
23 ed by section 702 and this section) is amended in para-
24 graph (9)(E) by inserting before the semicolon at the end
25 “, including vehicles directly used in the emergency repair

1 of transmission lines and in the restoration of electricity
2 service following power outages, as determined by the Sec-
3 retary”.

4 **SEC. 706. REVIEW OF ENERGY POLICY ACT OF 1992 PRO-**
5 **GRAMS.**

6 (a) IN GENERAL.—Not later than 180 days after the
7 date of enactment of this section, the Secretary of Energy
8 shall complete a study to determine the effect that titles
9 III, IV, and V of the Energy Policy Act of 1992 (42
10 U.S.C. 13211 et seq.) have had on—

11 (1) the development of alternative fueled vehicle
12 technology;

13 (2) the availability of that technology in the
14 market; and

15 (3) the cost of alternative fueled vehicles.

16 (b) TOPICS.—As part of the study under subsection
17 (a), the Secretary shall specifically identify—

18 (1) the number of alternative fueled vehicles ac-
19 quired by fleets or covered persons required to ac-
20 quire alternative fueled vehicles;

21 (2) the quantity, by type, of alternative fuel ac-
22 tually used in alternative fueled vehicles acquired by
23 fleets or covered persons;

1 (3) the quantity of petroleum displaced by the
2 use of alternative fuels in alternative fueled vehicles
3 acquired by fleets or covered persons;

4 (4) the direct and indirect costs of compliance
5 with requirements under titles III, IV, and V of the
6 Energy Policy Act of 1992 (42 U.S.C. 13211 et
7 seq.), including—

8 (A) vehicle acquisition requirements im-
9 posed on fleets or covered persons;

10 (B) administrative and recordkeeping ex-
11 penses;

12 (C) fuel and fuel infrastructure costs;

13 (D) associated training and employee ex-
14 penses; and

15 (E) any other factors or expenses the Sec-
16 retary determines to be necessary to compile re-
17 liable estimates of the overall costs and benefits
18 of complying with programs under those titles
19 for fleets, covered persons, and the national
20 economy;

21 (5) the existence of obstacles preventing compli-
22 ance with vehicle acquisition requirements and in-
23 creased use of alternative fuel in alternative fueled
24 vehicles acquired by fleets or covered persons; and

1 (6) the projected impact of amendments to the
2 Energy Policy Act of 1992 made by this title.

3 (c) REPORT.—Upon completion of the study under
4 this section, the Secretary shall submit to Congress a re-
5 port that describes the results of the study and includes
6 any recommendations of the Secretary for legislative or
7 administrative changes concerning the alternative fueled
8 vehicle requirements under titles III, IV and V of the En-
9 ergy Policy Act of 1992 (42 U.S.C. 13211 et seq.).

10 **SEC. 707. REPORT CONCERNING COMPLIANCE WITH AL-**
11 **TERNATIVE FUELED VEHICLE PURCHASING**
12 **REQUIREMENTS.**

13 Section 310(b)(1) of the Energy Policy Act of 1992
14 (42 U.S.C. 13218(b)(1)) is amended by striking “1 year
15 after the date of enactment of this subsection” and insert-
16 ing “February 15, 2004”.

17 **Subtitle B—Hybrid Vehicles, Ad-**
18 **vanced Vehicles, and Fuel Cell**
19 **Buses**

20 **PART 1—HYBRID VEHICLES**

21 **SEC. 711. HYBRID VEHICLES.**

22 The Secretary of Energy shall accelerate efforts di-
23 rected toward the improvement of batteries and other re-
24 chargeable energy storage systems, power electronics, hy-

1 brid systems integration, and other technologies for use
2 in hybrid vehicles.

3 **PART 2—ADVANCED VEHICLES**

4 **SEC. 721. DEFINITIONS.**

5 In this part:

6 (1) **ALTERNATIVE FUELED VEHICLE.**—

7 (A) **IN GENERAL.**—The term “alternative
8 fueled vehicle” means a vehicle propelled solely
9 on an alternative fuel (as defined in section 301
10 of the Energy Policy Act of 1992 (42 U.S.C.
11 13211)).

12 (B) **EXCLUSION.**—The term “alternative
13 fueled vehicle” does not include a vehicle that
14 the Secretary determines, by regulation, does
15 not yield substantial environmental benefits
16 over a vehicle operating solely on gasoline or
17 diesel derived from fossil fuels.

18 (2) **FUEL CELL VEHICLE.**—The term “fuel cell
19 vehicle” means a vehicle propelled by an electric
20 motor powered by a fuel cell system that converts
21 chemical energy into electricity by combining oxygen
22 (from air) with hydrogen fuel that is stored on the
23 vehicle or is produced onboard by reformation of a
24 hydrocarbon fuel. Such fuel cell system may or may

1 not include the use of auxiliary energy storage sys-
2 tems to enhance vehicle performance.

3 (3) HYBRID VEHICLE.—The term “hybrid vehi-
4 cle” means a medium or heavy duty vehicle propelled
5 by an internal combustion engine or heat engine
6 using any combustible fuel and an onboard recharge-
7 able energy storage device.

8 (4) NEIGHBORHOOD ELECTRIC VEHICLE.—The
9 term “neighborhood electric vehicle” means a motor
10 vehicle that—

11 (A) meets the definition of a low-speed ve-
12 hicle (as defined in part 571 of title 49, Code
13 of Federal Regulations);

14 (B) meets the definition of a zero-emission
15 vehicle (as defined in section 86.1702–99 of
16 title 40, Code of Federal Regulations);

17 (C) meets the requirements of Federal
18 Motor Vehicle Safety Standard No. 500; and

19 (D) has a maximum speed of not greater
20 than 25 miles per hour.

21 (5) PILOT PROGRAM.—The term “pilot pro-
22 gram” means the competitive grant program estab-
23 lished under section 722.

24 (6) SECRETARY.—The term “Secretary” means
25 the Secretary of Energy.

1 (7) ULTRA-LOW SULFUR DIESEL VEHICLE.—

2 The term “ultra-low sulfur diesel vehicle” means a
3 vehicle manufactured in any of model years 2003
4 through 2006 powered by a heavy-duty diesel engine
5 that—

6 (A) is fueled by diesel fuel that contains
7 sulfur at not more than 15 parts per million;
8 and

9 (B) emits not more than the lesser of—

10 (i) for vehicles manufactured in—

11 (I) model year 2003, 3.0 grams
12 per brake horsepower-hour of oxides
13 of nitrogen and .01 grams per brake
14 horsepower-hour of particulate matter;
15 and

16 (II) model years 2004 through
17 2006, 2.5 grams per brake horse-
18 power-hour of nonmethane hydro-
19 carbons and oxides of nitrogen and
20 .01 grams per brake horsepower-hour
21 of particulate matter; or

22 (ii) the quantity of emissions of non-
23 methane hydrocarbons, oxides of nitrogen,
24 and particulate matter of the best-per-
25 forming technology of ultra-low sulfur die-

1 sel vehicles of the same class and applica-
2 tion that are commercially available.

3 **SEC. 722. PILOT PROGRAM.**

4 (a) ESTABLISHMENT.—The Secretary, in consulta-
5 tion with the Secretary of Transportation, shall establish
6 a competitive grant pilot program, to be administered
7 through the Clean Cities Program of the Department of
8 Energy, to provide not more than 15 geographically dis-
9 persed project grants to State governments, local govern-
10 ments, or metropolitan transportation authorities to carry
11 out a project or projects for the purposes described in sub-
12 section (b).

13 (b) GRANT PURPOSES.—A grant under this section
14 may be used for the following purposes:

15 (1) The acquisition of alternative fueled vehicles
16 or fuel cell vehicles, including—

17 (A) passenger vehicles (including neighbor-
18 hood electric vehicles); and

19 (B) motorized 2-wheel bicycles, scooters, or
20 other vehicles for use by law enforcement per-
21 sonnel or other State or local government or
22 metropolitan transportation authority employ-
23 ees.

24 (2) The acquisition of alternative fueled vehi-
25 cles, hybrid vehicles, or fuel cell vehicles, including—

1 (A) buses used for public transportation or
2 transportation to and from schools;

3 (B) delivery vehicles for goods or services;
4 and

5 (C) ground support vehicles at public air-
6 ports (including vehicles to carry baggage or
7 push or pull airplanes toward or away from ter-
8 minal gates).

9 (3) The acquisition of ultra-low sulfur diesel ve-
10 hicles.

11 (4) Installation or acquisition of infrastructure
12 necessary to directly support an alternative fueled
13 vehicle, fuel cell vehicle, or hybrid vehicle project
14 funded by the grant, including fueling and other
15 support equipment.

16 (5) Operation and maintenance of vehicles, in-
17 frastructure, and equipment acquired as part of a
18 project funded by the grant.

19 (c) APPLICATIONS.—

20 (1) REQUIREMENTS.—

21 (A) IN GENERAL.—The Secretary shall
22 issue requirements for applying for grants
23 under the pilot program.

1 (B) MINIMUM REQUIREMENTS.—At a min-
2 imum, the Secretary shall require that an appli-
3 cation for a grant—

4 (i) be submitted by the head of a
5 State or local government or a metropoli-
6 tan transportation authority, or any com-
7 bination thereof, and a registered partici-
8 pant in the Clean Cities Program of the
9 Department of Energy; and

10 (ii) include—

11 (I) a description of the project
12 proposed in the application, including
13 how the project meets the require-
14 ments of this part;

15 (II) an estimate of the ridership
16 or degree of use of the project;

17 (III) an estimate of the air pollu-
18 tion emissions reduced and fossil fuel
19 displaced as a result of the project,
20 and a plan to collect and disseminate
21 environmental data, related to the
22 project to be funded under the grant,
23 over the life of the project;

24 (IV) a description of how the
25 project will be sustainable without

1 Federal assistance after the comple-
2 tion of the term of the grant;

3 (V) a complete description of the
4 costs of the project, including acquisi-
5 tion, construction, operation, and
6 maintenance costs over the expected
7 life of the project;

8 (VI) a description of which costs
9 of the project will be supported by
10 Federal assistance under this part;
11 and

12 (VII) documentation to the satis-
13 faction of the Secretary that diesel
14 fuel containing sulfur at not more
15 than 15 parts per million is available
16 for carrying out the project, and a
17 commitment by the applicant to use
18 such fuel in carrying out the project.

19 (2) PARTNERS.—An applicant under paragraph
20 (1) may carry out a project under the pilot program
21 in partnership with public and private entities.

22 (d) SELECTION CRITERIA.—In evaluating applica-
23 tions under the pilot program, the Secretary shall—

24 (1) consider each applicant's previous experi-
25 ence with similar projects; and

1 (2) give priority consideration to applications
2 that—

3 (A) are most likely to maximize protection
4 of the environment;

5 (B) demonstrate the greatest commitment
6 on the part of the applicant to ensure funding
7 for the proposed project and the greatest likeli-
8 hood that the project will be maintained or ex-
9 panded after Federal assistance under this part
10 is completed; and

11 (C) exceed the minimum requirements of
12 subsection (c)(1)(B)(ii).

13 (e) PILOT PROJECT REQUIREMENTS.—

14 (1) MAXIMUM AMOUNT.—The Secretary shall
15 not provide more than \$20,000,000 in Federal as-
16 sistance under the pilot program to any applicant.

17 (2) COST SHARING.—The Secretary shall not
18 provide more than 50 percent of the cost, incurred
19 during the period of the grant, of any project under
20 the pilot program.

21 (3) MAXIMUM PERIOD OF GRANTS.—The Sec-
22 retary shall not fund any applicant under the pilot
23 program for more than 5 years.

24 (4) DEPLOYMENT AND DISTRIBUTION.—The
25 Secretary shall seek to the maximum extent prac-

1 ticable to ensure a broad geographic distribution of
2 project sites.

3 (5) TRANSFER OF INFORMATION AND KNOWL-
4 EDGE.—The Secretary shall establish mechanisms to
5 ensure that the information and knowledge gained
6 by participants in the pilot program are transferred
7 among the pilot program participants and to other
8 interested parties, including other applicants that
9 submitted applications.

10 (f) SCHEDULE.—

11 (1) PUBLICATION.—Not later than 90 days
12 after the date of enactment of this Act, the Sec-
13 retary shall publish in the Federal Register, Com-
14 merce Business Daily, and elsewhere as appropriate,
15 a request for applications to undertake projects
16 under the pilot program. Applications shall be due
17 not later than 180 days after the date of publication
18 of the notice.

19 (2) SELECTION.—Not later than 180 days after
20 the date by which applications for grants are due,
21 the Secretary shall select by competitive, peer re-
22 viewed proposal, all applications for projects to be
23 awarded a grant under the pilot program.

24 (g) LIMIT ON FUNDING.—The Secretary shall pro-
25 vide not less than 20 nor more than 25 percent of the

1 grant funding made available under this section for the
2 acquisition of ultra-low sulfur diesel vehicles.

3 **SEC. 723. REPORTS TO CONGRESS.**

4 (a) INITIAL REPORT.—Not later than 60 days after
5 the date on which grants are awarded under this part,
6 the Secretary shall submit to Congress a report con-
7 taining—

8 (1) an identification of the grant recipients and
9 a description of the projects to be funded;

10 (2) an identification of other applicants that
11 submitted applications for the pilot program; and

12 (3) a description of the mechanisms used by the
13 Secretary to ensure that the information and knowl-
14 edge gained by participants in the pilot program are
15 transferred among the pilot program participants
16 and to other interested parties, including other ap-
17 plicants that submitted applications.

18 (b) EVALUATION.—Not later than 3 years after the
19 date of enactment of this Act, and annually thereafter
20 until the pilot program ends, the Secretary shall submit
21 to Congress a report containing an evaluation of the effec-
22 tiveness of the pilot program, including—

23 (1) an assessment of the benefits to the envi-
24 ronment derived from the projects included in the
25 pilot program; and

1 (2) an estimate of the potential benefits to the
2 environment to be derived from widespread applica-
3 tion of alternative fueled vehicles and ultra-low sul-
4 fur diesel vehicles.

5 **SEC. 724. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated to the Sec-
7 retary to carry out this part \$200,000,000, to remain
8 available until expended.

9 **PART 3—FUEL CELL BUSES**

10 **SEC. 731. FUEL CELL TRANSIT BUS DEMONSTRATION.**

11 (a) **IN GENERAL.**—The Secretary of Energy, in con-
12 sultation with the Secretary of Transportation, shall es-
13 tablish a transit bus demonstration program to make com-
14 petitive, merit-based awards for 5-year projects to dem-
15 onstrate not more than 25 fuel cell transit buses (and nec-
16 essary infrastructure) in 5 geographically dispersed local-
17 ities.

18 (b) **PREFERENCE.**—In selecting projects under this
19 section, the Secretary of Energy shall give preference to
20 projects that are most likely to mitigate congestion and
21 improve air quality.

22 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
23 are authorized to be appropriated to the Secretary of En-
24 ergy to carry out this section \$10,000,000 for each of fis-
25 cal years 2004 through 2008.

1 **Subtitle C—Clean School Buses**

2 **SEC. 741. DEFINITIONS.**

3 In this subtitle:

4 (1) ADMINISTRATOR.—The term “Adminis-
5 trator” means the Administrator of the Environ-
6 mental Protection Agency.

7 (2) ALTERNATIVE FUEL.—The term “alter-
8 native fuel” means liquefied natural gas, compressed
9 natural gas, liquefied petroleum gas, hydrogen, pro-
10 pane, or methanol or ethanol at no less than 85 per-
11 cent by volume.

12 (3) ALTERNATIVE FUEL SCHOOL BUS.—The
13 term “alternative fuel school bus” means a school
14 bus that meets all of the requirements of this sub-
15 title and is operated solely on an alternative fuel.

16 (4) EMISSIONS CONTROL RETROFIT TECH-
17 NOLOGY.—The term “emissions control retrofit tech-
18 nology” means a particulate filter or other emissions
19 control equipment that is verified or certified by the
20 Administrator or the California Air Resources Board
21 as an effective emission reduction technology when
22 installed on an existing school bus.

23 (5) IDLING.—The term “idling” means oper-
24 ating an engine while remaining stationary for more
25 than approximately 15 minutes, except that the term

1 does not apply to routine stoppages associated with
2 traffic movement or congestion.

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

5 (7) ULTRA-LOW SULFUR DIESEL FUEL.—The
6 term “ultra-low sulfur diesel fuel” means diesel fuel
7 that contains sulfur at not more than 15 parts per
8 million.

9 (8) ULTRA-LOW SULFUR DIESEL FUEL SCHOOL
10 BUS.—The term “ultra-low sulfur diesel fuel school
11 bus” means a school bus that meets all of the re-
12 quirements of this subtitle and is operated solely on
13 ultra-low sulfur diesel fuel.

14 **SEC. 742. PROGRAM FOR REPLACEMENT OF CERTAIN**
15 **SCHOOL BUSES WITH CLEAN SCHOOL BUSES.**

16 (a) ESTABLISHMENT.—The Administrator, in con-
17 sultation with the Secretary and other appropriate Federal
18 departments and agencies, shall establish a program for
19 awarding grants on a competitive basis to eligible entities
20 for the replacement of existing school buses manufactured
21 before model year 1991 with alternative fuel school buses
22 and ultra-low sulfur diesel fuel school buses.

23 (b) REQUIREMENTS.—

24 (1) IN GENERAL.—Not later than 90 days after
25 the date of enactment of this Act, the Administrator

1 shall establish and publish in the Federal Register
2 grant requirements on eligibility for assistance, and
3 on implementation of the program established under
4 subsection (a), including instructions for the submis-
5 sion of grant applications and certification require-
6 ments to ensure compliance with this subtitle.

7 (2) APPLICATION DEADLINES.—The require-
8 ments established under paragraph (1) shall require
9 submission of grant applications not later than—

10 (A) in the case of the first year of program
11 implementation, the date that is 180 days after
12 the publication of the requirements in the Fed-
13 eral Register; and

14 (B) in the case of each subsequent year,
15 June 1 of the year.

16 (c) ELIGIBLE RECIPIENTS.—A grant shall be award-
17 ed under this section only—

18 (1) to 1 or more local or State governmental
19 entities responsible for providing school bus service
20 to 1 or more public school systems or responsible for
21 the purchase of school buses;

22 (2) to 1 or more contracting entities that pro-
23 vide school bus service to 1 or more public school
24 systems, if the grant application is submitted jointly
25 with the 1 or more school systems to be served by

1 the buses, except that the application may provide
2 that buses purchased using funds awarded shall be
3 owned, operated, and maintained exclusively by the
4 1 or more contracting entities; or

5 (3) to a nonprofit school transportation associa-
6 tion representing private contracting entities, if the
7 association has notified and received approval from
8 the 1 or more school systems to be served by the
9 buses.

10 (d) AWARD DEADLINES.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 the Administrator shall award a grant made to a
13 qualified applicant for a fiscal year—

14 (A) in the case of the first fiscal year of
15 program implementation, not later than the
16 date that is 90 days after the application dead-
17 line established under subsection (b)(2); and

18 (B) in the case of each subsequent fiscal
19 year, not later than August 1 of the fiscal year.

20 (2) INSUFFICIENT NUMBER OF QUALIFIED
21 GRANT APPLICATIONS.—If the Administrator does
22 not receive a sufficient number of qualified grant ap-
23 plications to meet the requirements of subsection
24 (i)(1) for a fiscal year, the Administrator shall
25 award a grant made to a qualified applicant under

1 subsection (i)(2) not later than September 30 of the
2 fiscal year.

3 (e) TYPES OF GRANTS.—

4 (1) IN GENERAL.—A grant under this section
5 shall be used for the replacement of school buses
6 manufactured before model year 1991 with alter-
7 native fuel school buses and ultra-low sulfur diesel
8 fuel school buses.

9 (2) NO ECONOMIC BENEFIT.—Other than the
10 receipt of the grant, a recipient of a grant under this
11 section may not receive any economic benefit in con-
12 nection with the receipt of the grant.

13 (3) PRIORITY OF GRANT APPLICATIONS.—The
14 Administrator shall give priority to applicants that
15 propose to replace school buses manufactured before
16 model year 1977.

17 (f) CONDITIONS OF GRANT.—A grant provided under
18 this section shall include the following conditions:

19 (1) SCHOOL BUS FLEET.—All buses acquired
20 with funds provided under the grant shall be oper-
21 ated as part of the school bus fleet for which the
22 grant was made for a minimum of 5 years.

23 (2) USE OF FUNDS.—Funds provided under the
24 grant may only be used—

1 (A) to pay the cost, except as provided in
2 paragraph (3), of new alternative fuel school
3 buses or ultra-low sulfur diesel fuel school
4 buses, including State taxes and contract fees
5 associated with the acquisition of such buses;
6 and

7 (B) to provide—

8 (i) up to 20 percent of the price of the
9 alternative fuel school buses acquired, for
10 necessary alternative fuel infrastructure if
11 the infrastructure will only be available to
12 the grant recipient; and

13 (ii) up to 25 percent of the price of
14 the alternative fuel school buses acquired,
15 for necessary alternative fuel infrastructure
16 if the infrastructure will be available to the
17 grant recipient and to other bus fleets.

18 (3) GRANT RECIPIENT FUNDS.—The grant re-
19 cipient shall be required to provide at least—

20 (A) in the case of a grant recipient de-
21 scribed in paragraph (1) or (3) of subsection
22 (c), the lesser of—

23 (i) an amount equal to 15 percent of
24 the total cost of each bus received; or

25 (ii) \$15,000 per bus; and

1 (B) in the case of a grant recipient de-
2 scribed in subsection (c)(2), the lesser of—

3 (i) an amount equal to 20 percent of
4 the total cost of each bus received; or

5 (ii) \$20,000 per bus.

6 (4) ULTRA-LOW SULFUR DIESEL FUEL.—In the
7 case of a grant recipient receiving a grant for ultra-
8 low sulfur diesel fuel school buses, the grant recipi-
9 ent shall be required to provide documentation to
10 the satisfaction of the Administrator that diesel fuel
11 containing sulfur at not more than 15 parts per mil-
12 lion is available for carrying out the purposes of the
13 grant, and a commitment by the applicant to use
14 such fuel in carrying out the purposes of the grant.

15 (5) TIMING.—All alternative fuel school buses,
16 ultra-low sulfur diesel fuel school buses, or alter-
17 native fuel infrastructure acquired under a grant
18 awarded under this section shall be purchased and
19 placed in service as soon as practicable.

20 (g) BUSES.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), funding under a grant made under this
23 section for the acquisition of new alternative fuel
24 school buses or ultra-low sulfur diesel fuel school
25 buses shall only be used to acquire school buses—

1 (A) with a gross vehicle weight of greater
2 than 14,000 pounds;

3 (B) that are powered by a heavy duty en-
4 gine;

5 (C) in the case of alternative fuel school
6 buses manufactured in model years 2004
7 through 2006, that emit not more than 1.8
8 grams per brake horsepower-hour of non-
9 methane hydrocarbons and oxides of nitrogen
10 and .01 grams per brake horsepower-hour of
11 particulate matter; and

12 (D) in the case of ultra-low sulfur diesel
13 fuel school buses manufactured in model years
14 2004 through 2006, that emit not more than
15 2.5 grams per brake horsepower-hour of non-
16 methane hydrocarbons and oxides of nitrogen
17 and .01 grams per brake horsepower-hour of
18 particulate matter.

19 (2) LIMITATIONS.—A bus shall not be acquired
20 under this section that emits nonmethane hydro-
21 carbons, oxides of nitrogen, or particulate matter at
22 a rate greater than the best performing technology
23 of the same class of ultra-low sulfur diesel fuel
24 school buses commercially available at the time the
25 grant is made.

1 (h) DEPLOYMENT AND DISTRIBUTION.—The Admin-
2 istrator shall—

3 (1) seek, to the maximum extent practicable, to
4 achieve nationwide deployment of alternative fuel
5 school buses and ultra-low sulfur diesel fuel school
6 buses through the program under this section; and

7 (2) ensure a broad geographic distribution of
8 grant awards, with a goal of no State receiving more
9 than 10 percent of the grant funding made available
10 under this section for a fiscal year.

11 (i) ALLOCATION OF FUNDS.—

12 (1) IN GENERAL.—Subject to paragraph (2), of
13 the amount of grant funding made available to carry
14 out this section for any fiscal year, the Adminis-
15 trator shall use—

16 (A) 70 percent for the acquisition of alter-
17 native fuel school buses or supporting infra-
18 structure; and

19 (B) 30 percent for the acquisition of ultra-
20 low sulfur diesel fuel school buses.

21 (2) INSUFFICIENT NUMBER OF QUALIFIED
22 GRANT APPLICATIONS.—After the first fiscal year in
23 which this program is in effect, if the Administrator
24 does not receive a sufficient number of qualified
25 grant applications to meet the requirements of sub-

1 paragraph (A) or (B) of paragraph (1) for a fiscal
2 year, effective beginning on August 1 of the fiscal
3 year, the Administrator shall make the remaining
4 funds available to other qualified grant applicants
5 under this section.

6 (j) REDUCTION OF SCHOOL BUS IDLING.—Each
7 local educational agency (as defined in section 9101 of the
8 Elementary and Secondary Education Act of 1965 (20
9 U.S.C. 7801)) that receives Federal funds under the Ele-
10 mentary and Secondary Education Act of 1965 (20 U.S.C.
11 6301 et seq.) is encouraged to develop a policy, consistent
12 with the health, safety, and welfare of students and the
13 proper operation and maintenance of school buses, to re-
14 duce the incidence of unnecessary school bus idling at
15 schools when picking up and unloading students.

16 (k) ANNUAL REPORT.—

17 (1) IN GENERAL.—Not later than January 31
18 of each year, the Administrator shall transmit to
19 Congress a report evaluating implementation of the
20 programs under this section and section 743.

21 (2) COMPONENTS.—The reports shall include a
22 description of—

23 (A) the total number of grant applications
24 received;

1 (B) the number and types of alternative
2 fuel school buses, ultra-low sulfur diesel fuel
3 school buses, and retrofitted buses requested in
4 grant applications;

5 (C) grants awarded and the criteria used
6 to select the grant recipients;

7 (D) certified engine emission levels of all
8 buses purchased or retrofitted under the pro-
9 grams under this section and section 743;

10 (E) an evaluation of the in-use emission
11 level of buses purchased or retrofitted under the
12 programs under this section and section 743;
13 and

14 (F) any other information the Adminis-
15 trator considers appropriate.

16 (I) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to the Administrator to
18 carry out this section, to remain available until ex-
19 pended—

20 (1) \$45,000,000 for fiscal year 2005;

21 (2) \$65,000,000 for fiscal year 2006;

22 (3) \$90,000,000 for fiscal year 2007; and

23 (4) such sums as are necessary for each of fis-
24 cal years 2008 and 2009.

1 **SEC. 743. DIESEL RETROFIT PROGRAM.**

2 (a) ESTABLISHMENT.—The Administrator, in con-
3 sultation with the Secretary, shall establish a program for
4 awarding grants on a competitive basis to entities for the
5 installation of retrofit technologies for diesel school buses.

6 (b) ELIGIBLE RECIPIENTS.—A grant shall be award-
7 ed under this section only—

8 (1) to a local or State governmental entity re-
9 sponsible for providing school bus service to 1 or
10 more public school systems;

11 (2) to 1 or more contracting entities that pro-
12 vide school bus service to 1 or more public school
13 systems, if the grant application is submitted jointly
14 with the 1 or more school systems that the buses
15 will serve, except that the application may provide
16 that buses purchased using funds awarded shall be
17 owned, operated, and maintained exclusively by the
18 1 or more contracting entities; or

19 (3) to a nonprofit school transportation associa-
20 tion representing private contracting entities, if the
21 association has notified and received approval from
22 the 1 or more school systems to be served by the
23 buses.

24 (c) AWARDS.—

25 (1) IN GENERAL.—The Administrator shall
26 seek, to the maximum extent practicable, to ensure

1 a broad geographic distribution of grants under this
2 section.

3 (2) PREFERENCES.—In making awards of
4 grants under this section, the Administrator shall
5 give preference to proposals that—

6 (A) will achieve the greatest reductions in
7 emissions of nonmethane hydrocarbons, oxides
8 of nitrogen, or particulate matter per proposal
9 or per bus; or

10 (B) involve the use of emissions control
11 retrofit technology on diesel school buses that
12 operate solely on ultra-low sulfur diesel fuel.

13 (d) CONDITIONS OF GRANT.—A grant shall be pro-
14 vided under this section on the conditions that—

15 (1) buses on which retrofit emissions-control
16 technology are to be demonstrated—

17 (A) will operate on ultra-low sulfur diesel
18 fuel where such fuel is reasonably available or
19 required for sale by State or local law or regula-
20 tion;

21 (B) were manufactured in model year 1991
22 or later; and

23 (C) will be used for the transportation of
24 school children to and from school for a min-
25 imum of 5 years;

1 (2) grant funds will be used for the purchase of
2 emission control retrofit technology, including State
3 taxes and contract fees; and

4 (3) grant recipients will provide at least 15 per-
5 cent of the total cost of the retrofit, including the
6 purchase of emission control retrofit technology and
7 all necessary labor for installation of the retrofit.

8 (e) VERIFICATION.—Not later than 90 days after the
9 date of enactment of this Act, the Administrator shall
10 publish in the Federal Register procedures to verify—

11 (1) the retrofit emissions-control technology to
12 be demonstrated;

13 (2) that buses powered by ultra-low sulfur die-
14 sel fuel on which retrofit emissions-control tech-
15 nology are to be demonstrated will operate on diesel
16 fuel containing not more than 15 parts per million
17 of sulfur; and

18 (3) that grants are administered in accordance
19 with this section.

20 (f) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Administrator to
22 carry out this section, to remain available until ex-
23 pended—

24 (1) \$20,000,000 for fiscal year 2005;

25 (2) \$35,000,000 for fiscal year 2006;

1 (3) \$45,000,000 for fiscal year 2007; and

2 (4) such sums as are necessary for each of fis-
3 cal years 2008 and 2009.

4 **SEC. 744. FUEL CELL SCHOOL BUSES.**

5 (a) ESTABLISHMENT.—The Secretary shall establish
6 a program for entering into cooperative agreements—

7 (1) with private sector fuel cell bus developers
8 for the development of fuel cell-powered school
9 buses; and

10 (2) subsequently, with not less than 2 units of
11 local government using natural gas-powered school
12 buses and such private sector fuel cell bus developers
13 to demonstrate the use of fuel cell-powered school
14 buses.

15 (b) COST SHARING.—The non-Federal contribution
16 for activities funded under this section shall be not less
17 than—

18 (1) 20 percent for fuel infrastructure develop-
19 ment activities; and

20 (2) 50 percent for demonstration activities and
21 for development activities not described in paragraph
22 (1).

23 (c) REPORTS TO CONGRESS.—Not later than 3 years
24 after the date of enactment of this Act, the Secretary shall
25 transmit to Congress a report that—

1 (1) evaluates the process of converting natural
2 gas infrastructure to accommodate fuel cell-powered
3 school buses; and

4 (2) assesses the results of the development and
5 demonstration program under this section.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated to the Secretary to carry
8 out this section \$25,000,000 for the period of fiscal years
9 2004 through 2006.

10 **Subtitle D—Miscellaneous**

11 **SEC. 751. RAILROAD EFFICIENCY.**

12 (a) ESTABLISHMENT.—The Secretary of Energy
13 shall, in cooperation with the Secretary of Transportation
14 and the Administrator of the Environmental Protection
15 Agency, establish a cost-shared, public-private research
16 partnership involving the Federal Government, railroad
17 carriers, locomotive manufacturers and equipment sup-
18 pliers, and the Association of American Railroads, to de-
19 velop and demonstrate railroad locomotive technologies
20 that increase fuel economy, reduce emissions, and lower
21 costs of operation.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary of En-
24 ergy to carry out this section—

25 (1) \$25,000,000 for fiscal year 2005;

1 (2) \$35,000,000 for fiscal year 2006; and

2 (3) \$50,000,000 for fiscal year 2007.

3 **SEC. 752. MOBILE EMISSION REDUCTIONS TRADING AND**
4 **CREDITING.**

5 (a) IN GENERAL.—Not later than 180 days after the
6 date of enactment of this Act, the Administrator of the
7 Environmental Protection Agency shall submit to Con-
8 gress a report on the experience of the Administrator with
9 the trading of mobile source emission reduction credits for
10 use by owners and operators of stationary source emission
11 sources to meet emission offset requirements within a non-
12 attainment area.

13 (b) CONTENTS.—The report shall describe—

14 (1) projects approved by the Administrator that
15 include the trading of mobile source emission reduc-
16 tion credits for use by stationary sources in com-
17 plying with offset requirements, including a descrip-
18 tion of—

19 (A) project and stationary sources location;

20 (B) volumes of emissions offset and trad-
21 ed;

22 (C) the sources of mobile emission reduc-
23 tion credits; and

24 (D) if available, the cost of the credits;

1 (2) the significant issues identified by the Ad-
2 ministrator in consideration and approval of trading
3 in the projects;

4 (3) the requirements for monitoring and assess-
5 ing the air quality benefits of any approved project;

6 (4) the statutory authority on which the Admin-
7 istrator has based approval of the projects;

8 (5) an evaluation of how the resolution of issues
9 in approved projects could be used in other projects;
10 and

11 (6) any other issues that the Administrator con-
12 siders relevant to the trading and generation of mo-
13 bile source emission reduction credits for use by sta-
14 tionary sources or for other purposes.

15 **SEC. 753. AVIATION FUEL CONSERVATION AND EMISSIONS.**

16 (a) IN GENERAL.—Not later than 60 days after the
17 date of enactment of this Act, the Administrator of the
18 Federal Aviation Administration and the Administrator of
19 the Environmental Protection Agency shall jointly initiate
20 a study to identify—

21 (1) the impact of aircraft emissions on air qual-
22 ity in nonattainment areas; and

23 (2) ways to promote fuel conservation measures
24 for aviation to—

25 (A) enhance fuel efficiency; and

1 (B) reduce emissions.

2 (b) FOCUS.—The study under subsection (a) shall
3 focus on how air traffic management inefficiencies, such
4 as aircraft idling at airports, result in unnecessary fuel
5 burn and air emissions.

6 (c) REPORT.—Not later than 1 year after the date
7 of the initiation of the study under subsection (a), the Ad-
8 ministrator of the Federal Aviation Administration and
9 the Administrator of the Environmental Protection Agen-
10 cy shall jointly submit to the Committee on Energy and
11 Commerce and the Committee on Transportation and In-
12 frastructure of the House of Representatives and the Com-
13 mittee on Environment and Public Works and the Com-
14 mittee on Commerce, Science, and Transportation of the
15 Senate a report that—

16 (1) describes the results of the study; and

17 (2) includes any recommendations on ways in
18 which unnecessary fuel use and emissions affecting
19 air quality may be reduced—

20 (A) without adversely affecting safety and
21 security and increasing individual aircraft noise;
22 and

23 (B) while taking into account all aircraft
24 emissions and the impact of the emissions on
25 human health.

1 **SEC. 754. DIESEL FUELED VEHICLES.**

2 (a) DEFINITION OF TIER 2 EMISSION STANDARDS.—

3 In this section, the term “tier 2 emission standards”
4 means the motor vehicle emission standards that apply to
5 passenger cars, light trucks, and larger passenger vehicles
6 manufactured after the 2003 model year, as issued on
7 February 10, 2000, by the Administrator of the Environ-
8 mental Protection Agency under sections 202 and 211 of
9 the Clean Air Act (42 U.S.C. 7521, 7545).

10 (b) DIESEL COMBUSTION AND AFTER-TREATMENT

11 TECHNOLOGIES.—The Secretary of Energy shall accel-
12 erate efforts to improve diesel combustion and after-treat-
13 ment technologies for use in diesel fueled motor vehicles.

14 (c) GOALS.—The Secretary shall carry out subsection
15 (b) with a view toward achieving the following goals:

16 (1) Developing and demonstrating diesel tech-
17 nologies that, not later than 2010, meet the fol-
18 lowing standards:

19 (A) Tier 2 emission standards.

20 (B) The heavy-duty emissions standards of
21 2007 that are applicable to heavy-duty vehicles
22 under regulations issued by the Administrator
23 of the Environmental Protection Agency as of
24 the date of enactment of this Act.

25 (2) Developing the next generation of low-emis-
26 sion, high-efficiency diesel engine technologies, in-

1 including homogeneous charge compression ignition
2 technology.

3 **SEC. 755. CONSERVE BY BICYCLING PROGRAM.**

4 (a) DEFINITIONS.—In this section:

5 (1) PROGRAM.—The term “program” means
6 the Conserve by Bicycling Program established by
7 subsection (b).

8 (2) SECRETARY.—The term “Secretary” means
9 the Secretary of Transportation.

10 (b) ESTABLISHMENT.—There is established within
11 the Department of Transportation a program to be known
12 as the “Conserve by Bicycling Program”.

13 (c) PROJECTS.—

14 (1) IN GENERAL.—In carrying out the program,
15 the Secretary shall establish not more than 10 pilot
16 projects that are—

17 (A) dispersed geographically throughout
18 the United States; and

19 (B) designed to conserve energy resources
20 by encouraging the use of bicycles in place of
21 motor vehicles.

22 (2) REQUIREMENTS.—A pilot project described
23 in paragraph (1) shall—

24 (A) use education and marketing to con-
25 vert motor vehicle trips to bicycle trips;

1 (B) document project results and energy
2 savings (in estimated units of energy con-
3 served);

4 (C) facilitate partnerships among inter-
5 ested parties in at least 2 of the fields of—

6 (i) transportation;

7 (ii) law enforcement;

8 (iii) education;

9 (iv) public health;

10 (v) environment; and

11 (vi) energy;

12 (D) maximize bicycle facility investments;

13 (E) demonstrate methods that may be
14 used in other regions of the United States; and

15 (F) facilitate the continuation of ongoing
16 programs that are sustained by local resources.

17 (3) COST SHARING.—At least 20 percent of the
18 cost of each pilot project described in paragraph (1)
19 shall be provided from State or local sources.

20 (d) ENERGY AND BICYCLING RESEARCH STUDY.—

21 (1) IN GENERAL.—Not later than 2 years after
22 the date of enactment of this Act, the Secretary
23 shall enter into a contract with the National Acad-
24 emy of Sciences for, and the National Academy of
25 Sciences shall conduct and submit to Congress a re-

1 port on, a study on the feasibility of converting
2 motor vehicle trips to bicycle trips.

3 (2) COMPONENTS.—The study shall—

4 (A) document the results or progress of
5 the pilot projects under subsection (c);

6 (B) determine the type and duration of
7 motor vehicle trips that people in the United
8 States may feasibly make by bicycle, taking into
9 consideration factors such as—

10 (i) weather;

11 (ii) land use and traffic patterns;

12 (iii) the carrying capacity of bicycles;

13 and

14 (iv) bicycle infrastructure;

15 (C) determine any energy savings that
16 would result from the conversion of motor vehi-
17 cle trips to bicycle trips;

18 (D) include a cost-benefit analysis of bicy-
19 cle infrastructure investments; and

20 (E) include a description of any factors
21 that would encourage more motor vehicle trips
22 to be replaced with bicycle trips.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Secretary to carry

1 out this section \$6,200,000, to remain available until ex-
2 pended, of which—

3 (1) \$5,150,000 shall be used to carry out pilot
4 projects described in subsection (c);

5 (2) \$300,000 shall be used by the Secretary to
6 coordinate, publicize, and disseminate the results of
7 the program; and

8 (3) \$750,000 shall be used to carry out sub-
9 section (d).

10 **SEC. 756. REDUCTION OF ENGINE IDLING OF HEAVY-DUTY**
11 **VEHICLES.**

12 (a) DEFINITIONS.—In this section:

13 (1) ADMINISTRATOR.—The term “Adminis-
14 trator” means the Administrator of the Environ-
15 mental Protection Agency.

16 (2) ADVANCED TRUCK STOP ELECTRIFICATION
17 SYSTEM.—The term “advanced truck stop elec-
18 trification system” means a stationary system that
19 delivers heat, air conditioning, electricity, and com-
20 munications, and is capable of providing verifiable
21 and auditable evidence of use of those services, to a
22 heavy-duty vehicle and any occupants of the heavy-
23 duty vehicle without relying on components mounted
24 onboard the heavy-duty vehicle for delivery of those
25 services.

1 (3) AUXILIARY POWER UNIT.—The term “auxil-
2 iary power unit” means an integrated system that—

3 (A) provides heat, air conditioning, engine
4 warming, and electricity to the factory-installed
5 components on a heavy-duty vehicle as if the
6 main drive engine of the heavy-duty vehicle
7 were running; and

8 (B) is certified by the Administrator under
9 part 89 of title 40, Code of Federal Regulations
10 (or any successor regulation), as meeting appli-
11 cable emission standards.

12 (4) HEAVY-DUTY VEHICLE.—The term “heavy-
13 duty vehicle” means a vehicle that—

14 (A) has a gross vehicle weight rating great-
15 er than 12,500 pounds; and

16 (B) is powered by a diesel engine.

17 (5) IDLE REDUCTION TECHNOLOGY.—The term
18 “idle reduction technology” means an advanced
19 truck stop electrification system, auxiliary power
20 unit, or other device or system of devices that—

21 (A) is used to reduce long-duration idling
22 of a heavy-duty vehicle; and

23 (B) allows for the main drive engine or
24 auxiliary refrigeration engine of a heavy-duty
25 vehicle to be shut down.

1 (6) LONG-DURATION IDLING.—

2 (A) IN GENERAL.—The term “long-dura-
3 tion idling” means the operation of a main
4 drive engine or auxiliary refrigeration engine of
5 a heavy-duty vehicle, for a period greater than
6 15 consecutive minutes, at a time at which the
7 main drive engine is not engaged in gear.

8 (B) EXCLUSIONS.—The term “long-dura-
9 tion idling” does not include the operation of a
10 main drive engine or auxiliary refrigeration en-
11 gine of a heavy-duty vehicle during a routine
12 stoppage associated with traffic movement or
13 congestion.

14 (b) IDLE REDUCTION TECHNOLOGY BENEFITS, PRO-
15 GRAMS, AND STUDIES.—

16 (1) IN GENERAL.—Not later than 90 days after
17 the date of enactment of this Act, the Administrator
18 shall—

19 (A)(i) commence a review of the mobile
20 source air emission models of the Environ-
21 mental Protection Agency used under the Clean
22 Air Act (42 U.S.C. 7401 et seq.) to determine
23 whether the models accurately reflect the emis-
24 sions resulting from long-duration idling of

1 heavy-duty vehicles and other vehicles and en-
2 gines; and

3 (ii) update those models as the Adminis-
4 trator determines to be appropriate; and

5 (B)(i) commence a review of the emission
6 reductions achieved by the use of idle reduction
7 technology; and

8 (ii) complete such revisions of the regula-
9 tions and guidance of the Environmental Pro-
10 tection Agency as the Administrator determines
11 to be appropriate.

12 (2) DEADLINE FOR COMPLETION.—Not later
13 than 180 days after the date of enactment of this
14 Act, the Administrator shall—

15 (A) complete the reviews under subpara-
16 graphs (A)(i) and (B)(i) of paragraph (1); and

17 (B) prepare and make publicly available 1
18 or more reports on the results of the reviews.

19 (3) DISCRETIONARY INCLUSIONS.—The reviews
20 under subparagraphs (A)(i) and (B)(i) of paragraph
21 (1) and the reports under paragraph (2)(B) may ad-
22 dress the potential fuel savings resulting from use of
23 idle reduction technology.

24 (4) IDLE REDUCTION DEPLOYMENT PRO-
25 GRAM.—

1 (A) ESTABLISHMENT.—

2 (i) IN GENERAL.—Not later than 90
3 days after the date of enactment of this
4 Act, the Administrator, in consultation
5 with the Secretary of Transportation, shall
6 establish a program to support deployment
7 of idle reduction technology.

8 (ii) PRIORITY.—The Administrator
9 shall give priority to the deployment of idle
10 reduction technology based on beneficial ef-
11 fects on air quality and ability to lessen
12 the emission of criteria air pollutants.

13 (B) FUNDING.—

14 (i) AUTHORIZATION OF APPROPRIA-
15 TIONS.—There are authorized to be appro-
16 priated to the Administrator to carry out
17 subparagraph (A) \$19,500,000 for fiscal
18 year 2004, \$30,000,000 for fiscal year
19 2005, and \$45,000,000 for fiscal year
20 2006.

21 (ii) COST SHARING.—Subject to clause
22 (iii), the Administrator shall require at
23 least 50 percent of the costs directly and
24 specifically related to any project under

1 this section to be provided from non-Fed-
2 eral sources.

3 (iii) NECESSARY AND APPROPRIATE
4 REDUCTIONS.—The Administrator may re-
5 duce the non-Federal requirement under
6 clause (ii) if the Administrator determines
7 that the reduction is necessary and appro-
8 priate to meet the objectives of this sec-
9 tion.

10 (5) IDLING LOCATION STUDY.—

11 (A) IN GENERAL.—Not later than 90 days
12 after the date of enactment of this Act, the Ad-
13 ministrator, in consultation with the Secretary
14 of Transportation, shall commence a study to
15 analyze all locations at which heavy-duty vehi-
16 cles stop for long-duration idling, including—

- 17 (i) truck stops;
18 (ii) rest areas;
19 (iii) border crossings;
20 (iv) ports;
21 (v) transfer facilities; and
22 (vi) private terminals.

23 (B) DEADLINE FOR COMPLETION.—Not
24 later than 180 days after the date of enactment
25 of this Act, the Administrator shall—

1 (i) complete the study under subpara-
2 graph (A); and

3 (ii) prepare and make publicly avail-
4 able 1 or more reports of the results of the
5 study.

6 (c) VEHICLE WEIGHT EXEMPTION.—Section 127(a)
7 of title 23, United States Code, is amended—

8 (1) by designating the first through eleventh
9 sentences as paragraphs (1) through (11), respec-
10 tively; and

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

12 “(12) HEAVY DUTY VEHICLES.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graphs (B) and (C), in order to promote reduc-
15 tion of fuel use and emissions because of engine
16 idling, the maximum gross vehicle weight limit
17 and the axle weight limit for any heavy-duty ve-
18 hicle equipped with an idle reduction technology
19 shall be increased by a quantity necessary to
20 compensate for the additional weight of the idle
21 reduction system.

22 “(B) MAXIMUM WEIGHT INCREASE.—The
23 weight increase under subparagraph (A) shall
24 be not greater than 250 pounds.

1 “(C) PROOF.—On request by a regulatory
2 agency or law enforcement agency, the vehicle
3 operator shall provide proof (through dem-
4 onstration or certification) that—

5 “(i) the idle reduction technology is
6 fully functional at all times; and

7 “(ii) the 250-pound gross weight in-
8 crease is not used for any purpose other
9 than the use of idle reduction technology
10 described in subparagraph (A).”.

11 **SEC. 757. BIODIESEL ENGINE TESTING PROGRAM.**

12 (a) IN GENERAL.—Not later than 180 days after the
13 date of enactment of this Act, the Secretary shall initiate
14 a partnership with diesel engine, diesel fuel injection sys-
15 tem, and diesel vehicle manufacturers and diesel and bio-
16 diesel fuel providers, to include biodiesel testing in ad-
17 vanced diesel engine and fuel system technology.

18 (b) SCOPE.—The program shall provide for testing
19 to determine the impact of biodiesel from different sources
20 on current and future emission control technologies, with
21 emphasis on—

22 (1) the impact of biodiesel on emissions war-
23 ranty, in-use liability, and antitampering provisions;

24 (2) the impact of long-term use of biodiesel on
25 engine operations;

1 (3) the options for optimizing these technologies
2 for both emissions and performance when switching
3 between biodiesel and diesel fuel; and

4 (4) the impact of using biodiesel in these fuel-
5 ing systems and engines when used as a blend with
6 2006 Environmental Protection Agency-mandated
7 diesel fuel containing a maximum of 15-parts-per-
8 million sulfur content.

9 (c) REPORT.—Not later than 2 years after the date
10 of enactment of this Act, the Secretary shall provide an
11 interim report to Congress on the findings of the program,
12 including a comprehensive analysis of impacts from bio-
13 diesel on engine operation for both existing and expected
14 future diesel technologies, and recommendations for en-
15 suring optimal emissions reductions and engine perform-
16 ance with biodiesel.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated \$5,000,000 for each of
19 fiscal years 2004 through 2008 to carry out this section.

20 (e) DEFINITION.—For purposes of this section, the
21 term “biodiesel” means a diesel fuel substitute produced
22 from nonpetroleum renewable resources that meets the
23 registration requirements for fuels and fuel additives es-
24 tablished by the Environmental Protection Agency under
25 section 211 of the Clean Air Act (42 U.S.C. 7545) and

1 that meets the American Society for Testing and Materials
2 D6751-02a Standard Specification for Biodiesel Fuel
3 (B100) Blend Stock for Distillate Fuels.

4 **SEC. 758. HIGH OCCUPANCY VEHICLE EXCEPTION.**

5 Notwithstanding section 102(a) of title 23, United
6 States Code, a State may permit a vehicle with fewer than
7 2 occupants to operate in high occupancy vehicle lanes if
8 the vehicle—

9 (1) is a dedicated vehicle (as defined in section
10 301 of the Energy Policy Act of 1992 (42 U.S.C.
11 13211)); or

12 (2) is a hybrid vehicle (as defined by the State
13 for the purpose of this section).

14 **Subtitle E—Automobile Efficiency**

15 **SEC. 771. AUTHORIZATION OF APPROPRIATIONS FOR IM-**
16 **PLEMENTATION AND ENFORCEMENT OF**
17 **FUEL ECONOMY STANDARDS.**

18 In addition to any other funds authorized by law,
19 there are authorized to be appropriated to the National
20 Highway Traffic Safety Administration to carry out its ob-
21 ligations with respect to average fuel economy standards
22 \$2,000,000 for each of fiscal years 2004 through 2008.

1 **SEC. 772. REVISED CONSIDERATIONS FOR DECISIONS ON**
2 **MAXIMUM FEASIBLE AVERAGE FUEL ECON-**
3 **OMY.**

4 Section 32902(f) of title 49, United States Code, is
5 amended to read as follows:

6 “(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM
7 FEASIBLE AVERAGE FUEL ECONOMY.—When deciding
8 maximum feasible average fuel economy under this sec-
9 tion, the Secretary of Transportation shall consider the
10 following matters:

11 “(1) Technological feasibility.

12 “(2) Economic practicability.

13 “(3) The effect of other motor vehicle standards
14 of the Government on fuel economy.

15 “(4) The need of the United States to conserve
16 energy.

17 “(5) The effects of fuel economy standards on
18 passenger automobiles, nonpassenger automobiles,
19 and occupant safety.

20 “(6) The effects of compliance with average fuel
21 economy standards on levels of automobile industry
22 employment in the United States.”.

1 **SEC. 773. EXTENSION OF MAXIMUM FUEL ECONOMY IN-**
2 **CREASE FOR ALTERNATIVE FUELED VEHI-**
3 **CLES.**

4 (a) MANUFACTURING INCENTIVES.—Section 32905
5 of title 49, United States Code, is amended—

6 (1) in each of subsections (b) and (d), by strik-
7 ing “1993–2004” and inserting “1993–2008”;

8 (2) in subsection (f), by striking “2001” and
9 inserting “2005”; and

10 (3) in subsection (f)(1), by striking “2004” and
11 inserting “2008”.

12 (b) MAXIMUM FUEL ECONOMY INCREASE.—Sub-
13 section (a)(1) of section 32906 of title 49, United States
14 Code, is amended—

15 (1) in subparagraph (A), by striking “the model
16 years 1993–2004” and inserting “model years
17 1993–2008”; and

18 (2) in subparagraph (B), by striking “the model
19 years 2005–2008” and inserting “model years
20 2009–2012”.

21 **SEC. 774. STUDY OF FEASIBILITY AND EFFECTS OF REDUC-**
22 **ING USE OF FUEL FOR AUTOMOBILES.**

23 (a) IN GENERAL.—Not later than 30 days after the
24 date of the enactment of this Act, the Administrator of
25 the National Highway Traffic Safety Administration shall
26 initiate a study of the feasibility and effects of reducing

1 by model year 2012, by a significant percentage, the
2 amount of fuel consumed by automobiles.

3 (b) SUBJECTS OF STUDY.—The study under this sec-
4 tion shall include—

5 (1) examination of, and recommendation of al-
6 ternatives to, the policy under current Federal law
7 of establishing average fuel economy standards for
8 automobiles and requiring each automobile manufac-
9 turer to comply with average fuel economy standards
10 that apply to the automobiles it manufactures;

11 (2) examination of how automobile manufactur-
12 ers could contribute toward achieving the reduction
13 referred to in subsection (a);

14 (3) examination of the potential of fuel cell
15 technology in motor vehicles in order to determine
16 the extent to which such technology may contribute
17 to achieving the reduction referred to in subsection
18 (a); and

19 (4) examination of the effects of the reduction
20 referred to in subsection (a) on—

21 (A) gasoline supplies;

22 (B) the automobile industry, including
23 sales of automobiles manufactured in the
24 United States;

25 (C) motor vehicle safety; and

1 (D) air quality.

2 (c) REPORT.—The Administrator shall submit to
3 Congress a report on the findings, conclusion, and rec-
4 ommendations of the study under this section by not later
5 than 1 year after the date of the enactment of this Act.

6 **TITLE VIII—HYDROGEN**

7 **SEC. 801. DEFINITIONS.**

8 In this title:

9 (1) ADVISORY COMMITTEE.—The term “Advi-
10 sory Committee” means the Hydrogen Technical and
11 Fuel Cell Advisory Committee established under sec-
12 tion 805.

13 (2) DEPARTMENT.—The term “Department”
14 means the Department of Energy.

15 (3) FUEL CELL.—The term “fuel cell” means a
16 device that directly converts the chemical energy of
17 a fuel and an oxidant into electricity by an electro-
18 chemical process taking place at separate electrodes
19 in the device.

20 (4) INFRASTRUCTURE.—The term “infrastruc-
21 ture” means the equipment, systems, or facilities
22 used to produce, distribute, deliver, or store hydro-
23 gen.

24 (5) LIGHT DUTY VEHICLE.—The term “light
25 duty vehicle” means a car or truck classified by the

1 Department of Transportation as a Class I or IIA
2 vehicle.

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

5 **SEC. 802. PLAN.**

6 Not later than 6 months after the date of enactment
7 of this Act, the Secretary shall transmit to Congress a
8 coordinated plan for the programs described in this title
9 and any other programs of the Department that are di-
10 rectly related to fuel cells or hydrogen. The plan shall de-
11 scribe, at a minimum—

12 (1) the agenda for the next 5 years for the pro-
13 grams authorized under this title, including the
14 agenda for each activity enumerated in section
15 803(a);

16 (2) the types of entities that will carry out the
17 activities under this title and what role each entity
18 is expected to play;

19 (3) the milestones that will be used to evaluate
20 the programs for the next 5 years;

21 (4) the most significant technical and nontech-
22 nical hurdles that stand in the way of achieving the
23 goals described in section 803(b), and how the pro-
24 grams will address those hurdles; and

1 (5) the policy assumptions that are implicit in
2 the plan, including any assumptions that would af-
3 fect the sources of hydrogen or the marketability of
4 hydrogen-related products.

5 **SEC. 803. PROGRAMS.**

6 (a) **ACTIVITIES.**—The Secretary, in partnership with
7 the private sector, shall conduct programs to address—

8 (1) production of hydrogen from diverse energy
9 sources, including—

10 (A) fossil fuels, which may include carbon
11 capture and sequestration;

12 (B) hydrogen-carrier fuels (including eth-
13 anol and methanol);

14 (C) renewable energy resources, including
15 biomass; and

16 (D) nuclear energy;

17 (2) use of hydrogen for commercial, industrial,
18 and residential electric power generation;

19 (3) safe delivery of hydrogen or hydrogen-car-
20 rier fuels, including—

21 (A) transmission by pipeline and other dis-
22 tribution methods; and

23 (B) convenient and economic refueling of
24 vehicles either at central refueling stations or
25 through distributed on-site generation;

- 1 (4) advanced vehicle technologies, including—
 - 2 (A) engine and emission control systems;
 - 3 (B) energy storage, electric propulsion, and
4 hybrid systems;
 - 5 (C) automotive materials; and
 - 6 (D) other advanced vehicle technologies;
- 7 (5) storage of hydrogen or hydrogen-carrier
8 fuels, including development of materials for safe
9 and economic storage in gaseous, liquid, or solid
10 form at refueling facilities and onboard vehicles;
- 11 (6) development of safe, durable, affordable,
12 and efficient fuel cells, including fuel-flexible fuel cell
13 power systems, improved manufacturing processes,
14 high-temperature membranes, cost-effective fuel
15 processing for natural gas, fuel cell stack and system
16 reliability, low temperature operation, and cold start
17 capability;
- 18 (7) development, after consultation with the pri-
19 vate sector, of necessary codes and standards (in-
20 cluding international codes and standards and vol-
21 untary consensus standards adopted in accordance
22 with OMB Circular A-119) and safety practices for
23 the production, distribution, storage, and use of hy-
24 drogen, hydrogen-carrier fuels, and related products;
25 and

1 (8) a public education program to develop im-
2 proved knowledge and acceptability of hydrogen-
3 based systems.

4 (b) PROGRAM GOALS.—

5 (1) VEHICLES.—For vehicles, the goals of the
6 program are—

7 (A) to enable a commitment by auto-
8 makers no later than year 2015 to offer safe,
9 affordable, and technically viable hydrogen fuel
10 cell vehicles in the mass consumer market; and

11 (B) to enable production, delivery, and ac-
12 ceptance by consumers of model year 2020 hy-
13 drogen fuel cell and other hydrogen-powered ve-
14 hicles that will have—

15 (i) a range of at least 300 miles;

16 (ii) improved performance and ease of
17 driving;

18 (iii) safety and performance com-
19 parable to vehicle technologies in the mar-
20 ket; and

21 (iv) when compared to light duty vehi-
22 cles in model year 2003—

23 (I) fuel economy that is substan-
24 tially higher;

- 1 (II) substantially lower emissions
2 of air pollutants; and
3 (III) equivalent or improved vehi-
4 cle fuel system crash integrity and oc-
5 cupant protection.

6 (2) HYDROGEN ENERGY AND ENERGY INFRA-
7 STRUCTURE.—For hydrogen energy and energy in-
8 frastructure, the goals of the program are to enable
9 a commitment not later than 2015 that will lead to
10 infrastructure by 2020 that will provide—

- 11 (A) safe and convenient refueling;
12 (B) improved overall efficiency;
13 (C) widespread availability of hydrogen
14 from domestic energy sources through—
15 (i) production, with consideration of
16 emissions levels;
17 (ii) delivery, including transmission by
18 pipeline and other distribution methods for
19 hydrogen; and
20 (iii) storage, including storage in sur-
21 face transportation vehicles;
22 (D) hydrogen for fuel cells, internal com-
23 bustion engines, and other energy conversion
24 devices for portable, stationary, and transpor-
25 tation applications; and

1 (E) other technologies consistent with the
2 Department's plan.

3 (3) FUEL CELLS.—The goals for fuel cells and
4 their portable, stationary, and transportation appli-
5 cations are to enable—

6 (A) safe, economical, and environmentally
7 sound hydrogen fuel cells;

8 (B) fuel cells for light duty and other vehi-
9 cles; and

10 (C) other technologies consistent with the
11 Department's plan.

12 (c) DEMONSTRATION.—In carrying out the programs
13 under this section, the Secretary shall fund a limited num-
14 ber of demonstration projects, consistent with a deter-
15 mination of the maturity, cost-effectiveness, and environ-
16 mental impacts of technologies supporting each project. In
17 selecting projects under this subsection, the Secretary
18 shall, to the extent practicable and in the public interest,
19 select projects that—

20 (1) involve using hydrogen and related products
21 at existing facilities or installations, such as existing
22 office buildings, military bases, vehicle fleet centers,
23 transit bus authorities, or units of the National Park
24 System;

1 (2) depend on reliable power from hydrogen to
2 carry out essential activities;

3 (3) lead to the replication of hydrogen tech-
4 nologies and draw such technologies into the market-
5 place;

6 (4) include vehicle, portable, and stationary
7 demonstrations of fuel cell and hydrogen-based en-
8 ergy technologies;

9 (5) address the interdependency of demand for
10 hydrogen fuel cell applications and hydrogen fuel in-
11 frastructure;

12 (6) raise awareness of hydrogen technology
13 among the public;

14 (7) facilitate identification of an optimum tech-
15 nology among competing alternatives;

16 (8) address distributed generation using renew-
17 able sources; and

18 (9) address applications specific to rural or re-
19 mote locations, including isolated villages and is-
20 lands, the National Park System, and tribal entities.

21 The Secretary shall give preference to projects which ad-
22 dress multiple elements contained in paragraphs (1)
23 through (9).

24 (d) DEPLOYMENT.—In carrying out the programs
25 under this section, the Secretary shall, in partnership with

1 the private sector, conduct activities to facilitate the de-
2 ployment of hydrogen energy and energy infrastructure,
3 fuel cells, and advanced vehicle technologies.

4 (e) FUNDING.—

5 (1) IN GENERAL.—The Secretary shall carry
6 out the programs under this section using a competi-
7 tive, merit-based review process and consistent with
8 the generally applicable Federal laws and regulations
9 governing awards of financial assistance, contracts,
10 or other agreements.

11 (2) RESEARCH CENTERS.—Activities under this
12 section may be carried out by funding nationally rec-
13 ognized university-based or Federal laboratory re-
14 search centers.

15 (f) COST SHARING.—

16 (1) RESEARCH AND DEVELOPMENT.—Except as
17 otherwise provided in this title, for research and de-
18 velopment programs carried out under this title the
19 Secretary shall require a commitment from non-Fed-
20 eral sources of at least 20 percent of the cost of the
21 project. The Secretary may reduce or eliminate the
22 non-Federal requirement under this paragraph if the
23 Secretary determines that the research and develop-
24 ment is of a basic or fundamental nature or involves
25 technical analyses or educational activities.

1 (2) DEMONSTRATION AND COMMERCIAL APPLI-
2 CATION.—Except as otherwise provided in this title,
3 the Secretary shall require at least 50 percent of the
4 costs directly and specifically related to any dem-
5 onstration or commercial application project under
6 this title to be provided from non-Federal sources.
7 The Secretary may reduce the non-Federal require-
8 ment under this paragraph if the Secretary deter-
9 mines that the reduction is necessary and appro-
10 prium considering the technological risks involved in
11 the project and is necessary to meet the objectives
12 of this title.

13 (3) CALCULATION OF AMOUNT.—In calculating
14 the amount of the non-Federal commitment under
15 paragraph (1) or (2), the Secretary may include per-
16 sonnel, services, equipment, and other resources.

17 (4) SIZE OF NON-FEDERAL SHARE.—The Sec-
18 retary may consider the size of the non-Federal
19 share in selecting projects.

20 (g) DISCLOSURE.—Section 623 of the Energy Policy
21 Act of 1992 (42 U.S.C. 13293) relating to the protection
22 of information shall apply to projects carried out through
23 grants, cooperative agreements, or contracts under this
24 title.

1 **SEC. 804. INTERAGENCY TASK FORCE.**

2 (a) ESTABLISHMENT.—Not later than 120 days after
3 the date of enactment of this Act, the President shall es-
4 tablish an interagency task force chaired by the Secretary
5 with representatives from each of the following:

6 (1) The Office of Science and Technology Pol-
7 icy within the Executive Office of the President.

8 (2) The Department of Transportation.

9 (3) The Department of Defense.

10 (4) The Department of Commerce (including
11 the National Institute of Standards and Tech-
12 nology).

13 (5) The Department of State.

14 (6) The Environmental Protection Agency.

15 (7) The National Aeronautics and Space Ad-
16 ministration.

17 (8) Other Federal agencies as the Secretary de-
18 termines appropriate.

19 (b) DUTIES.—

20 (1) PLANNING.—The interagency task force
21 shall work toward—

22 (A) a safe, economical, and environ-
23 mentally sound fuel infrastructure for hydrogen
24 and hydrogen-carrier fuels, including an infra-
25 structure that supports buses and other fleet
26 transportation;

1 (B) fuel cells in government and other ap-
2 plications, including portable, stationary, and
3 transportation applications;

4 (C) distributed power generation, including
5 the generation of combined heat, power, and
6 clean fuels including hydrogen;

7 (D) uniform hydrogen codes, standards,
8 and safety protocols; and

9 (E) vehicle hydrogen fuel system integrity
10 safety performance.

11 (2) ACTIVITIES.—The interagency task force
12 may organize workshops and conferences, may issue
13 publications, and may create databases to carry out
14 its duties. The interagency task force shall—

15 (A) foster the exchange of generic, non-
16 proprietary information and technology among
17 industry, academia, and government;

18 (B) develop and maintain an inventory and
19 assessment of hydrogen, fuel cells, and other
20 advanced technologies, including the commercial
21 capability of each technology for the economic
22 and environmentally safe production, distribu-
23 tion, delivery, storage, and use of hydrogen;

1 (C) integrate technical and other informa-
2 tion made available as a result of the programs
3 and activities under this title;

4 (D) promote the marketplace introduction
5 of infrastructure for hydrogen fuel vehicles; and

6 (E) conduct an education program to pro-
7 vide hydrogen and fuel cell information to po-
8 tential end-users.

9 (c) AGENCY COOPERATION.—The heads of all agen-
10 cies, including those whose agencies are not represented
11 on the interagency task force, shall cooperate with and
12 furnish information to the interagency task force, the Ad-
13 visory Committee, and the Department.

14 **SEC. 805. ADVISORY COMMITTEE.**

15 (a) ESTABLISHMENT.—The Hydrogen Technical and
16 Fuel Cell Advisory Committee is established to advise the
17 Secretary on the programs and activities under this title.

18 (b) MEMBERSHIP.—

19 (1) MEMBERS.—The Advisory Committee shall
20 be comprised of not fewer than 12 nor more than 25
21 members. The members shall be appointed by the
22 Secretary to represent domestic industry, academia,
23 professional societies, government agencies, Federal
24 laboratories, previous advisory panels, and financial,
25 environmental, and other appropriate organizations

1 based on the Department's assessment of the tech-
2 nical and other qualifications of committee members
3 and the needs of the Advisory Committee.

4 (2) TERMS.—The term of a member of the Ad-
5 visory Committee shall not be more than 3 years.
6 The Secretary may appoint members of the Advisory
7 Committee in a manner that allows the terms of the
8 members serving at any time to expire at spaced in-
9 tervals so as to ensure continuity in the functioning
10 of the Advisory Committee. A member of the Advi-
11 sory Committee whose term is expiring may be re-
12 appointed.

13 (3) CHAIRPERSON.—The Advisory Committee
14 shall have a chairperson, who is elected by the mem-
15 bers from among their number.

16 (c) REVIEW.—The Advisory Committee shall review
17 and make recommendations to the Secretary on—

18 (1) the implementation of programs and activi-
19 ties under this title;

20 (2) the safety, economical, and environmental
21 consequences of technologies for the production, dis-
22 tribution, delivery, storage, or use of hydrogen en-
23 ergy and fuel cells; and

24 (3) the plan under section 802.

25 (d) RESPONSE.—

1 (1) CONSIDERATION OF RECOMMENDATIONS.—

2 The Secretary shall consider, but need not adopt,
3 any recommendations of the Advisory Committee
4 under subsection (c).

5 (2) BIENNIAL REPORT.—The Secretary shall
6 transmit a biennial report to Congress describing
7 any recommendations made by the Advisory Com-
8 mittee since the previous report. The report shall in-
9 clude a description of how the Secretary has imple-
10 mented or plans to implement the recommendations,
11 or an explanation of the reasons that a recommenda-
12 tion will not be implemented. The report shall be
13 transmitted along with the President’s budget pro-
14 posal.

15 (e) SUPPORT.—The Secretary shall provide resources
16 necessary in the judgment of the Secretary for the Advi-
17 sory Committee to carry out its responsibilities under this
18 title.

19 **SEC. 806. EXTERNAL REVIEW.**

20 (a) PLAN.—The Secretary shall enter into an ar-
21 rangement with the National Academy of Sciences to re-
22 view the plan prepared under section 802, which shall be
23 completed not later than 6 months after the Academy re-
24 ceives the plan. Not later than 45 days after receiving the
25 review, the Secretary shall transmit the review to Congress

1 along with a plan to implement the review's recommenda-
2 tions or an explanation of the reasons that a recommenda-
3 tion will not be implemented.

4 (b) **ADDITIONAL REVIEW.**—The Secretary shall enter
5 into an arrangement with the National Academy of
6 Sciences under which the Academy will review the pro-
7 grams under section 803 during the fourth year following
8 the date of enactment of this Act. The Academy's review
9 shall include the research priorities and technical mile-
10 stones, and evaluate the progress toward achieving them.
11 The review shall be completed not later than 5 years after
12 the date of enactment of this Act. Not later than 45 days
13 after receiving the review, the Secretary shall transmit the
14 review to Congress along with a plan to implement the
15 review's recommendations or an explanation for the rea-
16 sons that a recommendation will not be implemented.

17 **SEC. 807. MISCELLANEOUS PROVISIONS.**

18 (a) **REPRESENTATION.**—The Secretary may rep-
19 resent the United States interests with respect to activities
20 and programs under this title, in coordination with the
21 Department of Transportation, the National Institute of
22 Standards and Technology, and other relevant Federal
23 agencies, before governments and nongovernmental orga-
24 nizations including—

1 (1) other Federal, State, regional, and local
2 governments and their representatives;

3 (2) industry and its representatives, including
4 members of the energy and transportation indus-
5 tries; and

6 (3) in consultation with the Department of
7 State, foreign governments and their representatives
8 including international organizations.

9 (b) REGULATORY AUTHORITY.—Nothing in this title
10 shall be construed to alter the regulatory authority of the
11 Department.

12 **SEC. 808. SAVINGS CLAUSE.**

13 Nothing in this title shall be construed to affect the
14 authority of the Secretary of Transportation that may
15 exist prior to the date of enactment of this Act with re-
16 spect to—

17 (1) research into, and regulation of, hydrogen-
18 powered vehicles fuel systems integrity, standards,
19 and safety under subtitle VI of title 49, United
20 States Code;

21 (2) regulation of hazardous materials transpor-
22 tation under chapter 51 of title 49, United States
23 Code;

24 (3) regulation of pipeline safety under chapter
25 601 of title 49, United States Code;

1 (4) encouragement and promotion of research,
2 development, and deployment activities relating to
3 advanced vehicle technologies under section 5506 of
4 title 49, United States Code;

5 (5) regulation of motor vehicle safety under
6 chapter 301 of title 49, United States Code;

7 (6) automobile fuel economy under chapter 329
8 of title 49, United States Code; or

9 (7) representation of the interests of the United
10 States with respect to the activities and programs
11 under the authority of title 49, United States Code.

12 **SEC. 809. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated to the Sec-
14 retary to carry out this title, in addition to any amounts
15 made available for these purposes under other Acts—

16 (1) \$273,500,000 for fiscal year 2004;

17 (2) \$375,000,000 for fiscal year 2005;

18 (3) \$450,000,000 for fiscal year 2006;

19 (4) \$500,000,000 for fiscal year 2007; and

20 (5) \$550,000,000 for fiscal year 2008.

21 **TITLE IX—RESEARCH AND**
22 **DEVELOPMENT**

23 **SEC. 901. GOALS.**

24 (a) IN GENERAL.—The Secretary shall conduct a bal-
25 anced set of programs of energy research, development,

1 demonstration, and commercial application to support
2 Federal energy policy and programs by the Department.

3 Such programs shall be focused on—

4 (1) increasing the efficiency of all energy inten-
5 sive sectors through conservation and improved tech-
6 nologies;

7 (2) promoting diversity of energy supply;

8 (3) decreasing the Nation's dependence on for-
9 eign energy supplies;

10 (4) improving United States energy security;

11 and

12 (5) decreasing the environmental impact of en-
13 ergy-related activities.

14 (b) GOALS.—The Secretary shall publish measurable
15 5-year cost and performance-based goals with each annual
16 budget submission in at least the following areas:

17 (1) Energy efficiency for buildings, energy-con-
18 suming industries, and vehicles.

19 (2) Electric energy generation (including dis-
20 tributed generation), transmission, and storage.

21 (3) Renewable energy technologies including
22 wind power, photovoltaics, solar thermal systems,
23 geothermal energy, hydrogen-fueled systems, bio-
24 mass-based systems, biofuels, and hydropower.

1 (4) Fossil energy including power generation,
2 onshore and offshore oil and gas resource recovery,
3 and transportation.

4 (5) Nuclear energy including programs for ex-
5 isting and advanced reactors and education of future
6 specialists.

7 (c) PUBLIC COMMENT.—The Secretary shall provide
8 mechanisms for input on the annually published goals
9 from industry, university, and other public sources.

10 (d) EFFECT OF GOALS.—

11 (1) NO NEW AUTHORITY OR REQUIREMENT.—
12 Nothing in subsection (a) or the annually published
13 goals shall—

14 (A) create any new—

15 (i) authority for any Federal agency;

16 or

17 (ii) requirement for any other person;

18 (B) be used by a Federal agency to sup-
19 port the establishment of regulatory standards
20 or regulatory requirements; or

21 (C) alter the authority of the Secretary to
22 make grants or other awards.

23 (2) NO LIMITATION.—Nothing in this sub-
24 section shall be construed to limit the authority of
25 the Secretary to impose conditions on grants or

1 other awards based on the goals in subsection (a) or
2 any subsequent modification thereto.

3 **SEC. 902. DEFINITIONS.**

4 For purposes of this title:

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

7 (2) DEPARTMENTAL MISSION.—The term “de-
8 partmental mission” means any of the functions
9 vested in the Secretary of Energy by the Depart-
10 ment of Energy Organization Act (42 U.S.C. 7101
11 et seq.) or other law.

12 (3) INSTITUTION OF HIGHER EDUCATION.—The
13 term “institution of higher education” has the
14 meaning given that term in section 101(a) of the
15 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

16 (4) NATIONAL LABORATORY.—The term “Na-
17 tional Laboratory” means any of the following lab-
18 oratories owned by the Department:

19 (A) Ames Laboratory.

20 (B) Argonne National Laboratory.

21 (C) Brookhaven National Laboratory.

22 (D) Fermi National Accelerator Labora-
23 tory.

24 (E) Idaho National Engineering and Envi-
25 ronmental Laboratory.

1 (F) Lawrence Berkeley National Labora-
2 tory.

3 (G) Lawrence Livermore National Labora-
4 tory.

5 (H) Los Alamos National Laboratory.

6 (I) National Energy Technology Labora-
7 tory.

8 (J) National Renewable Energy Labora-
9 tory.

10 (K) Oak Ridge National Laboratory.

11 (L) Pacific Northwest National Labora-
12 tory.

13 (M) Princeton Plasma Physics Laboratory.

14 (N) Sandia National Laboratories.

15 (O) Stanford Linear Accelerator Center.

16 (P) Thomas Jefferson National Accelerator
17 Facility.

18 (5) NONMILITARY ENERGY LABORATORY.—The
19 term “nonmilitary energy laboratory” means the lab-
20 oratories listed in paragraph (4), except for those
21 listed in subparagraphs (G), (H), and (N).

22 (6) SECRETARY.—The term “Secretary” means
23 the Secretary of Energy.

24 (7) SINGLE-PURPOSE RESEARCH FACILITY.—
25 The term “single-purpose research facility” means

1 any of the primarily single-purpose entities owned by
2 the Department or any other organization of the De-
3 partment designated by the Secretary.

4 **Subtitle A—Energy Efficiency**

5 **SEC. 904. ENERGY EFFICIENCY.**

6 (a) IN GENERAL.—The following sums are author-
7 ized to be appropriated to the Secretary for energy effi-
8 ciency and conservation research, development, dem-
9 onstration, and commercial application activities, includ-
10 ing activities authorized under this subtitle:

11 (1) For fiscal year 2004, \$616,000,000.

12 (2) For fiscal year 2005, \$695,000,000.

13 (3) For fiscal year 2006, \$772,000,000.

14 (4) For fiscal year 2007, \$865,000,000.

15 (5) For fiscal year 2008, \$920,000,000.

16 (b) ALLOCATIONS.—From amounts authorized under
17 subsection (a), the following sums are authorized:

18 (1) For activities under section 905—

19 (A) for fiscal year 2004, \$20,000,000;

20 (B) for fiscal year 2005, \$30,000,000;

21 (C) for fiscal year 2006, \$50,000,000;

22 (D) for fiscal year 2007, \$50,000,000; and

23 (E) for fiscal year 2008, \$50,000,000.

24 (2) For activities under section 907—

25 (A) for fiscal year 2004, \$4,000,000; and

1 (B) for each of fiscal years 2005 through
2 2008, \$7,000,000.

3 (3) For activities under section 908—

4 (A) for fiscal year 2004, \$20,000,000;

5 (B) for fiscal year 2005, \$25,000,000;

6 (C) for fiscal year 2006, \$30,000,000;

7 (D) for fiscal year 2007, \$35,000,000; and

8 (E) for fiscal year 2008, \$40,000,000.

9 (4) For activities under section 909,
10 \$2,000,000 for each of fiscal years 2005 through
11 2008.

12 (c) EXTENDED AUTHORIZATION.—There are author-
13 ized to be appropriated to the Secretary for activities
14 under section 905, \$50,000,000 for each of fiscal years
15 2009 through 2013.

16 (d) LIMITATION ON USE OF FUNDS.—None of the
17 funds authorized to be appropriated under this section
18 may be used for—

19 (1) the issuance and implementation of energy
20 efficiency regulations;

21 (2) the Weatherization Assistance Program
22 under part A of title IV of the Energy Conservation
23 and Production Act (42 U.S.C. 6861 et seq.);

1 (3) the State Energy Program under part D of
2 title III of the Energy Policy and Conservation Act
3 (42 U.S.C. 6321 et seq.); or

4 (4) the Federal Energy Management Program
5 under part 3 of title V of the National Energy Con-
6 servation Policy Act (42 U.S.C. 8251 et seq.).

7 **SEC. 905. NEXT GENERATION LIGHTING INITIATIVE.**

8 (a) **IN GENERAL.**—The Secretary shall carry out a
9 Next Generation Lighting Initiative in accordance with
10 this section to support research, development, demonstra-
11 tion, and commercial application activities related to ad-
12 vanced solid-state lighting technologies based on white
13 light emitting diodes.

14 (b) **OBJECTIVES.**—The objectives of the initiative
15 shall be to develop advanced solid-state organic and inor-
16 ganic lighting technologies based on white light emitting
17 diodes that, compared to incandescent and fluorescent
18 lighting technologies, are longer lasting; more energy-effi-
19 cient; and cost-competitive, and have less environmental
20 impact.

21 (c) **INDUSTRY ALLIANCE.**—The Secretary shall, not
22 later than 3 months after the date of enactment of this
23 section, competitively select an Industry Alliance to rep-
24 resent participants that are private, for-profit firms which,
25 as a group, are broadly representative of United States

1 solid state lighting research, development, infrastructure,
2 and manufacturing expertise as a whole.

3 (d) RESEARCH.—

4 (1) IN GENERAL.—The Secretary shall carry
5 out the research activities of the Next Generation
6 Lighting Initiative through competitively awarded
7 grants to researchers, including Industry Alliance
8 participants, National Laboratories, and institutions
9 of higher education.

10 (2) ASSISTANCE FROM THE INDUSTRY ALLI-
11 ANCE.—The Secretary shall annually solicit from the
12 Industry Alliance—

13 (A) comments to identify solid-state light-
14 ing technology needs;

15 (B) assessment of the progress of the Ini-
16 tiative's research activities; and

17 (C) assistance in annually updating solid-
18 state lighting technology roadmaps.

19 (3) AVAILABILITY OF INFORMATION AND ROAD-
20 MAPS.—The information and roadmaps under para-
21 graph (2) shall be available to the public and public
22 response shall be solicited by the Secretary.

23 (e) DEVELOPMENT, DEMONSTRATION, AND COMMER-
24 CIAL APPLICATION.—The Secretary shall carry out a de-
25 velopment, demonstration, and commercial application

1 program for the Next Generation Lighting Initiative
2 through competitively selected awards. The Secretary may
3 give preference to participants of the Industry Alliance se-
4 lected pursuant to subsection (c).

5 (f) INTELLECTUAL PROPERTY.—The Secretary may
6 require, in accordance with the authorities provided in sec-
7 tion 202(a)(ii) of title 35, United States Code, section 152
8 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), and
9 section 9 of the Federal Nonnuclear Energy Research and
10 Development Act of 1974 (42 U.S.C. 5908), that—

11 (1) for any new invention resulting from activi-
12 ties under subsection (d)—

13 (A) the Industry Alliance members that
14 are active participants in research, development,
15 and demonstration activities related to the ad-
16 vanced solid-state lighting technologies that are
17 the subject of this section shall be granted first
18 option to negotiate with the invention owner
19 nonexclusive licenses and royalties for uses of
20 the invention related to solid-state lighting on
21 terms that are reasonable under the cir-
22 cumstances; and

23 (B)(i) for 1 year after a United States pat-
24 ent is issued for the invention, the patent hold-
25 er shall not negotiate any license or royalty

1 with any entity that is not a participant in the
2 Industry Alliance described in subparagraph
3 (A); and

4 (ii) during the year described in clause (i),
5 the invention owner shall negotiate nonexclusive
6 licenses and royalties in good faith with any in-
7 terested participant in the Industry Alliance de-
8 scribed in subparagraph (A); and

9 (2) such other terms as the Secretary deter-
10 mines are required to promote accelerated commer-
11 cialization of inventions made under the Initiative.

12 (g) NATIONAL ACADEMY REVIEW.—The Secretary
13 shall enter into an arrangement with the National Acad-
14 emy of Sciences to conduct periodic reviews of the Next
15 Generation Lighting Initiative. The Academy shall review
16 the research priorities, technical milestones, and plans for
17 technology transfer and progress towards achieving them.
18 The Secretary shall consider the results of such reviews
19 in evaluating the information obtained under subsection
20 (d)(2).

21 (h) DEFINITIONS.—As used in this section:

22 (1) ADVANCED SOLID-STATE LIGHTING.—The
23 term “advanced solid-state lighting” means a
24 semiconducting device package and delivery system

1 that produces white light using externally applied
2 voltage.

3 (2) RESEARCH.—The term “research” includes
4 research on the technologies, materials, and manu-
5 facturing processes required for white light emitting
6 diodes.

7 (3) INDUSTRY ALLIANCE.—The term “Industry
8 Alliance” means an entity selected by the Secretary
9 under subsection (c).

10 (4) WHITE LIGHT EMITTING DIODE.—The term
11 “white light emitting diode” means a
12 semiconducting package, utilizing either organic or
13 inorganic materials, that produces white light using
14 externally applied voltage.

15 **SEC. 906. NATIONAL BUILDING PERFORMANCE INITIATIVE.**

16 (a) INTERAGENCY GROUP.—Not later than 90 days
17 after the date of enactment of this Act, the Director of
18 the Office of Science and Technology Policy shall establish
19 an interagency group to develop, in coordination with the
20 advisory committee established under subsection (e), a
21 National Building Performance Initiative (in this section
22 referred to as the “Initiative”). The interagency group
23 shall be co-chaired by appropriate officials of the Depart-
24 ment and the Department of Commerce, who shall jointly

1 arrange for the provision of necessary administrative sup-
2 port to the group.

3 (b) INTEGRATION OF EFFORTS.—The Initiative,
4 working with the National Institute of Building Sciences,
5 shall integrate Federal, State, and voluntary private sector
6 efforts to reduce the costs of construction, operation,
7 maintenance, and renovation of commercial, industrial, in-
8 stitutional, and residential buildings.

9 (c) PLAN.—Not later than 1 year after the date of
10 enactment of this Act, the interagency group shall submit
11 to Congress a plan for carrying out the appropriate Fed-
12 eral role in the Initiative. The plan shall include—

13 (1) research, development, demonstration, and
14 commercial application of systems and materials for
15 new construction and retrofit relating to the building
16 envelope and building system components; and

17 (2) the collection, analysis, and dissemination of
18 research results and other pertinent information on
19 enhancing building performance to industry, govern-
20 ment entities, and the public.

21 (d) DEPARTMENT OF ENERGY ROLE.—Within the
22 Federal portion of the Initiative, the Department shall be
23 the lead agency for all aspects of building performance re-
24 lated to use and conservation of energy.

25 (e) ADVISORY COMMITTEE.—

1 (1) ESTABLISHMENT.—The Secretary, in con-
2 sultation with the Secretary of Commerce and the
3 Director of the Office of Science and Technology
4 Policy, shall establish an advisory committee to—

5 (A) analyze and provide recommendations
6 on potential private sector roles and participa-
7 tion in the Initiative; and

8 (B) review and provide recommendations
9 on the plan described in subsection (c).

10 (2) MEMBERSHIP.—Membership of the advisory
11 committee shall include representatives with a broad
12 range of appropriate expertise, including expertise
13 in—

14 (A) building research and technology;

15 (B) architecture, engineering, and building
16 materials and systems; and

17 (C) the residential, commercial, and indus-
18 trial sectors of the construction industry.

19 (f) CONSTRUCTION.—Nothing in this section provides
20 any Federal agency with new authority to regulate build-
21 ing performance.

22 **SEC. 907. SECONDARY ELECTRIC VEHICLE BATTERY USE**
23 **PROGRAM.**

24 (a) DEFINITIONS.—For purposes of this section:

1 (1) ASSOCIATED EQUIPMENT.—The term “asso-
2 ciated equipment” means equipment located where
3 the batteries will be used that is necessary to enable
4 the use of the energy stored in the batteries.

5 (2) BATTERY.—The term “battery” means an
6 energy storage device that previously has been used
7 to provide motive power in a vehicle powered in
8 whole or in part by electricity.

9 (b) PROGRAM.—The Secretary shall establish and
10 conduct a research, development, demonstration, and com-
11 mercial application program for the secondary use of bat-
12 teries if the Secretary finds that there are sufficient num-
13 bers of such batteries to support the program. The pro-
14 gram shall be—

15 (1) designed to demonstrate the use of batteries
16 in secondary applications, including utility and com-
17 mercial power storage and power quality;

18 (2) structured to evaluate the performance, in-
19 cluding useful service life and costs, of such bat-
20 teries in field operations, and the necessary sup-
21 porting infrastructure, including reuse and disposal
22 of batteries; and

23 (3) coordinated with ongoing secondary battery
24 use programs at the National Laboratories and in
25 industry.

1 (c) SOLICITATION.—Not later than 180 days after
2 the date of enactment of this Act, if the Secretary finds
3 under subsection (b) that there are sufficient numbers of
4 batteries to support the program, the Secretary shall so-
5 licit proposals to demonstrate the secondary use of bat-
6 teries and associated equipment and supporting infra-
7 structure in geographic locations throughout the United
8 States. The Secretary may make additional solicitations
9 for proposals if the Secretary determines that such solici-
10 tations are necessary to carry out this section.

11 (d) SELECTION OF PROPOSALS.—

12 (1) IN GENERAL.—The Secretary shall, not
13 later than 90 days after the closing date established
14 by the Secretary for receipt of proposals under sub-
15 section (c), select up to 5 proposals which may re-
16 ceive financial assistance under this section, subject
17 to the availability of appropriations.

18 (2) DIVERSITY; ENVIRONMENTAL EFFECT.—In
19 selecting proposals, the Secretary shall consider di-
20 versity of battery type, geographic and climatic di-
21 versity, and life-cycle environmental effects of the
22 approaches.

23 (3) LIMITATION.—No 1 project selected under
24 this section shall receive more than 25 percent of the
25 funds authorized for the program under this section.

1 (4) OPTIMIZATION OF FEDERAL RESOURCES.—
2 The Secretary shall consider the extent of involve-
3 ment of State or local government and other persons
4 in each demonstration project to optimize use of
5 Federal resources.

6 (5) OTHER CRITERIA.—The Secretary may con-
7 sider such other criteria as the Secretary considers
8 appropriate.

9 (e) CONDITIONS.—The Secretary shall require that—

10 (1) relevant information be provided to the De-
11 partment, the users of the batteries, the proposers,
12 and the battery manufacturers;

13 (2) the proposer provide at least 50 percent of
14 the costs associated with the proposal; and

15 (3) the proposer provide to the Secretary such
16 information regarding the disposal of the batteries
17 as the Secretary may require to ensure that the pro-
18 poser disposes of the batteries in accordance with
19 applicable law.

20 **SEC. 908. ENERGY EFFICIENCY SCIENCE INITIATIVE.**

21 (a) ESTABLISHMENT.—The Secretary shall establish
22 an Energy Efficiency Science Initiative to be managed by
23 the Assistant Secretary in the Department with responsi-
24 bility for energy conservation under section 203(a)(9) of
25 the Department of Energy Organization Act (42 U.S.C.

1 7133(a)(9)), in consultation with the Director of the Of-
2 fice of Science, for grants to be competitively awarded and
3 subject to peer review for research relating to energy effi-
4 ciency.

5 (b) REPORT.—The Secretary shall submit to Con-
6 gress, along with the President’s annual budget request
7 under section 1105(a) of title 31, United States Code, a
8 report on the activities of the Energy Efficiency Science
9 Initiative, including a description of the process used to
10 award the funds and an explanation of how the research
11 relates to energy efficiency.

12 **SEC. 909. ELECTRIC MOTOR CONTROL TECHNOLOGY.**

13 The Secretary shall conduct a research, development,
14 demonstration, and commercial application program on
15 advanced control devices to improve the energy efficiency
16 of electric motors used in heating, ventilation, air condi-
17 tioning, and comparable systems.

18 **SEC. 910. ADVANCED ENERGY TECHNOLOGY TRANSFER**
19 **CENTERS.**

20 (a) GRANTS.—Not later than 18 months after the
21 date of enactment of this Act, the Secretary shall make
22 grants to nonprofit institutions, State and local govern-
23 ments, or universities (or consortia thereof), to establish
24 a geographically dispersed network of Advanced Energy
25 Technology Transfer Centers, to be located in areas the

1 Secretary determines have the greatest need of the serv-
2 ices of such Centers.

3 (b) ACTIVITIES.—

4 (1) IN GENERAL.—Each Center shall operate a
5 program to encourage demonstration and commer-
6 cial application of advanced energy methods and
7 technologies through education and outreach to
8 building and industrial professionals, and to other
9 individuals and organizations with an interest in ef-
10 ficient energy use.

11 (2) ADVISORY PANEL.—Each Center shall es-
12 tablish an advisory panel to advise the Center on
13 how best to accomplish the activities under para-
14 graph (1).

15 (c) APPLICATION.—A person seeking a grant under
16 this section shall submit to the Secretary an application
17 in such form and containing such information as the Sec-
18 retary may require. The Secretary may award a grant
19 under this section to an entity already in existence if the
20 entity is otherwise eligible under this section.

21 (d) SELECTION CRITERIA.—The Secretary shall
22 award grants under this section on the basis of the fol-
23 lowing criteria, at a minimum:

24 (1) The ability of the applicant to carry out the
25 activities in subsection (b).

1 (2) The extent to which the applicant will co-
2 ordinate the activities of the Center with other enti-
3 ties, such as State and local governments, utilities,
4 and educational and research institutions.

5 (e) MATCHING FUNDS.—The Secretary shall require
6 a non-Federal matching requirement of at least 50 percent
7 of the costs of establishing and operating each Center.

8 (f) ADVISORY COMMITTEE.—The Secretary shall es-
9 tablish an advisory committee to advise the Secretary on
10 the establishment of Centers under this section. The advi-
11 sory committee shall be composed of individuals with ex-
12 pertise in the area of advanced energy methods and tech-
13 nologies, including at least 1 representative from—

14 (1) State or local energy offices;

15 (2) energy professionals;

16 (3) trade or professional associations;

17 (4) architects, engineers, or construction profes-
18 sionals;

19 (5) manufacturers;

20 (6) the research community; and

21 (7) nonprofit energy or environmental organiza-
22 tions.

23 (g) DEFINITIONS.—For purposes of this section:

24 (1) ADVANCED ENERGY METHODS AND TECH-
25 NOLOGIES.—The term “advanced energy methods

1 and technologies” means all methods and tech-
2 nologies that promote energy efficiency and con-
3 servation, including distributed generation tech-
4 nologies, and life-cycle analysis of energy use.

5 (2) CENTER.—The term “Center” means an
6 Advanced Energy Technology Transfer Center estab-
7 lished pursuant to this section.

8 (3) DISTRIBUTED GENERATION.—The term
9 “distributed generation” means an electric power
10 generation facility that is designed to serve retail
11 electric consumers at or near the facility site.

12 **Subtitle B—Distributed Energy and** 13 **Electric Energy Systems**

14 **SEC. 911. DISTRIBUTED ENERGY AND ELECTRIC ENERGY** 15 **SYSTEMS.**

16 (a) IN GENERAL.—The following sums are author-
17 ized to be appropriated to the Secretary for distributed
18 energy and electric energy systems activities, including ac-
19 tivities authorized under this subtitle:

20 (1) For fiscal year 2004, \$190,000,000.

21 (2) For fiscal year 2005, \$200,000,000.

22 (3) For fiscal year 2006, \$220,000,000.

23 (4) For fiscal year 2007, \$240,000,000.

24 (5) For fiscal year 2008, \$260,000,000.

1 (b) MICRO-COGENERATION ENERGY TECH-
2 NOLOGY.—From amounts authorized under subsection
3 (a), \$20,000,000 for each of fiscal years 2004 and 2005
4 is authorized for activities under section 914.

5 **SEC. 912. HYBRID DISTRIBUTED POWER SYSTEMS.**

6 (a) REQUIREMENT.—Not later than 1 year after the
7 date of enactment of this Act, the Secretary shall develop
8 and transmit to Congress a strategy for a comprehensive
9 research, development, demonstration, and commercial ap-
10 plication program to develop hybrid distributed power sys-
11 tems that combine—

12 (1) 1 or more renewable electric power genera-
13 tion technologies of 10 megawatts or less located
14 near the site of electric energy use; and

15 (2) nonintermittent electric power generation
16 technologies suitable for use in a distributed power
17 system.

18 (b) CONTENTS.—The strategy shall—

19 (1) identify the needs best met with such hybrid
20 distributed power systems and the technological bar-
21 riers to the use of such systems;

22 (2) provide for the development of methods to
23 design, test, integrate into systems, and operate
24 such hybrid distributed power systems;

1 (3) include, as appropriate, research, develop-
2 ment, demonstration, and commercial application on
3 related technologies needed for the adoption of such
4 hybrid distributed power systems, including energy
5 storage devices and environmental control tech-
6 nologies;

7 (4) include research, development, demonstra-
8 tion, and commercial application of interconnection
9 technologies for communications and controls of dis-
10 tributed generation architectures, particularly tech-
11 nologies promoting real-time response to power mar-
12 ket information and physical conditions on the elec-
13 trical grid; and

14 (5) describe how activities under the strategy
15 will be integrated with other research, development,
16 demonstration, and commercial application activities
17 supported by the Department related to electric
18 power technologies.

19 **SEC. 913. HIGH POWER DENSITY INDUSTRY PROGRAM.**

20 The Secretary shall establish a comprehensive re-
21 search, development, demonstration, and commercial ap-
22 plication program to improve energy efficiency of high
23 power density facilities, including data centers, server
24 farms, and telecommunications facilities. Such program
25 shall consider technologies that provide significant im-

1 improvement in thermal controls, metering, load manage-
2 ment, peak load reduction, or the efficient cooling of elec-
3 tronics.

4 **SEC. 914. MICRO-COGENERATION ENERGY TECHNOLOGY.**

5 The Secretary shall make competitive, merit-based
6 grants to consortia for the development of micro-cogenera-
7 tion energy technology. The consortia shall explore—

8 (1) the use of small-scale combined heat and
9 power in residential heating appliances; and

10 (2) the use of excess power to operate other ap-
11 pliances within the residence and supply excess gen-
12 erated power to the power grid.

13 **SEC. 915. DISTRIBUTED ENERGY TECHNOLOGY DEM-**
14 **ONSTRATION PROGRAM.**

15 The Secretary, within the sums authorized under sec-
16 tion 911(a), may provide financial assistance to coordi-
17 nating consortia of interdisciplinary participants for dem-
18 onstrations designed to accelerate the utilization of dis-
19 tributed energy technologies, such as fuel cells, microtur-
20 bines, reciprocating engines, thermally activated tech-
21 nologies, and combined heat and power systems, in highly
22 energy intensive commercial applications.

23 **SEC. 916. RECIPROCATING POWER.**

24 The Secretary shall conduct a research, development,
25 and demonstration program regarding fuel system optimi-

1 zation and emissions reduction after-treatment tech-
2 nologies for industrial reciprocating engines. Such after-
3 treatment technologies shall use processes that reduce
4 emissions by recirculating exhaust gases and shall be de-
5 signed to be retrofitted to any new or existing diesel or
6 natural gas engine used for power generation, peaking
7 power generation, combined heat and power, or compres-
8 sion.

9 **Subtitle C—Renewable Energy**

10 **SEC. 918. RENEWABLE ENERGY.**

11 (a) IN GENERAL.—The following sums are author-
12 ized to be appropriated to the Secretary for renewable en-
13 ergy research, development, demonstration, and commer-
14 cial application activities, including activities authorized
15 under this subtitle:

16 (1) For fiscal year 2004, \$480,000,000.

17 (2) For fiscal year 2005, \$550,000,000.

18 (3) For fiscal year 2006, \$610,000,000.

19 (4) For fiscal year 2007, \$659,000,000.

20 (5) For fiscal year 2008, \$710,000,000.

21 (b) BIOENERGY.—From the amounts authorized
22 under subsection (a), the following sums are authorized
23 to be appropriated to carry out section 919:

24 (1) For fiscal year 2004, \$135,425,000.

25 (2) For fiscal year 2005, \$155,600,000.

1 (3) For fiscal year 2006, \$167,650,000.

2 (4) For fiscal year 2007, \$180,000,000.

3 (5) For fiscal year 2008, \$192,000,000.

4 (c) CONCENTRATING SOLAR POWER.—From
5 amounts authorized under subsection (a), the following
6 sums are authorized to be appropriated to carry out sec-
7 tion 920:

8 (1) For fiscal year 2004, \$20,000,000.

9 (2) For fiscal year 2005, \$40,000,000.

10 (3) For each of fiscal years 2006, 2007 and
11 2008, \$50,000,000.

12 (d) PUBLIC BUILDINGS.—From the amounts author-
13 ized under subsection (a), \$30,000,000 for each of the fis-
14 cal years 2004 through 2008 are authorized to be appro-
15 priated to carry out section 922.

16 (e) LIMITS ON USE OF FUNDS.—

17 (1) NO FUNDS FOR RENEWABLE SUPPORT AND
18 IMPLEMENTATION.—None of the funds authorized to
19 be appropriated under this section may be used for
20 Renewable Support and Implementation.

21 (2) GRANTS.—Of the funds authorized under
22 subsection (b), not less than \$5,000,000 for each fis-
23 cal year shall be made available for grants to His-
24 torically Black Colleges and Universities, Tribal Col-
25 leges, and Hispanic-Serving Institutions.

1 (3) REGIONAL FIELD VERIFICATION PRO-
2 GRAM.—Of the funds authorized under subsection
3 (a), not less than \$4,000,000 for each fiscal year
4 shall be made available for the Regional Field
5 Verification Program of the Department.

6 (4) OFF-STREAM PUMPED STORAGE HYDRO-
7 POWER.—Of the funds authorized under subsection
8 (a), such sums as may be necessary shall be made
9 available for demonstration projects of off-stream
10 pumped storage hydropower.

11 (f) CONSULTATION.—In carrying out this subtitle,
12 the Secretary, in consultation with the Secretary of Agri-
13 culture, shall demonstrate the use of advanced wind power
14 technology, including combined use with coal gasification;
15 biomass; geothermal energy systems; and other renewable
16 energy technologies to assist in delivering electricity to
17 rural and remote locations.

18 **SEC. 919. BIOENERGY PROGRAMS.**

19 (a) DEFINITIONS.—For the purposes of this section:

20 (1) The term “agricultural byproducts” in-
21 cludes waste products, including poultry fat and
22 poultry waste.

23 (2) The term “cellulosic biomass” means any
24 portion of a crop containing lignocellulose or hemi-
25 cellulose, including barley grain, grapeseed, forest

1 thinnings, rice bran, rice hulls, rice straw, soybean
2 matter, and sugarcane bagasse, or any crop grown
3 specifically for the purpose of producing cellulosic
4 feedstocks.

5 (b) PROGRAM.—The Secretary shall conduct a pro-
6 gram of research, development, demonstration, and com-
7 mercial application for bioenergy, including—

8 (1) biopower energy systems;

9 (2) biofuels;

10 (3) bio-based products;

11 (4) integrated biorefineries that may produce
12 biopower, biofuels, and bio-based products;

13 (5) cross-cutting research and development in
14 feedstocks and enzymes; and

15 (6) economic analysis.

16 (c) BIOFUELS AND BIO-BASED PRODUCTS.—The
17 goals of the biofuels and bio-based products programs
18 shall be to develop, in partnership with industry—

19 (1) advanced biochemical and thermochemical
20 conversion technologies capable of making biofuels
21 that are price-competitive with gasoline or diesel in
22 either internal combustion engines or fuel cell-pow-
23 ered vehicles, and bio-based products from a variety
24 of feedstocks, including grains, cellulosic biomass,
25 and other agricultural byproducts; and

1 (2) advanced biotechnology processes capable of
2 making biofuels and bio-based products with empha-
3 sis on development of biorefinery technologies using
4 enzyme-based processing systems.

5 **SEC. 920. CONCENTRATING SOLAR POWER RESEARCH AND**
6 **DEVELOPMENT PROGRAM.**

7 (a) IN GENERAL.—The Secretary shall conduct a
8 program of research and development to evaluate the po-
9 tential of concentrating solar power for hydrogen produc-
10 tion, including cogeneration approaches for both hydrogen
11 and electricity. Such program shall take advantage of ex-
12 isting facilities to the extent possible and shall include—

13 (1) development of optimized technologies that
14 are common to both electricity and hydrogen produc-
15 tion;

16 (2) evaluation of thermochemical cycles for hy-
17 drogen production at the temperatures attainable
18 with concentrating solar power;

19 (3) evaluation of materials issues for the
20 thermochemical cycles described in paragraph (2);

21 (4) system architectures and economics studies;
22 and

23 (5) coordination with activities in the Advanced
24 Reactor Hydrogen Cogeneration Project on high

1 temperature materials, thermochemical cycles, and
2 economic issues.

3 (b) ASSESSMENT.—In carrying out the program
4 under this section, the Secretary shall—

5 (1) assess conflicting guidance on the economic
6 potential of concentrating solar power for electricity
7 production received from the National Research
8 Council report entitled “Renewable Power Pathways:
9 A Review of the U.S. Department of Energy’s Re-
10 newable Energy Programs” in 2000 and subsequent
11 Department-funded reviews of that report; and

12 (2) provide an assessment of the potential im-
13 pact of the technology before, or concurrent with,
14 submission of the fiscal year 2006 budget.

15 (c) REPORT.—Not later than 5 years after the date
16 of enactment of this Act, the Secretary shall provide a re-
17 port to Congress on the economic and technical potential
18 for electricity or hydrogen production, with or without co-
19 generation, with concentrating solar power, including the
20 economic and technical feasibility of potential construction
21 of a pilot demonstration facility suitable for commercial
22 production of electricity or hydrogen from concentrating
23 solar power.

1 **SEC. 921. MISCELLANEOUS PROJECTS.**

2 The Secretary may conduct research, development,
3 demonstration, and commercial application programs
4 for—

5 (1) ocean energy, including wave energy; and

6 (2) the combined use of renewable energy tech-
7 nologies with one another and with other energy
8 technologies, including the combined use of wind
9 power and coal gasification technologies.

10 **SEC. 922. RENEWABLE ENERGY IN PUBLIC BUILDINGS.**

11 (a) **DEMONSTRATION AND TECHNOLOGY TRANSFER**
12 **PROGRAM.**—The Secretary shall establish a program for
13 the demonstration of innovative technologies for solar and
14 other renewable energy sources in buildings owned or op-
15 erated by a State or local government, and for the dissemi-
16 nation of information resulting from such demonstration
17 to interested parties.

18 (b) **LIMIT ON FEDERAL FUNDING.**—The Secretary
19 shall provide under this section no more than 40 percent
20 of the incremental costs of the solar or other renewable
21 energy source project funded.

22 (c) **REQUIREMENT.**—As part of the application for
23 awards under this section, the Secretary shall require all
24 applicants—

1 (1) to demonstrate a continuing commitment to
2 the use of solar and other renewable energy sources
3 in buildings they own or operate; and

4 (2) to state how they expect any award to fur-
5 ther their transition to the significant use of renew-
6 able energy.

7 **SEC. 923. STUDY OF MARINE RENEWABLE ENERGY OP-**
8 **TIONS.**

9 (a) IN GENERAL.—The Secretary shall enter into an
10 arrangement with the National Academy of Sciences to
11 conduct a study on—

12 (1) the feasibility of various methods of renew-
13 able generation of energy from the ocean, including
14 energy from waves, tides, currents, and thermal gra-
15 dients; and

16 (2) the research, development, demonstration,
17 and commercial application activities required to
18 make marine renewable energy generation competi-
19 tive with other forms of electricity generation.

20 (b) TRANSMITTAL.—Not later than 1 year after the
21 date of enactment of this Act, the Secretary shall transmit
22 the study to Congress along with the Secretary's rec-
23 ommendations for implementing the results of the study.

1 **Subtitle D—Nuclear Energy**

2 **SEC. 924. NUCLEAR ENERGY.**

3 (a) CORE PROGRAMS.—The following sums are au-
4 thorized to be appropriated to the Secretary for nuclear
5 energy research, development, demonstration, and com-
6 mercial application activities, including activities author-
7 ized under this subtitle, other than those described in sub-
8 section (b):

9 (1) For fiscal year 2004, \$273,000,000.

10 (2) For fiscal year 2005, \$355,000,000.

11 (3) For fiscal year 2006, \$430,000,000.

12 (4) For fiscal year 2007, \$455,000,000.

13 (5) For fiscal year 2008, \$545,000,000.

14 (b) NUCLEAR INFRASTRUCTURE SUPPORT.—The fol-
15 lowing sums are authorized to be appropriated to the Sec-
16 retary for activities under section 925(e):

17 (1) For fiscal year 2004, \$125,000,000.

18 (2) For fiscal year 2005, \$130,000,000.

19 (3) For fiscal year 2006, \$135,000,000.

20 (4) For fiscal year 2007, \$140,000,000.

21 (5) For fiscal year 2008, \$145,000,000.

22 (c) ALLOCATIONS.—From amounts authorized under
23 subsection (a), the following sums are authorized:

24 (1) For activities under section 926—

25 (A) for fiscal year 2004, \$140,000,000;

- 1 (B) for fiscal year 2005, \$145,000,000;
2 (C) for fiscal year 2006, \$150,000,000;
3 (D) for fiscal year 2007, \$155,000,000;
4 and
5 (E) for fiscal year 2008, \$275,000,000.

- 6 (2) For activities under section 927—
7 (A) for fiscal year 2004, \$35,200,000;
8 (B) for fiscal year 2005, \$44,350,000;
9 (C) for fiscal year 2006, \$49,200,000;
10 (D) for fiscal year 2007, \$54,950,000; and
11 (E) for fiscal year 2008, \$60,000,000.

- 12 (3) For activities under section 929, for each of
13 fiscal years 2004 through 2008, \$6,000,000.

- 14 (d) LIMITATION ON USE OF FUNDS.—None of the
15 funds authorized under this section may be used for de-
16 commissioning the Fast Flux Test Facility.

17 **SEC. 925. NUCLEAR ENERGY RESEARCH AND DEVELOP-**
18 **MENT PROGRAMS.**

- 19 (a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The
20 Secretary shall carry out a Nuclear Energy Research Ini-
21 tiative for research and development related to nuclear en-
22 ergy.

- 23 (b) NUCLEAR ENERGY PLANT OPTIMIZATION PRO-
24 GRAM.—The Secretary shall carry out a Nuclear Energy
25 Plant Optimization Program to support research and de-

1 velopment activities addressing reliability, availability, pro-
2 ductivity, component aging, safety, and security of existing
3 nuclear power plants.

4 (c) NUCLEAR POWER 2010 PROGRAM.—The Sec-
5 retary shall carry out a Nuclear Power 2010 Program,
6 consistent with recommendations in the October 2001 re-
7 port entitled “A Roadmap to Deploy New Nuclear Power
8 Plants in the United States by 2010” issued by the Nu-
9 clear Energy Research Advisory Committee of the Depart-
10 ment. Whatever type of reactor is chosen for the hydrogen
11 cogeneration project under subtitle C of title VI, that type
12 shall not be addressed in the Program under this section.
13 The Program shall include—

14 (1) support for first-of-a-kind engineering de-
15 sign and certification expenses of advanced nuclear
16 power plant designs, which offer improved safety
17 and economics over current conventional plants and
18 the promise of near-term to medium-term commer-
19 cial deployment;

20 (2) action by the Secretary to encourage domes-
21 tic power companies to install new nuclear plant ca-
22 pacity as soon as possible;

23 (3) utilization of the expertise and capabilities
24 of industry, universities, and National Laboratories

1 in evaluation of advanced nuclear fuel cycles and
2 fuels testing;

3 (4) consideration of proliferation-resistant pas-
4 sively-safe, small reactors suitable for long-term elec-
5 tricity production without refueling and suitable for
6 use in remote installations;

7 (5) participation of international collaborators
8 in research, development, design, and deployment ef-
9 forts as appropriate and consistent with United
10 States interests in nonproliferation of nuclear weap-
11 ons;

12 (6) encouragement for university and industry
13 participation; and

14 (7) selection of projects such as to strengthen
15 the competitive position of the domestic nuclear
16 power industrial infrastructure.

17 (d) GENERATION IV NUCLEAR ENERGY SYSTEMS

18 INITIATIVE.—The Secretary shall carry out a Generation
19 IV Nuclear Energy Systems Initiative to develop an over-
20 all technology plan and to support research and develop-
21 ment necessary to make an informed technical decision
22 about the most promising candidates for eventual commer-
23 cial application. The Initiative shall examine advanced
24 proliferation-resistant and passively safe reactor designs,
25 including designs that—

1 (1) are economically competitive with other elec-
2 tric power generation plants;

3 (2) have higher efficiency, lower cost, and im-
4 proved safety compared to reactors in operation on
5 the date of enactment of this Act;

6 (3) use fuels that are proliferation-resistant and
7 have substantially reduced production of high-level
8 waste per unit of output; and

9 (4) use improved instrumentation.

10 (e) **NUCLEAR INFRASTRUCTURE SUPPORT.**—The
11 Secretary shall develop and implement a strategy for the
12 facilities of the Office of Nuclear Energy, Science, and
13 Technology and shall transmit a report containing the
14 strategy along with the President’s budget request to Con-
15 gress for fiscal year 2006.

16 **SEC. 926. ADVANCED FUEL CYCLE INITIATIVE.**

17 (a) **IN GENERAL.**—The Secretary, through the Direc-
18 tor of the Office of Nuclear Energy, Science, and Tech-
19 nology, shall conduct an advanced fuel recycling tech-
20 nology research and development program to evaluate pro-
21 liferation-resistant fuel recycling and transmutation tech-
22 nologies that minimize environmental or public health and
23 safety impacts as an alternative to aqueous reprocessing
24 technologies deployed as of the date of enactment of this
25 Act in support of evaluation of alternative national strate-

1 gies for spent nuclear fuel and the Generation IV ad-
2 vanced reactor concepts, subject to annual review by the
3 Secretary's Nuclear Energy Research Advisory Committee
4 or other independent entity, as appropriate. Opportunities
5 to enhance progress of the program through international
6 cooperation should be sought.

7 (b) REPORTS.—The Secretary shall report on the ac-
8 tivities of the advanced fuel recycling technology research
9 and development program as part of the Department's an-
10 nual budget submission.

11 **SEC. 927. UNIVERSITY NUCLEAR SCIENCE AND ENGINEER-**
12 **ING SUPPORT.**

13 (a) ESTABLISHMENT.—The Secretary shall support
14 a program to invest in human resources and infrastructure
15 in the nuclear sciences and engineering and related fields
16 (including health physics and nuclear and radiochemistry),
17 consistent with departmental missions related to civilian
18 nuclear research and development.

19 (b) DUTIES.—In carrying out the program under this
20 section, the Secretary shall establish fellowship and faculty
21 assistance programs, as well as provide support for funda-
22 mental research and encourage collaborative research
23 among industry, National Laboratories, and universities
24 through the Nuclear Energy Research Initiative. The Sec-
25 retary is encouraged to support activities addressing the

1 entire fuel cycle through involvement of both the Office
2 of Nuclear Energy, Science, and Technology and the Of-
3 fice of Civilian Radioactive Waste Management. The Sec-
4 retary shall support communication and outreach related
5 to nuclear science, engineering, and nuclear waste man-
6 agement, consistent with interests of the United States in
7 nonproliferation of nuclear weapons capabilities.

8 (c) STRENGTHENING UNIVERSITY RESEARCH AND
9 TRAINING REACTORS AND ASSOCIATED INFRASTRUC-
10 TURE.—Activities under this section may include—

11 (1) converting research and training reactors
12 currently using high-enrichment fuels to low-enrich-
13 ment fuels, upgrading operational instrumentation,
14 and sharing of reactors among institutions of higher
15 education;

16 (2) providing technical assistance, in collabora-
17 tion with the United States nuclear industry, in reli-
18 censing and upgrading research and training reac-
19 tors as part of a student training program; and

20 (3) providing funding, through the Innovations
21 in Nuclear Infrastructure and Education Program,
22 for reactor improvements as part of a focused effort
23 that emphasizes research, training, and education.

24 (d) UNIVERSITY NATIONAL LABORATORY INTER-
25 ACTIONS.—The Secretary shall develop sabbatical fellow-

1 ship and visiting scientist programs to encourage sharing
2 of personnel between National Laboratories and univer-
3 sities.

4 (e) OPERATING AND MAINTENANCE COSTS.—Fund-
5 ing for a research project provided under this section may
6 be used to offset a portion of the operating and mainte-
7 nance costs of a research and training reactor at an insti-
8 tution of higher education used in the research project.

9 **SEC. 928. SECURITY OF REACTOR DESIGNS.**

10 The Secretary, through the Director of the Office of
11 Nuclear Energy, Science, and Technology, shall conduct
12 a research and development program on cost-effective
13 technologies for increasing the safety of reactor designs
14 from natural phenomena and the security of reactor de-
15 signs from deliberate attacks.

16 **SEC. 929. ALTERNATIVES TO INDUSTRIAL RADIOACTIVE**
17 **SOURCES.**

18 (a) STUDY.—The Secretary shall conduct a study and
19 provide a report to Congress not later than August 1,
20 2004. The study shall—

21 (1) survey industrial applications of large radio-
22 active sources, including well-logging sources;

23 (2) review current domestic and international
24 Department, Department of Defense, Department of

1 State, and commercial programs to manage and dis-
2 pose of radioactive sources;

3 (3) discuss disposal options and practices for
4 currently deployed or future sources and, if defi-
5 ciencies are noted in existing disposal options or
6 practices for either deployed or future sources, rec-
7 ommend options to remedy deficiencies; and

8 (4) develop a program plan for research and de-
9 velopment to develop alternatives to large industrial
10 sources that reduce safety, environmental, or pro-
11 liferation risks to either workers using the sources or
12 the public.

13 (b) PROGRAM.—The Secretary shall establish a re-
14 search and development program to implement the pro-
15 gram plan developed under subsection (a)(4). The pro-
16 gram shall include miniaturized particle accelerators for
17 well-logging or other industrial applications and portable
18 accelerators for production of short-lived radioactive mate-
19 rials at an industrial site.

20 **SEC. 930. GEOLOGICAL ISOLATION OF SPENT FUEL.**

21 The Secretary shall conduct a study to determine the
22 feasibility of deep borehole disposal of spent nuclear fuel
23 and high-level radioactive waste. The study shall empha-
24 size geological, chemical, and hydrological characterization
25 of, and design of engineered structures for, deep borehole

1 environments. Not later than 1 year after the date of en-
2 actment of this Act, the Secretary shall transmit the study
3 to Congress.

4 **Subtitle E—Fossil Energy**

5 **PART I—RESEARCH PROGRAMS**

6 **SEC. 931. FOSSIL ENERGY.**

7 (a) IN GENERAL.—The following sums are author-
8 ized to be appropriated to the Secretary for fossil energy
9 research, development, demonstration, and commercial ap-
10 plication activities, including activities authorized under
11 this part:

12 (1) For fiscal year 2004, \$530,000,000.

13 (2) For fiscal year 2005, \$556,000,000.

14 (3) For fiscal year 2006, \$583,000,000.

15 (4) For fiscal year 2007, \$611,000,000.

16 (5) For fiscal year 2008, \$626,000,000.

17 (b) ALLOCATIONS.—From amounts authorized under
18 subsection (a), the following sums are authorized:

19 (1) For activities under section 932(b)(2),
20 \$28,000,000 for each of the fiscal years 2004
21 through 2008.

22 (2) For activities under section 934—

23 (A) for fiscal year 2004, \$12,000,000;

24 (B) for fiscal year 2005, \$15,000,000; and

1 (C) for each of fiscal years 2006 through
2 2008, \$20,000,000.

3 (3) For activities under section 935—

4 (A) for fiscal year 2004, \$259,000,000;

5 (B) for fiscal year 2005, \$272,000,000;

6 (C) for fiscal year 2006, \$285,000,000;

7 (D) for fiscal year 2007, \$298,000,000;

8 and

9 (E) for fiscal year 2008, \$308,000,000.

10 (4) For the Office of Arctic Energy under sec-
11 tion 3197 of the Floyd D. Spence National Defense
12 Authorization Act for Fiscal Year 2001 (42 U.S.C.
13 7144d), \$25,000,000 for each of fiscal years 2004
14 through 2008.

15 (5) For activities under section 933,
16 \$4,000,000 for fiscal year 2004 and \$2,000,000 for
17 each of fiscal years 2005 through 2008.

18 (c) EXTENDED AUTHORIZATION.—There are author-
19 ized to be appropriated to the Secretary for the Office of
20 Arctic Energy under section 3197 of the Floyd D. Spence
21 National Defense Authorization Act for Fiscal Year 2001
22 (42 U.S.C. 7144d), \$25,000,000 for each of fiscal years
23 2009 through 2012.

24 (d) LIMITS ON USE OF FUNDS.—

1 (1) NO FUNDS FOR CERTAIN PROGRAMS.—None
2 of the funds authorized under this section may be
3 used for Fossil Energy Environmental Restoration
4 or Import/Export Authorization.

5 (2) INSTITUTIONS OF HIGHER EDUCATION.—Of
6 the funds authorized under subsection (b)(2), not
7 less than 20 percent of the funds appropriated for
8 each fiscal year shall be dedicated to research and
9 development carried out at institutions of higher
10 education.

11 **SEC. 932. OIL AND GAS RESEARCH PROGRAMS.**

12 (a) OIL AND GAS RESEARCH.—The Secretary shall
13 conduct a program of research, development, demonstra-
14 tion, and commercial application on oil and gas, includ-
15 ing—

16 (1) exploration and production;

17 (2) gas hydrates;

18 (3) reservoir life and extension;

19 (4) transportation and distribution infrastruc-
20 ture;

21 (5) ultraclean fuels;

22 (6) heavy oil and oil shale;

23 (7) related environmental research; and

24 (8) compressed natural gas marine transport.

25 (b) FUEL CELLS.—

1 (1) IN GENERAL.—The Secretary shall conduct
2 a program of research, development, demonstration,
3 and commercial application on fuel cells for low-cost,
4 high-efficiency, fuel-flexible, modular power systems.

5 (2) IMPROVED MANUFACTURING PRODUCTION
6 AND PROCESSES.—The demonstrations under para-
7 graph (1) shall include fuel cell technology for com-
8 mercial, residential, and transportation applications,
9 and distributed generation systems, utilizing im-
10 proved manufacturing production and processes.

11 (c) NATURAL GAS AND OIL DEPOSITS REPORT.—
12 Not later than 2 years after the date of enactment of this
13 Act, and every 2 years thereafter, the Secretary of the In-
14 terior, in consultation with other appropriate Federal
15 agencies, shall transmit a report to Congress of the latest
16 estimates of natural gas and oil reserves, reserves growth,
17 and undiscovered resources in Federal and State waters
18 off the coast of Louisiana and Texas.

19 (d) INTEGRATED CLEAN POWER AND ENERGY RE-
20 SEARCH.—

21 (1) NATIONAL CENTER OR CONSORTIUM OF EX-
22 CELLENCE.—The Secretary shall establish a na-
23 tional center or consortium of excellence in clean en-
24 ergy and power generation, utilizing the resources of
25 the existing Clean Power and Energy Research Con-

1 consortium, to address the Nation's critical dependence
2 on energy and the need to reduce emissions.

3 (2) PROGRAM.—The center or consortium shall
4 conduct a program of research, development, dem-
5 onstration, and commercial application on inte-
6 grating the following focus areas:

7 (A) Efficiency and reliability of gas tur-
8 bines for power generation.

9 (B) Reduction in emissions from power
10 generation.

11 (C) Promotion of energy conservation
12 issues.

13 (D) Effectively utilizing alternative fuels
14 and renewable energy.

15 (E) Development of advanced materials
16 technology for oil and gas exploration and utili-
17 zation in harsh environments.

18 (F) Education on energy and power gen-
19 eration issues.

20 **SEC. 933. TECHNOLOGY TRANSFER.**

21 The Secretary shall establish a competitive program
22 to award a contract to a nonprofit entity for the purpose
23 of transferring technologies developed with public funds.
24 The entity selected under this section shall have experi-
25 ence in offshore oil and gas technology research manage-

1 ment, in the transfer of technologies developed with public
2 funds to the offshore and maritime industry, and in man-
3 agement of an offshore and maritime industry consortium.
4 The program consortium selected under section 942 shall
5 not be eligible for selection under this section. When ap-
6 propriate, the Secretary shall consider utilizing the entity
7 selected under this section when implementing the activi-
8 ties authorized by section 975.

9 **SEC. 934. RESEARCH AND DEVELOPMENT FOR COAL MIN-**
10 **ING TECHNOLOGIES.**

11 (a) ESTABLISHMENT.—The Secretary shall carry out
12 a program of research and development on coal mining
13 technologies. The Secretary shall cooperate with appro-
14 priate Federal agencies, coal producers, trade associations,
15 equipment manufacturers, institutions of higher education
16 with mining engineering departments, and other relevant
17 entities.

18 (b) PROGRAM.—The research and development activi-
19 ties carried out under this section shall—

20 (1) be guided by the mining research and devel-
21 opment priorities identified by the Mining Industry
22 of the Future Program and in the recommendations
23 from relevant reports of the National Academy of
24 Sciences on mining technologies;

1 (2) include activities exploring minimization of
2 contaminants in mined coal that contribute to envi-
3 ronmental concerns including development and dem-
4 onstration of electromagnetic wave imaging ahead of
5 mining operations;

6 (3) develop and demonstrate electromagnetic
7 wave imaging and radar techniques for horizontal
8 drilling in coal beds in order to increase methane re-
9 covery efficiency, prevent spoilage of domestic coal
10 reserves, and minimize water disposal associated
11 with methane extraction; and

12 (4) expand mining research capabilities at insti-
13 tutions of higher education.

14 **SEC. 935. COAL AND RELATED TECHNOLOGIES PROGRAM.**

15 (a) IN GENERAL.—In addition to the programs au-
16 thorized under title IV, the Secretary shall conduct a pro-
17 gram of technology research, development, demonstration,
18 and commercial application for coal and power systems,
19 including programs to facilitate production and generation
20 of coal-based power through—

21 (1) innovations for existing plants;

22 (2) integrated gasification combined cycle;

23 (3) advanced combustion systems;

24 (4) turbines for synthesis gas derived from coal;

1 (5) carbon capture and sequestration research
2 and development;

3 (6) coal-derived transportation fuels and chemi-
4 cals;

5 (7) solid fuels and feedstocks;

6 (8) advanced coal-related research;

7 (9) advanced separation technologies; and

8 (10) a joint project for permeability enhance-
9 ment in coals for natural gas production and carbon
10 dioxide sequestration.

11 (b) COST AND PERFORMANCE GOALS.—In carrying
12 out programs authorized by this section, the Secretary
13 shall identify cost and performance goals for coal-based
14 technologies that would permit the continued cost-com-
15 petitive use of coal for electricity generation, as chemical
16 feedstocks, and as transportation fuel in 2007, 2015, and
17 the years after 2020. In establishing such cost and per-
18 formance goals, the Secretary shall—

19 (1) consider activities and studies undertaken
20 to date by industry in cooperation with the Depart-
21 ment in support of such assessment;

22 (2) consult with interested entities, including
23 coal producers, industries using coal, organizations
24 to promote coal and advanced coal technologies, en-

1 vironmental organizations, and organizations rep-
2 resenting workers;

3 (3) not later than 120 days after the date of
4 enactment of this Act, publish in the Federal Reg-
5 ister proposed draft cost and performance goals for
6 public comments; and

7 (4) not later than 180 days after the date of
8 enactment of this Act and every 4 years thereafter,
9 submit to Congress a report describing final cost
10 and performance goals for such technologies that in-
11 cludes a list of technical milestones as well as an ex-
12 planation of how programs authorized in this section
13 will not duplicate the activities authorized under the
14 Clean Coal Power Initiative authorized under sub-
15 title A of title IV.

16 **SEC. 936. COMPLEX WELL TECHNOLOGY TESTING FACIL-**
17 **ITY.**

18 The Secretary, in coordination with industry leaders
19 in extended research drilling technology, shall establish a
20 Complex Well Technology Testing Facility at the Rocky
21 Mountain Oilfield Testing Center to increase the range of
22 extended drilling technologies.

1 **SEC. 937. FISCHER-TROPSCH DIESEL FUEL LOAN GUAR-**
2 **ANTEE PROGRAM.**

3 (a) DEFINITION OF FISCHER-TROPSCH DIESEL
4 FUEL.—In this section, the term “Fischer-Tropsch diesel
5 fuel” means diesel fuel that—

6 (1) contains less than 10 parts per million sul-
7 fur; and

8 (2) is produced through the Fischer-Tropsch
9 liquification process from coal or waste from coal
10 that was mined in the United States.

11 (b) LOAN GUARANTEES.—

12 (1) ESTABLISHMENT OF PROGRAM.—The Sec-
13 retary of Energy shall establish a program to pro-
14 vide guarantees of loans by private lending institu-
15 tions for the construction of facilities for the produc-
16 tion of Fischer-Tropsch diesel fuel and commercial
17 byproducts of that production.

18 (2) REQUIREMENTS.—The Secretary may pro-
19 vide a loan guarantee under paragraph (1) if—

20 (A) without a loan guarantee, credit is not
21 available to the applicant under reasonable
22 terms or conditions sufficient to finance the
23 construction of a facility described in paragraph
24 (1);

25 (B) the prospective earning power of the
26 applicant and the character and value of the se-

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

4 (C) the loan bears interest at a rate deter-
5 mined by the Secretary to be reasonable, taking
6 into account the current average yield on out-
7 standing obligations of the United States with
8 remaining periods of maturity comparable to
9 the maturity of the loan.

10 (3) CRITERIA.—In selecting recipients of loan
11 guarantees from among applicants, the Secretary
12 shall give preference to proposals that—

13 (A) meet all Federal and State permitting
14 requirements;

15 (B) are most likely to be successful; and

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

18 (i) the availability of domestic coal or
19 coal waste for conversion; or

20 (ii) a projected high level of demand
21 for Fischer-Tropsch diesel fuel or other
22 commercial byproducts of the facility.

23 (4) MATURITY.—A loan guaranteed under
24 paragraph (1) shall have a maturity of not more
25 than 25 years.

1 (5) TERMS AND CONDITIONS.—The loan agree-
2 ment for a loan guaranteed under paragraph (1)
3 shall provide that no provision of the loan may be
4 amended or waived without the consent of the Sec-
5 retary.

6 (6) GUARANTEE FEE.—A recipient of a loan
7 guarantee under paragraph (1) shall pay the Sec-
8 retary an amount to be determined by the Secretary
9 to be sufficient to cover the administrative costs of
10 the Secretary relating to the loan guarantee.

11 (7) FULL FAITH AND CREDIT.—

12 (A) IN GENERAL.—The full faith and cred-
13 it of the United States is pledged to payment
14 of loan guarantees made under this section.

15 (B) CONCLUSIVE EVIDENCE.—Any loan
16 guarantee made by the Secretary under this
17 section shall be conclusive evidence of the eligi-
18 bility of the loan for the guarantee with respect
19 to principal and interest.

20 (C) VALIDITY.—The validity of a loan
21 guarantee shall be incontestable in the hands of
22 a holder of the guaranteed loan.

23 (8) REPORTS.—Until each guaranteed loan
24 under this section is repaid in full, the Secretary

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

3 (9) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated such sums
5 as are necessary to carry out this section.

6 (10) TERMINATION OF AUTHORITY.—The au-
7 thority of the Secretary to issue a new loan guar-
8 antee under paragraph (1) terminates on the date
9 that is 5 years after the date of enactment of this
10 Act.

11 **PART II—ULTRA-DEEPWATER AND UNCONVEN-**
12 **TIONAL NATURAL GAS AND OTHER PETRO-**
13 **LEUM RESOURCES**

14 **SEC. 941. PROGRAM AUTHORITY.**

15 (a) IN GENERAL.—The Secretary shall carry out a
16 program under this part of research, development, dem-
17 onstration, and commercial application of technologies for
18 ultra-deepwater and unconventional natural gas and other
19 petroleum resource exploration and production, including
20 addressing the technology challenges for small producers,
21 safe operations, and environmental mitigation (including
22 reduction of greenhouse gas emissions and sequestration
23 of carbon).

24 (b) PROGRAM ELEMENTS.—The program under this
25 part shall address the following areas, including improving

1 safety and minimizing environmental impacts of activities
2 within each area:

3 (1) Ultra-deepwater technology, including drill-
4 ing to formations in the Outer Continental Shelf to
5 depths greater than 15,000 feet.

6 (2) Ultra-deepwater architecture.

7 (3) Unconventional natural gas and other petro-
8 leum resource exploration and production tech-
9 nology, including the technology challenges of small
10 producers.

11 (c) LIMITATION ON LOCATION OF FIELD ACTIVI-
12 TIES.—Field activities under the program under this part
13 shall be carried out only—

14 (1) in—

15 (A) areas in the territorial waters of the
16 United States not under any Outer Continental
17 Shelf moratorium as of September 30, 2002;

18 (B) areas onshore in the United States on
19 public land administered by the Secretary of the
20 Interior available for oil and gas leasing, where
21 consistent with applicable law and land use
22 plans; and

23 (C) areas onshore in the United States on
24 State or private land, subject to applicable law;
25 and

1 (2) with the approval of the appropriate Fed-
2 eral or State land management agency or private
3 land owner.

4 (d) RESEARCH AT NATIONAL ENERGY TECHNOLOGY
5 LABORATORY.—The Secretary, through the National En-
6 ergy Technology Laboratory, shall carry out research com-
7 plementary to research under subsection (b).

8 (e) CONSULTATION WITH SECRETARY OF THE INTE-
9 RIOR.—In carrying out this part, the Secretary shall con-
10 sult regularly with the Secretary of the Interior.

11 **SEC. 942. ULTRA-DEEPWATER PROGRAM.**

12 (a) IN GENERAL.—The Secretary shall carry out the
13 activities under section 941(a), to maximize the use of the
14 ultra-deepwater natural gas and other petroleum resources
15 of the United States by increasing the supply of such re-
16 sources, through reducing the cost and increasing the effi-
17 ciency of exploration for and production of such resources,
18 while improving safety and minimizing environmental im-
19 pacts.

20 (b) ROLE OF THE SECRETARY.—The Secretary shall
21 have ultimate responsibility for, and oversight of, all as-
22 pects of the program under this section.

23 (c) ROLE OF THE PROGRAM CONSORTIUM.—

24 (1) IN GENERAL.—The Secretary may contract
25 with a consortium to—

1 (A) manage awards pursuant to subsection
2 (f)(4);

3 (B) make recommendations to the Sec-
4 retary for project solicitations;

5 (C) disburse funds awarded under sub-
6 section (f) as directed by the Secretary in ac-
7 cordance with the annual plan under subsection
8 (e); and

9 (D) carry out other activities assigned to
10 the program consortium by this section.

11 (2) LIMITATION.—The Secretary may not as-
12 sign any activities to the program consortium except
13 as specifically authorized under this section.

14 (3) CONFLICT OF INTEREST.—

15 (A) PROCEDURES.—The Secretary shall
16 establish procedures—

17 (i) to ensure that each board member,
18 officer, or employee of the program consor-
19 tium who is in a decision-making capacity
20 under subsection (f)(3) or (4) shall disclose
21 to the Secretary any financial interests in,
22 or financial relationships with, applicants
23 for or recipients of awards under this sec-
24 tion, including those of his or her spouse
25 or minor child, unless such relationships or

1 interests would be considered to be remote
2 or inconsequential; and

3 (ii) to require any board member, offi-
4 cer, or employee with a financial relation-
5 ship or interest disclosed under clause (i)
6 to recuse himself or herself from any re-
7 view under subsection (f)(3) or oversight
8 under subsection (f)(4) with respect to
9 such applicant or recipient.

10 (B) FAILURE TO COMPLY.—The Secretary
11 may disqualify an application or revoke an
12 award under this section if a board member, of-
13 ficer, or employee has failed to comply with pro-
14 cedures required under subparagraph (A)(ii).

15 (d) SELECTION OF THE PROGRAM CONSORTIUM.—

16 (1) IN GENERAL.—The Secretary shall select
17 the program consortium through an open, competi-
18 tive process.

19 (2) MEMBERS.—The program consortium may
20 include corporations, trade associations, institutions
21 of higher education, National Laboratories, or other
22 research institutions. After submitting a proposal
23 under paragraph (4), the program consortium may
24 not add members without the consent of the Sec-
25 retary.

1 (3) TAX STATUS.—The program consortium
2 shall be an entity that is exempt from tax under sec-
3 tion 501(c)(3) of the Internal Revenue Code of
4 1986.

5 (4) SCHEDULE.—Not later than 180 days after
6 the date of enactment of this Act, the Secretary
7 shall solicit proposals from eligible consortia to per-
8 form the duties in subsection (c)(1), which shall be
9 submitted not later than 360 days after the date of
10 enactment of this Act. The Secretary shall select the
11 program consortium not later than 18 months after
12 such date of enactment.

13 (5) APPLICATION.—Applicants shall submit a
14 proposal including such information as the Secretary
15 may require. At a minimum, each proposal shall—

16 (A) list all members of the consortium;

17 (B) fully describe the structure of the con-
18 sortium, including any provisions relating to in-
19 tellectual property; and

20 (C) describe how the applicant would carry
21 out the activities of the program consortium
22 under this section.

23 (6) ELIGIBILITY.—To be eligible to be selected
24 as the program consortium, an applicant must be an
25 entity whose members collectively have demonstrated

1 capabilities in planning and managing research, de-
2 velopment, demonstration, and commercial applica-
3 tion programs in natural gas or other petroleum ex-
4 ploration or production.

5 (7) CRITERION.—The Secretary shall consider
6 the amount of the fee an applicant proposes to re-
7 ceive under subsection (g) in selecting a consortium
8 under this section.

9 (e) ANNUAL PLAN.—

10 (1) IN GENERAL.—The program under this sec-
11 tion shall be carried out pursuant to an annual plan
12 prepared by the Secretary in accordance with para-
13 graph (2).

14 (2) DEVELOPMENT.—

15 (A) SOLICITATION OF RECOMMENDA-
16 TIONS.—Before drafting an annual plan under
17 this subsection, the Secretary shall solicit spe-
18 cific written recommendations from the pro-
19 gram consortium for each element to be ad-
20 dressed in the plan, including those described in
21 paragraph (4). The Secretary may request that
22 the program consortium submit its rec-
23 ommendations in the form of a draft annual
24 plan.

1 (B) SUBMISSION OF RECOMMENDATIONS;
2 OTHER COMMENT.—The Secretary shall submit
3 the recommendations of the program consor-
4 tium under subparagraph (A) to the Ultra-
5 Deepwater Advisory Committee established
6 under section 945(a) for review, and such Advi-
7 sory Committee shall provide to the Secretary
8 written comments by a date determined by the
9 Secretary. The Secretary may also solicit com-
10 ments from any other experts.

11 (C) CONSULTATION.—The Secretary shall
12 consult regularly with the program consortium
13 throughout the preparation of the annual plan.

14 (3) PUBLICATION.—The Secretary shall trans-
15 mit to Congress and publish in the Federal Register
16 the annual plan, along with any written comments
17 received under paragraph (2)(A) and (B).

18 (4) CONTENTS.—The annual plan shall describe
19 the ongoing and prospective activities of the pro-
20 gram under this section and shall include—

21 (A) a list of any solicitations for awards
22 that the Secretary plans to issue to carry out
23 research, development, demonstration, or com-
24 mercial application activities, including the top-
25 ics for such work, who would be eligible to

1 apply, selection criteria, and the duration of
2 awards; and

3 (B) a description of the activities expected
4 of the program consortium to carry out sub-
5 section (f)(4).

6 (5) ESTIMATES OF INCREASED ROYALTY RE-
7 CEIPTS.—The Secretary, in consultation with the
8 Secretary of the Interior, shall provide an annual re-
9 port to Congress with the President’s budget on the
10 estimated cumulative increase in Federal royalty re-
11 ceipts (if any) resulting from the implementation of
12 this part. The initial report under this paragraph
13 shall be submitted in the first President’s budget fol-
14 lowing the completion of the first annual plan re-
15 quired under this subsection.

16 (f) AWARDS.—

17 (1) IN GENERAL.—The Secretary shall make
18 awards to carry out research, development, dem-
19 onstration, and commercial application activities
20 under the program under this section. The program
21 consortium shall not be eligible to receive such
22 awards, but members of the program consortium
23 may receive such awards.

24 (2) PROPOSALS.—The Secretary shall solicit
25 proposals for awards under this subsection in such

1 manner and at such time as the Secretary may pre-
2 scribe, in consultation with the program consortium.

3 (3) REVIEW.—The Secretary shall make awards
4 under this subsection through a competitive process,
5 which shall include a review by individuals selected
6 by the Secretary. Such individuals shall include, for
7 each application, Federal officials, the program con-
8 sortium, and non-Federal experts who are not board
9 members, officers, or employees of the program con-
10 sortium or of a member of the program consortium.

11 (4) OVERSIGHT.—

12 (A) IN GENERAL.—The program consor-
13 tium shall oversee the implementation of
14 awards under this subsection, consistent with
15 the annual plan under subsection (e), including
16 disbursing funds and monitoring activities car-
17 ried out under such awards for compliance with
18 the terms and conditions of the awards.

19 (B) EFFECT.—Nothing in subparagraph
20 (A) shall limit the authority or responsibility of
21 the Secretary to oversee awards, or limit the
22 authority of the Secretary to review or revoke
23 awards.

24 (C) PROVISION OF INFORMATION.—The
25 Secretary shall provide to the program consor-

1 tium the information necessary for the program
2 consortium to carry out its responsibilities
3 under this paragraph.

4 (g) ADMINISTRATIVE COSTS.—

5 (1) IN GENERAL.—To compensate the program
6 consortium for carrying out its activities under this
7 section, the Secretary shall provide to the program
8 consortium funds sufficient to administer the pro-
9 gram. This compensation may include a manage-
10 ment fee consistent with Department of Energy con-
11 tracting practices and procedures.

12 (2) ADVANCE.—The Secretary shall advance
13 funds to the program consortium upon selection of
14 the consortium, which shall be deducted from
15 amounts to be provided under paragraph (1).

16 (h) AUDIT.—The Secretary shall retain an inde-
17 pendent, commercial auditor to determine the extent to
18 which funds provided to the program consortium, and
19 funds provided under awards made under subsection (f),
20 have been expended in a manner consistent with the pur-
21 poses and requirements of this part. The auditor shall
22 transmit a report annually to the Secretary, who shall
23 transmit the report to Congress, along with a plan to rem-
24 edy any deficiencies cited in the report.

1 **SEC. 943. UNCONVENTIONAL NATURAL GAS AND OTHER PE-**
2 **TROLEUM RESOURCES PROGRAM.**

3 (a) IN GENERAL.—The Secretary shall carry out ac-
4 tivities under subsection 941(b)(3), to maximize the use
5 of the onshore unconventional natural gas and other petro-
6 leum resources of the United States, by increasing the
7 supply of such resources, through reducing the cost and
8 increasing the efficiency of exploration for and production
9 of such resources, while improving safety and minimizing
10 environmental impacts.

11 (b) AWARDS.—

12 (1) IN GENERAL.—The Secretary shall carry
13 out this section through awards to research con-
14 sortia made through an open, competitive process.
15 As a condition of award of funds, qualified research
16 consortia shall—

17 (A) demonstrate capability and experience
18 in unconventional onshore natural gas or other
19 petroleum research and development;

20 (B) provide a research plan that dem-
21 onstrates how additional natural gas or oil pro-
22 duction will be achieved; and

23 (C) at the request of the Secretary, provide
24 technical advice to the Secretary for the pur-
25 poses of developing the annual plan required
26 under subsection (e).

1 (2) PRODUCTION POTENTIAL.—The Secretary
2 shall seek to ensure that the number and types of
3 awards made under this subsection have reasonable
4 potential to lead to additional oil and natural gas
5 production on Federal lands.

6 (3) SCHEDULE.—To carry out this subsection,
7 not later than 180 days after the date of enactment
8 of this Act, the Secretary shall solicit proposals from
9 research consortia, which shall be submitted not
10 later than 360 days after the date of enactment of
11 this Act. The Secretary shall select the first group
12 of research consortia to receive awards under this
13 subsection not later than 18 months after such date
14 of enactment.

15 (c) AUDIT.—The Secretary shall retain an inde-
16 pendent, commercial auditor to determine the extent to
17 which funds provided under awards made under this sec-
18 tion have been expended in a manner consistent with the
19 purposes and requirements of this part. The auditor shall
20 transmit a report annually to the Secretary, who shall
21 transmit the report to Congress, along with a plan to rem-
22 edy any deficiencies cited in the report.

23 (d) FOCUS AREAS FOR AWARDS.—

24 (1) UNCONVENTIONAL RESOURCES.—Awards
25 from allocations under section 949(d)(2) shall focus

1 on areas including advanced coalbed methane, deep
2 drilling, natural gas production from tight sands,
3 natural gas production from gas shales, stranded
4 gas, innovative exploration and production tech-
5 niques, enhanced recovery techniques, and environ-
6 mental mitigation of unconventional natural gas and
7 other petroleum resources exploration and produc-
8 tion.

9 (2) SMALL PRODUCERS.—Awards from alloca-
10 tions under section 949(d)(3) shall be made to con-
11 sortia consisting of small producers or organized pri-
12 marily for the benefit of small producers, and shall
13 focus on areas including complex geology involving
14 rapid changes in the type and quality of the oil and
15 gas reservoirs across the reservoir; low reservoir
16 pressure; unconventional natural gas reservoirs in
17 coalbeds, deep reservoirs, tight sands, or shales; and
18 unconventional oil reservoirs in tar sands and oil
19 shales.

20 (e) ANNUAL PLAN.—

21 (1) IN GENERAL.—The program under this sec-
22 tion shall be carried out pursuant to an annual plan
23 prepared by the Secretary in accordance with para-
24 graph (2).

25 (2) DEVELOPMENT.—

1 (A) WRITTEN RECOMMENDATIONS.—Be-
2 fore drafting an annual plan under this sub-
3 section, the Secretary shall solicit specific writ-
4 ten recommendations from the research con-
5 sortia receiving awards under subsection (b)
6 and the Unconventional Resources Technology
7 Advisory Committee for each element to be ad-
8 dressed in the plan, including those described in
9 subparagraph (D).

10 (B) CONSULTATION.—The Secretary shall
11 consult regularly with the research consortia
12 throughout the preparation of the annual plan.

13 (C) PUBLICATION.—The Secretary shall
14 transmit to Congress and publish in the Fed-
15 eral Register the annual plan, along with any
16 written comments received under subparagraph
17 (A).

18 (D) CONTENTS.—The annual plan shall
19 describe the ongoing and prospective activities
20 under this section and shall include a list of any
21 solicitations for awards that the Secretary plans
22 to issue to carry out research, development,
23 demonstration, or commercial application activi-
24 ties, including the topics for such work, who

1 would be eligible to apply, selection criteria, and
2 the duration of awards.

3 (3) ESTIMATES OF INCREASED ROYALTY RE-
4 CEIPTS.—The Secretary, in consultation with the
5 Secretary of the Interior, shall provide an annual re-
6 port to Congress with the President’s budget on the
7 estimated cumulative increase in Federal royalty re-
8 ceipts (if any) resulting from the implementation of
9 this part. The initial report under this paragraph
10 shall be submitted in the first President’s budget fol-
11 lowing the completion of the first annual plan re-
12 quired under this subsection.

13 (f) ACTIVITIES BY THE UNITED STATES GEOLOGI-
14 CAL SURVEY.—The Secretary of the Interior, through the
15 United States Geological Survey, shall, where appropriate,
16 carry out programs of long-term research to complement
17 the programs under this section.

18 **SEC. 944. ADDITIONAL REQUIREMENTS FOR AWARDS.**

19 (a) DEMONSTRATION PROJECTS.—An application for
20 an award under this part for a demonstration project shall
21 describe with specificity the intended commercial use of
22 the technology to be demonstrated.

23 (b) FLEXIBILITY IN LOCATING DEMONSTRATION
24 PROJECTS.—Subject to the limitation in section 941(c),
25 a demonstration project under this part relating to an

1 ultra-deepwater technology or an ultra-deepwater architec-
2 ture may be conducted in deepwater depths.

3 (c) INTELLECTUAL PROPERTY AGREEMENTS.—If an
4 award under this part is made to a consortium (other than
5 the program consortium), the consortium shall provide to
6 the Secretary a signed contract agreed to by all members
7 of the consortium describing the rights of each member
8 to intellectual property used or developed under the award.

9 (d) TECHNOLOGY TRANSFER.—2.5 percent of the
10 amount of each award made under this part shall be des-
11 ignated for technology transfer and outreach activities
12 under this title.

13 (e) COST SHARING REDUCTION FOR INDEPENDENT
14 PRODUCERS.—In applying the cost sharing requirements
15 under section 972 to an award under this part the Sec-
16 retary may reduce or eliminate the non-Federal require-
17 ment if the Secretary determines that the reduction is nec-
18 essary and appropriate considering the technological risks
19 involved in the project.

20 **SEC. 945. ADVISORY COMMITTEES.**

21 (a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

22 (1) ESTABLISHMENT.—Not later than 270 days
23 after the date of enactment of this Act, the Sec-
24 retary shall establish an advisory committee to be
25 known as the Ultra-Deepwater Advisory Committee.

1 (2) MEMBERSHIP.—The advisory committee
2 under this subsection shall be composed of members
3 appointed by the Secretary including—

4 (A) individuals with extensive research ex-
5 perience or operational knowledge of offshore
6 natural gas and other petroleum exploration
7 and production;

8 (B) individuals broadly representative of
9 the affected interests in ultra-deepwater natural
10 gas and other petroleum production, including
11 interests in environmental protection and safe
12 operations;

13 (C) no individuals who are Federal employ-
14 ees; and

15 (D) no individuals who are board members,
16 officers, or employees of the program Consor-
17 tium.

18 (3) DUTIES.—The advisory committee under
19 this subsection shall—

20 (A) advise the Secretary on the develop-
21 ment and implementation of programs under
22 this part related to ultra-deepwater natural gas
23 and other petroleum resources; and

24 (B) carry out section 942(e)(2)(B).

1 (4) COMPENSATION.—A member of the advi-
2 sory committee under this subsection shall serve
3 without compensation but shall receive travel ex-
4 penses in accordance with applicable provisions
5 under subchapter I of chapter 57 of title 5, United
6 States Code.

7 (b) UNCONVENTIONAL RESOURCES TECHNOLOGY
8 ADVISORY COMMITTEE.—

9 (1) ESTABLISHMENT.—Not later than 270 days
10 after the date of enactment of this Act, the Sec-
11 retary shall establish an advisory committee to be
12 known as the Unconventional Resources Technology
13 Advisory Committee.

14 (2) MEMBERSHIP.—The advisory committee
15 under this subsection shall be composed of members
16 appointed by the Secretary including—

17 (A) a majority of members who are em-
18 ployees or representatives of independent pro-
19 ducers of natural gas and other petroleum, in-
20 cluding small producers;

21 (B) individuals with extensive research ex-
22 perience or operational knowledge of unconven-
23 tional natural gas and other petroleum resource
24 exploration and production;

1 (C) individuals broadly representative of
2 the affected interests in unconventional natural
3 gas and other petroleum resource exploration
4 and production, including interests in environ-
5 mental protection and safe operations; and

6 (D) no individuals who are Federal em-
7 ployees.

8 (3) DUTIES.—The advisory committee under
9 this subsection shall advise the Secretary on the de-
10 velopment and implementation of activities under
11 this part related to unconventional natural gas and
12 other petroleum resources.

13 (4) COMPENSATION.—A member of the advi-
14 sory committee under this subsection shall serve
15 without compensation but shall receive travel ex-
16 penses in accordance with applicable provisions
17 under subchapter I of chapter 57 of title 5, United
18 States Code.

19 (c) PROHIBITION.—No advisory committee estab-
20 lished under this section shall make recommendations on
21 funding awards to particular consortia or other entities,
22 or for specific projects.

23 **SEC. 946. LIMITS ON PARTICIPATION.**

24 An entity shall be eligible to receive an award under
25 this part only if the Secretary finds—

1 (1) that the entity's participation in the pro-
2 gram under this part would be in the economic in-
3 terest of the United States; and

4 (2) that either—

5 (A) the entity is a United States-owned en-
6 tity organized under the laws of the United
7 States; or

8 (B) the entity is organized under the laws
9 of the United States and has a parent entity or-
10 ganized under the laws of a country that af-
11 fords—

12 (i) to United States-owned entities op-
13 portunities, comparable to those afforded
14 to any other entity, to participate in any
15 cooperative research venture similar to
16 those authorized under this part;

17 (ii) to United States-owned entities
18 local investment opportunities comparable
19 to those afforded to any other entity; and

20 (iii) adequate and effective protection
21 for the intellectual property rights of
22 United States-owned entities.

23 **SEC. 947. SUNSET.**

24 The authority provided by this part shall terminate
25 on September 30, 2011.

1 **SEC. 948. DEFINITIONS.**

2 In this part:

3 (1) DEEPWATER.—The term “deepwater”
4 means a water depth that is greater than 200 but
5 less than 1,500 meters.

6 (2) INDEPENDENT PRODUCER OF OIL OR
7 GAS.—

8 (A) IN GENERAL.—The term “independent
9 producer of oil or gas” means any person that
10 produces oil or gas other than a person to
11 whom subsection (c) of section 613A of the In-
12 ternal Revenue Code of 1986 does not apply by
13 reason of paragraph (2) (relating to certain re-
14 tailers) or paragraph (4) (relating to certain re-
15 finers) of section 613A(d) of such Code.

16 (B) RULES FOR APPLYING PARAGRAPHS (2)
17 AND (4) OF SECTION 613A(d).—For purposes of
18 subparagraph (A), paragraphs (2) and (4) of
19 section 613A(d) of the Internal Revenue Code
20 of 1986 shall be applied by substituting “cal-
21 endar year” for “taxable year” each place it ap-
22 pears in such paragraphs.

23 (3) PROGRAM CONSORTIUM.—The term “pro-
24 gram consortium” means the consortium selected
25 under section 942(d).

1 (4) REMOTE OR INCONSEQUENTIAL.—The term
2 “remote or inconsequential” has the meaning given
3 that term in regulations issued by the Office of Gov-
4 ernment Ethics under section 208(b)(2) of title 18,
5 United States Code.

6 (5) SMALL PRODUCER.—The term “small pro-
7 ducer” means an entity organized under the laws of
8 the United States with production levels of less than
9 1,000 barrels per day of oil equivalent.

10 (6) ULTRA-DEEPWATER.—The term “ultra-
11 deepwater” means a water depth that is equal to or
12 greater than 1,500 meters.

13 (7) ULTRA-DEEPWATER ARCHITECTURE.—The
14 term “ultra-deepwater architecture” means the inte-
15 gration of technologies for the exploration for, or
16 production of, natural gas or other petroleum re-
17 sources located at ultra-deepwater depths.

18 (8) ULTRA-DEEPWATER TECHNOLOGY.—The
19 term “ultra-deepwater technology” means a discrete
20 technology that is specially suited to address 1 or
21 more challenges associated with the exploration for,
22 or production of, natural gas or other petroleum re-
23 sources located at ultra-deepwater depths.

24 (9) UNCONVENTIONAL NATURAL GAS AND
25 OTHER PETROLEUM RESOURCE.—The term “uncon-

1 ventional natural gas and other petroleum resource”
2 means natural gas and other petroleum resource lo-
3 cated onshore in an economically inaccessible geo-
4 logical formation, including resources of small pro-
5 ducers.

6 **SEC. 949. FUNDING.**

7 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
8 are authorized to be appropriated to the Secretary, to be
9 deposited in the Fund, such sums as are necessary for
10 each of the fiscal years 2004 through 2013, to remain
11 available until expended.

12 (b) **OBLIGATIONAL AUTHORITY.**—Monies in the
13 Fund shall be available to the Secretary for obligation
14 under this part without fiscal year limitation, to remain
15 available until expended.

16 (c) **ALLOCATION.**—Amounts obligated from the Fund
17 under this section in each fiscal year shall be allocated
18 as follows:

19 (1) 50 percent shall be for activities under sec-
20 tion 942.

21 (2) 35 percent shall be for activities under sec-
22 tion 943(d)(1).

23 (3) 10 percent shall be for activities under sec-
24 tion 943(d)(2).

1 (4) 5 percent shall be for research under section
2 941(d).

3 (d) FUND.—There is hereby established in the Treas-
4 ury of the United States a separate fund to be known as
5 the “Ultra-Deepwater and Unconventional Natural Gas
6 and Other Petroleum Research Fund”.

7 **Subtitle F—Science**

8 **SEC. 951. SCIENCE.**

9 (a) IN GENERAL.—The following sums are author-
10 ized to be appropriated to the Secretary for research, de-
11 velopment, demonstration, and commercial application ac-
12 tivities of the Office of Science, including activities author-
13 ized under this subtitle, including the amounts authorized
14 under the amendment made by section 958(c)(2)(C), and
15 including basic energy sciences, advanced scientific com-
16 puting research, biological and environmental research, fu-
17 sion energy sciences, high energy physics, nuclear physics,
18 and research analysis and infrastructure support:

19 (1) For fiscal year 2004, \$3,785,000,000.

20 (2) For fiscal year 2005, \$4,153,000,000.

21 (3) For fiscal year 2006, \$4,618,000,000.

22 (4) For fiscal year 2007, \$5,310,000,000.

23 (5) For fiscal year 2008, \$5,800,000,000.

24 (b) ALLOCATIONS.—From amounts authorized under
25 subsection (a), the following sums are authorized:

1 (1) For activities of the Fusion Energy Sciences
2 Program, including activities under sections 952 and
3 953—

4 (A) for fiscal year 2004, \$335,000,000;

5 (B) for fiscal year 2005, \$349,000,000;

6 (C) for fiscal year 2006, \$362,000,000;

7 (D) for fiscal year 2007, \$377,000,000;

8 and

9 (E) for fiscal year 2008, \$393,000,000.

10 (2) For the Spallation Neutron Source—

11 (A) for construction in fiscal year 2004,
12 \$124,600,000;

13 (B) for construction in fiscal year 2005,
14 \$79,800,000;

15 (C) for completion of construction in fiscal
16 year 2006, \$41,100,000; and

17 (D) for other project costs (including re-
18 search and development necessary to complete
19 the project, preoperations costs, and capital
20 equipment related to construction),
21 \$103,279,000 for the period encompassing fis-
22 cal years 2003 through 2006, to remain avail-
23 able until expended through September 30,
24 2006.

1 (3) For Catalysis Research activities under sec-
2 tion 956—

- 3 (A) for fiscal year 2004, \$33,000,000;
4 (B) for fiscal year 2005, \$35,000,000;
5 (C) for fiscal year 2006, \$36,500,000;
6 (D) for fiscal year 2007, \$38,200,000; and
7 (E) for fiscal year 2008, \$40,100,000.

8 (4) For Nanoscale Science and Engineering Re-
9 search activities under section 957—

- 10 (A) for fiscal year 2004, \$270,000,000;
11 (B) for fiscal year 2005, \$292,000,000;
12 (C) for fiscal year 2006, \$322,000,000;
13 (D) for fiscal year 2007, \$355,000,000;

14 and

- 15 (E) for fiscal year 2008, \$390,000,000.

16 (5) For activities under section 957(c), from
17 the amounts authorized under paragraph (4) of this
18 subsection—

- 19 (A) for fiscal year 2004, \$135,000,000;
20 (B) for fiscal year 2005, \$150,000,000;
21 (C) for fiscal year 2006, \$120,000,000;
22 (D) for fiscal year 2007, \$100,000,000;

23 and

- 24 (E) for fiscal year 2008, \$125,000,000.

1 (6) For activities in the Genomes to Life Pro-
2 gram under section 959—

3 (A) for fiscal year 2004, \$100,000,000;
4 and

5 (B) for fiscal years 2005 through 2008,
6 such sums as may be necessary.

7 (7) For activities in the Energy-Water Supply
8 Program under section 961, \$30,000,000 for each of
9 fiscal years 2004 through 2008.

10 (c) ITER CONSTRUCTION.—In addition to the funds
11 authorized under subsection (b)(1), such sums as may be
12 necessary for costs associated with ITER construction,
13 consistent with limitations under section 952.

14 **SEC. 952. UNITED STATES PARTICIPATION IN ITER.**

15 (a) IN GENERAL.—The United States may partici-
16 pate in ITER in accordance with the provisions of this
17 section.

18 (b) AGREEMENT.—

19 (1) IN GENERAL.—The Secretary is authorized
20 to negotiate an agreement for United States partici-
21 pation in ITER.

22 (2) CONTENTS.—Any agreement for United
23 States participation in ITER shall, at a minimum—

1 (A) clearly define the United States finan-
2 cial contribution to construction and operating
3 costs;

4 (B) ensure that the share of ITER's high-
5 technology components manufactured in the
6 United States is at least proportionate to the
7 United States financial contribution to ITER;

8 (C) ensure that the United States will not
9 be financially responsible for cost overruns in
10 components manufactured in other ITER par-
11 ticipating countries;

12 (D) guarantee the United States full ac-
13 cess to all data generated by ITER;

14 (E) enable United States researchers to
15 propose and carry out an equitable share of the
16 experiments at ITER;

17 (F) provide the United States with a role
18 in all collective decisionmaking related to ITER;
19 and

20 (G) describe the process for discontinuing
21 or decommissioning ITER and any United
22 States role in those processes.

23 (c) PLAN.—The Secretary, in consultation with the
24 Fusion Energy Sciences Advisory Committee, shall de-
25 velop a plan for the participation of United States sci-

1 entists in ITER that shall include the United States re-
2 search agenda for ITER, methods to evaluate whether
3 ITER is promoting progress toward making fusion a reli-
4 able and affordable source of power, and a description of
5 how work at ITER will relate to other elements of the
6 United States fusion program. The Secretary shall request
7 a review of the plan by the National Academy of Sciences.

8 (d) LIMITATION.—No funds shall be expended for the
9 construction of ITER until the Secretary has transmitted
10 to Congress—

11 (1) the agreement negotiated pursuant to sub-
12 section (b) and 120 days have elapsed since that
13 transmission;

14 (2) a report describing the management struc-
15 ture of ITER and providing a fixed dollar estimate
16 of the cost of United States participation in the con-
17 struction of ITER, and 120 days have elapsed since
18 that transmission;

19 (3) a report describing how United States par-
20 ticipation in ITER will be funded without reducing
21 funding for other programs in the Office of Science,
22 including other fusion programs, and 60 days have
23 elapsed since that transmission; and

24 (4) the plan required by subsection (c) (but not
25 the National Academy of Sciences review of that

1 plan), and 60 days have elapsed since that trans-
2 mission.

3 (e) ALTERNATIVE TO ITER.—If at any time during
4 the negotiations on ITER, the Secretary determines that
5 construction and operation of ITER is unlikely or infeasible,
6 the Secretary shall send to Congress, as part of the
7 budget request for the following year, a plan for imple-
8 menting the domestic burning plasma experiment known
9 as FIRE, including costs and schedules for such a plan.
10 The Secretary shall refine such plan in full consultation
11 with the Fusion Energy Sciences Advisory Committee and
12 shall also transmit such plan to the National Academy of
13 Sciences for review.

14 (f) DEFINITIONS.—In this section and sections
15 951(b)(1) and (c):

16 (1) CONSTRUCTION.—The term “construction”
17 means the physical construction of the ITER facil-
18 ity, and the physical construction, purchase, or man-
19 ufacture of equipment or components that are spe-
20 cifically designed for the ITER facility, but does not
21 mean the design of the facility, equipment, or com-
22 ponents.

23 (2) FIRE.—The term “FIRE” means the Fu-
24 sion Ignition Research Experiment, the fusion re-
25 search experiment for which design work has been

1 supported by the Department as a possible alter-
2 native burning plasma experiment in the event that
3 ITER fails to move forward.

4 (3) ITER.—The term “ITER” means the
5 international burning plasma fusion research project
6 in which the President announced United States
7 participation on January 30, 2003.

8 **SEC. 953. PLAN FOR FUSION ENERGY SCIENCES PROGRAM.**

9 (a) DECLARATION OF POLICY.—It shall be the policy
10 of the United States to conduct research, development,
11 demonstration, and commercial application to provide for
12 the scientific, engineering, and commercial infrastructure
13 necessary to ensure that the United States is competitive
14 with other nations in providing fusion energy for its own
15 needs and the needs of other nations, including by dem-
16 onstrating electric power or hydrogen production for the
17 United States energy grid utilizing fusion energy at the
18 earliest date possible.

19 (b) PLANNING.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of enactment of this Act, the Sec-
22 retary shall present to Congress a plan, with pro-
23 posed cost estimates, budgets, and potential inter-
24 national partners, for the implementation of the pol-

1 icity described in subsection (a). The plan shall ensure
2 that—

3 (A) existing fusion research facilities are
4 more fully utilized;

5 (B) fusion science, technology, theory, ad-
6 vanced computation, modeling, and simulation
7 are strengthened;

8 (C) new magnetic and inertial fusion re-
9 search facilities are selected based on scientific
10 innovation, cost effectiveness, and their poten-
11 tial to advance the goal of practical fusion en-
12 ergy at the earliest date possible, and those that
13 are selected are funded at a cost-effective rate;

14 (D) communication of scientific results and
15 methods between the fusion energy science com-
16 munity and the broader scientific and tech-
17 nology communities is improved;

18 (E) inertial confinement fusion facilities
19 are utilized to the extent practicable for the
20 purpose of inertial fusion energy research and
21 development; and

22 (F) attractive alternative inertial and mag-
23 netic fusion energy approaches are more fully
24 explored.

1 (2) COSTS AND SCHEDULES.—Such plan shall
2 also address the status of and, to the degree pos-
3 sible, costs and schedules for—

4 (A) in coordination with the program
5 under section 960, the design and implementa-
6 tion of international or national facilities for the
7 testing of fusion materials; and

8 (B) the design and implementation of
9 international or national facilities for the test-
10 ing and development of key fusion technologies.

11 **SEC. 954. SPALLATION NEUTRON SOURCE.**

12 (a) DEFINITION.—For the purposes of this section,
13 the term “Spallation Neutron Source” means Department
14 Project 99–E–334, Oak Ridge National Laboratory, Oak
15 Ridge, Tennessee.

16 (b) REPORT.—The Secretary shall report on the
17 Spallation Neutron Source as part of the Department’s
18 annual budget submission, including a description of the
19 achievement of milestones, a comparison of actual costs
20 to estimated costs, and any changes in estimated project
21 costs or schedule.

22 (c) LIMITATIONS.—The total amount obligated by the
23 Department, including prior year appropriations, for the
24 Spallation Neutron Source shall not exceed—

25 (1) \$1,192,700,000 for costs of construction;

1 (2) \$219,000,000 for other project costs; and

2 (3) \$1,411,700,000 for total project cost.

3 **SEC. 955. SUPPORT FOR SCIENCE AND ENERGY FACILITIES**

4 **AND INFRASTRUCTURE.**

5 (a) FACILITY AND INFRASTRUCTURE POLICY.—The
6 Secretary shall develop and implement a strategy for fa-
7 cilities and infrastructure supported primarily from the
8 Office of Science, the Office of Energy Efficiency and Re-
9 newable Energy, the Office of Fossil Energy, or the Office
10 of Nuclear Energy, Science, and Technology Programs at
11 all National Laboratories and single-purpose research fa-
12 cilities. Such strategy shall provide cost-effective means
13 for—

14 (1) maintaining existing facilities and infra-
15 structure, as needed;

16 (2) closing unneeded facilities;

17 (3) making facility modifications; and

18 (4) building new facilities.

19 (b) REPORT.—

20 (1) IN GENERAL.—The Secretary shall prepare
21 and transmit, along with the President's budget re-
22 quest to Congress for fiscal year 2006, a report con-
23 taining the strategy developed under subsection (a).

24 (2) CONTENTS.—For each National Laboratory
25 and single-purpose research facility, for the facilities

1 primarily used for science and energy research, such
2 report shall contain—

3 (A) the current priority list of proposed fa-
4 cilities and infrastructure projects, including
5 cost and schedule requirements;

6 (B) a current 10-year plan that dem-
7 onstrates the reconfiguration of its facilities and
8 infrastructure to meet its missions and to ad-
9 dress its long-term operational costs and return
10 on investment;

11 (C) the total current budget for all facili-
12 ties and infrastructure funding; and

13 (D) the current status of each facility and
14 infrastructure project compared to the original
15 baseline cost, schedule, and scope.

16 **SEC. 956. CATALYSIS RESEARCH AND DEVELOPMENT PRO-**
17 **GRAM.**

18 (a) **ESTABLISHMENT.**—The Secretary, through the
19 Office of Science, shall support a program of research and
20 development in catalysis science consistent with the De-
21 partment’s statutory authorities related to research and
22 development. The program shall include efforts to—

23 (1) enable catalyst design using combinations of
24 experimental and mechanistic methodologies coupled

1 with computational modeling of catalytic reactions at
2 the molecular level;

3 (2) develop techniques for high throughput syn-
4 thesis, assay, and characterization at nanometer and
5 subnanometer scales in situ under actual operating
6 conditions;

7 (3) synthesize catalysts with specific site archi-
8 tectures;

9 (4) conduct research on the use of precious
10 metals for catalysis; and

11 (5) translate molecular understanding to the
12 design of catalytic compounds.

13 (b) DUTIES OF THE OFFICE OF SCIENCE.—In car-
14 rying out the program under this section, the Director of
15 the Office of Science shall—

16 (1) support both individual investigators and
17 multidisciplinary teams of investigators to pioneer
18 new approaches in catalytic design;

19 (2) develop, plan, construct, acquire, share, or
20 operate special equipment or facilities for the use of
21 investigators in collaboration with national user fa-
22 cilities such as nanoscience and engineering centers;

23 (3) support technology transfer activities to
24 benefit industry and other users of catalysis science
25 and engineering; and

1 (4) coordinate research and development activi-
2 ties with industry and other Federal agencies.

3 (c) TRIENNIAL ASSESSMENT.—The National Acad-
4 emy of Sciences shall review the catalysis program every
5 3 years to report on gains made in the fundamental
6 science of catalysis and its progress towards developing
7 new fuels for energy production and material fabrication
8 processes.

9 **SEC. 957. NANOSCALE SCIENCE AND ENGINEERING RE-**
10 **SEARCH, DEVELOPMENT, DEMONSTRATION,**
11 **AND COMMERCIAL APPLICATION.**

12 (a) ESTABLISHMENT.—The Secretary, acting
13 through the Office of Science, shall support a program of
14 research, development, demonstration, and commercial ap-
15 plication in nanoscience and nanoengineering. The pro-
16 gram shall include efforts to further the understanding of
17 the chemistry, physics, materials science, and engineering
18 of phenomena on the scale of nanometers and to apply
19 that knowledge to the Department’s mission areas.

20 (b) DUTIES OF THE OFFICE OF SCIENCE.—In car-
21 rying out the program under this section, the Office of
22 Science shall—

23 (1) support both individual investigators and
24 teams of investigators, including multidisciplinary
25 teams;

1 (2) carry out activities under subsection (c);

2 (3) support technology transfer activities to
3 benefit industry and other users of nanoscience and
4 nanoengineering;

5 (4) coordinate research and development activi-
6 ties with other Department programs, industry, and
7 other Federal agencies;

8 (5) ensure that societal and ethical concerns
9 will be addressed as the technology is developed by—

10 (A) establishing a research program to
11 identify societal and ethical concerns related to
12 nanotechnology, and ensuring that the results
13 of such research are widely disseminated; and

14 (B) integrating, insofar as possible, re-
15 search on societal and ethical concerns with
16 nanotechnology research and development; and

17 (6) ensure that the potential of nanotechnology
18 to produce or facilitate the production of clean, inex-
19 pensive energy is realized by supporting
20 nanotechnology energy applications research and de-
21 velopment.

22 (c) NANOSCIENCE AND NANOENGINEERING RE-
23 SEARCH CENTERS AND MAJOR INSTRUMENTATION.—

24 (1) IN GENERAL.—The Secretary shall carry
25 out projects to develop, plan, construct, acquire, op-

1 erate, or support special equipment, instrumenta-
2 tion, or facilities for investigators conducting re-
3 search and development in nanoscience and
4 nanoengineering.

5 (2) ACTIVITIES.—Projects under paragraph (1)
6 may include the measurement of properties at the
7 scale of nanometers, manipulation at such scales,
8 and the integration of technologies based on
9 nanoscience or nanoengineering into bulk materials
10 or other technologies.

11 (3) FACILITIES.—Facilities under paragraph
12 (1) may include electron microcharacterization facili-
13 ties, microlithography facilities, scanning probe fa-
14 cilities, and related instrumentation.

15 (4) COLLABORATIONS.—The Secretary shall en-
16 courage collaborations among Department programs,
17 institutions of higher education, laboratories, and in-
18 dustry at facilities under this subsection.

19 **SEC. 958. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY**
20 **MISSIONS.**

21 (a) IN GENERAL.—The Secretary, acting through the
22 Office of Science, shall support a program to advance the
23 Nation’s computing capability across a diverse set of
24 grand challenge, computationally based, science problems
25 related to departmental missions.

1 (b) DUTIES OF THE OFFICE OF SCIENCE.—In car-
2 rying out the program under this section, the Office of
3 Science shall—

4 (1) advance basic science through computation
5 by developing software to solve grand challenge
6 science problems on new generations of computing
7 platforms in collaboration with other Department
8 program offices;

9 (2) enhance the foundations for scientific com-
10 puting by developing the basic mathematical and
11 computing systems software needed to take full ad-
12 vantage of the computing capabilities of computers
13 with peak speeds of 100 teraflops or more, some of
14 which may be unique to the scientific problem of in-
15 terest;

16 (3) enhance national collaboratory and net-
17 working capabilities by developing software to inte-
18 grate geographically separated researchers into ef-
19 fective research teams and to facilitate access to and
20 movement and analysis of large (petabyte) data sets;

21 (4) develop and maintain a robust scientific
22 computing hardware infrastructure to ensure that
23 the computing resources needed to address depart-
24 mental missions are available; and

1 (5) explore new computing approaches and
2 technologies that promise to advance scientific com-
3 puting, including developments in quantum com-
4 puting.

5 (c) HIGH-PERFORMANCE COMPUTING ACT OF 1991
6 AMENDMENTS.—The High-Performance Computing Act
7 of 1991 is amended—

8 (1) in section 4 (15 U.S.C. 5503)—

9 (A) in paragraph (3) by striking “means”
10 and inserting “and networking and information
11 technology mean”, and by striking “(including
12 vector supercomputers and large scale parallel
13 systems)”; and

14 (B) in paragraph (4), by striking “packet
15 switched”; and

16 (2) in section 203 (15 U.S.C. 5523)—

17 (A) in subsection (a), by striking all after
18 “As part of the” and inserting “Networking
19 and Information Technology Research and De-
20 velopment Program, the Secretary of Energy
21 shall conduct basic and applied research in net-
22 working and information technology, with em-
23 phasis on supporting fundamental research in
24 the physical sciences and engineering, and en-
25 ergy applications; providing supercomputer ac-

1 cess and advanced communication capabilities
2 and facilities to scientific researchers; and de-
3 veloping tools for distributed scientific collabo-
4 ration.”;

5 (B) in subsection (b), by striking “Pro-
6 gram” and inserting “Networking and Informa-
7 tion Technology Research and Development
8 Program”; and

9 (C) by amending subsection (e) to read as
10 follows:

11 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary of En-
13 ergy to carry out the Networking and Information Tech-
14 nology Research and Development Program such sums as
15 may be necessary for fiscal years 2004 through 2008.”.

16 (d) COORDINATION.—The Secretary shall ensure that
17 the program under this section is integrated and con-
18 sistent with—

19 (1) the Advanced Simulation and Computing
20 Program, formerly known as the Accelerated Stra-
21 tegic Computing Initiative, of the National Nuclear
22 Security Administration; and

23 (2) other national efforts related to advanced
24 scientific computing for science and engineering.

25 (e) REPORT.—

1 (1) IN GENERAL.—Before undertaking any new
2 initiative to develop any new advanced architecture
3 for high-speed computing, the Secretary, through the
4 Director of the Office of Science, shall transmit a re-
5 port to Congress describing—

6 (A) the expected duration and cost of the
7 initiative;

8 (B) the technical milestones the initiative
9 is designed to achieve;

10 (C) how institutions of higher education
11 and private firms will participate in the initia-
12 tive; and

13 (D) why the goals of the initiative could
14 not be achieved through existing programs.

15 (2) LIMITATION.—No funds may be expended
16 on any initiative described in paragraph (1) until 30
17 days after the report required by that paragraph is
18 transmitted to Congress.

19 **SEC. 959. GENOMES TO LIFE PROGRAM.**

20 (a) PROGRAM.—

21 (1) ESTABLISHMENT.—The Secretary shall es-
22 tablish a research, development, and demonstration
23 program in genetics, protein science, and computa-
24 tional biology to support the energy, national secu-
25 rity, and environmental mission of the Department.

1 (2) GRANTS.—The program shall support indi-
2 vidual investigators and multidisciplinary teams of
3 investigators through competitive, merit-reviewed
4 grants.

5 (3) CONSULTATION.—In carrying out the pro-
6 gram, the Secretary shall consult with other Federal
7 agencies that conduct genetic and protein research.

8 (b) GOALS.—The program shall have the goal of de-
9 veloping technologies and methods based on the biological
10 functions of genomes, microbes, and plants that—

11 (1) can facilitate the production of fuels, includ-
12 ing hydrogen;

13 (2) convert carbon dioxide to organic carbon;

14 (3) improve national security and combat ter-
15 rorism;

16 (4) detoxify soils and water at Department fa-
17 cilities contaminated with heavy metals and radio-
18 logical materials; and

19 (5) address other Department missions as iden-
20 tified by the Secretary.

21 (c) PLAN.—

22 (1) DEVELOPMENT OF PLAN.—Not later than 1
23 year after the date of enactment of this Act, the
24 Secretary shall prepare and transmit to Congress a
25 research plan describing how the program author-

1 ized pursuant to this section will be undertaken to
2 accomplish the program goals established in sub-
3 section (b).

4 (2) REVIEW OF PLAN.—The Secretary shall
5 contract with the National Academy of Sciences to
6 review the research plan developed under this sub-
7 section. The Secretary shall transmit the review to
8 Congress not later than 18 months after transmittal
9 of the research plan under paragraph (1), along with
10 the Secretary’s response to the recommendations
11 contained in the review.

12 (d) GENOMES TO LIFE USER FACILITIES AND AN-
13 CILLARY EQUIPMENT.—

14 (1) IN GENERAL.—Within the funds authorized
15 to be appropriated pursuant to this Act, the
16 amounts specified under section 951(b)(6) shall,
17 subject to appropriations, be available for projects to
18 develop, plan, construct, acquire, or operate special
19 equipment, instrumentation, or facilities for inves-
20 tigators conducting research, development, dem-
21 onstration, and commercial application in systems
22 biology and proteomics and associated biological dis-
23 ciplines.

1 (2) FACILITIES.—Facilities under paragraph
2 (1) may include facilities, equipment, or instrumen-
3 tation for—

4 (A) the production and characterization of
5 proteins;

6 (B) whole proteome analysis;

7 (C) characterization and imaging of molec-
8 ular machines; and

9 (D) analysis and modeling of cellular sys-
10 tems.

11 (3) COLLABORATIONS.—The Secretary shall en-
12 courage collaborations among universities, labora-
13 tories, and industry at facilities under this sub-
14 section. All facilities under this subsection shall have
15 a specific mission of technology transfer to other in-
16 stitutions.

17 (e) PROHIBITION ON BIOMEDICAL AND HUMAN CELL
18 AND HUMAN SUBJECT RESEARCH.—

19 (1) NO BIOMEDICAL RESEARCH.—In carrying
20 out the program under this section, the Secretary
21 shall not conduct biomedical research.

22 (2) LIMITATIONS.—Nothing in this section shall
23 authorize the Secretary to conduct any research or
24 demonstrations—

25 (A) on human cells or human subjects; or

1 (B) designed to have direct application
2 with respect to human cells or human subjects.

3 **SEC. 960. FISSION AND FUSION ENERGY MATERIALS RE-**
4 **SEARCH PROGRAM.**

5 In the President's fiscal year 2006 budget request,
6 the Secretary shall establish a research and development
7 program on material science issues presented by advanced
8 fission reactors and the Department's fusion energy pro-
9 gram. The program shall develop a catalog of material
10 properties required for these applications, develop theo-
11 retical models for materials possessing the required prop-
12 erties, benchmark models against existing data, and de-
13 velop a roadmap to guide further research and develop-
14 ment in this area.

15 **SEC. 961. ENERGY-WATER SUPPLY PROGRAM.**

16 (a) ESTABLISHMENT.—There is established within
17 the Department the Energy-Water Supply Program, to
18 study energy-related and certain other issues associated
19 with the supply of drinking water and operation of com-
20 munity water systems and to study water supply issues
21 related to energy.

22 (b) DEFINITIONS.—For the purposes of this section:

23 (1) ADMINISTRATOR.—The term “Adminis-
24 trator” means the Administrator of the Environ-
25 mental Protection Agency.

1 (2) AGENCY.—The term “Agency” means the
2 Environmental Protection Agency.

3 (3) FOUNDATION.—The term “Foundation”
4 means the American Water Works Association Re-
5 search Foundation.

6 (4) INDIAN TRIBE.—The term “Indian tribe”
7 has the meaning given the term in section 4 of the
8 Indian Self-Determination and Education Assistance
9 Act (25 U.S.C. 450b).

10 (5) PROGRAM.—The term “Program” means
11 the Energy-Water Supply Program established by
12 this section.

13 (c) PROGRAM AREAS.—The Program shall develop
14 methods, means, procedures, equipment, and improved
15 technologies relating to—

16 (1) the arsenic removal program under sub-
17 section (d);

18 (2) the desalination program under subsection
19 (e); and

20 (3) the water and energy sustainability program
21 under subsection (f).

22 (d) ARSENIC REMOVAL PROGRAM.—

23 (1) IN GENERAL.—As soon as practicable after
24 the date of enactment of this Act, the Secretary, in
25 coordination with the Administrator and in partner-

1 ship with the Foundation, shall utilize the facilities,
2 institutions, and relationships established in the
3 Consolidated Appropriations Resolution, 2003 as de-
4 scribed in Senate Report 107–220 to carry out a re-
5 search program to provide innovative methods and
6 means for removal of arsenic.

7 (2) REQUIRED EVALUATIONS.—The program
8 shall, to the maximum extent practicable, evaluate
9 the means of—

10 (A) reducing energy costs incurred in
11 using arsenic removal technologies;

12 (B) minimizing materials, operating, and
13 maintenance costs; and

14 (C) minimizing any quantities of waste (es-
15 pecially hazardous waste) that result from use
16 of arsenic removal technologies.

17 (3) PEER REVIEW.—Where applicable and rea-
18 sonably available, projects undertaken under this
19 subsection shall be peer-reviewed.

20 (4) COMMUNITY WATER SYSTEMS.—In carrying
21 out the program under this subsection, the Sec-
22 retary, in coordination with the Administrator,
23 shall—

24 (A) select projects involving a geographi-
25 cally and hydrologically diverse group of com-

1 community water systems (as defined in section
2 1003 of the Public Health Service Act (42
3 U.S.C. 300)) and water chemistries, that have
4 experienced technical or economic difficulties in
5 providing drinking water with levels of arsenic
6 at 10 parts-per-billion or lower, which projects
7 shall be designed to develop innovative methods
8 and means to deliver drinking water that con-
9 tains less than 10 parts per billion of arsenic;
10 and

11 (B) provide not less than 40 percent of all
12 funds spent pursuant to this subsection to ad-
13 dress the needs of, and in collaboration with,
14 rural communities or Indian tribes.

15 (5) COST EFFECTIVENESS.—The Foundation
16 shall create methods for determining cost effective-
17 ness of arsenic removal technologies used in the pro-
18 gram.

19 (6) EDUCATION, TRAINING, AND TECH-
20 NOLOGY.—The Foundation shall include education,
21 training, and technology transfer as part of the pro-
22 gram.

23 (7) COORDINATION.—The Secretary shall con-
24 sult with the Administrator to ensure that all activi-
25 ties conducted under the program are coordinated

1 with the Agency and do not duplicate other pro-
2 grams in the Agency and other Federal agencies,
3 State programs, and academia.

4 (8) REPORTS.—Not later than 1 year after the
5 date of commencement of the program under this
6 subsection, and once every year thereafter, the Sec-
7 retary shall submit to the Committee on Energy and
8 Commerce of the House of Representatives and the
9 Committee on Environment and Public Works and
10 the Committee on Energy and Natural Resources of
11 the Senate a report on the results of the program
12 under this subsection.

13 (e) DESALINATION PROGRAM.—

14 (1) IN GENERAL.—The Secretary, in coopera-
15 tion with the Commissioner of Reclamation of the
16 Department of the Interior, shall carry out a pro-
17 gram to conduct research and develop methods and
18 means for desalination in accordance with the desali-
19 nation technology progress plan developed under
20 title II of the Energy and Water Development Ap-
21 propriations Act, 2002 (115 Stat. 498), and de-
22 scribed in Senate Report 107–39 under the heading
23 “WATER AND RELATED RESOURCES” in the “BU-
24 REAU OF RECLAMATION” section.

1 (2) REQUIREMENTS.—The desalination pro-
2 gram shall—

3 (A) use the resources of the Department
4 and the Department of the Interior that were
5 involved in the development of the 2003 Na-
6 tional Desalination and Water Purification
7 Technology Roadmap for next-generation de-
8 salination technology;

9 (B) focus on technologies that are appro-
10 priate for use in desalinating brackish ground-
11 water, drinking water, wastewater and other sa-
12 line water supplies, or disposal of residual brine
13 or salt; and

14 (C) consider the use of renewable energy
15 sources.

16 (3) CONSTRUCTION PROJECTS.—Funds made
17 available to carry out this subsection may be used
18 for construction projects, including completion of the
19 National Desalination Research Center for brackish
20 groundwater and ongoing operational costs of this
21 facility.

22 (4) STEERING COMMITTEE.—The Secretary and
23 the Commissioner of Reclamation of the Department
24 of the Interior shall jointly establish a steering com-
25 mittee for activities conducted under this subsection.

1 The steering committee shall be jointly chaired by 1
2 representative from the program and 1 representa-
3 tive from the Bureau of Reclamation.

4 (f) WATER AND ENERGY SUSTAINABILITY PRO-
5 GRAM.—

6 (1) IN GENERAL.—The Secretary shall develop
7 a program to identify methods, means, procedures,
8 equipment, and improved technologies necessary to
9 ensure that sufficient quantities of water are avail-
10 able to meet energy needs and sufficient energy is
11 available to meet water needs.

12 (2) ASSESSMENTS.—In order to acquire infor-
13 mation and avoid duplication, the Secretary shall
14 work in collaboration with the Secretary of the Inte-
15 rior, the Army Corps of Engineers, the Adminis-
16 trator, the Secretary of Commerce, the Secretary of
17 Defense, relevant State agencies, nongovernmental
18 organizations, and academia, to assess—

19 (A) future water resources needed to sup-
20 port energy development and production within
21 the United States including water used for hy-
22 dropower, and production of, or electricity gen-
23 eration by, hydrogen, biomass, fossil fuels, and
24 nuclear fuel;

1 (B) future energy resources needed to sup-
2 port water purification and wastewater treat-
3 ment, including desalination and water convey-
4 ance;

5 (C) use of impaired and nontraditional
6 water supplies for energy production other than
7 oil and gas extraction;

8 (D) technology and programs for improv-
9 ing water use efficiency; and

10 (E) technologies to reduce water use in en-
11 ergy development and production.

12 (3) ROADMAP; TOOLS.—The Secretary shall—

13 (A) develop a program plan and technology
14 development roadmap for the Water and En-
15 ergy Sustainability Program to identify sci-
16 entific and technical requirements and activities
17 that are required to support planning for en-
18 ergy sustainability under current and potential
19 future conditions of water availability, use of
20 impaired water for energy production and other
21 uses, and reduction of water use in energy de-
22 velopment and production;

23 (B) develop tools for national and local en-
24 ergy and water sustainability planning, includ-
25 ing numerical models, decision analysis tools,

1 economic analysis tools, databases, and plan-
2 ning methodologies and strategies;

3 (C) implement at least 3 planning projects
4 involving energy development or production that
5 use the tools described in subparagraph (B)
6 and assess the viability of those tools at the
7 scale of river basins with at least 1 demonstra-
8 tion involving an international border; and

9 (D) transfer those tools to other Federal
10 agencies, State agencies, nonprofit organiza-
11 tions, industry, and academia.

12 (4) REPORT.—Not later than 1 year after the
13 date of enactment of this Act, the Secretary shall
14 submit to Congress a report on the Water and En-
15 ergy Sustainability Program that—

16 (A) includes the results of the assessment
17 under paragraph (2) and the program plan and
18 technology development roadmap; and

19 (B) identifies policy, legal, and institu-
20 tional issues related to water and energy sus-
21 tainability.

22 **SEC. 962. NITROGEN FIXATION.**

23 The Secretary, acting through the Office of Science,
24 shall support a program of research, development, dem-
25 onstration, and commercial application on biological nitro-

1 gen fixation, including plant genomics research relevant
2 to the development of commercial crop varieties with en-
3 hanced nitrogen fixation efficiency and ability.

4 **Subtitle G—Energy and** 5 **Environment**

6 **SEC. 964. UNITED STATES-MEXICO ENERGY TECHNOLOGY** 7 **COOPERATION.**

8 (a) PROGRAM.—The Secretary shall establish a re-
9 search, development, demonstration, and commercial ap-
10 plication program to be carried out in collaboration with
11 entities in Mexico and the United States to promote en-
12 ergy efficient, environmentally sound economic develop-
13 ment along the United States-Mexico border that mini-
14 mizes public health risks from industrial activities in the
15 border region.

16 (b) PROGRAM MANAGEMENT.—The program under
17 subsection (a) shall be managed by the Department of En-
18 ergy Carlsbad Environmental Management Field Office.

19 (c) TECHNOLOGY TRANSFER.—In carrying out
20 projects and activities under this section, the Secretary
21 shall assess the applicability of technology developed under
22 the Environmental Management Science Program of the
23 Department.

24 (d) INTELLECTUAL PROPERTY.—In carrying out this
25 section, the Secretary shall comply with the requirements

1 of any agreement entered into between the United States
2 and Mexico regarding intellectual property protection.

3 (e) AUTHORIZATION OF APPROPRIATIONS.—The fol-
4 lowing sums are authorized to be appropriated to the Sec-
5 retary to carry out activities under this section:

6 (1) For each of fiscal years 2004 and 2005,
7 \$5,000,000.

8 (2) For each of fiscal years 2006, 2007, and
9 2008, \$6,000,000.

10 **SEC. 965. WESTERN HEMISPHERE ENERGY COOPERATION.**

11 (a) PROGRAM.—The Secretary shall carry out a pro-
12 gram to promote cooperation on energy issues with West-
13 ern Hemisphere countries.

14 (b) ACTIVITIES.—Under the program, the Secretary
15 shall fund activities to work with Western Hemisphere
16 countries to—

17 (1) assist the countries in formulating and
18 adopting changes in economic policies and other poli-
19 cies to—

20 (A) increase the production of energy sup-
21 plies; and

22 (B) improve energy efficiency; and

23 (2) assist in the development and transfer of
24 energy supply and efficiency technologies that would
25 have a beneficial impact on world energy markets.

1 (c) UNIVERSITY PARTICIPATION.—To the extent
2 practicable, the Secretary shall carry out the program
3 under this section with the participation of universities so
4 as to take advantage of the acceptance of universities by
5 Western Hemisphere countries as sources of unbiased
6 technical and policy expertise when assisting the Secretary
7 in—

8 (1) evaluating new technologies;

9 (2) resolving technical issues;

10 (3) working with those countries in the develop-
11 ment of new policies; and

12 (4) training policymakers, particularly in the
13 case of universities that involve the participation of
14 minority students, such as Hispanic-serving institu-
15 tions and Historically Black Colleges and Univer-
16 sities.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to carry out this sec-
19 tion—

20 (1) \$8,000,000 for fiscal year 2004;

21 (2) \$10,000,000 for fiscal year 2005;

22 (3) \$13,000,000 for fiscal year 2006;

23 (4) \$16,000,000 for fiscal year 2007; and

24 (5) \$19,000,000 for fiscal year 2008.

1 **SEC. 966. WASTE REDUCTION AND USE OF ALTERNATIVES.**

2 (a) GRANT AUTHORITY.—The Secretary may make
3 a single grant to a qualified institution to examine and
4 develop the feasibility of burning post-consumer carpet in
5 cement kilns as an alternative energy source. The pur-
6 poses of the grant shall include determining—

7 (1) how post-consumer carpet can be burned
8 without disrupting kiln operations;

9 (2) the extent to which overall kiln emissions
10 may be reduced;

11 (3) the emissions of air pollutants and other
12 relevant environmental impacts; and

13 (4) how this process provides benefits to both
14 cement kiln operations and carpet suppliers.

15 (b) QUALIFIED INSTITUTION.—For the purposes of
16 subsection (a), a qualified institution is a research-inten-
17 sive institution of higher education with demonstrated ex-
18 pertise in the fields of fiber recycling and logistical mod-
19 eling of carpet waste collection and preparation.

20 (c) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretary for car-
22 rying out this section \$500,000.

23 **SEC. 967. REPORT ON FUEL CELL TEST CENTER.**

24 (a) REPORT.—Not later than 1 year after the date
25 of enactment of this Act, the Secretary shall transmit to
26 Congress a report on the results of a study of the estab-

1 lishment of a test center for next-generation fuel cells at
2 an institution of higher education that has available a con-
3 tinuous source of hydrogen and access to the electric
4 transmission grid. Such report shall include a conceptual
5 design for such test center and a projection of the costs
6 of establishing the test center.

7 (b) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary for car-
9 rying out this section \$500,000.

10 **SEC. 968. ARCTIC ENGINEERING RESEARCH CENTER.**

11 (a) IN GENERAL.—The Secretary of Energy (referred
12 to in this section as the “Secretary”) in consultation with
13 the Secretary of Transportation and the United States
14 Arctic Research Commission shall provide annual grants
15 to a university located adjacent to the Arctic Energy Of-
16 fice of the Department of Energy, to establish and operate
17 a university research center to be headquartered in Fair-
18 banks and to be known as the “Arctic Engineering Re-
19 search Center” (referred to in this section as the “Cen-
20 ter”).

21 (b) PURPOSE.—The purpose of the Center shall be
22 to conduct research on, and develop improved methods of,
23 construction and use of materials to improve the overall
24 performance of roads, bridges, residential, commercial,

1 and industrial structures, and other infrastructure in the
2 Arctic region, with an emphasis on developing—

3 (1) new construction techniques for roads,
4 bridges, rail, and related transportation infrastruc-
5 ture and residential, commercial, and industrial in-
6 frastructure that are capable of withstanding the
7 Arctic environment and using limited energy re-
8 sources as efficiently as possible;

9 (2) technologies and procedures for increasing
10 road, bridge, rail, and related transportation infra-
11 structure and residential, commercial, and industrial
12 infrastructure safety, reliability, and integrity in the
13 Arctic region;

14 (3) new materials and improving the perform-
15 ance and energy efficiency of existing materials for
16 the construction of roads, bridges, rail, and related
17 transportation infrastructure and residential, com-
18 mercial, and industrial infrastructure in the Arctic
19 region; and

20 (4) recommendations for new local, regional,
21 and State permitting and building codes to ensure
22 transportation and building safety and efficient en-
23 ergy use when constructing, using, and occupying
24 such infrastructure in the Arctic region.

25 (c) OBJECTIVES.—The Center shall carry out—

1 (1) basic and applied research in the subjects
2 described in subsection (b), the products of which
3 shall be judged by peers or other experts in the field
4 to advance the body of knowledge in road, bridge,
5 rail, and infrastructure engineering in the Arctic re-
6 gion; and

7 (2) an ongoing program of technology transfer
8 that makes research results available to potential
9 users in a form that can be implemented.

10 (d) AMOUNT OF GRANT.—For each of fiscal years
11 2004 through 2009, the Secretary shall provide a grant
12 in the amount of \$3,000,000 to the institution specified
13 in subsection (a) to carry out this section.

14 (e) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to carry out this section
16 \$3,000,000 for each of fiscal years 2004 through 2009.

17 **SEC. 969. BARROW GEOPHYSICAL RESEARCH FACILITY.**

18 (a) ESTABLISHMENT.—The Secretary of Commerce,
19 in consultation with the Secretaries of Energy and the In-
20 terior, the Director of the National Science Foundation,
21 and the Administrator of the Environmental Protection
22 Agency, shall establish a joint research facility in Barrow,
23 Alaska, to be known as the “Barrow Geophysical Research
24 Facility”, to support scientific research activities in the
25 Arctic.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretaries of
3 Commerce, Energy, and the Interior, the Director of the
4 National Science Foundation, and the Administrator of
5 the Environmental Protection Agency for the planning,
6 design, construction, and support of the Barrow Geo-
7 physical Research Facility \$61,000,000.

8 **SEC. 970. WESTERN MICHIGAN DEMONSTRATION PROJECT.**

9 The Administrator of the Environmental Protection
10 Agency, in consultation with the State of Michigan and
11 affected local officials, shall conduct a demonstration
12 project to address the effect of transported ozone and
13 ozone precursors in Southwestern Michigan. The dem-
14 onstration program shall address projected nonattainment
15 areas in Southwestern Michigan that include counties with
16 design values for ozone of less than .095 based on years
17 2000 to 2002 or the most current 3-year period of air
18 quality data. The Administrator shall assess any difficul-
19 ties such areas may experience in meeting the 8-hour na-
20 tional ambient air quality standard for ozone due to the
21 effect of transported ozone or ozone precursors into the
22 areas. The Administrator shall work with State and local
23 officials to determine the extent of ozone and ozone pre-
24 cursor transport, to assess alternatives to achieve compli-
25 ance with the 8-hour standard apart from local controls,

1 and to determine the timeframe in which such compliance
2 could take place. The Administrator shall complete this
3 demonstration project no later than 2 years after the date
4 of enactment of this section and shall not impose any re-
5 quirement or sanction that might otherwise apply during
6 the pendency of the demonstration project.

7 **Subtitle H—Management**

8 **SEC. 971. AVAILABILITY OF FUNDS.**

9 Funds authorized to be appropriated to the Depart-
10 ment under this title shall remain available until expended.

11 **SEC. 972. COST SHARING.**

12 (a) RESEARCH AND DEVELOPMENT.—Except as oth-
13 erwise provided in this title, for research and development
14 programs carried out under this title the Secretary shall
15 require a commitment from non-Federal sources of at
16 least 20 percent of the cost of the project. The Secretary
17 may reduce or eliminate the non-Federal requirement
18 under this subsection if the Secretary determines that the
19 research and development is of a basic or fundamental na-
20 ture or involves technical analyses or educational activi-
21 ties.

22 (b) DEMONSTRATION AND COMMERCIAL APPLICA-
23 TION.—Except as otherwise provided in this title, the Sec-
24 retary shall require at least 50 percent of the costs directly
25 and specifically related to any demonstration or commer-

1 cial application project under this title to be provided from
2 non-Federal sources. The Secretary may reduce the non-
3 Federal requirement under this subsection if the Secretary
4 determines that the reduction is necessary and appropriate
5 considering the technological risks involved in the project
6 and is necessary to meet the objectives of this title.

7 (c) CALCULATION OF AMOUNT.—In calculating the
8 amount of the non-Federal commitment under subsection
9 (a) or (b), the Secretary may include personnel, services,
10 equipment, and other resources.

11 (d) SIZE OF NON-FEDERAL SHARE.—The Secretary
12 may consider the size of the non-Federal share in selecting
13 projects.

14 **SEC. 973. MERIT REVIEW OF PROPOSALS.**

15 Awards of funds authorized under this title shall be
16 made only after an impartial review of the scientific and
17 technical merit of the proposals for such awards has been
18 carried out by or for the Department.

19 **SEC. 974. EXTERNAL TECHNICAL REVIEW OF DEPART-**
20 **MENTAL PROGRAMS.**

21 (a) NATIONAL ENERGY RESEARCH AND DEVELOP-
22 MENT ADVISORY BOARDS.—

23 (1) IN GENERAL.—The Secretary shall establish
24 1 or more advisory boards to review Department re-
25 search, development, demonstration, and commercial

1 application programs in energy efficiency, renewable
2 energy, nuclear energy, and fossil energy.

3 (2) EXISTING ADVISORY BOARDS.—The Sec-
4 retary may designate an existing advisory board
5 within the Department to fulfill the responsibilities
6 of an advisory board under this subsection, and may
7 enter into appropriate arrangements with the Na-
8 tional Academy of Sciences to establish such an ad-
9 visory board.

10 (b) OFFICE OF SCIENCE ADVISORY COMMITTEES.—

11 (1) UTILIZATION OF EXISTING COMMITTEES.—
12 The Secretary shall continue to use the scientific
13 program advisory committees chartered under the
14 Federal Advisory Committee Act (5 U.S.C. App.) by
15 the Office of Science to oversee research and devel-
16 opment programs under that Office.

17 (2) SCIENCE ADVISORY COMMITTEE.—

18 (A) ESTABLISHMENT.—There shall be in
19 the Office of Science a Science Advisory Com-
20 mittee that includes the chairs of each of the
21 advisory committees described in paragraph (1).

22 (B) RESPONSIBILITIES.—The Science Ad-
23 visory Committee shall—

24 (i) serve as the science advisor to the
25 Director of the Office of Science;

1 (ii) advise the Director with respect to
2 the well-being and management of the Na-
3 tional Laboratories and single-purpose re-
4 search facilities;

5 (iii) advise the Director with respect
6 to education and workforce training activi-
7 ties required for effective short-term and
8 long-term basic and applied research ac-
9 tivities of the Office of Science; and

10 (iv) advise the Director with respect
11 to the well being of the university research
12 programs supported by the Office of
13 Science.

14 (c) MEMBERSHIP.—Each advisory board under this
15 section shall consist of persons with appropriate expertise
16 representing a diverse range of interests.

17 (d) MEETINGS AND PURPOSES.—Each advisory
18 board under this section shall meet at least semiannually
19 to review and advise on the progress made by the respec-
20 tive research, development, demonstration, and commer-
21 cial application program or programs. The advisory board
22 shall also review the measurable cost and performance-
23 based goals for such programs as established under sec-
24 tion 901(b), and the progress on meeting such goals.

1 (e) PERIODIC REVIEWS AND ASSESSMENTS.—The
2 Secretary shall enter into appropriate arrangements with
3 the National Academy of Sciences to conduct periodic re-
4 views and assessments of the programs authorized by this
5 title, the measurable cost and performance-based goals for
6 such programs as established under section 901(b), if any,
7 and the progress on meeting such goals. Such reviews and
8 assessments shall be conducted every 5 years, or more
9 often as the Secretary considers necessary, and the Sec-
10 retary shall transmit to Congress reports containing the
11 results of all such reviews and assessments.

12 **SEC. 975. IMPROVED COORDINATION OF TECHNOLOGY**
13 **TRANSFER ACTIVITIES.**

14 (a) TECHNOLOGY TRANSFER COORDINATOR.—The
15 Secretary shall designate a Technology Transfer Coordi-
16 nator to perform oversight of and policy development for
17 technology transfer activities at the Department. The
18 Technology Transfer Coordinator shall—

19 (1) coordinate the activities of the Technology
20 Transfer Working Group;

21 (2) oversee the expenditure of funds allocated
22 to the Technology Transfer Working Group; and

23 (3) coordinate with each technology partnership
24 ombudsman appointed under section 11 of the Tech-

1 nology Transfer Commercialization Act of 2000 (42
2 U.S.C. 7261c).

3 (b) TECHNOLOGY TRANSFER WORKING GROUP.—

4 The Secretary shall establish a Technology Transfer
5 Working Group, which shall consist of representatives of
6 the National Laboratories and single-purpose research fa-
7 cilities, to—

8 (1) coordinate technology transfer activities oc-
9 ccurring at National Laboratories and single-purpose
10 research facilities;

11 (2) exchange information about technology
12 transfer practices, including alternative approaches
13 to resolution of disputes involving intellectual prop-
14 erty rights and other technology transfer matters;
15 and

16 (3) develop and disseminate to the public and
17 prospective technology partners information about
18 opportunities and procedures for technology transfer
19 with the Department, including those related to al-
20 ternative approaches to resolution of disputes involv-
21 ing intellectual property rights and other technology
22 transfer matters.

23 (c) TECHNOLOGY TRANSFER RESPONSIBILITY.—

24 Nothing in this section shall affect the technology transfer
25 responsibilities of Federal employees under the Stevenson-

1 Wydler Technology Innovation Act of 1980 (15 U.S.C.
2 3701 et seq.).

3 **SEC. 976. FEDERAL LABORATORY EDUCATIONAL PART-**
4 **NERS.**

5 (a) DISTRIBUTION OF ROYALTIES RECEIVED BY
6 FEDERAL AGENCIES.—Section 14(a)(1)(B)(v) of the Ste-
7 venson-Wydler Technology Innovation Act of 1980 (15
8 U.S.C. 3710c(a)(1)(B)(v)), is amended to read as follows:

9 “(v) for scientific research and develop-
10 ment and for educational assistance and other
11 purposes consistent with the missions and ob-
12 jectives of the agency and the laboratory.”.

13 (b) COOPERATIVE RESEARCH AND DEVELOPMENT
14 AGREEMENTS.—Section 12(b)(5)(C) of the Stevenson-
15 Wydler Technology Innovation Act of 1980 (15 U.S.C.
16 3710a(b)(5)(C)) is amended to read as follows:

17 “(C) for scientific research and development
18 and for educational assistance consistent with the
19 missions and objectives of the agency and the lab-
20 oratory.”.

21 **SEC. 977. INTERAGENCY COOPERATION.**

22 The Secretary shall enter into discussions with the
23 Administrator of the National Aeronautics and Space Ad-
24 ministration with the goal of reaching an interagency
25 working agreement between the 2 agencies that would

1 make the National Aeronautics and Space Administra-
2 tion's expertise in energy, gained from its existing and
3 planned programs, more readily available to the relevant
4 research, development, demonstration, and commercial ap-
5 plications programs of the Department. Technologies to
6 be discussed should include the National Aeronautics and
7 Space Administration's modeling, research, development,
8 testing, and evaluation of new energy technologies, includ-
9 ing solar, wind, fuel cells, and hydrogen storage and dis-
10 tribution.

11 **SEC. 978. TECHNOLOGY INFRASTRUCTURE PROGRAM.**

12 (a) ESTABLISHMENT.—The Secretary shall establish
13 a Technology Infrastructure Program in accordance with
14 this section.

15 (b) PURPOSE.—The purpose of the Technology Infra-
16 structure Program shall be to improve the ability of Na-
17 tional Laboratories and single-purpose research facilities
18 to support departmental missions by—

19 (1) stimulating the development of technology
20 clusters that can support departmental missions at
21 the National Laboratories or single-purpose research
22 facilities;

23 (2) improving the ability of National Labora-
24 tories and single-purpose research facilities to lever-

1 age and benefit from commercial research, tech-
2 nology, products, processes, and services; and

3 (3) encouraging the exchange of scientific and
4 technological expertise between National Labora-
5 tories or single-purpose research facilities and enti-
6 ties that can support departmental missions at the
7 National Laboratories or single-purpose research fa-
8 cilities, such as institutions of higher education;
9 technology-related business concerns; nonprofit insti-
10 tutions; and agencies of State, tribal, or local gov-
11 ernments.

12 (c) PROJECTS.—The Secretary shall authorize the
13 Director of each National Laboratory or single-purpose re-
14 search facility to implement the Technology Infrastructure
15 Program at such National Laboratory or facility through
16 projects that meet the requirements of subsections (d) and
17 (e).

18 (d) PROGRAM REQUIREMENTS.—Each project funded
19 under this section shall meet the following requirements:

20 (1) Each project shall include at least 1 of each
21 of the following entities: A business; an institution of
22 higher education; a nonprofit institution; and an
23 agency of a State, local, or tribal government.

24 (2) Not less than 50 percent of the costs of
25 each project funded under this section shall be pro-

1 vided from non-Federal sources. The calculation of
2 costs paid by the non-Federal sources to a project
3 shall include cash, personnel, services, equipment,
4 and other resources expended on the project after
5 start of the project. Independent research and devel-
6 opment expenses of Government contractors that
7 qualify for reimbursement under section 31.205-
8 18(e) of the Federal Acquisition Regulation issued
9 pursuant to section 25(c)(1) of the Office of Federal
10 Procurement Policy Act (41 U.S.C. 421(c)(1)) may
11 be credited toward costs paid by non-Federal sources
12 to a project, if the expenses meet the other require-
13 ments of this section.

14 (3) All projects under this section shall be com-
15 petitively selected using procedures determined by
16 the Secretary.

17 (4) Any participant that receives funds under
18 this section may use generally accepted accounting
19 principles for maintaining accounts, books, and
20 records relating to the project.

21 (5) No Federal funds shall be made available
22 under this section for construction or any project for
23 more than 5 years.

24 (e) SELECTION CRITERIA.—

1 (1) IN GENERAL.—The Secretary shall allocate
2 funds under this section only if the Director of the
3 National Laboratory or single-purpose research facil-
4 ity managing the project determines that the project
5 is likely to improve the ability of the National Lab-
6 oratory or single-purpose research facility to achieve
7 technical success in meeting departmental missions.

8 (2) CRITERIA.—The Secretary shall consider
9 the following criteria in selecting a project to receive
10 Federal funds:

11 (A) The potential of the project to promote
12 the development of a commercially sustainable
13 technology cluster following the period of De-
14 partment investment, which will derive most of
15 the demand for its products or services from
16 the private sector, and which will support de-
17 partmental missions at the participating Na-
18 tional Laboratory or single-purpose research fa-
19 cility.

20 (B) The potential of the project to promote
21 the use of commercial research, technology,
22 products, processes, and services by the partici-
23 pating National Laboratory or single-purpose
24 research facility to achieve its mission or the
25 commercial development of technological inno-

1 vations made at the participating National Lab-
2 oratory or single-purpose research facility.

3 (C) The extent to which the project in-
4 volves a wide variety and number of institutions
5 of higher education, nonprofit institutions, and
6 technology-related business concerns that can
7 support the missions of the participating Na-
8 tional Laboratory or single-purpose research fa-
9 cility and that will make substantive contribu-
10 tions to achieving the goals of the project.

11 (D) The extent to which the project fo-
12 cuses on promoting the development of tech-
13 nology-related business concerns that are small
14 businesses or involves such small businesses
15 substantively in the project.

16 (E) Such other criteria as the Secretary
17 determines to be appropriate.

18 (f) ALLOCATION.—In allocating funds for projects
19 approved under this section, the Secretary shall provide—

20 (1) the Federal share of the project costs; and

21 (2) additional funds to the National Laboratory
22 or single-purpose research facility managing the
23 project to permit the National Laboratory or single-
24 purpose research facility to carry out activities relat-

1 ing to the project, and to coordinate such activities
2 with the project.

3 (g) REPORT TO CONGRESS.—Not later than July 1,
4 2006, the Secretary shall report to Congress on whether
5 the Technology Infrastructure Program should be contin-
6 ued and, if so, how the program should be managed.

7 (h) DEFINITIONS.—In this section:

8 (1) TECHNOLOGY CLUSTER.—The term “tech-
9 nology cluster” means a concentration of technology-
10 related business concerns, institutions of higher edu-
11 cation, or nonprofit institutions that reinforce each
12 other’s performance in the areas of technology devel-
13 opment through formal or informal relationships.

14 (2) TECHNOLOGY-RELATED BUSINESS CON-
15 CERN.—The term “technology-related business con-
16 cern” means a for-profit corporation, company, asso-
17 ciation, firm, partnership, or small business concern
18 that conducts scientific or engineering research; de-
19 velops new technologies; manufactures products
20 based on new technologies; or performs technological
21 services.

22 (i) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary for ac-
24 tivities under this section \$10,000,000 for each of fiscal
25 years 2004, 2005, and 2006.

1 **SEC. 979. REPROGRAMMING.**

2 (a) DISTRIBUTION REPORT.—Not later than 60 days
3 after the date of the enactment of an Act appropriating
4 amounts authorized under this title, the Secretary shall
5 transmit to the appropriate authorizing committees of
6 Congress a report explaining how such amounts will be
7 distributed among the authorizations contained in this
8 title.

9 (b) PROHIBITION.—

10 (1) IN GENERAL.—No amount identified under
11 subsection (a) shall be reprogrammed if such re-
12 programming would result in an obligation which
13 changes an individual distribution required to be re-
14 ported under subsection (a) by more than 5 percent
15 unless the Secretary has transmitted to the appro-
16 priate authorizing committees of Congress a report
17 described in subsection (c) and a period of 30 days
18 has elapsed after such committees receive the report.

19 (2) COMPUTATION.—In the computation of the
20 30-day period described in paragraph (1), there shall
21 be excluded any day on which either House of Con-
22 gress is not in session because of an adjournment of
23 more than 3 days to a day certain.

24 (c) REPROGRAMMING REPORT.—A report referred to
25 in subsection (b)(1) shall contain a full and complete
26 statement of the action proposed to be taken and the facts

1 and circumstances relied on in support of the proposed
2 action.

3 **SEC. 980. CONSTRUCTION WITH OTHER LAWS.**

4 Except as otherwise provided in this title, the Sec-
5 retary shall carry out the research, development, dem-
6 onstration, and commercial application programs,
7 projects, and activities authorized by this title in accord-
8 ance with the applicable provisions of the Atomic Energy
9 Act of 1954 (42 U.S.C. 2011 et seq.), the Federal Non-
10 nuclear Research and Development Act of 1974 (42
11 U.S.C. 5901 et seq.), the Energy Policy Act of 1992 (42
12 U.S.C. 13201 et seq.), the Stevenson-Wydler Technology
13 Innovation Act of 1980 (15 U.S.C. 3701 et seq.), chapter
14 18 of title 35, United States Code (commonly referred to
15 as the Bayh-Dole Act), and any other Act under which
16 the Secretary is authorized to carry out such activities.

17 **SEC. 981. REPORT ON RESEARCH AND DEVELOPMENT PRO-**
18 **GRAM EVALUATION METHODOLOGIES.**

19 Not later than 180 days after the date of enactment
20 of this Act, the Secretary shall enter into appropriate ar-
21 rangements with the National Academy of Sciences to in-
22 vestigate and report on the scientific and technical merits
23 of any evaluation methodology currently in use or pro-
24 posed for use in relation to the scientific and technical pro-
25 grams of the Department by the Secretary or other Fed-

1 eral official. Not later than 6 months after receiving the
2 report of the National Academy, the Secretary shall sub-
3 mit such report to Congress, along with any other views
4 or plans of the Secretary with respect to the future use
5 of such evaluation methodology.

6 **SEC. 982. DEPARTMENT OF ENERGY SCIENCE AND TECH-**
7 **NOLOGY SCHOLARSHIP PROGRAM.**

8 (a) ESTABLISHMENT OF PROGRAM.—

9 (1) IN GENERAL.—The Secretary is authorized
10 to establish a Department of Energy Science and
11 Technology Scholarship Program to award scholar-
12 ships to individuals that is designed to recruit and
13 prepare students for careers in the Department.

14 (2) COMPETITIVE PROCESS.—Individuals shall
15 be selected to receive scholarships under this section
16 through a competitive process primarily on the basis
17 of academic merit, with consideration given to finan-
18 cial need and the goal of promoting the participation
19 of individuals identified in section 33 or 34 of the
20 Science and Engineering Equal Opportunities Act
21 (42 U.S.C. 1885a or 1885b).

22 (3) SERVICE AGREEMENTS.—To carry out the
23 Program the Secretary shall enter into contractual
24 agreements with individuals selected under para-
25 graph (2) under which the individuals agree to serve

1 as full-time employees of the Department, for the
2 period described in subsection (f)(1), in positions
3 needed by the Department and for which the individ-
4 uals are qualified, in exchange for receiving a schol-
5 arship.

6 (b) SCHOLARSHIP ELIGIBILITY.—In order to be eligi-
7 ble to participate in the Program, an individual must—

8 (1) be enrolled or accepted for enrollment as a
9 full-time student at an institution of higher edu-
10 cation in an academic program or field of study de-
11 scribed in the list made available under subsection
12 (d);

13 (2) be a United States citizen; and

14 (3) at the time of the initial scholarship award,
15 not be a Federal employee as defined in section
16 2105 of title 5 of the United States Code.

17 (c) APPLICATION REQUIRED.—An individual seeking
18 a scholarship under this section shall submit an applica-
19 tion to the Secretary at such time, in such manner, and
20 containing such information, agreements, or assurances as
21 the Secretary may require.

22 (d) ELIGIBLE ACADEMIC PROGRAMS.—The Secretary
23 shall make publicly available a list of academic programs
24 and fields of study for which scholarships under the Pro-

1 gram may be utilized, and shall update the list as nec-
2 essary.

3 (e) SCHOLARSHIP REQUIREMENT.—

4 (1) IN GENERAL.—The Secretary may provide a
5 scholarship under the Program for an academic year
6 if the individual applying for the scholarship has
7 submitted to the Secretary, as part of the applica-
8 tion required under subsection (c), a proposed aca-
9 demic program leading to a degree in a program or
10 field of study on the list made available under sub-
11 section (d).

12 (2) DURATION OF ELIGIBILITY.—An individual
13 may not receive a scholarship under this section for
14 more than 4 academic years, unless the Secretary
15 grants a waiver.

16 (3) SCHOLARSHIP AMOUNT.—The dollar
17 amount of a scholarship under this section for an
18 academic year shall be determined under regulations
19 issued by the Secretary, but shall in no case exceed
20 the cost of attendance.

21 (4) AUTHORIZED USES.—A scholarship pro-
22 vided under this section may be expended for tuition,
23 fees, and other authorized expenses as established by
24 the Secretary by regulation.

1 (5) CONTRACTS REGARDING DIRECT PAYMENTS
2 TO INSTITUTIONS.—The Secretary may enter into a
3 contractual agreement with an institution of higher
4 education under which the amounts provided for a
5 scholarship under this section for tuition, fees, and
6 other authorized expenses are paid directly to the in-
7 stitution with respect to which the scholarship is
8 provided.

9 (f) PERIOD OF OBLIGATED SERVICE.—

10 (1) DURATION OF SERVICE.—The period of
11 service for which an individual shall be obligated to
12 serve as an employee of the Department is, except
13 as provided in subsection (h)(2), 24 months for each
14 academic year for which a scholarship under this
15 section is provided.

16 (2) SCHEDULE FOR SERVICE.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), obligated service under para-
19 graph (1) shall begin not later than 60 days
20 after the individual obtains the educational de-
21 gree for which the scholarship was provided.

22 (B) DEFERRAL.—The Secretary may defer
23 the obligation of an individual to provide a pe-
24 riod of service under paragraph (1) if the Sec-
25 retary determines that such a deferral is appro-

1 priate. The Secretary shall prescribe the terms
2 and conditions under which a service obligation
3 may be deferred through regulation.

4 (g) PENALTIES FOR BREACH OF SCHOLARSHIP
5 AGREEMENT.—

6 (1) FAILURE TO COMPLETE ACADEMIC TRAIN-
7 ING.—Scholarship recipients who fail to maintain a
8 high level of academic standing, as defined by the
9 Secretary by regulation, who are dismissed from
10 their educational institutions for disciplinary rea-
11 sons, or who voluntarily terminate academic training
12 before graduation from the educational program for
13 which the scholarship was awarded, shall be in
14 breach of their contractual agreement and, in lieu of
15 any service obligation arising under such agreement,
16 shall be liable to the United States for repayment
17 not later than 1 year after the date of default of all
18 scholarship funds paid to them and to the institution
19 of higher education on their behalf under the agree-
20 ment, except as provided in subsection (h)(2). The
21 repayment period may be extended by the Secretary
22 when determined to be necessary, as established by
23 regulation.

24 (2) FAILURE TO BEGIN OR COMPLETE THE
25 SERVICE OBLIGATION OR MEET THE TERMS AND

1 CONDITIONS OF DEFERMENT.—A scholarship recipi-
2 ent who, for any reason, fails to begin or complete
3 a service obligation under this section after comple-
4 tion of academic training, or fails to comply with the
5 terms and conditions of deferment established by the
6 Secretary pursuant to subsection (f)(2)(B), shall be
7 in breach of the contractual agreement. When a re-
8 cipient breaches an agreement for the reasons stated
9 in the preceding sentence, the recipient shall be lia-
10 ble to the United States for an amount equal to—

11 (A) the total amount of scholarships re-
12 ceived by such individual under this section;
13 plus

14 (B) the interest on the amounts of such
15 awards which would be payable if at the time
16 the awards were received they were loans bear-
17 ing interest at the maximum legal prevailing
18 rate, as determined by the Treasurer of the
19 United States,
20 multiplied by 3.

21 (h) WAIVER OR SUSPENSION OF OBLIGATION.—

22 (1) DEATH OF INDIVIDUAL.—Any obligation of
23 an individual incurred under the Program (or a con-
24 tractual agreement thereunder) for service or pay-

1 ment shall be canceled upon the death of the indi-
2 vidual.

3 (2) IMPOSSIBILITY OR EXTREME HARDSHIP.—

4 The Secretary shall by regulation provide for the
5 partial or total waiver or suspension of any obliga-
6 tion of service or payment incurred by an individual
7 under the Program (or a contractual agreement
8 thereunder) whenever compliance by the individual is
9 impossible or would involve extreme hardship to the
10 individual, or if enforcement of such obligation with
11 respect to the individual would be contrary to the
12 best interests of the Government.

13 (i) DEFINITIONS.—In this section the following defi-
14 nitions apply:

15 (1) COST OF ATTENDANCE.—The term “cost of
16 attendance” has the meaning given that term in sec-
17 tion 472 of the Higher Education Act of 1965 (20
18 U.S.C. 1087*ll*).

19 (2) PROGRAM.—The term “Program” means
20 the Department of Energy Science and Technology
21 Scholarship Program established under this section.

22 (j) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary for ac-
24 tivities under this section—

25 (1) for fiscal year 2004, \$800,000;

- 1 (2) for fiscal year 2005, \$1,600,000;
- 2 (3) for fiscal year 2006, \$2,000,000;
- 3 (4) for fiscal year 2007, \$2,000,000; and
- 4 (5) for fiscal year 2008, \$2,000,000.

5 **SEC. 983. REPORT ON EQUAL EMPLOYMENT OPPORTUNITY**
6 **PRACTICES.**

7 Not later than 12 months after the date of enactment
8 of this Act, and biennially thereafter, the Secretary shall
9 transmit to Congress a report on the equal employment
10 opportunity practices at National Laboratories. Such re-
11 port shall include—

12 (1) a thorough review of each laboratory con-
13 tractor's equal employment opportunity policies, in-
14 cluding promotion to management and professional
15 positions and pay raises;

16 (2) a statistical report on complaints and their
17 disposition in the laboratories;

18 (3) a description of how equal employment op-
19 portunity practices at the laboratories are treated in
20 the contract and in calculating award fees for each
21 contractor;

22 (4) a summary of disciplinary actions and their
23 disposition by either the Department or the relevant
24 contractors for each laboratory;

1 (5) a summary of outreach efforts to attract
2 women and minorities to the laboratories;

3 (6) a summary of efforts to retain women and
4 minorities in the laboratories; and

5 (7) a summary of collaboration efforts with the
6 Office of Federal Contract Compliance Programs to
7 improve equal employment opportunity practices at
8 the laboratories.

9 **SEC. 984. SMALL BUSINESS ADVOCACY AND ASSISTANCE.**

10 (a) **SMALL BUSINESS ADVOCATE.**—The Secretary
11 shall require the Director of each National Laboratory,
12 and may require the Director of a single-purpose research
13 facility, to designate a small business advocate to—

14 (1) increase the participation of small business
15 concerns, including socially and economically dis-
16 advantaged small business concerns, in procurement,
17 collaborative research, technology licensing, and
18 technology transfer activities conducted by the Na-
19 tional Laboratory or single-purpose research facility;

20 (2) report to the Director of the National Lab-
21 oratory or single-purpose research facility on the ac-
22 tual participation of small business concerns, includ-
23 ing socially and economically disadvantaged small
24 business concerns, in procurement, collaborative re-
25 search, technology licensing, and technology transfer

1 activities along with recommendations, if appro-
2 priate, on how to improve participation;

3 (3) make available to small businesses training,
4 mentoring, and information on how to participate in
5 procurement and collaborative research activities;

6 (4) increase the awareness inside the National
7 Laboratory or single-purpose research facility of the
8 capabilities and opportunities presented by small
9 business concerns; and

10 (5) establish guidelines for the program under
11 subsection (b) and report on the effectiveness of
12 such program to the Director of the National Lab-
13 oratory or single-purpose research facility.

14 (b) ESTABLISHMENT OF SMALL BUSINESS ASSIST-
15 ANCE PROGRAM.—The Secretary shall require the Direc-
16 tor of each National Laboratory, and may require the Di-
17 rector of a single-purpose research facility, to establish a
18 program to provide small business concerns—

19 (1) assistance directed at making them more ef-
20 fective and efficient subcontractors or suppliers to
21 the National Laboratory or single-purpose research
22 facility; or

23 (2) general technical assistance, the cost of
24 which shall not exceed \$10,000 per instance of as-

1 operating a National Laboratory or single-purpose re-
2 search facility that create disincentives to the temporary
3 transfer of scientific and technical personnel among the
4 contractor-operated National Laboratories or contractor-
5 operated single-purpose research facilities and provide
6 suggestions for improving interlaboratory exchange of sci-
7 entific and technical personnel.

8 **SEC. 986. NATIONAL ACADEMY OF SCIENCES REPORT.**

9 Not later than 90 days after the date of enactment
10 of this Act, the Secretary shall enter into an arrangement
11 with the National Academy of Sciences for the Academy
12 to—

13 (1) conduct a study on—

14 (A) the obstacles to accelerating the com-
15 mercial application of energy technology; and

16 (B) the adequacy of Department policies
17 and procedures for, and oversight of, technology
18 transfer-related disputes between contractors of
19 the Department and the private sector; and

20 (2) transmit a report to Congress on rec-
21 ommendations developed as a result of the study.

22 **SEC. 987. OUTREACH.**

23 The Secretary shall ensure that each program au-
24 thorized by this title includes an outreach component to
25 provide information, as appropriate, to manufacturers,

1 consumers, engineers, architects, builders, energy service
2 companies, institutions of higher education, small busi-
3 nesses, facility planners and managers, State and local
4 governments, and other entities.

5 **SEC. 988. COMPETITIVE AWARD OF MANAGEMENT CON-**
6 **TRACTS.**

7 None of the funds authorized to be appropriated to
8 the Secretary by this title may be used to award a manage-
9 ment and operating contract for a nonmilitary energy lab-
10 oratory of the Department unless such contract is com-
11 petitively awarded or the Secretary grants, on a case-by-
12 case basis, a waiver to allow for such a deviation. The Sec-
13 retary may not delegate the authority to grant such a
14 waiver and shall submit to Congress a report notifying
15 Congress of the waiver and setting forth the reasons for
16 the waiver at least 60 days prior to the date of the award
17 of such a contract.

18 **SEC. 989. EDUCATIONAL PROGRAMS IN SCIENCE AND**
19 **MATHEMATICS.**

20 (a) ACTIVITIES.—Section 3165(a) of the Department
21 of Energy Science Education Enhancement Act (42
22 U.S.C. 7381b(a)) is amended by adding at the end the
23 following:

24 “(14) Support competitive events for students,
25 under supervision of teachers, designed to encourage

1 student interest and knowledge in science and math-
2 ematics.”.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
4 3169 of the Department of Energy Science Education En-
5 hancement Act (42 U.S.C. 7381e), as so redesignated by
6 section 1102(b), is amended by inserting before the period
7 “; and \$40,000,000 for each of fiscal years 2004 through
8 2008”.

9 **TITLE X—DEPARTMENT OF**
10 **ENERGY MANAGEMENT**

11 **SEC. 1001. ADDITIONAL ASSISTANT SECRETARY POSITION.**

12 (a) ADDITIONAL ASSISTANT SECRETARY POSITION
13 TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR EN-
14 ERGY ISSUES.—

15 (1) IN GENERAL.—Section 203(a) of the De-
16 partment of Energy Organization Act (42 U.S.C.
17 7133(a)) is amended by striking “six Assistant Sec-
18 retaries” and inserting “7 Assistant Secretaries”.

19 (2) SENSE OF CONGRESS.—It is the sense of
20 Congress that the leadership for departmental mis-
21 sions in nuclear energy should be at the Assistant
22 Secretary level.

23 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

24 (1) TITLE 5.—Section 5315 of title 5, United
25 States Code, is amended by striking “Assistant Sec-

1 retaries of Energy (6)” and inserting “Assistant
2 Secretaries of Energy (7)”.

3 (2) DEPARTMENT OF ENERGY ORGANIZATION
4 ACT.—The table of contents for the Department of
5 Energy Organization Act (42 U.S.C. 7101 note) is
6 amended—

7 (A) by striking “Section 209” and insert-
8 ing “Sec. 209”;

9 (B) by striking “213.” and inserting “Sec.
10 213.”;

11 (C) by striking “214.” and inserting “Sec.
12 214.”;

13 (D) by striking “215.” and inserting “Sec.
14 215.”; and

15 (E) by striking “216.” and inserting “Sec.
16 216.”.

17 **SEC. 1002. OTHER TRANSACTIONS AUTHORITY.**

18 Section 646 of the Department of Energy Organiza-
19 tion Act (42 U.S.C. 7256) is amended by adding at the
20 end the following:

21 “(g)(1) In addition to other authorities granted to the
22 Secretary under law, the Secretary may enter into other
23 transactions on such terms as the Secretary may deem
24 appropriate in furtherance of research, development, or
25 demonstration functions vested in the Secretary. Such

1 other transactions shall not be subject to the provisions
2 of section 9 of the Federal Nonnuclear Energy Research
3 and Development Act of 1974 (42 U.S.C. 5908) or section
4 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

5 “(2)(A) The Secretary shall ensure that—

6 “(i) to the maximum extent the Secretary de-
7 termines practicable, no transaction entered into
8 under paragraph (1) provides for research, develop-
9 ment, or demonstration that duplicates research, de-
10 velopment, or demonstration being conducted under
11 existing projects carried out by the Department;

12 “(ii) to the extent the Secretary determines
13 practicable, the funds provided by the Government
14 under a transaction authorized by paragraph (1) do
15 not exceed the total amount provided by other par-
16 ties to the transaction; and

17 “(iii) to the extent the Secretary determines
18 practicable, competitive, merit-based selection proce-
19 dures shall be used when entering into transactions
20 under paragraph (1).

21 “(B) A transaction authorized by paragraph (1) may
22 be used for a research, development, or demonstration
23 project only if the Secretary makes a written determina-
24 tion that the use of a standard contract, grant, or coopera-

1 tive agreement for the project is not feasible or appro-
2 priate.

3 “(3)(A) The Secretary shall protect from disclosure,
4 including disclosure under section 552 of title 5, United
5 States Code, for up to 5 years after the date the informa-
6 tion is received by the Secretary—

7 “(i) a proposal, proposal abstract, and sup-
8 porting documents submitted to the Department in
9 a competitive or noncompetitive process having the
10 potential for resulting in an award under paragraph
11 (1) to the party submitting the information; and

12 “(ii) a business plan and technical information
13 relating to a transaction authorized by paragraph
14 (1) submitted to the Department as confidential
15 business information.

16 “(B) The Secretary may protect from disclosure, for
17 up to 5 years after the information was developed, any
18 information developed pursuant to a transaction under
19 paragraph (1) which developed information is of a char-
20 acter that it would be protected from disclosure under sec-
21 tion 552(b)(4) of title 5, United States Code, if obtained
22 from a person other than a Federal agency.

23 “(4) Not later than 90 days after the date of enact-
24 ment of this subsection, the Secretary shall prescribe
25 guidelines for using other transactions authorized by para-

1 graph (1). Such guidelines shall be published in the Fed-
2 eral Register for public comment under rulemaking proce-
3 dures of the Department.

4 “(5) The authority of the Secretary under this sub-
5 section may be delegated only to an officer of the Depart-
6 ment who is appointed by the President by and with the
7 advice and consent of the Senate and may not be delegated
8 to any other person.

9 “(6)(A) Not later than September 31, 2005, the
10 Comptroller General of the United States shall report to
11 Congress on the Department’s use of the authorities
12 granted under this section, including the ability to attract
13 nontraditional government contractors and whether addi-
14 tional safeguards are needed with respect to the use of
15 such authorities.

16 “(B) In this section, the term ‘nontraditional Govern-
17 ment contractor’ has the same meaning as the term ‘non-
18 traditional defense contractor’ as defined in section 845(e)
19 of the National Defense Authorization Act for Fiscal Year
20 1994 (Public Law 103–160; 10 U.S.C. 2371 note).”.

1 **TITLE XI—PERSONNEL AND**
2 **TRAINING**

3 **SEC. 1101. TRAINING GUIDELINES FOR ELECTRIC ENERGY**
4 **INDUSTRY PERSONNEL.**

5 The Secretary of Energy, in consultation with the
6 Secretary of Labor and jointly with the electric industry
7 and recognized employee representatives, shall develop
8 model personnel training guidelines to support electric sys-
9 tem reliability and safety. The training guidelines shall,
10 at a minimum—

11 (1) include training requirements for workers
12 engaged in the construction, operation, inspection,
13 and maintenance of electric generation, trans-
14 mission, and distribution, including competency and
15 certification requirements, and assessment require-
16 ments that include initial and ongoing evaluation of
17 workers, recertification assessment procedures, and
18 methods for examining or testing the qualification of
19 individuals performing covered tasks; and

20 (2) consolidate existing training guidelines on
21 the construction, operation, maintenance, and in-
22 spection of electric generation, transmission, and
23 distribution facilities, such as those established by
24 the National Electric Safety Code and other indus-
25 try consensus standards.

1 **SEC. 1102. IMPROVED ACCESS TO ENERGY-RELATED SCI-**
2 **ENTIFIC AND TECHNICAL CAREERS.**

3 (a) DEPARTMENT OF ENERGY SCIENCE EDUCATION
4 PROGRAMS.—Section 3164 of the Department of Energy
5 Science Education Enhancement Act (42 U.S.C. 7381a)
6 is amended by adding at the end the following:

7 “(c) PROGRAMS FOR STUDENTS FROM UNDERREP-
8 RESENTED GROUPS.—In carrying out a program under
9 subsection (a), the Secretary shall give priority to activi-
10 ties that are designed to encourage students from under-
11 represented groups to pursue scientific and technical ca-
12 reers.”.

13 (b) PARTNERSHIPS WITH HISTORICALLY BLACK
14 COLLEGES AND UNIVERSITIES, HISPANIC-SERVICING IN-
15 STITUTIONS, AND TRIBAL COLLEGES.—The Department
16 of Energy Science Education Enhancement Act (42
17 U.S.C. 7381 et seq.) is amended—

18 (1) by redesignating sections 3167 and 3168 as
19 sections 3168 and 3169, respectively; and

20 (2) by inserting after section 3166 the fol-
21 lowing:

22 **“SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK**
23 **COLLEGES AND UNIVERSITIES, HISPANIC-**
24 **SERVING INSTITUTIONS, AND TRIBAL COL-**
25 **LEGES.**

26 “(a) DEFINITIONS.—In this section:

1 “(1) HISPANIC-SERVING INSTITUTION.—The
2 term ‘Hispanic-serving institution’ has the meaning
3 given that term in section 502(a) of the Higher
4 Education Act of 1965 (20 U.S.C. 1101a(a)).

5 “(2) HISTORICALLY BLACK COLLEGE OR UNI-
6 VERSITY.—The term ‘historically Black college or
7 university’ has the meaning given the term ‘part B
8 institution’ in section 322 of the Higher Education
9 Act of 1965 (20 U.S.C. 1061).

10 “(3) NATIONAL LABORATORY.—The term ‘Na-
11 tional Laboratory’ has the meaning given that term
12 in section 902 of the Energy Policy Act of 2003.

13 “(4) SCIENCE FACILITY.—The term ‘science fa-
14 cility’ has the meaning given the term ‘single-pur-
15 pose research facility’ in section 902 of the Energy
16 Policy Act of 2003.

17 “(5) TRIBAL COLLEGE.—The term ‘tribal col-
18 lege’ has the meaning given the term ‘Tribal College
19 or University’ in section 316(b)(3) of the Higher
20 Education Act of 1965 (20 U.S.C. 1059c(b)(3)).

21 “(b) EDUCATION PARTNERSHIP.—The Secretary
22 shall direct the Director of each National Laboratory and,
23 to the extent practicable, the head of any science facility
24 to increase the participation of historically Black colleges
25 or universities, Hispanic-serving institutions, or tribal col-

1 leges in activities that increase the capacity of the histori-
2 cally Black colleges or universities, Hispanic-serving insti-
3 tutions, or tribal colleges to train personnel in science or
4 engineering.

5 “(c) ACTIVITIES.—An activity under subsection (b)
6 may include—

7 “(1) collaborative research;

8 “(2) equipment transfer;

9 “(3) training activities conducted at a National
10 Laboratory or science facility; and

11 “(4) mentoring activities conducted at a Na-
12 tional Laboratory or science facility.

13 “(d) REPORT.—Not later than 2 years after the date
14 of enactment of the Energy Policy Act of 2003, the Sec-
15 retary shall submit to Congress a report on the activities
16 carried out under this section.”.

17 **SEC. 1103. NATIONAL POWER PLANT OPERATIONS TECH-**
18 **NOLOGY AND EDUCATION CENTER.**

19 (a) ESTABLISHMENT.—The Secretary shall support
20 the establishment of a National Power Plant Operations
21 Technology and Education Center (in this section referred
22 to as the “Center”), to address the need for training and
23 educating certified operators for nonnuclear electric power
24 generation plants.

1 (b) ROLE.—The Center shall provide both training
2 and continuing education relating to nonnuclear electric
3 power generation plant technologies and operations. The
4 Center shall conduct training and education activities on
5 site and through Internet-based information technologies
6 that allow for learning at remote sites.

7 (c) CRITERIA FOR COMPETITIVE SELECTION.—The
8 Secretary shall support the establishment of the Center
9 at an institution of higher education with expertise in
10 power plant technology and operation and with the ability
11 to provide onsite as well as Internet-based training.

12 **SEC. 1104. INTERNATIONAL ENERGY TRAINING.**

13 (a) IN GENERAL.—The Secretary of Energy, in con-
14 sultation with the Secretaries of Commerce, Interior, and
15 State and the Federal Energy Regulatory Commission,
16 shall coordinate training and outreach efforts for inter-
17 national commercial energy markets in countries with de-
18 veloping and restructuring economies.

19 (b) COMPONENTS.—The efforts may address—

- 20 (1) production-related fiscal regimes;
- 21 (2) grid and network issues;
- 22 (3) energy user and demand side response;
- 23 (4) international trade of energy; and
- 24 (5) international transportation of energy.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated to carry out this section
 3 \$1,500,000 for each of fiscal years 2004 through 2007.

4 **TITLE XII—ELECTRICITY**

5 **SEC. 1201. SHORT TITLE.**

6 This title may be cited as the “Electric Reliability
 7 Act of 2003”.

8 **Subtitle A—Reliability Standards**

9 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

10 (a) IN GENERAL.—Part II of the Federal Power Act
 11 (16 U.S.C 824 et seq.) is amended by adding at the end
 12 the following:

13 **“SEC. 215. ELECTRIC RELIABILITY.**

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

15 “(1) The term ‘bulk-power system’ means—

16 “(A) facilities and control systems nec-
 17 essary for operating an interconnected electric
 18 energy transmission network (or any portion
 19 thereof); and

20 “(B) electric energy from generation facili-
 21 ties needed to maintain transmission system re-
 22 liability.

23 The term does not include facilities used in the local
 24 distribution of electric energy.

1 “(2) The terms ‘Electric Reliability Organiza-
2 tion’ and ‘ERO’ mean the organization certified by
3 the Commission under subsection (c) the purpose of
4 which is to establish and enforce reliability stand-
5 ards for the bulk-power system, subject to Commis-
6 sion review.

7 “(3) The term ‘reliability standard’ means a re-
8 quirement, approved by the Commission under this
9 section, to provide for reliable operation of the bulk-
10 power system. The term includes requirements for
11 the operation of existing bulk-power system facilities
12 and the design of planned additions or modifications
13 to such facilities to the extent necessary to provide
14 for reliable operation of the bulk-power system, but
15 the term does not include any requirement to en-
16 large such facilities or to construct new transmission
17 capacity or generation capacity.

18 “(4) The term ‘reliable operation’ means oper-
19 ating the elements of the bulk-power system within
20 equipment and electric system thermal, voltage, and
21 stability limits so that instability, uncontrolled sepa-
22 ration, or cascading failures of such system will not
23 occur as a result of a sudden disturbance or unan-
24 ticipated failure of system elements.

1 “(5) The term ‘Interconnection’ means a geo-
2 graphic area in which the operation of bulk-power
3 system components is synchronized such that the
4 failure of 1 or more of such components may ad-
5 versely affect the ability of the operators of other
6 components within the system to maintain reliable
7 operation of the facilities within their control.

8 “(6) The term ‘transmission organization’
9 means a Regional Transmission Organization, Inde-
10 pendent System Operator, independent transmission
11 provider, or other transmission organization finally
12 approved by the Commission for the operation of
13 transmission facilities.

14 “(7) The term ‘regional entity’ means an entity
15 having enforcement authority pursuant to subsection
16 (e)(4).

17 “(b) JURISDICTION AND APPLICABILITY.—(1) The
18 Commission shall have jurisdiction, within the United
19 States, over the ERO certified by the Commission under
20 subsection (c), any regional entities, and all users, owners
21 and operators of the bulk-power system, including but not
22 limited to the entities described in section 201(f), for pur-
23 poses of approving reliability standards established under
24 this section and enforcing compliance with this section. All
25 users, owners and operators of the bulk-power system

1 shall comply with reliability standards that take effect
2 under this section.

3 “(2) The Commission shall issue a final rule to imple-
4 ment the requirements of this section not later than 180
5 days after the date of enactment of this section.

6 “(c) CERTIFICATION.—Following the issuance of a
7 Commission rule under subsection (b)(2), any person may
8 submit an application to the Commission for certification
9 as the Electric Reliability Organization. The Commission
10 may certify 1 such ERO if the Commission determines
11 that such ERO—

12 “(1) has the ability to develop and enforce, sub-
13 ject to subsection (e)(2), reliability standards that
14 provide for an adequate level of reliability of the
15 bulk-power system; and

16 “(2) has established rules that—

17 “(A) assure its independence of the users
18 and owners and operators of the bulk-power
19 system, while assuring fair stakeholder rep-
20 resentation in the selection of its directors and
21 balanced decisionmaking in any ERO com-
22 mittee or subordinate organizational structure;

23 “(B) allocate equitably reasonable dues,
24 fees, and other charges among end users for all
25 activities under this section;

1 “(C) provide fair and impartial procedures
2 for enforcement of reliability standards through
3 the imposition of penalties in accordance with
4 subsection (e) (including limitations on activi-
5 ties, functions, or operations, or other appro-
6 priate sanctions);

7 “(D) provide for reasonable notice and op-
8 portunity for public comment, due process,
9 openness, and balance of interests in developing
10 reliability standards and otherwise exercising its
11 duties; and

12 “(E) provide for taking, after certification,
13 appropriate steps to gain recognition in Canada
14 and Mexico.

15 “(d) RELIABILITY STANDARDS.—(1) The Electric
16 Reliability Organization shall file each reliability standard
17 or modification to a reliability standard that it proposes
18 to be made effective under this section with the Commis-
19 sion.

20 “(2) The Commission may approve, by rule or order,
21 a proposed reliability standard or modification to a reli-
22 ability standard if it determines that the standard is just,
23 reasonable, not unduly discriminatory or preferential, and
24 in the public interest. The Commission shall give due
25 weight to the technical expertise of the Electric Reliability

1 Organization with respect to the content of a proposed
2 standard or modification to a reliability standard and to
3 the technical expertise of a regional entity organized on
4 an Interconnection-wide basis with respect to a reliability
5 standard to be applicable within that Interconnection, but
6 shall not defer with respect to the effect of a standard
7 on competition. A proposed standard or modification shall
8 take effect upon approval by the Commission.

9 “(3) The Electric Reliability Organization shall
10 rebuttably presume that a proposal from a regional entity
11 organized on an Interconnection-wide basis for a reliability
12 standard or modification to a reliability standard to be ap-
13 plicable on an Interconnection-wide basis is just, reason-
14 able, and not unduly discriminatory or preferential, and
15 in the public interest.

16 “(4) The Commission shall remand to the Electric
17 Reliability Organization for further consideration a pro-
18 posed reliability standard or a modification to a reliability
19 standard that the Commission disapproves in whole or in
20 part.

21 “(5) The Commission, upon its own motion or upon
22 complaint, may order the Electric Reliability Organization
23 to submit to the Commission a proposed reliability stand-
24 ard or a modification to a reliability standard that ad-
25 dresses a specific matter if the Commission considers such

1 a new or modified reliability standard appropriate to carry
2 out this section.

3 “(6) The final rule adopted under subsection (b)(2)
4 shall include fair processes for the identification and time-
5 ly resolution of any conflict between a reliability standard
6 and any function, rule, order, tariff, rate schedule, or
7 agreement accepted, approved, or ordered by the Commis-
8 sion applicable to a transmission organization. Such trans-
9 mission organization shall continue to comply with such
10 function, rule, order, tariff, rate schedule or agreement ac-
11 cepted approved, or ordered by the Commission until—

12 “(A) the Commission finds a conflict exists be-
13 tween a reliability standard and any such provision;

14 “(B) the Commission orders a change to such
15 provision pursuant to section 206 of this part; and

16 “(C) the ordered change becomes effective
17 under this part.

18 If the Commission determines that a reliability standard
19 needs to be changed as a result of such a conflict, it shall
20 order the ERO to develop and file with the Commission
21 a modified reliability standard under paragraph (4) or (5)
22 of this subsection.

23 “(e) ENFORCEMENT.—(1) The ERO may impose,
24 subject to paragraph (2), a penalty on a user or owner
25 or operator of the bulk-power system for a violation of a

1 reliability standard approved by the Commission under
2 subsection (d) if the ERO, after notice and an opportunity
3 for a hearing—

4 “(A) finds that the user or owner or operator
5 has violated a reliability standard approved by the
6 Commission under subsection (d); and

7 “(B) files notice and the record of the pro-
8 ceeding with the Commission.

9 “(2) A penalty imposed under paragraph (1) may
10 take effect not earlier than the 31st day after the ERO
11 files with the Commission notice of the penalty and the
12 record of proceedings. Such penalty shall be subject to re-
13 view by the Commission, on its own motion or upon appli-
14 cation by the user, owner or operator that is the subject
15 of the penalty filed within 30 days after the date such
16 notice is filed with the Commission. Application to the
17 Commission for review, or the initiation of review by the
18 Commission on its own motion, shall not operate as a stay
19 of such penalty unless the Commission otherwise orders
20 upon its own motion or upon application by the user,
21 owner or operator that is the subject of such penalty. In
22 any proceeding to review a penalty imposed under para-
23 graph (1), the Commission, after notice and opportunity
24 for hearing (which hearing may consist solely of the record
25 before the ERO and opportunity for the presentation of

1 supporting reasons to affirm, modify, or set aside the pen-
2 alty), shall by order affirm, set aside, reinstate, or modify
3 the penalty, and, if appropriate, remand to the ERO for
4 further proceedings. The Commission shall implement ex-
5 pedited procedures for such hearings.

6 “(3) On its own motion or upon complaint, the Com-
7 mission may order compliance with a reliability standard
8 and may impose a penalty against a user or owner or oper-
9 ator of the bulk-power system if the Commission finds,
10 after notice and opportunity for a hearing, that the user
11 or owner or operator of the bulk-power system has en-
12 gaged or is about to engage in any acts or practices that
13 constitute or will constitute a violation of a reliability
14 standard.

15 “(4) The Commission shall issue regulations author-
16 izing the ERO to enter into an agreement to delegate au-
17 thority to a regional entity for the purpose of proposing
18 reliability standards to the ERO and enforcing reliability
19 standards under paragraph (1) if—

20 “(A) the regional entity is governed by—

21 “(i) an independent board;

22 “(ii) a balanced stakeholder board; or

23 “(iii) a combination independent and bal-
24 anced stakeholder board.

1 “(B) the regional entity otherwise satisfies the
2 provisions of subsection (c)(1) and (2); and

3 “(C) the agreement promotes effective and effi-
4 cient administration of bulk-power system reliability.
5 The Commission may modify such delegation. The ERO
6 and the Commission shall rebuttably presume that a pro-
7 posal for delegation to a regional entity organized on an
8 Interconnection-wide basis promotes effective and efficient
9 administration of bulk-power system reliability and should
10 be approved. Such regulation may provide that the Com-
11 mission may assign the ERO’s authority to enforce reli-
12 ability standards under paragraph (1) directly to a re-
13 gional entity consistent with the requirements of this para-
14 graph.

15 “(5) The Commission may take such action as is nec-
16 essary or appropriate against the ERO or a regional entity
17 to ensure compliance with a reliability standard or any
18 Commission order affecting the ERO or a regional entity.

19 “(6) Any penalty imposed under this section shall
20 bear a reasonable relation to the seriousness of the viola-
21 tion and shall take into consideration the efforts of such
22 user, owner, or operator to remedy the violation in a time-
23 ly manner.

24 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
25 TION RULES.—The Electric Reliability Organization shall

1 file with the Commission for approval any proposed rule
2 or proposed rule change, accompanied by an explanation
3 of its basis and purpose. The Commission, upon its own
4 motion or complaint, may propose a change to the rules
5 of the ERO. A proposed rule or proposed rule change shall
6 take effect upon a finding by the Commission, after notice
7 and opportunity for comment, that the change is just, rea-
8 sonable, not unduly discriminatory or preferential, is in
9 the public interest, and satisfies the requirements of sub-
10 section (c).

11 “(g) RELIABILITY REPORTS.—The ERO shall con-
12 duct periodic assessments of the reliability and adequacy
13 of the bulk-power system in North America.

14 “(h) COORDINATION WITH CANADA AND MEXICO.—
15 The President is urged to negotiate international agree-
16 ments with the governments of Canada and Mexico to pro-
17 vide for effective compliance with reliability standards and
18 the effectiveness of the ERO in the United States and
19 Canada or Mexico.

20 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
21 authority to develop and enforce compliance with reli-
22 ability standards for only the bulk-power system.

23 “(2) This section does not authorize the ERO or the
24 Commission to order the construction of additional gen-
25 eration or transmission capacity or to set and enforce com-

1 pliance with standards for adequacy or safety of electric
2 facilities or services.

3 “(3) Nothing in this section shall be construed to pre-
4 empt any authority of any State to take action to ensure
5 the safety, adequacy, and reliability of electric service
6 within that State, as long as such action is not incon-
7 sistent with any reliability standard.

8 “(4) Within 90 days of the application of the Electric
9 Reliability Organization or other affected party, and after
10 notice and opportunity for comment, the Commission shall
11 issue a final order determining whether a State action is
12 inconsistent with a reliability standard, taking into consid-
13 eration any recommendation of the ERO.

14 “(5) The Commission, after consultation with the
15 ERO and the State taking action, may stay the effective-
16 ness of any State action, pending the Commission’s
17 issuance of a final order.

18 “(j) REGIONAL ADVISORY BODIES.—The Commis-
19 sion shall establish a regional advisory body on the petition
20 of at least $\frac{2}{3}$ of the States within a region that have more
21 than $\frac{1}{2}$ of their electric load served within the region. A
22 regional advisory body shall be composed of 1 member
23 from each participating State in the region, appointed by
24 the Governor of each State, and may include representa-
25 tives of agencies, States, and provinces outside the United

1 States. A regional advisory body may provide advice to the
2 Electric Reliability Organization, a regional entity, or the
3 Commission regarding the governance of an existing or
4 proposed regional entity within the same region, whether
5 a standard proposed to apply within the region is just,
6 reasonable, not unduly discriminatory or preferential, and
7 in the public interest, whether fees proposed to be assessed
8 within the region are just, reasonable, not unduly discrimi-
9 natory or preferential, and in the public interest and any
10 other responsibilities requested by the Commission. The
11 Commission may give deference to the advice of any such
12 regional advisory body if that body is organized on an
13 Interconnection-wide basis.

14 “(k) ALASKA AND HAWAII.—The provisions of this
15 section do not apply to Alaska or Hawaii.”

16 (b) STATUS OF ERO.—The Electric Reliability Orga-
17 nization certified by the Federal Energy Regulatory Com-
18 mission under section 215(c) of the Federal Power Act
19 and any regional entity delegated enforcement authority
20 pursuant to section 215(e)(4) of that Act are not depart-
21 ments, agencies, or instrumentalities of the United States
22 Government.

1 **Subtitle B—Transmission**
2 **Infrastructure Modernization**

3 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-**
4 **MISSION FACILITIES.**

5 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
6 II of the Federal Power Act is amended by adding at the
7 end the following:

8 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**
9 **MISSION FACILITIES.**

10 “(a) DESIGNATION OF NATIONAL INTEREST ELEC-
11 TRIC TRANSMISSION CORRIDORS.—

12 “(1) TRANSMISSION CONGESTION STUDY.—

13 Within 1 year after the enactment of this section,
14 and every 3 years thereafter, the Secretary of En-
15 ergy, in consultation with affected States, shall con-
16 duct a study of electric transmission congestion.

17 After considering alternatives and recommendations
18 from interested parties, including an opportunity for
19 comment from affected States, the Secretary shall
20 issue a report, based on such study, which may des-
21 ignate any geographic area experiencing electric en-
22 ergy transmission capacity constraints or congestion
23 that adversely affects consumers as a national inter-
24 est electric transmission corridor. The Secretary
25 shall conduct the study and issue the report in con-

1 sultation with any appropriate regional entity ref-
2 erenced in section 215 of this Act.

3 “(2) CONSIDERATIONS.—In determining wheth-
4 er to designate a national interest electric trans-
5 mission corridor referred to in paragraph (1) under
6 this section, the Secretary may consider whether—

7 “(A) the economic vitality and development
8 of the corridor, or the end markets served by
9 the corridor, may be constrained by lack of ade-
10 quate or reasonably priced electricity;

11 “(B)(i) economic growth in the corridor, or
12 the end markets served by the corridor, may be
13 jeopardized by reliance on limited sources of en-
14 ergy; and

15 “(ii) a diversification of supply is war-
16 ranted;

17 “(C) the energy independence of the
18 United States would be served by the designa-
19 tion;

20 “(D) the designation would be in the inter-
21 est of national energy policy; and

22 “(E) the designation would enhance na-
23 tional defense and homeland security.

24 “(b) CONSTRUCTION PERMIT.—Except as provided
25 in subsection (i), the Commission is authorized, after no-

1 tice and an opportunity for hearing, to issue a permit or
2 permits for the construction or modification of electric
3 transmission facilities in a national interest electric trans-
4 mission corridor designated by the Secretary under sub-
5 section (a) if the Commission finds that—

6 “(1)(A) a State in which the transmission fa-
7 cilities are to be constructed or modified is without
8 authority to—

9 “(i) approve the siting of the facilities; or

10 “(ii) consider the interstate benefits ex-
11 pected to be achieved by the proposed construc-
12 tion or modification of transmission facilities in
13 the State;

14 “(B) the applicant for a permit is a transmit-
15 ting utility under this Act but does not qualify to
16 apply for a permit or siting approval for the pro-
17 posed project in a State because the applicant does
18 not serve end-use customers in the State; or

19 “(C) a State commission or other entity that
20 has authority to approve the siting of the facilities
21 has—

22 “(i) withheld approval for more than 1
23 year after the filing of an application pursuant
24 to applicable law seeking approval or 1 year
25 after the designation of the relevant national in-

1 terest electric transmission corridor, whichever
2 is later; or

3 “(ii) conditioned its approval in such a
4 manner that the proposed construction or modi-
5 fication will not significantly reduce trans-
6 mission congestion in interstate commerce or is
7 not economically feasible;

8 “(2) the facilities to be authorized by the per-
9 mit will be used for the transmission of electric en-
10 ergy in interstate commerce;

11 “(3) the proposed construction or modification
12 is consistent with the public interest;

13 “(4) the proposed construction or modification
14 will significantly reduce transmission congestion in
15 interstate commerce and protects or benefits con-
16 sumers; and

17 “(5) the proposed construction or modification
18 is consistent with sound national energy policy and
19 will enhance energy independence.

20 “(c) PERMIT APPLICATIONS.—Permit applications
21 under subsection (b) shall be made in writing to the Com-
22 mission. The Commission shall issue rules setting forth
23 the form of the application, the information to be con-
24 tained in the application, and the manner of service of no-
25 tice of the permit application upon interested persons.

1 “(d) COMMENTS.—In any proceeding before the
2 Commission under subsection (b), the Commission shall
3 afford each State in which a transmission facility covered
4 by the permit is or will be located, each affected Federal
5 agency and Indian tribe, private property owners, and
6 other interested persons, a reasonable opportunity to
7 present their views and recommendations with respect to
8 the need for and impact of a facility covered by the permit.

9 “(e) RIGHTS-OF-WAY.—In the case of a permit under
10 subsection (b) for electric transmission facilities to be lo-
11 cated on property other than property owned by the
12 United States or a State, if the permit holder cannot ac-
13 quire by contract, or is unable to agree with the owner
14 of the property to the compensation to be paid for, the
15 necessary right-of-way to construct or modify such trans-
16 mission facilities, the permit holder may acquire the right-
17 of-way by the exercise of the right of eminent domain in
18 the district court of the United States for the district in
19 which the property concerned is located, or in the appro-
20 priate court of the State in which the property is located.
21 The practice and procedure in any action or proceeding
22 for that purpose in the district court of the United States
23 shall conform as nearly as may be with the practice and
24 procedure in similar action or proceeding in the courts of
25 the State where the property is situated.

1 “(f) STATE LAW.—Nothing in this section shall pre-
2 clude any person from constructing or modifying any
3 transmission facility pursuant to State law.

4 “(g) COMPENSATION.—Any exercise of eminent do-
5 main authority pursuant to this section shall be considered
6 a taking of private property for which just compensation
7 is due. Just compensation shall be an amount equal to
8 the full fair market value of the property taken on the
9 date of the exercise of eminent domain authority, except
10 that the compensation shall exceed fair market value if
11 necessary to make the landowner whole for decreases in
12 the value of any portion of the land not subject to eminent
13 domain. Any parcel of land acquired by eminent domain
14 under this subsection shall be transferred back to the
15 owner from whom it was acquired (or his heirs or assigns)
16 if the land is not used for the construction or modification
17 of electric transmission facilities within a reasonable pe-
18 riod of time after the acquisition. Other than construction,
19 modification, operation, or maintenance of electric trans-
20 mission facilities and related facilities, property acquired
21 under subsection (e) may not be used for any purpose (in-
22 cluding use for any heritage area, recreational trail, or
23 park) without the consent of the owner of the parcel from
24 whom the property was acquired (or the owner’s heirs or
25 assigns).

1 “(h) COORDINATION OF FEDERAL AUTHORIZATIONS
2 FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

3 “(1) LEAD AGENCY.—If an applicant, or pro-
4 spective applicant, for a Federal authorization re-
5 lated to an electric transmission or distribution facil-
6 ity so requests, the Department of Energy (DOE)
7 shall act as the lead agency for purposes of coordi-
8 nating all applicable Federal authorizations and re-
9 lated environmental reviews of the facility. For pur-
10 poses of this subsection, the term ‘Federal author-
11 ization’ means any authorization required under
12 Federal law in order to site a transmission or dis-
13 tribution facility, including but not limited to such
14 permits, special use authorizations, certifications,
15 opinions, or other approvals as may be required,
16 whether issued by a Federal or a State agency. To
17 the maximum extent practicable under applicable
18 Federal law, the Secretary of Energy shall coordi-
19 nate this Federal authorization and review process
20 with any Indian tribes, multi-State entities, and
21 State agencies that are responsible for conducting
22 any separate permitting and environmental reviews
23 of the facility, to ensure timely and efficient review
24 and permit decisions.

1 “(2) AUTHORITY TO SET DEADLINES.—As lead
2 agency, the Department of Energy, in consultation
3 with agencies responsible for Federal authorizations
4 and, as appropriate, with Indian tribes, multi-State
5 entities, and State agencies that are willing to co-
6 ordinate their own separate permitting and environ-
7 mental reviews with the Federal authorization and
8 environmental reviews, shall establish prompt and
9 binding intermediate milestones and ultimate dead-
10 lines for the review of, and Federal authorization de-
11 cisions relating to, the proposed facility. The Sec-
12 retary of Energy shall ensure that once an applica-
13 tion has been submitted with such data as the Sec-
14 retary considers necessary, all permit decisions and
15 related environmental reviews under all applicable
16 Federal laws shall be completed within 1 year or,
17 if a requirement of another provision of Federal law
18 makes this impossible, as soon thereafter as is prac-
19 ticable. The Secretary of Energy also shall provide
20 an expeditious pre-application mechanism for pro-
21 spective applicants to confer with the agencies in-
22 volved to have each such agency determine and com-
23 municate to the prospective applicant within 60 days
24 of when the prospective applicant submits a request
25 for such information concerning—

1 “(A) the likelihood of approval for a poten-
2 tial facility; and

3 “(B) key issues of concern to the agencies
4 and public.

5 “(3) CONSOLIDATED ENVIRONMENTAL REVIEW
6 AND RECORD OF DECISION.—As lead agency head,
7 the Secretary of Energy, in consultation with the af-
8 fected agencies, shall prepare a single environmental
9 review document, which shall be used as the basis
10 for all decisions on the proposed project under Fed-
11 eral law. The document may be an environmental as-
12 sessment or environmental impact statement under
13 the National Environmental Policy Act of 1969 if
14 warranted, or such other form of analysis as may be
15 warranted. The Secretary of Energy and the heads
16 of other agencies shall streamline the review and
17 permitting of transmission and distribution facilities
18 within corridors designated under section 503 of the
19 Federal Land Policy and Management Act (43
20 U.S.C. 1763) by fully taking into account prior anal-
21 yses and decisions relating to the corridors. Such
22 document shall include consideration by the relevant
23 agencies of any applicable criteria or other matters
24 as required under applicable laws.

1 “(4) APPEALS.—In the event that any agency
2 has denied a Federal authorization required for a
3 transmission or distribution facility, or has failed to
4 act by the deadline established by the Secretary pur-
5 suant to this section for deciding whether to issue
6 the authorization, the applicant or any State in
7 which the facility would be located may file an ap-
8 peal with the Secretary, who shall, in consultation
9 with the affected agency, review the denial or take
10 action on the pending application. Based on the
11 overall record and in consultation with the affected
12 agency, the Secretary may then either issue the nec-
13 essary authorization with any appropriate condi-
14 tions, or deny the application. The Secretary shall
15 issue a decision within 90 days of the filing of the
16 appeal. In making a decision under this paragraph,
17 the Secretary shall comply with applicable require-
18 ments of Federal law, including any requirements of
19 the Endangered Species Act, the Clean Water Act,
20 the National Forest Management Act, the National
21 Environmental Policy Act of 1969, and the Federal
22 Land Policy and Management Act.

23 “(5) CONFORMING REGULATIONS AND MEMO-
24 RANDA OF UNDERSTANDING.—Not later than 18
25 months after the date of enactment of this section,

1 the Secretary of Energy shall issue any regulations
2 necessary to implement this subsection. Not later
3 than 1 year after the date of enactment of this sec-
4 tion, the Secretary and the heads of all Federal
5 agencies with authority to issue Federal authoriza-
6 tions shall enter into Memoranda of Understanding
7 to ensure the timely and coordinated review and per-
8 mitting of electricity transmission and distribution
9 facilities. The head of each Federal agency with au-
10 thority to issue a Federal authorization shall des-
11 ignate a senior official responsible for, and dedicate
12 sufficient other staff and resources to ensure, full
13 implementation of the DOE regulations and any
14 Memoranda. Interested Indian tribes, multi-State
15 entities, and State agencies may enter such Memo-
16 randa of Understanding.

17 “(6) DURATION AND RENEWAL.—Each Federal
18 land use authorization for an electricity transmission
19 or distribution facility shall be issued—

20 “(A) for a duration, as determined by the
21 Secretary of Energy, commensurate with the
22 anticipated use of the facility, and

23 “(B) with appropriate authority to manage
24 the right-of-way for reliability and environ-
25 mental protection.

1 Upon the expiration of any such authorization (in-
2 cluding an authorization issued prior to enactment
3 of this section), the authorization shall be reviewed
4 for renewal taking fully into account reliance on
5 such electricity infrastructure, recognizing its impor-
6 tance for public health, safety and economic welfare
7 and as a legitimate use of Federal lands.

8 “(7) MAINTAINING AND ENHANCING THE
9 TRANSMISSION INFRASTRUCTURE.—In exercising the
10 responsibilities under this section, the Secretary of
11 Energy shall consult regularly with the Federal En-
12 ergy Regulatory Commission (FERC), FERC-ap-
13 proved electric reliability organizations (including re-
14 lated regional entities), and FERC-approved Re-
15 gional Transmission Organizations and Independent
16 System Operators.

17 “(i) INTERSTATE COMPACTS.—The consent of Con-
18 gress is hereby given for 3 or more contiguous States to
19 enter into an interstate compact, subject to approval by
20 Congress, establishing regional transmission siting agen-
21 cies to facilitate siting of future electric energy trans-
22 mission facilities within such States and to carry out the
23 electric energy transmission siting responsibilities of such
24 States. The Secretary of Energy may provide technical as-
25 sistance to regional transmission siting agencies estab-

1 lished under this subsection. Such regional transmission
2 siting agencies shall have the authority to review, certify,
3 and permit siting of transmission facilities, including fa-
4 cilities in national interest electric transmission corridors
5 (other than facilities on property owned by the United
6 States). The Commission shall have no authority to issue
7 a permit for the construction or modification of electric
8 transmission facilities within a State that is a party to
9 a compact, unless the members of a compact are in dis-
10 agreement and the Secretary makes, after notice and an
11 opportunity for a hearing, the finding described in section
12 (b)(1)(C).

13 “(j) SAVINGS CLAUSE.—Nothing in this section shall
14 be construed to affect any requirement of the environ-
15 mental laws of the United States, including, but not lim-
16 ited to, the National Environmental Policy Act of 1969.
17 Subsection (h)(4) of this section shall not apply to any
18 Congressionally-designated components of the National
19 Wilderness Preservation System, the National Wild and
20 Scenic Rivers System, or the National Park system (in-
21 cluding National Monuments therein).

22 “(k) ERCOT.—This section shall not apply within
23 the area referred to in section 212(k)(2)(A).”.

24 (b) REPORTS TO CONGRESS ON CORRIDORS AND
25 RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of

1 the Interior, the Secretary of Energy, the Secretary of Ag-
2 riculture, and the Chairman of the Council on Environ-
3 mental Quality shall, within 90 days of the date of enact-
4 ment of this subsection, submit a joint report to Congress
5 identifying each of the following:

6 (1) All existing designated transmission and
7 distribution corridors on Federal land and the status
8 of work related to proposed transmission and dis-
9 tribution corridor designations under Title V of the
10 Federal Land Policy and Management Act (43
11 U.S.C. 1761 et seq.), the schedule for completing
12 such work, any impediments to completing the work,
13 and steps that Congress could take to expedite the
14 process.

15 (2) The number of pending applications to lo-
16 cate transmission and distribution facilities on Fed-
17 eral lands, key information relating to each such fa-
18 cility, how long each application has been pending,
19 the schedule for issuing a timely decision as to each
20 facility, and progress in incorporating existing and
21 new such rights-of-way into relevant land use and
22 resource management plans or their equivalent.

23 (3) The number of existing transmission and
24 distribution rights-of-way on Federal lands that will
25 come up for renewal within the following 5-, 10-,

1 and 15-year periods, and a description of how the
2 Secretaries plan to manage such renewals.

3 **SEC. 1222. THIRD-PARTY FINANCE.**

4 (a) EXISTING FACILITIES.—The Secretary of Energy
5 (hereinafter in this section referred to as the “Secretary”),
6 acting through the Administrator of the Western Area
7 Power Administration (hereinafter in this section referred
8 to as “WAPA”), or through the Administrator of the
9 Southwestern Power Administration (hereinafter in this
10 section referred to as “SWPA”), or both, may design, de-
11 velop, construct, operate, maintain, or own, or participate
12 with other entities in designing, developing, constructing,
13 operating, maintaining, or owning, an electric power
14 transmission facility and related facilities (“Project”)
15 needed to upgrade existing transmission facilities owned
16 by SWPA or WAPA if the Secretary of Energy, in con-
17 sultation with the applicable Administrator, determines
18 that the proposed Project—

19 (1)(A) is located in a national interest electric
20 transmission corridor designated under section
21 216(a) of the Federal Power Act and will reduce
22 congestion of electric transmission in interstate com-
23 merce; or

1 (B) is necessary to accommodate an actual or
2 projected increase in demand for electric trans-
3 mission capacity;

4 (2) is consistent with—

5 (A) transmission needs identified, in a
6 transmission expansion plan or otherwise, by
7 the appropriate Regional Transmission Organi-
8 zation or Independent System Operator (as de-
9 fined in the Federal Power Act), if any, or ap-
10 proved regional reliability organization; and

11 (B) efficient and reliable operation of the
12 transmission grid; and

13 (3) would be operated in conformance with pru-
14 dent utility practice.

15 (b) NEW FACILITIES.—The Secretary, acting
16 through WAPA or SWPA, or both, may design, develop,
17 construct, operate, maintain, or own, or participate with
18 other entities in designing, developing, constructing, oper-
19 ating, maintaining, or owning, a new electric power trans-
20 mission facility and related facilities (“Project”) located
21 within any State in which WAPA or SWPA operates if
22 the Secretary, in consultation with the applicable Adminis-
23 trator, determines that the proposed Project—

24 (1)(A) is located in an area designated under
25 section 216(a) of the Federal Power Act and will re-

1 duce congestion of electric transmission in interstate
2 commerce; or

3 (B) is necessary to accommodate an actual or
4 projected increase in demand for electric trans-
5 mission capacity;

6 (2) is consistent with—

7 (A) transmission needs identified, in a
8 transmission expansion plan or otherwise, by
9 the appropriate Regional Transmission Organi-
10 zation or Independent System Operator, if any,
11 or approved regional reliability organization;
12 and

13 (B) efficient and reliable operation of the
14 transmission grid;

15 (3) will be operated in conformance with pru-
16 dent utility practice;

17 (4) will be operated by, or in conformance with
18 the rules of, the appropriate (A) Regional Trans-
19 mission Organization or Independent System Oper-
20 ator, if any, or (B) if such an organization does not
21 exist, regional reliability organization; and

22 (5) will not duplicate the functions of existing
23 transmission facilities or proposed facilities which
24 are the subject of ongoing or approved siting and re-
25 lated permitting proceedings.

1 (c) OTHER FUNDS.—

2 (1) IN GENERAL.—In carrying out a Project
3 under subsection (a) or (b), the Secretary may ac-
4 cept and use funds contributed by another entity for
5 the purpose of carrying out the Project.

6 (2) AVAILABILITY.—The contributed funds
7 shall be available for expenditure for the purpose of
8 carrying out the Project—

9 (A) without fiscal year limitation; and

10 (B) as if the funds had been appropriated
11 specifically for that Project.

12 (3) ALLOCATION OF COSTS.—In carrying out a
13 Project under subsection (a) or (b), any costs of the
14 Project not paid for by contributions from another
15 entity shall be collected through rates charged to
16 customers using the new transmission capability pro-
17 vided by the Project and allocated equitably among
18 these project beneficiaries using the new trans-
19 mission capability.

20 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in
21 this section affects any requirement of—

22 (1) any Federal environmental law, including
23 the National Environmental Policy Act of 1969 (42
24 U.S.C. 4321 et seq.);

1 (2) any Federal or State law relating to the
2 siting of energy facilities; or

3 (3) any existing authorizing statutes.

4 (e) SAVINGS CLAUSE.—Nothing in this section shall
5 constrain or restrict an Administrator in the utilization
6 of other authority delegated to the Administrator of
7 WAPA or SWPA.

8 (f) SECRETARIAL DETERMINATIONS.—Any deter-
9 mination made pursuant to subsection (a) or (b) shall be
10 based on findings by the Secretary using the best available
11 data.

12 (g) LIMITATIONS.—The Secretary shall not accept
13 and use more than \$100,000,000 under subsection (c)(1)
14 for the period encompassing fiscal years 2005 through
15 2013.

16 (h) EFFECTIVE DATE.—This section takes effect on
17 October 1, 2004.

18 **SEC. 1223. TRANSMISSION SYSTEM MONITORING.**

19 Within 6 months after the date of enactment of this
20 Act, the Secretary of Energy and the Federal Energy Reg-
21 ulatory Commission shall study and report to Congress on
22 the steps which must be taken to establish a system to
23 make available to all transmission system owners and Re-
24 gional Transmission Organizations (as defined in the Fed-
25 eral Power Act) within the Eastern and Western Inter-

1 connections real-time information on the functional status
2 of all transmission lines within such Interconnections. In
3 such study, the Commission shall assess technical means
4 for implementing such transmission information system
5 and identify the steps the Commission or Congress must
6 take to require the implementation of such system.

7 **SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.**

8 (a) **AUTHORITY.**—The Federal Energy Regulatory
9 Commission, in the exercise of its authorities under the
10 Federal Power Act and the Public Utility Regulatory Poli-
11 cies Act of 1978, shall encourage the deployment of ad-
12 vanced transmission technologies.

13 (b) **DEFINITION.**—For the purposes of this section,
14 the term “advanced transmission technologies” means
15 technologies that increase the capacity, efficiency, or reli-
16 ability of existing or new transmission facilities, including,
17 but not limited to—

18 (1) high-temperature lines (including super-
19 conducting cables);

20 (2) underground cables;

21 (3) advanced conductor technology (including
22 advanced composite conductors, high-temperature
23 low-sag conductors, and fiber optic temperature
24 sensing conductors);

- 1 (4) high-capacity ceramic electric wire, connec-
- 2 tors, and insulators;
- 3 (5) optimized transmission line configurations
- 4 (including multiple phased transmission lines);
- 5 (6) modular equipment;
- 6 (7) wireless power transmission;
- 7 (8) ultra-high voltage lines;
- 8 (9) high-voltage DC technology;
- 9 (10) flexible AC transmission systems;
- 10 (11) energy storage devices (including pumped
- 11 hydro, compressed air, superconducting magnetic en-
- 12 ergy storage, flywheels, and batteries);
- 13 (12) controllable load;
- 14 (13) distributed generation (including PV, fuel
- 15 cells, microturbines);
- 16 (14) enhanced power device monitoring;
- 17 (15) direct system state sensors;
- 18 (16) fiber optic technologies;
- 19 (17) power electronics and related software (in-
- 20 cluding real time monitoring and analytical soft-
- 21 ware); and
- 22 (18) any other technologies the Commission
- 23 considers appropriate.
- 24 (c) OBSOLETE OR IMPRACTICABLE TECH-
- 25 NOLOGIES.—The Commission is authorized to cease en-

1 couraging the deployment of any technology described in
2 this section on a finding that such technology has been
3 rendered obsolete or otherwise impracticable to deploy.

4 **SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION**
5 **PROGRAMS.**

6 (a) **ELECTRIC TRANSMISSION AND DISTRIBUTION**
7 **PROGRAM.**—The Secretary of Energy (hereinafter in this
8 section referred to as the “Secretary”) acting through the
9 Director of the Office of Electric Transmission and Dis-
10 tribution shall establish a comprehensive research, devel-
11 opment, demonstration and commercial application pro-
12 gram to promote improved reliability and efficiency of
13 electrical transmission and distribution systems. This pro-
14 gram shall include—

15 (1) advanced energy delivery and storage tech-
16 nologies, materials, and systems, including new
17 transmission technologies, such as flexible alter-
18 nating current transmission systems, composite con-
19 ductor materials and other technologies that enhance
20 reliability, operational flexibility, or power-carrying
21 capability;

22 (2) advanced grid reliability and efficiency tech-
23 nology development;

24 (3) technologies contributing to significant load
25 reductions;

1 (4) advanced metering, load management, and
2 control technologies;

3 (5) technologies to enhance existing grid compo-
4 nents;

5 (6) the development and use of high-tempera-
6 ture superconductors to—

7 (A) enhance the reliability, operational
8 flexibility, or power-carrying capability of elec-
9 tric transmission or distribution systems; or

10 (B) increase the efficiency of electric en-
11 ergy generation, transmission, distribution, or
12 storage systems;

13 (7) integration of power systems, including sys-
14 tems to deliver high-quality electric power, electric
15 power reliability, and combined heat and power;

16 (8) supply of electricity to the power grid by
17 small scale, distributed and residential-based power
18 generators;

19 (9) the development and use of advanced grid
20 design, operation and planning tools;

21 (10) any other infrastructure technologies, as
22 appropriate; and

23 (11) technology transfer and education.

24 (b) PROGRAM PLAN.—Not later than 1 year after the
25 date of the enactment of this legislation, the Secretary,

1 in consultation with other appropriate Federal agencies,
2 shall prepare and transmit to Congress a 5-year program
3 plan to guide activities under this section. In preparing
4 the program plan, the Secretary may consult with utilities,
5 energy services providers, manufacturers, institutions of
6 higher education, other appropriate State and local agen-
7 cies, environmental organizations, professional and tech-
8 nical societies, and any other persons the Secretary con-
9 siders appropriate.

10 (c) IMPLEMENTATION.—The Secretary shall consider
11 implementing this program using a consortium of indus-
12 try, university and national laboratory participants.

13 (d) REPORT.—Not later than 2 years after the trans-
14 mittal of the plan under subsection (b), the Secretary shall
15 transmit a report to Congress describing the progress
16 made under this section and identifying any additional re-
17 sources needed to continue the development and commer-
18 cial application of transmission and distribution infra-
19 structure technologies.

20 (e) POWER DELIVERY RESEARCH INITIATIVE.—

21 (1) IN GENERAL.—The Secretary shall establish
22 a research, development, demonstration, and com-
23 mercial application initiative specifically focused on
24 power delivery utilizing components incorporating
25 high temperature superconductivity.

1 (2) GOALS.—The goals of this initiative shall be
2 to—

3 (A) establish facilities to develop high tem-
4 perature superconductivity power applications
5 in partnership with manufacturers and utilities;

6 (B) provide technical leadership for estab-
7 lishing reliability for high temperature super-
8 conductivity power applications including suit-
9 able modeling and analysis;

10 (C) facilitate commercial transition toward
11 direct current power transmission, storage, and
12 use for high power systems utilizing high tem-
13 perature superconductivity; and

14 (D) facilitate the integration of very low
15 impedance high temperature superconducting
16 wires and cables in existing electric networks to
17 improve system performance, power flow control
18 and reliability.

19 (3) REQUIREMENTS.—The initiative shall in-
20 clude—

21 (A) feasibility analysis, planning, research,
22 and design to construct demonstrations of
23 superconducting links in high power, direct cur-
24 rent and controllable alternating current trans-
25 mission systems;

1 (B) public-private partnerships to dem-
2 onstrate deployment of high temperature super-
3 conducting cable into testbeds simulating a re-
4 alistic transmission grid and under varying
5 transmission conditions, including actual grid
6 insertions; and

7 (C) testbeds developed in cooperation with
8 national laboratories, industries, and univer-
9 sities to demonstrate these technologies, pre-
10 pare the technologies for commercial introduc-
11 tion, and address cost or performance road-
12 blocks to successful commercial use.

13 (4) AUTHORIZATION OF APPROPRIATIONS.—For
14 purposes of carrying out this subsection, there are
15 authorized to be appropriated—

16 (A) for fiscal year 2004, \$15,000,000;

17 (B) for fiscal year 2005, \$20,000,000;

18 (C) for fiscal year 2006, \$30,000,000;

19 (D) for fiscal year 2007, \$35,000,000; and

20 (E) for fiscal year 2008, \$40,000,000.

21 **SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
22 **CENTIVE PROGRAM.**

23 (a) PROGRAM.—The Secretary of Energy is author-
24 ized to establish an Advanced Power System Technology
25 Incentive Program to support the deployment of certain

1 advanced power system technologies and to improve and
2 protect certain critical governmental, industrial, and com-
3 mercial processes. Funds provided under this section shall
4 be used by the Secretary to make incentive payments to
5 eligible owners or operators of advanced power system
6 technologies to increase power generation through en-
7 hanced operational, economic, and environmental perform-
8 ance. Payments under this section may only be made upon
9 receipt by the Secretary of an incentive payment applica-
10 tion establishing an applicant as either—

11 (1) a qualifying advanced power system tech-
12 nology facility; or

13 (2) a qualifying security and assured power fa-
14 cility.

15 (b) INCENTIVES.—Subject to availability of funds, a
16 payment of 1.8 cents per kilowatt-hour shall be paid to
17 the owner or operator of a qualifying advanced power sys-
18 tem technology facility under this section for electricity
19 generated at such facility. An additional 0.7 cents per kilo-
20 watt-hour shall be paid to the owner or operator of a quali-
21 fying security and assured power facility for electricity
22 generated at such facility. Any facility qualifying under
23 this section shall be eligible for an incentive payment for
24 up to, but not more than, the first 10,000,000 kilowatt-
25 hours produced in any fiscal year.

1 (c) ELIGIBILITY.—For purposes of this section:

2 (1) QUALIFYING ADVANCED POWER SYSTEM
3 TECHNOLOGY FACILITY.—The term “qualifying ad-
4 vanced power system technology facility” means a
5 facility using an advanced fuel cell, turbine, or hy-
6 brid power system or power storage system to gen-
7 erate or store electric energy.

8 (2) QUALIFYING SECURITY AND ASSURED
9 POWER FACILITY.—The term “qualifying security
10 and assured power facility” means a qualifying ad-
11 vanced power system technology facility determined
12 by the Secretary of Energy, in consultation with the
13 Secretary of Homeland Security, to be in critical
14 need of secure, reliable, rapidly available, high-qual-
15 ity power for critical governmental, industrial, or
16 commercial applications.

17 (d) AUTHORIZATION.—There are authorized to be ap-
18 propriated to the Secretary of Energy for the purposes
19 of this section, \$10,000,000 for each of the fiscal years
20 2004 through 2010.

21 **SEC. 1227. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
22 **TRIBUTION.**

23 (a) CREATION OF AN OFFICE OF ELECTRIC TRANS-
24 MISSION AND DISTRIBUTION.—Title II of the Department
25 of Energy Organization Act (42 U.S.C. 7131 et seq.) (as

1 amended by section 502(a)) is amended by inserting the
2 following after section 217, as added by title V:

3 **“SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
4 **TRIBUTION.**

5 “(a) ESTABLISHMENT.—There is established within
6 the Department an Office of Electric Transmission and
7 Distribution. This Office shall be headed by a Director,
8 subject to the authority of the Secretary. The Director
9 shall be appointed by the Secretary. The Director shall
10 be compensated at the annual rate prescribed for level IV
11 of the Executive Schedule under section 5315 of title 5,
12 United States Code.

13 “(b) DIRECTOR.—The Director shall—

14 “(1) coordinate and develop a comprehensive,
15 multi-year strategy to improve the Nation’s elec-
16 tricity transmission and distribution;

17 “(2) implement or, where appropriate, coordi-
18 nate the implementation of, the recommendations
19 made in the Secretary’s May 2002 National Trans-
20 mission Grid Study;

21 “(3) oversee research, development, and dem-
22 onstration to support Federal energy policy related
23 to electricity transmission and distribution;

1 “(4) grant authorizations for electricity import
2 and export pursuant to section 202(c), (d), (e), and
3 (f) of the Federal Power Act (16 U.S.C. 824a);

4 “(5) perform other functions, assigned by the
5 Secretary, related to electricity transmission and dis-
6 tribution; and

7 “(6) develop programs for workforce training in
8 power and transmission engineering.”.

9 (b) CONFORMING AMENDMENTS.—(1) The table of
10 contents of the Department of Energy Organization Act
11 (42 U.S.C. 7101 note) is amended by inserting after the
12 item relating to section 217 the following new item:

“Sec. 218. Office of Electric Transmission and Distribution.”.

13 (2) Section 5315 of title 5, United States Code, is
14 amended by inserting after the item relating to “Inspector
15 General, Department of Energy.” the following:

16 “Director, Office of Electric Transmission and
17 Distribution, Department of Energy.”.

18 **Subtitle C—Transmission**
19 **Operation Improvements**

20 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

21 Part II of the Federal Power Act (16 U.S.C. 824 et
22 seq.) is amended by inserting after section 211 the fol-
23 lowing new section:

1 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**
2 **TING UTILITIES.**

3 “(a) TRANSMISSION SERVICES.—Subject to section
4 212(h), the Commission may, by rule or order, require an
5 unregulated transmitting utility to provide transmission
6 services—

7 “(1) at rates that are comparable to those that
8 the unregulated transmitting utility charges itself;
9 and

10 “(2) on terms and conditions (not relating to
11 rates) that are comparable to those under which
12 such unregulated transmitting utility provides trans-
13 mission services to itself and that are not unduly
14 discriminatory or preferential.

15 “(b) EXEMPTION.—The Commission shall exempt
16 from any rule or order under this section any unregulated
17 transmitting utility that—

18 “(1) sells no more than 4,000,000 megawatt
19 hours of electricity per year; or

20 “(2) does not own or operate any transmission
21 facilities that are necessary for operating an inter-
22 connected transmission system (or any portion
23 thereof); or

24 “(3) meets other criteria the Commission deter-
25 mines to be in the public interest.

1 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
2 quirements of subsection (a) shall not apply to facilities
3 used in local distribution.

4 “(d) EXEMPTION TERMINATION.—Whenever the
5 Commission, after an evidentiary hearing held upon a
6 complaint and after giving consideration to reliability
7 standards established under section 215, finds on the
8 basis of a preponderance of the evidence that any exemp-
9 tion granted pursuant to subsection (b) unreasonably im-
10 pairs the continued reliability of an interconnected trans-
11 mission system, it shall revoke the exemption granted to
12 that transmitting utility.

13 “(e) APPLICATION TO UNREGULATED TRANSMIT-
14 TING UTILITIES.—The rate changing procedures applica-
15 ble to public utilities under subsections (c) and (d) of sec-
16 tion 205 are applicable to unregulated transmitting utili-
17 ties for purposes of this section.

18 “(f) REMAND.—In exercising its authority under
19 paragraph (1) of subsection (a), the Commission may re-
20 mand transmission rates to an unregulated transmitting
21 utility for review and revision where necessary to meet the
22 requirements of subsection (a).

23 “(g) OTHER REQUESTS.—The provision of trans-
24 mission services under subsection (a) does not preclude a
25 request for transmission services under section 211.

1 “(h) LIMITATION.—The Commission may not require
2 a State or municipality to take action under this section
3 that would violate a private activity bond rule for purposes
4 of section 141 of the Internal Revenue Code of 1986 (26
5 U.S.C. 141).

6 “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
7 CILITIES.—Nothing in this section authorizes the Commis-
8 sion to require an unregulated transmitting utility to
9 transfer control or operational control of its transmitting
10 facilities to an RTO or any other Commission-approved
11 independent transmission organization designated to pro-
12 vide nondiscriminatory transmission access.

13 “(j) DEFINITION.—For purposes of this section, the
14 term ‘unregulated transmitting utility’ means an entity
15 that—

16 “(1) owns or operates facilities used for the
17 transmission of electric energy in interstate com-
18 merce; and

19 “(2) is an entity described in section 201(f).”.

20 **SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANS-**
21 **MISSION ORGANIZATIONS.**

22 It is the sense of Congress that, in order to promote
23 fair, open access to electric transmission service, benefit
24 retail consumers, facilitate wholesale competition, improve
25 efficiencies in transmission grid management, promote

1 grid reliability, remove opportunities for unduly discrimi-
2 natory or preferential transmission practices, and provide
3 for the efficient development of transmission infrastruc-
4 ture needed to meet the growing demands of competitive
5 wholesale power markets, all transmitting utilities in inter-
6 state commerce should voluntarily become members of Re-
7 gional Transmission Organizations as defined in section
8 3 of the Federal Power Act.

9 **SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION AP-**
10 **PLICATIONS PROGRESS REPORT.**

11 Not later than 120 days after the date of enactment
12 of this section, the Federal Energy Regulatory Commis-
13 sion shall submit to Congress a report containing each of
14 the following:

15 (1) A list of all regional transmission organiza-
16 tion applications filed at the Commission pursuant
17 to subpart F of part 35 of title 18, Code of Federal
18 Regulations (in this section referred to as “Order
19 No. 2000”), including an identification of each pub-
20 lic utility and other entity included within the pro-
21 posed membership of the regional transmission orga-
22 nization.

23 (2) A brief description of the status of each
24 pending regional transmission organization applica-
25 tion, including a precise explanation of how each

1 fails to comply with the minimal requirements of
2 Order No. 2000 and what steps need to be taken to
3 bring each application into such compliance.

4 (3) For any application that has not been fi-
5 nally approved by the Commission, a detailed de-
6 scription of every aspect of the application that the
7 Commission has determined does not conform to the
8 requirements of Order No. 2000.

9 (4) For any application that has not been fi-
10 nally approved by the Commission, an explanation
11 by the Commission of why the items described pur-
12 suant to paragraph (3) constitute material non-
13 compliance with the requirements of the Commis-
14 sion's Order No. 2000 sufficient to justify denial of
15 approval by the Commission.

16 (5) For all regional transmission organization
17 applications filed pursuant to the Commission's
18 Order No. 2000, whether finally approved or not—

19 (A) a discussion of that regional trans-
20 mission organization's efforts to minimize rate
21 seams between itself and—

22 (i) other regional transmission organi-
23 zations; and

24 (ii) entities not participating in a re-
25 gional transmission organization;

1 (B) a discussion of the impact of such
2 seams on consumers and wholesale competition;
3 and

4 (C) a discussion of minimizing cost-shifting
5 on consumers.

6 **SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL**
7 **TRANSMISSION ORGANIZATIONS.**

8 (a) DEFINITIONS.—For purposes of this section—

9 (1) APPROPRIATE FEDERAL REGULATORY AU-
10 THORITY.—The term “appropriate Federal regu-
11 latory authority” means—

12 (A) with respect to a Federal power mar-
13 keting agency (as defined in the Federal Power
14 Act), the Secretary of Energy, except that the
15 Secretary may designate the Administrator of a
16 Federal power marketing agency to act as the
17 appropriate Federal regulatory authority with
18 respect to the transmission system of that Fed-
19 eral power marketing agency; and

20 (B) with respect to the Tennessee Valley
21 Authority, the Board of Directors of the Ten-
22 nessee Valley Authority.

23 (2) FEDERAL UTILITY.—The term “Federal
24 utility” means a Federal power marketing agency or
25 the Tennessee Valley Authority.

1 (3) TRANSMISSION SYSTEM.—The term “trans-
2 mission system” means electric transmission facili-
3 ties owned, leased, or contracted for by the United
4 States and operated by a Federal utility.

5 (b) TRANSFER.—The appropriate Federal regulatory
6 authority is authorized to enter into a contract, agreement
7 or other arrangement transferring control and use of all
8 or part of the Federal utility’s transmission system to an
9 RTO or ISO (as defined in the Federal Power Act), ap-
10 proved by the Federal Energy Regulatory Commission.

11 Such contract, agreement or arrangement shall include—

12 (1) performance standards for operation and
13 use of the transmission system that the head of the
14 Federal utility determines necessary or appropriate,
15 including standards that assure recovery of all the
16 Federal utility’s costs and expenses related to the
17 transmission facilities that are the subject of the
18 contract, agreement or other arrangement; consist-
19 ency with existing contracts and third-party financ-
20 ing arrangements; and consistency with said Federal
21 utility’s statutory authorities, obligations, and limi-
22 tations;

23 (2) provisions for monitoring and oversight by
24 the Federal utility of the RTO’s or ISO’s fulfillment
25 of the terms and conditions of the contract, agree-

1 ment or other arrangement, including a provision for
2 the resolution of disputes through arbitration or
3 other means with the regional transmission organi-
4 zation or with other participants, notwithstanding
5 the obligations and limitations of any other law re-
6 garding arbitration; and

7 (3) a provision that allows the Federal utility to
8 withdraw from the RTO or ISO and terminate the
9 contract, agreement or other arrangement in accord-
10 ance with its terms.

11 Neither this section, actions taken pursuant to it, nor any
12 other transaction of a Federal utility using an RTO or
13 ISO shall confer upon the Federal Energy Regulatory
14 Commission jurisdiction or authority over the Federal util-
15 ity's electric generation assets, electric capacity or energy
16 that the Federal utility is authorized by law to market,
17 or the Federal utility's power sales activities.

18 (c) EXISTING STATUTORY AND OTHER OBLIGA-
19 TIONS.—

20 (1) SYSTEM OPERATION REQUIREMENTS.—No
21 statutory provision requiring or authorizing a Fed-
22 eral utility to transmit electric power or to construct,
23 operate or maintain its transmission system shall be
24 construed to prohibit a transfer of control and use

1 of its transmission system pursuant to, and subject
2 to all requirements of subsection (b).

3 (2) OTHER OBLIGATIONS.—This subsection
4 shall not be construed to—

5 (A) suspend, or exempt any Federal utility
6 from, any provision of existing Federal law, in-
7 cluding but not limited to any requirement or
8 direction relating to the use of the Federal util-
9 ity’s transmission system, environmental protec-
10 tion, fish and wildlife protection, flood control,
11 navigation, water delivery, or recreation; or

12 (B) authorize abrogation of any contract
13 or treaty obligation.

14 (3) REPEAL.—Section 311 of title III of Appen-
15 dix B of the Act of October 27, 2000 (Public Law
16 106–377, section 1(a)(2); 114 Stat. 1441, 1441A–
17 80; 16 U.S.C. 824n) is repealed.

18 **SEC. 1235. STANDARD MARKET DESIGN.**

19 (a) REMAND.—The Commission’s proposed rule-
20 making entitled “Remedying Undue Discrimination
21 through Open Access Transmission Service and Standard
22 Electricity Market Design” (Docket No. RM01–12–000)
23 (“SMD NOPR”) is remanded to the Commission for re-
24 consideration. No final rule mandating a standard elec-
25 tricity market design pursuant to the proposed rule-

1 making, including any rule or order of general applica-
2 bility within the scope of the proposed rulemaking, may
3 be issued before October 31, 2006, or take effect before
4 December 31, 2006. Any final rule issued by the Commis-
5 sion pursuant to the proposed rulemaking shall be pre-
6 ceded by a second notice of proposed rulemaking issued
7 after the date of enactment of this Act and an opportunity
8 for public comment.

9 (b) SAVINGS CLAUSE.—This section shall not be con-
10 strued to modify or diminish any authority or obligation
11 the Commission has under this division, the Federal
12 Power Act, or other applicable law, including, but not lim-
13 ited to, any authority to—

14 (1) issue any rule or order (of general or par-
15 ticular applicability) pursuant to any such authority
16 or obligation; or

17 (2) act on a filing or filings by 1 or more trans-
18 mitting utilities for the voluntary formation of a Re-
19 gional Transmission Organization or Independent
20 System Operator (as defined in the Federal Power
21 Act) (and related market structures or rules) or vol-
22 untary modification of an existing Regional Trans-
23 mission Organization or Independent System Oper-
24 ator (and related market structures or rules).

1 **SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.**

2 Part II of the Federal Power Act (16 U.S.C. 824 et
3 seq.) is amended by adding at the end the following:

4 **“SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

5 “(a) MEETING SERVICE OBLIGATIONS.—(1) Any
6 load-serving entity that, as of the date of enactment of
7 this section—

8 “(A) owns generation facilities, markets the
9 output of Federal generation facilities, or holds
10 rights under 1 or more wholesale contracts to pur-
11 chase electric energy, for the purpose of meeting a
12 service obligation, and

13 “(B) by reason of ownership of transmission fa-
14 cilities, or 1 or more contracts or service agreements
15 for firm transmission service, holds firm trans-
16 mission rights for delivery of the output of such gen-
17 eration facilities or such purchased energy to meet
18 such service obligation,

19 is entitled to use such firm transmission rights, or, equiva-
20 lent tradable or financial transmission rights, in order to
21 deliver such output or purchased energy, or the output of
22 other generating facilities or purchased energy to the ex-
23 tent deliverable using such rights, to the extent required
24 to meet its service obligation.

25 “(2) To the extent that all or a portion of the service
26 obligation covered by such firm transmission rights or

1 equivalent tradable or financial transmission rights is
2 transferred to another load-serving entity, the successor
3 load-serving entity shall be entitled to use the firm trans-
4 mission rights or equivalent tradable or financial trans-
5 mission rights associated with the transferred service obli-
6 gation. Subsequent transfers to another load-serving enti-
7 ty, or back to the original load-serving entity, shall be enti-
8 tled to the same rights.

9 “(3) The Commission shall exercise its authority
10 under this Act in a manner that facilitates the planning
11 and expansion of transmission facilities to meet the rea-
12 sonable needs of load-serving entities to satisfy their serv-
13 ice obligations.

14 “(b) ALLOCATION OF TRANSMISSION RIGHTS.—
15 Nothing in this section shall affect any methodology ap-
16 proved by the Commission prior to September 15, 2003,
17 for the allocation of transmission rights by an RTO or
18 ISO that has been authorized by the Commission to allo-
19 cate transmission rights.

20 “(c) CERTAIN TRANSMISSION RIGHTS.—The Com-
21 mission may exercise authority under this Act to make
22 transmission rights not used to meet an obligation covered
23 by subsection (a) available to other entities in a manner
24 determined by the Commission to be just, reasonable, and
25 not unduly discriminatory or preferential.

1 “(d) OBLIGATION TO BUILD.—Nothing in this Act
2 shall relieve a load-serving entity from any obligation
3 under State or local law to build transmission or distribu-
4 tion facilities adequate to meet its service obligations.

5 “(e) CONTRACTS.—Nothing in this section shall pro-
6 vide a basis for abrogating any contract or service agree-
7 ment for firm transmission service or rights in effect as
8 of the date of the enactment of this subsection.

9 “(f) WATER PUMPING FACILITIES.—The Commis-
10 sion shall ensure that any entity described in section
11 201(f) that owns transmission facilities used predomi-
12 nately to support its own water pumping facilities shall
13 have, with respect to such facilities, protections for trans-
14 mission service comparable to those provided to load-serv-
15 ing entities pursuant to this section.

16 “(g) ERCOT.—This section shall not apply within
17 the area referred to in section 212(k)(2)(A).

18 “(h) JURISDICTION.—This section does not authorize
19 the Commission to take any action not otherwise within
20 its jurisdiction.

21 “(i) EFFECT OF EXERCISING RIGHTS.—An entity
22 that lawfully exercises rights granted under subsection (a)
23 shall not be considered by such action as engaging in
24 undue discrimination or preference under this Act.

1 “(j) TVA AREA.—For purposes of subsection
2 (a)(1)(B), a load-serving entity that is located within the
3 service area of the Tennessee Valley Authority and that
4 has a firm wholesale power supply contract with the Ten-
5 nessee Valley Authority shall be deemed to hold firm
6 transmission rights for the transmission of such power.

7 “(k) DEFINITIONS.—For purposes of this section:

8 “(1) The term ‘distribution utility’ means an
9 electric utility that has a service obligation to end-
10 users or to a State utility or electric cooperative
11 that, directly or indirectly, through 1 or more addi-
12 tional State utilities or electric cooperatives, provides
13 electric service to end-users.

14 “(2) The term ‘load-serving entity’ means a dis-
15 tribution utility or an electric utility that has a serv-
16 ice obligation.

17 “(3) The term ‘service obligation’ means a re-
18 quirement applicable to, or the exercise of authority
19 granted to, an electric utility under Federal, State
20 or local law or under long-term contracts to provide
21 electric service to end-users or to a distribution util-
22 ity.

23 “(4) The term ‘State utility’ means a State or
24 any political subdivision of a State, or any agency,
25 authority, or instrumentality of any 1 or more of the

1 ably serve consumers, recognizing any operational limits
2 of generation and transmission facilities.

3 (c) REPORT TO CONGRESS AND THE STATES.—Not
4 later than 90 days after the date of enactment of this Act,
5 and on a yearly basis following, the Secretary of Energy
6 shall submit a report to Congress and the States on the
7 results of the study conducted under subsection (a), in-
8 cluding recommendations to Congress and the States for
9 any suggested legislative or regulatory changes.

10 **Subtitle D—Transmission Rate** 11 **Reform**

12 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

13 Part II of the Federal Power Act (16 U.S.C. 824 et
14 seq.) is amended by adding at the end the following:

15 **“SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

16 “(a) RULEMAKING REQUIREMENT.—Within 1 year
17 after the enactment of this section, the Commission shall
18 establish, by rule, incentive-based (including, but not lim-
19 ited to performance-based) rate treatments for the trans-
20 mission of electric energy in interstate commerce by public
21 utilities for the purpose of benefiting consumers by ensur-
22 ing reliability and reducing the cost of delivered power by
23 reducing transmission congestion. Such rule shall—

24 “(1) promote reliable and economically efficient
25 transmission and generation of electricity by pro-

1 moting capital investment in the enlargement, im-
2 provement, maintenance and operation of facilities
3 for the transmission of electric energy in interstate
4 commerce;

5 “(2) provide a return on equity that attracts
6 new investment in transmission facilities (including
7 related transmission technologies);

8 “(3) encourage deployment of transmission
9 technologies and other measures to increase the ca-
10 pacity and efficiency of existing transmission facili-
11 ties and improve the operation of such facilities; and

12 “(4) allow recovery of all prudently incurred
13 costs necessary to comply with mandatory reliability
14 standards issued pursuant to section 215 of this
15 Act.

16 The Commission may, from time to time, revise such rule.

17 “(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPA-
18 TION.—In the rule issued under this section, the Commis-
19 sion shall, to the extent within its jurisdiction, provide for
20 incentives to each transmitting utility or electric utility
21 that joins a Regional Transmission Organization or Inde-
22 pendent System Operator. Incentives provided by the
23 Commission pursuant to such rule shall include—

1 “(1) recovery of all prudently incurred costs to
2 develop and participate in any proposed or approved
3 RTO, ISO, or independent transmission company;

4 “(2) recovery of all costs previously approved by
5 a State commission which exercised jurisdiction over
6 the transmission facilities prior to the utility’s par-
7 ticipation in the RTO or ISO, including costs nec-
8 essary to honor preexisting transmission service con-
9 tracts, in a manner which does not reduce the reve-
10 nues the utility receives for transmission services for
11 a reasonable transition period after the utility joins
12 the RTO or ISO;

13 “(3) recovery as an expense in rates of the
14 costs prudently incurred to conduct transmission
15 planning and reliability activities, including the costs
16 of participating in RTO, ISO and other regional
17 planning activities and design, study and other
18 precertification costs involved in seeking permits and
19 approvals for proposed transmission facilities;

20 “(4) a current return in rates for construction
21 work in progress for transmission facilities and full
22 recovery of prudently incurred costs for constructing
23 transmission facilities;

24 “(5) formula transmission rates; and

1 “(6) a maximum 15-year accelerated deprecia-
2 tion on new transmission facilities for rate treatment
3 purposes.

4 The Commission shall ensure that any costs recoverable
5 pursuant to this subsection may be recovered by such util-
6 ity through the transmission rates charged by such utility
7 or through the transmission rates charged by the RTO
8 or ISO that provides transmission service to such utility.

9 “(c) **JUST AND REASONABLE RATES.**—All rates ap-
10 proved under the rules adopted pursuant to this section,
11 including any revisions to such rules, are subject to the
12 requirement of sections 205 and 206 that all rates,
13 charges, terms, and conditions be just and reasonable and
14 not unduly discriminatory or preferential.”.

15 **SEC. 1242. VOLUNTARY TRANSMISSION PRICING PLANS.**

16 Part II of the Federal Power Act (16 U.S.C. 824 et
17 seq.) is amended by adding at the end the following:

18 **“SEC. 219. VOLUNTARY TRANSMISSION PRICING PLANS.**

19 “(a) **IN GENERAL.**—Any transmission provider, in-
20 cluding an RTO or ISO, may submit to the Commission
21 a plan or plans under section 205 containing the criteria
22 for determining the person or persons that will be required
23 to pay for any construction of new transmission facilities
24 or expansion, modification or upgrade of transmission fa-

1 cilities (in this section referred to as ‘transmission service
2 related expansion’) or new generator interconnection.

3 “(b) VOLUNTARY TRANSMISSION PRICING PLANS.—

4 (1) Any plan or plans submitted under subsection (a) shall
5 specify the method or methods by which costs may be allo-
6 cated or assigned. Such methods may include, but are not
7 limited to:

8 “(A) directly assigned;

9 “(B) participant funded; or

10 “(C) rolled into regional or sub-regional rates.

11 “(2) FERC shall approve a plan or plans submitted
12 under subparagraph (B) of paragraph (1) if such plan or
13 plans—

14 “(A) result in rates that are just and reason-
15 able and not unduly discriminatory or preferential
16 consistent with section 205; and

17 “(B) ensure that the costs of any transmission
18 service related expansion or new generator inter-
19 connection not required to meet applicable reliability
20 standards established under section 215 are assigned
21 in a fair manner, meaning that those who benefit
22 from the transmission service related expansion or
23 new generator interconnection pay an appropriate
24 share of the associated costs, provided that—

1 “(i) costs may not be assigned or allocated
2 to an electric utility if the native load customers
3 of that utility would not have required such
4 transmission service related expansion or new
5 generator interconnection absent the request for
6 transmission service related expansion or new
7 generator interconnection that necessitated the
8 investment;

9 “(ii) the party requesting such trans-
10 mission service related expansion or new gener-
11 ator interconnection shall not be required to
12 pay for both—

13 “(I) the assigned cost of the upgrade;

14 and

15 “(II) the difference between—

16 “(aa) the embedded cost paid for
17 transmission services (including the
18 cost of the requested upgrade); and

19 “(bb) the embedded cost that
20 would have been paid absent the up-
21 grade; and

22 “(iii) the party or parties who pay for fa-
23 cilities necessary for the transmission service
24 related expansion or new generator interconnec-
25 tion receives full compensation for its costs for

1 the participant funded facilities in the form
2 of—

3 “(I) monetary credit equal to the cost
4 of the participant funded facilities (ac-
5 counting for the time value of money at
6 the Gross Domestic Product deflator),
7 which credit shall be pro-rated in equal in-
8 stallments over a period of not more than
9 30 years and shall not exceed in total the
10 amount of the initial investment, against
11 the transmission charges that the funding
12 entity or its assignee is otherwise assessed
13 by the transmission provider;

14 “(II) appropriate financial or physical
15 rights; or

16 “(III) any other method of cost recov-
17 ery or compensation approved by the Com-
18 mission.

19 “(3) A plan submitted under this section shall apply
20 only to—

21 “(A) a contract or interconnection agreement
22 executed or filed with the Commission after the date
23 of enactment of this section; or

24 “(B) an interconnection agreement pending re-
25 hearing as of November 1, 2003.

1 “(4) Nothing in this section diminishes or alters the
2 rights of individual members of an RTO or ISO under
3 this Act.

4 “(5) Nothing in this section shall affect the allocation
5 of costs or the cost methodology employed by an RTO or
6 ISO authorized by the Commission to allocate costs (in-
7 cluding costs for transmission service related expansion or
8 new generator interconnection) prior to the date of enact-
9 ment of this section.

10 “(6) This section shall not apply within the area re-
11 ferred to in section 212(k)(2)(A).

12 “(7) The term ‘transmission provider’ means a public
13 utility that owns or operates facilities that provide inter-
14 connection or transmission service in interstate com-
15 merce.”.

16 **Subtitle E—Amendments to PURPA**

17 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

18 (a) ADOPTION OF STANDARDS.—Section 111(d) of
19 the Public Utility Regulatory Policies Act of 1978 (16
20 U.S.C. 2621(d)) is amended by adding at the end the fol-
21 lowing:

22 “(11) NET METERING.—Each electric utility
23 shall make available upon request net metering serv-
24 ice to any electric consumer that the electric utility
25 serves. For purposes of this paragraph, the term

1 ‘net metering service’ means service to an electric
2 consumer under which electric energy generated by
3 that electric consumer from an eligible on-site gener-
4 ating facility and delivered to the local distribution
5 facilities may be used to offset electric energy pro-
6 vided by the electric utility to the electric consumer
7 during the applicable billing period.

8 “(12) FUEL SOURCES.—Each electric utility
9 shall develop a plan to minimize dependence on 1
10 fuel source and to ensure that the electric energy it
11 sells to consumers is generated using a diverse range
12 of fuels and technologies, including renewable tech-
13 nologies.

14 “(13) FOSSIL FUEL GENERATION EFFI-
15 CIENCY.—Each electric utility shall develop and im-
16 plement a 10-year plan to increase the efficiency of
17 its fossil fuel generation.”.

18 (b) COMPLIANCE.—

19 (1) TIME LIMITATIONS.—Section 112(b) of the
20 Public Utility Regulatory Policies Act of 1978 (16
21 U.S.C. 2622(b)) is amended by adding at the end
22 the following:

23 “(3)(A) Not later than 2 years after the enactment
24 of this paragraph, each State regulatory authority (with
25 respect to each electric utility for which it has ratemaking

1 authority) and each nonregulated electric utility shall com-
2 mence the consideration referred to in section 111, or set
3 a hearing date for such consideration, with respect to each
4 standard established by paragraphs (11) through (13) of
5 section 111(d).

6 “(B) Not later than 3 years after the date of the en-
7 actment of this paragraph, each State regulatory authority
8 (with respect to each electric utility for which it has rate-
9 making authority), and each nonregulated electric utility,
10 shall complete the consideration, and shall make the deter-
11 mination, referred to in section 111 with respect to each
12 standard established by paragraphs (11) through (13) of
13 section 111(d).”.

14 (2) FAILURE TO COMPLY.—Section 112(c) of
15 the Public Utility Regulatory Policies Act of 1978
16 (16 U.S.C. 2622(c)) is amended by adding at the
17 end the following:

18 “In the case of each standard established by paragraphs
19 (11) through (13) of section 111(d), the reference con-
20 tained in this subsection to the date of enactment of this
21 Act shall be deemed to be a reference to the date of enact-
22 ment of such paragraphs (11) through (13).”.

23 (3) PRIOR STATE ACTIONS.—

24 (A) IN GENERAL.—Section 112 of the
25 Public Utility Regulatory Policies Act of 1978

1 (16 U.S.C. 2622) is amended by adding at the
2 end the following:

3 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
4 (c) of this section shall not apply to the standards estab-
5 lished by paragraphs (11) through (13) of section 111(d)
6 in the case of any electric utility in a State if, before the
7 enactment of this subsection—

8 “(1) the State has implemented for such utility
9 the standard concerned (or a comparable standard);

10 “(2) the State regulatory authority for such
11 State or relevant nonregulated electric utility has
12 conducted a proceeding to consider implementation
13 of the standard concerned (or a comparable stand-
14 ard) for such utility; or

15 “(3) the State legislature has voted on the im-
16 plementation of such standard (or a comparable
17 standard) for such utility.”.

18 (B) CROSS REFERENCE.—Section 124 of
19 such Act (16 U.S.C. 2634) is amended by add-
20 ing the following at the end thereof: “In the
21 case of each standard established by paragraphs
22 (11) through (13) of section 111(d), the ref-
23 erence contained in this subsection to the date
24 of enactment of this Act shall be deemed to be

1 a reference to the date of enactment of such
2 paragraphs (11) through (13).”.

3 **SEC. 1252. SMART METERING.**

4 (a) IN GENERAL.—Section 111(d) of the Public Utili-
5 ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
6 is amended by adding at the end the following:

7 “(14) TIME-BASED METERING AND COMMU-
8 NICATIONS.—

9 “(A) Not later than 18 months after the
10 date of enactment of this paragraph, each elec-
11 tric utility shall offer each of its customer class-
12 es, and provide individual customers upon cus-
13 tomer request, a time-based rate schedule under
14 which the rate charged by the electric utility
15 varies during different time periods and reflects
16 the variance, if any, in the utility’s costs of gen-
17 erating and purchasing electricity at the whole-
18 sale level. The time-based rate schedule shall
19 enable the electric consumer to manage energy
20 use and cost through advanced metering and
21 communications technology.

22 “(B) The types of time-based rate sched-
23 ules that may be offered under the schedule re-
24 ferred to in subparagraph (A) include, among
25 others—

1 “(i) time-of-use pricing whereby elec-
2 tricity prices are set for a specific time pe-
3 riod on an advance or forward basis, typi-
4 cally not changing more often than twice a
5 year, based on the utility’s cost of gener-
6 ating and/or purchasing such electricity at
7 the wholesale level for the benefit of the
8 consumer. Prices paid for energy consumed
9 during these periods shall be pre-estab-
10 lished and known to consumers in advance
11 of such consumption, allowing them to
12 vary their demand and usage in response
13 to such prices and manage their energy
14 costs by shifting usage to a lower cost pe-
15 riod or reducing their consumption overall;

16 “(ii) critical peak pricing whereby
17 time-of-use prices are in effect except for
18 certain peak days, when prices may reflect
19 the costs of generating and/or purchasing
20 electricity at the wholesale level and when
21 consumers may receive additional discounts
22 for reducing peak period energy consump-
23 tion; and

24 “(iii) real-time pricing whereby elec-
25 tricity prices are set for a specific time pe-

1 riod on an advanced or forward basis, re-
2 flecting the utility’s cost of generating and/
3 or purchasing electricity at the wholesale
4 level, and may change as often as hourly.

5 “(C) Each electric utility subject to sub-
6 paragraph (A) shall provide each customer re-
7 questing a time-based rate with a time-based
8 meter capable of enabling the utility and cus-
9 tomer to offer and receive such rate, respec-
10 tively.

11 “(D) For purposes of implementing this
12 paragraph, any reference contained in this sec-
13 tion to the date of enactment of the Public Util-
14 ity Regulatory Policies Act of 1978 shall be
15 deemed to be a reference to the date of enact-
16 ment of this paragraph.

17 “(E) In a State that permits third-party
18 marketers to sell electric energy to retail elec-
19 tric consumers, such consumers shall be entitled
20 to receive the same time-based metering and
21 communications device and service as a retail
22 electric consumer of the electric utility.

23 “(F) Notwithstanding subsections (b) and
24 (c) of section 112, each State regulatory au-
25 thority shall, not later than 18 months after the

1 date of enactment of this paragraph conduct an
2 investigation in accordance with section 115(i)
3 and issue a decision whether it is appropriate to
4 implement the standards set out in subpara-
5 graphs (A) and (C).”.

6 (b) STATE INVESTIGATION OF DEMAND RESPONSE
7 AND TIME-BASED METERING.—Section 115 of the Public
8 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
9 is amended as follows:

10 (1) By inserting in subsection (b) after the
11 phrase “the standard for time-of-day rates estab-
12 lished by section 111(d)(3)” the following: “and the
13 standard for time-based metering and communica-
14 tions established by section 111(d)(14)”.

15 (2) By inserting in subsection (b) after the
16 phrase “are likely to exceed the metering” the fol-
17 lowing: “and communications”.

18 (3) By adding at the end the following:
19 “(i) TIME-BASED METERING AND COMMUNICA-
20 TIONS.—In making a determination with respect to the
21 standard established by section 111(d)(14), the investiga-
22 tion requirement of section 111(d)(14)(F) shall be as fol-
23 lows: Each State regulatory authority shall conduct an in-
24 vestigation and issue a decision whether or not it is appro-
25 priate for electric utilities to provide and install time-based

1 meters and communications devices for each of their cus-
2 tomers which enable such customers to participate in time-
3 based pricing rate schedules and other demand response
4 programs.”.

5 (c) FEDERAL ASSISTANCE ON DEMAND RE-
6 SPONSE.—Section 132(a) of the Public Utility Regulatory
7 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
8 striking “and” at the end of paragraph (3), striking the
9 period at the end of paragraph (4) and inserting “; and”,
10 and by adding the following at the end thereof:

11 “(5) technologies, techniques, and rate-making
12 methods related to advanced metering and commu-
13 nications and the use of these technologies, tech-
14 niques and methods in demand response programs.”.

15 (d) FEDERAL GUIDANCE.—Section 132 of the Public
16 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
17 is amended by adding the following at the end thereof:

18 “(d) DEMAND RESPONSE.—The Secretary shall be
19 responsible for—

20 “(1) educating consumers on the availability,
21 advantages, and benefits of advanced metering and
22 communications technologies, including the funding
23 of demonstration or pilot projects;

24 “(2) working with States, utilities, other energy
25 providers and advanced metering and communica-

1 tions experts to identify and address barriers to the
2 adoption of demand response programs; and

3 “(3) not later than 180 days after the date of
4 enactment of the Energy Policy Act of 2003, pro-
5 viding Congress with a report that identifies and
6 quantifies the national benefits of demand response
7 and makes a recommendation on achieving specific
8 levels of such benefits by January 1, 2005.”.

9 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
10 TION.—

11 (1) IN GENERAL.—It is the policy of the United
12 States to encourage States to coordinate, on a re-
13 gional basis, State energy policies to provide reliable
14 and affordable demand response services to the pub-
15 lic.

16 (2) TECHNICAL ASSISTANCE.—The Secretary of
17 Energy shall provide technical assistance to States
18 and regional organizations formed by 2 or more
19 States to assist them in—

20 (A) identifying the areas with the greatest
21 demand response potential;

22 (B) identifying and resolving problems in
23 transmission and distribution networks, includ-
24 ing through the use of demand response;

1 (C) developing plans and programs to use
2 demand response to respond to peak demand or
3 emergency needs; and

4 (D) identifying specific measures con-
5 sumers can take to participate in these demand
6 response programs.

7 (3) REPORT.—Not later than 1 year after the
8 date of enactment of the Energy Policy Act of 2003,
9 the Commission shall prepare and publish an annual
10 report, by appropriate region, that assesses demand
11 response resources, including those available from all
12 consumer classes, and which identifies and reviews—

13 (A) saturation and penetration rate of ad-
14 vanced meters and communications tech-
15 nologies, devices and systems;

16 (B) existing demand response programs
17 and time-based rate programs;

18 (C) the annual resource contribution of de-
19 mand resources;

20 (D) the potential for demand response as
21 a quantifiable, reliable resource for regional
22 planning purposes; and

23 (E) steps taken to ensure that, in regional
24 transmission planning and operations, demand
25 resources are provided equitable treatment as a

1 quantifiable, reliable resource relative to the re-
2 source obligations of any load-serving entity,
3 transmission provider, or transmitting party.

4 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
5 SPONSE DEVICES.—It is the policy of the United States
6 that time-based pricing and other forms of demand re-
7 sponse, whereby electricity customers are provided with
8 electricity price signals and the ability to benefit by re-
9 sponding to them, shall be encouraged, and the deploy-
10 ment of such technology and devices that enable electricity
11 customers to participate in such pricing and demand re-
12 sponse systems shall be facilitated. It is further the policy
13 of the United States that the benefits of such demand re-
14 sponse that accrue to those not deploying such technology
15 and devices, but who are part of the same regional elec-
16 tricity entity, shall be recognized.

17 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
18 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
19 2622(b)) is amended by adding at the end the following:

20 “(4)(A) Not later than 1 year after the enact-
21 ment of this paragraph, each State regulatory au-
22 thority (with respect to each electric utility for which
23 it has ratemaking authority) and each nonregulated
24 electric utility shall commence the consideration re-
25 ferred to in section 111, or set a hearing date for

1 such consideration, with respect to the standard es-
2 tablished by paragraph (14) of section 111(d).

3 “(B) Not later than 2 years after the date of
4 the enactment of this paragraph, each State regu-
5 latory authority (with respect to each electric utility
6 for which it has ratemaking authority), and each
7 nonregulated electric utility, shall complete the con-
8 sideration, and shall make the determination, re-
9 ferred to in section 111 with respect to the standard
10 established by paragraph (14) of section 111(d).”.

11 (h) FAILURE TO COMPLY.—Section 112(c) of the
12 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
13 2622(c)) is amended by adding at the end the following:
14 “In the case of the standard established by paragraph (14)
15 of section 111(d), the reference contained in this sub-
16 section to the date of enactment of this Act shall be
17 deemed to be a reference to the date of enactment of such
18 paragraph (14).”.

19 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
20 TERING STANDARDS.—

21 (1) IN GENERAL.—Section 112 of the Public
22 Utility Regulatory Policies Act of 1978 (16 U.S.C.
23 2622) is amended by adding at the end the fol-
24 lowing:

1 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
2 (c) of this section shall not apply to the standard estab-
3 lished by paragraph (14) of section 111(d) in the case of
4 any electric utility in a State if, before the enactment of
5 this subsection—

6 “(1) the State has implemented for such utility
7 the standard concerned (or a comparable standard);

8 “(2) the State regulatory authority for such
9 State or relevant nonregulated electric utility has
10 conducted a proceeding to consider implementation
11 of the standard concerned (or a comparable stand-
12 ard) for such utility within the previous 3 years; or

13 “(3) the State legislature has voted on the im-
14 plementation of such standard (or a comparable
15 standard) for such utility within the previous 3
16 years.”.

17 (2) CROSS REFERENCE.—Section 124 of such
18 Act (16 U.S.C. 2634) is amended by adding the fol-
19 lowing at the end thereof: “In the case of the stand-
20 ard established by paragraph (14) of section 111(d),
21 the reference contained in this subsection to the date
22 of enactment of this Act shall be deemed to be a ref-
23 erence to the date of enactment of such paragraph
24 (14).”.

1 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**
2 **TION PURCHASE AND SALE REQUIREMENTS.**

3 (a) **TERMINATION OF MANDATORY PURCHASE AND**
4 **SALE REQUIREMENTS.**—Section 210 of the Public Utility
5 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is
6 amended by adding at the end the following:

7 “(m) **TERMINATION OF MANDATORY PURCHASE AND**
8 **SALE REQUIREMENTS.**—

9 “(1) **OBLIGATION TO PURCHASE.**—After the
10 date of enactment of this subsection, no electric util-
11 ity shall be required to enter into a new contract
12 or obligation to purchase electric energy from a
13 qualifying cogeneration facility or a qualifying small
14 power production facility under this section if the
15 Commission finds that the qualifying cogeneration
16 facility or qualifying small power production facility
17 has nondiscriminatory access to—

18 “(A)(i) independently administered, auc-
19 tion-based day ahead and real time wholesale
20 markets for the sale of electric energy; and (ii)
21 wholesale markets for long-term sales of capac-
22 ity and electric energy; or

23 “(B)(i) transmission and interconnection
24 services that are provided by a Commission-ap-
25 proved regional transmission entity and admin-
26 istered pursuant to an open access transmission

1 tariff that affords nondiscriminatory treatment
2 to all customers; and (ii) competitive wholesale
3 markets that provide a meaningful opportunity
4 to sell capacity, including long-term and short-
5 term sales, and electric energy, including long-
6 term, short-term and real-time sales, to buyers
7 other than the utility to which the qualifying fa-
8 cility is interconnected. In determining whether
9 a meaningful opportunity to sell exists, the
10 Commission shall consider, among other fac-
11 tors, evidence of transactions within the rel-
12 evant market; or

13 “(C) wholesale markets for the sale of ca-
14 pacity and electric energy that are, at a min-
15 imum, of comparable competitive quality as
16 markets described in subparagraphs (A) and
17 (B).

18 “(2) REVISED PURCHASE AND SALE OBLIGA-
19 TION FOR NEW FACILITIES.—(A) After the date of
20 enactment of this subsection, no electric utility shall
21 be required pursuant to this section to enter into a
22 new contract or obligation to purchase from or sell
23 electric energy to a facility that is not an existing
24 qualifying cogeneration facility unless the facility
25 meets the criteria for qualifying cogeneration facili-

1 ties established by the Commission pursuant to the
2 rulemaking required by subsection (n).

3 “(B) For the purposes of this paragraph, the
4 term ‘existing qualifying cogeneration facility’ means
5 a facility that—

6 “(i) was a qualifying cogeneration facility
7 on the date of enactment of subsection (m); or

8 “(ii) had filed with the Commission a no-
9 tice of self-certification, self recertification or
10 an application for Commission certification
11 under 18 CFR 292.207 prior to the date on
12 which the Commission issues the final rule re-
13 quired by subsection (n).

14 “(3) COMMISSION REVIEW.—Any electric utility
15 may file an application with the Commission for re-
16 lief from the mandatory purchase obligation pursu-
17 ant to this subsection on a service territory-wide
18 basis. Such application shall set forth the factual
19 basis upon which relief is requested and describe
20 why the conditions set forth in subparagraphs (A),
21 (B) or (C) of paragraph (1) of this subsection have
22 been met. After notice, including sufficient notice to
23 potentially affected qualifying cogeneration facilities
24 and qualifying small power production facilities, and
25 an opportunity for comment, the Commission shall

1 make a final determination within 90 days of such
2 application regarding whether the conditions set
3 forth in subparagraphs (A), (B) or (C) of paragraph
4 (1) have been met.

5 “(4) REINSTATEMENT OF OBLIGATION TO PUR-
6 CHASE.—At any time after the Commission makes a
7 finding under paragraph (3) relieving an electric
8 utility of its obligation to purchase electric energy,
9 a qualifying cogeneration facility, a qualifying small
10 power production facility, a State agency, or any
11 other affected person may apply to the Commission
12 for an order reinstating the electric utility’s obliga-
13 tion to purchase electric energy under this section.
14 Such application shall set forth the factual basis
15 upon which the application is based and describe
16 why the conditions set forth in subparagraphs (A),
17 (B) or (C) of paragraph (1) of this subsection are
18 no longer met. After notice, including sufficient no-
19 tice to potentially affected utilities, and opportunity
20 for comment, the Commission shall issue an order
21 within 90 days of such application reinstating the
22 electric utility’s obligation to purchase electric en-
23 ergy under this section if the Commission finds that
24 the conditions set forth in subparagraphs (A), (B) or

1 (C) of paragraph (1) which relieved the obligation to
2 purchase, are no longer met.

3 “(5) OBLIGATION TO SELL.—After the date of
4 enactment of this subsection, no electric utility shall
5 be required to enter into a new contract or obliga-
6 tion to sell electric energy to a qualifying cogenera-
7 tion facility or a qualifying small power production
8 facility under this section if the Commission finds
9 that—

10 “(A) competing retail electric suppliers are
11 willing and able to sell and deliver electric en-
12 ergy to the qualifying cogeneration facility or
13 qualifying small power production facility; and

14 “(B) the electric utility is not required by
15 State law to sell electric energy in its service
16 territory.

17 “(6) NO EFFECT ON EXISTING RIGHTS AND
18 REMEDIES.—Nothing in this subsection affects the
19 rights or remedies of any party under any contract
20 or obligation, in effect or pending approval before
21 the appropriate State regulatory authority or non-
22 regulated electric utility on the date of enactment of
23 this subsection, to purchase electric energy or capac-
24 ity from or to sell electric energy or capacity to a
25 qualifying cogeneration facility or qualifying small

1 power production facility under this Act (including
2 the right to recover costs of purchasing electric en-
3 ergy or capacity).

4 “(7) RECOVERY OF COSTS.—(A) The Commis-
5 sion shall issue and enforce such regulations as are
6 necessary to ensure that an electric utility that pur-
7 chases electric energy or capacity from a qualifying
8 cogeneration facility or qualifying small power pro-
9 duction facility in accordance with any legally en-
10 forceable obligation entered into or imposed under
11 this section recovers all prudently incurred costs as-
12 sociated with the purchase.

13 “(B) A regulation under subparagraph (A) shall
14 be enforceable in accordance with the provisions of
15 law applicable to enforcement of regulations under
16 the Federal Power Act (16 U.S.C. 791a et seq.).

17 “(n) RULEMAKING FOR NEW QUALIFYING FACILI-
18 TIES.—(1)(A) Not later than 180 days after the date of
19 enactment of this section, the Commission shall issue a
20 rule revising the criteria in 18 CFR 292.205 for new
21 qualifying cogeneration facilities seeking to sell electric en-
22 ergy pursuant to section 210 of this Act to ensure—

23 “(i) that the thermal energy output of a new
24 qualifying cogeneration facility is used in a produc-
25 tive and beneficial manner;

1 “(ii) the electrical, thermal, and chemical out-
2 put of the cogeneration facility is used fundamen-
3 tally for industrial, commercial, or institutional pur-
4 poses and is not intended fundamentally for sale to
5 an electric utility, taking into account technological,
6 efficiency, economic, and variable thermal energy re-
7 quirements, as well as State laws applicable to sales
8 of electric energy from a qualifying facility to its
9 host facility; and

10 “(iii) continuing progress in the development of
11 efficient electric energy generating technology.

12 “(B) The rule issued pursuant to section (n)(1)(A)
13 shall be applicable only to facilities that seek to sell electric
14 energy pursuant to section 210 of this Act. For all other
15 purposes, except as specifically provided in section
16 (m)(2)(A), qualifying facility status shall be determined
17 in accordance with the rules and regulations of this Act.

18 “(2) Notwithstanding rule revisions under paragraph
19 (1), the Commission’s criteria for qualifying cogeneration
20 facilities in effect prior to the date on which the Commis-
21 sion issues the final rule required by paragraph (1) shall
22 continue to apply to any cogeneration facility that—

23 “(A) was a qualifying cogeneration facility on
24 the date of enactment of subsection (m), or

1 “(B) had filed with the Commission a notice of
2 self-certification, self-recertification or an application
3 for Commission certification under 18 CFR 292.207
4 prior to the date on which the Commission issues
5 the final rule required by paragraph (1).”.

6 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

7 (1) QUALIFYING SMALL POWER PRODUCTION
8 FACILITY.—Section 3(17)(C) of the Federal Power
9 Act (16 U.S.C. 796(17)(C)) is amended to read as
10 follows:

11 “(C) ‘qualifying small power production fa-
12 cility’ means a small power production facility
13 that the Commission determines, by rule, meets
14 such requirements (including requirements re-
15 specting fuel use, fuel efficiency, and reliability)
16 as the Commission may, by rule, prescribe;”.

17 (2) QUALIFYING COGENERATION FACILITY.—
18 Section 3(18)(B) of the Federal Power Act (16
19 U.S.C. 796(18)(B)) is amended to read as follows:

20 “(B) ‘qualifying cogeneration facility’
21 means a cogeneration facility that the Commis-
22 sion determines, by rule, meets such require-
23 ments (including requirements respecting min-
24 imum size, fuel use, and fuel efficiency) as the
25 Commission may, by rule, prescribe;”.

1 **Subtitle F—Repeal of PUHCA**

2 **SEC. 1261. SHORT TITLE.**

3 This subtitle may be cited as the “Public Utility
4 Holding Company Act of 2003”.

5 **SEC. 1262. DEFINITIONS.**

6 For purposes of this subtitle:

7 (1) **AFFILIATE.**—The term “affiliate” of a com-
8 pany means any company, 5 percent or more of the
9 outstanding voting securities of which are owned,
10 controlled, or held with power to vote, directly or in-
11 directly, by such company.

12 (2) **ASSOCIATE COMPANY.**—The term “associate
13 company” of a company means any company in the
14 same holding company system with such company.

15 (3) **COMMISSION.**—The term “Commission”
16 means the Federal Energy Regulatory Commission.

17 (4) **COMPANY.**—The term “company” means a
18 corporation, partnership, association, joint stock
19 company, business trust, or any organized group of
20 persons, whether incorporated or not, or a receiver,
21 trustee, or other liquidating agent of any of the fore-
22 going.

23 (5) **ELECTRIC UTILITY COMPANY.**—The term
24 “electric utility company” means any company that
25 owns or operates facilities used for the generation,

1 transmission, or distribution of electric energy for
2 sale.

3 (6) EXEMPT WHOLESALE GENERATOR AND
4 FOREIGN UTILITY COMPANY.—The terms “exempt
5 wholesale generator” and “foreign utility company”
6 have the same meanings as in sections 32 and 33,
7 respectively, of the Public Utility Holding Company
8 Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those
9 sections existed on the day before the effective date
10 of this subtitle.

11 (7) GAS UTILITY COMPANY.—The term “gas
12 utility company” means any company that owns or
13 operates facilities used for distribution at retail
14 (other than the distribution only in enclosed portable
15 containers or distribution to tenants or employees of
16 the company operating such facilities for their own
17 use and not for resale) of natural or manufactured
18 gas for heat, light, or power.

19 (8) HOLDING COMPANY.—The term “holding
20 company” means—

21 (A) any company that directly or indirectly
22 owns, controls, or holds, with power to vote, 10
23 percent or more of the outstanding voting secu-
24 rities of a public-utility company or of a holding
25 company of any public-utility company; and

1 (B) any person, determined by the Com-
2 mission, after notice and opportunity for hear-
3 ing, to exercise directly or indirectly (either
4 alone or pursuant to an arrangement or under-
5 standing with 1 or more persons) such a con-
6 trolling influence over the management or poli-
7 cies of any public-utility company or holding
8 company as to make it necessary or appropriate
9 for the rate protection of utility customers with
10 respect to rates that such person be subject to
11 the obligations, duties, and liabilities imposed
12 by this subtitle upon holding companies.

13 (9) HOLDING COMPANY SYSTEM.—The term
14 “holding company system” means a holding com-
15 pany, together with its subsidiary companies.

16 (10) JURISDICTIONAL RATES.—The term “ju-
17 risdictional rates” means rates accepted or estab-
18 lished by the Commission for the transmission of
19 electric energy in interstate commerce, the sale of
20 electric energy at wholesale in interstate commerce,
21 the transportation of natural gas in interstate com-
22 merce, and the sale in interstate commerce of nat-
23 ural gas for resale for ultimate public consumption
24 for domestic, commercial, industrial, or any other
25 use.

1 (11) NATURAL GAS COMPANY.—The term “nat-
2 ural gas company” means a person engaged in the
3 transportation of natural gas in interstate commerce
4 or the sale of such gas in interstate commerce for
5 resale.

6 (12) PERSON.—The term “person” means an
7 individual or company.

8 (13) PUBLIC UTILITY.—The term “public util-
9 ity” means any person who owns or operates facili-
10 ties used for transmission of electric energy in inter-
11 state commerce or sales of electric energy at whole-
12 sale in interstate commerce.

13 (14) PUBLIC-UTILITY COMPANY.—The term
14 “public-utility company” means an electric utility
15 company or a gas utility company.

16 (15) STATE COMMISSION.—The term “State
17 commission” means any commission, board, agency,
18 or officer, by whatever name designated, of a State,
19 municipality, or other political subdivision of a State
20 that, under the laws of such State, has jurisdiction
21 to regulate public utility companies.

22 (16) SUBSIDIARY COMPANY.—The term “sub-
23 sidiary company” of a holding company means—

24 (A) any company, 10 percent or more of
25 the outstanding voting securities of which are

1 directly or indirectly owned, controlled, or held
2 with power to vote, by such holding company;
3 and

4 (B) any person, the management or poli-
5 cies of which the Commission, after notice and
6 opportunity for hearing, determines to be sub-
7 ject to a controlling influence, directly or indi-
8 rectly, by such holding company (either alone
9 or pursuant to an arrangement or under-
10 standing with 1 or more other persons) so as
11 to make it necessary for the rate protection of
12 utility customers with respect to rates that such
13 person be subject to the obligations, duties, and
14 liabilities imposed by this subtitle upon sub-
15 sidiary companies of holding companies.

16 (17) VOTING SECURITY.—The term “voting se-
17 curity” means any security presently entitling the
18 owner or holder thereof to vote in the direction or
19 management of the affairs of a company.

20 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
21 **PANY ACT OF 1935.**

22 The Public Utility Holding Company Act of 1935 (15
23 U.S.C. 79 et seq.) is repealed.

1 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Each holding company and each
3 associate company thereof shall maintain, and shall make
4 available to the Commission, such books, accounts, memo-
5 randa, and other records as the Commission determines
6 are relevant to costs incurred by a public utility or natural
7 gas company that is an associate company of such holding
8 company and necessary or appropriate for the protection
9 of utility customers with respect to jurisdictional rates.

10 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
11 ing company or of any subsidiary company of a holding
12 company shall maintain, and shall make available to the
13 Commission, such books, accounts, memoranda, and other
14 records with respect to any transaction with another affil-
15 iate, as the Commission determines are relevant to costs
16 incurred by a public utility or natural gas company that
17 is an associate company of such holding company and nec-
18 essary or appropriate for the protection of utility cus-
19 tomers with respect to jurisdictional rates.

20 (c) HOLDING COMPANY SYSTEMS.—The Commission
21 may examine the books, accounts, memoranda, and other
22 records of any company in a holding company system, or
23 any affiliate thereof, as the Commission determines are
24 relevant to costs incurred by a public utility or natural
25 gas company within such holding company system and

1 necessary or appropriate for the protection of utility cus-
2 tomers with respect to jurisdictional rates.

3 (d) CONFIDENTIALITY.—No member, officer, or em-
4 ployee of the Commission shall divulge any fact or infor-
5 mation that may come to his or her knowledge during the
6 course of examination of books, accounts, memoranda, or
7 other records as provided in this section, except as may
8 be directed by the Commission or by a court of competent
9 jurisdiction.

10 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

11 (a) IN GENERAL.—Upon the written request of a
12 State commission having jurisdiction to regulate a public-
13 utility company in a holding company system, the holding
14 company or any associate company or affiliate thereof,
15 other than such public-utility company, wherever located,
16 shall produce for inspection books, accounts, memoranda,
17 and other records that—

18 (1) have been identified in reasonable detail in
19 a proceeding before the State commission;

20 (2) the State commission determines are rel-
21 evant to costs incurred by such public-utility com-
22 pany; and

23 (3) are necessary for the effective discharge of
24 the responsibilities of the State commission with re-
25 spect to such proceeding.

1 (b) LIMITATION.—Subsection (a) does not apply to
2 any person that is a holding company solely by reason of
3 ownership of 1 or more qualifying facilities under the Pub-
4 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
5 2601 et seq.).

6 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
7 duction of books, accounts, memoranda, and other records
8 under subsection (a) shall be subject to such terms and
9 conditions as may be necessary and appropriate to safe-
10 guard against unwarranted disclosure to the public of any
11 trade secrets or sensitive commercial information.

12 (d) EFFECT ON STATE LAW.—Nothing in this sec-
13 tion shall preempt applicable State law concerning the pro-
14 vision of books, accounts, memoranda, and other records,
15 or in any way limit the rights of any State to obtain books,
16 accounts, memoranda, and other records under any other
17 Federal law, contract, or otherwise.

18 (e) COURT JURISDICTION.—Any United States dis-
19 trict court located in the State in which the State commis-
20 sion referred to in subsection (a) is located shall have ju-
21 risdiction to enforce compliance with this section.

22 **SEC. 1266. EXEMPTION AUTHORITY.**

23 (a) RULEMAKING.—Not later than 90 days after the
24 effective date of this subtitle, the Commission shall issue
25 a final rule to exempt from the requirements of section

1 1264 (relating to Federal access to books and records) any
2 person that is a holding company, solely with respect to
3 1 or more—

4 (1) qualifying facilities under the Public Utility
5 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
6 seq.);

7 (2) exempt wholesale generators; or

8 (3) foreign utility companies.

9 (b) OTHER AUTHORITY.—The Commission shall ex-
10 empt a person or transaction from the requirements of
11 section 1264 (relating to Federal access to books and
12 records) if, upon application or upon the motion of the
13 Commission—

14 (1) the Commission finds that the books, ac-
15 counts, memoranda, and other records of any person
16 are not relevant to the jurisdictional rates of a pub-
17 lic utility or natural gas company; or

18 (2) the Commission finds that any class of
19 transactions is not relevant to the jurisdictional
20 rates of a public utility or natural gas company.

21 **SEC. 1267. AFFILIATE TRANSACTIONS.**

22 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
23 ing in this subtitle shall limit the authority of the Commis-
24 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
25 to require that jurisdictional rates are just and reasonable,

1 including the ability to deny or approve the pass through
2 of costs, the prevention of cross-subsidization, and the
3 issuance of such rules and regulations as are necessary
4 or appropriate for the protection of utility consumers.

5 (b) RECOVERY OF COSTS.—Nothing in this subtitle
6 shall preclude the Commission or a State commission from
7 exercising its jurisdiction under otherwise applicable law
8 to determine whether a public-utility company, public util-
9 ity, or natural gas company may recover in rates any costs
10 of an activity performed by an associate company, or any
11 costs of goods or services acquired by such public-utility
12 company from an associate company.

13 **SEC. 1268. APPLICABILITY.**

14 Except as otherwise specifically provided in this sub-
15 title, no provision of this subtitle shall apply to, or be
16 deemed to include—

17 (1) the United States;

18 (2) a State or any political subdivision of a
19 State;

20 (3) any foreign governmental authority not op-
21 erating in the United States;

22 (4) any agency, authority, or instrumentality of
23 any entity referred to in paragraph (1), (2), or (3);

24 or

1 (5) any officer, agent, or employee of any entity
2 referred to in paragraph (1), (2), (3), or (4) acting
3 as such in the course of his or her official duty.

4 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

5 Nothing in this subtitle precludes the Commission or
6 a State commission from exercising its jurisdiction under
7 otherwise applicable law to protect utility customers.

8 **SEC. 1270. ENFORCEMENT.**

9 The Commission shall have the same powers as set
10 forth in sections 306 through 317 of the Federal Power
11 Act (16 U.S.C. 825e–825p) to enforce the provisions of
12 this subtitle.

13 **SEC. 1271. SAVINGS PROVISIONS.**

14 (a) **IN GENERAL.**—Nothing in this subtitle, or other-
15 wise in the Public Utility Holding Company Act of 1935,
16 or rules, regulations, or orders thereunder, prohibits a per-
17 son from engaging in or continuing to engage in activities
18 or transactions in which it is legally engaged or authorized
19 to engage on the date of enactment of this Act, if that
20 person continues to comply with the terms (other than an
21 expiration date or termination date) of any such author-
22 ization, whether by rule or by order.

23 (b) **EFFECT ON OTHER COMMISSION AUTHORITY.**—
24 Nothing in this subtitle limits the authority of the Com-

1 mission under the Federal Power Act (16 U.S.C. 791a et
2 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

3 **SEC. 1272. IMPLEMENTATION.**

4 Not later than 12 months after the date of enactment
5 of this subtitle, the Commission shall—

6 (1) issue such regulations as may be necessary
7 or appropriate to implement this subtitle (other than
8 section 1265, relating to State access to books and
9 records); and

10 (2) submit to Congress detailed recommenda-
11 tions on technical and conforming amendments to
12 Federal law necessary to carry out this subtitle and
13 the amendments made by this subtitle.

14 **SEC. 1273. TRANSFER OF RESOURCES.**

15 All books and records that relate primarily to the
16 functions transferred to the Commission under this sub-
17 title shall be transferred from the Securities and Exchange
18 Commission to the Commission.

19 **SEC. 1274. EFFECTIVE DATE.**

20 (a) IN GENERAL.—Except for section 1272 (relating
21 to implementation), this subtitle shall take effect 12
22 months after the date of enactment of this subtitle.

23 (b) COMPLIANCE WITH CERTAIN RULES.—If the
24 Commission approves and makes effective any final rule-
25 making modifying the standards of conduct governing en-

1 tities that own, operate, or control facilities for trans-
2 mission of electricity in interstate commerce or transpor-
3 tation of natural gas in interstate commerce prior to the
4 effective date of this subtitle, any action taken by a public-
5 utility company or utility holding company to comply with
6 the requirements of such rulemaking shall not subject
7 such public-utility company or utility holding company to
8 any regulatory requirement applicable to a holding com-
9 pany under the Public Utility Holding Company Act of
10 1935 (15 U.S.C. 79 et seq.).

11 **SEC. 1275. SERVICE ALLOCATION.**

12 (a) FERC REVIEW.—In the case of non-power goods
13 or administrative or management services provided by an
14 associate company organized specifically for the purpose
15 of providing such goods or services to any public utility
16 in the same holding company system, at the election of
17 the system or a State commission having jurisdiction over
18 the public utility, the Commission, after the effective date
19 of this subtitle, shall review and authorize the allocation
20 of the costs for such goods or services to the extent rel-
21 evant to that associate company in order to assure that
22 each allocation is appropriate for the protection of inves-
23 tors and consumers of such public utility.

24 (b) COST ALLOCATION.—Nothing in this section shall
25 preclude the Commission or a State commission from exer-

1 cising its jurisdiction under other applicable law with re-
2 spect to the review or authorization of any costs allocated
3 to a public utility in a holding company system located
4 in the affected State as a result of the acquisition of non-
5 power goods or administrative and management services
6 by such public utility from an associate company orga-
7 nized specifically for that purpose.

8 (c) RULES.—Not later than 6 months after the date
9 of enactment of this Act, the Commission shall issue rules
10 (which rules shall be effective no earlier than the effective
11 date of this subtitle) to exempt from the requirements of
12 this section any company in a holding company system
13 whose public utility operations are confined substantially
14 to a single State and any other class of transactions that
15 the Commission finds is not relevant to the jurisdictional
16 rates of a public utility.

17 (d) PUBLIC UTILITY.—As used in this section, the
18 term “public utility” has the meaning given that term in
19 section 201(e) of the Federal Power Act.

20 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such funds
22 as may be necessary to carry out this subtitle.

1 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**
2 **POWER ACT.**

3 (a) CONFLICT OF JURISDICTION.—Section 318 of the
4 Federal Power Act (16 U.S.C. 825q) is repealed.

5 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-
6 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-
7 ing “1935” and inserting “2003”.

8 (2) Section 214 of the Federal Power Act (16 U.S.C.
9 824m) is amended by striking “1935” and inserting
10 “2003”.

11 **Subtitle G—Market Transparency,**
12 **Enforcement, and Consumer**
13 **Protection**

14 **SEC. 1281. MARKET TRANSPARENCY RULES.**

15 Part II of the Federal Power Act (16 U.S.C. 824 et
16 seq.) is amended by adding at the end the following:

17 **“SEC. 220. MARKET TRANSPARENCY RULES.**

18 “(a) IN GENERAL.—Not later than 180 days after
19 the date of enactment of this section, the Commission
20 shall issue rules establishing an electronic information sys-
21 tem to provide the Commission and the public with access
22 to such information as is necessary or appropriate to fa-
23 cilitate price transparency and participation in markets
24 subject to the Commission’s jurisdiction under this Act.
25 Such systems shall provide information about the avail-
26 ability and market price of wholesale electric energy and

1 transmission services to the Commission, State commis-
2 sions, buyers and sellers of wholesale electric energy, users
3 of transmission services, and the public on a timely basis.
4 The Commission shall have authority to obtain such infor-
5 mation from any electric utility or transmitting utility, in-
6 cluding any entity described in section 201(f).

7 “(b) EXEMPTIONS.—The Commission shall exempt
8 from disclosure information it determines would, if dis-
9 closed, be detrimental to the operation of an effective mar-
10 ket or jeopardize system security. This section shall not
11 apply to transactions for the purchase or sale of wholesale
12 electric energy or transmission services within the area de-
13 scribed in section 212(k)(2)(A). In determining the infor-
14 mation to be made available under this section and time
15 to make such information available, the Commission shall
16 seek to ensure that consumers and competitive markets
17 are protected from the adverse effects of potential collu-
18 sion or other anti-competitive behaviors that can be facili-
19 tated by untimely public disclosure of transaction-specific
20 information.

21 “(c) COMMODITY FUTURES TRADING COMMIS-
22 SION.—This section shall not affect the exclusive jurisdic-
23 tion of the Commodity Futures Trading Commission with
24 respect to accounts, agreements, contracts, or transactions
25 in commodities under the Commodity Exchange Act (7

1 U.S.C. 1 et seq.). Any request for information to a des-
2 ignated contract market, registered derivatives transaction
3 execution facility, board of trade, exchange, or market in-
4 volving accounts, agreements, contracts, or transactions in
5 commodities (including natural gas, electricity and other
6 energy commodities) within the exclusive jurisdiction of
7 the Commodity Futures Trading Commission shall be di-
8 rected to the Commodity Futures Trading Commission.

9 “(d) SAVINGS PROVISION.—In exercising its author-
10 ity under this section, the Commission shall not—

11 “(1) compete with, or displace from the market
12 place, any price publisher; or

13 “(2) regulate price publishers or impose any re-
14 quirements on the publication of information.”.

15 **SEC. 1282. MARKET MANIPULATION.**

16 Part II of the Federal Power Act (16 U.S.C. 824 et
17 seq.) is amended by adding at the end the following:

18 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

19 “No person or other entity (including an entity de-
20 scribed in section 201(f)) shall willfully and knowingly re-
21 port any information relating to the price of electricity
22 sold at wholesale or availability of transmission capacity,
23 which information the person or any other entity knew to
24 be false at the time of the reporting, to a Federal agency

1 with intent to fraudulently affect the data being compiled
2 by such Federal agency.

3 **“SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

4 “(a) PROHIBITION.—No person or other entity (in-
5 cluding an entity described in section 201(f)) shall willfully
6 and knowingly enter into any contract or other arrange-
7 ment to execute a ‘round trip trade’ for the purchase or
8 sale of electric energy at wholesale.

9 “(b) DEFINITION.—For the purposes of this section,
10 the term ‘round trip trade’ means a transaction, or com-
11 bination of transactions, in which a person or any other
12 entity—

13 “(1) enters into a contract or other arrange-
14 ment to purchase from, or sell to, any other person
15 or other entity electric energy at wholesale;

16 “(2) simultaneously with entering into the con-
17 tract or arrangement described in paragraph (1), ar-
18 ranges a financially offsetting trade with such other
19 person or entity for the same such electric energy,
20 at the same location, price, quantity and terms so
21 that, collectively, the purchase and sale transactions
22 in themselves result in no financial gain or loss; and

23 “(3) enters into the contract or arrangement
24 with a specific intent to fraudulently affect reported
25 revenues, trading volumes, or prices.”.

1 **SEC. 1283. ENFORCEMENT.**

2 (a) COMPLAINTS.—Section 306 of the Federal Power
3 Act (16 U.S.C. 825e) is amended as follows:

4 (1) By inserting “electric utility,” after “Any
5 person,”.

6 (2) By inserting “, transmitting utility,” after
7 “licensee” each place it appears.

8 (b) REVIEW OF COMMISSION ORDERS.—Section
9 313(a) of the Federal Power Act (16 U.S.C. 8251) is
10 amended by inserting ‘electric utility,’ after ‘person,’ in
11 the first 2 places it appears and by striking ‘any person
12 unless such person’ and inserting ‘any entity unless such
13 entity’.

14 (c) INVESTIGATIONS.—Section 307(a) of the Federal
15 Power Act (16 U.S.C. 825f(a)) is amended as follows:

16 (1) By inserting ‘, electric utility, transmitting
17 utility, or other entity’ after ‘person’ each time it ap-
18 pears.

19 (2) By striking the period at the end of the
20 first sentence and inserting the following: “or in ob-
21 taining information about the sale of electric energy
22 at wholesale in interstate commerce and the trans-
23 mission of electric energy in interstate commerce.”.

24 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-
25 eral Power Act (16 U.S.C. 825o) is amended—

1 (1) in subsection (a), by striking “\$5,000” and
2 inserting “\$1,000,000”, and by striking “two years”
3 and inserting “5 years”;

4 (2) in subsection (b), by striking “\$500” and
5 inserting “\$25,000”; and

6 (3) by striking subsection (c).

7 (e) CIVIL PENALTIES.—Section 316A of the Federal
8 Power Act (16 U.S.C. 825o–1) is amended as follows:

9 (1) In subsections (a) and (b), by striking “sec-
10 tion 211, 212, 213, or 214” each place it appears
11 and inserting “Part II”.

12 (2) In subsection (b), by striking “\$10,000”
13 and inserting “\$1,000,000”.

14 **SEC. 1284. REFUND EFFECTIVE DATE.**

15 Section 206(b) of the Federal Power Act (16 U.S.C.
16 824e(b)) is amended as follows:

17 (1) By striking “the date 60 days after the fil-
18 ing of such complaint nor later than 5 months after
19 the expiration of such 60-day period” in the second
20 sentence and inserting “the date of the filing of such
21 complaint nor later than 5 months after the filing of
22 such complaint”.

23 (2) By striking “60 days after” in the third
24 sentence and inserting “of”.

1 (3) By striking “expiration of such 60-day pe-
2 riod” in the third sentence and inserting “publica-
3 tion date”.

4 (4) By striking the fifth sentence and inserting
5 the following: “If no final decision is rendered by the
6 conclusion of the 180-day period commencing upon
7 initiation of a proceeding pursuant to this section,
8 the Commission shall state the reasons why it has
9 failed to do so and shall state its best estimate as
10 to when it reasonably expects to make such deci-
11 sion.”.

12 **SEC. 1285. REFUND AUTHORITY.**

13 Section 206 of the Federal Power Act (16 U.S.C.
14 824e) is amended by adding the following new subsection
15 at the end thereof:

16 “(e)(1) Except as provided in paragraph (2), if an
17 entity described in section 201(f) voluntarily makes a
18 short-term sale of electric energy and the sale violates
19 Commission rules in effect at the time of the sale, such
20 entity shall be subject to the Commission’s refund author-
21 ity under this section with respect to such violation.

22 “(2) This section shall not apply to—

23 “(A) any entity that sells less than 8,000,000
24 megawatt hours of electricity per year; or

25 “(B) any electric cooperative.

1 “(3) For purposes of this subsection, the term ‘short-
2 term sale’ means an agreement for the sale of electric en-
3 ergy at wholesale in interstate commerce that is for a pe-
4 riod of 31 days or less (excluding monthly contracts sub-
5 ject to automatic renewal).

6 “(4) The Commission shall have refund authority
7 under subsection (e)(1) with respect to a voluntary short-
8 term sale of electric energy by the Bonneville Power Ad-
9 ministration (in this section ‘Bonneville’) only if the sale
10 is at an unjust and unreasonable rate and, in that event,
11 may order a refund only for short-term sales made by
12 Bonneville at rates that are higher than the highest just
13 and reasonable rate charged by any other entity for a
14 short-term sale of electric energy in the same geographic
15 market for the same, or most nearly comparable, period
16 as the sale by Bonneville.

17 “(5) With respect to any Federal power marketing
18 agency or the Tennessee Valley Authority, the Commission
19 shall not assert or exercise any regulatory authority or
20 powers under subsection (e)(1) other than the ordering of
21 refunds to achieve a just and reasonable rate.”.

22 **SEC. 1286. SANCTITY OF CONTRACT.**

23 (a) IN GENERAL.—The Federal Energy Regulatory
24 Commission (in this section, “the Commission”) shall have
25 no authority to abrogate or modify any provision of an

1 executed contract or executed contract amendment de-
2 scribed in subsection (b) that has been entered into or
3 taken effect, except upon a finding that failure to take
4 such action would be contrary to the public interest.

5 (b) LIMITATION.—Except as provided in subsection
6 (c), this section shall apply only to a contract or contract
7 amendment—

8 (1) executed on or after the date of enactment
9 of this Act; and

10 (2) entered into—

11 (A) for the purchase or sale of electric en-
12 ergy under section 205 of the Federal Power
13 Act (16 U.S.C. 824d) where the seller has been
14 authorized by the Commission to charge mar-
15 ket-based rates; or

16 (B) under section 4 of the Natural Gas
17 Act (15 U.S.C. 717c) where the natural gas
18 company has been authorized by the Commis-
19 sion to charge market-based rates for the serv-
20 ice described in the contract.

21 (c) EXCLUSION.—This section shall not apply to an
22 executed contract or executed contract amendment that
23 expressly provides for a standard of review other than the
24 public interest standard.

1 (d) SAVINGS PROVISION.—With respect to contracts
2 to which this section does not apply, nothing in this sec-
3 tion alters existing law regarding the applicable standard
4 of review for a contract subject to the jurisdiction of the
5 Commission.

6 **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
7 **TICES.**

8 (a) PRIVACY.—The Federal Trade Commission may
9 issue rules protecting the privacy of electric consumers
10 from the disclosure of consumer information obtained in
11 connection with the sale or delivery of electric energy to
12 electric consumers.

13 (b) SLAMMING.—The Federal Trade Commission
14 may issue rules prohibiting the change of selection of an
15 electric utility except with the informed consent of the
16 electric consumer or if approved by the appropriate State
17 regulatory authority.

18 (c) CRAMMING.—The Federal Trade Commission
19 may issue rules prohibiting the sale of goods and services
20 to an electric consumer unless expressly authorized by law
21 or the electric consumer.

22 (d) RULEMAKING.—The Federal Trade Commission
23 shall proceed in accordance with section 553 of title 5,
24 United States Code, when prescribing a rule under this
25 section.

1 (e) STATE AUTHORITY.—If the Federal Trade Com-
2 mission determines that a State’s regulations provide
3 equivalent or greater protection than the provisions of this
4 section, such State regulations shall apply in that State
5 in lieu of the regulations issued by the Commission under
6 this section.

7 (f) DEFINITIONS.—For purposes of this section:

8 (1) STATE REGULATORY AUTHORITY.—The
9 term “State regulatory authority” has the meaning
10 given that term in section 3(21) of the Federal
11 Power Act (16 U.S.C. 796(21)).

12 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-
13 ITY.—The terms “electric consumer” and “electric
14 utility” have the meanings given those terms in sec-
15 tion 3 of the Public Utility Regulatory Policies Act
16 of 1978 (16 U.S.C. 2602).

17 **Subtitle H—Merger Reform**

18 **SEC. 1291. MERGER REVIEW REFORM AND ACCOUNT-** 19 **ABILITY.**

20 (a) MERGER REVIEW REFORM.—Within 180 days
21 after the date of enactment of this Act, the Secretary of
22 Energy, in consultation with the Federal Energy Regu-
23 latory Commission and the Attorney General of the United
24 States, shall prepare, and transmit to Congress each of
25 the following:

1 (1) A study of the extent to which the authori-
2 ties vested in the Federal Energy Regulatory Com-
3 mission under section 203 of the Federal Power Act
4 are duplicative of authorities vested in—

5 (A) other agencies of Federal and State
6 Government; and

7 (B) the Federal Energy Regulatory Com-
8 mission, including under sections 205 and 206
9 of the Federal Power Act.

10 (2) Recommendations on reforms to the Fed-
11 eral Power Act that would eliminate any unneces-
12 sary duplication in the exercise of regulatory author-
13 ity or unnecessary delays in the approval (or dis-
14 approval) of applications for the sale, lease, or other
15 disposition of public utility facilities.

16 (b) MERGER REVIEW ACCOUNTABILITY.—Not later
17 than 1 year after the date of enactment of this Act and
18 annually thereafter, with respect to all orders issued with-
19 in the preceding year that impose a condition on a sale,
20 lease, or other disposition of public utility facilities under
21 section 203(b) of the Federal Power Act, the Federal En-
22 ergy Regulatory Commission shall transmit a report to
23 Congress explaining each of the following:

24 (1) The condition imposed.

1 (2) Whether the Commission could have im-
2 posed such condition by exercising its authority
3 under any provision of the Federal Power Act other
4 than under section 203(b).

5 (3) If the Commission could not have imposed
6 such condition other than under section 203(b), why
7 the Commission determined that such condition was
8 consistent with the public interest.

9 **SEC. 1292. ELECTRIC UTILITY MERGERS.**

10 (a) AMENDMENT.—Section 203(a) of the Federal
11 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-
12 lows:

13 “(a)(1) No public utility shall, without first having
14 secured an order of the Commission authorizing it to do
15 so—

16 “(A) sell, lease, or otherwise dispose of the
17 whole of its facilities subject to the jurisdiction of
18 the Commission, or any part thereof of a value in
19 excess of \$10,000,000;

20 “(B) merge or consolidate, directly or indi-
21 rectly, such facilities or any part thereof with those
22 of any other person, by any means whatsoever; or

23 “(C) purchase, acquire, or take any security
24 with a value in excess of \$10,000,000 of any other
25 public utility.

1 “(2) No holding company in a holding company sys-
2 tem that includes a public utility shall purchase, acquire,
3 or take any security with a value in excess of \$10,000,000
4 of, or, by any means whatsoever, directly or indirectly,
5 merge or consolidate with, a public utility or a holding
6 company in a holding company system that includes a
7 public utility with a value in excess of \$10,000,000 with-
8 out first having secured an order of the Commission au-
9 thorizing it to do so.

10 “(3) Upon receipt of an application for such approval
11 the Commission shall give reasonable notice in writing to
12 the Governor and State commission of each of the States
13 in which the physical property affected, or any part there-
14 of, is situated, and to such other persons as it may deem
15 advisable.

16 “(4) After notice and opportunity for hearing, the
17 Commission shall approve the proposed disposition, con-
18 solidation, acquisition, or change in control, if it finds that
19 the proposed transaction will be consistent with the public
20 interest. In evaluating whether a transaction will be con-
21 sistent with the public interest, the Commission shall con-
22 sider whether the proposed transaction—

23 “(A) will adequately protect consumer interests;

24 “(B) will be consistent with competitive whole-
25 sale markets;

1 “(C) will impair the financial integrity of any
2 public utility that is a party to the transaction or an
3 associate company of any party to the transaction;
4 and

5 “(D) satisfies such other criteria as the Com-
6 mission considers consistent with the public interest.

7 “(5) The Commission shall, by rule, adopt procedures
8 for the expeditious consideration of applications for the
9 approval of dispositions, consolidations, or acquisitions
10 under this section. Such rules shall identify classes of
11 transactions, or specify criteria for transactions, that nor-
12 mally meet the standards established in paragraph (4).
13 The Commission shall provide expedited review for such
14 transactions. The Commission shall grant or deny any
15 other application for approval of a transaction not later
16 than 180 days after the application is filed. If the Com-
17 mission does not act within 180 days, such application
18 shall be deemed granted unless the Commission finds,
19 based on good cause, that further consideration is required
20 to determine whether the proposed transaction meets the
21 standards of paragraph (4) and issues an order tolling the
22 time for acting on the application for not more than 180
23 days, at the end of which additional period the Commis-
24 sion shall grant or deny the application.

1 “(6) For purposes of this subsection, the terms ‘asso-
 2 ciate company’, ‘holding company’, and ‘holding company
 3 system’ have the meaning given those terms in the Public
 4 Utility Holding Company Act of 2003.”.

5 (b) EFFECTIVE DATE.—The amendments made by
 6 this section shall take effect 12 months after the date of
 7 enactment of this section.

8 **Subtitle I—Definitions**

9 **SEC. 1295. DEFINITIONS.**

10 (a) ELECTRIC UTILITY.—Section 3(22) of the Fed-
 11 eral Power Act (16 U.S.C. 796(22)) is amended to read
 12 as follows:

13 “(22) ELECTRIC UTILITY.—The term ‘electric
 14 utility’ means any person or Federal or State agency
 15 (including any entity described in section 201(f))
 16 that sells electric energy; such term includes the
 17 Tennessee Valley Authority and each Federal power
 18 marketing administration.”.

19 (b) TRANSMITTING UTILITY.—Section 3(23) of the
 20 Federal Power Act (16 U.S.C. 796(23)) is amended to
 21 read as follows:

22 “(23) TRANSMITTING UTILITY.—The term
 23 ‘transmitting utility’ means an entity, including any
 24 entity described in section 201(f), that owns, oper-

1 ates, or controls facilities used for the transmission
2 of electric energy—

3 “(A) in interstate commerce; or

4 “(B) for the sale of electric energy at
5 wholesale.”.

6 (c) ADDITIONAL DEFINITIONS.—Section 3 of the
7 Federal Power Act (16 U.S.C. 796) is amended by adding
8 at the end the following:

9 “(26) ELECTRIC COOPERATIVE.—The term
10 ‘electric cooperative’ means a cooperatively owned
11 electric utility.

12 “(27) RTO.—The term ‘Regional Transmission
13 Organization’ or ‘RTO’ means an entity of sufficient
14 regional scope approved by the Commission to exer-
15 cise operational or functional control of facilities
16 used for the transmission of electric energy in inter-
17 state commerce and to ensure nondiscriminatory ac-
18 cess to such facilities.

19 “(28) ISO.—The term ‘Independent System
20 Operator’ or ‘ISO’ means an entity approved by the
21 Commission to exercise operational or functional
22 control of facilities used for the transmission of elec-
23 tric energy in interstate commerce and to ensure
24 nondiscriminatory access to such facilities.”.

1 (d) COMMISSION.—For the purposes of this title, the
 2 term “Commission” means the Federal Energy Regu-
 3 latory Commission.

4 (e) APPLICABILITY.—Section 201(f) of the Federal
 5 Power Act (16 U.S.C. 824(f)) is amended by adding after
 6 “political subdivision of a state,” the following: “an elec-
 7 tric cooperative that has financing under the Rural Elec-
 8 trification Act of 1936 (7 U.S.C. 901 et seq.) or that sells
 9 less than 4,000,000 megawatt hours of electricity per
 10 year.”.

11 **Subtitle J—Technical and** 12 **Conforming Amendments**

13 **SEC. 1297. CONFORMING AMENDMENTS.**

14 The Federal Power Act is amended as follows:

15 (1) Section 201(b)(2) of such Act (16 U.S.C.
 16 824(b)(2)) is amended as follows:

17 (A) In the first sentence by striking “210,
 18 211, and 212” and inserting “203(a)(2),
 19 206(e), 210, 211, 211A, 212, 215, 216, 217,
 20 218, 219, 220, 221, and 222”.

21 (B) In the second sentence by striking
 22 “210 or 211” and inserting “203(a)(2), 206(e),
 23 210, 211, 211A, 212, 215, 216, 217, 218, 219,
 24 220, 221, and 222”.

1 (C) Section 201(b)(2) of such Act is
2 amended by striking “The” in the first place it
3 appears and inserting “Notwithstanding section
4 201(f), the” and in the second sentence after
5 “any order” by inserting “or rule”.

6 (2) Section 201(e) of such Act is amended by
7 striking “210, 211, or 212” and inserting “206(e),
8 206(f), 210, 211, 211A, 212, 215, 216, 217, 218,
9 219, 220, 221, and 222”.

10 (3) Section 206 of such Act (16 U.S.C. 824e)
11 is amended as follows:

12 (A) In subsection (b), in the seventh sen-
13 tence, by striking “the public utility to make”.

14 (B) In the first sentence of subsection (a),
15 by striking ‘hearing had’ and inserting “hearing
16 held”.

17 (4) Section 211(c) of such Act (16 U.S.C.
18 824j(c)) is amended by—

19 (A) striking “(2)”;

20 (B) striking “(A)” and inserting “(1)”

21 (C) striking “(B)” and inserting “(2)”;

22 and

23 (D) striking “termination of modification”
24 and inserting “termination or modification”.

1 (5) Section 211(d)(1) of such Act (16 U.S.C.
2 824j(d)(1)) is amended by striking “electric utility”
3 the second time it appears and inserting “transmit-
4 ting utility”.

5 (6) Section 315 (c) of such Act (16 U.S.C.
6 825n(e)) is amended by striking “subsection” and
7 inserting “section”.

8 **TITLE XIII—ENERGY TAX** 9 **INCENTIVES**

10 **SEC. 1300. SHORT TITLE; ETC.**

11 (a) **SHORT TITLE.**—This title may be cited as the
12 “Energy Tax Incentives Act”.

13 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
14 wise expressly provided, whenever in this title an amend-
15 ment or repeal is expressed in terms of an amendment
16 to, or repeal of, a section or other provision, the reference
17 shall be considered to be made to a section or other provi-
18 sion of the Internal Revenue Code of 1986.

19 (c) **TABLE OF CONTENTS.**—The table of contents for
20 this title is as follows:

Sec. 1300. Short title; etc.

Subtitle A—Renewable Electricity Production Tax Credit

Sec. 1301. Extension and expansion of credit for electricity produced from cer-
tain renewable resources.

Subtitle B—Alternative Motor Vehicles and Fuels Incentives

Sec. 1311. Alternative motor vehicle credit.

Sec. 1312. Modification of credit for qualified electric vehicles.

Sec. 1313. Credit for installation of alternative fueling stations.

Sec. 1314. Credit for retail sale of alternative fuels as motor vehicle fuel.

- Sec. 1315. Small ethanol producer credit.
- Sec. 1316. Incentives for biodiesel.
- Sec. 1317. Alcohol fuel and biodiesel mixtures excise tax credit.
- Sec. 1318. Sale of gasoline and diesel fuel at duty-free sales enterprises.

Subtitle C—Conservation and Energy Efficiency Provisions

- Sec. 1321. Credit for construction of new energy efficient home.
- Sec. 1322. Credit for energy efficient appliances.
- Sec. 1323. Credit for residential energy efficient property.
- Sec. 1324. Credit for business installation of qualified fuel cells and stationary microturbine power plants.
- Sec. 1325. Energy efficient commercial buildings deduction.
- Sec. 1326. Three-year applicable recovery period for depreciation of qualified energy management devices.
- Sec. 1327. Three-year applicable recovery period for depreciation of qualified water submetering devices.
- Sec. 1328. Energy credit for combined heat and power system property.
- Sec. 1329. Credit for energy efficiency improvements to existing homes.

Subtitle D—Clean Coal Incentives

PART I—CREDIT FOR EMISSION REDUCTIONS AND EFFICIENCY IMPROVEMENTS IN EXISTING COAL-BASED ELECTRICITY GENERATION FACILITIES

- Sec. 1341. Credit for production from a qualifying clean coal technology unit.

PART II—INCENTIVES FOR EARLY COMMERCIAL APPLICATIONS OF ADVANCED CLEAN COAL TECHNOLOGIES

- Sec. 1342. Credit for investment in qualifying advanced clean coal technology.
- Sec. 1343. Credit for production from a qualifying advanced clean coal technology unit.

PART III—TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT

- Sec. 1344. Treatment of persons not able to use entire credit.

Subtitle E—Oil and Gas Provisions

- Sec. 1351. Oil and gas from marginal wells.
- Sec. 1352. Natural gas gathering lines treated as 7-year property.
- Sec. 1353. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
- Sec. 1354. Environmental tax credit.
- Sec. 1355. Determination of small refiner exception to oil depletion deduction.
- Sec. 1356. Marginal production income limit extension.
- Sec. 1357. Amortization of delay rental payments.
- Sec. 1358. Amortization of geological and geophysical expenditures.
- Sec. 1359. Extension and modification of credit for producing fuel from a non-conventional source.
- Sec. 1360. Natural gas distribution lines treated as 15-year property.
- Sec. 1361. Credit for Alaska natural gas.
- Sec. 1362. Certain Alaska natural gas pipeline property treated as 7-year property.
- Sec. 1363. Arbitrage rules not to apply to prepayments for natural gas.
- Sec. 1364. Extension of enhanced oil recovery credit to certain Alaska facilities.

Subtitle F—Electric Utility Restructuring Provisions

- Sec. 1371. Modifications to special rules for nuclear decommissioning costs.
 Sec. 1372. Treatment of certain income of cooperatives.
 Sec. 1373. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.

Subtitle G—Additional Provisions

- Sec. 1381. Extension of accelerated depreciation and wage credit benefits on Indian reservations.
 Sec. 1382. Study of effectiveness of certain provisions by GAO.
 Sec. 1383. Repeal of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
 Sec. 1384. Expansion of research credit.

Subtitle H—Revenue Provisions

PART I—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

- Sec. 1385. Penalty for failing to disclose reportable transaction.
 Sec. 1386. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
 Sec. 1387. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
 Sec. 1388. Disclosure of reportable transactions.
 Sec. 1389. Modifications to penalty for failure to register tax shelters.
 Sec. 1390. Modification of penalty for failure to maintain lists of investors.
 Sec. 1391. Penalty on promoters of tax shelters.

PART II—PROVISIONS TO DISCOURAGE CORPORATE EXPATRIATION

- Sec. 1392. Tax treatment of inverted corporate entities.
 Sec. 1393. Excise tax on stock compensation of insiders in inverted corporations.
 Sec. 1394. Reinsurance of United States risks in foreign jurisdictions.

PART III—OTHER REVENUE PROVISIONS

- Sec. 1395. Extension of Internal Revenue Service user fees.
 Sec. 1396. Addition of vaccines against hepatitis A to list of taxable vaccines.
 Sec. 1397. Individual expatriation to avoid tax.

1 **Subtitle A—Renewable Electricity**

2 **Production Tax Credit**

3 **SEC. 1301. EXTENSION AND EXPANSION OF CREDIT FOR**
 4 **ELECTRICITY PRODUCED FROM CERTAIN RE-**
 5 **NEWABLE RESOURCES.**

6 (a) EXPANSION OF QUALIFIED ENERGY RE-
 7 SOURCES.—Subsection (c) of section 45 (relating to elec-

1 tricity produced from certain renewable resources) is
2 amended to read as follows:

3 “(c) QUALIFIED ENERGY RESOURCES.—For pur-
4 poses of this section—

5 “(1) IN GENERAL.—The term ‘qualified energy
6 resources’ means—

7 “(A) wind,

8 “(B) closed-loop biomass,

9 “(C) biomass (other than closed-loop bio-
10 mass),

11 “(D) geothermal energy,

12 “(E) solar energy,

13 “(F) small irrigation power,

14 “(G) biosolids and sludge, and

15 “(H) municipal solid waste.”.

16 “(2) CLOSED-LOOP BIOMASS.—The term
17 ‘closed-loop biomass’ means any organic material
18 from a plant which is planted exclusively for pur-
19 poses of being used at a qualified facility to produce
20 electricity.

21 “(3) BIOMASS.—

22 “(A) IN GENERAL.—The term ‘biomass’
23 means—

24 “(i) any agricultural livestock waste
25 nutrients, or

1 “(ii) any solid, nonhazardous, cel-
2 lulosic waste material which is segregated
3 from other waste materials and which is
4 derived from—

5 “(I) any of the following forest-
6 related resources: mill and harvesting
7 residues, precommercial thinnings,
8 slash, and brush,

9 “(II) solid wood waste materials,
10 including waste pallets, crates,
11 dunnage, manufacturing and con-
12 struction wood wastes (other than
13 pressure-treated, chemically-treated,
14 or painted wood wastes), and land-
15 scape or right-of-way tree trimmings,
16 but not including municipal solid
17 waste, gas derived from the bio-
18 degradation of solid waste, or paper
19 which is commonly recycled, or

20 “(III) agriculture sources, includ-
21 ing orchard tree crops, vineyard,
22 grain, legumes, sugar, and other crop
23 by-products or residues.

24 “(B) AGRICULTURAL LIVESTOCK WASTE
25 NUTRIENTS.—

1 “(i) IN GENERAL.—The term ‘agricul-
2 tural livestock waste nutrients’ means agri-
3 cultural livestock manure and litter, includ-
4 ing wood shavings, straw, rice hulls, and
5 other bedding material for the disposition
6 of manure.

7 “(ii) AGRICULTURAL LIVESTOCK.—
8 The term ‘agricultural livestock’ includes
9 bovine, swine, poultry, and sheep.

10 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
11 thermal energy’ means energy derived from a geo-
12 thermal deposit (within the meaning of section
13 613(e)(2)).

14 “(5) SMALL IRRIGATION POWER.—The term
15 ‘small irrigation power’ means power—

16 “(A) generated without any dam or im-
17 poundment of water through an irrigation sys-
18 tem canal or ditch, and

19 “(B) the installed capacity of which is less
20 than 5 megawatts.

21 “(6) BIOSOLIDS AND SLUDGE.—The term ‘bio-
22 solids and sludge’ means the residue or solids re-
23 moved in the treatment of commercial, industrial, or
24 municipal wastewater.

1 “(7) MUNICIPAL SOLID WASTE.—The term
2 ‘municipal solid waste’ has the meaning given the
3 term ‘solid waste’ under section 2(27) of the Solid
4 Waste Disposal Act (42 U.S.C. 6903).”.

5 (b) EXTENSION AND EXPANSION OF QUALIFIED FA-
6 CILITIES.—

7 (1) IN GENERAL.—Section 45 is amended by
8 redesignating subsection (d) as subsection (e) and by
9 inserting after subsection (c) the following new sub-
10 section:

11 “(d) QUALIFIED FACILITIES.—For purposes of this
12 section—

13 “(1) WIND FACILITY.—In the case of a facility
14 using wind to produce electricity, the term ‘qualified
15 facility’ means any facility owned by the taxpayer
16 which is originally placed in service after December
17 31, 1993, and before January 1, 2007.

18 “(2) CLOSED-LOOP BIOMASS FACILITY.—

19 “(A) IN GENERAL.—In the case of a facil-
20 ity using closed-loop biomass to produce elec-
21 tricity, the term ‘qualified facility’ means any
22 facility—

23 “(i) owned by the taxpayer which is
24 originally placed in service after December
25 31, 1992, and before January 1, 2007, or

1 “(ii) owned by the taxpayer which be-
2 fore January 1, 2007, is originally placed
3 in service and modified to use closed-loop
4 biomass to co-fire with coal, with other bio-
5 mass, or with both, but only if the modi-
6 fication is approved under the Biomass
7 Power for Rural Development Programs or
8 is part of a pilot project of the Commodity
9 Credit Corporation as described in 65 Fed.
10 Reg. 63052.

11 “(B) SPECIAL RULES.—In the case of a
12 qualified facility described in subparagraph
13 (A)(ii)—

14 “(i) the 10-year period referred to in
15 subsection (a) shall be treated as beginning
16 no earlier than October 1, 2004,

17 “(ii) the amount of the credit deter-
18 mined under subsection (a) with respect to
19 the facility shall be an amount equal to the
20 amount determined without regard to this
21 clause multiplied by the ratio of the ther-
22 mal content of the closed-loop biomass
23 used in such facility to the thermal content
24 of all fuels used in such facility, and

1 “(iii) if the owner of such facility is
 2 not the producer of the electricity, the per-
 3 son eligible for the credit allowable under
 4 subsection (a) shall be the lessee or the op-
 5 erator of such facility.

6 “(3) BIOMASS FACILITY.—

7 “(A) IN GENERAL.—In the case of a facil-
 8 ity using biomass (other than closed-loop bio-
 9 mass) to produce electricity, the term ‘qualified
 10 facility’ means any facility owned by the tax-
 11 payer which—

12 “(i) in the case of a facility using ag-
 13 ricultural livestock waste nutrients, is
 14 originally placed in service after September
 15 30, 2004 and before January 1, 2007, and

16 “(ii) in the case of any other facility,
 17 is originally placed in service before Janu-
 18 ary 1, 2005.

19 “(B) SPECIAL RULES FOR PREEFFECTIVE
 20 DATE FACILITIES.—In the case of any facility
 21 described in subparagraph (A)(ii) which is
 22 placed in service before October 1, 2004—

23 “(i) subsection (a)(1) shall be applied
 24 by substituting ‘1.2 cents’ for ‘1.5 cents’,
 25 and

1 “(ii) the 5-year period beginning on
2 October 1, 2004, shall be substituted for
3 the 10-year period in subsection
4 (a)(2)(A)(ii).

5 “(C) CREDIT ELIGIBILITY.—In the case of
6 any facility described in subparagraph (A), if
7 the owner of such facility is not the producer of
8 the electricity, the person eligible for the credit
9 allowable under subsection (a) shall be the les-
10 see or the operator of such facility.

11 “(4) GEOTHERMAL OR SOLAR ENERGY FACIL-
12 ITY.—

13 “(A) IN GENERAL.—In the case of a facil-
14 ity using geothermal or solar energy to produce
15 electricity, the term ‘qualified facility’ means
16 any facility owned by the taxpayer which is
17 originally placed in service after September 30,
18 2004, and before January 1, 2007.

19 “(B) SPECIAL RULE.—In the case of any
20 facility described in subparagraph (A), the 5-
21 year period beginning on the date the facility
22 was originally placed in service shall be sub-
23 stituted for the 10-year period in subsection
24 (a)(2)(A)(ii).

1 “(5) SMALL IRRIGATION POWER FACILITY.—In
2 the case of a facility using small irrigation power to
3 produce electricity, the term ‘qualified facility’
4 means any facility owned by the taxpayer which is
5 originally placed in service after September 30,
6 2004, and before January 1, 2007.

7 “(6) BIOSOLIDS AND SLUDGE FACILITY.—In
8 the case of a facility using waste heat from the in-
9 cineration of biosolids and sludge to produce elec-
10 tricity, the term ‘qualified facility’ means any facility
11 owned by the taxpayer which is originally placed in
12 service after September 30, 2004, and before Janu-
13 ary 1, 2007. Such term shall not include any prop-
14 erty described in section 48(a)(6) the basis of which
15 is taken into account for purposes of the energy
16 credit under section 46.

17 “(7) MUNICIPAL SOLID WASTE FACILITY.—

18 “(A) IN GENERAL.—In the case of a facil-
19 ity or unit incinerating municipal solid waste to
20 produce electricity, the term ‘qualified facility’
21 means any facility or unit owned by the tax-
22 payer which is originally placed in service after
23 September 30, 2004, and before January 1,
24 2007.

1 “(B) SPECIAL RULE.—In the case of any
2 facility or unit described in subparagraph (A),
3 the 5-year period beginning on the date the fa-
4 cility or unit was originally placed in service
5 shall be substituted for the 10-year period in
6 subsection (a)(2)(A)(ii).

7 “(C) CREDIT ELIGIBILITY.—In the case of
8 any qualified facility described in subparagraph
9 (A), if the owner of such facility is not the pro-
10 ducer of the electricity, the person eligible for
11 the credit allowable under subsection (a) shall
12 be the lessee or the operator of such facility.”.

13 (2) NO CREDIT FOR CERTAIN PRODUCTION.—
14 Section 45(e) (relating to definitions and special
15 rules), as redesignated by paragraph (1), is amended
16 by striking paragraph (6) and inserting the following
17 new paragraph:

18 “(6) OPERATIONS INCONSISTENT WITH SOLID
19 WASTE DISPOSAL ACT.—In the case of a qualified fa-
20 cility described in subsection (d)(6)(A), subsection
21 (a) shall not apply to electricity produced at such fa-
22 cility during any taxable year if, during a portion of
23 such year, there is a certification in effect by the
24 Administrator of the Environmental Protection
25 Agency that such facility was permitted to operate

1 in a manner inconsistent with section 4003(d) of the
2 Solid Waste Disposal Act (42 U.S.C. 6943(d)).”.

3 (3) CONFORMING AMENDMENT.—Section 45(e),
4 as so redesignated, is amended by striking “sub-
5 section (c)(3)(A)” in paragraph (7)(A)(i) and insert-
6 ing “subsection (d)(1)”.

7 (c) CREDIT RATE FOR ELECTRICITY PRODUCED
8 FROM NEW FACILITIES.—

9 (1) IN GENERAL.—Section 45(a) is amended by
10 adding at the end the following new flush sentence:
11 “In the case of electricity produced after September 30,
12 2004, at any qualified facility originally placed in service
13 after such date, paragraph (1) shall be applied by sub-
14 stituting ‘1.8 cents’ for ‘1.5 cents’.”.

15 (2) NEW RATE NOT SUBJECT TO INFLATION
16 ADJUSTMENT.—Section 45(b)(2) (relating to credit
17 and phaseout adjustment based on inflation) is
18 amended by adding at the end the following new
19 sentence: “This paragraph shall not apply to any
20 amount which is substituted for the 1.5 cent amount
21 in subsection (a) by reason of any provision of this
22 section.”.

23 (d) ELIMINATION OF CERTAIN CREDIT REDUC-
24 TIONS.—Section 45(b)(3)(A) (relating to credit reduced

1 for grants, tax-exempt bonds, subsidized energy financing,
2 and other credits) is amended—

3 (1) by striking clause (ii),

4 (2) by redesignating clauses (iii) and (iv) as
5 clauses (ii) and (iii),

6 (3) by inserting “(other than proceeds of an
7 issue of State or local government obligations the in-
8 terest on which is exempt from tax under section
9 103, or any loan, debt, or other obligation incurred
10 under subchapter I of chapter 31 of title 7 of the
11 Rural Electrification Act of 1936 (7 U.S.C. 901 et
12 seq.), as in effect on the date of the enactment of
13 the Energy Tax Incentives Act)” after “project” in
14 clause (ii) (as so redesignated),

15 (4) by adding at the end the following new sen-
16 tence: “This paragraph shall not apply with respect
17 to any facility described in subsection (d)(2)(A)(ii).”,
18 and

19 (5) by striking “TAX-EXEMPT BONDS,” in the
20 heading and inserting “CERTAIN”.

21 (e) TREATMENT OF PERSONS NOT ABLE TO USE
22 ENTIRE CREDIT.—Section 45(e) (relating to definitions
23 and special rules), as redesignated by subsection (b)(1),
24 is amended by adding at the end the following new para-
25 graph:

1 “(8) TREATMENT OF PERSONS NOT ABLE TO
2 USE ENTIRE CREDIT.—

3 “(A) ALLOWANCE OF CREDIT.—

4 “(i) IN GENERAL.—Except as other-
5 wise provided in this subsection—

6 “(I) any credit allowable under
7 subsection (a) with respect to a quali-
8 fied facility owned by a person de-
9 scribed in clause (ii) may be trans-
10 ferred or used as provided in this
11 paragraph, and

12 “(II) the determination as to
13 whether the credit is allowable shall
14 be made without regard to the tax-ex-
15 empt status of the person.

16 “(ii) PERSONS DESCRIBED.—A person
17 is described in this clause if the person
18 is—

19 “(I) an organization described in
20 section 501(c)(12)(C) and exempt
21 from tax under section 501(a),

22 “(II) an organization described
23 in section 1381(a)(2)(C),

24 “(III) a public utility (as defined
25 in section 136(c)(2)(B)), which is ex-

1 empt from income tax under this sub-
2 title,

3 “(IV) any State or political sub-
4 division thereof, the District of Co-
5 lumbia, any possession of the United
6 States, or any agency or instrumen-
7 tality of any of the foregoing, or

8 “(V) any Indian tribal govern-
9 ment (within the meaning of section
10 7871) or any agency or instrumen-
11 tality thereof.

12 “(B) TRANSFER OF CREDIT.—

13 “(i) IN GENERAL.—A person de-
14 scribed in subparagraph (A)(ii) may trans-
15 fer any credit to which subparagraph
16 (A)(i) applies through an assignment to
17 any other person not described in subpara-
18 graph (A)(ii). Such transfer may be re-
19 voked only with the consent of the Sec-
20 retary.

21 “(ii) REGULATIONS.—The Secretary
22 shall prescribe such regulations as nec-
23 essary to ensure that any credit described
24 in clause (i) is assigned once and not reas-
25 signed by such other person.

1 “(iii) TRANSFER PROCEEDS TREATED
2 AS ARISING FROM ESSENTIAL GOVERN-
3 MENT FUNCTION.—Any proceeds derived
4 by a person described in subclause (III),
5 (IV), or (V) of subparagraph (A)(ii) from
6 the transfer of any credit under clause (i)
7 shall be treated as arising from the exer-
8 cise of an essential government function.

9 “(C) USE OF CREDIT AS AN OFFSET.—
10 Notwithstanding any other provision of law, in
11 the case of a person described in subclause (I),
12 (II), or (V) of subparagraph (A)(ii), any credit
13 to which subparagraph (A)(i) applies may be
14 applied by such person, to the extent provided
15 by the Secretary of Agriculture, as a prepay-
16 ment of any loan, debt, or other obligation the
17 entity has incurred under subchapter I of chap-
18 ter 31 of title 7 of the Rural Electrification Act
19 of 1936 (7 U.S.C. 901 et seq.), as in effect on
20 the date of the enactment of the Energy Tax
21 Incentives Act.

22 “(D) CREDIT NOT INCOME.—Any transfer
23 under subparagraph (B) or use under subpara-
24 graph (C) of any credit to which subparagraph

1 (A)(i) applies shall not be treated as income for
2 purposes of section 501(c)(12).

3 “(E) TREATMENT OF UNRELATED PER-
4 SONS.—For purposes of subsection (a)(2)(B),
5 sales of electricity among and between persons
6 described in subparagraph (A)(ii) shall be treat-
7 ed as sales between unrelated parties.”.

8 (f) EFFECTIVE DATES.—

9 (1) IN GENERAL.—Except as otherwise pro-
10 vided in this subsection, the amendments made by
11 this section shall apply to electricity produced and
12 sold—

13 (A) with respect to facilities described in
14 paragraphs (1) and (2)(A)(i) of section 45(d),
15 as amended by this section, after December 31,
16 2003, in taxable years ending after such date,
17 and

18 (B) with respect to all other facilities de-
19 scribed in section 45(d), as amended by this
20 section, after September 30, 2004, in taxable
21 years ending after such date.

22 (2) CERTAIN BIOMASS FACILITIES.—With re-
23 spect to any facility described in section
24 45(d)(3)(A)(ii) of the Internal Revenue Code of
25 1986, as added by subsection (b)(1), which is placed

1 in service before the date of the enactment of this
2 Act, the amendments made by this section shall
3 apply to electricity produced and sold after Sep-
4 tember 30, 2004, in taxable years ending after such
5 date.

6 (3) CREDIT RATE FOR NEW FACILITIES.—The
7 amendments made by subsection (c) shall apply to
8 electricity produced and sold after September 30,
9 2004, in taxable years ending after such date.

10 (4) NONAPPLICATION OF AMENDMENTS TO
11 PREEFFECTIVE DATE POULTRY WASTE FACILI-
12 TIES.—The amendments made by this section shall
13 not apply with respect to any poultry waste facility
14 (within the meaning of section 45(c)(3)(C), as in ef-
15 fect on September 30, 2004) placed in service on or
16 before such date.

17 **Subtitle B—Alternative Motor**
18 **Vehicles and Fuels Incentives**

19 **SEC. 1311. ALTERNATIVE MOTOR VEHICLE CREDIT.**

20 (a) IN GENERAL.—Subpart B of part IV of sub-
21 chapter A of chapter 1 (relating to foreign tax credit, etc.)
22 is amended by adding at the end the following new section:

1 **“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—There shall be al-
3 lowed as a credit against the tax imposed by this chapter
4 for the taxable year an amount equal to the sum of—

5 “(1) the new qualified fuel cell motor vehicle
6 credit determined under subsection (b),

7 “(2) the new qualified hybrid motor vehicle
8 credit determined under subsection (c), and

9 “(3) the new qualified alternative fuel motor ve-
10 hicle credit determined under subsection (d).

11 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE
12 CREDIT.—

13 “(1) IN GENERAL.—For purposes of subsection
14 (a), the new qualified fuel cell motor vehicle credit
15 determined under this subsection with respect to a
16 new qualified fuel cell motor vehicle placed in service
17 by the taxpayer during the taxable year is—

18 “(A) \$4,000, if such vehicle has a gross ve-
19 hicle weight rating of not more than 8,500
20 pounds,

21 “(B) \$10,000, if such vehicle has a gross
22 vehicle weight rating of more than 8,500
23 pounds but not more than 14,000 pounds,

24 “(C) \$20,000, if such vehicle has a gross
25 vehicle weight rating of more than 14,000
26 pounds but not more than 26,000 pounds, and

1 “(D) \$40,000, if such vehicle has a gross
2 vehicle weight rating of more than 26,000
3 pounds.

4 “(2) INCREASE FOR FUEL EFFICIENCY.—

5 “(A) IN GENERAL.—The amount deter-
6 mined under paragraph (1)(A) with respect to
7 a new qualified fuel cell motor vehicle which is
8 a passenger automobile or light truck shall be
9 increased by—

10 “(i) \$1,000, if such vehicle achieves at
11 least 150 percent but less than 175 per-
12 cent of the 2002 model year city fuel econ-
13 omy,

14 “(ii) \$1,500, if such vehicle achieves
15 at least 175 percent but less than 200 per-
16 cent of the 2002 model year city fuel econ-
17 omy,

18 “(iii) \$2,000, if such vehicle achieves
19 at least 200 percent but less than 225 per-
20 cent of the 2002 model year city fuel econ-
21 omy,

22 “(iv) \$2,500, if such vehicle achieves
23 at least 225 percent but less than 250 per-
24 cent of the 2002 model year city fuel econ-
25 omy,

1 “(v) \$3,000, if such vehicle achieves
 2 at least 250 percent but less than 275 per-
 3 cent of the 2002 model year city fuel econ-
 4 omy,

5 “(vi) \$3,500, if such vehicle achieves
 6 at least 275 percent but less than 300 per-
 7 cent of the 2002 model year city fuel econ-
 8 omy, and

9 “(vii) \$4,000, if such vehicle achieves
 10 at least 300 percent of the 2002 model
 11 year city fuel economy.

12 “(B) 2002 MODEL YEAR CITY FUEL ECON-
 13 OMY.—For purposes of subparagraph (A), the
 14 2002 model year city fuel economy with respect
 15 to a vehicle shall be determined in accordance
 16 with the following tables:

17 “(i) In the case of a passenger auto-
 18 mobile:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

1 “(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

2 “(C) VEHICLE INERTIA WEIGHT CLASS.—

3 For purposes of subparagraph (B), the term
 4 ‘vehicle inertia weight class’ has the same
 5 meaning as when defined in regulations pre-
 6 scribed by the Administrator of the Environ-
 7 mental Protection Agency for purposes of the
 8 administration of title II of the Clean Air Act
 9 (42 U.S.C. 7521 et seq.).

10 “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-
 11 CLE.—For purposes of this subsection, the term
 12 ‘new qualified fuel cell motor vehicle’ means a motor
 13 vehicle—

14 “(A) which is propelled by power derived
 15 from 1 or more cells which convert chemical en-
 16 ergy directly into electricity by combining oxy-
 17 gen with hydrogen fuel which is stored on board

1 the vehicle in any form and may or may not re-
2 quire reformation prior to use,

3 “(B) which, in the case of a passenger
4 automobile or light truck—

5 “(i) for 2002 and later model vehicles,
6 has received a certificate of conformity
7 under the Clean Air Act and meets or ex-
8 ceeds the equivalent qualifying California
9 low emission vehicle standard under sec-
10 tion 243(e)(2) of the Clean Air Act for
11 that make and model year, and

12 “(ii) for 2004 and later model vehi-
13 cles, has received a certificate that such ve-
14 hicle meets or exceeds the Bin 5 Tier II
15 emission level established in regulations
16 prescribed by the Administrator of the En-
17 vironmental Protection Agency under sec-
18 tion 202(i) of the Clean Air Act for that
19 make and model year vehicle,

20 “(C) the original use of which commences
21 with the taxpayer,

22 “(D) which is acquired for use or lease by
23 the taxpayer and not for resale, and

24 “(E) which is made by a manufacturer.

1 “(c) NEW QUALIFIED HYBRID MOTOR VEHICLE
2 CREDIT.—

3 “(1) IN GENERAL.—For purposes of subsection
4 (a), the new qualified hybrid motor vehicle credit de-
5 termined under this subsection with respect to a new
6 qualified hybrid motor vehicle placed in service by
7 the taxpayer during the taxable year is the credit
8 amount determined under paragraph (2).

9 “(2) CREDIT AMOUNT.—

10 “(A) IN GENERAL.—The credit amount de-
11 termined under this paragraph shall be deter-
12 mined in accordance with the following tables:

13 “(i) In the case of a new qualified hy-
14 brid motor vehicle which is a passenger
15 automobile, medium duty passenger vehi-
16 cle, or light truck and which provides the
17 following percentage of the maximum
18 available power:

“If percentage of the maximum available power is:	The credit amount is:
At least 4 percent but less than 10 percent	\$250
At least 10 percent but less than 20 percent	\$500
At least 20 percent but less than 30 percent	\$750
At least 30 percent	\$1,000.

19 “(ii) In the case of a new qualified hy-
20 brid motor vehicle which is a heavy duty
21 hybrid motor vehicle and which provides

1 the following percentage of the maximum
2 available power:

3 “(I) If such vehicle has a gross
4 vehicle weight rating of not more than
5 14,000 pounds:

“If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	\$1,000
At least 30 percent but less than 40 percent	\$1,750
At least 40 percent but less than 50 percent	\$2,000
At least 50 percent but less than 60 percent	\$2,250
At least 60 percent	\$2,500.

6 “(II) If such vehicle has a gross
7 vehicle weight rating of more than
8 14,000 but not more than 26,000
9 pounds:

“If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	\$4,000
At least 30 percent but less than 40 percent	\$4,500
At least 40 percent but less than 50 percent	\$5,000
At least 50 percent but less than 60 percent	\$5,500
At least 60 percent	\$6,000.

10 “(III) If such vehicle has a gross
11 vehicle weight rating of more than
12 26,000 pounds:

“If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	\$6,000
At least 30 percent but less than 40 percent	\$7,000
At least 40 percent but less than 50 percent	\$8,000
At least 50 percent but less than 60 percent	\$9,000
At least 60 percent	\$10,000.

13 “(B) INCREASE FOR FUEL EFFICIENCY.—

14 “(i) AMOUNT.—The amount deter-
15 mined under subparagraph (A)(i) with re-

1 spect to a new qualified hybrid motor vehi-
2 cle which is a passenger automobile or
3 light truck shall be increased by—

4 “(I) \$500, if such vehicle
5 achieves at least 125 percent but less
6 than 150 percent of the 2002 model
7 year city fuel economy,

8 “(II) \$1,000, if such vehicle
9 achieves at least 150 percent but less
10 than 175 percent of the 2002 model
11 year city fuel economy,

12 “(III) \$1,500, if such vehicle
13 achieves at least 175 percent but less
14 than 200 percent of the 2002 model
15 year city fuel economy,

16 “(IV) \$2,000, if such vehicle
17 achieves at least 200 percent but less
18 than 225 percent of the 2002 model
19 year city fuel economy,

20 “(V) \$2,500, if such vehicle
21 achieves at least 225 percent but less
22 than 250 percent of the 2002 model
23 year city fuel economy, and

1 “(VI) \$3,000, if such vehicle
2 achieves at least 250 percent of the
3 2002 model year city fuel economy.

4 “(ii) 2002 MODEL YEAR CITY FUEL
5 ECONOMY.—For purposes of clause (i), the
6 2002 model year city fuel economy with re-
7 spect to a vehicle shall be determined on a
8 gasoline gallon equivalent basis as deter-
9 mined by the Administrator of the Envi-
10 ronmental Protection Agency using the ta-
11 bles provided in subsection (b)(2)(B) with
12 respect to such vehicle.

13 “(C) INCREASE FOR ACCELERATED EMIS-
14 SIONS PERFORMANCE.—The amount deter-
15 mined under subparagraph (A)(ii) with respect
16 to an applicable heavy duty hybrid motor vehi-
17 cle shall be increased by the increased credit
18 amount determined in accordance with the fol-
19 lowing tables:

20 “(i) In the case of a vehicle which has
21 a gross vehicle weight rating of not more
22 than 14,000 pounds:

“If the model year is:	The increased credit amount is:
2003	\$3,000
2004	\$2,500
2005	\$2,000
2006	\$1,500.

1 “(ii) In the case of a vehicle which
2 has a gross vehicle weight rating of more
3 than 14,000 pounds but not more than
4 26,000 pounds:

“If the model year is:	The increased credit amount is:
2003	\$7,750
2004	\$6,500
2005	\$5,250
2006	\$4,000.

5 “(iii) In the case of a vehicle which
6 has a gross vehicle weight rating of more
7 than 26,000 pounds:

“If the model year is:	The increased credit amount is:
2003	\$12,000
2004	\$10,000
2005	\$8,000
2006	\$6,000.

8 “(D) DEFINITIONS RELATING TO CREDIT
9 AMOUNT.—

10 “(i) APPLICABLE HEAVY DUTY HY-
11 BRID MOTOR VEHICLE.—For purposes of
12 subparagraph (C), the term ‘applicable
13 heavy duty hybrid motor vehicle’ means a
14 heavy duty hybrid motor vehicle which is
15 powered by an internal combustion or heat
16 engine which is certified as meeting the
17 emission standards set in the regulations
18 prescribed by the Administrator of the En-
19 vironmental Protection Agency for 2007
20 and later model year diesel heavy duty en-

1 gines, or for 2008 and later model year
2 otto-cycle heavy duty engines, as applicable.

3 “(ii) MAXIMUM AVAILABLE POWER.—

4 “(I) PASSENGER AUTOMOBILE,
5 MEDIUM DUTY PASSENGER VEHICLE,
6 OR LIGHT TRUCK.—For purposes of
7 subparagraph (A)(i), the term ‘max-
8 imum available power’ means the
9 maximum power available from the re-
10 chargeable energy storage system,
11 during a standard 10 second pulse
12 power or equivalent test, divided by
13 such maximum power and the SAE
14 net power of the heat engine.

15 “(II) HEAVY DUTY HYBRID
16 MOTOR VEHICLE.—For purposes of
17 subparagraph (A)(ii), the term ‘max-
18 imum available power’ means the
19 maximum power available from the re-
20 chargeable energy storage system,
21 during a standard 10 second pulse
22 power or equivalent test, divided by
23 the vehicle’s total traction power. The
24 term ‘total traction power’ means the
25 sum of the peak power from the re-

1 chargeable energy storage system and
2 the heat engine peak power of the ve-
3 hicle, except that if such storage sys-
4 tem is the sole means by which the ve-
5 hicle can be driven, the total traction
6 power is the peak power of such stor-
7 age system.

8 “(3) NEW QUALIFIED HYBRID MOTOR VEHI-
9 CLE.—For purposes of this subsection—

10 “(A) IN GENERAL.—The term ‘new quali-
11 fied hybrid motor vehicle’ means a motor vehi-
12 cle—

13 “(i) which draws propulsion energy
14 from onboard sources of stored energy
15 which are both—

16 “(I) an internal combustion or
17 heat engine using consumable fuel,
18 and

19 “(II) a rechargeable energy stor-
20 age system,

21 “(ii) which, in the case of a passenger
22 automobile, medium duty passenger vehi-
23 cle, or light truck—

24 “(I) for 2002 and later model ve-
25 hicles, has received a certificate of

1 conformity under the Clean Air Act
2 and meets or exceeds the equivalent
3 qualifying California low emission ve-
4 hicle standard under section 243(e)(2)
5 of the Clean Air Act for that make
6 and model year, and

7 “(II) for 2004 and later model
8 vehicles, has received a certificate that
9 such vehicle meets or exceeds the Bin
10 5 Tier II emission level established in
11 regulations prescribed by the Adminis-
12 trator of the Environmental Protec-
13 tion Agency under section 202(i) of
14 the Clean Air Act for that make and
15 model year vehicle,

16 “(iii) which, in the case of a heavy
17 duty hybrid motor vehicle, has an internal
18 combustion or heat engine which has re-
19 ceived a certificate of conformity under the
20 Clean Air Act as meeting the emission
21 standards set in the regulations prescribed
22 by the Administrator of the Environmental
23 Protection Agency for 2004 through 2007
24 model year diesel heavy duty engines or
25 ottocycle heavy duty engines, as applicable,

1 “(iv) the original use of which com-
2 mences with the taxpayer,

3 “(v) which is acquired for use or lease
4 by the taxpayer and not for resale, and

5 “(vi) which is made by a manufac-
6 turer.

7 “(B) CONSUMABLE FUEL.—For purposes
8 of subparagraph (A)(i)(I), the term ‘consumable
9 fuel’ means any solid, liquid, or gaseous matter
10 which releases energy when consumed by an
11 auxiliary power unit.

12 “(4) HEAVY DUTY HYBRID MOTOR VEHICLE.—
13 For purposes of this subsection, the term ‘heavy
14 duty hybrid motor vehicle’ means a new qualified hy-
15 brid motor vehicle which has a gross vehicle weight
16 rating of more than 8,500 pounds. Such term does
17 not include a medium duty passenger vehicle.

18 “(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR
19 VEHICLE CREDIT.—

20 “(1) ALLOWANCE OF CREDIT.—Except as pro-
21 vided in paragraph (5), the new qualified alternative
22 fuel motor vehicle credit determined under this sub-
23 section is an amount equal to the applicable percent-
24 age of the incremental cost of any new qualified al-

1 ternative fuel motor vehicle placed in service by the
2 taxpayer during the taxable year.

3 “(2) APPLICABLE PERCENTAGE.—For purposes
4 of paragraph (1), the applicable percentage with re-
5 spect to any new qualified alternative fuel motor ve-
6 hicle is—

7 “(A) 40 percent, plus

8 “(B) 30 percent, if such vehicle—

9 “(i) has received a certificate of con-
10 formity under the Clean Air Act and meets
11 or exceeds the most stringent standard
12 available for certification under the Clean
13 Air Act for that make and model year vehi-
14 cle (other than a zero emission standard),
15 or

16 “(ii) has received an order certifying
17 the vehicle as meeting the same require-
18 ments as vehicles which may be sold or
19 leased in California and meets or exceeds
20 the most stringent standard available for
21 certification under the State laws of Cali-
22 fornia (enacted in accordance with a waiv-
23 er granted under section 209(b) of the
24 Clean Air Act) for that make and model

1 year vehicle (other than a zero emission
2 standard).

3 For purposes of the preceding sentence, in the case
4 of any new qualified alternative fuel motor vehicle
5 which weighs more than 14,000 pounds gross vehicle
6 weight rating, the most stringent standard available
7 shall be such standard available for certification on
8 the date of the enactment of the Energy Tax Incen-
9 tives Act.

10 “(3) INCREMENTAL COST.—For purposes of
11 this subsection, the incremental cost of any new
12 qualified alternative fuel motor vehicle is equal to
13 the amount of the excess of the manufacturer’s sug-
14 gested retail price for such vehicle over such price
15 for a gasoline or diesel fuel motor vehicle of the
16 same model, to the extent such amount does not ex-
17 ceed—

18 “(A) \$5,000, if such vehicle has a gross ve-
19 hicle weight rating of not more than 8,500
20 pounds,

21 “(B) \$10,000, if such vehicle has a gross
22 vehicle weight rating of more than 8,500
23 pounds but not more than 14,000 pounds,

1 “(C) \$25,000, if such vehicle has a gross
2 vehicle weight rating of more than 14,000
3 pounds but not more than 26,000 pounds, and

4 “(D) \$40,000, if such vehicle has a gross
5 vehicle weight rating of more than 26,000
6 pounds.

7 “(4) NEW QUALIFIED ALTERNATIVE FUEL
8 MOTOR VEHICLE.—For purposes of this sub-
9 section—

10 “(A) IN GENERAL.—The term ‘new quali-
11 fied alternative fuel motor vehicle’ means any
12 motor vehicle—

13 “(i) which is only capable of operating
14 on an alternative fuel,

15 “(ii) the original use of which com-
16 mences with the taxpayer,

17 “(iii) which is acquired by the tax-
18 payer for use or lease, but not for resale,
19 and

20 “(iv) which is made by a manufac-
21 turer.

22 “(B) ALTERNATIVE FUEL.—The term ‘al-
23 ternative fuel’ means compressed natural gas,
24 liquefied natural gas, liquefied petroleum gas,

1 hydrogen, and any liquid at least 85 percent of
2 the volume of which consists of methanol.

3 “(5) CREDIT FOR MIXED-FUEL VEHICLES.—

4 “(A) IN GENERAL.—In the case of a
5 mixed-fuel vehicle placed in service by the tax-
6 payer during the taxable year, the credit deter-
7 mined under this subsection is an amount equal
8 to—

9 “(i) in the case of a 75/25 mixed-fuel
10 vehicle, 70 percent of the credit which
11 would have been allowed under this sub-
12 section if such vehicle was a qualified alter-
13 native fuel motor vehicle, and

14 “(ii) in the case of a 90/10 mixed-fuel
15 vehicle, 90 percent of the credit which
16 would have been allowed under this sub-
17 section if such vehicle was a qualified alter-
18 native fuel motor vehicle.

19 “(B) MIXED-FUEL VEHICLE.—For pur-
20 poses of this subsection, the term ‘mixed-fuel
21 vehicle’ means any motor vehicle described in
22 subparagraph (C) or (D) of paragraph (3),
23 which—

24 “(i) is certified by the manufacturer
25 as being able to perform efficiently in nor-

1 mal operation on a combination of an al-
2 ternative fuel and a petroleum-based fuel,

3 “(ii) either—

4 “(I) has received a certificate of
5 conformity under the Clean Air Act,
6 or

7 “(II) has received an order certi-
8 fying the vehicle as meeting the same
9 requirements as vehicles which may be
10 sold or leased in California and meets
11 or exceeds the low emission vehicle
12 standard under section 88.105–94 of
13 title 40, Code of Federal Regulations,
14 for that make and model year vehicle,

15 “(iii) the original use of which com-
16 mences with the taxpayer,

17 “(iv) which is acquired by the tax-
18 payer for use or lease, but not for resale,
19 and

20 “(v) which is made by a manufac-
21 turer.

22 “(C) 75/25 MIXED-FUEL VEHICLE.—For
23 purposes of this subsection, the term ‘75/25
24 mixed-fuel vehicle’ means a mixed-fuel vehicle
25 which operates using at least 75 percent alter-

1 native fuel and not more than 25 percent petro-
2 leum-based fuel.

3 “(D) 90/10 MIXED-FUEL VEHICLE.—For
4 purposes of this subsection, the term ‘90/10
5 mixed-fuel vehicle’ means a mixed-fuel vehicle
6 which operates using at least 90 percent alter-
7 native fuel and not more than 10 percent petro-
8 leum-based fuel.

9 “(e) APPLICATION WITH OTHER CREDITS.—The
10 credit allowed under subsection (a) for any taxable year
11 shall not exceed the excess (if any) of—

12 “(1) the regular tax for the taxable year re-
13 duced by the sum of the credits allowable under sub-
14 part A and sections 27, 29, and 30, over

15 “(2) the tentative minimum tax for the taxable
16 year.

17 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—
18 For purposes of this section—

19 “(1) MOTOR VEHICLE.—The term ‘motor vehi-
20 cle’ has the meaning given such term by section
21 30(c)(2).

22 “(2) CITY FUEL ECONOMY.—The city fuel econ-
23 omy with respect to any vehicle shall be measured in
24 a manner which is substantially similar to the man-
25 ner city fuel economy is measured in accordance

1 with procedures under part 600 of subchapter Q of
2 chapter I of title 40, Code of Federal Regulations,
3 as in effect on the date of the enactment of this sec-
4 tion.

5 “(3) OTHER TERMS.—The terms ‘automobile’,
6 ‘passenger automobile’, ‘medium duty passenger ve-
7 hicle’, ‘light truck’, and ‘manufacturer’ have the
8 meanings given such terms in regulations prescribed
9 by the Administrator of the Environmental Protec-
10 tion Agency for purposes of the administration of
11 title II of the Clean Air Act (42 U.S.C. 7521 et
12 seq.).

13 “(4) REDUCTION IN BASIS.—For purposes of
14 this subtitle, the basis of any property for which a
15 credit is allowable under subsection (a) shall be re-
16 duced by the amount of such credit so allowed (de-
17 termined without regard to subsection (e)).

18 “(5) NO DOUBLE BENEFIT.—The amount of
19 any deduction or other credit allowable under this
20 chapter—

21 “(A) for any incremental cost taken into
22 account in computing the amount of the credit
23 determined under subsection (d) shall be re-
24 duced by the amount of such credit attributable
25 to such cost, and

1 “(B) with respect to a vehicle described
2 under subsection (b) or (c), shall be reduced by
3 the amount of credit allowed under subsection
4 (a) for such vehicle for the taxable year.

5 “(6) PROPERTY USED BY TAX-EXEMPT ENTI-
6 TIES.—In the case of a credit amount which is al-
7 lowable with respect to a motor vehicle which is ac-
8 quired by an entity exempt from tax under this
9 chapter, the person which sells or leases such vehicle
10 to the entity shall be treated as the taxpayer with
11 respect to the vehicle for purposes of this section
12 and the credit shall be allowed to such person, but
13 only if the person clearly discloses to the entity at
14 the time of any sale or lease the specific amount of
15 any credit otherwise allowable to the entity under
16 this section.

17 “(7) RECAPTURE.—The Secretary shall, by reg-
18 ulations, provide for recapturing the benefit of any
19 credit allowable under subsection (a) with respect to
20 any property which ceases to be property eligible for
21 such credit (including recapture in the case of a
22 lease period of less than the economic life of a vehi-
23 cle).

24 “(8) PROPERTY USED OUTSIDE UNITED
25 STATES, ETC., NOT QUALIFIED.—No credit shall be

1 allowed under subsection (a) with respect to any
2 property referred to in section 50(b) or with respect
3 to the portion of the cost of any property taken into
4 account under section 179.

5 “(9) ELECTION TO NOT TAKE CREDIT.—No
6 credit shall be allowed under subsection (a) for any
7 vehicle if the taxpayer elects to not have this section
8 apply to such vehicle.

9 “(10) CARRYBACK AND CARRYFORWARD AL-
10 LOWED.—

11 “(A) IN GENERAL.—If the credit allowable
12 under subsection (a) for a taxable year exceeds
13 the amount of the limitation under subsection
14 (e) for such taxable year (in this paragraph re-
15 ferred to as the ‘unused credit year’), such ex-
16 cess shall be a credit carryback to each of the
17 3 taxable years preceding the unused credit
18 year and a credit carryforward to each of the
19 20 taxable years following the unused credit
20 year, except that no excess may be carried to a
21 taxable year beginning before October 1, 2004.

22 “(B) RULES.—Rules similar to the rules of
23 section 39 shall apply with respect to the credit
24 carryback and credit carryforward under sub-
25 paragraph (A).

1 “(11) INTERACTION WITH AIR QUALITY AND
2 MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-
3 erwise provided in this section, a motor vehicle shall
4 not be considered eligible for a credit under this sec-
5 tion unless such vehicle is in compliance with—

6 “(A) the applicable provisions of the Clean
7 Air Act for the applicable make and model year
8 of the vehicle (or applicable air quality provi-
9 sions of State law in the case of a State which
10 has adopted such provision under a waiver
11 under section 209(b) of the Clean Air Act), and

12 “(B) the motor vehicle safety provisions of
13 sections 30101 through 30169 of title 49,
14 United States Code.

15 “(g) REGULATIONS.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2), the Secretary shall promulgate such regu-
18 lations as necessary to carry out the provisions of
19 this section.

20 “(2) COORDINATION IN PRESCRIPTION OF CER-
21 TAIN REGULATIONS.—The Secretary of the Treas-
22 ury, in coordination with the Secretary of Transpor-
23 tation and the Administrator of the Environmental
24 Protection Agency, shall prescribe such regulations
25 as necessary to determine whether a motor vehicle

1 meets the requirements to be eligible for a credit
2 under this section.

3 “(h) TERMINATION.—This section shall not apply to
4 any property purchased after—

5 “(1) in the case of a new qualified fuel cell
6 motor vehicle (as described in subsection (b)), De-
7 cember 31, 2011, and

8 “(2) in the case of any other property, Decem-
9 ber 31, 2006.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 1016(a) is amended by striking
12 “and” at the end of paragraph (27), by striking the
13 period at the end of paragraph (28) and inserting “,
14 and”, and by adding at the end the following new
15 paragraph:

16 “(29) to the extent provided in section
17 30B(f)(4).”.

18 (2) Section 55(c)(2) is amended by inserting
19 “30B(e),” after “30(b)(3),”.

20 (3) Section 6501(m) is amended by inserting
21 “30B(f)(9),” after “30(d)(4),”.

22 (4) The table of sections for subpart B of part
23 IV of subchapter A of chapter 1 is amended by in-
24 serting after the item relating to section 30A the fol-
25 lowing new item:

“Sec. 30B. Alternative motor vehicle credit.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to property placed in service after
3 September 30, 2004, in taxable years ending after such
4 date.

5 **SEC. 1312. MODIFICATION OF CREDIT FOR QUALIFIED**
6 **ELECTRIC VEHICLES.**

7 (a) AMOUNT OF CREDIT.—

8 (1) IN GENERAL.—Section 30(a) (relating to al-
9 lowance of credit) is amended by striking “10 per-
10 cent of”.

11 (2) LIMITATION OF CREDIT ACCORDING TO
12 TYPE OF VEHICLE.—Section 30(b) (relating to limi-
13 tations) is amended—

14 (A) by striking paragraphs (1) and (2) and
15 inserting the following new paragraph:

16 “(1) LIMITATION ACCORDING TO TYPE OF VE-
17 HICLE.—The amount of the credit allowed under
18 subsection (a) for any vehicle shall not exceed the
19 greatest of the following amounts applicable to such
20 vehicle:

21 “(A) In the case of a vehicle with a gross
22 vehicle weight rating not exceeding 8,500
23 pounds—

24 “(i) except as provided in clause (ii)
25 or (iii), \$3,500,

1 “(ii) \$6,000, if such vehicle is—

2 “(I) capable of a driving range of
3 at least 100 miles on a single charge
4 of the vehicle’s rechargeable batteries
5 as measured pursuant to the urban
6 dynamometer schedules under appen-
7 dix I to part 86 of title 40, Code of
8 Federal Regulations, or

9 “(II) capable of a payload capac-
10 ity of at least 1,000 pounds, and

11 “(iii) if such vehicle is a low-speed ve-
12 hicle which conforms to Standard 500 pre-
13 scribed by the Secretary of Transportation
14 (49 CFR 571.500), as in effect on the date
15 of the enactment of the Energy Tax Incen-
16 tives Act, the lesser of—

17 “(I) 10 percent of the manufac-
18 turer’s suggested retail price of the
19 vehicle, or

20 “(II) \$1,500.

21 “(B) In the case of a vehicle with a gross
22 vehicle weight rating exceeding 8,500 but not
23 exceeding 14,000 pounds, \$10,000.

1 “(C) In the case of a vehicle with a gross
2 vehicle weight rating exceeding 14,000 but not
3 exceeding 26,000 pounds, \$20,000.

4 “(D) In the case of a vehicle with a gross
5 vehicle weight rating exceeding 26,000 pounds,
6 \$40,000.”, and

7 (B) by redesignating paragraph (3) as
8 paragraph (2).

9 (3) CONFORMING AMENDMENTS.—

10 (A) Section 53(d)(1)(B)(iii) is amended by
11 striking “section 30(b)(3)(B)” and inserting
12 “section 30(b)(2)(B)”.

13 (B) Section 55(c)(2), as amended by this
14 Act, is amended by striking “30(b)(3)” and in-
15 serting “30(b)(2)”.

16 (b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

17 (1) IN GENERAL.—Section 30(c)(1)(A) (defin-
18 ing qualified electric vehicle) is amended to read as
19 follows:

20 “(A) which is—

21 “(i) operated solely by use of a bat-
22 tery or battery pack, or

23 “(ii) powered primarily through the
24 use of an electric battery or battery pack
25 using a flywheel or capacitor which stores

1 energy produced by an electric motor
2 through regenerative braking to assist in
3 vehicle operation,”.

4 (2) LEASED VEHICLES.—Section 30(c)(1)(C) is
5 amended by inserting “or lease” after “use”.

6 (3) CONFORMING AMENDMENTS.—

7 (A) Subsections (a), (b)(2), and (c) of sec-
8 tion 30 are each amended by inserting “bat-
9 tery” after “qualified” each place it appears.

10 (B) The heading of subsection (c) of sec-
11 tion 30 is amended by inserting “BATTERY”
12 after “QUALIFIED”.

13 (C) The heading of section 30 is amended
14 by inserting “**BATTERY**” after “**QUALIFIED**”.

15 (D) The item relating to section 30 in the
16 table of sections for subpart B of part IV of
17 subchapter A of chapter 1 is amended by in-
18 serting “battery” after “qualified”.

19 (E) Section 179A(c)(3) is amended by in-
20 serting “battery” before “electric”.

21 (F) The heading of paragraph (3) of sec-
22 tion 179A(c) is amended by inserting “BAT-
23 TERY” before “ELECTRIC”.

1 (c) ADDITIONAL SPECIAL RULES.—Section 30(d)
2 (relating to special rules) is amended by adding at the end
3 the following new paragraphs:

4 “(5) NO DOUBLE BENEFIT.—The amount of
5 any deduction or other credit allowable under this
6 chapter for any cost taken into account in com-
7 puting the amount of the credit determined under
8 subsection (a) shall be reduced by the amount of
9 such credit attributable to such cost.

10 “(6) PROPERTY USED BY TAX-EXEMPT ENTI-
11 TIES.—In the case of a credit amount which is al-
12 lowable with respect to a vehicle which is acquired
13 by an entity exempt from tax under this chapter, the
14 person which sells or leases such vehicle to the entity
15 shall be treated as the taxpayer with respect to the
16 vehicle for purposes of this section and the credit
17 shall be allowed to such person, but only if the per-
18 son clearly discloses to the entity at the time of any
19 sale or lease the specific amount of any credit other-
20 wise allowable to the entity under this section.

21 “(7) CARRYBACK AND CARRYFORWARD AL-
22 LOWED.—

23 “(A) IN GENERAL.—If the credit allowable
24 under subsection (a) for a taxable year exceeds
25 the amount of the limitation under subsection

1 (b)(2) for such taxable year (in this paragraph
2 referred to as the ‘unused credit year’), such
3 excess shall be a credit carryback to each of the
4 3 taxable years preceding the unused credit
5 year and a credit carryforward to each of the
6 20 taxable years following the unused credit
7 year, except that no excess may be carried to a
8 taxable year beginning before October 1, 2004.

9 “(B) RULES.—Rules similar to the rules of
10 section 39 shall apply with respect to the credit
11 carryback and credit carryforward under sub-
12 paragraph (A).”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to property placed in service after
15 September 30, 2004, in taxable years ending after such
16 date.

17 **SEC. 1313. CREDIT FOR INSTALLATION OF ALTERNATIVE**
18 **FUELING STATIONS.**

19 (a) IN GENERAL.—Subpart B of part IV of sub-
20 chapter A of chapter 1 (relating to foreign tax credit, etc.),
21 as amended by this Act, is amended by adding at the end
22 the following new section:

1 **“SEC. 30C. CLEAN-FUEL VEHICLE REFUELING PROPERTY**
2 **CREDIT.**

3 “(a) CREDIT ALLOWED.—There shall be allowed as
4 a credit against the tax imposed by this chapter for the
5 taxable year an amount equal to 50 percent of the amount
6 paid or incurred by the taxpayer during the taxable year
7 for the installation of qualified clean-fuel vehicle refueling
8 property.

9 “(b) LIMITATION.—The credit allowed under sub-
10 section (a)—

11 “(1) with respect to any retail clean-fuel vehicle
12 refueling property, shall not exceed \$30,000, and

13 “(2) with respect to any residential clean-fuel
14 vehicle refueling property, shall not exceed \$1,000.

15 “(c) YEAR CREDIT ALLOWED.—Notwithstanding
16 subsection (a), no credit shall be allowed under subsection
17 (a) with respect to any qualified clean-fuel vehicle refuel-
18 ing property before the taxable year in which the property
19 is placed in service by the taxpayer.

20 “(d) DEFINITIONS.—For purposes of this section—

21 “(1) QUALIFIED CLEAN-FUEL VEHICLE RE-
22 FUELING PROPERTY.—The term ‘qualified clean-fuel
23 vehicle refueling property’ has the same meaning
24 given such term by section 179A(d).

25 “(2) RESIDENTIAL CLEAN-FUEL VEHICLE RE-
26 FUELING PROPERTY.—The term ‘residential clean-

1 fuel vehicle refueling property’ means qualified
2 clean-fuel vehicle refueling property which is in-
3 stalled on property which is used as the principal
4 residence (within the meaning of section 121) of the
5 taxpayer.

6 “(3) RETAIL CLEAN-FUEL VEHICLE REFUELING
7 PROPERTY.—The term ‘retail clean-fuel vehicle re-
8 fueling property’ means qualified clean-fuel vehicle
9 refueling property which is installed on property
10 (other than property described in paragraph (2))
11 used in a trade or business of the taxpayer.

12 “(e) APPLICATION WITH OTHER CREDITS.—The
13 credit allowed under subsection (a) for any taxable year
14 shall not exceed the excess (if any) of—

15 “(1) the regular tax for the taxable year re-
16 duced by the sum of the credits allowable under sub-
17 part A and sections 27, 29, 30, and 30B, over

18 “(2) the tentative minimum tax for the taxable
19 year.

20 “(f) BASIS REDUCTION.—For purposes of this title,
21 the basis of any property shall be reduced by the portion
22 of the cost of such property taken into account under sub-
23 section (a).

24 “(g) NO DOUBLE BENEFIT.—

1 “(1) COORDINATION WITH OTHER DEDUCTIONS
2 AND CREDITS.—Except as provided in paragraph
3 (2), the amount of any deduction or other credit al-
4 lowable under this chapter for any cost taken into
5 account in computing the amount of the credit de-
6 termined under subsection (a) shall be reduced by
7 the amount of such credit attributable to such cost.

8 “(2) NO DEDUCTION ALLOWED UNDER SECTION
9 179A.—No deduction shall be allowed under section
10 179A with respect to any property with respect to
11 which a credit is allowed under subsection (a).

12 “(h) REFUELING PROPERTY INSTALLED FOR TAX-
13 EXEMPT ENTITIES.—In the case of qualified clean-fuel ve-
14 hicle refueling property installed on property owned or
15 used by an entity exempt from tax under this chapter, the
16 person which installs such refueling property for the entity
17 shall be treated as the taxpayer with respect to the refuel-
18 ing property for purposes of this section (and such refuel-
19 ing property shall be treated as retail clean-fuel vehicle
20 refueling property) and the credit shall be allowed to such
21 person, but only if the person clearly discloses to the entity
22 in any installation contract the specific amount of the
23 credit allowable under this section.

24 “(i) CARRYFORWARD ALLOWED.—

1 “(1) IN GENERAL.—If the credit allowable
2 under subsection (a) for a taxable year exceeds the
3 amount of the limitation under subsection (e) for
4 such taxable year, such excess shall be a credit
5 carryforward to each of the 20 taxable years fol-
6 lowing such taxable year.

7 “(2) RULES.—Rules similar to the rules of sec-
8 tion 39 shall apply with respect to the credit
9 carryforward under paragraph (1).

10 “(j) SPECIAL RULES.—Rules similar to the rules of
11 paragraphs (4) and (5) of section 179A(e) shall apply.

12 “(k) REGULATIONS.—The Secretary shall prescribe
13 such regulations as necessary to carry out the provisions
14 of this section.

15 “(l) TERMINATION.—This section shall not apply to
16 any property placed in service—

17 “(1) in the case of property relating to hydro-
18 gen, after December 31, 2011, and

19 “(2) in the case of any other property, after
20 December 31, 2007.”.

21 (b) MODIFICATIONS TO EXTENSION OF DEDUCTION
22 FOR CERTAIN REFUELING PROPERTY.—

23 (1) IN GENERAL.—Subsection (f) of section
24 179A is amended to read as follows:

1 “(f) TERMINATION.—This section shall not apply to
2 any property placed in service—

3 “(1) in the case of property relating to hydro-
4 gen, after December 31, 2011, and

5 “(2) in the case of any other property, after
6 December 31, 2007.”.

7 (2) EXTENSION OF PHASEOUT.—Section
8 179A(b)(1)(B) is amended—

9 (A) by striking “calendar year 2004” in
10 clause (i) and inserting “calendar years 2004
11 and 2005 (calendar years 2004 through 2009
12 in the case of property relating to hydrogen) ”,

13 (B) by striking “2005” in clause (ii) and
14 inserting “2006 (calendar year 2010 in the case
15 of property relating to hydrogen)”, and

16 (C) by striking “2006” in clause (iii) and
17 inserting “2007 (calendar year 2011 in the case
18 of property relating to hydrogen)”.

19 (c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT
20 QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROP-
21 erty.—Section 179A(d) (defining qualified clean-fuel ve-
22 hicle refueling property) is amended by adding at the end
23 the following new flush sentence:

24 “In the case of clean-burning fuel which is hydrogen pro-
25 duced from another clean-burning fuel, paragraph (3)(A)

1 shall be applied by substituting ‘production, storage, or
2 dispensing’ for ‘storage or dispensing’ both places it ap-
3 pears.”.

4 (d) CONFORMING AMENDMENTS.—

5 (1) Section 1016(a), as amended by this Act, is
6 amended by striking “and” at the end of paragraph
7 (28), by striking the period at the end of paragraph
8 (29) and inserting “, and”, and by adding at the
9 end the following new paragraph:

10 “(30) to the extent provided in section
11 30C(f).”.

12 (2) Section 55(c)(2), as amended by this Act, is
13 amended by inserting “30C(e),” after “30B(e),”.

14 (3) The table of sections for subpart B of part
15 IV of subchapter A of chapter 1, as amended by this
16 Act, is amended by inserting after the item relating
17 to section 30B the following new item:

“Sec. 30C. Clean-fuel vehicle refueling property credit.”.

18 (e) EFFECTIVE DATE.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the amendments made by this section
21 shall apply to property placed in service after Sep-
22 tember 30, 2004, in taxable years ending after such
23 date.

24 (2) EXTENSION OF PHASEOUT.—The amend-
25 ments made by subsection (b)(2) shall apply to prop-

1 erty placed in service after December 31, 2003, in
2 taxable years ending after such date.

3 **SEC. 1314. CREDIT FOR RETAIL SALE OF ALTERNATIVE**
4 **FUELS AS MOTOR VEHICLE FUEL.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
6 chapter A of chapter 1 (relating to business related cred-
7 its) is amended by inserting after section 40 the following
8 new section:

9 **“SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE**
10 **FUELS AS MOTOR VEHICLE FUEL.**

11 “(a) GENERAL RULE.—For purposes of section 38,
12 the alternative fuel retail sales credit for any taxable year
13 is the applicable amount for each gasoline gallon equiva-
14 lent of alternative fuel sold at retail by the taxpayer during
15 such year as a fuel to propel any qualified motor vehicle.

16 “(b) DEFINITIONS.—For purposes of this section—

17 “(1) APPLICABLE AMOUNT.—The term ‘applica-
18 ble amount’ means the amount determined in ac-
19 cordance with the following table:

“In the case of any taxable year ending in—	The applicable amount is—
2004	40 cents
2005 and 2006	50 cents.

21 “(2) ALTERNATIVE FUEL.—The term ‘alter-
22 native fuel’ means compressed natural gas, liquefied
natural gas, liquefied petroleum gas, hydrogen, or

1 any liquid at least 85 percent of the volume of which
2 consists of methanol or ethanol.

3 “(3) GASOLINE GALLON EQUIVALENT.—The
4 term ‘gasoline gallon equivalent’ means, with respect
5 to any alternative fuel, the amount (determined by
6 the Secretary) of such fuel having a Btu content of
7 114,000.

8 “(4) QUALIFIED MOTOR VEHICLE.—The term
9 ‘qualified motor vehicle’ means any motor vehicle (as
10 defined in section 30(c)(2)) which meets any appli-
11 cable Federal or State emissions standards with re-
12 spect to each fuel by which such vehicle is designed
13 to be propelled.

14 “(5) SOLD AT RETAIL.—

15 “(A) IN GENERAL.—The term ‘sold at re-
16 tail’ means the sale, for a purpose other than
17 resale, after manufacture, production, or impor-
18 tation.

19 “(B) USE TREATED AS SALE.—If any per-
20 son uses alternative fuel (including any use
21 after importation) as a fuel to propel any new
22 qualified alternative fuel motor vehicle (as de-
23 fined in section 30B(d)(4)) before such fuel is
24 sold at retail, then such use shall be treated in
25 the same manner as if such fuel were sold at

1 retail as a fuel to propel such a vehicle by such
2 person.

3 “(c) NO DOUBLE BENEFIT.—The amount of any de-
4 duction or other credit allowable under this chapter for
5 any fuel taken into account in computing the amount of
6 the credit determined under subsection (a) shall be re-
7 duced by the amount of such credit attributable to such
8 fuel.

9 “(d) PASS-THRU IN THE CASE OF ESTATES AND
10 TRUSTS.—Under regulations prescribed by the Secretary,
11 rules similar to the rules of subsection (d) of section 52
12 shall apply.

13 “(e) TERMINATION.—This section shall not apply to
14 any fuel sold at retail after December 31, 2006.”.

15 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
16 tion 38(b) (relating to current year business credit) is
17 amended by striking “plus” at the end of paragraph (14),
18 by striking the period at the end of paragraph (15) and
19 inserting “, plus”, and by adding at the end the following
20 new paragraph:

21 “(16) the alternative fuel retail sales credit de-
22 termined under section 40A(a).”.

23 (c) TRANSITIONAL RULE.—Section 39(d) (relating to
24 transitional rules) is amended by adding at the end the
25 following new paragraph:

1 “(11) NO CARRYBACK OF SECTION 40A CREDIT
2 BEFORE EFFECTIVE DATE.—No portion of the un-
3 used business credit for any taxable year which is
4 attributable to the alternative fuel retail sales credit
5 determined under section 40A(a) may be carried
6 back to a taxable year ending before October 1,
7 2004.”.

8 (d) CLERICAL AMENDMENT.—The table of sections
9 for subpart D of part IV of subchapter A of chapter 1
10 is amended by inserting after the item relating to section
11 40 the following new item:

 “Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.”.

12 (e) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to fuel sold at retail after Sep-
14 tember 30, 2004, in taxable years ending after such date.

15 **SEC. 1315. SMALL ETHANOL PRODUCER CREDIT.**

16 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO
17 PATRONS OF A COOPERATIVE.—Section 40(g) (relating to
18 definitions and special rules for eligible small ethanol pro-
19 ducer credit) is amended by adding at the end the fol-
20 lowing new paragraph:

21 “(6) ALLOCATION OF SMALL ETHANOL PRO-
22 DUCER CREDIT TO PATRONS OF COOPERATIVE.—

23 “(A) ELECTION TO ALLOCATE.—

24 “(i) IN GENERAL.—In the case of a
25 cooperative organization described in sec-

1 tion 1381(a), any portion of the credit de-
2 termined under subsection (a)(3) for the
3 taxable year may, at the election of the or-
4 ganization, be apportioned pro rata among
5 patrons of the organization on the basis of
6 the quantity or value of business done with
7 or for such patrons for the taxable year.

8 “(ii) FORM AND EFFECT OF ELEC-
9 TION.—An election under clause (i) for any
10 taxable year shall be made on a timely
11 filed return for such year. Such election,
12 once made, shall be irrevocable for such
13 taxable year.

14 “(B) TREATMENT OF ORGANIZATIONS AND
15 PATRONS.—The amount of the credit appor-
16 tioned to patrons under subparagraph (A)—

17 “(i) shall not be included in the
18 amount determined under subsection (a)
19 with respect to the organization for the
20 taxable year, and

21 “(ii) shall be included in the amount
22 determined under subsection (a) for the
23 taxable year of each patron for which the
24 patronage dividends for the taxable year

1 described in subparagraph (A) are included
2 in gross income.

3 “(C) SPECIAL RULES FOR DECREASE IN
4 CREDITS FOR TAXABLE YEAR.—If the amount
5 of the credit of a cooperative organization de-
6 termined under subsection (a)(3) for a taxable
7 year is less than the amount of such credit
8 shown on the return of the cooperative organi-
9 zation for such year, an amount equal to the
10 excess of—

11 “(i) such reduction, over

12 “(ii) the amount not apportioned to
13 such patrons under subparagraph (A) for
14 the taxable year,

15 shall be treated as an increase in tax imposed
16 by this chapter on the organization. Such in-
17 crease shall not be treated as tax imposed by
18 this chapter for purposes of determining the
19 amount of any credit under this chapter or for
20 purposes of section 55.”.

21 (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER
22 CREDIT.—

23 (1) DEFINITION OF SMALL ETHANOL PRO-
24 DUCER.—Section 40(g) (relating to definitions and
25 special rules for eligible small ethanol producer cred-

1 it) is amended by striking “30,000,000” each place
2 it appears and inserting “60,000,000”.

3 (2) SMALL ETHANOL PRODUCER CREDIT NOT A
4 PASSIVE ACTIVITY CREDIT.—Clause (i) of section
5 469(d)(2)(A) is amended by striking “subpart D”
6 and inserting “subpart D, other than section
7 40(a)(3),”.

8 (3) ALLOWING CREDIT AGAINST ENTIRE REG-
9 ULAR TAX AND MINIMUM TAX.—

10 (A) IN GENERAL.—Subsection (c) of sec-
11 tion 38 (relating to limitation based on amount
12 of tax) is amended by redesignating paragraph
13 (4) as paragraph (5) and by inserting after
14 paragraph (3) the following new paragraph:

15 “(4) SPECIAL RULES FOR SMALL ETHANOL
16 PRODUCER CREDIT.—

17 “(A) IN GENERAL.—In the case of the
18 small ethanol producer credit—

19 “(i) this section and section 39 shall
20 be applied separately with respect to the
21 credit, and

22 “(ii) in applying paragraph (1) to the
23 credit—

1 “(I) the amounts in subpara-
2 graphs (A) and (B) thereof shall be
3 treated as being zero, and

4 “(II) the limitation under para-
5 graph (1) (as modified by subclause
6 (I)) shall be reduced by the credit al-
7 lowed under subsection (a) for the
8 taxable year (other than the small
9 ethanol producer credit).

10 “(B) SMALL ETHANOL PRODUCER CRED-
11 IT.—For purposes of this subsection, the term
12 ‘small ethanol producer credit’ means the credit
13 allowable under subsection (a) by reason of sec-
14 tion 40(a)(3).”.

15 (B) CONFORMING AMENDMENTS.—Sub-
16 clause (II) of section 38(c)(2)(A)(ii) and sub-
17 clause (II) of section 38(c)(3)(A)(ii) are each
18 amended by inserting “or the small ethanol pro-
19 ducer credit” after “employee credit”.

20 (4) SMALL ETHANOL PRODUCER CREDIT NOT
21 ADDED BACK TO INCOME UNDER SECTION 87.—Sec-
22 tion 87 (relating to income inclusion of alcohol fuel
23 credit) is amended to read as follows:

1 **“SEC. 87. ALCOHOL FUEL CREDIT.**

2 “Gross income includes an amount equal to the sum
3 of—

4 “(1) the amount of the alcohol mixture credit
5 determined with respect to the taxpayer for the tax-
6 able year under section 40(a)(1), and

7 “(2) the alcohol credit determined with respect
8 to the taxpayer for the taxable year under section
9 40(a)(2).”.

10 (c) **CONFORMING AMENDMENT.**—Section 1388 (re-
11 lating to definitions and special rules for cooperative orga-
12 nizations) is amended by adding at the end the following
13 new subsection:

14 “(k) **CROSS REFERENCE.**—For provisions relating to
15 the apportionment of the alcohol fuels credit between coop-
16 erative organizations and their patrons, see section
17 40(g)(6).”.

18 (d) **EFFECTIVE DATE.**—The amendments made by
19 this section shall apply to taxable years beginning after
20 September 30, 2004.

21 **SEC. 1316. INCENTIVES FOR BIODIESEL.**

22 (a) **IN GENERAL.**—Subpart D of part IV of sub-
23 chapter A of chapter 1 (relating to business related cred-
24 its), as amended by this Act, is amended by inserting after
25 section 40A the following new section:

1 **“SEC. 40B. BIODIESEL USED AS FUEL.**

2 “(a) GENERAL RULE.—For purposes of section 38,
3 the biodiesel fuels credit determined under this section for
4 the taxable year is an amount equal to the sum of—

5 “(1) the biodiesel mixture credit, plus

6 “(2) the biodiesel credit.

7 “(b) DEFINITION OF BIODIESEL MIXTURE CREDIT
8 AND BIODIESEL CREDIT.—For purposes of this section—

9 “(1) BIODIESEL MIXTURE CREDIT.—

10 “(A) IN GENERAL.—The biodiesel mixture
11 credit of any taxpayer for any taxable year is
12 50 cents for each gallon of biodiesel used by the
13 taxpayer in the production of a qualified bio-
14 diesel mixture.

15 “(B) QUALIFIED BIODIESEL MIXTURE.—
16 The term ‘qualified biodiesel mixture’ means a
17 mixture of biodiesel and diesel fuel which—

18 “(i) is sold by the taxpayer producing
19 such mixture to any person for use as a
20 fuel, or

21 “(ii) is used as a fuel by the taxpayer
22 producing such mixture.

23 “(C) SALE OR USE MUST BE IN TRADE OR
24 BUSINESS, ETC.—Biodiesel used in the produc-
25 tion of a qualified biodiesel mixture shall be
26 taken into account—

1 “(i) only if the sale or use described
2 in subparagraph (B) is in a trade or busi-
3 ness of the taxpayer, and

4 “(ii) for the taxable year in which
5 such sale or use occurs.

6 “(D) CASUAL OFF-FARM PRODUCTION NOT
7 ELIGIBLE.—No credit shall be allowed under
8 this section with respect to any casual off-farm
9 production of a qualified biodiesel mixture.

10 “(2) BIODIESEL CREDIT.—

11 “(A) IN GENERAL.—The biodiesel credit of
12 any taxpayer for any taxable year is 50 cents
13 for each gallon of biodiesel which is not in a
14 mixture with diesel fuel and which during the
15 taxable year—

16 “(i) is used by the taxpayer as a fuel
17 in a trade or business, or

18 “(ii) is sold by the taxpayer at retail
19 to a person and placed in the fuel tank of
20 such person’s vehicle.

21 “(B) USER CREDIT NOT TO APPLY TO BIO-
22 DIESEL SOLD AT RETAIL.—No credit shall be
23 allowed under subparagraph (A)(i) with respect
24 to any biodiesel which was sold in a retail sale
25 described in subparagraph (A)(ii).

1 “(3) CREDIT FOR AGRI-BIODIESEL.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), in the case of any biodiesel which is
4 agri-biodiesel, paragraphs (1)(A) and (2)(A)
5 shall be applied by substituting ‘\$1.00’ for ‘50
6 cents’.

7 “(B) CERTIFICATION FOR AGRI-BIO-
8 DIESEL.—Subparagraph (A) shall apply only if
9 the taxpayer described in paragraph (1)(A) or
10 (2)(A) obtains a certification (in such form and
11 manner as prescribed by the Secretary) from
12 the producer of the agri-biodiesel which identi-
13 fies the product produced.

14 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
15 TAX.—The amount of the credit determined under this
16 section with respect to any agri-biodiesel shall, under regu-
17 lations prescribed by the Secretary, be properly reduced
18 to take into account any benefit provided with respect to
19 such agri-biodiesel solely by reason of the application of
20 section 6426 or 6427(e).

21 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
22 poses of this section—

23 “(1) BIODIESEL.—The term ‘biodiesel’ means
24 the monoalkyl esters of long chain fatty acids de-

1 rived from plant or animal matter for use in diesel-
2 powered engines which meet—

3 “(A) the registration requirements for
4 fuels and fuel additives established by the Envi-
5 ronmental Protection Agency under section 211
6 of the Clean Air Act (42 U.S.C. 7545), and

7 “(B) the requirements of the American So-
8 ciety of Testing and Materials D6751.

9 “(2) AGRI-BIODIESEL.—The term ‘agri-bio-
10 diesel’ means biodiesel derived solely from virgin oils.
11 Such term shall include esters derived from vege-
12 table oils from corn, soybeans, sunflower seeds, cot-
13 tonseeds, canola, crambe, rapeseeds, safflowers,
14 flaxseeds, rice bran, and mustard seeds, and from
15 animal fats.

16 “(3) BIODIESEL MIXTURE NOT USED AS A
17 FUEL, ETC.—

18 “(A) IMPOSITION OF TAX.—If—

19 “(i) any credit was determined under
20 this section with respect to biodiesel used
21 in the production of any qualified biodiesel
22 mixture, and

23 “(ii) any person—

24 “(I) separates such biodiesel
25 from the mixture, or

1 “(II) without separation, uses the
2 mixture other than as a fuel,
3 then there is hereby imposed on such per-
4 son a tax equal to the product of the rate
5 applicable under subsection (b)(1)(A) and
6 the number of gallons of the mixture.

7 “(B) APPLICABLE LAWS.—All provisions of
8 law, including penalties, shall, insofar as appli-
9 cable and not inconsistent with this section,
10 apply in respect of any tax imposed under sub-
11 paragraph (A) as if such tax were imposed by
12 section 4081 and not by this chapter.

13 “(4) PASS-THRU IN THE CASE OF ESTATES AND
14 TRUSTS.—Under regulations prescribed by the Sec-
15 retary, rules similar to the rules of subsection (d) of
16 section 52 shall apply.

17 “(e) TERMINATION.—This section shall not apply to
18 any fuel sold after December 31, 2005.”.

19 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
20 NESS CREDIT.—Section 38(b) (relating to current year
21 business credit), as amended by this Act, is amended by
22 striking “plus” at the end of paragraph (15), by striking
23 the period at the end of paragraph (16) and inserting “,
24 plus”, and by adding at the end the following new para-
25 graph:

1 “(17) the biodiesel fuels credit determined
2 under section 40B(a).”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 39(d), as amended by this Act, is
5 amended by adding at the end the following new
6 paragraph:

7 “(12) NO CARRYBACK OF BIODIESEL FUELS
8 CREDIT BEFORE EFFECTIVE DATE.—No portion of
9 the unused business credit for any taxable year
10 which is attributable to the biodiesel fuels credit de-
11 termined under section 40B may be carried back to
12 a taxable year ending before October 1, 2004.”.

13 (2)(A) Section 87, as amended by this Act, is
14 amended—

15 (i) by striking “and” at the end of para-
16 graph (1),

17 (ii) by striking the period at the end of
18 paragraph (2) and inserting “, and”,

19 (iii) by adding at the end the following new
20 paragraph:

21 “(3) the biodiesel fuels credit determined with
22 respect to the taxpayer for the taxable year under
23 section 40B(a).”, and

1 (iv) by striking “**FUEL CREDIT**” in the head-
2 ing and inserting “**AND BIODIESEL FUELS CRED-**
3 **ITS**”.

4 (B) The item relating to section 87 in the table
5 of sections for part II of subchapter B of chapter 1
6 is amended by striking “fuel credit” and inserting
7 “and biodiesel fuels credits”.

8 (3) Section 196(c) is amended by striking
9 “and” at the end of paragraph (9), by striking the
10 period at the end of paragraph (10) and inserting “,
11 and”, and by adding at the end the following new
12 paragraph:

13 “(11) the biodiesel fuels credit determined
14 under section 40B(a).”.

15 (4) The table of sections for subpart D of part
16 IV of subchapter A of chapter 1, as amended by this
17 Act, is amended by adding after the item relating to
18 section 40A the following new item:

“Sec. 40B. Biodiesel used as fuel.”.

19 (d) **EFFECTIVE DATE.**—The amendments made by
20 this section shall apply to fuel sold after September 30,
21 2004, in taxable years ending after such date.

1 **SEC. 1317. ALCOHOL FUEL AND BIODIESEL MIXTURES EX-**
 2 **CISE TAX CREDIT.**

3 (a) IN GENERAL.—Subchapter B of chapter 65 (re-
 4 lating to rules of special application) is amended by insert-
 5 ing after section 6425 the following new section:

6 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
 7 **MIXTURES.**

8 “(a) ALLOWANCE OF CREDITS.—There shall be al-
 9 lowed as a credit against the tax imposed by section 4081
 10 an amount equal to the sum of—

11 “(1) the alcohol fuel mixture credit, plus

12 “(2) the biodiesel mixture credit.

13 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

14 “(1) IN GENERAL.—For purposes of this sec-
 15 tion, the alcohol fuel mixture credit is the applicable
 16 amount for each gallon of alcohol used by the tax-
 17 payer in producing an alcohol fuel mixture.

18 “(2) APPLICABLE AMOUNT.—For purposes of
 19 this subsection—

20 “(A) IN GENERAL.—Except as provided in
 21 subparagraph (B), the applicable amount is 52
 22 cents (51 cents in the case of any sale or use
 23 after 2004).

24 “(B) MIXTURES NOT CONTAINING ETH-
 25 ANOL.—In the case of an alcohol fuel mixture

1 in which none of the alcohol consists of ethanol,
2 the applicable amount is 60 cents.

3 “(3) ALCOHOL FUEL MIXTURE.—For purposes
4 of this subsection, the term ‘alcohol fuel mixture’ is
5 a mixture which—

6 “(A) consists of alcohol and a taxable fuel,
7 and

8 “(B) is sold for use or used as a fuel by
9 the taxpayer producing the mixture.

10 “(4) OTHER DEFINITIONS.—For purposes of
11 this subsection—

12 “(A) ALCOHOL.—The term ‘alcohol’ in-
13 cludes methanol and ethanol but does not in-
14 clude—

15 “(i) alcohol produced from petroleum,
16 natural gas, or coal (including peat), or

17 “(ii) alcohol with a proof of less than
18 190 (determined without regard to any
19 added denaturants).

20 Such term also includes an alcohol gallon equiv-
21 alent of ethyl tertiary butyl ether or other
22 ethers produced from such alcohol.

23 “(B) TAXABLE FUEL.—The term ‘taxable
24 fuel’ has the meaning given such term by sec-
25 tion 4083(a)(1).

1 “(5) TERMINATION.—This subsection shall not
2 apply to any sale or use for any period after Decem-
3 ber 31, 2010.

4 “(c) BIODIESEL MIXTURE CREDIT.—

5 “(1) IN GENERAL.—For purposes of this sec-
6 tion, the biodiesel mixture credit is the product of
7 the applicable amount and the number of gallons of
8 biodiesel used by the taxpayer in producing any
9 qualified biodiesel mixture.

10 “(2) APPLICABLE AMOUNT.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the applicable amount is 50
13 cents.

14 “(B) AMOUNT FOR AGRI-BIODIESEL.—

15 “(i) IN GENERAL.—Subject to clause
16 (ii), in the case of any biodiesel which is
17 agri-biodiesel, the applicable amount is
18 \$1.00.

19 “(ii) CERTIFICATION FOR AGRI-BIO-
20 DIESEL.—Clause (i) shall apply only if the
21 taxpayer described in paragraph (1) ob-
22 tains a certification (in such form and
23 manner as prescribed by the Secretary)
24 from the producer of the agri-biodiesel
25 which identifies the product produced.

1 “(3) DEFINITIONS.—Any term used in this sub-
2 section which is also used in section 40B shall have
3 the meaning given such term by section 40B.

4 “(4) TERMINATION.—This subsection shall not
5 apply to any sale or use for any period after Decem-
6 ber 31, 2005.

7 “(d) MIXTURE NOT USED AS A FUEL, ETC.—

8 “(1) IMPOSITION OF TAX.—If—

9 “(A) any credit was determined under this
10 section with respect to alcohol or biodiesel used
11 in the production of any alcohol fuel mixture
12 or qualified biodiesel mixture, respectively, and

13 “(B) any person—

14 “(i) separates such alcohol or biodiesel
15 from the mixture, or

16 “(ii) without separation, uses the mix-
17 ture other than as a fuel,

18 then there is hereby imposed on such person a
19 tax equal to the product of the applicable
20 amount and the number of gallons of such alco-
21 hol or biodiesel.

22 “(2) APPLICABLE LAWS.—All provisions of law,
23 including penalties, shall, insofar as applicable and
24 not inconsistent with this section, apply in respect of
25 any tax imposed under paragraph (1) as if such tax

1 were imposed by section 4081 and not by this sec-
2 tion.”.

3 (b) REGISTRATION REQUIREMENT.—Section 4101(a)
4 (relating to registration) is amended by inserting “and
5 every person producing biodiesel (as defined in section
6 40B(d)(1)) or alcohol (as defined in section
7 6426(b)(4)(A))” after “4091”.

8 (c) CONFORMING AMENDMENTS.—

9 (1) Section 40(c) is amended by striking “sec-
10 tion 4081(c), or section 4091(c)” and inserting “sec-
11 tion 4091(c), section 6426, section 6427(e), or sec-
12 tion 6427(f)”.

13 (2) Section 40(d)(4)(B) is amended by striking
14 “or 4081(c)”.

15 (3) Section 40(e)(1) is amended—

16 (A) by striking “2007” in subparagraph
17 (A) and inserting “2010”, and

18 (B) by striking “2008” in subparagraph
19 (B) and inserting “2011”.

20 (4) Section 40(h) is amended—

21 (A) by striking “2007” in paragraph (1)
22 and inserting “2010”, and

23 (B) by striking “, 2006, or 2007” in the
24 table contained in paragraph (2) and inserting
25 “through 2010”.

1 (5) Section 4041(b)(2)(B) is amended by strik-
2 ing “a substance other than petroleum or natural
3 gas” and inserting “coal (including peat)”.

4 (6) Paragraph (1) of section 4041(k) is amend-
5 ed to read as follows:

6 “(1) IN GENERAL.—Under regulations pre-
7 scribed by the Secretary, in the case of the sale or
8 use of any liquid at least 10 percent of which con-
9 sists of alcohol (as defined in section
10 6426(b)(4)(A)), the rate of the tax imposed by sub-
11 section (c)(1) shall be the comparable rate under
12 section 4091(c).”.

13 (7) Section 4081 is amended by striking sub-
14 section (c).

15 (8) Paragraph (2) of section 4083(a) is amend-
16 ed to read as follows:

17 “(2) GASOLINE.—The term ‘gasoline’—

18 “(A) includes any gasoline blend, other
19 than qualified methanol or ethanol fuel (as de-
20 fined in section 4041(b)(2)(B)) or a denaturant
21 of alcohol (as defined in section 6426(b)(4)(A)),
22 and

23 “(B) includes, to the extent prescribed in
24 regulations—

25 “(i) any gasoline blend stock, and

1 “(ii) any product commonly used as
2 an additive in gasoline.

3 For purposes of subparagraph (B)(i), the term ‘gas-
4 oline blend stock’ means any petroleum product
5 component of gasoline.”.

6 (9) Section 6427 is amended by inserting after
7 subsection (d) the following new subsection:

8 “(e) ALCOHOL OR BIODIESEL USED TO PRODUCE
9 ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS
10 FUELS.—Except as provided in subsection (k)—

11 “(1) USED TO PRODUCE A MIXTURE.—If any
12 person produces a mixture described in section 6426
13 in such person’s trade or business, the Secretary
14 shall pay (without interest) to such person an
15 amount equal to the alcohol fuel mixture credit or
16 the biodiesel mixture credit with respect to such mix-
17 ture.

18 “(2) USED AS FUEL.—If alcohol (as defined in
19 section 40(d)(1)) or biodiesel (as defined in section
20 40B(d)(1)) or agri-biodiesel (as defined in section
21 40B(d)(2)) which is not in a mixture with a taxable
22 fuel (as defined in section 4083(a)(1))—

23 “(A) is used by any person as a fuel in a
24 trade or business, or

1 “(B) is sold by any person at retail to an-
2 other person and placed in the fuel tank of such
3 person’s vehicle,
4 the Secretary shall pay (without interest) to such
5 person an amount equal to the alcohol credit (as de-
6 termined under section 40(b)(2)) or the biodiesel
7 credit (as determined under section 40B(b)(2)) with
8 respect to such fuel.

9 “(3) COORDINATION WITH OTHER REPAYMENT
10 PROVISIONS.—No amount shall be payable under
11 paragraph (1) with respect to any mixture with re-
12 spect to which an amount is allowed as a credit
13 under section 6426.

14 “(4) TERMINATION.—This subsection shall not
15 apply with respect to—

16 “(A) any alcohol fuel mixture (as defined
17 in section 6426(b)(3)) or alcohol (as so defined)
18 sold or used after December 31, 2010, and

19 “(B) any qualified biodiesel mixture (with-
20 in the meaning of section 6426(c)(1)) or bio-
21 diesel (as so defined) or agri-biodiesel (as so de-
22 fined) sold or used after December 31, 2005.”.

23 (10) Subsection (f) of section 6427 is amended
24 to read as follows:

1 “(f) AVIATION FUEL USED TO PRODUCE CERTAIN
2 ALCOHOL FUELS.—

3 “(1) IN GENERAL.—Except as provided in sub-
4 section (k), if any aviation fuel on which tax was im-
5 posed by section 4091 at the regular tax rate is used
6 by any person in producing a mixture described in
7 section 4091(c)(1)(A) which is sold or used in such
8 person’s trade or business, the Secretary shall pay
9 (without interest) to such person an amount equal to
10 the excess of the regular tax rate over the incentive
11 tax rate with respect to such fuel.

12 “(2) DEFINITIONS.—For purposes of paragraph
13 (1)—

14 “(A) REGULAR TAX RATE.—The term ‘reg-
15 ular tax rate’ means the aggregate rate of tax
16 imposed by section 4091 determined without re-
17 gard to subsection (c) thereof.

18 “(B) INCENTIVE TAX RATE.—The term
19 ‘incentive tax rate’ means the aggregate rate of
20 tax imposed by section 4091 with respect to
21 fuel described in subsection (c)(2) thereof.

22 “(3) COORDINATION WITH OTHER REPAYMENT
23 PROVISIONS.—No amount shall be payable under
24 paragraph (1) with respect to any aviation fuel with

1 respect to which an amount is payable under sub-
2 section (d) or (l).

3 “(4) TERMINATION.—This subsection shall not
4 apply with respect to any mixture sold or used after
5 September 30, 2007.”.

6 (11) Paragraphs (1) and (2) of section 6427(i)
7 are amended by inserting “(f),” after “(d),”.

8 (12) Section 6427(i)(3) is amended—

9 (A) by striking “subsection (f)” both
10 places it appears in subparagraph (A) and in-
11 serting “subsection (e)(1)”,

12 (B) by striking “gasoline, diesel fuel, or
13 kerosene used to produce a qualified alcohol
14 mixture (as defined in section 4081(e)(3))” in
15 subparagraph (A) and inserting “a mixture de-
16 scribed in section 6426”,

17 (C) by striking “subsection (f)(1)” in sub-
18 paragraph (B) and inserting “subsection
19 (e)(1)”,

20 (D) by striking “20 days of the date of the
21 filing of such claim” in subparagraph (B) and
22 inserting “45 days of the date of the filing of
23 such claim (20 days in the case of an electronic
24 claim)”, and

1 (E) by striking “ALCOHOL MIXTURE” in
2 the heading and inserting “ALCOHOL FUEL AND
3 BIODIESEL MIXTURE”.

4 (13) Section 6427(o) is amended—

5 (A) by striking paragraph (1) and insert-
6 ing the following new paragraph:

7 “(1) any tax is imposed by section 4081, and”,

8 (B) by striking “such gasohol” in para-
9 graph (2) and inserting “the alcohol fuel mix-
10 ture (as defined in section 6426(b)(3))”,

11 (C) by striking “gasohol” both places it
12 appears in the matter following paragraph (2)
13 and inserting “alcohol fuel mixture”, and

14 (D) by striking “GASOHOL” in the heading
15 and inserting “ALCOHOL FUEL MIXTURE”.

16 (14) Section 9503(b)(1) is amended by adding
17 at the end the following new flush sentence:

18 “For purposes of this paragraph, taxes received
19 under sections 4041 and 4081 shall be determined
20 without reduction for credits under section 6426.”.

21 (15) Section 9503(b)(4) is amended—

22 (A) by adding “or” at the end of subpara-
23 graph (C),

1 (B) by striking the comma at the end of
2 subparagraph (D)(iii) and inserting a period,
3 and

4 (C) by striking subparagraphs (E) and
5 (F).

6 (16) Section 9503(c)(2)(A)(i)(III) is amended
7 by inserting “(other than subsection (e) thereof)”
8 after “section 6427”.

9 (17) Section 9503(e)(2) is amended by striking
10 subparagraph (B) and by redesignating subpara-
11 graphs (C), (D), and (E) as subparagraphs (B), (C),
12 and (D), respectively.

13 (18) The table of sections for subchapter B of
14 chapter 65 is amended by inserting after the item
15 relating to section 6425 the following new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to fuel sold or used after Sep-
18 tember 30, 2004.

19 (e) FORMAT FOR FILING.—The Secretary of the
20 Treasury shall describe the electronic format for filing
21 claims described in section 6427(i)(3)(B) of the Internal
22 Revenue Code of 1986 (as amended by subsection
23 (b)(12)(D)) not later than September 30, 2004.

1 **SEC. 1318. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-**
2 **FREE SALES ENTERPRISES.**

3 (a) PROHIBITION.—Section 555(b) of the Tariff Act
4 of 1930 (19 U.S.C. 1555(b)) is amended—

5 (1) by redesignating paragraphs (6) through
6 (8) as paragraphs (7) through (9), respectively; and

7 (2) by inserting after paragraph (5) the fol-
8 lowing:

9 “(6) Any gasoline or diesel fuel sold at a duty-
10 free sales enterprise shall be considered to be en-
11 tered for consumption into the customs territory of
12 the United States.”.

13 (b) CONSTRUCTION.—The amendments made by this
14 section shall not be construed to create any inference with
15 respect to the interpretation of any provision of law as
16 such provision was in effect on the day before the date
17 of enactment of this Act.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the date of enactment of
20 this Act.

21 **Subtitle C—Conservation and**
22 **Energy Efficiency Provisions**

23 **SEC. 1321. CREDIT FOR CONSTRUCTION OF NEW ENERGY**
24 **EFFICIENT HOME.**

25 (a) IN GENERAL.—Subpart D of part IV of sub-
26 chapter A of chapter 1 (relating to business related cred-

1 its), as amended by this Act, is amended by adding at
 2 the end the following new section:

3 **“SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.**

4 “(a) IN GENERAL.—For purposes of section 38, in
 5 the case of an eligible contractor, the credit determined
 6 under this section for the taxable year is an amount equal
 7 to the aggregate adjusted bases of all energy efficient
 8 property installed in a qualifying new home during con-
 9 struction of such home.

10 “(b) LIMITATIONS.—

11 “(1) MAXIMUM CREDIT.—

12 “(A) IN GENERAL.—The credit allowed by
 13 this section with respect to a qualifying new
 14 home shall not exceed—

15 “(i) in the case of a 30-percent home,
 16 \$1,000, and

17 “(ii) in the case of a 50-percent home,
 18 \$2,000.

19 “(B) 30- OR 50-PERCENT HOME.—For pur-
 20 poses of subparagraph (A)—

21 “(i) 30-PERCENT HOME.—The term
 22 ‘30-percent home’ means—

23 “(I) a qualifying new home which
 24 is certified to have a projected level of
 25 annual heating and cooling energy

1 consumption, measured in terms of
2 average annual energy cost to the
3 homeowner, which is at least 30 per-
4 cent less than the annual level of
5 heating and cooling energy consump-
6 tion of a qualifying new home con-
7 structed in accordance with the latest
8 standards of chapter 4 of the Inter-
9 national Energy Conservation Code
10 approved by the Department of En-
11 ergy before the construction of such
12 qualifying new home and any applica-
13 ble Federal minimum efficiency stand-
14 ards for equipment, or

15 “(II) in the case of a qualifying
16 new home which is a manufactured
17 home, a home which meets the appli-
18 cable standards required by the Ad-
19 ministrator of the Environmental Pro-
20 tection Agency under the Energy Star
21 Labeled Homes program.

22 “(ii) 50-PERCENT HOME.—The term
23 ‘50-percent home’ means a qualifying new
24 home which would be described in clause

1 (i)(I) if 50 percent were substituted for 30
2 percent.

3 “(C) PRIOR CREDIT AMOUNTS ON SAME
4 HOME TAKEN INTO ACCOUNT.—The amount of
5 the credit otherwise allowable for the taxable
6 year with respect to a qualifying new home
7 under clause (i) or (ii) of subparagraph (A)
8 shall be reduced by the sum of the credits al-
9 lowed under subsection (a) to any taxpayer with
10 respect to the home for all preceding taxable
11 years.

12 “(2) COORDINATION WITH CERTAIN CREDITS.—
13 For purposes of this section—

14 “(A) the basis of any property referred to
15 in subsection (a) shall be reduced by that por-
16 tion of the basis of any property which is attrib-
17 utable to the rehabilitation credit (as deter-
18 mined under section 47(a)) or to the energy
19 credit (as determined under section 48(a)), and

20 “(B) expenditures taken into account
21 under section 25D, 47, or 48(a) shall not be
22 taken into account under this section.

23 “(3) PROVIDER LIMITATION.—Any eligible con-
24 tractor who directly or indirectly provides the guar-
25 antee of energy savings under a guarantee-based

1 method of certification described in subsection
2 (d)(1)(D) shall not be eligible to receive the credit
3 allowed by this section.

4 “(c) DEFINITIONS.—For purposes of this section—

5 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-
6 ble contractor’ means—

7 “(A) the person who constructed the quali-
8 fying new home, or

9 “(B) in the case of a qualifying new home
10 which is a manufactured home, the manufac-
11 tured home producer of such home.

12 If more than 1 person is described in subparagraph
13 (A) or (B) with respect to any qualifying new home,
14 such term means the person designated as such by
15 the owner of such home.

16 “(2) ENERGY EFFICIENT PROPERTY.—The
17 term ‘energy efficient property’ means any energy
18 efficient building envelope component, and any en-
19 ergy efficient heating or cooling equipment or system
20 which can, individually or in combination with other
21 components, meet the requirements of this section.

22 “(3) QUALIFYING NEW HOME.—

23 “(A) IN GENERAL.—The term ‘qualifying
24 new home’ means a dwelling—

25 “(i) located in the United States,

1 “(ii) the construction of which is sub-
2 stantially completed after September 30,
3 2004, and

4 “(iii) the first use of which after con-
5 struction is as a principal residence (within
6 the meaning of section 121).

7 “(B) MANUFACTURED HOME INCLUDED.—
8 The term ‘qualifying new home’ includes a
9 manufactured home conforming to Federal
10 Manufactured Home Construction and Safety
11 Standards (24 CFR 3280).

12 “(4) CONSTRUCTION.—The term ‘construction’
13 includes reconstruction and rehabilitation.

14 “(5) BUILDING ENVELOPE COMPONENT.—The
15 term ‘building envelope component’ means—

16 “(A) any insulation material or system
17 which is specifically and primarily designed to
18 reduce the heat loss or gain of a qualifying new
19 home when installed in or on such home,

20 “(B) exterior windows (including sky-
21 lights), and

22 “(C) exterior doors.

23 “(d) CERTIFICATION.—

24 “(1) METHOD OF CERTIFICATION.—

1 “(A) IN GENERAL.—A certification de-
2 scribed in subsection (b)(1)(B) shall be deter-
3 mined either by a component-based method, a
4 performance-based method, or a guarantee-
5 based method, or, in the case of a qualifying
6 new home which is a manufactured home, by a
7 method prescribed by the Administrator of the
8 Environmental Protection Agency under the
9 Energy Star Labeled Homes program.

10 “(B) COMPONENT-BASED METHOD.—A
11 component-based method is a method which
12 uses the applicable technical energy efficiency
13 specifications or ratings (including product la-
14 beling requirements) for the energy efficient
15 building envelope component or energy efficient
16 heating or cooling equipment. The Secretary
17 shall, in consultation with the Administrator of
18 the Environmental Protection Agency, develop
19 prescriptive component-based packages which
20 are equivalent in energy performance to prop-
21 erties which qualify under subparagraph (C).

22 “(C) PERFORMANCE-BASED METHOD.—

23 “(i) IN GENERAL.—A performance-
24 based method is a method which calculates
25 projected energy usage and cost reductions

1 in the qualifying new home in relation to
2 a new home—

3 “(I) heated by the same fuel
4 type, and

5 “(II) constructed in accordance
6 with the latest standards of chapter 4
7 of the International Energy Conserva-
8 tion Code approved by the Depart-
9 ment of Energy before the construc-
10 tion of such qualifying new home and
11 any applicable Federal minimum effi-
12 ciency standards for equipment.

13 “(ii) COMPUTER SOFTWARE.—Com-
14 puter software shall be used in support of
15 a performance-based method certification
16 under clause (i). Such software shall meet
17 procedures and methods for calculating en-
18 ergy and cost savings in regulations pro-
19 mulgated by the Secretary of Energy.

20 “(D) GUARANTEE-BASED METHOD.—

21 “(i) IN GENERAL.—A guarantee-based
22 method is a method which guarantees in
23 writing to the homeowner energy savings
24 of either 30 percent or 50 percent over the
25 2000 International Energy Conservation

1 Code for heating and cooling costs. The
2 guarantee shall be provided for a minimum
3 of 2 years and shall fully reimburse the
4 homeowner any heating and cooling costs
5 in excess of the guaranteed amount.

6 “(ii) COMPUTER SOFTWARE.—Com-
7 puter software shall be selected by the pro-
8 vider to support the guarantee-based meth-
9 od certification under clause (i). Such soft-
10 ware shall meet procedures and methods
11 for calculating energy and cost savings in
12 regulations promulgated by the Secretary
13 of Energy.

14 “(2) PROVIDER.—A certification described in
15 subsection (b)(1)(B) shall be provided by—

16 “(A) in the case of a component-based
17 method, a local building regulatory authority, a
18 utility, or a home energy rating organization,

19 “(B) in the case of a performance-based
20 method or a guarantee-based method, an indi-
21 vidual recognized by an organization designated
22 by the Secretary for such purposes, or

23 “(C) in the case of a qualifying new home
24 which is a manufactured home, a manufactured
25 home primary inspection agency.

1 “(3) FORM.—

2 “(A) IN GENERAL.—A certification de-
3 scribed in subsection (b)(1)(B) shall be made in
4 writing in a manner which specifies in readily
5 verifiable fashion the energy efficient building
6 envelope components and energy efficient heat-
7 ing or cooling equipment installed and their re-
8 spective rated energy efficiency performance,
9 and

10 “(i) in the case of a performance-
11 based method, accompanied by a written
12 analysis documenting the proper applica-
13 tion of a permissible energy performance
14 calculation method to the specific cir-
15 cumstances of such qualifying new home,
16 and

17 “(ii) in the case of a qualifying new
18 home which is a manufactured home, ac-
19 companied by such documentation as re-
20 quired by the Administrator of the Envi-
21 ronmental Protection Agency under the
22 Energy Star Labeled Homes program.

23 “(B) FORM PROVIDED TO BUYER.—A form
24 documenting the energy efficient building enve-
25 lope components and energy efficient heating or

1 cooling equipment installed and their rated en-
2 ergy efficiency performance shall be provided to
3 the buyer of the qualifying new home. The form
4 shall include labeled R-value for insulation
5 products, NFRC-labeled U-factor and solar
6 heat gain coefficient for windows, skylights, and
7 doors, labeled annual fuel utilization efficiency
8 (AFUE) ratings for furnaces and boilers, la-
9 beled heating seasonal performance factor
10 (HSPF) ratings for electric heat pumps, and la-
11 beled seasonal energy efficiency ratio (SEER)
12 ratings for air conditioners.

13 “(C) RATINGS LABEL AFFIXED IN DWELL-
14 ING.—A permanent label documenting the rat-
15 ings in subparagraph (B) shall be affixed to the
16 front of the electrical distribution panel of the
17 qualifying new home, or shall be otherwise per-
18 manently displayed in a readily inspectable loca-
19 tion in such home.

20 “(4) REGULATIONS.—

21 “(A) IN GENERAL.—In prescribing regula-
22 tions under this subsection for performance-
23 based and guarantee-based certification meth-
24 ods, the Secretary shall prescribe procedures for
25 calculating annual energy usage and cost reduc-

1 tions for heating and cooling and for the report-
2 ing of the results. Such regulations shall—

3 “(i) provide that any calculation pro-
4 cedures be fuel neutral such that the same
5 energy efficiency measures allow a quali-
6 fying new home to be eligible for the credit
7 under this section regardless of whether
8 such home uses a gas or oil furnace or
9 boiler or an electric heat pump, and

10 “(ii) require that any computer soft-
11 ware allow for the printing of the Federal
12 tax forms necessary for the credit under
13 this section and for the printing of forms
14 for disclosure to the homebuyer.

15 “(B) PROVIDERS.—For purposes of para-
16 graph (2)(B), the Secretary shall establish re-
17 quirements for the designation of individuals
18 based on the requirements for energy consult-
19 ants and home energy raters specified by the
20 Mortgage Industry National Home Energy Rat-
21 ing Standards.

22 “(e) APPLICATION.—Subsection (a) shall apply to
23 qualifying new homes the construction of which is substan-
24 tially completed after September 30, 2004, and purchased
25 during the period beginning on such date and ending on—

1 “(1) in the case of any 30-percent home, De-
2 cember 31, 2005, and

3 “(2) in the case of any 50-percent home, De-
4 cember 31, 2007.”.

5 (b) CREDIT MADE PART OF GENERAL BUSINESS
6 CREDIT.—Section 38(b) (relating to current year business
7 credit), as amended by this Act, is amended by striking
8 “plus” at the end of paragraph (16), by striking the period
9 at the end of paragraph (17) and inserting “, plus”, and
10 by adding at the end the following new paragraph:

11 “(18) the new energy efficient home credit de-
12 termined under section 45G(a).”.

13 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
14 (relating to certain expenses for which credits are allow-
15 able) is amended by adding at the end the following new
16 subsection:

17 “(d) NEW ENERGY EFFICIENT HOME EXPENSES.—
18 No deduction shall be allowed for that portion of expenses
19 for a qualifying new home otherwise allowable as a deduc-
20 tion for the taxable year which is equal to the amount
21 of the credit determined for such taxable year under sec-
22 tion 45G(a).”.

23 (d) LIMITATION ON CARRYBACK.—Section 39(d) (re-
24 lating to transition rules), as amended by this Act, is

1 amended by adding at the end the following new para-
2 graph:

3 “(13) NO CARRYBACK OF NEW ENERGY EFFI-
4 CIENT HOME CREDIT BEFORE EFFECTIVE DATE.—
5 No portion of the unused business credit for any
6 taxable year which is attributable to the credit deter-
7 mined under section 45G may be carried back to any
8 taxable year ending before October 1, 2004.”.

9 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
10 CREDITS.—Section 196(c) (defining qualified business
11 credits), as amended by this Act, is amended by striking
12 “and” at the end of paragraph (10), by striking the period
13 at the end of paragraph (11) and inserting “, and”, and
14 by adding after paragraph (11) the following new para-
15 graph:

16 “(12) the new energy efficient home credit de-
17 termined under section 45G(a).”.

18 (f) CLERICAL AMENDMENT.—The table of sections
19 for subpart D of part IV of subchapter A of chapter 1,
20 as amended by this Act, is amended by adding at the end
21 the following new item:

 “Sec. 45G. New energy efficient home credit.”.

22 (g) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to homes the construction of which
24 is substantially completed after September 30, 2004.

1 **SEC. 1322. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

2 (a) IN GENERAL.—Subpart D of part IV of sub-
3 chapter A of chapter 1 (relating to business-related cred-
4 its), as amended by this Act, is amended by adding at
5 the end the following new section:

6 **“SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.**

7 “(a) ALLOWANCE OF CREDIT.—

8 “(1) IN GENERAL.—For purposes of section 38,
9 the energy efficient appliance credit determined
10 under this section for the taxable year is an amount
11 equal to the sum of the amounts determined under
12 paragraph (2) for qualified energy efficient appli-
13 ances produced by the taxpayer during the calendar
14 year ending with or within the taxable year.

15 “(2) AMOUNT.—The amount determined under
16 this paragraph for any category described in sub-
17 section (b)(2)(B) shall be the product of the applica-
18 ble amount for appliances in the category and the el-
19 igible production for the category.

20 “(b) APPLICABLE AMOUNT; ELIGIBLE PRODUC-
21 TION.—For purposes of subsection (a)—

22 “(1) APPLICABLE AMOUNT.—The applicable
23 amount is—

24 “(A) \$50, in the case of—

25 “(i) a clothes washer which is manu-
26 factured with at least a 1.42 MEF, or

1 “(ii) a refrigerator which consumes at
2 least 10 percent less kilowatt hours per
3 year than the energy conservation stand-
4 ards for refrigerators promulgated by the
5 Department of Energy and effective on
6 July 1, 2001,

7 “(B) \$100, in the case of—

8 “(i) a clothes washer which is manu-
9 factured with at least a 1.50 MEF, or

10 “(ii) a refrigerator which consumes at
11 least 15 percent (20 percent in the case of
12 a refrigerator manufactured after 2006)
13 less kilowatt hours per year than such en-
14 ergy conservation standards, and

15 “(C) \$150, in the case of a refrigerator
16 manufactured before 2007 which consumes at
17 least 20 percent less kilowatt hours per year
18 than such energy conservation standards.

19 “(2) ELIGIBLE PRODUCTION.—

20 “(A) IN GENERAL.—The eligible produc-
21 tion of each category of qualified energy effi-
22 cient appliances is the excess of—

23 “(i) the number of appliances in such
24 category which are produced by the tax-
25 payer during such calendar year, over

1 “(ii) the average number of appliances
2 in such category which were produced by
3 the taxpayer during calendar years 2000,
4 2001, and 2002.

5 “(B) CATEGORIES.—For purposes of sub-
6 paragraph (A), the categories are—

7 “(i) clothes washers described in para-
8 graph (1)(A)(i),

9 “(ii) clothes washers described in
10 paragraph (1)(B)(i),

11 “(iii) refrigerators described in para-
12 graph (1)(A)(ii),

13 “(iv) refrigerators described in para-
14 graph (1)(B)(ii), and

15 “(v) refrigerators described in para-
16 graph (1)(C).

17 “(c) LIMITATION ON MAXIMUM CREDIT.—

18 “(1) IN GENERAL.—The amount of credit al-
19 lowed under subsection (a) with respect to a tax-
20 payer for all taxable years shall not exceed
21 \$60,000,000, of which not more than \$30,000,000
22 may be allowed with respect to the credit determined
23 by using the applicable amount under subsection
24 (b)(1)(A).

1 “(2) LIMITATION BASED ON GROSS RE-
2 CEIPTS.—The credit allowed under subsection (a)
3 with respect to a taxpayer for the taxable year shall
4 not exceed an amount equal to 2 percent of the aver-
5 age annual gross receipts of the taxpayer for the 3
6 taxable years preceding the taxable year in which
7 the credit is determined.

8 “(3) GROSS RECEIPTS.—For purposes of this
9 subsection, the rules of paragraphs (2) and (3) of
10 section 448(c) shall apply.

11 “(d) DEFINITIONS.—For purposes of this section—

12 “(1) QUALIFIED ENERGY EFFICIENT APPLI-
13 ANCE.—The term ‘qualified energy efficient appli-
14 ance’ means—

15 “(A) a clothes washer described in sub-
16 paragraph (A)(i) or (B)(i) of subsection (b)(1),
17 or

18 “(B) a refrigerator described in subpara-
19 graph (A)(ii), (B)(ii), or (C) of subsection
20 (b)(1).

21 “(2) CLOTHES WASHER.—The term ‘clothes
22 washer’ means a residential clothes washer, includ-
23 ing a residential style coin operated washer.

24 “(3) REFRIGERATOR.—The term ‘refrigerator’
25 means an automatic defrost refrigerator-freezer

1 which has an internal volume of at least 16.5 cubic
2 feet.

3 “(4) MEF.—The term ‘MEF’ means Modified
4 Energy Factor (as determined by the Secretary of
5 Energy).

6 “(e) SPECIAL RULES.—

7 “(1) IN GENERAL.—Rules similar to the rules
8 of subsections (c), (d), and (e) of section 52 shall
9 apply for purposes of this section.

10 “(2) AGGREGATION RULES.—All persons treat-
11 ed as a single employer under subsection (a) or (b)
12 of section 52 or subsection (m) or (o) of section 414
13 shall be treated as 1 person for purposes of sub-
14 section (a).

15 “(f) VERIFICATION.—The taxpayer shall submit such
16 information or certification as the Secretary, in consulta-
17 tion with the Secretary of Energy, determines necessary
18 to claim the credit amount under subsection (a).

19 “(g) TERMINATION.—This section shall not apply—

20 “(1) with respect to refrigerators described in
21 subsection (b)(1)(A)(ii) produced after December 31,
22 2004, and

23 “(2) with respect to all other qualified energy
24 efficient appliances produced after December 31,
25 2007.”.

1 (b) CREDIT MADE PART OF GENERAL BUSINESS
2 CREDIT.—Section 38(b) (relating to current year business
3 credit), as amended by this Act, is amended by striking
4 “plus” at the end of paragraph (17), by striking the period
5 at the end of paragraph (18) and inserting “, plus”, and
6 by adding at the end the following new paragraph:

7 “(19) the energy efficient appliance credit de-
8 termined under section 45H(a).”.

9 (c) LIMITATION ON CARRYBACK.—Section 39(d) (re-
10 lating to transition rules), as amended by this Act, is
11 amended by adding at the end the following new para-
12 graph:

13 “(14) NO CARRYBACK OF ENERGY EFFICIENT
14 APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No
15 portion of the unused business credit for any taxable
16 year which is attributable to the energy efficient ap-
17 pliance credit determined under section 45H may be
18 carried to a taxable year ending before October 1,
19 2004.”.

20 (d) CLERICAL AMENDMENT.—The table of sections
21 for subpart D of part IV of subchapter A of chapter 1,
22 as amended by this Act, is amended by adding at the end
23 the following new item:

“Sec. 45H. Energy efficient appliance credit.”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to appliances produced after Sep-
3 tember 30, 2004, in taxable years ending after such date.

4 **SEC. 1323. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT**
5 **PROPERTY.**

6 (a) IN GENERAL.—Subpart A of part IV of sub-
7 chapter A of chapter 1 (relating to nonrefundable personal
8 credits) is amended by inserting after section 25B the fol-
9 lowing new section:

10 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

11 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
12 dividual, there shall be allowed as a credit against the tax
13 imposed by this chapter for the taxable year an amount
14 equal to the sum of—

15 “(1) 15 percent of the qualified photovoltaic
16 property expenditures made by the taxpayer during
17 such year,

18 “(2) 15 percent of the qualified solar water
19 heating property expenditures made by the taxpayer
20 during such year,

21 “(3) 30 percent of the qualified fuel cell prop-
22 erty expenditures made by the taxpayer during such
23 year,

1 “(4) 30 percent of the qualified wind energy
2 property expenditures made by the taxpayer during
3 such year, and

4 “(5) the sum of the qualified Tier 2 energy effi-
5 cient building property expenditures made by the
6 taxpayer during such year.

7 “(b) LIMITATIONS.—

8 “(1) MAXIMUM CREDIT.—The credit allowed
9 under subsection (a) shall not exceed—

10 “(A) \$2,000 for property described in
11 paragraph (1), (2), or (5) of subsection (d),

12 “(B) \$500 for each 0.5 kilowatt of capac-
13 ity of property described in subsection (d)(4),
14 and

15 “(C) for property described in subsection
16 (d)(6)—

17 “(i) \$150 for each electric heat pump
18 water heater,

19 “(ii) \$125 for each advanced natural
20 gas, oil, propane furnace, or hot water boil-
21 er,

22 “(iii) \$150 for each advanced natural
23 gas, oil, or propane water heater,

24 “(iv) \$50 for each natural gas, oil, or
25 propane water heater,

1 “(v) \$50 for an advanced main air
2 circulating fan,

3 “(vi) \$150 for each advanced com-
4 bination space and water heating system,

5 “(vii) \$50 for each combination space
6 and water heating system, and

7 “(viii) \$250 for each geothermal heat
8 pump.

9 “(2) SAFETY CERTIFICATIONS.—No credit shall
10 be allowed under this section for an item of property
11 unless—

12 “(A) in the case of solar water heating
13 property, such property is certified for perform-
14 ance and safety by the non-profit Solar Rating
15 Certification Corporation or a comparable enti-
16 ty endorsed by the government of the State in
17 which such property is installed,

18 “(B) in the case of a photovoltaic property,
19 a fuel cell property, or a wind energy property,
20 such property meets appropriate fire and elec-
21 tric code requirements, and

22 “(C) in the case of property described in
23 subsection (d)(6), such property meets the per-
24 formance and quality standards, and the certifi-
25 cation requirements (if any), which—

1 “(i) have been prescribed by the Sec-
2 retary by regulations (after consultation
3 with the Secretary of Energy or the Ad-
4 ministrators of the Environmental Protec-
5 tion Agency, as appropriate),

6 “(ii) in the case of the energy effi-
7 ciency ratio (EER) for property described
8 in subsection (d)(6)(B)(viii)—

9 “(I) require measurements to be
10 based on published data which is test-
11 ed by manufacturers at 95 degrees
12 Fahrenheit, and

13 “(II) do not require ratings to be
14 based on certified data of the Air
15 Conditioning and Refrigeration Insti-
16 tute, and

17 “(iii) are in effect at the time of the
18 acquisition of the property.

19 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
20 credit allowable under subsection (a) exceeds the limita-
21 tion imposed by section 26(a) for such taxable year re-
22 duced by the sum of the credits allowable under this sub-
23 part (other than this section and section 25D), such excess
24 shall be carried to the succeeding taxable year and added

1 to the credit allowable under subsection (a) for such suc-
2 ceeding taxable year.

3 “(d) DEFINITIONS.—For purposes of this section—

4 “(1) QUALIFIED SOLAR WATER HEATING PROP-
5 ERTY EXPENDITURE.—The term ‘qualified solar
6 water heating property expenditure’ means an ex-
7 penditure for property to heat water for use in a
8 dwelling unit located in the United States and used
9 as a residence by the taxpayer if at least half of the
10 energy used by such property for such purpose is de-
11 rived from the sun.

12 “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-
13 PENDITURE.—The term ‘qualified photovoltaic prop-
14 erty expenditure’ means an expenditure for property
15 which uses solar energy to generate electricity for
16 use in a dwelling unit located in the United States
17 and used as a residence by the taxpayer.

18 “(3) SOLAR PANELS.—No expenditure relating
19 to a solar panel or other property installed as a roof
20 (or portion thereof) shall fail to be treated as prop-
21 erty described in paragraph (1) or (2) solely because
22 it constitutes a structural component of the struc-
23 ture on which it is installed.

24 “(4) QUALIFIED FUEL CELL PROPERTY EX-
25 PENDITURE.—The term ‘qualified fuel cell property

1 expenditure' means an expenditure for qualified fuel
2 cell property (as defined in section 48(a)(4)) in-
3 stalled on or in connection with a dwelling unit lo-
4 cated in the United States and used as a principal
5 residence (within the meaning of section 121) by the
6 taxpayer.

7 “(5) QUALIFIED WIND ENERGY PROPERTY EX-
8 PENDITURE.—The term ‘qualified wind energy prop-
9 erty expenditure’ means an expenditure for property
10 which uses wind energy to generate electricity for
11 use in a dwelling unit located in the United States
12 and used as a residence by the taxpayer.

13 “(6) QUALIFIED TIER 2 ENERGY EFFICIENT
14 BUILDING PROPERTY EXPENDITURE.—

15 “(A) IN GENERAL.—The term ‘qualified
16 Tier 2 energy efficient building property ex-
17 penditure’ means an expenditure for any Tier 2
18 energy efficient building property.

19 “(B) TIER 2 ENERGY EFFICIENT BUILDING
20 PROPERTY.—The term ‘Tier 2 energy efficient
21 building property’ means—

22 “(i) an electric heat pump water heat-
23 er which yields an energy factor of at least
24 1.7 in the standard Department of Energy
25 test procedure,

1 “(ii) an advanced natural gas, oil,
2 propane furnace, or hot water boiler which
3 achieves at least 95 percent annual fuel
4 utilization efficiency (AFUE),

5 “(iii) an advanced natural gas, oil, or
6 propane water heater which has an energy
7 factor of at least 0.80 in the standard De-
8 partment of Energy test procedure,

9 “(iv) a natural gas, oil, or propane
10 water heater which has an energy factor of
11 at least 0.65 but less than 0.80 in the
12 standard Department of Energy test proce-
13 dure,

14 “(v) an advanced main air circulating
15 fan used in a new natural gas, propane, or
16 oil-fired furnace, including main air circu-
17 lating fans that use a brushless permanent
18 magnet motor or another type of motor
19 which achieves similar or higher efficiency
20 at half and full speed, as determined by
21 the Secretary,

22 “(vi) an advanced combination space
23 and water heating system which has a
24 combined energy factor of at least 0.80
25 and a combined annual fuel utilization effi-

1 ciency (AFUE) of at least 78 percent in
2 the standard Department of Energy test
3 procedure,

4 “(vii) a combination space and water
5 heating system which has a combined en-
6 ergy factor of at least 0.65 but less than
7 0.80 and a combined annual fuel utiliza-
8 tion efficiency (AFUE) of at least 78 per-
9 cent in the standard Department of En-
10 ergy test procedure, and

11 “(viii) a geothermal heat pump which
12 has an energy efficiency ratio (EER) of at
13 least 21.

14 “(7) LABOR COSTS.—Expenditures for labor
15 costs properly allocable to the onsite preparation, as-
16 sembly, or original installation of the property de-
17 scribed in paragraph (1), (2), (4), (5), or (6) and for
18 piping or wiring to interconnect such property to the
19 dwelling unit shall be taken into account for pur-
20 poses of this section.

21 “(8) SWIMMING POOLS, ETC., USED AS STOR-
22 AGE MEDIUM.—Expenditures which are properly al-
23 locable to a swimming pool, hot tub, or any other
24 energy storage medium which has a function other

1 than the function of such storage shall not be taken
2 into account for purposes of this section.

3 “(e) SPECIAL RULES.—For purposes of this sec-
4 tion—

5 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-
6 CUPANCY.—In the case of any dwelling unit which is
7 jointly occupied and used during any calendar year
8 as a residence by 2 or more individuals the following
9 rules shall apply:

10 “(A) The amount of the credit allowable,
11 under subsection (a) by reason of expenditures
12 (as the case may be) made during such cal-
13 endar year by any of such individuals with re-
14 spect to such dwelling unit shall be determined
15 by treating all of such individuals as 1 taxpayer
16 whose taxable year is such calendar year.

17 “(B) There shall be allowable, with respect
18 to such expenditures to each of such individ-
19 uals, a credit under subsection (a) for the tax-
20 able year in which such calendar year ends in
21 an amount which bears the same ratio to the
22 amount determined under subparagraph (A) as
23 the amount of such expenditures made by such
24 individual during such calendar year bears to

1 the aggregate of such expenditures made by all
2 of such individuals during such calendar year.

3 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
4 HOUSING CORPORATION.—In the case of an indi-
5 vidual who is a tenant-stockholder (as defined in sec-
6 tion 216) in a cooperative housing corporation (as
7 defined in such section), such individual shall be
8 treated as having made his tenant-stockholder’s pro-
9 portionate share (as defined in section 216(b)(3)) of
10 any expenditures of such corporation.

11 “(3) CONDOMINIUMS.—

12 “(A) IN GENERAL.—In the case of an indi-
13 vidual who is a member of a condominium man-
14 agement association with respect to a condo-
15 minium which the individual owns, such indi-
16 vidual shall be treated as having made the indi-
17 vidual’s proportionate share of any expenditures
18 of such association.

19 “(B) CONDOMINIUM MANAGEMENT ASSO-
20 CIATION.—For purposes of this paragraph, the
21 term ‘condominium management association’
22 means an organization which meets the require-
23 ments of paragraph (1) of section 528(c) (other
24 than subparagraph (E) thereof) with respect to

1 a condominium project substantially all of the
2 units of which are used as residences.

3 “(4) ALLOCATION IN CERTAIN CASES.—Except
4 in the case of qualified wind energy property expend-
5 itures, if less than 80 percent of the use of an item
6 is for nonbusiness purposes, only that portion of the
7 expenditures for such item which is properly allo-
8 cable to use for nonbusiness purposes shall be taken
9 into account.

10 “(5) WHEN EXPENDITURE MADE; AMOUNT OF
11 EXPENDITURE.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), an expenditure with respect
14 to an item shall be treated as made when the
15 original installation of the item is completed.

16 “(B) EXPENDITURES PART OF BUILDING
17 CONSTRUCTION.—In the case of an expenditure
18 in connection with the construction or recon-
19 struction of a structure, such expenditure shall
20 be treated as made when the original use of the
21 constructed or reconstructed structure by the
22 taxpayer begins.

23 “(C) AMOUNT.—The amount of any ex-
24 penditure shall be the cost thereof.

1 “(6) PROPERTY FINANCED BY SUBSIDIZED EN-
2 ERGY FINANCING.—For purposes of determining the
3 amount of expenditures made by any individual with
4 respect to any dwelling unit, there shall not be taken
5 into account expenditures which are made from sub-
6 sidized energy financing (as defined in section
7 48(a)(5)(C)).

8 “(f) BASIS ADJUSTMENTS.—For purposes of this
9 subtitle, if a credit is allowed under this section for any
10 expenditure with respect to any property, the increase in
11 the basis of such property which would (but for this sub-
12 section) result from such expenditure shall be reduced by
13 the amount of the credit so allowed.

14 “(g) TERMINATION.—The credit allowed under this
15 section shall not apply to expenditures after December 31,
16 2007.”.

17 (b) CREDIT ALLOWED AGAINST REGULAR TAX AND
18 ALTERNATIVE MINIMUM TAX.—

19 (1) IN GENERAL.—Section 25C(b), as added by
20 subsection (a), is amended by adding at the end the
21 following new paragraph:

22 “(3) LIMITATION BASED ON AMOUNT OF
23 TAX.—The credit allowed under subsection (a) for
24 the taxable year shall not exceed the excess of—

1 “(A) the sum of the regular tax liability
2 (as defined in section 26(b)) plus the tax im-
3 posed by section 55, over

4 “(B) the sum of the credits allowable
5 under this subpart (other than this section and
6 section 25D) and section 27 for the taxable
7 year.”.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 25C(e), as added by subsection
10 (a), is amended by striking “section 26(a) for
11 such taxable year reduced by the sum of the
12 credits allowable under this subpart (other than
13 this section and section 25D)” and inserting
14 “subsection (b)(3)”.

15 (B) Section 23(b)(4)(B) is amended by in-
16 serting “and section 25C” after “this section”.

17 (C) Section 24(b)(3)(B) is amended by
18 striking “23 and 25B” and inserting “23, 25B,
19 and 25C”.

20 (D) Section 25(e)(1)(C) is amended by in-
21 serting “25C,” after “25B,”.

22 (E) Section 25B(g)(2) is amended by
23 striking “section 23” and inserting “sections 23
24 and 25C”.

1 (F) Section 26(a)(1) is amended by strik-
2 ing “and 25B” and inserting “25B, and 25C”.

3 (G) Section 904(h) is amended by striking
4 “and 25B” and inserting “25B, and 25C”.

5 (H) Section 1400C(d) is amended by strik-
6 ing “and 25B” and inserting “25B, and 25C”.

7 (c) ADDITIONAL CONFORMING AMENDMENTS.—

8 (1) Section 1016(a), as amended by this Act, is
9 amended by striking “and” at the end of paragraph
10 (29), by striking the period at the end of paragraph
11 (30) and inserting “, and”, and by adding at the
12 end the following new paragraph:

13 “(31) to the extent provided in section 25C(f),
14 in the case of amounts with respect to which a credit
15 has been allowed under section 25C.”.

16 (2) The table of sections for subpart A of part
17 IV of subchapter A of chapter 1 is amended by in-
18 serting after the item relating to section 25B the fol-
19 lowing new item:

“Sec. 25C. Residential energy efficient property.”.

20 (d) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as provided by para-
22 graph (2), the amendments made by this section
23 shall apply to expenditures after September 30,
24 2004, in taxable years ending after such date.

1 (2) SUBSECTION (b).—The amendments made
2 by subsection (b) shall apply to taxable years begin-
3 ning after September 30, 2004.

4 **SEC. 1324. CREDIT FOR BUSINESS INSTALLATION OF**
5 **QUALIFIED FUEL CELLS AND STATIONARY**
6 **MICROTURBINE POWER PLANTS.**

7 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-
8 ergy property) is amended by striking “or” at the end of
9 clause (i), by adding “or” at the end of clause (ii), and
10 by inserting after clause (ii) the following new clause:

11 “(iii) qualified fuel cell property or
12 qualified microturbine property,”.

13 (b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED
14 MICROTURBINE PROPERTY.—Section 48(a) (relating to
15 energy credit) is amended by redesignating paragraphs (4)
16 and (5) as paragraphs (5) and (6), respectively, and by
17 inserting after paragraph (3) the following new paragraph:

18 “(4) QUALIFIED FUEL CELL PROPERTY; QUALI-
19 FIED MICROTURBINE PROPERTY.—For purposes of
20 this subsection—

21 “(A) QUALIFIED FUEL CELL PROPERTY.—

22 “(i) IN GENERAL.—The term ‘quali-
23 fied fuel cell property’ means a fuel cell
24 power plant which—

1 “(I) generates at least 0.5 kilo-
2 watt of electricity using an electro-
3 chemical process, and

4 “(II) has an electricity-only gen-
5 eration efficiency greater than 30 per-
6 cent.

7 “(ii) LIMITATION.—In the case of
8 qualified fuel cell property placed in service
9 during the taxable year, the credit other-
10 wise determined under paragraph (1) for
11 such year with respect to such property
12 shall not exceed an amount equal to \$500
13 for each 0.5 kilowatt of capacity of such
14 property.

15 “(iii) FUEL CELL POWER PLANT.—
16 The term ‘fuel cell power plant’ means an
17 integrated system comprised of a fuel cell
18 stack assembly and associated balance of
19 plant components which converts a fuel
20 into electricity using electrochemical
21 means.

22 “(iv) TERMINATION.—The term
23 ‘qualified fuel cell property’ shall not in-
24 clude any property placed in service after
25 December 31, 2007.

1 “(B) QUALIFIED MICROTURBINE PROP-
2 ERTY.—

3 “(i) IN GENERAL.—The term ‘quali-
4 fied microturbine property’ means a sta-
5 tionary microturbine power plant which—

6 “(I) has a capacity of less than
7 2,000 kilowatts, and

8 “(II) has an electricity-only gen-
9 eration efficiency of not less than 26
10 percent at International Standard Or-
11 ganization conditions.

12 “(ii) LIMITATION.—In the case of
13 qualified microturbine property placed in
14 service during the taxable year, the credit
15 otherwise determined under paragraph (1)
16 for such year with respect to such property
17 shall not exceed an amount equal to \$200
18 for each kilowatt of capacity of such prop-
19 erty.

20 “(iii) STATIONARY MICROTURBINE
21 POWER PLANT.—The term ‘stationary
22 microturbine power plant’ means an inte-
23 grated system comprised of a gas turbine
24 engine, a combustor, a recuperator or re-
25 generator, a generator or alternator, and

1 associated balance of plant components
2 which converts a fuel into electricity and
3 thermal energy. Such term also includes all
4 secondary components located between the
5 existing infrastructure for fuel delivery and
6 the existing infrastructure for power dis-
7 tribution, including equipment and controls
8 for meeting relevant power standards, such
9 as voltage, frequency, and power factors.

10 “(iv) TERMINATION.—The term
11 ‘qualified microturbine property’ shall not
12 include any property placed in service after
13 December 31, 2006.”.

14 (c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (re-
15 lating to energy percentage) is amended to read as follows:

16 “(A) IN GENERAL.—The energy percent-
17 age is—

18 “(i) in the case of qualified fuel cell
19 property, 30 percent, and

20 “(ii) in the case of any other energy
21 property, 10 percent.”.

22 (d) CONFORMING AMENDMENTS.—

23 (A) Section 29(b)(3)(A)(i)(III) is amended
24 by striking “section 48(a)(4)(C)” and inserting
25 “section 48(a)(5)(C)”.

1 (B) Section 48(a)(1) is amended by insert-
2 ing “except as provided in subparagraph (A)(ii)
3 or (B)(ii) of paragraph (4),” before “the en-
4 ergy”.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to property placed in service after
7 September 30, 2004, in taxable years ending after such
8 date, under rules similar to the rules of section 48(m) of
9 the Internal Revenue Code of 1986 (as in effect on the
10 day before the date of the enactment of the Revenue Rec-
11 onciliation Act of 1990).

12 **SEC. 1325. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
13 **DEDUCTION.**

14 (a) IN GENERAL.—Part VI of subchapter B of chap-
15 ter 1 (relating to itemized deductions for individuals and
16 corporations) is amended by inserting after section 179A
17 the following new section:

18 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
19 **DEDUCTION.**

20 “(a) IN GENERAL.—There shall be allowed as a de-
21 duction for the taxable year in which a building is placed
22 in service by a taxpayer, an amount equal to the energy
23 efficient commercial building property expenditures made
24 by such taxpayer with respect to the construction or recon-

1 construction of such building for the taxable year or any pre-
2 ceding taxable year.

3 “(b) MAXIMUM AMOUNT OF DEDUCTION.—The
4 amount of energy efficient commercial building property
5 expenditures taken into account under subsection (a) shall
6 not exceed an amount equal to the product of—

7 “(1) \$2.25, and

8 “(2) the square footage of the building with re-
9 spect to which the expenditures are made.

10 “(c) ENERGY EFFICIENT COMMERCIAL BUILDING
11 PROPERTY EXPENDITURES.—For purposes of this sec-
12 tion—

13 “(1) IN GENERAL.—The term ‘energy efficient
14 commercial building property expenditures’ means
15 amounts paid or incurred for energy efficient prop-
16 erty installed on or in connection with the construc-
17 tion or reconstruction of a building—

18 “(A) for which depreciation is allowable
19 under section 167,

20 “(B) which is located in the United States,
21 and

22 “(C) which is the type of structure to
23 which the Standard 90.1–2001 of the American
24 Society of Heating, Refrigerating, and Air Con-

1 conditioning Engineers and the Illuminating Engi-
2 neering Society of North America is applicable.
3 Such term includes expenditures for labor costs
4 properly allocable to the onsite preparation, assem-
5 bly, or original installation of the property.

6 “(2) ENERGY EFFICIENT PROPERTY.—For pur-
7 poses of paragraph (1)—

8 “(A) IN GENERAL.—The term ‘energy effi-
9 cient property’ means any property which re-
10 duces total annual energy and power costs with
11 respect to the lighting, heating, cooling, ventila-
12 tion, and hot water supply systems of the build-
13 ing by 50 percent or more in comparison to a
14 building which meets the minimum require-
15 ments of Standard 90.1–2001 of the American
16 Society of Heating, Refrigerating, and Air Con-
17 ditioning Engineers and the Illuminating Engi-
18 neering Society of North America, using meth-
19 ods of calculation described in subparagraph
20 (B) and certified by qualified individuals as
21 provided under paragraph (5).

22 “(B) METHODS OF CALCULATION.—The
23 Secretary, in consultation with the Secretary of
24 Energy, shall promulgate regulations which de-

1 scribe in detail methods for calculating and
2 verifying energy and power costs.

3 “(C) COMPUTER SOFTWARE.—

4 “(i) IN GENERAL.—Any calculation
5 described in subparagraph (B) shall be
6 prepared by qualified computer software.

7 “(ii) QUALIFIED COMPUTER SOFT-
8 WARE.—For purposes of this subpara-
9 graph, the term ‘qualified computer soft-
10 ware’ means software—

11 “(I) for which the software de-
12 signer has certified that the software
13 meets all procedures and detailed
14 methods for calculating energy and
15 power costs as required by the Sec-
16 retary,

17 “(II) which provides such forms
18 as required to be filed by the Sec-
19 retary in connection with energy effi-
20 ciency of property and the deduction
21 allowed under this section, and

22 “(III) which provides a notice
23 form which summarizes the energy ef-
24 ficiency features of the building and
25 its projected annual energy costs.

1 “(3) ALLOCATION OF DEDUCTION FOR PUBLIC
2 PROPERTY.—In the case of energy efficient commer-
3 cial building property expenditures made by a public
4 entity with respect to the construction or reconstruc-
5 tion of a public building, the Secretary shall promul-
6 gate regulations under which the value of the deduc-
7 tion with respect to such expenditures which would
8 be allowable to the public entity under this section
9 (determined without regard to the tax-exempt status
10 of such entity) may be allocated to the person pri-
11 marily responsible for designing the energy efficient
12 property. Such person shall be treated as the tax-
13 payer for purposes of this section.

14 “(4) NOTICE TO OWNER.—Any qualified indi-
15 vidual providing a certification under paragraph (5)
16 shall provide an explanation to the owner of the
17 building regarding the energy efficiency features of
18 the building and its projected annual energy costs as
19 provided in the notice under paragraph
20 (2)(C)(ii)(III).

21 “(5) CERTIFICATION.—

22 “(A) IN GENERAL.—The Secretary shall
23 prescribe procedures for the inspection and test-
24 ing for compliance of buildings by qualified in-

1 individuals described in subparagraph (B). Such
2 procedures shall be—

3 “(i) comparable, given the difference
4 between commercial and residential build-
5 ings, to the requirements in the Mortgage
6 Industry National Home Energy Rating
7 Standards, and

8 “(ii) fuel neutral such that the same
9 energy efficiency measures allow a building
10 to be eligible for the credit under this sec-
11 tion regardless of whether such building
12 uses a gas or oil furnace or boiler or an
13 electric heat pump.

14 “(B) QUALIFIED INDIVIDUALS.—Individ-
15 uals qualified to determine compliance shall be
16 only those individuals who are recognized by an
17 organization certified by the Secretary for such
18 purposes. The Secretary may qualify a home
19 energy ratings organization, a local building
20 regulatory authority, a State or local energy of-
21 fice, a utility, or any other organization which
22 meets the requirements prescribed under this
23 paragraph.

24 “(C) PROFICIENCY OF QUALIFIED INDIVID-
25 UALS.—The Secretary shall consult with non-

1 profit organizations and State agencies with ex-
2 pertise in energy efficiency calculations and in-
3 spections to develop proficiency tests and train-
4 ing programs to qualify individuals to determine
5 compliance.

6 “(d) BASIS REDUCTION.—For purposes of this sub-
7 title, if a deduction is allowed under this section with re-
8 spect to any energy efficient property, the basis of such
9 property shall be reduced by the amount of the deduction
10 so allowed.

11 “(e) REGULATIONS.—The Secretary shall promulgate
12 such regulations as necessary to take into account new
13 technologies regarding energy efficiency and renewable en-
14 ergy for purposes of determining energy efficiency and
15 savings under this section.

16 “(f) TERMINATION.—This section shall not apply
17 with respect to any energy efficient commercial building
18 property expenditures in connection with a building the
19 construction of which is not completed on or before De-
20 cember 31, 2009.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 1016(a), as amended by this Act, is
23 amended by striking “and” at the end of paragraph
24 (30), by striking the period at the end of paragraph

1 (31) and inserting “, and”, and by adding at the
2 end the following new paragraph:

3 “(32) to the extent provided in section
4 179B(d).”.

5 (2) Section 1245(a) is amended by inserting
6 “179B,” after “179A,” both places it appears in
7 paragraphs (2)(C) and (3)(C).

8 (3) Section 1250(b)(3) is amended by inserting
9 before the period at the end of the first sentence “or
10 by section 179B”.

11 (4) Section 263(a)(1) is amended by striking
12 “or” at the end of subparagraph (G), by striking the
13 period at the end of subparagraph (H) and inserting
14 “, or”, and by inserting after subparagraph (H) the
15 following new subparagraph:

16 “(I) expenditures for which a deduction is
17 allowed under section 179B.”.

18 (5) Section 312(k)(3)(B) is amended by strik-
19 ing “or 179A” each place it appears in the heading
20 and text and inserting “, 179A, or 179B”.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 for part VI of subchapter B of chapter 1 is amended by
23 inserting after section 179A the following new item:

“Sec. 179B. Energy efficient commercial buildings deduction.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 September 30, 2004.

4 **SEC. 1326. THREE-YEAR APPLICABLE RECOVERY PERIOD**
5 **FOR DEPRECIATION OF QUALIFIED ENERGY**
6 **MANAGEMENT DEVICES.**

7 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-
8 year property) is amended by striking “and” at the end
9 of clause (ii), by striking the period at the end of clause
10 (iii) and inserting “, and”, and by adding at the end the
11 following new clause:

12 “(iv) any qualified energy manage-
13 ment device.”.

14 (b) DEFINITION OF QUALIFIED ENERGY MANAGE-
15 MENT DEVICE.—Section 168(i) (relating to definitions
16 and special rules) is amended by inserting at the end the
17 following new paragraph:

18 “(15) QUALIFIED ENERGY MANAGEMENT DE-
19 VICE.—

20 “(A) IN GENERAL.—The term ‘qualified
21 energy management device’ means any energy
22 management device which is placed in service
23 before January 1, 2008, by a taxpayer who is
24 a supplier of electric energy or a provider of
25 electric energy services.

1 “(B) ENERGY MANAGEMENT DEVICE.—
2 For purposes of subparagraph (A), the term
3 ‘energy management device’ means any meter
4 or metering device which is used by the tax-
5 payer—

6 “(i) to measure and record electricity
7 usage data on a time-differentiated basis
8 in at least 4 separate time segments per
9 day, and

10 “(ii) to provide such data on at least
11 a monthly basis to both consumers and the
12 taxpayer.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to property placed in service after
15 September 30, 2004, in taxable years ending after such
16 date.

17 **SEC. 1327. THREE-YEAR APPLICABLE RECOVERY PERIOD**
18 **FOR DEPRECIATION OF QUALIFIED WATER**
19 **SUBMETERING DEVICES.**

20 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-
21 year property), as amended by this Act, is amended by
22 striking “and” at the end of clause (iii), by striking the
23 period at the end of clause (iv) and inserting “, and”, and
24 by adding at the end the following new clause:

1 “(v) any qualified water submetering
2 device.”.

3 (b) DEFINITION OF QUALIFIED WATER SUB-
4 METERING DEVICE.—Section 168(i) (relating to defini-
5 tions and special rules), as amended by this Act, is amend-
6 ed by inserting at the end the following new paragraph:

7 “(16) QUALIFIED WATER SUBMETERING DE-
8 VICE.—

9 “(A) IN GENERAL.—The term ‘qualified
10 water submetering device’ means any water
11 submetering device which is placed in service
12 before January 1, 2008, by a taxpayer who is
13 an eligible resupplier with respect to the unit
14 for which the device is placed in service.

15 “(B) WATER SUBMETERING DEVICE.—For
16 purposes of this paragraph, the term ‘water
17 submetering device’ means any submetering de-
18 vice which is used by the taxpayer—

19 “(i) to measure and record water
20 usage data, and

21 “(ii) to provide such data on at least
22 a monthly basis to both consumers and the
23 taxpayer.

24 “(C) ELIGIBLE RESUPPLIER.—For pur-
25 poses of subparagraph (A), the term ‘eligible re-

1 supplier’ means any taxpayer who purchases
2 and installs qualified water submetering devices
3 in every unit in any multi-unit property.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to property placed in service after
6 September 30, 2004, in taxable years ending after such
7 date.

8 **SEC. 1328. ENERGY CREDIT FOR COMBINED HEAT AND**
9 **POWER SYSTEM PROPERTY.**

10 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-
11 ergy property), as amended by this Act, is amended by
12 striking “or” at the end of clause (ii), by adding “or” at
13 the end of clause (iii), and by inserting after clause (iii)
14 the following new clause:

15 “(iv) combined heat and power system
16 property,”.

17 (b) COMBINED HEAT AND POWER SYSTEM PROP-
18 erty.—Section 48(a) (relating to energy credit), as
19 amended by this Act, is amended by redesignating para-
20 graphs (5) and (6) as paragraphs (6) and (7), respectively,
21 and by inserting after paragraph (4) the following new
22 paragraph:

23 “(5) COMBINED HEAT AND POWER SYSTEM
24 PROPERTY.—For purposes of this subsection—

1 “(A) COMBINED HEAT AND POWER SYS-
2 TEM PROPERTY.—The term ‘combined heat and
3 power system property’ means property com-
4 prising a system—

5 “(i) which uses the same energy
6 source for the simultaneous or sequential
7 generation of electrical power, mechanical
8 shaft power, or both, in combination with
9 the generation of steam or other forms of
10 useful thermal energy (including heating
11 and cooling applications),

12 “(ii) which has an electrical capacity
13 of more than 50 kilowatts or a mechanical
14 energy capacity of more than 67 horse-
15 power or an equivalent combination of elec-
16 trical and mechanical energy capacities,

17 “(iii) which produces—

18 “(I) at least 20 percent of its
19 total useful energy in the form of
20 thermal energy which is not used to
21 produce electrical or mechanical power
22 (or combination thereof), and

23 “(II) at least 20 percent of its
24 total useful energy in the form of elec-

1 trical or mechanical power (or com-
2 bination thereof),

3 “(iv) the energy efficiency percentage
4 of which exceeds 60 percent (70 percent in
5 the case of a system with an electrical ca-
6 pacity in excess of 50 megawatts or a me-
7 chanical energy capacity in excess of
8 67,000 horsepower, or an equivalent com-
9 bination of electrical and mechanical en-
10 ergy capacities), and

11 “(v) which is placed in service before
12 January 1, 2007.

13 “(B) SPECIAL RULES.—

14 “(i) ENERGY EFFICIENCY PERCENT-
15 AGE.—For purposes of subparagraph
16 (A)(iv), the energy efficiency percentage of
17 a system is the fraction—

18 “(I) the numerator of which is
19 the total useful electrical, thermal,
20 and mechanical power produced by
21 the system at normal operating rates,
22 and expected to be consumed in its
23 normal application, and

1 “(II) the denominator of which is
2 the lower heating value of the primary
3 fuel source for the system.

4 “(ii) DETERMINATIONS MADE ON BTU
5 BASIS.—The energy efficiency percentage
6 and the percentages under subparagraph
7 (A)(iii) shall be determined on a Btu basis.

8 “(iii) INPUT AND OUTPUT PROPERTY
9 NOT INCLUDED.—The term ‘combined heat
10 and power system property’ does not in-
11 clude property used to transport the en-
12 ergy source to the facility or to distribute
13 energy produced by the facility.

14 “(iv) PUBLIC UTILITY PROPERTY.—

15 “(I) ACCOUNTING RULE FOR
16 PUBLIC UTILITY PROPERTY.—If the
17 combined heat and power system
18 property is public utility property (as
19 defined in section 168(i)(10)), the
20 taxpayer may only claim the credit
21 under this subsection if, with respect
22 to such property, the taxpayer uses a
23 normalization method of accounting.

24 “(II) CERTAIN EXCEPTION NOT
25 TO APPLY.—The matter following

1 paragraph (3)(D) shall not apply to
2 combined heat and power system
3 property.

4 “(v) NONAPPLICATION OF CERTAIN
5 RULES.—For purposes of determining if
6 the term ‘combined heat and power system
7 property’ includes technologies which gen-
8 erate electricity or mechanical power using
9 back-pressure steam turbines in place of
10 existing pressure-reducing valves or which
11 make use of waste heat from industrial
12 processes such as by using organic rankin,
13 stirling, or kalina heat engine systems,
14 subparagraph (A) shall be applied without
15 regard to clauses (i), (iii), and (iv) thereof.

16 “(C) EXTENSION OF DEPRECIATION RE-
17 COVERY PERIOD.—If a taxpayer is allowed a
18 credit under this section for a combined heat
19 and power system property which has a class
20 life of 15 years or less under section 168, such
21 property shall be treated as having a 22-year
22 class life for purposes of section 168.”.

23 (e) LIMITATION ON CARRYBACK.—Section 39(d) (re-
24 lating to transition rules), as amended by this Act, is

1 amended by adding at the end the following new para-
2 graph:

3 “(15) NO CARRYBACK OF ENERGY CREDIT BE-
4 FORE EFFECTIVE DATE.—No portion of the unused
5 business credit for any taxable year which is attrib-
6 utable to the energy credit with respect to property
7 described in section 48(a)(5) may be carried back to
8 a taxable year ending before October 1, 2004.”.

9 (d) CONFORMING AMENDMENTS.—

10 (A) Section 25C(e)(6), as added by this
11 Act, is amended by striking “section
12 48(a)(5)(C)” and inserting “section
13 48(a)(6)(C)”.

14 (B) Section 29(b)(3)(A)(i)(III), as amend-
15 ed by this Act, is amended by striking “section
16 48(a)(5)(C)” and inserting “section
17 48(a)(6)(C)”.

18 (e) EFFECTIVE DATE.—The amendments made by
19 this subsection shall apply to property placed in service
20 after September 30, 2004, in taxable years ending after
21 such date, under rules similar to the rules of section 48(m)
22 of the Internal Revenue Code of 1986 (as in effect on the
23 day before the date of the enactment of the Revenue Rec-
24 onciliation Act of 1990).

1 **SEC. 1329. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**
2 **MENTS TO EXISTING HOMES.**

3 (a) IN GENERAL.—Subpart A of part IV of sub-
4 chapter A of chapter 1 (relating to nonrefundable personal
5 credits), as amended by this Act, is amended by inserting
6 after section 25C the following new section:

7 **“SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**
8 **ING HOMES.**

9 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
10 dividual, there shall be allowed as a credit against the tax
11 imposed by this chapter for the taxable year an amount
12 equal to 10 percent of the amount paid or incurred by
13 the taxpayer for qualified energy efficiency improvements
14 installed during such taxable year.

15 “(b) LIMITATION.—The credit allowed by this section
16 with respect to a dwelling for any taxable year shall not
17 exceed \$300, reduced (but not below zero) by the sum of
18 the credits allowed under subsection (a) to the taxpayer
19 with respect to the dwelling for all preceding taxable years.

20 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
21 credit allowable under subsection (a) exceeds the limita-
22 tion imposed by section 26(a) for such taxable year re-
23 duced by the sum of the credits allowable under this sub-
24 part (other than this section) for such taxable year, such
25 excess shall be carried to the succeeding taxable year and

1 added to the credit allowable under subsection (a) for such
2 succeeding taxable year.

3 “(d) QUALIFIED ENERGY EFFICIENCY IMPROVE-
4 MENTS.—For purposes of this section, the term ‘qualified
5 energy efficiency improvements’ means any energy effi-
6 cient building envelope component which is certified to
7 meet or exceed the latest prescriptive criteria for such
8 component in the International Energy Conservation Code
9 approved by the Department of Energy before the installa-
10 tion of such component, or any combination of energy effi-
11 ciency measures which are certified as achieving at least
12 a 30 percent reduction in heating and cooling energy
13 usage for the dwelling (as measured in terms of energy
14 cost to the taxpayer), if—

15 “(1) such component or combination of meas-
16 ures is installed in or on a dwelling which—

17 “(A) is located in the United States,

18 “(B) has not been treated as a qualifying
19 new home for purposes of any credit allowed
20 under section 45G, and

21 “(C) is owned and used by the taxpayer as
22 the taxpayer’s principal residence (within the
23 meaning of section 121),

1 “(2) the original use of such component or com-
2 bination of measures commences with the taxpayer,
3 and

4 “(3) such component or combination of meas-
5 ures reasonably can be expected to remain in use for
6 at least 5 years.

7 “(e) CERTIFICATION.—

8 “(1) METHODS OF CERTIFICATION.—

9 “(A) COMPONENT-BASED METHOD.—The
10 certification described in subsection (d) for any
11 component described in such subsection shall be
12 determined on the basis of applicable energy ef-
13 ficiency ratings (including product labeling re-
14 quirements) for affected building envelope com-
15 ponents.

16 “(B) PERFORMANCE-BASED METHOD.—

17 “(i) IN GENERAL.—The certification
18 described in subsection (d) for any com-
19 bination of measures described in such
20 subsection shall be—

21 “(I) determined by comparing
22 the projected heating and cooling en-
23 ergy usage for the dwelling to such
24 usage for such dwelling in its original
25 condition, and

1 “(II) accompanied by a written
2 analysis documenting the proper ap-
3 plication of a permissible energy per-
4 formance calculation method to the
5 specific circumstances of such dwell-
6 ing.

7 “(ii) COMPUTER SOFTWARE.—Com-
8 puter software shall be used in support of
9 a performance-based method certification
10 under clause (i). Such software shall meet
11 procedures and methods for calculating en-
12 ergy and cost savings in regulations pro-
13 mulgated by the Secretary of Energy.

14 “(2) PROVIDER.—A certification described in
15 subsection (d) shall be provided by—

16 “(A) in the case of the method described
17 in paragraph (1)(A), a third party, such as a
18 local building regulatory authority, a utility, a
19 manufactured home primary inspection agency,
20 or a home energy rating organization, or

21 “(B) in the case of the method described
22 in paragraph (1)(B), an individual recognized
23 by an organization designated by the Secretary
24 for such purposes.

1 “(3) FORM.—A certification described in sub-
2 section (d) shall be made in writing on forms which
3 specify in readily inspectable fashion the energy effi-
4 cient components and other measures and their re-
5 spective efficiency ratings, and which include a per-
6 manent label affixed to the electrical distribution
7 panel of the dwelling.

8 “(4) REGULATIONS.—

9 “(A) IN GENERAL.—In prescribing regula-
10 tions under this subsection for certification
11 methods described in paragraph (1)(B), the
12 Secretary, after examining the requirements for
13 energy consultants and home energy ratings
14 providers specified by the Mortgage Industry
15 National Home Energy Rating Standards, shall
16 prescribe procedures for calculating annual en-
17 ergy usage and cost reductions for heating and
18 cooling and for the reporting of the results.
19 Such regulations shall—

20 “(i) provide that any calculation pro-
21 cedures be fuel neutral such that the same
22 energy efficiency measures allow a dwelling
23 to be eligible for the credit under this sec-
24 tion regardless of whether such dwelling

1 uses a gas or oil furnace or boiler or an
2 electric heat pump, and

3 “(ii) require that any computer soft-
4 ware allow for the printing of the Federal
5 tax forms necessary for the credit under
6 this section and for the printing of forms
7 for disclosure to the owner of the dwelling.

8 “(B) PROVIDERS.—For purposes of para-
9 graph (2)(B), the Secretary shall establish re-
10 quirements for the designation of individuals
11 based on the requirements for energy consult-
12 ants and home energy raters specified by the
13 Mortgage Industry National Home Energy Rat-
14 ing Standards.

15 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-
16 poses of this section—

17 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-
18 CUPANCY.—In the case of any dwelling unit which is
19 jointly occupied and used during any calendar year
20 as a residence by 2 or more individuals the following
21 rules shall apply:

22 “(A) The amount of the credit allowable
23 under subsection (a) by reason of expenditures
24 for the qualified energy efficiency improvements
25 made during such calendar year by any of such

1 individuals with respect to such dwelling unit
2 shall be determined by treating all of such indi-
3 viduals as 1 taxpayer whose taxable year is
4 such calendar year.

5 “(B) There shall be allowable, with respect
6 to such expenditures to each of such individ-
7 uals, a credit under subsection (a) for the tax-
8 able year in which such calendar year ends in
9 an amount which bears the same ratio to the
10 amount determined under subparagraph (A) as
11 the amount of such expenditures made by such
12 individual during such calendar year bears to
13 the aggregate of such expenditures made by all
14 of such individuals during such calendar year.

15 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
16 HOUSING CORPORATION.—In the case of an indi-
17 vidual who is a tenant-stockholder (as defined in sec-
18 tion 216) in a cooperative housing corporation (as
19 defined in such section), such individual shall be
20 treated as having paid his tenant-stockholder’s pro-
21 portionate share (as defined in section 216(b)(3)) of
22 the cost of qualified energy efficiency improvements
23 made by such corporation.

24 “(3) CONDOMINIUMS.—

1 “(A) IN GENERAL.—In the case of an indi-
2 vidual who is a member of a condominium man-
3 agement association with respect to a condo-
4 minium which the individual owns, such indi-
5 vidual shall be treated as having paid the indi-
6 vidual’s proportionate share of the cost of quali-
7 fied energy efficiency improvements made by
8 such association.

9 “(B) CONDOMINIUM MANAGEMENT ASSO-
10 CIATION.—For purposes of this paragraph, the
11 term ‘condominium management association’
12 means an organization which meets the require-
13 ments of paragraph (1) of section 528(c) (other
14 than subparagraph (E) thereof) with respect to
15 a condominium project substantially all of the
16 units of which are used as residences.

17 “(4) BUILDING ENVELOPE COMPONENT.—The
18 term ‘building envelope component’ means—

19 “(A) any insulation material or system
20 which is specifically and primarily designed to
21 reduce the heat loss or gain of a dwelling when
22 installed in or on such dwelling,

23 “(B) exterior windows (including sky-
24 lights), and

25 “(C) exterior doors.

1 “(5) MANUFACTURED HOMES INCLUDED.—For
2 purposes of this section, the term ‘dwelling’ includes
3 a manufactured home which conforms to Federal
4 Manufactured Home Construction and Safety Stand-
5 ards (24 CFR 3280).

6 “(g) BASIS ADJUSTMENT.—For purposes of this sub-
7 title, if a credit is allowed under this section for any ex-
8 penditure with respect to any property, the increase in the
9 basis of such property which would (but for this sub-
10 section) result from such expenditure shall be reduced by
11 the amount of the credit so allowed.

12 “(h) TERMINATION.—Subsection (a) shall not apply
13 to qualified energy efficiency improvements installed after
14 December 31, 2006.”.

15 (b) CREDIT ALLOWED AGAINST REGULAR TAX AND
16 ALTERNATIVE MINIMUM TAX.—

17 (1) IN GENERAL.—Section 25D(b), as added by
18 subsection (a), is amended—

19 (A) by striking “The credit” and inserting
20 the following:

21 “(1) DOLLAR AMOUNT.—The credit”, and

22 (B) by adding at the end the following new
23 paragraph:

1 “(2) LIMITATION BASED ON AMOUNT OF
2 TAX.—The credit allowed under subsection (a) for
3 the taxable year shall not exceed the excess of—

4 “(A) the sum of the regular tax liability
5 (as defined in section 26(b)) plus the tax im-
6 posed by section 55, over

7 “(B) the sum of the credits allowable
8 under this subpart (other than this section) and
9 section 27 for the taxable year.”.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Section 25D(c), as added by subsection
12 (a), is amended by striking “section 26(a) for
13 such taxable year reduced by the sum of the
14 credits allowable under this subpart (other than
15 this section)” and inserting “subsection (b)(2)”.

16 (B) Section 23(b)(4)(B), as amended by
17 this Act, is amended by striking “section 25C”
18 and inserting “sections 25C and 25D”.

19 (C) Section 24(b)(3)(B), as amended by
20 this Act, is amended by striking “and 25C” and
21 inserting “25C, and 25D”.

22 (D) Section 25(e)(1)(C), as amended by
23 this Act, is amended by inserting “25D,” after
24 “25C,”.

1 (E) Section 25B(g)(2), as amended by this
2 Act, is amended by striking “23 and 25C” and
3 inserting “23, 25C, and 25D”.

4 (F) Section 26(a)(1), as amended by this
5 Act, is amended by striking “and 25C” and in-
6 serting “25C, and 25D”.

7 (G) Section 904(h), as amended by this
8 Act, is amended by striking “and 25C” and in-
9 serting “25C, and 25D”.

10 (H) Section 1400C(d), as amended by this
11 Act, is amended by striking “and 25C” and in-
12 serting “25C, and 25D”.

13 (c) ADDITIONAL CONFORMING AMENDMENTS.—

14 (1) Section 1016(a), as amended by this Act, is
15 amended by striking “and” at the end of paragraph
16 (31), by striking the period at the end of paragraph
17 (32) and inserting “; and”, and by adding at the
18 end the following new paragraph:

19 “(33) to the extent provided in section 25D(g),
20 in the case of amounts with respect to which a credit
21 has been allowed under section 25D.”.

22 (2) The table of sections for subpart A of part
23 IV of subchapter A of chapter 1, as amended by this
24 Act, is amended by inserting after the item relating
25 to section 25C the following new item:

“Sec. 25D. Energy efficiency improvements to existing homes.”.

1 (d) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as provided by para-
3 graph (2), the amendments made by this section
4 shall apply to property installed after September 30,
5 2004, in taxable years ending after such date.

6 (2) SUBSECTION (b).—The amendments made
7 by subsection (b) shall apply to taxable years begin-
8 ning after September 30, 2004.

9 **Subtitle D—Clean Coal Incentives**

10 **PART I—CREDIT FOR EMISSION REDUCTIONS** 11 **AND EFFICIENCY IMPROVEMENTS IN EXIST-** 12 **ING COAL-BASED ELECTRICITY GENERATION** 13 **FACILITIES**

14 **SEC. 1341. CREDIT FOR PRODUCTION FROM A QUALIFYING** 15 **CLEAN COAL TECHNOLOGY UNIT.**

16 (a) CREDIT FOR PRODUCTION FROM A QUALIFYING
17 CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV
18 of subchapter A of chapter 1 (relating to business related
19 credits), as amended by this Act, is amended by adding
20 at the end the following new section:

21 **“SEC. 45I. CREDIT FOR PRODUCTION FROM A QUALIFYING** 22 **CLEAN COAL TECHNOLOGY UNIT.**

23 “(a) GENERAL RULE.—For purposes of section 38,
24 the qualifying clean coal technology production credit of
25 any taxpayer for any taxable year is equal to—

1 “(1) the applicable amount of clean coal tech-
2 nology production credit, multiplied by

3 “(2) the applicable percentage of the sum of—

4 “(A) the kilowatt hours of electricity, plus

5 “(B) each 3,413 Btu of fuels or chemicals,
6 produced by the taxpayer during such taxable year
7 at a qualifying clean coal technology unit, but only
8 if such production occurs during the 10-year period
9 beginning on the date the unit was returned to serv-
10 ice after becoming a qualifying clean coal technology
11 unit.

12 “(b) APPLICABLE AMOUNT.—

13 “(1) IN GENERAL.—For purposes of this sec-
14 tion, the applicable amount of clean coal technology
15 production credit is equal to \$0.0034.

16 “(2) INFLATION ADJUSTMENT.—For calendar
17 years after 2004, the applicable amount of clean coal
18 technology production credit shall be adjusted by
19 multiplying such amount by the inflation adjustment
20 factor for the calendar year in which the amount is
21 applied. If any amount as increased under the pre-
22 ceding sentence is not a multiple of 0.01 cent, such
23 amount shall be rounded to the nearest multiple of
24 0.01 cent.

1 “(c) APPLICABLE PERCENTAGE.—For purposes of
2 this section, with respect to any qualifying clean coal tech-
3 nology unit, the applicable percentage is the percentage
4 equal to the ratio which the portion of the national mega-
5 watt capacity limitation allocated to the taxpayer with re-
6 spect to such unit under subsection (e) bears to the total
7 megawatt capacity of such unit.

8 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
9 poses of this section—

10 “(1) QUALIFYING CLEAN COAL TECHNOLOGY
11 UNIT.—The term ‘qualifying clean coal technology
12 unit’ means a clean coal technology unit of the tax-
13 payer which—

14 “(A) on October 1, 2004—

15 “(i) was a coal-based electricity gener-
16 ating steam generator-turbine unit which
17 was not a clean coal technology unit, and

18 “(ii) had a nameplate capacity rating
19 of not more than 300 megawatts,

20 “(B) becomes a clean coal technology unit
21 as the result of the retrofitting, repowering, or
22 replacement of the unit with clean coal tech-
23 nology during the 10-year period beginning on
24 October 1, 2004,

1 “(C) is not receiving nor is scheduled to
2 receive funding under the Clean Coal Tech-
3 nology Program, the Power Plant Improvement
4 Initiative, or the Clean Coal Power Initiative
5 administered by the Secretary of Energy, and

6 “(D) receives an allocation of a portion of
7 the national megawatt capacity limitation under
8 subsection (e).

9 “(2) CLEAN COAL TECHNOLOGY UNIT.—The
10 term ‘clean coal technology unit’ means a unit
11 which—

12 “(A) uses clean coal technology, including
13 advanced pulverized coal or atmospheric fluid-
14 ized bed combustion, pressurized fluidized bed
15 combustion, integrated gasification combined
16 cycle, or any other technology, for the produc-
17 tion of electricity,

18 “(B) uses an input of at least 75 percent
19 coal to produce at least 50 percent of its ther-
20 mal output as electricity,

21 “(C) has a design net heat rate of at least
22 500 less than that of such unit as described in
23 paragraph (1)(A),

24 “(D) has a maximum design net heat rate
25 of not more than 9,500, and

1 “(E) meets the pollution control require-
2 ments of paragraph (3).

3 “(3) POLLUTION CONTROL REQUIREMENTS.—

4 “(A) IN GENERAL.—A unit meets the re-
5 quirements of this paragraph if—

6 “(i) its emissions of sulfur dioxide, ni-
7 trogen oxide, or particulates meet the
8 lower of the emission levels for each such
9 emission specified in—

10 “(I) subparagraph (B), or

11 “(II) the new source performance
12 standards of the Clean Air Act (42
13 U.S.C. 7411) which are in effect for
14 the category of source at the time of
15 the retrofitting, repowering, or re-
16 placement of the unit, and

17 “(ii) its emissions do not exceed any
18 relevant emission level specified by regula-
19 tion pursuant to the hazardous air pollut-
20 ant requirements of the Clean Air Act (42
21 U.S.C. 7412) in effect at the time of the
22 retrofitting, repowering, or replacement.

23 “(B) SPECIFIC LEVELS.—The levels speci-
24 fied in this subparagraph are—

1 “(i) in the case of sulfur dioxide emis-
2 sions, 50 percent of the sulfur dioxide
3 emission levels specified in the new source
4 performance standards of the Clean Air
5 Act (42 U.S.C. 7411) in effect on the date
6 of the enactment of this section for the
7 category of source,

8 “(ii) in the case of nitrogen oxide
9 emissions—

10 “(I) 0.1 pound per million Btu of
11 heat input if the unit is not a cyclone-
12 fired boiler, and

13 “(II) if the unit is a cyclone-fired
14 boiler, 15 percent of the uncontrolled
15 nitrogen oxide emissions from such
16 boilers, and

17 “(iii) in the case of particulate emis-
18 sions, 0.02 pound per million Btu of heat
19 input.

20 “(4) DESIGN NET HEAT RATE.—The design net
21 heat rate with respect to any unit, measured in Btu
22 per kilowatt hour (HHV)—

23 “(A) shall be based on the design annual
24 heat input to and the design annual net elec-
25 trical power, fuels, and chemicals output from

1 such unit (determined without regard to such
2 unit's co-generation of steam),

3 “(B) shall be adjusted for the heat content
4 of the design coal to be used by the unit if it
5 is less than 12,000 Btu per pound according to
6 the following formula:

7 Design net heat rate = Unit net heat rate \times [1 –
8 {((12,000-design coal heat content, Btu per pound)/
9 1,000) \times 0.013}],

10 “(C) shall be corrected for the site ref-
11 erence conditions of—

12 “(i) elevation above sea level of 500
13 feet,

14 “(ii) air pressure of 14.4 pounds per
15 square inch absolute (psia),

16 “(iii) temperature, dry bulb of 63°F,

17 “(iv) temperature, wet bulb of 54°F,

18 and

19 “(v) relative humidity of 55 percent,

20 and

21 “(D) if carbon capture controls have been
22 installed with respect to any qualifying unit and
23 such controls remove at least 50 percent of the
24 unit's carbon dioxide emissions, shall be ad-
25 justed up to the design heat rate level which

1 would have resulted without the installation of
2 such controls.

3 “(5) HHV.—The term ‘HHV’ means higher
4 heating value.

5 “(6) APPLICATION OF CERTAIN RULES.—The
6 rules of paragraphs (3), (4), and (5) of section 45(e)
7 shall apply.

8 “(7) INFLATION ADJUSTMENT FACTOR.—

9 “(A) IN GENERAL.—The term ‘inflation
10 adjustment factor’ means, with respect to a cal-
11 endar year, a fraction the numerator of which
12 is the GDP implicit price deflator for the pre-
13 ceding calendar year and the denominator of
14 which is the GDP implicit price deflator for the
15 calendar year 2003.

16 “(B) GDP IMPLICIT PRICE DEFLATOR.—

17 The term ‘GDP implicit price deflator’ means,
18 for any calendar year, the most recent revision
19 of the implicit price deflator for the gross do-
20 mestic product as of June 30 of such calendar
21 year as computed by the Department of Com-
22 merce before October 1 of such calendar year.

23 “(8) NONCOMPLIANCE WITH POLLUTION
24 LAWS.—For purposes of this section, a unit which is
25 not in compliance with the applicable State and Fed-

1 eral pollution prevention, control, and permit re-
2 quirements for any period of time shall not be con-
3 sidered to be a qualifying clean coal technology unit
4 during such period.

5 “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-
6 PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY
7 UNITS.—

8 “(1) IN GENERAL.—For purposes of this sec-
9 tion, the national megawatt capacity limitation for
10 qualifying clean coal technology units is 4,000
11 megawatts.

12 “(2) ALLOCATION OF LIMITATION.—The Sec-
13 retary shall allocate the national megawatt capacity
14 limitation for qualifying clean coal technology units
15 in such manner as the Secretary may prescribe
16 under the regulations under paragraph (3).

17 “(3) REGULATIONS.—Not later than 6 months
18 after the date of the enactment of this section, the
19 Secretary shall prescribe such regulations as may be
20 necessary or appropriate—

21 “(A) to carry out the purposes of this sub-
22 section,

23 “(B) to limit the capacity of any qualifying
24 clean coal technology unit to which this section
25 applies so that the megawatt capacity allocated

1 to any unit under this subsection does not ex-
2 ceed 300 megawatts and the combined mega-
3 watt capacity allocated to all such units when
4 all such units are placed in service during the
5 10-year period described in subsection
6 (d)(1)(B), does not exceed 4,000 megawatts,

7 “(C) to provide a certification process
8 under which the Secretary, in consultation with
9 the Secretary of Energy, shall approve and allo-
10 cate the national megawatt capacity limita-
11 tion—

12 “(i) to encourage that units with the
13 highest thermal efficiencies, when adjusted
14 for the heat content of the design coal and
15 site reference conditions described in sub-
16 section (d)(4)(C), and environmental per-
17 formance, be placed in service as soon as
18 possible, and

19 “(ii) to allocate capacity to taxpayers
20 which have a definite and credible plan for
21 placing into commercial operation a quali-
22 fying clean coal technology unit, includ-
23 ing—

24 “(I) a site,

1 “(II) contractual commitments
2 for procurement and construction or,
3 in the case of regulated utilities, the
4 agreement of the State utility commis-
5 sion,
6 “(III) filings for all necessary
7 preconstruction approvals,
8 “(IV) a demonstrated record of
9 having successfully completed com-
10 parable projects on a timely basis, and
11 “(V) such other factors that the
12 Secretary determines are appropriate,
13 “(D) to allocate the national megawatt ca-
14 pacity limitation to a portion of the capacity of
15 a qualifying clean coal technology unit if the
16 Secretary determines that such an allocation
17 would maximize the amount of efficient produc-
18 tion encouraged with the available tax credits,
19 “(E) to set progress requirements and con-
20 ditional approvals so that capacity allocations
21 for clean coal technology units which become
22 unlikely to meet the necessary conditions for
23 qualifying can be reallocated by the Secretary
24 to other clean coal technology units, and

1 “(F) to provide taxpayers with opportuni-
2 ties to correct administrative errors and omis-
3 sions with respect to allocations and record
4 keeping within a reasonable period after dis-
5 covery, taking into account the availability of
6 regulations and other administrative guidance
7 from the Secretary.”.

8 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
9 tion 38(b) (relating to current year business credit), as
10 amended by this Act, is amended by striking “plus” at
11 the end of paragraph (18), by striking the period at the
12 end of paragraph (19) and inserting “, plus”, and by add-
13 ing at the end the following new paragraph:

14 “(20) the qualifying clean coal technology pro-
15 duction credit determined under section 45I(a).”.

16 (c) TRANSITIONAL RULE.—Section 39(d) (relating to
17 transitional rules), as amended by this Act, is amended
18 by adding at the end the following new paragraph:

19 “(16) NO CARRYBACK OF SECTION 45I CREDIT
20 BEFORE EFFECTIVE DATE.—No portion of the un-
21 used business credit for any taxable year which is
22 attributable to the qualifying clean coal technology
23 production credit determined under section 45I may
24 be carried back to a taxable year ending before Oc-
25 tober 1, 2004.”.

1 (d) CLERICAL AMENDMENT.—The table of sections
 2 for subpart D of part IV of subchapter A of chapter 1,
 3 as amended by this Act, is amended by adding at the end
 4 the following new item:

“Sec. 45I. Credit for production from a qualifying clean coal technology unit.”.

5 (e) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to production after September 30,
 7 2004, in taxable years ending after such date.

8 **PART II—INCENTIVES FOR EARLY COMMERCIAL**
 9 **APPLICATIONS OF ADVANCED CLEAN COAL**
 10 **TECHNOLOGIES**

11 **SEC. 1342. CREDIT FOR INVESTMENT IN QUALIFYING AD-**
 12 **VANCED CLEAN COAL TECHNOLOGY.**

13 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN
 14 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating
 15 to amount of credit) is amended by striking “and” at the
 16 end of paragraph (2), by striking the period at the end
 17 of paragraph (3) and inserting “, and”, and by adding
 18 at the end the following new paragraph:

19 “(4) the qualifying advanced clean coal tech-
 20 nology unit credit.”.

21 (b) AMOUNT OF QUALIFYING ADVANCED CLEAN
 22 COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part
 23 IV of subchapter A of chapter 1 (relating to rules for com-
 24 puting investment credit) is amended by inserting after
 25 section 48 the following new section:

1 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-**
2 **NOLOGY UNIT CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 46, the
4 qualifying advanced clean coal technology unit credit for
5 any taxable year is an amount equal to 10 percent of the
6 applicable percentage of the qualified investment in a
7 qualifying advanced clean coal technology unit for such
8 taxable year.

9 “(b) QUALIFYING ADVANCED CLEAN COAL TECH-
10 NOLOGY UNIT.—

11 “(1) IN GENERAL.—For purposes of subsection
12 (a), the term ‘qualifying advanced clean coal tech-
13 nology unit’ means an advanced clean coal tech-
14 nology unit of the taxpayer—

15 “(A)(i) in the case of a unit first placed in
16 service after September 30, 2004, the original
17 use of which commences with the taxpayer, or

18 “(ii) in the case of the retrofitting or
19 repowering of a unit first placed in service be-
20 fore October 1, 2004, the retrofitting or
21 repowering of which is completed by the tax-
22 payer after such date, or

23 “(B) which is depreciable under section
24 167,

25 “(C) which has a useful life of not less
26 than 4 years,

1 “(D) which is located in the United States,

2 “(E) which is not receiving nor is sched-
3 uled to receive funding under the Clean Coal
4 Technology Program, the Power Plant Improve-
5 ment Initiative, or the Clean Coal Power Initia-
6 tive administered by the Secretary of Energy,

7 “(F) which is not a qualifying clean coal
8 technology unit, and

9 “(G) which receives an allocation of a por-
10 tion of the national megawatt capacity limita-
11 tion under subsection (f).

12 “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—
13 For purposes of subparagraph (A) of paragraph (1),
14 in the case of a unit which—

15 “(A) is originally placed in service by a
16 person, and

17 “(B) is sold and leased back by such per-
18 son, or is leased to such person, within 3
19 months after the date such unit was originally
20 placed in service, for a period of not less than
21 12 years—

22 such unit shall be treated as originally placed in
23 service not earlier than the date on which such unit
24 is used under the leaseback (or lease) referred to in
25 subparagraph (B). The preceding sentence shall not

1 apply to any property if the lessee and lessor of such
2 property make an election under this sentence. Such
3 an election, once made, may be revoked only with
4 the consent of the Secretary.

5 “(3) NONCOMPLIANCE WITH POLLUTION
6 LAWS.—For purposes of this subsection, a unit
7 which is not in compliance with the applicable State
8 and Federal pollution prevention, control, and per-
9 mit requirements for any period of time shall not be
10 considered to be a qualifying advanced clean coal
11 technology unit during such period.

12 “(c) APPLICABLE PERCENTAGE.—For purposes of
13 this section, with respect to any qualifying advanced clean
14 coal technology unit, the applicable percentage is the per-
15 centage equal to the ratio which the portion of the national
16 megawatt capacity limitation allocated to the taxpayer
17 with respect to such unit under subsection (f) bears to
18 the total megawatt capacity of such unit.

19 “(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—
20 For purposes of this section—

21 “(1) IN GENERAL.—The term ‘advanced clean
22 coal technology unit’ means a new, retrofit, or
23 repowering unit of the taxpayer which—

24 “(A) is—

1 “(i) an eligible advanced pulverized
2 coal or atmospheric fluidized bed combus-
3 tion technology unit,

4 “(ii) an eligible pressurized fluidized
5 bed combustion technology unit,

6 “(iii) an eligible integrated gasifi-
7 cation combined cycle technology unit, or

8 “(iv) an eligible other technology unit,
9 and

10 “(B) meets the carbon emission rate re-
11 quirements of paragraph (6).

12 “(2) ELIGIBLE ADVANCED PULVERIZED COAL
13 OR ATMOSPHERIC FLUIDIZED BED COMBUSTION
14 TECHNOLOGY UNIT.—The term ‘eligible advanced
15 pulverized coal or atmospheric fluidized bed combus-
16 tion technology unit’ means a clean coal technology
17 unit using advanced pulverized coal or atmospheric
18 fluidized bed combustion technology which—

19 “(A) is placed in service after September
20 30, 2004, and before January 1, 2013, and

21 “(B) has a design net heat rate of not
22 more than 8,500 (8,900 in the case of units
23 placed in service before 2009).

24 “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED
25 COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-

1 ble pressurized fluidized bed combustion technology
2 unit' means a clean coal technology unit using pres-
3 surized fluidized bed combustion technology which—

4 “(A) is placed in service after September
5 30, 2004, and before January 1, 2017, and

6 “(B) has a design net heat rate of not
7 more than 7,720 (8,900 in the case of units
8 placed in service before 2009, and 8,500 in the
9 case of units placed in service after 2008 and
10 before 2013).

11 “(4) ELIGIBLE INTEGRATED GASIFICATION
12 COMBINED CYCLE TECHNOLOGY UNIT.—The term
13 ‘eligible integrated gasification combined cycle tech-
14 nology unit’ means a clean coal technology unit
15 using integrated gasification combined cycle tech-
16 nology, with or without fuel or chemical co-produc-
17 tion, which—

18 “(A) is placed in service after September
19 30, 2004, and before January 1, 2017,

20 “(B) has a design net heat rate of not
21 more than 7,720 (8,900 in the case of units
22 placed in service before 2009, and 8,500 in the
23 case of units placed in service after 2008 and
24 before 2013), and

1 “(C) has a net thermal efficiency (HHV)
2 using coal with fuel or chemical co-production
3 of not less than 44.2 percent (38.4 percent in
4 the case of units placed in service before 2009,
5 and 40.2 percent in the case of units placed in
6 service after 2008 and before 2013).

7 “(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—
8 The term ‘eligible other technology unit’ means a
9 clean coal technology unit using any other tech-
10 nology for the production of electricity which is
11 placed in service after September 30, 2004, and be-
12 fore January 1, 2017.

13 “(6) CARBON EMISSION RATE REQUIRE-
14 MENTS.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), a unit meets the require-
17 ments of this paragraph if—

18 “(i) in the case of a unit using design
19 coal with a heat content of not more than
20 9,000 Btu per pound, the carbon emission
21 rate is less than 0.60 pound of carbon per
22 kilowatt hour, and

23 “(ii) in the case of a unit using design
24 coal with a heat content of more than
25 9,000 Btu per pound, the carbon emission

1 rate is less than 0.54 pound of carbon per
2 kilowatt hour.

3 “(B) ELIGIBLE OTHER TECHNOLOGY
4 UNIT.—In the case of an eligible other tech-
5 nology unit, subparagraph (A) shall be applied
6 by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and
7 ‘0.54’, respectively.

8 “(e) GENERAL DEFINITIONS.—Any term used in this
9 section which is also used in section 45I shall have the
10 meaning given such term in section 45I.

11 “(f) NATIONAL LIMITATION ON THE AGGREGATE CA-
12 PACITY OF ADVANCED CLEAN COAL TECHNOLOGY
13 UNITS.—

14 “(1) IN GENERAL.—For purposes of subsection
15 (b)(1)(G), the national megawatt capacity limitation
16 is—

17 “(A) for qualifying advanced clean coal
18 technology units using advanced pulverized coal
19 or atmospheric fluidized bed combustion tech-
20 nology, not more than 1,000 megawatts (not
21 more than 500 megawatts in the case of units
22 placed in service before 2009),

23 “(B) for such units using pressurized flu-
24 idized bed combustion technology, not more
25 than 500 megawatts (not more than 250

1 megawatts in the case of units placed in service
2 before 2009),

3 “(C) for such units using integrated gasifi-
4 cation combined cycle technology, with or with-
5 out fuel or chemical co-production, not more
6 than 2,000 megawatts (not more than 750
7 megawatts in the case of units placed in service
8 before 2009), and

9 “(D) for such units using other technology
10 for the production of electricity, not more than
11 500 megawatts (not more than 250 megawatts
12 in the case of units placed in service before
13 2009).

14 “(2) ALLOCATION OF LIMITATION.—The Sec-
15 retary shall allocate the national megawatt capacity
16 limitation for qualifying advanced clean coal tech-
17 nology units in such manner as the Secretary may
18 prescribe under the regulations under paragraph (3).

19 “(3) REGULATIONS.—Not later than 6 months
20 after the date of the enactment of this section, the
21 Secretary shall prescribe such regulations as may be
22 necessary or appropriate—

23 “(A) to carry out the purposes of this sub-
24 section and section 45J,

1 “(B) to limit the capacity of any qualifying
2 advanced clean coal technology unit to which
3 this section applies so that the combined mega-
4 watt capacity of all such units to which this sec-
5 tion applies does not exceed 4,000 megawatts,

6 “(C) to provide a certification process de-
7 scribed in section 45I(e)(3)(C),

8 “(D) to carry out the purposes described
9 in subparagraphs (D), (E), and (F) of section
10 45I(e)(3), and

11 “(E) to reallocate capacity which is not al-
12 located to any technology described in subpara-
13 graphs (A) through (D) of paragraph (1) be-
14 cause an insufficient number of qualifying units
15 request an allocation for such technology, to an-
16 other technology described in such subpara-
17 graphs in order to maximize the amount of en-
18 ergy efficient production encouraged with the
19 available tax credits.

20 “(4) SELECTION CRITERIA.—For purposes of
21 this subsection, the selection criteria for allocating
22 the national megawatt capacity limitation to quali-
23 fying advanced clean coal technology units—

24 “(A) shall be established by the Secretary
25 of Energy as part of a competitive solicitation,

1 “(B) shall include primary criteria of min-
2 imum design net heat rate, maximum design
3 thermal efficiency, environmental performance,
4 and lowest cost to the Government, and

5 “(C) shall include supplemental criteria as
6 determined appropriate by the Secretary of En-
7 ergy.

8 “(g) QUALIFIED INVESTMENT.—For purposes of
9 subsection (a), the term ‘qualified investment’ means, with
10 respect to any taxable year, the basis of a qualifying ad-
11 vanced clean coal technology unit placed in service by the
12 taxpayer during such taxable year (in the case of a unit
13 described in subsection (b)(1)(A)(ii), only that portion of
14 the basis of such unit which is properly attributable to
15 the retrofitting or repowering of such unit).

16 “(h) QUALIFIED PROGRESS EXPENDITURES.—

17 “(1) INCREASE IN QUALIFIED INVESTMENT.—

18 In the case of a taxpayer who has made an election
19 under paragraph (5), the amount of the qualified in-
20 vestment of such taxpayer for the taxable year (de-
21 termined under subsection (g) without regard to this
22 subsection) shall be increased by an amount equal to
23 the aggregate of each qualified progress expenditure
24 for the taxable year with respect to progress expend-
25 iture property.

1 “(2) PROGRESS EXPENDITURE PROPERTY DE-
2 FINED.—For purposes of this subsection, the term
3 ‘progress expenditure property’ means any property
4 being constructed by or for the taxpayer and which
5 it is reasonable to believe will qualify as a qualifying
6 advanced clean coal technology unit which is being
7 constructed by or for the taxpayer when it is placed
8 in service.

9 “(3) QUALIFIED PROGRESS EXPENDITURES DE-
10 FINED.—For purposes of this subsection—

11 “(A) SELF-CONSTRUCTED PROPERTY.—In
12 the case of any self-constructed property, the
13 term ‘qualified progress expenditures’ means
14 the amount which, for purposes of this subpart,
15 is properly chargeable (during such taxable
16 year) to capital account with respect to such
17 property.

18 “(B) NONSELF-CONSTRUCTED PROP-
19 erty.—In the case of nonself-constructed prop-
20 erty, the term ‘qualified progress expenditures’
21 means the amount paid during the taxable year
22 to another person for the construction of such
23 property.

24 “(4) OTHER DEFINITIONS.—For purposes of
25 this subsection—

1 “(A) SELF-CONSTRUCTED PROPERTY.—

2 The term ‘self-constructed property’ means
3 property for which it is reasonable to believe
4 that more than half of the construction expendi-
5 tures will be made directly by the taxpayer.

6 “(B) NONSELF-CONSTRUCTED PROP-

7 ERTY.—The term ‘nonself-constructed property’
8 means property which is not self-constructed
9 property.

10 “(C) CONSTRUCTION, ETC.—The term

11 ‘construction’ includes reconstruction and erec-
12 tion, and the term ‘constructed’ includes recon-
13 structed and erected.

14 “(D) ONLY CONSTRUCTION OF QUALI-

15 FYING ADVANCED CLEAN COAL TECHNOLOGY

16 UNIT TO BE TAKEN INTO ACCOUNT.—Construc-

17 tion shall be taken into account only if, for pur-

18 poses of this subpart, expenditures therefor are

19 properly chargeable to capital account with re-

20 spect to the property.

21 “(5) ELECTION.—An election under this sub-

22 section may be made at such time and in such man-

23 ner as the Secretary may by regulations prescribe.

24 Such an election shall apply to the taxable year for

25 which made and to all subsequent taxable years.

1 Such an election, once made, may not be revoked ex-
2 cept with the consent of the Secretary.

3 “(i) COORDINATION WITH OTHER CREDITS.—This
4 section shall not apply to any property with respect to
5 which the rehabilitation credit under section 47 or the en-
6 ergy credit under section 48 is allowed unless the taxpayer
7 elects to waive the application of such credit to such prop-
8 erty.”.

9 (c) RECAPTURE.—Section 50(a) (relating to other
10 special rules) is amended by adding at the end the fol-
11 lowing new paragraph:

12 “(6) SPECIAL RULES RELATING TO QUALIFYING
13 ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For
14 purposes of applying this subsection in the case of
15 any credit allowable by reason of section 48A, the
16 following rules shall apply:

17 “(A) GENERAL RULE.—In lieu of the
18 amount of the increase in tax under paragraph
19 (1), the increase in tax shall be an amount
20 equal to the investment tax credit allowed under
21 section 38 for all prior taxable years with re-
22 spect to a qualifying advanced clean coal tech-
23 nology unit (as defined by section 48A(b)(1))
24 multiplied by a fraction the numerator of which
25 is the number of years remaining to fully depre-

1 ciate under this title the qualifying advanced
2 clean coal technology unit disposed of, and the
3 denominator of which is the total number of
4 years over which such unit would otherwise
5 have been subject to depreciation. For purposes
6 of the preceding sentence, the year of disposi-
7 tion of the qualifying advanced clean coal tech-
8 nology unit shall be treated as a year of re-
9 maining depreciation.

10 “(B) PROPERTY CEASES TO QUALIFY FOR
11 PROGRESS EXPENDITURES.—Rules similar to
12 the rules of paragraph (2) shall apply in the
13 case of qualified progress expenditures for a
14 qualifying advanced clean coal technology unit
15 under section 48A, except that the amount of
16 the increase in tax under subparagraph (A) of
17 this paragraph shall be substituted for the
18 amount described in such paragraph (2).

19 “(C) APPLICATION OF PARAGRAPH.—This
20 paragraph shall be applied separately with re-
21 spect to the credit allowed under section 38 re-
22 garding a qualifying advanced clean coal tech-
23 nology unit.”.

1 (d) TRANSITIONAL RULE.—Section 39(d) (relating to
2 transitional rules), as amended by this Act, is amended
3 by adding at the end the following new paragraph:

4 “(17) NO CARRYBACK OF SECTION 48A CREDIT
5 BEFORE EFFECTIVE DATE.—No portion of the un-
6 used business credit for any taxable year which is
7 attributable to the qualifying advanced clean coal
8 technology unit credit determined under section 48A
9 may be carried back to a taxable year ending before
10 October 1, 2004.”.

11 (e) TECHNICAL AMENDMENTS.—

12 (1) Section 49(a)(1)(C) is amended by striking
13 “and” at the end of clause (ii), by striking the pe-
14 riod at the end of clause (iii) and inserting “, and”,
15 and by adding at the end the following new clause:

16 “(iv) the portion of the basis of any
17 qualifying advanced clean coal technology
18 unit attributable to any qualified invest-
19 ment (as defined by section 48A(g)).”.

20 (2) Section 50(a)(4) is amended by striking
21 “and (2)” and inserting “, (2), and (6)”.

22 (3) Section 50(c) is amended by adding at the
23 end the following new paragraph:

1 “(6) **NONAPPLICATION.**—Paragraphs (1) and
2 (2) shall not apply to any qualifying advanced clean
3 coal technology unit credit under section 48A.”.

4 (4) The table of sections for subpart E of part
5 IV of subchapter A of chapter 1 is amended by in-
6 serting after the item relating to section 48 the fol-
7 lowing new item:

“Sec. 48A. Qualifying advanced clean coal technology unit credit.”.

8 (f) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to periods after September 30,
10 2004, under rules similar to the rules of section 48(m)
11 of the Internal Revenue Code of 1986 (as in effect on the
12 day before the date of the enactment of the Revenue Rec-
13 onciliation Act of 1990).

14 **SEC. 1343. CREDIT FOR PRODUCTION FROM A QUALIFYING**
15 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

16 (a) **IN GENERAL.**—Subpart D of part IV of sub-
17 chapter A of chapter 1 (relating to business related cred-
18 its), as amended by this Act, is amended by adding at
19 the end the following new section:

20 **“SEC. 45J. CREDIT FOR PRODUCTION FROM A QUALIFYING**
21 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

22 “(a) **GENERAL RULE.**—For purposes of section 38,
23 the qualifying advanced clean coal technology production
24 credit of any taxpayer for any taxable year is equal to—

1 “(1) the applicable amount of advanced clean
2 coal technology production credit, multiplied by

3 “(2) the applicable percentage (as determined
4 under section 48A(c)) of the sum of—

5 “(A) the kilowatt hours of electricity, plus

6 “(B) each 3,413 Btu of fuels or chemi-
7 cals—

8 produced by the taxpayer during such taxable year
9 at a qualifying advanced clean coal technology unit,
10 but only if such production occurs during the 10-
11 year period beginning on the date the unit was origi-
12 nally placed in service (or returned to service after
13 becoming a qualifying advanced clean coal tech-
14 nology unit).

15 “(b) APPLICABLE AMOUNT.—For purposes of this
16 section—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), the applicable amount of advanced clean
19 coal technology production credit with respect to
20 production from a qualifying advanced clean coal
21 technology unit shall be determined as follows:

22 “(A) If the qualifying advanced clean coal
23 technology unit is producing electricity only:

24 “(i) In the case of a unit originally
25 placed in service before 2009, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,500	\$.0060	\$.0038
More than 8,500 but not more than 8,750	\$.0025	\$.0010
More than 8,750 but less than 8,900	\$.0010	\$.0010.

1 “(ii) In the case of a unit originally
2 placed in service after 2008 and before
3 2013, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770	\$.0105	\$.0090
More than 7,770 but not more than 8,125	\$.0085	\$.0068
More than 8,125 but less than 8,500	\$.0075	\$.0055.

4 “(iii) In the case of a unit originally
5 placed in service after 2012 and before
6 2017, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380	\$.0140	\$.0115
More than 7,380 but not more than 7,720	\$.0120	\$.0090.

7 “(B) If the qualifying advanced clean coal
8 technology unit is producing fuel or chemicals:

1 “(i) In the case of a unit originally
 2 placed in service before 2009, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.2 percent	\$.0060	\$.0038
Less than 40.2 but not less than 39 percent	\$.0025	\$.0010
Less than 39 but not less than 38.4 percent	\$.0010	\$.0010.

3 “(ii) In the case of a unit originally
 4 placed in service after 2008 and before
 5 2013, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.9 percent	\$.0105	\$.0090
Less than 43.9 but not less than 42 percent	\$.0085	\$.0068
Less than 42 but not less than 40.2 percent	\$.0075	\$.0055.

6 “(iii) In the case of a unit originally
 7 placed in service after 2012 and before
 8 2017, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 46.3 percent	\$.0140	\$.0115
Less than 46.3 but not less than 44.2 percent	\$.0120	\$.0090.

1 “(2) SPECIAL RULE FOR UNITS QUALIFYING
2 FOR GREATER APPLICABLE AMOUNT WHEN PLACED
3 IN SERVICE.—If, at the time a qualifying advanced
4 clean coal technology unit is placed in service, pro-
5 duction from the unit would be entitled to a greater
6 applicable amount if such unit had been placed in
7 service at a later date, the applicable amount for
8 such unit shall be such greater amount.

9 “(c) INFLATION ADJUSTMENT.—For calendar years
10 after 2004, each dollar amount in subsection (b)(1) shall
11 be adjusted by multiplying such amount by the inflation
12 adjustment factor for the calendar year in which the
13 amount is applied. If any amount as increased under the
14 preceding sentence is not a multiple of 0.01 cent, such
15 amount shall be rounded to the nearest multiple of 0.01
16 cent.

17 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
18 poses of this section—

19 “(1) IN GENERAL.—Any term used in this sec-
20 tion which is also used in section 45I or 48A shall
21 have the meaning given such term in such section.

22 “(2) APPLICABLE RULES.—The rules of para-
23 graphs (3), (4), and (5) of section 45(e) shall
24 apply.”.

1 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
2 tion 38(b) (relating to current year business credit), as
3 amended by this Act, is amended by striking “plus” at
4 the end of paragraph (19), by striking the period at the
5 end of paragraph (20) and inserting “, plus”, and by add-
6 ing at the end the following new paragraph:

7 “(21) the qualifying advanced clean coal tech-
8 nology production credit determined under section
9 45J(a).”.

10 (c) TRANSITIONAL RULE.—Section 39(d) (relating to
11 transitional rules), as amended by this Act, is amended
12 by adding at the end the following new paragraph:

13 “(18) NO CARRYBACK OF SECTION 45J CREDIT
14 BEFORE EFFECTIVE DATE.—No portion of the un-
15 used business credit for any taxable year which is
16 attributable to the qualifying advanced clean coal
17 technology production credit determined under sec-
18 tion 45J may be carried back to a taxable year end-
19 ing before October 1, 2004.”.

20 (d) DENIAL OF DOUBLE BENEFIT.—Section 29(d)
21 (relating to other definitions and special rules) is amended
22 by adding at the end the following new paragraph:

23 “(9) DENIAL OF DOUBLE BENEFIT.—This sec-
24 tion shall not apply with respect to any qualified fuel
25 the production of which may be taken into account

1 for purposes of determining the credit under section
2 45J.”.

3 (e) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1,
5 as amended by this Act, is amended by adding at the end
6 the following new item:

“Sec. 45J. Credit for production from a qualifying advanced clean coal technology unit.”.

7 (f) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to production after September 30,
9 2004, in taxable years ending after such date.

10 **PART III—TREATMENT OF PERSONS NOT ABLE**

11 **TO USE ENTIRE CREDIT**

12 **SEC. 1344. TREATMENT OF PERSONS NOT ABLE TO USE EN-**
13 **TIRE CREDIT.**

14 (a) IN GENERAL.—Section 45I, as added by this Act,
15 is amended by adding at the end the following new sub-
16 section:

17 “(f) TREATMENT OF PERSON NOT ABLE TO USE
18 ENTIRE CREDIT.—

19 “(1) ALLOWANCE OF CREDITS.—

20 “(A) IN GENERAL.—Any credit allowable
21 under this section, section 45J, or section 48A
22 with respect to a facility owned by a person de-
23 scribed in subparagraph (B) may be transferred
24 or used as provided in this subsection, and the

1 determination as to whether the credit is allow-
2 able shall be made without regard to the tax-
3 exempt status of the person.

4 “(B) PERSONS DESCRIBED.—A person is
5 described in this subparagraph if the person
6 is—

7 “(i) an organization described in sec-
8 tion 501(c)(12)(C) and exempt from tax
9 under section 501(a),

10 “(ii) an organization described in sec-
11 tion 1381(a)(2)(C),

12 “(iii) a public utility (as defined in
13 section 136(c)(2)(B)),

14 “(iv) any State or political subdivision
15 thereof, the District of Columbia, or any
16 agency or instrumentality of any of the
17 foregoing,

18 “(v) any Indian tribal government
19 (within the meaning of section 7871) or
20 any agency or instrumentality thereof, or

21 “(vi) the Tennessee Valley Authority.

22 “(2) TRANSFER OF CREDIT.—

23 “(A) IN GENERAL.—A person described in
24 clause (i), (ii), (iii), (iv), or (v) of paragraph
25 (1)(B) may transfer any credit to which para-

1 graph (1)(A) applies through an assignment to
2 any other person not described in paragraph
3 (1)(B). Such transfer may be revoked only with
4 the consent of the Secretary.

5 “(B) REGULATIONS.—The Secretary shall
6 prescribe such regulations as necessary to en-
7 sure that any credit described in subparagraph
8 (A) is claimed once and not reassigned by such
9 other person.

10 “(C) TRANSFER PROCEEDS TREATED AS
11 ARISING FROM ESSENTIAL GOVERNMENT FUNC-
12 TION.—Any proceeds derived by a person de-
13 scribed in clause (iii), (iv), or (v) of paragraph
14 (1)(B) from the transfer of any credit under
15 subparagraph (A) shall be treated as arising
16 from the exercise of an essential government
17 function.

18 “(3) USE OF CREDIT AS AN OFFSET.—Notwith-
19 standing any other provision of law, in the case of
20 a person described in clause (i), (ii), or (v) of para-
21 graph (1)(B), any credit to which paragraph (1)(A)
22 applies may be applied by such person, to the extent
23 provided by the Secretary of Agriculture, as a pre-
24 payment of any loan, debt, or other obligation the
25 entity has incurred under subchapter I of chapter 31

1 of title 7 of the Rural Electrification Act of 1936 (7
2 U.S.C. 901 et seq.), as in effect on the date of the
3 enactment of this section.

4 “(4) USE BY TVA.—

5 “(A) IN GENERAL.—Notwithstanding any
6 other provision of law, in the case of a person
7 described in paragraph (1)(B)(vi), any credit to
8 which paragraph (1)(A) applies may be applied
9 as a credit against the payments required to be
10 made in any fiscal year under section 15d(e) of
11 the Tennessee Valley Authority Act of 1933 (16
12 U.S.C. 831n-4(e)) as an annual return on the
13 appropriations investment and an annual repay-
14 ment sum.

15 “(B) TREATMENT OF CREDITS.—The ag-
16 gregate amount of credits described in para-
17 graph (1)(A) with respect to such person shall
18 be treated in the same manner and to the same
19 extent as if such credits were a payment in cash
20 and shall be applied first against the annual re-
21 turn on the appropriations investment.

22 “(C) CREDIT CARRYOVER.—With respect
23 to any fiscal year, if the aggregate amount of
24 credits described in paragraph (1)(A) with re-
25 spect to such person exceeds the aggregate

1 amount of payment obligations described in
2 subparagraph (A), the excess amount shall re-
3 main available for application as credits against
4 the amounts of such payment obligations in
5 succeeding fiscal years in the same manner as
6 described in this paragraph.

7 “(5) CREDIT NOT INCOME.—Any transfer
8 under paragraph (2) or use under paragraph (3) of
9 any credit to which paragraph (1)(A) applies shall
10 not be treated as income for purposes of section
11 501(c)(12).

12 “(6) TREATMENT OF UNRELATED PERSONS.—
13 For purposes of this subsection, transfers among
14 and between persons described in clauses (i), (ii),
15 (iii), (iv), and (v) of paragraph (1)(B) shall be treat-
16 ed as transfers between unrelated parties.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to production after September 30,
19 2004, in taxable years ending after such date.

20 **Subtitle E—Oil and Gas Provisions**

21 **SEC. 1351. OIL AND GAS FROM MARGINAL WELLS.**

22 (a) IN GENERAL.—Subpart D of part IV of sub-
23 chapter A of chapter 1 (relating to business credits), as
24 amended by this Act, is amended by adding at the end
25 the following new section:

1 **“SEC. 45K. CREDIT FOR PRODUCING OIL AND GAS FROM**
2 **MARGINAL WELLS.**

3 “(a) GENERAL RULE.—For purposes of section 38,
4 the marginal well production credit for any taxable year
5 is an amount equal to the product of—

6 “(1) the credit amount, and

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

10 “(b) CREDIT AMOUNT.—For purposes of this sec-
11 tion—

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

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

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

17 “(2) REDUCTION AS OIL AND GAS PRICES IN-
18 CREASE.—

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

24 “(i) the excess (if any) of the applica-
25 ble reference price over \$15 (\$1.67 for
26 qualified natural gas production), bears to

1 “(ii) \$3 (\$0.33 for qualified natural
2 gas production).

3 The applicable reference price for a taxable
4 year is the reference price of the calendar year
5 preceding the calendar year in which the tax-
6 able year begins.

7 “(B) INFLATION ADJUSTMENT.—

8 “(i) IN GENERAL.—In the case of any
9 taxable year beginning in a calendar year
10 after 2004, each of the dollar amounts
11 contained in subparagraph (A) shall be in-
12 creased to an amount equal to such dollar
13 amount multiplied by the inflation adjust-
14 ment factor for such calendar year.

15 “(ii) INFLATION ADJUSTMENT FAC-
16 TOR.—For purposes of clause (i)—

17 “(I) IN GENERAL.—The term ‘in-
18 flation adjustment factor’ means, with
19 respect to a calendar year, a fraction
20 the numerator of which is the GDP
21 implicit price deflator for the pre-
22 ceding calendar year and the denomi-
23 nator of which is the GDP implicit
24 price deflator for the calendar year
25 2003.

1 “(II) GDP IMPLICIT PRICE
2 DEFLATOR.—The term ‘GDP implicit
3 price deflator’ means, for any cal-
4 endar year, the most recent revision of
5 the implicit price deflator for the
6 gross domestic product as of June 30
7 of such calendar year as computed by
8 the Department of Commerce before
9 October 1 of such calendar year.

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

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

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

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

23 “(1) IN GENERAL.—The terms ‘qualified crude
24 oil production’ and ‘qualified natural gas production’

1 mean domestic crude oil or domestic natural gas
2 which is produced from a qualified marginal well.

3 “(2) LIMITATION ON AMOUNT OF PRODUCTION
4 WHICH MAY QUALIFY.—

5 “(A) IN GENERAL.—Crude oil or natural
6 gas produced during any taxable year from any
7 well shall not be treated as qualified crude oil
8 production or qualified natural gas production
9 to the extent production from the well during
10 the taxable year exceeds 1,095 barrels or barrel
11 equivalents.

12 “(B) PROPORTIONATE REDUCTIONS.—

13 “(i) SHORT TAXABLE YEARS.—In the
14 case of a short taxable year, the limitations
15 under this paragraph shall be proportion-
16 ately reduced to reflect the ratio which the
17 number of days in such taxable year bears
18 to 365.

19 “(ii) WELLS NOT IN PRODUCTION EN-
20 TIRE YEAR.—In the case of a well which is
21 not capable of production during each day
22 of a taxable year, the limitations under
23 this paragraph applicable to the well shall
24 be proportionately reduced to reflect the
25 ratio which the number of days of produc-

1 tion bears to the total number of days in
2 the taxable year.

3 “(3) NONCOMPLIANCE WITH POLLUTION
4 LAWS.—Production from any well during any period
5 in which such well is not in compliance with applica-
6 ble Federal pollution prevention, control, and permit
7 requirements shall not be treated as qualified crude
8 oil production or qualified natural gas production.

9 “(4) DEFINITIONS.—

10 “(A) QUALIFIED MARGINAL WELL.—The
11 term ‘qualified marginal well’ means a domestic
12 well—

13 “(i) the production from which during
14 the taxable year is treated as marginal
15 production under section 613A(c)(6), or

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

17 “(I) has average daily production
18 of not more than 25 barrel equiva-
19 lents, and

20 “(II) produces water at a rate
21 not less than 95 percent of total well
22 effluent.

23 “(B) CRUDE OIL, ETC.—The terms ‘crude
24 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have

1 the meanings given such terms by section
2 613A(e).

3 “(C) BARREL EQUIVALENT.—The term
4 ‘barrel equivalent’ means, with respect to nat-
5 ural gas, a conversion ratio of 6,000 cubic
6 feet of natural gas to 1 barrel of crude oil.

7 “(D) DOMESTIC NATURAL GAS.—The term
8 ‘domestic natural gas’ does not include Alaska
9 natural gas (as defined in section 45M(e)(1)).

10 “(d) OTHER RULES.—

11 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
12 PAYER.—In the case of a qualified marginal well in
13 which there is more than 1 owner of operating inter-
14 ests in the well and the crude oil or natural gas pro-
15 duction exceeds the limitation under subsection
16 (c)(2), qualifying crude oil production or qualifying
17 natural gas production attributable to the taxpayer
18 shall be determined on the basis of the ratio which
19 taxpayer’s revenue interest in the production bears
20 to the aggregate of the revenue interests of all oper-
21 ating interest owners in the production.

22 “(2) OPERATING INTEREST REQUIRED.—Any
23 credit under this section may be claimed only on
24 production which is attributable to the holder of an
25 operating interest.

1 “(3) PRODUCTION FROM NONCONVENTIONAL
2 SOURCES EXCLUDED.—In the case of production
3 from a qualified marginal well which is eligible for
4 the credit allowed under section 29 for the taxable
5 year, no credit shall be allowable under this section
6 unless the taxpayer elects not to claim the credit
7 under section 29 with respect to the well.”.

8 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
9 tion 38(b) (relating to current year business credit), as
10 amended by this Act, is amended by striking “plus” at
11 the end of paragraph (20), by striking the period at the
12 end of paragraph (21) and inserting “, plus”, and by add-
13 ing at the end the following new paragraph:

14 “(22) the marginal oil and gas well production
15 credit determined under section 45K(a).”.

16 (c) NO CARRYBACK OF MARGINAL OIL AND GAS
17 WELL PRODUCTION CREDIT BEFORE EFFECTIVE
18 DATE.—Section 39(d) (relating to transition rules), as
19 amended by this Act, is amended by adding at the end
20 the following new paragraph:

21 “(19) NO CARRYBACK OF MARGINAL OIL AND
22 GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE
23 DATE.—No portion of the unused business credit for
24 any taxable year which is attributable to the mar-
25 ginal oil and gas well production credit determined

1 under section 45K may be carried back to a taxable
2 year ending before October 1, 2004.”.

3 (d) COORDINATION WITH SECTION 29.—Section
4 29(a) (relating to allowance of credit) is amended by strik-
5 ing “There” and inserting “At the election of the tax-
6 payer, there”.

7 (e) CLERICAL AMENDMENT.—The table of sections
8 for subpart D of part IV of subchapter A of chapter 1,
9 as amended by this Act, is amended by adding at the end
10 the following new item:

“Sec. 45K. Credit for producing oil and gas from marginal
wells.”.

11 (f) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to production in taxable years be-
13 ginning after September 30, 2004.

14 **SEC. 1352. NATURAL GAS GATHERING LINES TREATED AS 7-**
15 **YEAR PROPERTY.**

16 (a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-
17 year property) is amended by striking “and” at the end
18 of clause (i), by redesignating clause (ii) as clause (iii),
19 and by inserting after clause (i) the following new clause:

20 “(ii) any natural gas gathering line,
21 and”.

22 (b) NATURAL GAS GATHERING LINE.—Section
23 168(i) (relating to definitions and special rules), as

1 amended by this Act, is amended by adding at the end
2 the following new paragraph:

3 “(17) NATURAL GAS GATHERING LINE.—The
4 term ‘natural gas gathering line’ means—

5 “(A) the pipe, equipment, and appur-
6 tenances used to deliver natural gas from the
7 wellhead or a commonpoint to the point at
8 which such gas first reaches—

9 “(i) a gas processing plant,

10 “(ii) an interconnection with a trans-
11 mission pipeline certificated by the Federal
12 Energy Regulatory Commission as an
13 interstate transmission pipeline,

14 “(iii) an interconnection with an
15 intrastate transmission pipeline, or

16 “(iv) a direct interconnection with a
17 local distribution company, a gas storage
18 facility, or an industrial consumer, or

19 “(B) any other pipe, equipment, or appur-
20 tenances determined to be a gathering line by
21 the Federal Energy Regulatory Commission.

22 (c) ALTERNATIVE SYSTEM.—The table contained in
23 section 168(g)(3)(B) (relating to special rule for certain
24 property assigned to classes) is amended by inserting after

1 the item relating to subparagraph (C)(i) the following new
2 item:

“(C)(ii) 14”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to property placed in service after
5 September 30, 2004, in taxable years ending after such
6 date.

7 **SEC. 1353. EXPENSING OF CAPITAL COSTS INCURRED IN**
8 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
9 **TION AGENCY SULFUR REGULATIONS.**

10 (a) IN GENERAL.—Part VI of subchapter B of chap-
11 ter 1 (relating to itemized deductions for individuals and
12 corporations), as amended by this Act, is amended by in-
13 serting after section 179B the following new section:

14 **“SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN**
15 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
16 **TION AGENCY SULFUR REGULATIONS.**

17 “(a) TREATMENT AS EXPENSE.—

18 “(1) IN GENERAL.—A small business refiner
19 may elect to treat any qualified capital costs as an
20 expense which is not chargeable to capital account.
21 Any qualified cost which is so treated shall be al-
22 lowed as a deduction for the taxable year in which
23 the cost is paid or incurred.

24 “(2) LIMITATION.—

1 “(A) IN GENERAL.—The aggregate costs
2 which may be taken into account under this
3 subsection for any taxable year with respect to
4 any facility may not exceed the applicable per-
5 centage of the qualified capital costs paid or in-
6 curred for the taxable year with respect to such
7 facility.

8 “(B) APPLICABLE PERCENTAGE.—For
9 purposes of subparagraph (A)—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii), the applicable percent-
12 age is 75 percent.

13 “(ii) REDUCED PERCENTAGE.—In the
14 case of any facility with average daily re-
15 finery runs or average retained production
16 for the period described in subsection
17 (b)(2) in excess of 155,000 barrels, the
18 percentage described in clause (i) shall be
19 reduced (but not below zero) by the prod-
20 uct of—

21 “(I) such percentage (before the
22 application of this clause), and

23 “(II) the ratio of such excess to
24 50,000 barrels.

25 “(b) DEFINITIONS.—For purposes of this section—

1 “(1) QUALIFIED CAPITAL COSTS.—The term
2 ‘qualified capital costs’ means any costs which—

3 “(A) are otherwise chargeable to capital
4 account, and

5 “(B) are paid or incurred for the purpose
6 of complying with the Highway Diesel Fuel Sul-
7 fur Control Requirement of the Environmental
8 Protection Agency, as in effect on the date of
9 the enactment of this section, with respect to a
10 facility placed in service by the taxpayer before
11 such date.

12 “(2) SMALL BUSINESS REFINER.—The term
13 ‘small business refiner’ means, with respect to any
14 taxable year, a refiner of crude oil—

15 “(A) which, within the refinery operations
16 of the business, employs not more than 1,500
17 employees on any day during such taxable year,
18 and

19 “(B) the average daily refinery run or av-
20 erage retained production of which for all facili-
21 ties of the taxpayer for the 1-year period ending
22 on the date of the enactment of this section did
23 not exceed 410,000 barrels.

1 “(c) COORDINATION WITH OTHER PROVISIONS.—
2 Section 280B shall not apply to amounts which are treated
3 as expenses under this section.

4 “(d) BASIS REDUCTION.—For purposes of this title,
5 the basis of any property shall be reduced by the portion
6 of the cost of such property taken into account under sub-
7 section (a).

8 “(e) CONTROLLED GROUPS.—For purposes of this
9 section, all persons treated as a single employer under sub-
10 section (b), (c), (m), or (o) of section 414 shall be treated
11 as a single employer.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Section 263(a)(1), as amended by this Act,
14 is amended by striking “or” at the end of subpara-
15 graph (H), by striking the period at the end of sub-
16 paragraph (I) and inserting “, or”, and by inserting
17 after subparagraph (I) the following new subpara-
18 graph:

19 “(J) expenditures for which a deduction is
20 allowed under section 179C.”.

21 (2) Section 263A(c)(3) is amended by inserting
22 “179C,” after “section”.

23 (3) Section 312(k)(3)(B), as amended by this
24 Act, is amended by striking “or 179B” each place

1 it appears in the heading and text and inserting
2 “179B, or 179C”.

3 (4) Section 1016(a), as amended by this Act, is
4 amended by striking “and” at the end of paragraph
5 (32), by striking the period at the end of paragraph
6 (33) and inserting “, and”, and by adding at the
7 end the following new paragraph:

8 “(34) to the extent provided in section
9 179C(d).”.

10 (5) Section 1245(a), as amended by this Act, is
11 amended by inserting “179C,” after “179B,” both
12 places it appears in paragraphs (2)(C) and (3)(C).

13 (6) The table of sections for part VI of sub-
14 chapter B of chapter 1, as amended by this Act, is
15 amended by inserting after the item relating to sec-
16 tion 179B the following new item:

“Sec. 179C. Deduction for capital costs incurred in complying with Environ-
mental Protection Agency sulfur regulations.”.

17 (c) **EFFECTIVE DATE.**—The amendment made by
18 this section shall apply to expenses paid or incurred after
19 December 31, 2002, in taxable years ending after such
20 date.

21 **SEC. 1354. ENVIRONMENTAL TAX CREDIT.**

22 (a) **IN GENERAL.**—Subpart D of part IV of sub-
23 chapter A of chapter 1 (relating to business-related cred-

1 its), as amended by this Act, is amended by adding at
2 the end the following new section:

3 **“SEC. 45L. ENVIRONMENTAL TAX CREDIT.**

4 “(a) IN GENERAL.—For purposes of section 38, the
5 amount of the environmental tax credit determined under
6 this section with respect to any small business refiner for
7 any taxable year is an amount equal to 5 cents for every
8 gallon of low-sulfur diesel fuel produced at a facility by
9 such small business refiner during such taxable year.

10 “(b) MAXIMUM CREDIT.—

11 “(1) IN GENERAL.—For any small business re-
12 finer, the aggregate amount determined under sub-
13 section (a) for any taxable year with respect to any
14 facility shall not exceed the applicable percentage of
15 the qualified capital costs paid or incurred by such
16 small business refiner with respect to such facility
17 during the applicable period, reduced by the credit
18 allowed under subsection (a) with respect to such fa-
19 cility for any preceding year.

20 “(2) APPLICABLE PERCENTAGE.—For purposes
21 of paragraph (1)—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the applicable percentage is
24 25 percent.

1 “(B) REDUCED PERCENTAGE.—The per-
2 centage described in subparagraph (A) shall be
3 reduced in the same manner as under section
4 179C(a)(2)(B)(ii).

5 “(c) DEFINITIONS.—For purposes of this section—

6 “(1) IN GENERAL.—The terms ‘small business
7 refiner’ and ‘qualified capital costs’ have the same
8 meaning as given in section 179C.

9 “(2) LOW-SULFUR DIESEL FUEL.—The term
10 ‘low-sulfur diesel fuel’ means diesel fuel containing
11 not more than 15 parts per million of sulfur.

12 “(3) APPLICABLE PERIOD.—The term ‘applica-
13 ble period’ means, with respect to any facility, the
14 period beginning on the day after the date of the en-
15 actment of this section and ending with the date
16 which is 1 year after the date on which the taxpayer
17 must comply with the applicable EPA regulations
18 with respect to such facility.

19 “(4) APPLICABLE EPA REGULATIONS.—The
20 term ‘applicable EPA regulations’ means the High-
21 way Diesel Fuel Sulfur Control Requirements of the
22 Environmental Protection Agency, as in effect on
23 the date of the enactment of this section.

24 “(d) CERTIFICATION.—

1 “(1) REQUIRED.—Not later than the date
2 which is 30 months after the first day of the first
3 taxable year in which a credit is allowed under this
4 section with respect to a facility, the small business
5 refiner shall obtain a certification from the Sec-
6 retary, in consultation with the Administrator of the
7 Environmental Protection Agency, that the tax-
8 payer’s qualified capital costs with respect to such
9 facility will result in compliance with the applicable
10 EPA regulations.

11 “(2) CONTENTS OF APPLICATION.—An applica-
12 tion for certification shall include relevant informa-
13 tion regarding unit capacities and operating charac-
14 teristics sufficient for the Secretary, in consultation
15 with the Administrator of the Environmental Protec-
16 tion Agency, to determine that such qualified capital
17 costs are necessary for compliance with the applica-
18 ble EPA regulations.

19 “(3) REVIEW PERIOD.—Any application shall
20 be reviewed and notice of certification, if applicable,
21 shall be made within 60 days of receipt of such ap-
22 plication. In the event the Secretary does not notify
23 the taxpayer of the results of such certification with-
24 in such period, the taxpayer may presume the cer-
25 tification to be issued until so notified.

1 “(4) STATUTE OF LIMITATIONS.—With respect
2 to the credit allowed under this section—

3 “(A) the statutory period for the assess-
4 ment of any deficiency attributable to such
5 credit shall not expire before the end of the 3-
6 year period ending on the date that the period
7 described in paragraph (3) ends with respect to
8 the taxpayer, and

9 “(B) such deficiency may be assessed be-
10 fore the expiration of such 3-year period not-
11 withstanding the provisions of any other law or
12 rule of law which would otherwise prevent such
13 assessment.

14 “(e) CONTROLLED GROUPS.—For purposes of this
15 section, all persons treated as a single employer under sub-
16 section (b), (c), (m), or (o) of section 414 shall be treated
17 as a single employer.

18 “(f) COOPERATIVE ORGANIZATIONS.—

19 “(1) APPORTIONMENT OF CREDIT.—

20 “(A) IN GENERAL.—In the case of a coop-
21 erative organization described in section
22 1381(a), any portion of the credit determined
23 under subsection (a) for the taxable year may,
24 at the election of the organization, be appor-
25 tioned among patrons eligible to share in pa-

1 tronage dividends on the basis of the quantity
2 or value of business done with or for such pa-
3 trons for the taxable year.

4 “(B) FORM AND EFFECT OF ELECTION.—
5 An election under subparagraph (A) for any
6 taxable year shall be made on a timely filed re-
7 turn for such year. Such election, once made,
8 shall be irrevocable for such taxable year.

9 “(2) TREATMENT OF ORGANIZATIONS AND PA-
10 TRONS.—

11 “(A) ORGANIZATIONS.—The amount of the
12 credit not apportioned to patrons pursuant to
13 paragraph (1) shall be included in the amount
14 determined under subsection (a) for the taxable
15 year of the organization.

16 “(B) PATRONS.—The amount of the credit
17 apportioned to patrons pursuant to paragraph
18 (1) shall be included in the amount determined
19 under subsection (a) for the first taxable year
20 of each patron ending on or after the last day
21 of the payment period (as defined in section
22 1382(d)) for the taxable year of the organiza-
23 tion or, if earlier, for the taxable year of each
24 patron ending on or after the date on which the

1 patron receives notice from the cooperative of
2 the apportionment.

3 “(3) SPECIAL RULES FOR DECREASE IN CRED-
4 ITS FOR TAXABLE YEAR.—If the amount of the cred-
5 it of a cooperative organization determined under
6 subsection (a) for a taxable year is less than the
7 amount of such credit shown on the return of the co-
8 operative organization for such year, an amount
9 equal to the excess of—

10 “(A) such reduction, over

11 “(B) the amount not apportioned to such
12 patrons under paragraph (1) for the taxable
13 year—

14 shall be treated as an increase in tax imposed by
15 this chapter on the organization. Such increase shall
16 not be treated as tax imposed by this chapter for
17 purposes of determining the amount of any credit
18 under this chapter or for purposes of section 55.”.

19 (b) CREDIT MADE PART OF GENERAL BUSINESS
20 CREDIT.—Section 38(b) (relating to current year business
21 credit), as amended by this Act, is amended by striking
22 “plus” at the end of paragraph (21), by striking the period
23 at the end of paragraph (22) and inserting “, plus”, and
24 by adding at the end the following new paragraph:

1 “(23) in the case of a small business refiner,
2 the environmental tax credit determined under sec-
3 tion 45L(a).”.

4 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
5 (relating to certain expenses for which credits are allow-
6 able), as amended by this Act, is amended by adding at
7 the end the following new subsection:

8 “(e) ENVIRONMENTAL TAX CREDIT.—No deduction
9 shall be allowed for that portion of the expenses otherwise
10 allowable as a deduction for the taxable year which is
11 equal to the amount of the credit determined for the tax-
12 able year under section 45L(a).”.

13 (d) CLERICAL AMENDMENT.—The table of sections
14 for subpart D of part IV of subchapter A of chapter 1,
15 as amended by this Act, is amended by adding at the end
16 the following new item:

 “Sec. 45L. Environmental tax credit.”.

17 (e) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to expenses paid or incurred after
19 December 31, 2002, in taxable years ending after such
20 date.

21 **SEC. 1355. DETERMINATION OF SMALL REFINER EXCEP-**
22 **TION TO OIL DEPLETION DEDUCTION.**

23 (a) IN GENERAL.—Paragraph (4) of section 613A(d)
24 (relating to limitations on application of subsection (e))
25 is amended to read as follows:

1 “(4) CERTAIN REFINERS EXCLUDED.—If the
2 taxpayer or 1 or more related persons engages in the
3 refining of crude oil, subsection (c) shall not apply
4 to the taxpayer for a taxable year if the average
5 daily refinery runs of the taxpayer and such persons
6 for the taxable year exceed 60,000 barrels. For pur-
7 poses of this paragraph, the average daily refinery
8 runs for any taxable year shall be determined by di-
9 viding the aggregate refinery runs for the taxable
10 year by the number of days in the taxable year.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to taxable years ending after Sep-
13 tember 30, 2004.

14 **SEC. 1356. MARGINAL PRODUCTION INCOME LIMIT EXTEN-**
15 **SION.**

16 Section 613A(c)(6)(H) (relating to temporary sus-
17 pension of taxable income limit with respect to marginal
18 production) is amended by striking “2004” and inserting
19 “2007”.

20 **SEC. 1357. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

21 (a) IN GENERAL.—Section 167 (relating to deprecia-
22 tion) is amended by redesignating subsection (h) as sub-
23 section (i) and by inserting after subsection (g) the fol-
24 lowing new subsection:

1 “(h) AMORTIZATION OF DELAY RENTAL PAYMENTS
2 FOR DOMESTIC OIL AND GAS WELLS.—

3 “(1) IN GENERAL.—Any delay rental payment
4 paid or incurred in connection with the development
5 of oil or gas wells within the United States (as de-
6 fined in section 638) shall be allowed as a deduction
7 ratably over the 24-month period beginning on the
8 date that such payment was paid or incurred.

9 “(2) HALF-YEAR CONVENTION.—For purposes
10 of paragraph (1), any payment paid or incurred dur-
11 ing the taxable year shall be treated as paid or in-
12 curred on the mid-point of such taxable year.

13 “(3) EXCLUSIVE METHOD.—Except as provided
14 in this subsection, no depreciation or amortization
15 deduction shall be allowed with respect to such pay-
16 ments.

17 “(4) TREATMENT UPON ABANDONMENT.—If
18 any property to which a delay rental payment relates
19 is retired or abandoned during the 24-month period
20 described in paragraph (1), no deduction shall be al-
21 lowed on account of such retirement or abandon-
22 ment and the amortization deduction under this sub-
23 section shall continue with respect to such payment.

24 “(5) DELAY RENTAL PAYMENTS.—For purposes
25 of this subsection, the term ‘delay rental payment’

1 means an amount paid for the privilege of deferring
2 development of an oil or gas well under an oil or gas
3 lease.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to amounts paid or incurred in tax-
6 able years beginning after September 30, 2004.

7 **SEC. 1358. AMORTIZATION OF GEOLOGICAL AND GEO-**
8 **PHYSICAL EXPENDITURES.**

9 (a) IN GENERAL.—Section 167 (relating to deprecia-
10 tion), as amended by this Act, is amended by redesignig-
11 nating subsection (i) as subsection (j) and by inserting
12 after subsection (h) the following new subsection:

13 “(i) AMORTIZATION OF GEOLOGICAL AND GEO-
14 PHYSICAL EXPENDITURES.—

15 “(1) IN GENERAL.—Any geological and geo-
16 physical expenses paid or incurred in connection
17 with the exploration for, or development of, oil or
18 gas within the United States (as defined in section
19 638) shall be allowed as a deduction ratably over the
20 24-month period beginning on the date that such ex-
21 pense was paid or incurred.

22 “(2) SPECIAL RULES.—For purposes of this
23 subsection, rules similar to the rules of paragraphs
24 (2), (3), and (4) of subsection (h) shall apply.”.

1 (b) CONFORMING AMENDMENT.—Section 263A(c)(3)
2 is amended by inserting “167(h), 167(i),” after “under
3 section”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to costs paid or incurred in taxable
6 years beginning after September 30, 2004.

7 **SEC. 1359. EXTENSION AND MODIFICATION OF CREDIT FOR**
8 **PRODUCING FUEL FROM A NONCONVEN-**
9 **TIONAL SOURCE.**

10 (a) IN GENERAL.—Section 29 (relating to credit for
11 producing fuel from a nonconventional source) is amended
12 by adding at the end the following new subsection:

13 “(h) EXTENSION FOR OTHER FACILITIES.—

14 “(1) OIL AND GAS.—In the case of a well or fa-
15 cility for producing qualified fuels described in sub-
16 paragraph (A) or (B) of subsection (c)(1) which was
17 drilled or placed in service after September 30,
18 2004, and before January 1, 2007, notwithstanding
19 subsection (f), this section shall apply with respect
20 to such fuels produced at such well or facility before
21 the close of the 3-year period beginning on the date
22 that such well is drilled or such facility is placed in
23 service.

24 “(2) FACILITIES PRODUCING FUELS FROM AG-
25 RICULTURAL AND ANIMAL WASTE.—

1 “(A) IN GENERAL.—In the case of facility
2 for producing liquid, gaseous, or solid fuels
3 from qualified agricultural and animal wastes,
4 including such fuels when used as feedstocks,
5 which was placed in service after September 30,
6 2004, and before January 1, 2007, this section
7 shall apply with respect to fuel produced at
8 such facility before the close of the 3-year pe-
9 riod beginning on the date such facility is
10 placed in service.

11 “(B) QUALIFIED AGRICULTURAL AND ANI-
12 MAL WASTE.—For purposes of this paragraph,
13 the term ‘qualified agricultural and animal
14 waste’ means agriculture and animal waste, in-
15 cluding by-products, packaging, and any mate-
16 rials associated with the processing, feeding,
17 selling, transporting, or disposal of agricultural
18 or animal products or wastes.

19 “(3) WELLS PRODUCING VISCOUS OIL.—

20 “(A) IN GENERAL.—In the case of a well
21 for producing viscous oil which was placed in
22 service after September 30, 2004, and before
23 January 1, 2007, this section shall apply with
24 respect to fuel produced at such well before the

1 close of the 3-year period beginning on the date
2 such well is placed in service.

3 “(B) VISCIOUS OIL.—The term ‘viscous oil’
4 means heavy oil, as defined in section
5 613A(e)(6), except that—

6 “(i) ‘22 degrees’ shall be substituted
7 for ‘20 degrees’ in applying subparagraph
8 (F) thereof, and

9 “(ii) in all cases, the oil gravity shall
10 be measured from the initial well-head
11 samples, drill cuttings, or down hole sam-
12 ples.

13 “(C) WAIVER OF UNRELATED PERSON RE-
14 QUIREMENT.—In the case of viscous oil, the re-
15 quirement under subsection (a)(2)(A) of a sale
16 to an unrelated person shall not apply to any
17 sale to the extent that the viscous oil is not con-
18 sumed in the immediate vicinity of the wellhead.

19 “(4) FACILITIES PRODUCING REFINED COAL.—

20 “(A) IN GENERAL.—In the case of a facil-
21 ity described in subparagraph (C) for producing
22 refined coal which was placed in service after
23 September 30, 2004, and before January 1,
24 2007, this section shall apply with respect to
25 fuel produced at such facility before the close of

1 the 5-year period beginning on the date such
2 facility is placed in service.

3 “(B) REFINED COAL.—For purposes of
4 this paragraph, the term ‘refined coal’ means a
5 fuel which is a liquid, gaseous, or solid syn-
6 thetic fuel produced from coal (including lig-
7 nite) or high carbon fly ash, including such fuel
8 used as a feedstock.

9 “(C) COVERED FACILITIES.—

10 “(i) IN GENERAL.—A facility is de-
11 scribed in this subparagraph if such facil-
12 ity produces refined coal using a tech-
13 nology which results in—

14 “(I) a qualified emission reduc-
15 tion, and

16 “(II) a qualified enhanced value.

17 “(ii) QUALIFIED EMISSION REDUC-
18 TION.—For purposes of this subparagraph,
19 the term ‘qualified emission reduction’
20 means a reduction of at least 20 percent of
21 the emissions of nitrogen oxide and either
22 sulfur dioxide or mercury released when
23 burning the refined coal (excluding any di-
24 lution caused by materials combined or
25 added during the production process), as

1 compared to the emissions released when
2 burning the feedstock coal or comparable
3 coal predominantly available in the market-
4 place as of January 1, 2003.

5 “(iii) QUALIFIED ENHANCED
6 VALUE.—For purposes of this subpara-
7 graph, the term ‘qualified enhanced value’
8 means an increase of at least 50 percent in
9 the market value of the refined coal (ex-
10 cluding any increase caused by materials
11 combined or added during the production
12 process), as compared to the value of the
13 feedstock coal.

14 “(iv) QUALIFYING ADVANCED CLEAN
15 COAL TECHNOLOGY UNITS EXCLUDED.—A
16 facility described in this subparagraph
17 shall not include a qualifying advanced
18 clean coal technology unit (as defined in
19 section 48A(b)).

20 “(5) COALMINE GAS.—

21 “(A) IN GENERAL.—This section shall
22 apply to coalmine gas—

23 “(i) captured or extracted by the tax-
24 payer during the period beginning after

1 September 30, 2004, and ending before
2 January 1, 2007, and

3 “(ii) utilized as a fuel source or sold
4 by or on behalf of the taxpayer to an unre-
5 lated person during such period.

6 “(B) COALMINE GAS.—For purposes of
7 this paragraph, the term ‘coalmine gas’ means
8 any methane gas which is—

9 “(i) liberated during or as a result of
10 coal mining operations, or

11 “(ii) extracted up to 10 years in ad-
12 vance of coal mining operations as part of
13 a specific plan to mine a coal deposit.

14 “(C) SPECIAL RULE FOR ADVANCED EX-
15 TRACTION.—In the case of coalmine gas which
16 is captured in advance of coal mining oper-
17 ations, the credit under subsection (a) shall be
18 allowed only after the date the coal extraction
19 occurs in the immediate area where the
20 coalmine gas was removed.

21 “(D) NONCOMPLIANCE WITH POLLUTION
22 LAWS.—This paragraph shall not apply to the
23 capture or extraction of coalmine gas from coal
24 mining operations with respect to any period in
25 which such coal mining operations are not in

1 compliance with applicable State and Federal
2 pollution prevention, control, and permit re-
3 quirements.

4 “(6) SPECIAL RULES.—In determining the
5 amount of credit allowable under this section solely
6 by reason of this subsection—

7 “(A) FUELS TREATED AS QUALIFIED
8 FUELS.—Any fuel described in paragraph (2),
9 (3), (4), or (5) shall be treated as a qualified
10 fuel for purposes of this section.

11 “(B) DAILY LIMIT.—The amount of quali-
12 fied fuels sold during any taxable year which
13 may be taken into account by reason of this
14 subsection with respect to any project shall not
15 exceed an average barrel-of-oil equivalent of
16 200,000 cubic feet of natural gas per day. Days
17 before the date the project is placed in service
18 shall not be taken into account in determining
19 such average.

20 “(C) CREDIT AMOUNT.—The dollar
21 amount applicable under subsection (a)(1) shall
22 be \$3 (and the inflation adjustment under sub-
23 section (b)(2) shall not apply to such
24 amount).”.

1 (b) CLARIFICATION OF PLACED IN SERVICE DATE
2 FOR CERTAIN LANDFILL GAS FACILITIES.—Section 29(d)
3 (relating to other definitions and special rules), as amend-
4 ed by this Act, is amended by adding at the end the fol-
5 lowing new paragraph:

6 “(10) CLARIFICATION OF PLACED IN SERVICE
7 DATE FOR CERTAIN LANDFILL GAS FACILITIES.—

8 “(A) IN GENERAL.—In the case of a land-
9 fill placed in service on or before the date of the
10 enactment of this paragraph—

11 “(i) a facility for producing qualified
12 fuel from such landfill shall include all
13 wells, pipes, and related components used
14 to collect landfill gas, and

15 “(ii) production of landfill gas from
16 such landfill attributable to wells, pipes,
17 and related components placed in service
18 after such date of enactment shall be treat-
19 ed as produced from a facility placed in
20 service on the date such wells, pipes, and
21 related components were placed in service.

22 “(B) LANDFILL GAS.—The term ‘landfill
23 gas’ means gas described in subsection
24 (c)(1)(B)(ii) and derived from the biodegrada-
25 tion of municipal solid waste.”.

1 (c) EXTENSION FOR CERTAIN FUEL PRODUCED AT
2 EXISTING FACILITIES.—Section 29(f)(2) (relating to ap-
3 plication of section) is amended by inserting “(January
4 1, 2006, in the case of any coke, coke gas, or natural gas
5 and byproducts produced by coal gasification from lignite
6 in a facility described in paragraph (1)(B))” after “Janu-
7 ary 1, 2003”.

8 (d) STUDY OF COALBED METHANE.—

9 (1) IN GENERAL.—The Secretary of the Treas-
10 ury shall conduct a study regarding the effect of sec-
11 tion 29 of the Internal Revenue Code of 1986 on the
12 production of coalbed methane.

13 (2) CONTENTS OF STUDY.—The study under
14 paragraph (1) shall estimate the total amount of
15 credits under section 29 of the Internal Revenue
16 Code of 1986 claimed annually and in the aggregate
17 which are related to the production of coalbed meth-
18 ane since the date of the enactment of such section
19 29. Such study shall report the annual value of such
20 credits allowable for coalbed methane compared to
21 the average annual wellhead price of natural gas
22 (per thousand cubic feet of natural gas). Such study
23 shall also estimate the incremental increase in pro-
24 duction of coalbed methane which has resulted from
25 the enactment of such section 29, and the cost to

1 the Federal Government, in terms of the net tax
2 benefits claimed, per thousand cubic feet of incre-
3 mental coalbed methane produced annually and in
4 the aggregate since such enactment.

5 (e) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 shall apply to fuel sold after September 30, 2004, in
9 taxable years ending after such date.

10 (2) EXISTING FACILITIES.—The amendments
11 made by subsection (e) shall apply to fuel sold after
12 December 31, 2002, in taxable years ending after
13 such date.

14 **SEC. 1360. NATURAL GAS DISTRIBUTION LINES TREATED**
15 **AS 15-YEAR PROPERTY.**

16 (a) IN GENERAL.—Section 168(e)(3)(E) (defining
17 15-year property) is amended by striking “and” at the end
18 of clause (ii), by striking the period at the end of clause
19 (iii) and by inserting “, and”, and by adding at the end
20 the following new clause:

21 “(iv) any natural gas distribution
22 line.”.

23 (b) ALTERNATIVE SYSTEM.—The table contained in
24 section 168(g)(3)(B) (relating to special rule for certain
25 property assigned to classes), as amended by this Act, is

1 amended by adding after the item relating to subpara-
 2 graph (E)(iii) the following new item:

“(E)(iv) 35”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to property placed in service after
 5 September 30, 2004, in taxable years ending after such
 6 date.

7 **SEC. 1361. CREDIT FOR ALASKA NATURAL GAS.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
 9 chapter A of chapter 1 (relating to business related cred-
 10 its), as amended by this Act, is amended by adding at
 11 the end the following new section:

12 **“SEC. 45M. ALASKA NATURAL GAS.**

13 “(a) IN GENERAL.—For purposes of section 38, the
 14 Alaska natural gas credit for any taxable year is an
 15 amount equal to the product of—

16 “(1) the credit amount, and

17 “(2) Alaska natural gas the production of which
 18 is attributable to the taxpayer.

19 “(b) CREDIT AMOUNT.—For purposes of this sec-
 20 tion—

21 “(1) IN GENERAL.—The credit amount is \$0.52
 22 per 1,000,000 Btu of Alaska natural gas.

23 “(2) REDUCTION AS GAS PRICES INCREASE.—

24 “(A) IN GENERAL.—The dollar amount
 25 under paragraph (1) shall be reduced (but not

1 below zero) by an amount which bears the same
2 ratio to such amount (determined without re-
3 gard to this paragraph) as—

4 “(i) the excess (if any) of the applica-
5 ble reference price over \$0.83, bears to

6 “(ii) \$0.52.

7 “(B) APPLICABLE REFERENCE PRICE.—
8 For purposes of this paragraph—

9 “(i) IN GENERAL.—The applicable
10 reference price for any calendar month in
11 a taxable year is the reference price for the
12 calendar month in which production oc-
13 curs.

14 “(ii) REFERENCE PRICE.—The term
15 ‘reference price’ means, with respect to any
16 calendar month, a published market price
17 for natural gas in United States dollars
18 per 1,000,000 Btu (reduced by any gas
19 transportation costs and gas processing
20 costs as determined by the appropriate na-
21 tional regulatory body for natural gas
22 transportation) as determined under regu-
23 lations by the Secretary.

24 “(C) INFLATION ADJUSTMENT.—

1 “(i) IN GENERAL.—In the case of any
2 taxable year beginning in a calendar year
3 after 2004, each of the dollar amounts
4 contained in paragraph (1) and subpara-
5 graph (A) of this paragraph shall be in-
6 creased to an amount equal to such dollar
7 amount multiplied by the inflation adjust-
8 ment factor for such calendar year.

9 “(ii) INFLATION ADJUSTMENT FAC-
10 TOR.—For purposes of clause (i)—

11 “(I) IN GENERAL.—The term ‘in-
12 flation adjustment factor’ means, with
13 respect to a calendar year, a fraction
14 the numerator of which is the GDP
15 implicit price deflator for the pre-
16 ceding calendar year and the denomi-
17 nator of which is the GDP implicit
18 price deflator for the calendar year
19 2003.

20 “(II) GDP IMPLICIT PRICE
21 DEFLATOR.—The term ‘GDP implicit
22 price deflator’ means, for any cal-
23 endar year, the most recent revision of
24 the implicit price deflator for the
25 gross domestic product as of June 30

1 of such calendar year as computed by
2 the Department of Commerce before
3 October 1 of such calendar year.

4 “(c) ALASKA NATURAL GAS.—For purposes of this
5 section—

6 “(1) IN GENERAL.—The term ‘Alaska natural
7 gas’ means natural gas entering the Alaska natural
8 gas pipeline (as defined in section 168(i)(18) (deter-
9 mined without regard to subparagraph (B) thereof))
10 which is produced from a well—

11 “(A) located in the area of the State of
12 Alaska lying north of 64 degrees North lati-
13 tude, determined by excluding the area of the
14 Alaska National Wildlife Refuge (including the
15 continental shelf thereof within the meaning of
16 section 638(1)), and

17 “(B) pursuant to the applicable State and
18 Federal pollution prevention, control, and per-
19 mit requirements from such area (including the
20 continental shelf thereof within the meaning of
21 section 638(1)).

22 “(2) NATURAL GAS.—The term ‘natural gas’
23 has the meaning given such term by section
24 613A(e)(2).

1 “(d) SPECIAL RULES.—For purposes of this sec-
2 tion—

3 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
4 PAYER.—

5 “(A) IN GENERAL.—In the case of a well
6 in which there is more than 1 person or enti-
7 ty—

8 “(i) entitled to production of Alaska
9 natural gas, or

10 “(ii) at the election of such person or
11 entity, entitled to the value of production
12 as either an operating interest owner or a
13 royalty interest owner—

14 the portion of such production attributable to
15 such person or entity shall be determined on
16 the basis of the ratio which the person’s or enti-
17 ty’s interest in the production or the value of
18 production bears to the aggregate of the inter-
19 ests of all such persons or entities. Production
20 otherwise attributable to a United States tax-
21 exempt person or entity by reason of a royalty
22 interest shall be attributable to such person or
23 entity with respect to whom royalty-in-value
24 production remains or to whom royalty-in-kind
25 production is sold.

1 “(B) PARTNERSHIP PROPERTIES.—In the
2 case of a partnership, for purposes of applying
3 subparagraph (A), production shall be attrib-
4 utable to its partners based on each partner’s
5 distributive share of Alaska natural gas which
6 is produced from partnership properties and at-
7 tributable to the partnership or its partners
8 under subparagraph (A).

9 “(2) PASS-THRU IN THE CASE OF ESTATES
10 AND TRUSTS.—Under regulations prescribed by the
11 Secretary, rules similar to the rules of subsection (d)
12 of section 52 shall apply.

13 “(e) APPLICATION OF SECTION.—This section shall
14 apply to Alaska natural gas during the period—

15 “(1) beginning with the later of—

16 “(A) January 1, 2010, or

17 “(B) the initial date for the interstate
18 transportation of such Alaska natural gas, and

19 “(2) ending with the date which is 25 years
20 after the date described in paragraph (1).”.

21 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
22 tion 38(b) (relating to current year business credit), as
23 amended by this Act, is amended by striking “plus” at
24 the end of paragraph (22), by striking the period at the

1 end of paragraph (23) and inserting “, plus”, and by add-
2 ing at the end the following new paragraph:

3 “(24) The Alaska natural gas credit determined
4 under section 45M(a).”.

5 (c) ALLOWING CREDIT AGAINST ENTIRE REGULAR
6 TAX AND MINIMUM TAX.—

7 (1) IN GENERAL.—Section 38(c) (relating to
8 limitation based on amount of tax), as amended by
9 this Act, is amended by redesignating paragraph (5)
10 as paragraph (6) and by inserting after paragraph
11 (4) the following new paragraph:

12 “(5) SPECIAL RULES FOR ALASKA NATURAL
13 GAS CREDIT.—

14 “(A) IN GENERAL.—In the case of the
15 Alaska natural gas credit—

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

19 “(ii) in applying paragraph (1) to the
20 credit—

21 “(I) the amounts in subpara-
22 graphs (A) and (B) thereof shall be
23 treated as being zero, and

24 “(II) the limitation under para-
25 graph (1) (as modified by subclause

1 (I) shall be reduced by the credit al-
 2 lowed under subsection (a) for the
 3 taxable year (other than the Alaska
 4 natural gas credit).

5 “(B) ALASKA NATURAL GAS CREDIT.—
 6 For purposes of this subsection, the term ‘Alas-
 7 ka natural gas credit’ means the credit allow-
 8 able under subsection (a) by reason of section
 9 45M(a).”.

10 (2) CONFORMING AMENDMENTS.—Subclause
 11 (II) of section 38(c)(2)(A)(ii), as amended by this
 12 Act, subclause (II) of section 38(c)(3)(A)(ii), as
 13 amended by this Act, and subclause (II) of section
 14 38(c)(4)(A)(ii), as added by this Act, are each
 15 amended by inserting “or the Alaska natural gas
 16 credit” after “producer credit”.

17 (d) CLERICAL AMENDMENT.—The table of sections
 18 for subpart D of part IV of subchapter A of chapter 1,
 19 as amended by this Act, is amended by adding at the end
 20 the following new item:

“Sec. 45M. Alaska natural gas.”.

21 **SEC. 1362. CERTAIN ALASKA NATURAL GAS PIPELINE**
 22 **PROPERTY TREATED AS 7-YEAR PROPERTY.**

23 (a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-
 24 year property), as amended by this Act, is amended by
 25 striking “and” at the end of clause (ii), by redesignating

1 clause (iii) as clause (iv), and by inserting after clause (ii)
2 the following new clause:

3 “(iii) any Alaska natural gas pipeline,
4 and”.

5 (b) ALASKA NATURAL GAS PIPELINE.—Section
6 168(i) (relating to definitions and special rules), as
7 amended by this Act, is amended by adding at the end
8 the following new paragraph:

9 “(18) ALASKA NATURAL GAS PIPELINE.—The
10 term ‘Alaska natural gas pipeline’ means the natural
11 gas pipeline system located in the State of Alaska
12 which—

13 “(A) has a capacity of more than
14 500,000,000,000 Btu of natural gas per day,
15 and

16 “(B) is—

17 “(i) placed in service after December
18 31, 2012, or

19 “(ii) treated as placed in service on
20 January 1, 2013, if the taxpayer who
21 places such system in service before Janu-
22 ary 1, 2013, elects such treatment.

23 Such term includes the pipe, trunk lines, related
24 equipment, and appurtenances used to carry natural
25 gas, but does not include any gas processing plant.”.

1 (c) ALTERNATIVE SYSTEM.—The table contained in
 2 section 168(g)(3)(B) (relating to special rule for certain
 3 property assigned to classes), as amended by this Act, is
 4 amended by inserting after the item relating to subpara-
 5 graph (C)(ii) the following new item:

“(C)(iii) 14”.

6 “(d) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to property placed in service after
 8 September 30, 2004.

9 **SEC. 1363. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**
 10 **MENTS FOR NATURAL GAS.**

11 (a) IN GENERAL.—Section 148(b) (relating to higher
 12 yielding investments) is amended by adding at the end the
 13 following new paragraph:

14 “(4) SAFE HARBOR FOR PREPAID NATURAL
 15 GAS.—

16 “(A) IN GENERAL.—The term ‘investment-
 17 type property’ does not include a prepayment
 18 under a qualified natural gas supply contract.

19 “(B) QUALIFIED NATURAL GAS SUPPLY
 20 CONTRACT.—For purposes of this paragraph,
 21 the term ‘qualified natural gas supply contract’
 22 means any contract to acquire natural gas for
 23 resale by or for a utility owned by a govern-
 24 mental unit if the amount of gas permitted to

1 be acquired under the contract for the utility
2 during any year does not exceed the sum of—

3 “(i) the annual average amount dur-
4 ing the testing period of natural gas pur-
5 chased (other than for resale) by cus-
6 tomers of such utility who are located
7 within the service area of such utility, and

8 “(ii) the amount of natural gas to be
9 used to transport the prepaid natural gas
10 to the utility during such year.

11 “(C) NATURAL GAS USED TO GENERATE
12 ELECTRICITY.—Natural gas used to generate
13 electricity shall be taken into account in deter-
14 mining the average under subparagraph
15 (B)(i)—

16 “(i) only if the electricity is generated
17 by a utility owned by a governmental unit,
18 and

19 “(ii) only to the extent that the elec-
20 tricity is sold (other than for resale) to
21 customers of such utility who are located
22 within the service area of such utility.

23 “(D) ADJUSTMENTS FOR CHANGES IN
24 CUSTOMER BASE.—

1 “(i) NEW BUSINESS CUSTOMERS.—

2 If—

3 “(I) after the close of the testing
4 period and before the date of issuance
5 of the issue, the utility owned by a
6 governmental unit enters into a con-
7 tract to supply natural gas (other
8 than for resale) for use by a business
9 at a property within the service area
10 of such utility, and

11 “(II) the utility did not supply
12 natural gas to such property during
13 the testing period or the ratable
14 amount of natural gas to be supplied
15 under the contract is significantly
16 greater than the ratable amount of
17 gas supplied to such property during
18 the testing period—

19 then a contract shall not fail to be treated
20 as a qualified natural gas supply contract
21 by reason of supplying the additional nat-
22 ural gas under the contract referred to in
23 subclause (I).

24 “(ii) OVERALL LIMITATION.—The av-
25 erage under subparagraph (B)(i) shall not

1 exceed the annual amount of natural gas
2 reasonably expected to be purchased (other
3 than for resale) by persons who are located
4 within the service area of such utility and
5 who, as of the date of issuance of the
6 issue, are customers of such utility.

7 “(E) RULING REQUESTS.—The Secretary
8 may increase the average under subparagraph
9 (B)(i) for any period if the utility owned by the
10 governmental unit establishes to the satisfaction
11 of the Secretary that, based on objective evi-
12 dence of growth in natural gas consumption or
13 population, such average would otherwise be in-
14 sufficient for such period.

15 “(F) ADJUSTMENT FOR NATURAL GAS
16 OTHERWISE ON HAND.—

17 “(i) IN GENERAL.—The amount oth-
18 erwise permitted to be acquired under the
19 contract for any period shall be reduced
20 by—

21 “(I) the applicable share of nat-
22 ural gas held by the utility on the
23 date of issuance of the issue, and

24 “(II) the natural gas (not taken
25 into account under subclause (I))

1 which the utility has a right to ac-
2 quire during such period (determined
3 as of the date of issuance of the
4 issue).

5 “(ii) APPLICABLE SHARE.—For pur-
6 poses of clause (i), the term ‘applicable
7 share’ means, with respect to any period,
8 the natural gas allocable to such period if
9 the gas were allocated ratably over the pe-
10 riod to which the prepayment relates.

11 “(G) INTENTIONAL ACTS.—Subparagraph
12 (A) shall cease to apply to any issue if the util-
13 ity owned by the governmental unit engages in
14 any intentional act to render the volume of nat-
15 ural gas acquired by such prepayment to be in
16 excess of the sum of—

17 “(i) the amount of natural gas needed
18 (other than for resale) by customers of
19 such utility who are located within the
20 service area of such utility, and

21 “(ii) the amount of natural gas used
22 to transport such natural gas to the utility.

23 “(H) TESTING PERIOD.—For purposes of
24 this paragraph, the term ‘testing period’ means,
25 with respect to an issue, the most recent 5 cal-

1 endar years ending before the date of issuance
2 of the issue.

3 “(I) SERVICE AREA.—For purposes of this
4 paragraph, the service area of a utility owned
5 by a governmental unit shall be comprised of—

6 “(i) any area throughout which such
7 utility provided at all times during the
8 testing period—

9 “(I) in the case of a natural gas
10 utility, natural gas transmission or
11 distribution services, and

12 “(II) in the case of an electric
13 utility, electricity distribution services,

14 “(ii) any area within a county contig-
15 uous to the area described in clause (i) in
16 which retail customers of such utility are
17 located if such area is not also served by
18 another utility providing natural gas or
19 electricity services, as the case may be, and

20 “(iii) any area recognized as the serv-
21 ice area of such utility under State or Fed-
22 eral law.”.

23 (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY
24 TO PREPAYMENTS FOR NATURAL GAS.—Section
25 141(c)(2) (providing exceptions to the private loan financ-

1 ing test) is amended by striking “or” at the end of sub-
 2 paragraph (A), by striking the period at the end of sub-
 3 paragraph (B) and inserting “, or”, and by adding at the
 4 end the following new subparagraph:

5 “(C) is a qualified natural gas supply con-
 6 tract (as defined in section 148(b)(4)).”.

7 (c) EFFECTIVE DATE.—The amendment made by
 8 this section shall apply to obligations issued after Sep-
 9 tember 30, 2004.

10 **SEC. 1364. EXTENSION OF ENHANCED OIL RECOVERY**

11 **CREDIT TO CERTAIN ALASKA FACILITIES.**

12 (a) IN GENERAL.—Section 43(c)(1) (defining quali-
 13 fied enhanced oil recovery costs) is amended by adding at
 14 the end the following new subparagraph:

15 “(D) Any amount which is paid or in-
 16 curred during the taxable year to construct a
 17 gas treatment plant which—

18 “(i) is located in the area of the
 19 United States (within the meaning of sec-
 20 tion 638(1)) lying north of 64 degrees
 21 North latitude,

22 “(ii) prepares Alaska natural gas (as
 23 defined in section 45M(c)(1)) for transpor-
 24 tation through a pipeline with a capacity of

1 at least 2,000,000,000,000 Btu of natural
2 gas per day, and

3 “(iii) produces carbon dioxide which is
4 injected into hydrocarbon-bearing geologi-
5 cal formations.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to costs paid or incurred in taxable
8 years beginning after September 30, 2004.

9 **Subtitle F—Electric Utility**
10 **Restructuring Provisions**

11 **SEC. 1371. MODIFICATIONS TO SPECIAL RULES FOR NU-**
12 **CLEAR DECOMMISSIONING COSTS.**

13 (a) REPEAL OF LIMITATION ON DEPOSITS INTO
14 FUND BASED ON COST OF SERVICE; CONTRIBUTIONS
15 AFTER FUNDING PERIOD.—Subsection (b) of section
16 468A (relating to special rules for nuclear decommis-
17 sioning costs) is amended to read as follows:

18 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—
19 The amount which a taxpayer may pay into the Fund for
20 any taxable year shall not exceed the ruling amount appli-
21 cable to such taxable year.”.

22 (b) CLARIFICATION OF TREATMENT OF FUND
23 TRANSFERS.—Section 468A(e) (relating to Nuclear De-
24 commissioning Reserve Fund) is amended by adding at
25 the end the following new paragraph:

1 “(8) TREATMENT OF FUND TRANSFERS.—If, in
2 connection with the transfer of the taxpayer’s inter-
3 est in a nuclear power plant, the taxpayer transfers
4 the Fund with respect to such power plant to the
5 transferee of such interest and the transferee elects
6 to continue the application of this section to such
7 Fund—

8 “(A) the transfer of such Fund shall not
9 cause such Fund to be disqualified from the ap-
10 plication of this section, and

11 “(B) no amount shall be treated as distrib-
12 uted from such Fund, or be includable in gross
13 income, by reason of such transfer.”.

14 (c) TREATMENT OF CERTAIN DECOMMISSIONING
15 COSTS.—

16 (1) IN GENERAL.—Section 468A is amended by
17 redesignating subsections (f) and (g) as subsections
18 (g) and (h), respectively, and by inserting after sub-
19 section (e) the following new subsection:

20 “(f) TRANSFERS INTO QUALIFIED FUNDS.—

21 “(1) IN GENERAL.—Notwithstanding subsection
22 (b), any taxpayer maintaining a Fund to which this
23 section applies with respect to a nuclear power plant
24 may transfer into such Fund not more than an
25 amount equal to the present value of the excess of

1 the total nuclear decommissioning costs with respect
2 to such nuclear power plant over the portion of such
3 costs taken into account in determining the ruling
4 amount in effect immediately before the transfer.

5 “(2) DEDUCTION FOR AMOUNTS TRANS-
6 FERRED.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (C), the deduction allowed by
9 subsection (a) for any transfer permitted by
10 this subsection shall be allowed ratably over the
11 remaining estimated useful life (within the
12 meaning of subsection (d)(2)(A)) of the nuclear
13 power plant beginning with the taxable year
14 during which the transfer is made.

15 “(B) DENIAL OF DEDUCTION FOR PRE-
16 VIOUSLY DEDUCTED AMOUNTS.—No deduction
17 shall be allowed for any transfer under this sub-
18 section of an amount for which a deduction was
19 previously allowed or a corresponding amount
20 was not included in gross income. For purposes
21 of the preceding sentence, a ratable portion of
22 each transfer shall be treated as being from
23 previously deducted or excluded amounts to the
24 extent thereof.

1 “(C) TRANSFERS OF QUALIFIED FUNDS.—

2 If—

3 “(i) any transfer permitted by this
4 subsection is made to any Fund to which
5 this section applies, and

6 “(ii) such Fund is transferred there-
7 after—

8 any deduction under this subsection for taxable
9 years ending after the date that such Fund is
10 transferred shall be allowed to the transferee
11 and not the transferor. The preceding sentence
12 shall not apply if the transferor is an entity ex-
13 empt from tax under this chapter.

14 “(D) SPECIAL RULES.—

15 “(i) GAIN OR LOSS NOT RECOG-
16 NIZED.—No gain or loss shall be recog-
17 nized on any transfer permitted by this
18 subsection.

19 “(ii) TRANSFERS OF APPRECIATED
20 PROPERTY.—If appreciated property is
21 transferred in a transfer permitted by this
22 subsection, the amount of the deduction
23 shall not exceed the adjusted basis of such
24 property.

1 “(3) NEW RULING AMOUNT REQUIRED.—Para-
2 graph (1) shall not apply to any transfer unless the
3 taxpayer requests from the Secretary a new schedule
4 of ruling amounts in connection with such transfer.

5 “(4) NO BASIS IN QUALIFIED FUNDS.—Not-
6 withstanding any other provision of law, the tax-
7 payer’s basis in any Fund to which this section ap-
8 plies shall not be increased by reason of any transfer
9 permitted by this subsection.”.

10 (2) NEW RULING AMOUNT TO TAKE INTO AC-
11 COUNT TOTAL COSTS.—Subparagraph (A) of section
12 468A(d)(2) (defining ruling amount) is amended to
13 read as follows:

14 “(A) fund the total nuclear decommis-
15 sioning costs with respect to such power plant
16 over the estimated useful life of such power
17 plant, and”.

18 (d) TECHNICAL AMENDMENT.—Section 468A(e)(2)
19 (relating to taxation of Fund) is amended—

20 (1) by striking “rate set forth in subparagraph
21 (B)” in subparagraph (A) and inserting “rate of 20
22 percent”,

23 (2) by striking subparagraph (B), and

24 (3) by redesignating subparagraphs (C) and
25 (D) as subparagraphs (B) and (C), respectively.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 September 30, 2004.

4 **SEC. 1372. TREATMENT OF CERTAIN INCOME OF COOPERA-**
5 **TIVES.**

6 (a) INCOME FROM OPEN ACCESS AND NUCLEAR DE-
7 COMMISSIONING TRANSACTIONS.—

8 (1) IN GENERAL.—Section 501(c)(12)(C) (re-
9 lating to list of exempt organizations) is amended by
10 striking “or” at the end of clause (i), by striking
11 clause (ii), and by adding at the end the following
12 new clauses:

13 “(ii) from any open access transaction
14 (other than income received or accrued di-
15 rectly or indirectly from a member),

16 “(iii) from any nuclear decommis-
17 sioning transaction,

18 “(iv) from any asset exchange or con-
19 version transaction, or

20 “(v) from the prepayment of any loan,
21 debt, or obligation made, insured, or guar-
22 anteed under the Rural Electrification Act
23 of 1936.”.

1 (2) DEFINITIONS AND SPECIAL RULES.—Sec-
2 tion 501(c)(12) is amended by adding at the end the
3 following new subparagraphs:

4 “(E) For purposes of subparagraph
5 (C)(ii)—

6 “(i) The term ‘open access trans-
7 action’ means any transaction meeting the
8 open access requirements of any of the fol-
9 lowing subclauses with respect to a mutual
10 or cooperative electric company:

11 “(I) The provision or sale of elec-
12 tric transmission service or ancillary
13 services meets the open access re-
14 quirements of this subclause only if
15 such services are provided on a non-
16 discriminatory open access basis pur-
17 suant to an open access transmission
18 tariff filed with and approved by
19 FERC, including an acceptable reci-
20 procuity tariff, or under a regional
21 transmission organization agreement
22 approved by FERC.

23 “(II) The provision or sale of
24 electric energy distribution services or
25 ancillary services meets the open ac-

1 cess requirements of this subclause
2 only if such services are provided on a
3 nondiscriminatory open access basis to
4 end-users served by distribution facili-
5 ties owned by the mutual or coopera-
6 tive electric company (or its mem-
7 bers).

8 “(III) The delivery or sale of
9 electric energy generated by a genera-
10 tion facility meets the open access re-
11 quirements of this subclause only if
12 such facility is directly connected to
13 distribution facilities owned by the
14 mutual or cooperative electric com-
15 pany (or its members) which owns the
16 generation facility, and such distribu-
17 tion facilities meet the open access re-
18 quirements of subclause (II).

19 “(ii) Clause (i)(I) shall apply in the
20 case of a voluntarily filed tariff only if the
21 mutual or cooperative electric company
22 files a report with FERC within 90 days
23 after the date of the enactment of this sub-
24 paragraph relating to whether or not such

1 company will join a regional transmission
2 organization.

3 “(iii) A mutual or cooperative electric
4 company shall be treated as meeting the
5 open access requirements of clause (i)(I) if
6 a regional transmission organization con-
7 trols the transmission facilities.

8 “(iv) References to FERC in this sub-
9 paragraph shall be treated as including
10 references to the Public Utility Commis-
11 sion of Texas with respect to any ERCOT
12 utility (as defined in section 212(k)(2)(B)
13 of the Federal Power Act (16 U.S.C.
14 824k(k)(2)(B))) or references to the Rural
15 Utilities Service with respect to any other
16 facility not subject to FERC jurisdiction.

17 “(v) For purposes of this subpara-
18 graph—

19 “(I) The term ‘transmission facil-
20 ity’ means an electric output facility
21 (other than a generation facility)
22 which operates at an electric voltage
23 of 69 kilovolts or greater. To the ex-
24 tent provided in regulations, such
25 term includes any output facility

1 which FERC determines is a trans-
2 mission facility under standards ap-
3 plied by FERC under the Federal
4 Power Act (as in effect on the date of
5 the enactment of the Energy Tax In-
6 centives Act).

7 “(II) The term ‘regional trans-
8 mission organization’ includes an
9 independent system operator.

10 “(III) The term ‘FERC’ means
11 the Federal Energy Regulatory Com-
12 mission.

13 “(F) The term ‘nuclear decommissioning
14 transaction’ means—

15 “(i) any transfer into a trust, fund, or
16 instrument established to pay any nuclear
17 decommissioning costs if the transfer is in
18 connection with the transfer of the mutual
19 or cooperative electric company’s interest
20 in a nuclear power plant or nuclear power
21 plant unit,

22 “(ii) any distribution from any trust,
23 fund, or instrument established to pay any
24 nuclear decommissioning costs, or

1 “(iii) any earnings from any trust,
2 fund, or instrument established to pay any
3 nuclear decommissioning costs.

4 “(G) The term ‘asset exchange or conver-
5 sion transaction’ means any voluntary exchange
6 or involuntary conversion of any property re-
7 lated to generating, transmitting, distributing,
8 or selling electric energy by a mutual or cooper-
9 ative electric company, the gain from which
10 qualifies for deferred recognition under section
11 1031 or 1033, but only if the replacement prop-
12 erty acquired by such company pursuant to
13 such section constitutes property which is used,
14 or to be used, for—

15 “(i) generating, transmitting, distrib-
16 uting, or selling electric energy, or

17 “(ii) producing, transmitting, distrib-
18 uting, or selling natural gas.”.

19 (b) TREATMENT OF INCOME FROM LOAD LOSS
20 TRANSACTIONS.—Section 501(c)(12), as amended by sub-
21 section (a)(2), is amended by adding after subparagraph
22 (G) the following new subparagraph:

23 “(H)(i) In the case of a mutual or coopera-
24 tive electric company described in this para-
25 graph or an organization described in section

1 1381(a)(2)(C), income received or accrued from
2 a load loss transaction shall be treated as an
3 amount collected from members for the sole
4 purpose of meeting losses and expenses.

5 “(ii) For purposes of clause (i), the term
6 ‘load loss transaction’ means any wholesale or
7 retail sale of electric energy (other than to
8 members) to the extent that the aggregate sales
9 during the recovery period do not exceed the
10 load loss mitigation sales limit for such period.

11 “(iii) For purposes of clause (ii), the load
12 loss mitigation sales limit for the recovery pe-
13 riod is the sum of the annual load losses for
14 each year of such period.

15 “(iv) For purposes of clause (iii), a mutual
16 or cooperative electric company’s annual load
17 loss for each year of the recovery period is the
18 amount (if any) by which—

19 “(I) the megawatt hours of electric
20 energy sold during such year to members
21 of such electric company are less than

22 “(II) the megawatt hours of electric
23 energy sold during the base year to such
24 members.

1 “(v) For purposes of clause (iv)(II), the
2 term ‘base year’ means—

3 “(I) the calendar year preceding the
4 start-up year, or

5 “(II) at the election of the electric
6 company, the second or third calendar
7 years preceding the start-up year.

8 “(vi) For purposes of this subparagraph,
9 the recovery period is the 7-year period begin-
10 ning with the start-up year.

11 “(vii) For purposes of this subparagraph,
12 the start-up year is the calendar year which in-
13 cludes October 1, 2004, or, if later, at the elec-
14 tion of the mutual or cooperative electric com-
15 pany—

16 “(I) the first year that such electric
17 company offers nondiscriminatory open ac-
18 cess, or

19 “(II) the first year in which at least
20 10 percent of such electric company’s sales
21 are not to members of such electric com-
22 pany.

23 “(viii) A company shall not fail to be treat-
24 ed as a mutual or cooperative company for pur-
25 poses of this paragraph or as a corporation op-

1 erating on a cooperative basis for purposes of
2 section 1381(a)(2)(C) by reason of the treat-
3 ment under clause (i).

4 “(ix) In the case of a mutual or coopera-
5 tive electric company, income from any open ac-
6 cess transaction received, or accrued, indirectly
7 from a member shall be treated as an amount
8 collected from members for the sole purpose of
9 meeting losses and expenses.”.

10 (c) EXCEPTION FROM UNRELATED BUSINESS TAX-
11 ABLE INCOME.—Section 512(b) (relating to modifications)
12 is amended by adding at the end the following new para-
13 graph:

14 “(18) TREATMENT OF MUTUAL OR COOPERA-
15 TIVE ELECTRIC COMPANIES.—In the case of a mu-
16 tual or cooperative electric company described in sec-
17 tion 501(c)(12), there shall be excluded income
18 which is treated as member income under subpara-
19 graph (H) thereof.”.

20 (d) CROSS REFERENCE.—Section 1381 is amended
21 by adding at the end the following new subsection:

1 “(c) CROSS REFERENCE.—

“For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).”.

2 (e) EFFECTIVE DATE.—The amendments made by
3 this section shall apply to taxable years beginning after
4 September 30, 2004.

5 **SEC. 1373. SALES OR DISPOSITIONS TO IMPLEMENT FED-**
6 **ERAL ENERGY REGULATORY COMMISSION**
7 **OR STATE ELECTRIC RESTRUCTURING POL-**
8 **ICY.**

9 (a) IN GENERAL.—Section 451 (relating to general
10 rule for taxable year of inclusion) is amended by adding
11 at the end the following new subsection:

12 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO
13 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-
14 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

15 “(1) IN GENERAL.—For purposes of this sub-
16 title, if a taxpayer elects the application of this sub-
17 section to a qualifying electric transmission trans-
18 action in any taxable year—

19 “(A) any ordinary income derived from
20 such transaction which would be required to be
21 recognized under section 1245 or 1250 for such
22 taxable year (determined without regard to this
23 subsection), and

1 “(B) any income derived from such trans-
2 action in excess of such ordinary income which
3 is required to be included in gross income for
4 such taxable year (determined without regard to
5 this subsection)—

6 shall be so recognized and included ratably over the
7 8-taxable year period beginning with such taxable
8 year.

9 “(2) QUALIFYING ELECTRIC TRANSMISSION
10 TRANSACTION.—For purposes of this subsection, the
11 term ‘qualifying electric transmission transaction’
12 means any sale or other disposition before January
13 1, 2008, of—

14 “(A) property used by the taxpayer in the
15 trade or business of providing electric trans-
16 mission services, or

17 “(B) any stock or partnership interest in a
18 corporation or partnership, as the case may be,
19 whose principal trade or business consists of
20 providing electric transmission services,

21 but only if such sale or disposition is to an inde-
22 pendent transmission company.

23 “(3) INDEPENDENT TRANSMISSION COM-
24 PANY.—For purposes of this subsection, the term
25 ‘independent transmission company’ means—

1 “(A) a regional transmission organization
2 approved by the Federal Energy Regulatory
3 Commission,

4 “(B) a person—

5 “(i) who the Federal Energy Regu-
6 latory Commission determines in its au-
7 thorization of the transaction under section
8 203 of the Federal Power Act (16 U.S.C.
9 824b) is not a market participant within
10 the meaning of such Commission’s rules
11 applicable to regional transmission organi-
12 zations, and

13 “(ii) whose transmission facilities to
14 which the election under this subsection
15 applies are under the operational control of
16 a Federal Energy Regulatory Commission-
17 approved regional transmission organiza-
18 tion before the close of the period specified
19 in such authorization, but not later than
20 January 1, 2008, or

21 “(C) in the case of facilities subject to the
22 exclusive jurisdiction of the Public Utility Com-
23 mission of Texas, a person which is approved by
24 that Commission as consistent with Texas State

1 law regarding an independent transmission or-
2 ganization.

3 “(4) ELECTION.—An election under paragraph
4 (1), once made, shall be irrevocable.

5 “(5) NONAPPLICATION OF INSTALLMENT SALES
6 TREATMENT.—Section 453 shall not apply to any
7 qualifying electric transmission transaction with re-
8 spect to which an election to apply this subsection
9 is made.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to transactions occurring after
12 September 30, 2004.

13 **Subtitle G—Additional Provisions**

14 **SEC. 1381. EXTENSION OF ACCELERATED DEPRECIATION** 15 **AND WAGE CREDIT BENEFITS ON INDIAN** 16 **RESERVATIONS.**

17 (a) SPECIAL RECOVERY PERIOD FOR PROPERTY ON
18 INDIAN RESERVATIONS.—Section 168(j)(8) (relating to
19 termination) is amended by striking “2004” and inserting
20 “2005”.

21 (b) INDIAN EMPLOYMENT CREDIT.—Section 45A(f)
22 (relating to termination) is amended by striking “2004”
23 and inserting “2005”.

1 **SEC. 1382. STUDY OF EFFECTIVENESS OF CERTAIN PROVI-**
2 **SIONS BY GAO.**

3 (a) **STUDY.**—The Comptroller General of the United
4 States shall undertake an ongoing analysis of—

5 (1) the effectiveness of the alternative motor ve-
6 hicles and fuel incentives provisions under title II
7 and the conservation and energy efficiency provisions
8 under title III, and

9 (2) the recipients of the tax benefits contained
10 in such provisions, including an identification of
11 such recipients by income and other appropriate
12 measurements.

13 Such analysis shall quantify the effectiveness of such pro-
14 visions by examining and comparing the Federal Govern-
15 ment's forgone revenue to the aggregate amount of energy
16 actually conserved and tangible environmental benefits
17 gained as a result of such provisions.

18 (b) **REPORTS.**—The Comptroller General of the
19 United States shall report the analysis required under sub-
20 section (a) to Congress not later than December 31, 2004,
21 and annually thereafter.

22 **SEC. 1383. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE**
23 **TAXES ON RAILROADS AND INLAND WATER-**
24 **WAY TRANSPORTATION WHICH REMAIN IN**
25 **GENERAL FUND.**

26 (a) **TAXES ON TRAINS.**—

1 (1) IN GENERAL.—Subparagraph (A) of section
2 4041(a)(1) is amended by striking “or a diesel-pow-
3 ered train” each place it appears and by striking “or
4 train”.

5 (2) CONFORMING AMENDMENTS.—

6 (A) Subparagraph (C) of section
7 4041(a)(1) is amended by striking clause (ii)
8 and by redesignating clause (iii) as clause (ii).

9 (B) Subparagraph (C) of section
10 4041(b)(1) is amended by striking all that fol-
11 lows “section 6421(e)(2)” and inserting a pe-
12 riod.

13 (C) Subsection (d) of section 4041 is
14 amended by redesignating paragraph (3) as
15 paragraph (4) and by inserting after paragraph
16 (2) the following new paragraph:

17 “(3) DIESEL FUEL USED IN TRAINS.—There is
18 hereby imposed a tax of 0.1 cent per gallon on any
19 liquid other than gasoline (as defined in section
20 4083)—

21 “(A) sold by any person to an owner, les-
22 see, or other operator of a diesel-powered train
23 for use as a fuel in such train, or

1 “(B) used by any person as a fuel in a die-
2 sel-powered train unless there was a taxable
3 sale of such fuel under subparagraph (A).

4 No tax shall be imposed by this paragraph on the
5 sale or use of any liquid if tax was imposed on such
6 liquid under section 4081.”

7 (D) Subsection (f) of section 4082 is
8 amended by striking “section 4041(a)(1)” and
9 inserting “subsections (d)(3) and (a)(1) of sec-
10 tion 4041, respectively”.

11 (E) Paragraph (3) of section 4083(a) is
12 amended by striking “or a diesel-powered
13 train”.

14 (F) Paragraph (3) of section 6421(f) is
15 amended to read as follows:

16 “(3) GASOLINE USED IN TRAINS.—In the case
17 of gasoline used as a fuel in a train, this section
18 shall not apply with respect to the Leaking Under-
19 ground Storage Tank Trust Fund financing rate
20 under section 4081.”

21 (G) Paragraph (3) of section 6427(l) is
22 amended to read as follows:

23 “(3) REFUND OF CERTAIN TAXES ON FUEL
24 USED IN DIESEL-POWERED TRAINS.—For purposes
25 of this subsection, the term ‘nontaxable use’ includes

1 fuel used in a diesel-powered train. The preceding
2 sentence shall not apply to the tax imposed by sec-
3 tion 4041(d) and the Leaking Underground Storage
4 Tank Trust Fund financing rate under section 4081
5 except with respect to fuel sold for exclusive use by
6 a State or any political subdivision thereof.”

7 (b) FUEL USED ON INLAND WATERWAYS.—

8 (1) IN GENERAL.—Paragraph (1) of section
9 4042(b) is amended by adding “and” at the end of
10 subparagraph (A), by striking “, and” at the end of
11 subparagraph (B) and inserting a period, and by
12 striking subparagraph (C).

13 (2) CONFORMING AMENDMENT.—Paragraph (2)
14 of section 4042(b) is amended by striking subpara-
15 graph (C).

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on October 1, 2004.

18 **SEC. 1384. EXPANSION OF RESEARCH CREDIT.**

19 (a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CER-
20 TAIN COLLABORATIVE ENERGY RESEARCH CONSORTIA.—

21 (1) IN GENERAL.—Section 41(a) (relating to
22 credit for increasing research activities) is amended
23 by striking “and” at the end of paragraph (1), by
24 striking the period at the end of paragraph (2) and

1 inserting “, and”, and by adding at the end the fol-
2 lowing new paragraph:

3 “(3) 20 percent of the amounts paid or in-
4 curred by the taxpayer in carrying on any trade or
5 business of the taxpayer during the taxable year (in-
6 cluding as contributions) to an energy research con-
7 sortium.”.

8 (2) ENERGY RESEARCH CONSORTIUM DE-
9 FINED.—Section 41(f) (relating to special rules) is
10 amended by adding at the end the following new
11 paragraph:

12 “(6) ENERGY RESEARCH CONSORTIUM.—

13 “(A) IN GENERAL.—The term ‘energy re-
14 search consortium’ means any organization—

15 “(i) which is—

16 “(I) described in section
17 501(c)(3) and is exempt from tax
18 under section 501(a) and is organized
19 and operated primarily to conduct en-
20 ergy research, or

21 “(II) organized and operated pri-
22 marily to conduct energy research in
23 the public interest (within the mean-
24 ing of section 501(c)(3)),

1 “(ii) which is not a private founda-
2 tion,

3 “(iii) to which at least 5 unrelated
4 persons paid or incurred during the cal-
5 endar year in which the taxable year of the
6 organization begins amounts (including as
7 contributions) to such organization for en-
8 ergy research, and

9 “(iv) to which no single person paid
10 or incurred (including as contributions)
11 during such calendar year an amount
12 equal to more than 50 percent of the total
13 amounts received by such organization
14 during such calendar year for energy re-
15 search.

16 “(B) TREATMENT OF PERSONS.—All per-
17 sons treated as a single employer under sub-
18 section (a) or (b) of section 52 shall be treated
19 as related persons for purposes of subparagraph
20 (A)(iii) and as a single person for purposes of
21 subparagraph (A)(iv).”.

22 (3) CONFORMING AMENDMENT.—Section
23 41(b)(3)(C) is amended by inserting “(other than an
24 energy research consortium)” after “organization”.

1 (b) REPEAL OF LIMITATION ON CONTRACT RE-
2 SEARCH EXPENSES PAID TO SMALL BUSINESSES, UNI-
3 VERSITIES, AND FEDERAL LABORATORIES.—Section
4 41(b)(3) (relating to contract research expenses) is
5 amended by adding at the end the following new subpara-
6 graph:

7 “(D) AMOUNTS PAID TO ELIGIBLE SMALL
8 BUSINESSES, UNIVERSITIES, AND FEDERAL
9 LABORATORIES.—

10 “(i) IN GENERAL.—In the case of
11 amounts paid by the taxpayer to—

12 “(I) an eligible small business,

13 “(II) an institution of higher
14 education (as defined in section
15 3304(f)), or

16 “(III) an organization which is a
17 Federal laboratory—

18 for qualified research which is energy re-
19 search, subparagraph (A) shall be applied
20 by substituting ‘100 percent’ for ‘65 per-
21 cent’.

22 “(ii) ELIGIBLE SMALL BUSINESS.—

23 For purposes of this subparagraph, the
24 term ‘eligible small business’ means a
25 small business with respect to which the

1 taxpayer does not own (within the meaning
2 of section 318) 50 percent or more of—

3 “(I) in the case of a corporation,
4 the outstanding stock of the corpora-
5 tion (either by vote or value), and

6 “(II) in the case of a small busi-
7 ness which is not a corporation, the
8 capital and profits interests of the
9 small business.

10 “(iii) SMALL BUSINESS.—For pur-
11 poses of this subparagraph—

12 “(I) IN GENERAL.—The term
13 ‘small business’ means, with respect
14 to any calendar year, any person if
15 the annual average number of employ-
16 ees employed by such person during
17 either of the 2 preceding calendar
18 years was 500 or fewer. For purposes
19 of the preceding sentence, a preceding
20 calendar year may be taken into ac-
21 count only if the person was in exist-
22 ence throughout the year.

23 “(II) STARTUPS, CONTROLLED
24 GROUPS, AND PREDECESSORS.—Rules
25 similar to the rules of subparagraphs

1 (B) and (D) of section 220(c)(4) shall
2 apply for purposes of this clause.

3 “(iv) FEDERAL LABORATORY.—For
4 purposes of this subparagraph, the term
5 ‘Federal laboratory’ has the meaning given
6 such term by section 4(6) of the Steven-
7 son-Wydler Technology Innovation Act of
8 1980 (15 U.S.C. 3703(6)), as in effect on
9 the date of the enactment of the Energy
10 Tax Incentives Act.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to amounts paid or incurred after
13 the date of the enactment of this Act.

14 **Subtitle H—Revenue Provisions**

15 **PART I—PROVISIONS DESIGNED TO CURTAIL TAX**

16 **SHELTERS**

17 **SEC. 1385. PENALTY FOR FAILING TO DISCLOSE REPORT-** 18 **ABLE TRANSACTION.**

19 (a) IN GENERAL.—Part I of subchapter B of chapter
20 68 (relating to assessable penalties) is amended by insert-
21 ing after section 6707 the following new section:

1 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
2 **ABLE TRANSACTION INFORMATION WITH RE-**
3 **TURN OR STATEMENT.**

4 “(a) IMPOSITION OF PENALTY.—Any person who
5 fails to include on any return or statement any informa-
6 tion with respect to a reportable transaction which is re-
7 quired under section 6011 to be included with such return
8 or statement shall pay a penalty in the amount determined
9 under subsection (b).

10 “(b) AMOUNT OF PENALTY.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graphs (2) and (3), the amount of the penalty under
13 subsection (a) shall be \$50,000.

14 “(2) LISTED TRANSACTION.—The amount of
15 the penalty under subsection (a) with respect to a
16 listed transaction shall be \$100,000.

17 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
18 TIES AND HIGH NET WORTH INDIVIDUALS.—

19 “(A) IN GENERAL.—In the case of a fail-
20 ure under subsection (a) by—

21 “(i) a large entity, or

22 “(ii) a high net worth individual—

23 the penalty under paragraph (1) or (2) shall be
24 twice the amount determined without regard to
25 this paragraph.

1 “(B) LARGE ENTITY.—For purposes of
2 subparagraph (A), the term ‘large entity’
3 means, with respect to any taxable year, a per-
4 son (other than a natural person) with gross re-
5 ceipts in excess of \$10,000,000 for the taxable
6 year in which the reportable transaction occurs
7 or the preceding taxable year. Rules similar to
8 the rules of paragraph (2) and subparagraphs
9 (B), (C), and (D) of paragraph (3) of section
10 448(c) shall apply for purposes of this subpara-
11 graph.

12 “(C) HIGH NET WORTH INDIVIDUAL.—For
13 purposes of subparagraph (A), the term ‘high
14 net worth individual’ means, with respect to a
15 reportable transaction, a natural person whose
16 net worth exceeds \$2,000,000 immediately be-
17 fore the transaction.

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) REPORTABLE TRANSACTION.—The term
20 ‘reportable transaction’ means any transaction with
21 respect to which information is required to be in-
22 cluded with a return or statement because, as deter-
23 mined under regulations prescribed under section
24 6011, such transaction is of a type which the Sec-

1 retary determines as having a potential for tax
2 avoidance or evasion.

3 “(2) LISTED TRANSACTION.—Except as pro-
4 vided in regulations, the term ‘listed transaction’
5 means a reportable transaction which is the same as,
6 or substantially similar to, a transaction specifically
7 identified by the Secretary as a tax avoidance trans-
8 action for purposes of section 6011.

9 “(d) AUTHORITY TO RESCIND PENALTY.—

10 “(1) IN GENERAL.—The Commissioner of In-
11 ternal Revenue may rescind all or any portion of any
12 penalty imposed by this section with respect to any
13 violation if—

14 “(A) the violation is with respect to a re-
15 portable transaction other than a listed trans-
16 action,

17 “(B) the person on whom the penalty is
18 imposed has a history of complying with the re-
19 quirements of this title,

20 “(C) it is shown that the violation is due
21 to an unintentional mistake of fact;

22 “(D) imposing the penalty would be
23 against equity and good conscience, and

1 “(E) rescinding the penalty would promote
2 compliance with the requirements of this title
3 and effective tax administration.

4 “(2) DISCRETION.—The exercise of authority
5 under paragraph (1) shall be at the sole discretion
6 of the Commissioner and may be delegated only to
7 the head of the Office of Tax Shelter Analysis. The
8 Commissioner, in the Commissioner’s sole discretion,
9 may establish a procedure to determine if a penalty
10 should be referred to the Commissioner or the head
11 of such Office for a determination under paragraph
12 (1).

13 “(3) NO APPEAL.—Notwithstanding any other
14 provision of law, any determination under this sub-
15 section may not be reviewed in any administrative or
16 judicial proceeding.

17 “(4) RECORDS.—If a penalty is rescinded under
18 paragraph (1), the Commissioner shall place in the
19 file in the Office of the Commissioner the opinion of
20 the Commissioner or the head of the Office of Tax
21 Shelter Analysis with respect to the determination,
22 including—

23 “(A) the facts and circumstances of the
24 transaction,

25 “(B) the reasons for the rescission, and

1 “(C) the amount of the penalty rescinded.

2 “(5) REPORT.—The Commissioner shall each
3 year report to the Committee on Ways and Means
4 of the House of Representatives and the Committee
5 on Finance of the Senate—

6 “(A) a summary of the total number and
7 aggregate amount of penalties imposed, and re-
8 scinded, under this section, and

9 “(B) a description of each penalty re-
10 scinded under this subsection and the reasons
11 therefor.

12 “(e) PENALTY REPORTED TO SEC.—In the case of
13 a person—

14 “(1) which is required to file periodic reports
15 under section 13 or 15(d) of the Securities Ex-
16 change Act of 1934 or is required to be consolidated
17 with another person for purposes of such reports,
18 and

19 “(2) which—

20 “(A) is required to pay a penalty under
21 this section with respect to a listed transaction,
22 or

23 “(B) is required to pay a penalty under
24 section 6662A with respect to any reportable

1 transaction at a rate prescribed under section
2 6662A(c)—
3 the requirement to pay such penalty shall be disclosed in
4 such reports filed by such person for such periods as the
5 Secretary shall specify. Failure to make a disclosure in
6 accordance with the preceding sentence shall be treated
7 as a failure to which the penalty under subsection (b)(2)
8 applies.

9 “(f) COORDINATION WITH OTHER PENALTIES.—The
10 penalty imposed by this section is in addition to any pen-
11 alty imposed under this title.”.

12 (b) CONFORMING AMENDMENT.—The table of sec-
13 tions for part I of subchapter B of chapter 68 is amended
14 by inserting after the item relating to section 6707 the
15 following:

“Sec. 6707A. Penalty for failure to include reportable transaction
information with return or statement.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to returns and statements the due
18 date for which is after the date of the enactment of this
19 Act.

1 **SEC. 1386. ACCURACY-RELATED PENALTY FOR LISTED**
2 **TRANSACTIONS AND OTHER REPORTABLE**
3 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
4 **AVOIDANCE PURPOSE.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is
6 amended by inserting after section 6662 the following new
7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
10 **TO REPORTABLE TRANSACTIONS.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
12 reportable transaction understatement for any taxable
13 year, there shall be added to the tax an amount equal to
14 20 percent of the amount of such understatement.

15 “(b) REPORTABLE TRANSACTION UNDERSTATE-
16 MENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘reportable trans-
18 action understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if
21 any) in taxable income which results from
22 a difference between the proper tax treat-
23 ment of an item to which this section ap-
24 plies and the taxpayer’s treatment of such
25 item (as shown on the taxpayer’s return of
26 tax), and

1 “(ii) the highest rate of tax imposed
2 by section 1 (section 11 in the case of a
3 taxpayer which is a corporation), and

4 “(B) the amount of the decrease (if any)
5 in the aggregate amount of credits determined
6 under subtitle A which results from a difference
7 between the taxpayer’s treatment of an item to
8 which this section applies (as shown on the tax-
9 payer’s return of tax) and the proper tax treat-
10 ment of such item.

11 For purposes of subparagraph (A), any reduction of
12 the excess of deductions allowed for the taxable year
13 over gross income for such year, and any reduction
14 in the amount of capital losses which would (without
15 regard to section 1211) be allowed for such year,
16 shall be treated as an increase in taxable income.

17 “(2) ITEMS TO WHICH SECTION APPLIES.—This
18 section shall apply to any item which is attributable
19 to—

20 “(A) any listed transaction, and

21 “(B) any reportable transaction (other
22 than a listed transaction) if a significant pur-
23 pose of such transaction is the avoidance or
24 evasion of Federal income tax.

1 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
2 AND OTHER AVOIDANCE TRANSACTIONS.—

3 “(1) IN GENERAL.—Subsection (a) shall be ap-
4 plied by substituting ‘30 percent’ for ‘20 percent’
5 with respect to the portion of any reportable trans-
6 action understatement with respect to which the re-
7 quirement of section 6664(d)(2)(A) is not met.

8 “(2) RULES APPLICABLE TO COMPROMISE OF
9 PENALTY.—

10 “(A) IN GENERAL.—If the 1st letter of
11 proposed deficiency which allows the taxpayer
12 an opportunity for administrative review in the
13 Internal Revenue Service Office of Appeals has
14 been sent with respect to a penalty to which
15 paragraph (1) applies, only the Commissioner
16 of Internal Revenue may compromise all or any
17 portion of such penalty.

18 “(B) APPLICABLE RULES.—The rules of
19 paragraphs (2), (3), (4), and (5) of section
20 6707A(d) shall apply for purposes of subpara-
21 graph (A).

22 “(d) DEFINITIONS OF REPORTABLE AND LISTED
23 TRANSACTIONS.—For purposes of this section, the terms
24 ‘reportable transaction’ and ‘listed transaction’ have the

1 respective meanings given to such terms by section
2 6707A(e).

3 “(e) SPECIAL RULES.—

4 “(1) COORDINATION WITH PENALTIES, ETC.,
5 ON OTHER UNDERSTATEMENTS.—In the case of an
6 understatement (as defined in section 6662(d)(2))—

7 “(A) the amount of such understatement
8 (determined without regard to this paragraph)
9 shall be increased by the aggregate amount of
10 reportable transaction understatements for pur-
11 poses of determining whether such understate-
12 ment is a substantial understatement under
13 section 6662(d)(1), and

14 “(B) the addition to tax under section
15 6662(a) shall apply only to the excess of the
16 amount of the substantial understatement (if
17 any) after the application of subparagraph (A)
18 over the aggregate amount of reportable trans-
19 action understatements.

20 “(2) COORDINATION WITH OTHER PEN-
21 ALTIES.—

22 “(A) APPLICATION OF FRAUD PENALTY.—
23 References to an underpayment in section 6663
24 shall be treated as including references to a re-
25 reportable transaction understatement.

1 “(B) NO DOUBLE PENALTY.—This section
2 shall not apply to any portion of an understatement
3 on which a penalty is imposed under section
4 6663.

5 “(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no
6 event shall any tax treatment included with an
7 amendment or supplement to a return of tax be
8 taken into account in determining the amount of any
9 reportable transaction understatement if the amendment
10 or supplement is filed after the earlier of the
11 date the taxpayer is first contacted by the Secretary
12 regarding the examination of the return or such
13 other date as is specified by the Secretary.
14

15 “(4) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the
Securities and Exchange Commission, see section
6707A(e).”.**

16 (b) DETERMINATION OF OTHER UNDERSTATE-
17 MENTS.—Subparagraph (A) of section 6662(d)(2) is
18 amended by adding at the end the following flush sen-
19 tence:

20 “The excess under the preceding sentence shall
21 be determined without regard to items to which
22 section 6662A applies.”.

23 (c) REASONABLE CAUSE EXCEPTION.—

1 (1) IN GENERAL.—Section 6664 is amended by
2 adding at the end the following new subsection:

3 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
4 ABLE TRANSACTION UNDERSTATEMENTS.—

5 “(1) IN GENERAL.—No penalty shall be im-
6 posed under section 6662A with respect to any por-
7 tion of a reportable transaction understatement if it
8 is shown that there was a reasonable cause for such
9 portion and that the taxpayer acted in good faith
10 with respect to such portion.

11 “(2) SPECIAL RULES.—Paragraph (1) shall not
12 apply to any reportable transaction understatement
13 unless—

14 “(A) the relevant facts affecting the tax
15 treatment of the item are adequately disclosed
16 in accordance with the regulations prescribed
17 under section 6011,

18 “(B) there is or was substantial authority
19 for such treatment, and

20 “(C) the taxpayer reasonably believed that
21 such treatment was more likely than not the
22 proper treatment.

23 A taxpayer failing to adequately disclose in accord-
24 ance with section 6011 shall be treated as meeting
25 the requirements of subparagraph (A) if the penalty

1 for such failure was rescinded under section
2 6707A(d).

3 “(3) RULES RELATING TO REASONABLE BE-
4 LIEF.—For purposes of paragraph (2)(C)—

5 “(A) IN GENERAL.—A taxpayer shall be
6 treated as having a reasonable belief with re-
7 spect to the tax treatment of an item only if
8 such belief—

9 “(i) is based on the facts and law that
10 exist at the time the return of tax which
11 includes such tax treatment is filed, and

12 “(ii) relates solely to the taxpayer’s
13 chances of success on the merits of such
14 treatment and does not take into account
15 the possibility that a return will not be au-
16 dited, such treatment will not be raised on
17 audit, or such treatment will be resolved
18 through settlement if it is raised.

19 “(B) CERTAIN OPINIONS MAY NOT BE RE-
20 LIED UPON.—

21 “(i) IN GENERAL.—An opinion of a
22 tax advisor may not be relied upon to es-
23 tablish the reasonable belief of a taxpayer
24 if—

1 “(I) the tax advisor is described
2 in clause (ii), or

3 “(II) the opinion is described in
4 clause (iii).

5 “(ii) DISQUALIFIED TAX ADVISORS.—
6 A tax advisor is described in this clause if
7 the tax advisor—

8 “(I) is a material advisor (within
9 the meaning of section 6111(b)(1))
10 who participates in the organization,
11 management, promotion, or sale of
12 the transaction or who is related
13 (within the meaning of section 267(b)
14 or 707(b)(1)) to any person who so
15 participates,

16 “(II) is compensated directly or
17 indirectly by a material advisor with
18 respect to the transaction,

19 “(III) has a fee arrangement
20 with respect to the transaction which
21 is contingent on all or part of the in-
22 tended tax benefits from the trans-
23 action being sustained, or

24 “(IV) as determined under regu-
25 lations prescribed by the Secretary,

1 has a continuing financial interest
2 with respect to the transaction.

3 “(iii) DISQUALIFIED OPINIONS.—For
4 purposes of clause (i), an opinion is dis-
5 qualified if the opinion—

6 “(I) is based on unreasonable
7 factual or legal assumptions (includ-
8 ing assumptions as to future events),

9 “(II) unreasonably relies on rep-
10 resentations, statements, findings, or
11 agreements of the taxpayer or any
12 other person,

13 “(III) does not identify and con-
14 sider all relevant facts, or

15 “(IV) fails to meet any other re-
16 quirement as the Secretary may pre-
17 scribe.”.

18 (2) CONFORMING AMENDMENT.—The heading
19 for subsection (c) of section 6664 is amended by in-
20 serting “FOR UNDERPAYMENTS” after “EXCEP-
21 TION”.

22 (d) CONFORMING AMENDMENTS.—

23 (1) Subparagraph (C) of section 461(i)(3) is
24 amended by striking “section 6662(d)(2)(C)(iii)”
25 and inserting “section 1274(b)(3)(C)”.

1 (2) Paragraph (3) of section 1274(b) is amend-
2 ed—

3 (A) by striking “(as defined in section
4 6662(d)(2)(C)(iii))” in subparagraph (B)(i),
5 and

6 (B) by adding at the end the following new
7 subparagraph:

8 “(C) TAX SHELTER.—For purposes of sub-
9 paragraph (B), the term ‘tax shelter’ means—

10 “(i) a partnership or other entity,

11 “(ii) any investment plan or arrange-
12 ment, or

13 “(iii) any other plan or arrange-
14 ment—

15 if a significant purpose of such partnership, en-
16 tity, plan, or arrangement is the avoidance or
17 evasion of Federal income tax.”.

18 (3) Section 6662(d) is amended—

19 (A) by striking subparagraphs (C) and (D)
20 of paragraph (2), and

21 (B) by adding at the end the following:

22 “(3) SECRETARIAL LIST.—For purposes of this
23 subsection, section 6664(d)(2), and section
24 6694(a)(1), the Secretary may prescribe a list of po-
25 sitions for which the Secretary believes there is not

1 substantial authority or there is no reasonable belief
2 that the tax treatment is more likely than not the
3 proper tax treatment. Such list (and any revisions
4 thereof) shall be published in the Federal Register
5 or the Internal Revenue Bulletin.”.

6 (4) Section 6664(c)(1) is amended by striking
7 “this part” and inserting “section 6662 or 6663”.

8 (5) Subsection (b) of section 7525 is amended
9 by striking “section 6662(d)(2)(C)(iii)” and insert-
10 ing “section 1274(b)(3)(C)”.

11 (6)(A) The heading for section 6662 is amend-
12 ed to read as follows:

13 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
14 **ON UNDERPAYMENTS.”.**

15 (B) The table of sections for part II of sub-
16 chapter A of chapter 68 is amended by striking the
17 item relating to section 6662 and inserting the fol-
18 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
ments.

“Sec. 6662A. Imposition of accuracy-related penalty on under-
statements with respect to reportable trans-
actions.”.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years ending after the
21 date of the enactment of this Act.

1 **SEC. 1387. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
2 **PRIVILEGES RELATING TO TAXPAYER COM-**
3 **MUNICATIONS.**

4 (a) IN GENERAL.—Section 7525(b) (relating to sec-
5 tion not to apply to communications regarding corporate
6 tax shelters) is amended to read as follows:

7 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
8 REGARDING TAX SHELTERS.—The privilege under sub-
9 section (a) shall not apply to any written communication
10 which is—

11 “(1) between a federally authorized tax practi-
12 tioner and—

13 “(A) any person,

14 “(B) any director, officer, employee, agent,
15 or representative of the person, or

16 “(C) any other person holding a capital or
17 profits interest in the person, and

18 “(2) in connection with the promotion of the di-
19 rect or indirect participation of the person in any
20 tax shelter (as defined in section 1274(b)(3)(C)).”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to communications made on or
23 after the date of the enactment of this Act.

24 **SEC. 1388. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

25 (a) IN GENERAL.—Section 6111 (relating to registra-
26 tion of tax shelters) is amended to read as follows:

1 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

2 “(a) IN GENERAL.—Each material advisor with re-
3 spect to any reportable transaction shall make a return
4 (in such form as the Secretary may prescribe) setting
5 forth—

6 “(1) information identifying and describing the
7 transaction,

8 “(2) information describing any potential tax
9 benefits expected to result from the transaction, and

10 “(3) such other information as the Secretary
11 may prescribe.

12 Such return shall be filed not later than the date specified
13 by the Secretary.

14 “(b) DEFINITIONS.—For purposes of this section—

15 “(1) MATERIAL ADVISOR.—

16 “(A) IN GENERAL.—The term ‘material
17 advisor’ means any person—

18 “(i) who provides any material aid,
19 assistance, or advice with respect to orga-
20 nizing, promoting, selling, implementing,
21 or carrying out any reportable transaction,
22 and

23 “(ii) who directly or indirectly derives
24 gross income in excess of the threshold
25 amount for such aid, assistance, or advice.

1 “(B) THRESHOLD AMOUNT.—For purposes
2 of subparagraph (A), the threshold amount is—

3 “(i) \$50,000 in the case of a report-
4 able transaction substantially all of the tax
5 benefits from which are provided to nat-
6 ural persons, and

7 “(ii) \$250,000 in any other case.

8 “(2) REPORTABLE TRANSACTION.—The term
9 ‘reportable transaction’ has the meaning given to
10 such term by section 6707A(c).

11 “(c) REGULATIONS.—The Secretary may prescribe
12 regulations which provide—

13 “(1) that only 1 person shall be required to
14 meet the requirements of subsection (a) in cases in
15 which 2 or more persons would otherwise be re-
16 quired to meet such requirements,

17 “(2) exemptions from the requirements of this
18 section, and

19 “(3) such rules as may be necessary or appro-
20 priate to carry out the purposes of this section.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) The item relating to section 6111 in the
23 table of sections for subchapter B of chapter 61 is
24 amended to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”.

1 (2)(A) So much of section 6112 as precedes
2 subsection (c) thereof is amended to read as follows:

3 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
4 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

5 “(a) IN GENERAL.—Each material advisor (as de-
6 fined in section 6111) with respect to any reportable
7 transaction (as defined in section 6707A(e)) shall main-
8 tain, in such manner as the Secretary may by regulations
9 prescribe, a list—

10 “(1) identifying each person with respect to
11 whom such advisor acted as such a material advisor
12 with respect to such transaction, and

13 “(2) containing such other information as the
14 Secretary may by regulations require.

15 This section shall apply without regard to whether a mate-
16 rial advisor is required to file a return under section 6111
17 with respect to such transaction.”.

18 (B) Section 6112 is amended by redesignating
19 subsection (c) as subsection (b).

20 (C) Section 6112(b), as redesignated by sub-
21 paragraph (B), is amended—

22 (i) by inserting “written” before “request”
23 in paragraph (1)(A), and

24 (ii) by striking “shall prescribe” in para-
25 graph (2) and inserting “may prescribe”.

1 (D) The item relating to section 6112 in the
2 table of sections for subchapter B of chapter 61 is
3 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must
keep lists of advisees.”.

4 (3)(A) The heading for section 6708 is amend-
5 ed to read as follows:

6 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
7 **WITH RESPECT TO REPORTABLE TRANS-**
8 **ACTIONS.”.**

9 (B) The item relating to section 6708 in the
10 table of sections for part I of subchapter B of chap-
11 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to
reportable transactions.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to transactions with respect to
14 which material aid, assistance, or advice referred to in sec-
15 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of
16 1986 (as added by this section) is provided after the date
17 of the enactment of this Act.

18 **SEC. 1389. MODIFICATIONS TO PENALTY FOR FAILURE TO**
19 **REGISTER TAX SHELTERS.**

20 (a) IN GENERAL.—Section 6707 (relating to failure
21 to furnish information regarding tax shelters) is amended
22 to read as follows:

1 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
2 **ING REPORTABLE TRANSACTIONS.**

3 “(a) IN GENERAL.—If a person who is required to
4 file a return under section 6111(a) with respect to any
5 reportable transaction—

6 “(1) fails to file such return on or before the
7 date prescribed therefor, or

8 “(2) files false or incomplete information with
9 the Secretary with respect to such transaction—

10 such person shall pay a penalty with respect to such return
11 in the amount determined under subsection (b).

12 “(b) AMOUNT OF PENALTY.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), the penalty imposed under subsection (a)
15 with respect to any failure shall be \$50,000.

16 “(2) LISTED TRANSACTIONS.—The penalty im-
17 posed under subsection (a) with respect to any listed
18 transaction shall be an amount equal to the greater
19 of—

20 “(A) \$200,000, or

21 “(B) 50 percent of the gross income de-
22 rived by such person with respect to aid, assist-
23 ance, or advice which is provided with respect
24 to the listed transaction before the date the re-
25 turn including the transaction is filed under
26 section 6111.

1 Subparagraph (B) shall be applied by substituting
2 ‘75 percent’ for ‘50 percent’ in the case of an inten-
3 tional failure or act described in subsection (a).

4 “(c) RESCISSION AUTHORITY.—The provisions of
5 section 6707A(d) (relating to authority of Commissioner
6 to rescind penalty) shall apply to any penalty imposed
7 under this section.

8 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
9 The terms ‘reportable transaction’ and ‘listed transaction’
10 have the respective meanings given to such terms by sec-
11 tion 6707A(c).”.

12 (b) CLERICAL AMENDMENT.—The item relating to
13 section 6707 in the table of sections for part I of sub-
14 chapter B of chapter 68 is amended by striking “tax shel-
15 ters” and inserting “reportable transactions”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to returns the due date for which
18 is after the date of the enactment of this Act.

19 **SEC. 1390. MODIFICATION OF PENALTY FOR FAILURE TO**
20 **MAINTAIN LISTS OF INVESTORS.**

21 (a) IN GENERAL.—Subsection (a) of section 6708 is
22 amended to read as follows:

23 “(a) IMPOSITION OF PENALTY.—

24 “(1) IN GENERAL.—If any person who is re-
25 quired to maintain a list under section 6112(a) fails

1 to make such list available upon written request to
2 the Secretary in accordance with section
3 6112(b)(1)(A) within 20 business days after the
4 date of the Secretary's request, such person shall
5 pay a penalty of \$10,000 for each day of such fail-
6 ure after such 20th day.

7 “(2) REASONABLE CAUSE EXCEPTION.—No
8 penalty shall be imposed by paragraph (1) with re-
9 spect to the failure on any day if such failure is due
10 to reasonable cause.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to requests made after the date
13 of the enactment of this Act.

14 **SEC. 1391. PENALTY ON PROMOTERS OF TAX SHELTERS.**

15 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
16 TERS.—Section 6700(a) is amended by adding at the end
17 the following new sentence: “Notwithstanding the first
18 sentence, if an activity with respect to which a penalty
19 imposed under this subsection involves a statement de-
20 scribed in paragraph (2)(A), the amount of the penalty
21 shall be equal to 50 percent of the gross income derived
22 (or to be derived) from such activity by the person on
23 which the penalty is imposed.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to activities after the date of the
3 enactment of this Act.

4 **PART II—PROVISIONS TO DISCOURAGE**

5 **CORPORATE EXPATRIATION**

6 **SEC. 1392. TAX TREATMENT OF INVERTED CORPORATE EN-**
7 **TITIES.**

8 (a) IN GENERAL.—Subchapter C of chapter 80 (re-
9 lating to provisions affecting more than one subtitle) is
10 amended by adding at the end the following new section:

11 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE**
12 **ENTITIES.**

13 **“(a) INVERTED CORPORATIONS TREATED AS DOMES-**
14 **TIC CORPORATIONS.—**

15 **“(1) IN GENERAL.—**If a foreign incorporated
16 entity is treated as an inverted domestic corporation,
17 then, notwithstanding section 7701(a)(4), such enti-
18 ty shall be treated for purposes of this title as a do-
19 mestic corporation.

20 **“(2) INVERTED DOMESTIC CORPORATION.—**For
21 purposes of this section, a foreign incorporated enti-
22 ty shall be treated as an inverted domestic corpora-
23 tion if, pursuant to a plan (or a series of related
24 transactions)—

1 “(A) the entity completes after March 20,
2 2002, the direct or indirect acquisition of sub-
3 stantially all of the properties held directly or
4 indirectly by a domestic corporation or substan-
5 tially all of the properties constituting a trade
6 or business of a domestic partnership,

7 “(B) after the acquisition at least 80 per-
8 cent of the stock (by vote or value) of the entity
9 is held—

10 “(i) in the case of an acquisition with
11 respect to a domestic corporation, by
12 former shareholders of the domestic cor-
13 poration by reason of holding stock in the
14 domestic corporation, or

15 “(ii) in the case of an acquisition with
16 respect to a domestic partnership, by
17 former partners of the domestic partner-
18 ship by reason of holding a capital or prof-
19 its interest in the domestic partnership,
20 and

21 “(C) the expanded affiliated group which
22 after the acquisition includes the entity does
23 not have substantial business activities in the
24 foreign country in which or under the law of
25 which the entity is created or organized when

1 compared to the total business activities of such
2 expanded affiliated group.

3 Except as provided in regulations, an acquisition of
4 properties of a domestic corporation shall not be
5 treated as described in subparagraph (A) if none of
6 the corporation's stock was readily tradeable on an
7 established securities market at any time during the
8 4-year period ending on the date of the acquisition.

9 “(b) PRESERVATION OF DOMESTIC TAX BASE IN
10 CERTAIN INVERSION TRANSACTIONS TO WHICH SUB-
11 SECTION (a) DOES NOT APPLY.—

12 “(1) IN GENERAL.—If a foreign incorporated
13 entity would be treated as an inverted domestic cor-
14 poration with respect to an acquired entity if ei-
15 ther—

16 “(A) subsection (a)(2)(A) were applied by
17 substituting ‘after December 31, 1996, and on
18 or before March 20, 2002’ for ‘after March 20,
19 2002’ and subsection (a)(2)(B) were applied by
20 substituting ‘more than 50 percent’ for ‘at least
21 80 percent’, or

22 “(B) subsection (a)(2)(B) were applied by
23 substituting ‘more than 50 percent’ for ‘at least
24 80 percent’—

1 then the rules of subsection (c) shall apply to any
2 inversion gain of the acquired entity during the ap-
3 plicable period and the rules of subsection (d) shall
4 apply to any related party transaction of the ac-
5 quired entity during the applicable period. This sub-
6 section shall not apply for any taxable year if sub-
7 section (a) applies to such foreign incorporated enti-
8 ty for such taxable year.

9 “(2) ACQUIRED ENTITY.—For purposes of this
10 section—

11 “(A) IN GENERAL.—The term ‘acquired
12 entity’ means the domestic corporation or part-
13 nership substantially all of the properties of
14 which are directly or indirectly acquired in an
15 acquisition described in subsection (a)(2)(A) to
16 which this subsection applies.

17 “(B) AGGREGATION RULES.—Any domes-
18 tic person bearing a relationship described in
19 section 267(b) or 707(b) to an acquired entity
20 shall be treated as an acquired entity with re-
21 spect to the acquisition described in subpara-
22 graph (A).

23 “(3) APPLICABLE PERIOD.—For purposes of
24 this section—

1 “(A) IN GENERAL.—The term ‘applicable
2 period’ means the period—

3 “(i) beginning on the first date prop-
4 erties are acquired as part of the acquisi-
5 tion described in subsection (a)(2)(A) to
6 which this subsection applies, and

7 “(ii) ending on the date which is 10
8 years after the last date properties are ac-
9 quired as part of such acquisition.

10 “(B) SPECIAL RULE FOR INVERSIONS OC-
11 CURRING BEFORE MARCH 21, 2002.—In the case
12 of any acquired entity to which paragraph
13 (1)(A) applies, the applicable period shall be the
14 10-year period beginning on January 1, 2003.

15 “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-
16 SET.—If subsection (b) applies—

17 “(1) IN GENERAL.—The taxable income of an
18 acquired entity (or any expanded affiliated group
19 which includes such entity) for any taxable year
20 which includes any portion of the applicable period
21 shall in no event be less than the inversion gain of
22 the entity for the taxable year.

23 “(2) CREDITS NOT ALLOWED AGAINST TAX ON
24 INVERSION GAIN.—Credits shall be allowed against
25 the tax imposed by this chapter on an acquired enti-

1 ty for any taxable year described in paragraph (1)
2 only to the extent such tax exceeds the product of—

3 “(A) the amount of the inversion gain for
4 the taxable year, and

5 “(B) the highest rate of tax specified in
6 section 11(b)(1).

7 For purposes of determining the credit allowed by
8 section 901 inversion gain shall be treated as from
9 sources within the United States.

10 “(3) SPECIAL RULES FOR PARTNERSHIPS.—In
11 the case of an acquired entity which is a partner-
12 ship—

13 “(A) the limitations of this subsection shall
14 apply at the partner rather than the partner-
15 ship level,

16 “(B) the inversion gain of any partner for
17 any taxable year shall be equal to the sum of—

18 “(i) the partner’s distributive share of
19 inversion gain of the partnership for such
20 taxable year, plus

21 “(ii) income or gain required to be
22 recognized for the taxable year by the part-
23 ner under section 367(a), 741, or 1001, or
24 under any other provision of chapter 1, by
25 reason of the transfer during the applica-

1 ble period of any partnership interest of
2 the partner in such partnership to the for-
3 eign incorporated entity, and

4 “(C) the highest rate of tax specified in
5 the rate schedule applicable to the partner
6 under chapter 1 shall be substituted for the
7 rate of tax under paragraph (2)(B).

8 “(4) INVERSION GAIN.—For purposes of this
9 section, the term ‘inversion gain’ means any income
10 or gain required to be recognized under section 304,
11 311(b), 367, 1001, or 1248, or under any other pro-
12 vision of chapter 1, by reason of the transfer during
13 the applicable period of stock or other properties by
14 an acquired entity—

15 “(A) as part of the acquisition described in
16 subsection (a)(2)(A) to which subsection (b) ap-
17 plies, or

18 “(B) after such acquisition to a foreign re-
19 lated person.

20 The Secretary may provide that income or gain from
21 the sale of inventories or other transactions in the
22 ordinary course of a trade or business shall not be
23 treated as inversion gain under subparagraph (B) to
24 the extent the Secretary determines such treatment

1 would not be inconsistent with the purposes of this
2 section.

3 “(5) COORDINATION WITH SECTION 172 AND
4 MINIMUM TAX.—Rules similar to the rules of para-
5 graphs (3) and (4) of section 860E(a) shall apply
6 for purposes of this section.

7 “(6) STATUTE OF LIMITATIONS.—

8 “(A) IN GENERAL.—The statutory period
9 for the assessment of any deficiency attrib-
10 utable to the inversion gain of any taxpayer for
11 any pre-inversion year shall not expire before
12 the expiration of 3 years from the date the Sec-
13 retary is notified by the taxpayer (in such man-
14 ner as the Secretary may prescribe) of the ac-
15 quisition described in subsection (a)(2)(A) to
16 which such gain relates and such deficiency
17 may be assessed before the expiration of such
18 3-year period notwithstanding the provisions of
19 any other law or rule of law which would other-
20 wise prevent such assessment.

21 “(B) PRE-INVERSION YEAR.—For purposes
22 of subparagraph (A), the term ‘pre-inversion
23 year’ means any taxable year if—

24 “(i) any portion of the applicable pe-
25 riod is included in such taxable year, and

1 “(ii) such year ends before the taxable
2 year in which the acquisition described in
3 subsection (a)(2)(A) is completed.

4 “(d) SPECIAL RULES APPLICABLE TO RELATED
5 PARTY TRANSACTIONS.—

6 “(1) ANNUAL APPLICATION FOR AGREEMENTS
7 ON RETURN POSITIONS.—

8 “(A) IN GENERAL.—Each acquired entity
9 to which subsection (b) applies shall file with
10 the Secretary an application for an approval
11 agreement under subparagraph (D) for each
12 taxable year which includes a portion of the ap-
13 plicable period. Such application shall be filed
14 at such time and manner, and shall contain
15 such information, as the Secretary may pre-
16 scribe.

17 “(B) SECRETARIAL ACTION.—Within 90
18 days of receipt of an application under subpara-
19 graph (A) (or such longer period as the Sec-
20 retary and entity may agree upon), the Sec-
21 retary shall—

22 “(i) enter into an agreement described
23 in subparagraph (D) for the taxable year
24 covered by the application,

1 “(ii) notify the entity that the Sec-
2 retary has determined that the application
3 was filed in good faith and substantially
4 complies with the requirements for the ap-
5 plication under subparagraph (A), or

6 “(iii) notify the entity that the Sec-
7 retary has determined that the application
8 was not filed in good faith or does not sub-
9 stantially comply with such requirements.

10 If the Secretary fails to act within the time pre-
11 scribed under the preceding sentence, the entity
12 shall be treated for purposes of this paragraph
13 as having received notice under clause (ii).

14 “(C) FAILURES TO COMPLY.—If an ac-
15 quired entity fails to file an application under
16 subparagraph (A), or the acquired entity re-
17 ceives a notice under subparagraph (B)(iii), for
18 any taxable year, then for such taxable year—

19 “(i) there shall not be allowed any de-
20 duction, or addition to basis or cost of
21 goods sold, for amounts paid or incurred,
22 or losses incurred, by reason of a trans-
23 action between the acquired entity and a
24 foreign related person,

1 “(ii) any transfer or license of intan-
2 gible property (as defined in section
3 936(h)(3)(B)) between the acquired entity
4 and a foreign related person shall be dis-
5 regarded, and

6 “(iii) any cost-sharing arrangement
7 between the acquired entity and a foreign
8 related person shall be disregarded.

9 “(D) APPROVAL AGREEMENT.—For pur-
10 poses of subparagraph (A), the term ‘approval
11 agreement’ means a prefilling, advance pricing,
12 or other agreement specified by the Secretary
13 which contains such provisions as the Secretary
14 determines necessary to ensure that the require-
15 ments of sections 163(j), 267(a)(3), 482, and
16 845, and any other provision of this title appli-
17 cable to transactions between related persons
18 and specified by the Secretary, are met.

19 “(E) TAX COURT REVIEW.—

20 “(i) IN GENERAL.—The Tax Court
21 shall have jurisdiction over any action
22 brought by an acquired entity receiving a
23 notice under subparagraph (B)(iii) to de-
24 termine whether the issuance of the notice
25 was an abuse of discretion, but only if the

1 action is brought within 30 days after the
2 date of the mailing (determined under
3 rules similar to section 6213) of the notice.

4 “(ii) COURT ACTION.—The Tax Court
5 shall issue its decision within 30 days after
6 the filing of the action under clause (i) and
7 may order the Secretary to issue a notice
8 described in subparagraph (B)(ii).

9 “(iii) REVIEW.—An order of the Tax
10 Court under this subparagraph shall be re-
11 viewable in the same manner as any other
12 decision of the Tax Court.

13 “(2) MODIFICATIONS OF LIMITATION ON INTER-
14 EST DEDUCTION.—In the case of an acquired entity
15 to which subsection (b) applies, section 163(j) shall
16 be applied—

17 “(A) without regard to paragraph
18 (2)(A)(ii) thereof, and

19 “(B) by substituting ‘25 percent’ for ‘50
20 percent’ each place it appears in paragraph
21 (2)(B) thereof.

22 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
23 For purposes of this section—

24 “(1) RULES FOR APPLICATION OF SUBSECTION
25 (a)(2).—In applying subsection (a)(2) for purposes of

1 subsections (a) and (b), the following rules shall
2 apply:

3 “(A) CERTAIN STOCK DISREGARDED.—

4 There shall not be taken into account in deter-
5 mining ownership for purposes of subsection
6 (a)(2)(B)—

7 “(i) stock held by members of the ex-
8 panded affiliated group which includes the
9 foreign incorporated entity, or

10 “(ii) stock of such entity which is sold
11 in a public offering or private placement
12 related to the acquisition described in sub-
13 section (a)(2)(A).

14 “(B) PLAN DEEMED IN CERTAIN CASES.—

15 If a foreign incorporated entity acquires directly
16 or indirectly substantially all of the properties
17 of a domestic corporation or partnership during
18 the 4-year period beginning on the date which
19 is 2 years before the ownership requirements of
20 subsection (a)(2)(B) are met with respect to
21 such domestic corporation or partnership, such
22 actions shall be treated as pursuant to a plan.

23 “(C) CERTAIN TRANSFERS DIS-
24 REGARDED.—The transfer of properties or li-
25 abilities (including by contribution or distribu-

1 tion) shall be disregarded if such transfers are
2 part of a plan a principal purpose of which is
3 to avoid the purposes of this section.

4 “(D) SPECIAL RULE FOR RELATED PART-
5 NERSHIPS.—For purposes of applying sub-
6 section (a)(2) to the acquisition of a domestic
7 partnership, except as provided in regulations,
8 all partnerships which are under common con-
9 trol (within the meaning of section 482) shall
10 be treated as 1 partnership.

11 “(E) TREATMENT OF CERTAIN RIGHTS.—
12 The Secretary shall prescribe such regulations
13 as may be necessary—

14 “(i) to treat warrants, options, con-
15 tracts to acquire stock, convertible debt in-
16 struments, and other similar interests as
17 stock, and

18 “(ii) to treat stock as not stock.

19 “(2) EXPANDED AFFILIATED GROUP.—The
20 term ‘expanded affiliated group’ means an affiliated
21 group as defined in section 1504(a) but without re-
22 gard to section 1504(b)(3), except that section
23 1504(a) shall be applied by substituting ‘more than
24 50 percent’ for ‘at least 80 percent’ each place it ap-
25 pears.

1 “(3) FOREIGN INCORPORATED ENTITY.—The
2 term ‘foreign incorporated entity’ means any entity
3 which is, or but for subsection (a)(1) would be,
4 treated as a foreign corporation for purposes of this
5 title.

6 “(4) FOREIGN RELATED PERSON.—The term
7 ‘foreign related person’ means, with respect to any
8 acquired entity, a foreign person which—

9 “(A) bears a relationship to such entity de-
10 scribed in section 267(b) or 707(b), or

11 “(B) is under the same common control
12 (within the meaning of section 482) as such en-
13 tity.

14 “(5) SUBSEQUENT ACQUISITIONS BY UNRE-
15 LATED DOMESTIC CORPORATIONS.—

16 “(A) IN GENERAL.—Subject to such condi-
17 tions, limitations, and exceptions as the Sec-
18 retary may prescribe, if, after an acquisition de-
19 scribed in subsection (a)(2)(A) to which sub-
20 section (b) applies, a domestic corporation stock
21 of which is traded on an established securities
22 market acquires directly or indirectly any prop-
23 erties of one or more acquired entities in a
24 transaction with respect to which the require-
25 ments of subparagraph (B) are met, this sec-

1 tion shall cease to apply to any such acquired
2 entity with respect to which such requirements
3 are met.

4 “(B) REQUIREMENTS.—The requirements
5 of the subparagraph are met with respect to a
6 transaction involving any acquisition described
7 in subparagraph (A) if—

8 “(i) before such transaction the do-
9 mestic corporation did not have a relation-
10 ship described in section 267(b) or 707(b),
11 and was not under common control (within
12 the meaning of section 482), with the ac-
13 quired entity, or any member of an ex-
14 panded affiliated group including such en-
15 tity, and

16 “(ii) after such transaction, such ac-
17 quired entity—

18 “(I) is a member of the same ex-
19 panded affiliated group which includes
20 the domestic corporation or has such
21 a relationship or is under such com-
22 mon control with any member of such
23 group, and

24 “(II) is not a member of, and
25 does not have such a relationship and

1 is not under such common control
2 with any member of, the expanded af-
3 filiated group which before such ac-
4 quisition included such entity.

5 “(f) REGULATIONS.—The Secretary shall provide
6 such regulations as are necessary to carry out this section,
7 including regulations providing for such adjustments to
8 the application of this section as are necessary to prevent
9 the avoidance of the purposes of this section, including the
10 avoidance of such purposes through—

11 “(1) the use of related persons, pass-through or
12 other noncorporate entities, or other intermediaries,
13 or

14 “(2) transactions designed to have persons
15 cease to be (or not become) members of expanded
16 affiliated groups or related persons.”.

17 (b) TREATMENT OF AGREEMENTS.—

18 (1) CONFIDENTIALITY.—

19 (A) TREATMENT AS RETURN INFORMA-
20 TION.—Section 6103(b)(2) (relating to return
21 information) is amended by striking “and” at
22 the end of subparagraph (C), by inserting
23 “and” at the end of subparagraph (D), and by
24 inserting after subparagraph (D) the following
25 new subparagraph:

1 “(E) any approval agreement under section
2 7874(d)(1) to which any preceding subpara-
3 graph does not apply and any background in-
4 formation related to the agreement or any ap-
5 plication for the agreement,”.

6 (B) EXCEPTION FROM PUBLIC INSPECTION
7 AS WRITTEN DETERMINATION.—Section
8 6110(b)(1)(B) is amended by striking “or (D)”
9 and inserting “, (D), or (E)”.

10 (2) REPORTING.—The Secretary of the Treas-
11 ury shall include with any report on advance pricing
12 agreements required to be submitted after the date
13 of the enactment of this Act under section 521(b) of
14 the Ticket to Work and Work Incentives Improve-
15 ment Act of 1999 (Public Law 106–170) a report
16 regarding approval agreements under section
17 7874(d)(1) of the Internal Revenue Code of 1986.
18 Such report shall include information similar to the
19 information required with respect to advance pricing
20 agreements and shall be treated for confidentiality
21 purposes in the same manner as the reports on ad-
22 vance pricing agreements are treated under section
23 521(b)(3) of such Act.

24 (c) INFORMATION REPORTING.—The Secretary of the
25 Treasury shall exercise the Secretary’s authority under the

1 Internal Revenue Code of 1986 to require entities involved
2 in transactions to which section 7874 of such Code (as
3 added by subsection (a)) applies to report to the Secretary,
4 shareholders, partners, and such other persons as the Sec-
5 retary may prescribe such information as is necessary to
6 ensure the proper tax treatment of such transactions.

7 (d) CONFORMING AMENDMENT.—The table of sec-
8 tions for subchapter C of chapter 80 is amended by adding
9 at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”.

10 (e) TRANSITION RULE FOR CERTAIN REGULATED
11 INVESTMENT COMPANIES AND UNIT INVESTMENT
12 TRUSTS.—Notwithstanding section 7874 of the Internal
13 Revenue Code of 1986 (as added by subsection (a)), a reg-
14 ulated investment company, or other pooled fund or trust
15 specified by the Secretary of the Treasury, may elect to
16 recognize gain by reason of section 367(a) of such Code
17 with respect to a transaction under which a foreign incor-
18 porated entity is treated as an inverted domestic corpora-
19 tion under section 7874(a) of such Code by reason of an
20 acquisition completed after March 20, 2002, and before
21 January 1, 2004.

22 **SEC. 1393. EXCISE TAX ON STOCK COMPENSATION OF IN-**
23 **SIDERS IN INVERTED CORPORATIONS.**

24 (a) IN GENERAL.—Subtitle D is amended by adding
25 at the end the following new chapter:

1 **“CHAPTER 48—STOCK COMPENSATION OF**
 2 **INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

3 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**
 4 **VERTED CORPORATIONS.**

5 “(a) IMPOSITION OF TAX.—In the case of an indi-
 6 vidual who is a disqualified individual with respect to any
 7 inverted corporation, there is hereby imposed on such per-
 8 son a tax equal to 20 percent of the value (determined
 9 under subsection (b)) of the specified stock compensation
 10 held (directly or indirectly) by or for the benefit of such
 11 individual or a member of such individual’s family (as de-
 12 fined in section 267) at any time during the 12-month
 13 period beginning on the date which is 6 months before
 14 the inversion date.

15 “(b) VALUE.—For purposes of subsection (a)—

16 “(1) IN GENERAL.—The value of specified stock
 17 compensation shall be—

18 “(A) in the case of a stock option (or other
 19 similar right) or any stock appreciation right,
 20 the fair value of such option or right, and

21 “(B) in any other case, the fair market
 22 value of such compensation.

23 “(2) DATE FOR DETERMINING VALUE.—The
 24 determination of value shall be made—

1 “(A) in the case of specified stock com-
2 pensation held on the inversion date, on such
3 date,

4 “(B) in the case of such compensation
5 which is canceled during the 6 months before
6 the inversion date, on the day before such can-
7 cellation, and

8 “(C) in the case of such compensation
9 which is granted after the inversion date, on the
10 date such compensation is granted.

11 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
12 RECOGNIZED.—Subsection (a) shall apply to any disquali-
13 fied individual with respect to an inverted corporation only
14 if gain (if any) on any stock in such corporation is recog-
15 nized in whole or part by any shareholder by reason of
16 the acquisition referred to in section 7874(a)(2)(A) (deter-
17 mined by substituting ‘July 10, 2002’ for ‘March 20,
18 2002’) with respect to such corporation.

19 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
20 COMPENSATION.—Subsection (a) shall not apply to—

21 “(1) any stock option which is exercised on the
22 inversion date or during the 6-month period before
23 such date and to the stock acquired in such exercise,
24 and

1 “(2) any specified stock compensation which is
2 sold, exchanged, or distributed during such period in
3 a transaction in which gain or loss is recognized in
4 full.

5 “(e) DEFINITIONS.—For purposes of this section—

6 “(1) DISQUALIFIED INDIVIDUAL.—The term
7 ‘disqualified individual’ means, with respect to a cor-
8 poration, any individual who, at any time during the
9 12-month period beginning on the date which is 6
10 months before the inversion date—

11 “(A) is subject to the requirements of sec-
12 tion 16(a) of the Securities Exchange Act of
13 1934 with respect to such corporation or any
14 member of the expanded affiliated group which
15 includes such corporation, or

16 “(B) would be subject to such require-
17 ments if such corporation or member were an
18 issuer of equity securities referred to in such
19 section.

20 “(2) INVERTED CORPORATION; INVERSION
21 DATE.—

22 “(A) INVERTED CORPORATION.—The term
23 ‘inverted corporation’ means any corporation to
24 which subsection (a) or (b) of section 7874 ap-
25 plies determined—

1 “(i) by substituting ‘July 10, 2002’
2 for ‘March 20, 2002’ in section
3 7874(a)(2)(A), and

4 “(ii) without regard to subsection
5 (b)(1)(A).

6 Such term includes any predecessor or suc-
7 cessor of such a corporation.

8 “(B) INVERSION DATE.—The term ‘inver-
9 sion date’ means, with respect to a corporation,
10 the date on which the corporation first becomes
11 an inverted corporation.

12 “(3) SPECIFIED STOCK COMPENSATION.—

13 “(A) IN GENERAL.—The term ‘specified
14 stock compensation’ means payment (or right
15 to payment) granted by the inverted corpora-
16 tion (or by any member of the expanded affili-
17 ated group which includes such corporation) to
18 any person in connection with the performance
19 of services by a disqualified individual for such
20 corporation or member if the value of such pay-
21 ment or right is based on (or determined by ref-
22 erence to) the value (or change in value) of
23 stock in such corporation (or any such mem-
24 ber).

1 “(B) EXCEPTIONS.—Such term shall not
2 include—

3 “(i) any option to which part II of
4 subchapter D of chapter 1 applies, or

5 “(ii) any payment or right to payment
6 from a plan referred to in section
7 280G(b)(6).

8 “(4) EXPANDED AFFILIATED GROUP.—The
9 term ‘expanded affiliated group’ means an affiliated
10 group (as defined in section 1504(a) without regard
11 to section 1504(b)(3)); except that section 1504(a)
12 shall be applied by substituting ‘more than 50 per-
13 cent’ for ‘at least 80 percent’ each place it appears.

14 “(f) SPECIAL RULES.—For purposes of this sec-
15 tion—

16 “(1) CANCELLATION OF RESTRICTION.—The
17 cancellation of a restriction which by its terms will
18 never lapse shall be treated as a grant.

19 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
20 CORPORATION TREATED AS SPECIFIED STOCK COM-
21 PENSATION.—Any payment of the tax imposed by
22 this section directly or indirectly by the inverted cor-
23 poration or by any member of the expanded affili-
24 ated group which includes such corporation—

1 “(A) shall be treated as specified stock
2 compensation, and

3 “(B) shall not be allowed as a deduction
4 under any provision of chapter 1.

5 “(3) CERTAIN RESTRICTIONS IGNORED.—
6 Whether there is specified stock compensation, and
7 the value thereof, shall be determined without regard
8 to any restriction other than a restriction which by
9 its terms will never lapse.

10 “(4) PROPERTY TRANSFERS.—Any transfer of
11 property shall be treated as a payment and any right
12 to a transfer of property shall be treated as a right
13 to a payment.

14 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
15 For purposes of subtitle F, any tax imposed by this
16 section shall be treated as a tax imposed by subtitle
17 A.

18 “(g) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section.”.

21 (b) DENIAL OF DEDUCTION.—

22 (1) IN GENERAL.—Paragraph (6) of section
23 275(a) is amended by inserting “48,” after “46,”.

24 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
25 PENSATION REDUCED BY PAYMENT OF EXCISE TAX

1 ON SPECIFIED STOCK COMPENSATION.—Paragraph
2 (4) of section 162(m) is amended by adding at the
3 end the following new subparagraph:

4 “(G) COORDINATION WITH EXCISE TAX ON
5 SPECIFIED STOCK COMPENSATION.—The dollar
6 limitation contained in paragraph (1) with re-
7 spect to any covered employee shall be reduced
8 (but not below zero) by the amount of any pay-
9 ment (with respect to such employee) of the tax
10 imposed by section 5000A directly or indirectly
11 by the inverted corporation (as defined in such
12 section) or by any member of the expanded af-
13 filiated group (as defined in such section) which
14 includes such corporation.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) The last sentence of section 3121(v)(2)(A)
17 is amended by inserting before the period “or to any
18 specified stock compensation (as defined in section
19 5000A) on which tax is imposed by section 5000A”.

20 (2) The table of chapters for subtitle D is
21 amended by adding at the end the following new
22 item:

“Chapter 48. Stock compensation of insiders in inverted corpora-
tions.”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on July 11, 2002; except that

1 periods before such date shall not be taken into account
2 in applying the periods in subsections (a) and (e)(1) of
3 section 5000A of the Internal Revenue Code of 1986, as
4 added by this section.

5 **SEC. 1394. REINSURANCE OF UNITED STATES RISKS IN**
6 **FOREIGN JURISDICTIONS.**

7 (a) **IN GENERAL.**—Section 845(a) (relating to alloca-
8 tion in case of reinsurance agreement involving tax avoid-
9 ance or evasion) is amended by striking “source and char-
10 acter” and inserting “amount, source, or character”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 this section shall apply to any risk reinsured after April
13 11, 2002.

14 **PART III—OTHER REVENUE PROVISIONS**

15 **SEC. 1395. EXTENSION OF INTERNAL REVENUE SERVICE**
16 **USER FEES.**

17 Section 7528(c) is amended by striking “December
18 31, 2004” and inserting “September 30, 2013”.

19 **SEC. 1396. ADDITION OF VACCINES AGAINST HEPATITIS A**
20 **TO LIST OF TAXABLE VACCINES.**

21 (a) **IN GENERAL.**—Section 4132(a)(1) (defining tax-
22 able vaccine) is amended by redesignating subparagraphs
23 (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and
24 (M), respectively, and by inserting after subparagraph (H)
25 the following new subparagraph:

1 “(I) Any vaccine against hepatitis A.”.

2 (b) CONFORMING AMENDMENT.—Section
3 9510(c)(1)(A) is amended by striking “October 18, 2000”
4 and inserting “April 2, 2003”.

5 (c) EFFECTIVE DATE.—

6 (1) SALES, ETC.—The amendments made by
7 this section shall apply to sales and uses on or after
8 the first day of the first month which begins more
9 than 4 weeks after the date of the enactment of this
10 Act.

11 (2) DELIVERIES.—For purposes of paragraph
12 (1) and section 4131 of the Internal Revenue Code
13 of 1986, in the case of sales on or before the effec-
14 tive date described in such paragraph for which de-
15 livery is made after such date, the delivery date shall
16 be considered the sale date.

17 **SEC. 1397. INDIVIDUAL EXPATRIATION TO AVOID TAX.**

18 (a) EXPATRIATION TO AVOID TAX.—

19 (1) IN GENERAL.—Subsection (a) of section
20 877 (relating to treatment of expatriates) is amend-
21 ed to read as follows:

22 “(a) TREATMENT OF EXPATRIATES.—

23 “(1) IN GENERAL.—Every nonresident alien in-
24 dividual to whom this section applies and who, with-
25 in the 10-year period immediately preceding the

1 close of the taxable year, lost United States citizen-
2 ship shall be taxable for such taxable year in the
3 manner provided in subsection (b) if the tax imposed
4 pursuant to such subsection (after any reduction in
5 such tax under the last sentence of such subsection)
6 exceeds the tax which, without regard to this section,
7 is imposed pursuant to section 871.

8 “(2) INDIVIDUALS SUBJECT TO THIS SEC-
9 TION.—This section shall apply to any individual
10 if—

11 “(A) the average annual net income tax
12 (as defined in section 38(c)(1)) of such indi-
13 vidual for the period of 5 taxable years ending
14 before the date of the loss of United States citi-
15 zenship is greater than \$122,000,

16 “(B) the net worth of the individual as of
17 such date is \$2,000,000 or more, or

18 “(C) such individual fails to certify under
19 penalty of perjury that he has met the require-
20 ments of this title for the 5 preceding taxable
21 years or fails to submit such evidence of such
22 compliance as the Secretary may require.

23 In the case of the loss of United States citizenship
24 in any calendar year after 2003, such \$122,000
25 amount shall be increased by an amount equal to

1 such dollar amount multiplied by the cost-of-living
2 adjustment determined under section 1(f)(3) for
3 such calendar year by substituting ‘2002’ for ‘1992’
4 in subparagraph (B) thereof. Any increase under the
5 preceding sentence shall be rounded to the nearest
6 multiple of \$1,000.”.

7 (2) REVISION OF EXCEPTIONS FROM ALTER-
8 NATIVE TAX.—Subsection (c) of section 877 (relat-
9 ing to tax avoidance not presumed in certain cases)
10 is amended to read as follows:

11 “(c) EXCEPTIONS.—

12 “(1) IN GENERAL.—Subparagraphs (A) and
13 (B) of subsection (a)(2) shall not apply to an indi-
14 vidual described in paragraph (2) or (3).

15 “(2) DUAL CITIZENS.—

16 “(A) IN GENERAL.—An individual is de-
17 scribed in this paragraph if—

18 “(i) the individual became at birth a
19 citizen of the United States and a citizen
20 of another country and continues to be a
21 citizen of such other country, and

22 “(ii) the individual has had no sub-
23 stantial contacts with the United States.

24 “(B) SUBSTANTIAL CONTACTS.—An indi-
25 vidual shall be treated as having no substantial

1 contacts with the United States only if the indi-
2 vidual—

3 “(i) was never a resident of the
4 United States (as defined in section
5 7701(b)),

6 “(ii) has never held a United States
7 passport, and

8 “(iii) was not present in the United
9 States for more than 30 days during any
10 calendar year which is 1 of the 10 calendar
11 years preceding the individual’s loss of
12 United States citizenship.

13 “(3) CERTAIN MINORS.—An individual is de-
14 scribed in this paragraph if—

15 “(A) the individual became at birth a cit-
16 izen of the United States,

17 “(B) neither parent of such individual was
18 a citizen of the United States at the time of
19 such birth,

20 “(C) the individual’s loss of United States
21 citizenship occurs before such individual attains
22 age 18½, and

23 “(D) the individual was not present in the
24 United States for more than 30 days during
25 any calendar year which is 1 of the 10 calendar

1 years preceding the individual's loss of United
2 States citizenship.”.

3 (3) CONFORMING AMENDMENT.—Section
4 2107(a) is amended to read as follows:

5 “(a) TREATMENT OF EXPATRIATES.—A tax com-
6 puted in accordance with the table contained in section
7 2001 is hereby imposed on the transfer of the taxable es-
8 tate, determined as provided in section 2106, of every de-
9 cedent nonresident not a citizen of the United States if
10 the date of death occurs during a taxable year with respect
11 to which the decedent is subject to tax under section
12 877(b).”.

13 (b) SPECIAL RULES FOR DETERMINING WHEN AN
14 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
15 OR LONG-TERM RESIDENT.—Section 7701 (relating to
16 definitions) is amended by redesignating subsection (n) as
17 subsection (o) and by inserting after subsection (m) the
18 following new subsection:

19 “(n) SPECIAL RULES FOR DETERMINING WHEN AN
20 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
21 OR LONG-TERM RESIDENT.—An individual who would not
22 (but for this subsection) be treated as a citizen or resident
23 of the United States shall continue to be treated as a cit-
24 izen or resident of the United States until such indi-
25 vidual—

1 “(1) gives notice of an expatriating act or ter-
2 mination of residency (with the requisite intent to
3 relinquish citizenship or terminate residency) to the
4 Secretary of State or the Secretary of Homeland Se-
5 curity, and

6 “(2) provides a statement in accordance with
7 section 6039G.”.

8 (c) PHYSICAL PRESENCE IN THE UNITED STATES
9 FOR MORE THAN 30 DAYS.—Section 877 (relating to ex-
10 patriation to avoid tax) is amended by adding at the end
11 the following new subsection:

12 “(g) PHYSICAL PRESENCE.—This section shall not
13 apply to any individual for any taxable year during the
14 10-year period referred to in subsection (a) in which such
15 individual is present (within the meaning of section
16 7701(b)(7) without regard to subparagraphs (B), (C), and
17 (D) thereof) in the United States for more than 30 days
18 in the calendar year ending in such taxable year, and such
19 individual shall be treated for purposes of this title as a
20 citizen or resident of the United States for such taxable
21 year.”.

22 (d) TRANSFERS SUBJECT TO GIFT TAX.—Subsection
23 (a) of section 2501 (relating to taxable transfers) is
24 amended by adding at the end the following:

25 “(6) TRANSFERS OF CERTAIN STOCK.—

1 “(A) IN GENERAL.—Paragraph (3) shall
2 not apply to the transfer of stock described in
3 subparagraph (B) by any individual to whom
4 section 877(b) applies, and section 2511(a)
5 shall be applied without regard to whether such
6 stock is property which is situated within the
7 United States.

8 “(B) VALUATION.—For purposes of sub-
9 paragraph (A), the value of stock shall be deter-
10 mined as provided in section 2103, except
11 that—

12 “(i) if the donor owned (within the
13 meaning of section 958(a)) at the time of
14 such transfer 10 percent or more of the
15 total combined voting power of all classes
16 of stock entitled to vote of a foreign cor-
17 poration, and

18 “(ii) if such donor owned (within the
19 meaning of section 958(a)), or is consid-
20 ered to have owned (by applying the own-
21 ership rules of section 958(b)), at the time
22 of such transfer, more than 50 percent
23 of—

1 “(I) the total combined voting
2 power of all classes of stock entitled
3 to vote of such corporation, or

4 “(II) the total value of the stock
5 of such corporation—

6 then the portion of the fair market value of the
7 stock of such foreign corporation transferred by
8 such donor which is included for purposes of
9 subparagraph (A) shall be the amount which
10 bears the same ratio to such value as the fair
11 market value of any assets owned by such for-
12 eign corporation and situated in the United
13 States at the time of such transfer bears to the
14 total fair market value of all assets owned by
15 such foreign corporation at such time. For pur-
16 poses of the preceding sentence, a donor shall
17 be treated as owning stock of a foreign corpora-
18 tion at the time of such transfer if, at such
19 time, by trust or otherwise, within the meaning
20 of sections 2035 to 2038, inclusive, he owned
21 such stock.”.

22 (e) ENHANCED INFORMATION REPORTING FROM IN-
23 DIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

24 (1) IN GENERAL.—Subsection (a) of section
25 6039G is amended to read as follows:

1 “(a) IN GENERAL.—Notwithstanding any other pro-
2 vision of law, any individual to whom section 877(b) ap-
3 plies for any taxable year shall provide a statement for
4 such taxable year which includes the information described
5 in subsection (b).”.

6 (2) INFORMATION TO BE PROVIDED.—Sub-
7 section (b) of section 6039G is amended to read as
8 follows:

9 “(b) INFORMATION TO BE PROVIDED.—Information
10 required under subsection (a) shall include—

11 “(1) the taxpayer’s TIN,

12 “(2) the mailing address of such individual’s
13 principal foreign residence,

14 “(3) the foreign country, in which such indi-
15 vidual is residing,

16 “(4) the foreign country of which such indi-
17 vidual is a citizen,

18 “(5) information detailing the income, assets,
19 and liabilities of such individual,

20 “(6) the number of days that the individual was
21 present in the United States during the taxable year,
22 and

23 “(7) such other information as the Secretary
24 may prescribe.”.

1 (3) INCREASE IN PENALTY.—Subsection (d) of
2 section 6039G is amended to read as follows:

3 “(d) PENALTY.—If—

4 “(1) an individual is required to file a state-
5 ment under subsection (a) for any taxable year, and

6 “(2) fails to file such a statement with the Sec-
7 retary on or before the date such statement is re-
8 quired to be filed or fails to include all the informa-
9 tion required to be shown on the statement or in-
10 cludes incorrect information—

11 such individual shall pay a penalty of \$5,000 unless it is
12 shown that such failure is due to reasonable cause and
13 not to willful neglect.”.

14 (4) CONFORMING AMENDMENT.—Section
15 6039G is amended by striking subsections (c), (f),
16 and (g) and by redesignating subsections (d) and (e)
17 as subsection (c) and (d), respectively.

18 (f) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to individuals who expatriate after
20 February 27, 2003.

1 **TITLE XIV—MISCELLANEOUS**
2 **Subtitle A—Rural and Remote**
3 **Electricity Construction**

4 **SEC. 1401. DENALI COMMISSION PROGRAMS.**

5 (a) POWER COST EQUALIZATION PROGRAM.—There
6 are authorized to be appropriated to the Denali Commis-
7 sion established by the Denali Commission Act of 1998
8 (42 U.S.C. 3121 note) not more than \$5,000,000 for each
9 of fiscal years 2005 through 2011 for the purposes of
10 funding the power cost equalization program established
11 under section 42.45.100 of the Alaska Statutes.

12 (b) AVAILABILITY OF FUNDS.—

13 (1) PURPOSE.—Amounts authorized in para-
14 graph (2) shall be available to the Denali Commis-
15 sion to permit energy generation and development
16 (including fuel cells, hydroelectric, solar, wind, wave,
17 and tidal energy, and alternative energy sources),
18 energy transmission (including interties), fuel tank
19 replacement and clean-up, fuel transportation net-
20 works and related facilities, power cost equalization
21 programs, and other energy programs, notwith-
22 standing any other provision of law.

23 (2) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated to the
25 Denali Commission to carry out paragraph (1)

1 \$50,000,000 for each of fiscal years 2004 through
2 2013.

3 **SEC. 1402. RURAL AND REMOTE COMMUNITY ASSISTANCE.**

4 (a) PROGRAM.—Section 19 of the Rural Electrifica-
5 tion Act of 1936 (7 U.S.C. 918a) is amended by striking
6 all that precedes subsection (b) and inserting the fol-
7 lowing:

8 **“SEC. 19. ELECTRIC GENERATION, TRANSMISSION, AND**
9 **DISTRIBUTION FACILITIES EFFICIENCY**
10 **GRANTS AND LOANS TO RURAL AND REMOTE**
11 **COMMUNITIES WITH EXTREMELY HIGH ELEC-**
12 **TRICITY COSTS.**

13 “(a) IN GENERAL.—The Secretary, acting through
14 the Rural Utilities Service, may—

15 “(1) in coordination with State rural develop-
16 ment initiatives, make grants and loans to persons,
17 States, political subdivisions of States, and other en-
18 tities organized under the laws of States, to acquire,
19 construct, extend, upgrade, and otherwise improve
20 electric generation, transmission, and distribution fa-
21 cilities serving communities in which the average
22 revenue per kilowatt hour of electricity for all con-
23 sumers is greater than 150 percent of the average
24 revenue per kilowatt hour of electricity for all con-
25 sumers in the United States (as determined by the

1 Energy Information Administration using the most
2 recent data available);

3 “(2) make grants and loans to the Denali Com-
4 mission established by the Denali Commission Act of
5 1998 (42 U.S.C. 3121 note; Public 105–277) to be
6 used for the purpose of providing funds to acquire,
7 construct, extend, upgrade, finance, and otherwise
8 improve electric generation, transmission, and dis-
9 tribution facilities serving communities described in
10 paragraph (1); and

11 “(3) make grants to State entities to establish
12 and support a revolving fund to provide a more cost-
13 effective means of purchasing fuel in areas where
14 the fuel cannot be shipped by means of surface
15 transportation.”.

16 (b) DEFINITION OF PERSON.—Section 13 of the
17 Rural Electrification Act of 1936 (7 U.S.C. 913) is
18 amended by striking “or association” and inserting “asso-
19 ciation, or Indian tribe (as defined in section 4 of the In-
20 dian Self-Determination and Education Assistance Act)”.

21 **Subtitle B—Coastal Programs**

22 **SEC. 1411. ROYALTY PAYMENTS UNDER LEASES UNDER** 23 **THE OUTER CONTINENTAL SHELF LANDS** 24 **ACT.**

25 (a) ROYALTY RELIEF.—

1 (1) IN GENERAL.—For purposes of providing
2 compensation for lessees and a State for which
3 amounts are authorized by section 6004(c) of the Oil
4 Pollution Act of 1990 (Public Law 101–380), effec-
5 tive beginning October 1, 2008, a lessee may with-
6 hold from payment any royalty due and owing to the
7 United States under any leases under the Outer
8 Continental Shelf Lands Act (43 U.S.C. 1301 et
9 seq.) for offshore oil or gas production from a cov-
10 ered lease tract if, on or before the date that the
11 payment is due and payable to the United States,
12 the lessee makes a payment to the Secretary of the
13 Interior of 44 cents for every \$1 of royalty withheld.

14 (2) USE OF AMOUNTS PAID TO SECRETARY.—
15 Within 30 days after the Secretary of the Interior
16 receives payments under paragraph (1), the Sec-
17 retary of the Interior shall—

18 (A) make 47.5 percent of such payments
19 available to the State referred to in section
20 6004(c) of the Oil Pollution Act of 1990; and

21 (B) make 52.5 percent of such payments
22 available equally, only for the programs and
23 purposes identified as number 282 at page
24 1389 of House Report number 108–10 and for
25 a program described at page 1159 of that Re-

1 port in the State referred to in such section
2 6004(c).

3 (3) TREATMENT OF AMOUNTS.—Any royalty
4 withheld by a lessee in accordance with this section
5 (including any portion thereof that is paid to the
6 Secretary of the Interior under paragraph (1)) shall
7 be treated as paid for purposes of satisfaction of the
8 royalty obligations of the lessee to the United States.

9 (4) CERTIFICATION OF WITHHELD AMOUNTS.—
10 The Secretary of the Treasury shall—

11 (A) determine the amount of royalty with-
12 held by a lessee under this section; and

13 (B) promptly publish a certification when
14 the total amount of royalty withheld by the les-
15 see under this section is equal to—

16 (i) the dollar amount stated at page
17 47 of Senate Report number 101-534,
18 which is designated therein as the total
19 drainage claim for the West Delta field;
20 plus

21 (ii) interest as described at page 47 of
22 that Report.

23 (b) PERIOD OF ROYALTY RELIEF.—Subsection (a)
24 shall apply to royalty amounts that are due and payable
25 in the period beginning on January 1, 2008, and ending

1 on the date on which the Secretary of the Treasury pub-
2 lishes a certification under subsection (a)(4)(B).

3 (c) DEFINITIONS.—As used in this section:

4 (1) COVERED LEASE TRACT.—The term “cov-
5 ered lease tract” means a leased tract (or portion of
6 a leased tract)—

7 (A) lying seaward of the zone defined and
8 governed by section 8(g) of the Outer Conti-
9 nental Shelf Lands Act (43 U.S.C. 1337(g)); or

10 (B) lying within such zone but to which
11 such section does not apply.

12 (2) LESSEE.—The term “lessee”—

13 (A) means a person or entity that, on the
14 date of the enactment of the Oil Pollution Act
15 of 1990, was a lessee referred to in section
16 6004(c) of that Act (as in effect on that date
17 of the enactment), but did not hold lease rights
18 in Federal offshore lease OCS–G–5669; and

19 (B) includes successors and affiliates of a
20 person or entity described in subparagraph (A).

21 **SEC. 1412. DOMESTIC OFFSHORE ENERGY REINVESTMENT.**

22 (a) DOMESTIC OFFSHORE ENERGY REINVESTMENT
23 PROGRAM.—The Outer Continental Shelf Lands Act (43
24 U.S.C. 1331 et seq.) is amended by adding at the end
25 the following:

1 **“SEC. 32. DOMESTIC OFFSHORE ENERGY REINVESTMENT**
2 **PROGRAM.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) APPROVED PLAN.—The term ‘approved
5 plan’ means a Secure Energy Reinvestment Plan ap-
6 proved by the Secretary under this section.

7 “(2) COASTAL ENERGY STATE.—The term
8 ‘Coastal Energy State’ means a Coastal State off
9 the coastline of which, within the seaward lateral
10 boundary as determined by the map referenced in
11 subsection (c)(2)(A), Outer Continental Shelf bonus
12 bids or royalties are generated, other than bonus
13 bids or royalties from a leased tract within any area
14 of the Outer Continental Shelf for which a morato-
15 rium on new leasing was in effect as of January 1,
16 2002, unless the lease was issued before the estab-
17 lishment of the moratorium and was in production
18 on such date.

19 “(3) COASTAL POLITICAL SUBDIVISION.—The
20 term ‘coastal political subdivision’ means a county,
21 parish, or other equivalent subdivision of a Coastal
22 Energy State, all or part of which lies within the
23 boundaries of the coastal zone of the State, as iden-
24 tified in the State’s approved coastal zone manage-
25 ment program under the Coastal Zone Management

1 Act of 1972 (16 U.S.C. 1451 et seq.) on the date
2 of the enactment of this section.

3 “(4) COASTAL POPULATION.—The term ‘coastal
4 population’ means the population of a coastal polit-
5 ical subdivision, as determined by the most recent
6 official data of the Census Bureau.

7 “(5) COASTLINE.—The term ‘coastline’ has the
8 same meaning as the term ‘coast line’ in subsection
9 2(c) of the Submerged Lands Act (43 U.S.C.
10 1301(e)).

11 “(6) FUND.—The term ‘Fund’ means the Se-
12 cure Energy Reinvestment Fund established by this
13 section.

14 “(7) LEASED TRACT.—The term ‘leased tract’
15 means a tract maintained under section 6 or leased
16 under section 8 for the purpose of drilling for, devel-
17 oping, and producing oil and natural gas resources.

18 “(8) QUALIFIED OUTER CONTINENTAL SHELF
19 REVENUES.—(A) Except as provided in subpara-
20 graph (B), the term ‘qualified Outer Continental
21 Shelf revenues’ means all amounts received by the
22 United States on or after October 1, 2003, from
23 each leased tract or portion of a leased tract lying
24 seaward of the zone defined and governed by section
25 8(g), or lying within such zone but to which section

1 8(g) does not apply, including bonus bids, rents, roy-
2 alties (including payments for royalties taken in kind
3 and sold), net profit share payments, and related in-
4 terest.

5 “(B) Such term does not include any revenues
6 from a leased tract or portion of a leased tract that
7 is included within any area of the Outer Continental
8 Shelf for which a moratorium on new leasing was in
9 effect as of January 1, 2002, unless the lease was
10 issued before the establishment of the moratorium
11 and was in production on such date.

12 “(9) SECRETARY.—The term ‘Secretary’ means
13 the Secretary of the Interior.

14 “(b) SECURE ENERGY REINVESTMENT FUND.—

15 “(1) ESTABLISHMENT.—There is established in
16 the Treasury of the United States a separate ac-
17 count which shall be known as the ‘Secure Energy
18 Reinvestment Fund’. The Fund shall consist of
19 amounts deposited under paragraph (2), and such
20 other amounts as may be appropriated to the Fund.

21 “(2) DEPOSITS.—For each fiscal year after fis-
22 cal year 2003, the Secretary of the Treasury shall
23 deposit into the Fund the following:

24 “(A) Notwithstanding section 9, all quali-
25 fied Outer Continental Shelf revenues attrib-

1 utable to royalties received by the United States
2 in the fiscal year that are in excess of the fol-
3 lowing amount:

4 “(i) \$3,455,000,000 in the case of
5 royalties received in fiscal year 2004.

6 “(ii) \$3,726,000,000 in the case of
7 royalties received in fiscal year 2005.

8 “(iii) \$4,613,000,000 in the case of
9 royalties received in fiscal year 2006.

10 “(iv) \$5,226,000,000 in the case of
11 royalties received in fiscal year 2007.

12 “(v) \$5,841,000,000 in the case of
13 royalties received in fiscal year 2008.

14 “(vi) \$5,763,000,000 in the case of
15 royalties received in fiscal year 2009.

16 “(vii) \$6,276,000,000 in the case of
17 royalties received in fiscal year 2010.

18 “(viii) \$6,351,000,000 in the case of
19 royalties received in fiscal year 2011.

20 “(ix) \$6,551,000,000 in the case of
21 royalties received in fiscal year 2012.

22 “(x) \$5,120,000,000 in the case of
23 royalties received in fiscal year 2013.

24 “(B) Notwithstanding section 9, all quali-
25 fied Outer Continental shelf revenues attrib-

1 utable to bonus bids received by the United
2 States in each of the fiscal years 2004 through
3 2013 that are in excess of \$1,000,000,000.

4 “(C) Notwithstanding section 9, in addi-
5 tion to amounts deposited under subparagraphs
6 (A) and (B), \$35,000,000 of amounts received
7 by the United States each fiscal year as royalti-
8 ties for oil or gas production on the Outer Con-
9 tinental Shelf, except that no amounts shall be
10 deposited under this subparagraph before fiscal
11 year 2004 or after fiscal year 2013.

12 “(D) All interest earned under paragraph
13 (4).

14 “(E) All repayments under subsection (f).

15 “(3) REDUCTION IN DEPOSIT.—(A) For each
16 fiscal year after fiscal year 2013 in which amounts
17 received by the United States as royalties for oil or
18 gas production on the Outer Continental Shelf are
19 less than the sum of the amounts described in sub-
20 paragraph (B) (before the application of this sub-
21 paragraph), the Secretary of the Treasury shall re-
22 duce each of the amounts described in subparagraph
23 (B) proportionately.

24 “(B) The amounts referred to in subparagraph
25 (A) are the following:

1 “(i) The amount required to be covered
2 into the Historic Preservation Fund under sec-
3 tion 108 of the National Historic Preservation
4 Act (16 U.S.C. 470h) on the date of the enact-
5 ment of this paragraph.

6 “(ii) The amount required to be credited to
7 the Land and Water Conservation Fund under
8 section 2(e)(2) of the Land and Water Con-
9 servation Fund Act of 1965 (16 U.S.C. 4601–
10 5(e)(2)) on the date of the enactment of this
11 paragraph.

12 “(iii) The amount required to be deposited
13 under subparagraph (C) of paragraph (2) of
14 this subsection.

15 “(4) INVESTMENT.—The Secretary of the
16 Treasury shall invest moneys in the Fund (including
17 interest) in public debt securities with maturities
18 suitable to the needs of the Fund, as determined by
19 the Secretary of the Treasury, and bearing interest
20 at rates determined by the Secretary of the Treas-
21 ury, taking into consideration current market yields
22 on outstanding marketable obligations of the United
23 States of comparable maturity. Such invested mon-
24 eys shall remain invested until needed to meet re-
25 quirements for disbursement under this section.

1 “(5) REVIEW AND REVISION OF BASELINE
2 AMOUNTS.—Not later than December 31, 2008, the
3 Secretary of the Interior, in consultation with the
4 Secretary of the Treasury, shall—

5 “(A) determine the amount and composi-
6 tion of Outer Continental Shelf revenues that
7 were received by the United States in each of
8 the fiscal years 2004 through 2008;

9 “(B) project the amount and composition
10 of Outer Continental Shelf revenues that will be
11 received in the United States in each of the fis-
12 cal years 2009 through 2013; and

13 “(C) submit to the Congress a report re-
14 garding whether any of the dollar amounts set
15 forth in clauses (v) through (x) of paragraph
16 (2)(A) or paragraph (2)(B) should be modified
17 to reflect those projections.

18 “(6) AUTHORIZATION OF APPROPRIATION OF
19 ADDITIONAL AMOUNTS.—In addition to the amounts
20 deposited into the Fund under paragraph (2) there
21 are authorized to be appropriated to the Fund—

22 “(A) for each of fiscal years 2004 through
23 2013 up to \$500,000,000; and

24 “(B) for each fiscal year after fiscal year
25 2013 up to 25 percent of qualified Outer Conti-

1 mental Shelf revenues received by the United
2 States in the preceding fiscal year.

3 “(c) USE OF SECURE ENERGY REINVESTMENT
4 FUND.—

5 “(1) IN GENERAL.—(A) Amounts into the Fund
6 shall be available for obligation or expenditure only
7 for the purposes of this section, and only as provided
8 for in an appropriations Act. The appropriations
9 may be made without fiscal year limitation.

10 “(B) Of amounts made available under sub-
11 section (m), the Secretary shall use amounts remain-
12 ing after the application of subsections (h) and (i)
13 to pay to each Coastal Energy State that has a Se-
14 cure Energy Reinvestment Plan approved by the
15 Secretary under this section, and to coastal political
16 subdivisions of such State, the amount allocated to
17 the State or coastal political subdivision, respec-
18 tively, under this subsection.

19 “(C) The Secretary shall make payments under
20 this paragraph in December of 2004, and of each
21 year thereafter, or as soon as practicable thereafter.

22 “(2) ALLOCATION.—The Secretary shall allo-
23 cate amounts made available under subsection (m)
24 in a fiscal year, and other amounts determined by
25 the Secretary to be available to carry out this sec-

1 tion, among Coastal Energy States that have an ap-
2 proved plan, and to coastal political subdivisions of
3 such States, as follows:

4 “(A)(i) Of the amounts made available for
5 each of the first 10 fiscal years for which
6 amounts are available for allocation under this
7 paragraph, the allocation for each Coastal En-
8 ergy State shall be calculated based on the ratio
9 of qualified Outer Continental Shelf revenues
10 generated off the coastline of the Coastal En-
11 ergy State to the qualified Outer Continental
12 Shelf revenues generated off the coastlines of
13 all Coastal Energy States for the period begin-
14 ning January 1, 1992, and ending December
15 31, 2001.

16 “(ii) Of the amounts available for a fiscal
17 year in a subsequent 10-fiscal-year period, the
18 allocation for each Coastal Energy State shall
19 be calculated based on such ratio determined by
20 the Secretary with respect to qualified Outer
21 Continental Shelf revenues generated in each
22 subsequent corresponding 10-year period.

23 “(iii) For purposes of this subparagraph,
24 qualified Outer Continental Shelf revenues shall
25 be considered to be generated off the coastline

1 of a Coastal Energy State if the geographic
2 center of the lease tract from which the reve-
3 nues are generated is located within the area
4 formed by the extension of the State's seaward
5 lateral boundaries, calculated using the strict
6 and scientifically derived conventions estab-
7 lished to delimit international lateral boundaries
8 under the Law of the Sea, as indicated on the
9 map entitled 'Calculated Seaward Lateral
10 Boundaries' and dated October 2003, on file in
11 the Office of the Director, Minerals Manage-
12 ment Service.

13 "(B) 35 percent of each Coastal Energy
14 State's allocable share as determined under
15 subparagraph (A) shall be allocated among and
16 paid directly to the coastal political subdivisions
17 of the State by the Secretary based on the fol-
18 lowing formula:

19 "(i) 25 percent shall be allocated
20 based on the ratio of each coastal political
21 subdivision's coastal population to the
22 coastal population of all coastal political
23 subdivisions of the Coastal Energy State.

24 "(ii) 25 percent shall be allocated
25 based on the ratio of each coastal political

1 subdivision's coastline miles to the coast-
2 line miles of all coastal political subdivi-
3 sions of the State. In the case of a coastal
4 political subdivision without a coastline,
5 the coastline of the political subdivision for
6 purposes of this clause shall be one-third
7 the average length of the coastline of the
8 other coastal political subdivisions of the
9 State.

10 “(iii) 50 percent shall be allocated
11 based on a formula that allocates 75 per-
12 cent of the funds based on such coastal po-
13 litical subdivision's relative distance from
14 any leased tract used to calculate that
15 State's allocation and 25 percent of the
16 funds based on the relative level of Outer
17 Continental Shelf oil and gas activities in
18 a coastal political subdivision to the level of
19 Outer Continental Shelf oil and gas activi-
20 ties in all coastal political subdivisions in
21 such State, as determined by the Sec-
22 retary, except that in the case of a coastal
23 political subdivision in the State of Cali-
24 fornia that has a coastal shoreline, that is
25 not within 200 miles of the geographic cen-

1 ter of a leased tract or portion of a leased
2 tract, and in which there is located one or
3 more oil refineries the allocation under this
4 clause shall be determined as if that coast-
5 al political subdivision were located within
6 a distance of 50 miles from the geographic
7 center of the closest leased tract with
8 qualified Outer Continental Shelf revenues.

9 “(3) REALLOCATION.—Any amount allocated to
10 a Coastal Energy State or coastal political subdivi-
11 sion of such a State but not disbursed because of a
12 failure of a Coastal Energy State to have an ap-
13 proved plan shall be reallocated by the Secretary
14 among all other Coastal Energy States in a manner
15 consistent with this subsection, except that the Sec-
16 retary—

17 “(A) shall hold the amount in escrow with-
18 in the Fund until the earlier of the end of the
19 next fiscal year in which the allocation is made
20 or the final resolution of any appeal regarding
21 the disapproval of a plan submitted by the
22 State under this section; and

23 “(B) shall continue to hold such amount in
24 escrow until the end of the subsequent fiscal
25 year thereafter, if the Secretary determines that

1 such State is making a good faith effort to de-
2 velop and submit, or update, a Secure Energy
3 Reinvestment Plan under subsection (d).

4 “(4) MINIMUM SHARE.—Notwithstanding any
5 other provision of this subsection, the amount allo-
6 cated under this subsection to each Coastal Energy
7 State each fiscal year shall be not less than 5 per-
8 cent of the total amount available for that fiscal year
9 for allocation under this subsection to Coastal En-
10 ergy States, except that for any Coastal Energy
11 State determined by the Secretary to have an area
12 formed by the extension of the State’s seaward lat-
13 eral boundary, as designated by the map referenced
14 in paragraph (2)(A)(iii), of less than 490 square
15 statute miles, the amount allocated to such State
16 shall not be less than 10 percent of the total amount
17 available for that fiscal year for allocation under this
18 subsection.

19 “(5) RECOMPUTATION.—If the allocation to one
20 or more Coastal Energy States under paragraph (4)
21 with respect to a fiscal year is greater than the
22 amount that would be allocated to such States under
23 this subsection if paragraph (4) did not apply, then
24 the allocations under this subsection to all other
25 Coastal Energy States shall be paid from the

1 amount remaining after deduction of the amounts
2 allocated under paragraph (4), but shall be reduced
3 on a pro rata basis by the sum of the allocations
4 under paragraph (4) so that not more than 100 per-
5 cent of the funds available in the Fund for allocation
6 with respect to that fiscal year is allocated.

7 “(d) SECURE ENERGY REINVESTMENT PLAN.—

8 “(1) DEVELOPMENT AND SUBMISSION OF
9 STATE PLANS.—The Governor of each State seeking
10 to receive funds under this section shall prepare, and
11 submit to the Secretary, a Secure Energy Reinvest-
12 ment Plan describing planned expenditures of funds
13 received under this section. The Governor shall in-
14 clude in the State plan submitted to the Secretary
15 plans prepared by the coastal political subdivisions
16 of the State. The Governor and the coastal political
17 subdivision shall solicit local input and provide for
18 public participation in the development of the State
19 plan. In describing the planned expenditures, the
20 State and coastal political subdivisions shall include
21 only items that are uses authorized under subsection
22 (e).

23 “(2) APPROVAL OR DISAPPROVAL.—

24 “(A) IN GENERAL.—The Secretary may
25 not disburse funds to a State or coastal political

1 subdivision of a State under this section before
2 the date the State has an approved plan. The
3 Secretary shall approve a Secure Energy Rein-
4 vestment Plan submitted by a State under
5 paragraph (1) if the Secretary determines that
6 the expenditures provided for in the plan are
7 uses authorized under subsection (e), and that
8 the plan contains each of the following:

9 “(i) The name of the State agency
10 that will have the authority to represent
11 and act for the State in dealing with the
12 Secretary for purposes of this section.

13 “(ii) A program for the implementa-
14 tion of the plan, that (I) has as a goal im-
15 proving the environment, (II) has as a goal
16 addressing the impacts of oil and gas pro-
17 duction from the Outer Continental Shelf,
18 and (III) includes a description of how the
19 State and coastal political subdivisions of
20 the State will evaluate the effectiveness of
21 the plan.

22 “(iii) Certification by the Governor
23 that ample opportunity has been accorded
24 for public participation in the development
25 and revision of the plan.

1 “(iv) Measures for taking into account
2 other relevant Federal resources and pro-
3 grams. The plan shall be correlated so far
4 as practicable with other State, regional,
5 and local plans.

6 “(v) For any State for which the ratio
7 determined under subsection (c)(2)(A)(i)
8 or (c)(2)(A)(ii), as appropriate, expressed
9 as a percentage, exceeds 25 percent, a plan
10 to spend not less than 30 percent of the
11 total funds provided under this section
12 each fiscal year to that State and appro-
13 priate coastal political subdivisions, to ad-
14 dress the socioeconomic or environmental
15 impacts identified in the plan that remain
16 significant or progressive after implemen-
17 tation of mitigation measures identified in
18 the most current environmental impact
19 statement (as of the date of the enactment
20 of this clause) required under the National
21 Environmental Protection Act of 1969 for
22 lease sales under this Act.

23 “(vi) A plan to utilize at least one-half
24 of the funds provided pursuant to sub-
25 section (c)(2)(B), and a portion of other

1 funds provided to such State under this
2 section, on programs or projects that are
3 coordinated and conducted in partnership
4 between the State and coastal political sub-
5 division.

6 “(B) PROCEDURE AND TIMING.—The Sec-
7 retary shall approve or disapprove each plan
8 submitted in accordance with this subsection
9 within 90 days after its submission.

10 “(3) AMENDMENT OR REVISION.—Any amend-
11 ment to or revision of an approved plan shall be pre-
12 pared and submitted in accordance with the require-
13 ments under this paragraph for the submittal of
14 plans, and shall be approved or disapproved by the
15 Secretary in accordance with paragraph (2)(B).

16 “(e) AUTHORIZED USES.—A Coastal Energy State,
17 and a coastal political subdivision of such a State, shall
18 use amounts paid under this section (including any such
19 amounts deposited into a trust fund administered by the
20 State or coastal political subdivision dedicated to uses con-
21 sistent with this subsection), in compliance with Federal
22 and State law and the approved plan of the State, only
23 for one or more of the following purposes:

1 “(1) Projects and activities, including edu-
2 cational activities, for the conservation, protection,
3 or restoration of coastal areas including wetlands.

4 “(2) Mitigating damage to, or the protection of,
5 fish, wildlife, or natural resources.

6 “(3) To the extent of such sums as are consid-
7 ered reasonable by the Secretary, planning assist-
8 ance and administrative costs of complying with this
9 section.

10 “(4) Implementation of federally approved
11 plans or programs for marine, coastal, subsidence,
12 or conservation management or for protection of re-
13 sources from natural disasters.

14 “(5) Mitigating impacts of Outer Continental
15 Shelf activities through funding onshore infrastruc-
16 ture and public service needs.

17 “(f) COMPLIANCE WITH AUTHORIZED USES.—If the
18 Secretary determines that an expenditure of an amount
19 made by a Coastal Energy State or coastal political sub-
20 division is not in accordance with the approved plan of
21 the State (including the plans of coastal political subdivi-
22 sions included in such plan), the Secretary shall not dis-
23 burse any further amounts under this section to that
24 Coastal Energy State or coastal political subdivision
25 until—

1 “(1) the amount is repaid to the Secretary; or

2 “(2) the Secretary approves an amendment to
3 the plan that authorizes the expenditure.

4 “(g) ARBITRATION OF STATE AND LOCAL DIS-
5 PUTES.—The Secretary may require, as a condition of any
6 payment under this section, that a State or coastal polit-
7 ical subdivision in a State must submit to arbitration—

8 “(1) any dispute between the State or coastal
9 political subdivision (or both) and the Secretary re-
10 garding implementation of this section; and

11 “(2) any dispute between the State and political
12 subdivision regarding implementation of this section,
13 including any failure to include, in the plan sub-
14 mitted by the State for purposes of subsection (d),
15 any spending plan of the coastal political subdivi-
16 sion.

17 “(h) ADMINISTRATIVE EXPENSES.—Of amounts
18 made available under subsection (m) for each fiscal year,
19 the Secretary may use up to one-half of one percent for
20 the administrative costs of implementing this section.

21 “(i) FUNDING FOR CONSORTIUM.—

22 “(1) IN GENERAL.—Of amounts made available
23 under subsection (m) for each of fiscal year 2004
24 through 2013, 2 percent shall be used by the Sec-
25 retary of the Interior to provide funding for the

1 Coastal Restoration and Enhancement through
2 Science and Technology program.

3 “(2) TREATMENT.—Any amount provided by
4 the Secretary of the Interior under this subsection
5 for a fiscal year shall, for purposes of determining
6 the amount appropriated under any other provision
7 of law that authorizes appropriations to carry out
8 the program referred to in paragraph (1), be treated
9 as appropriated under that other provision.

10 “(j) DISPOSITION OF FUNDS.—A Coastal Energy
11 State or coastal political subdivision may use funds pro-
12 vided to such entity under this section, subject to sub-
13 section (e), for any payment that is eligible to be made
14 with funds provided to States under section 35 of the Min-
15 eral Leasing Act (30 U.S.C. 191).

16 “(k) REPORTS.—Each fiscal year following a fiscal
17 year in which a Coastal Energy State or coastal political
18 subdivision of a Coastal Energy State receives funds under
19 this section, the Governor of the Coastal Energy State,
20 in coordination with such State’s coastal political subdivi-
21 sions, shall account for all funds so received for the pre-
22 vious fiscal year in a written report to the Secretary. The
23 report shall include, in accordance with regulations pre-
24 scribed by the Secretary, a description of all projects and
25 activities that received such funds. In order to avoid dupli-

1 cation, such report may incorporate, by reference, any
2 other reports required to be submitted under other provi-
3 sions of law.

4 “(l) SIGNS.—The Secretary shall require, as a condi-
5 tion of any allocation of funds provided with amounts
6 made available by this section, that each State and coastal
7 political subdivision shall include on any sign otherwise in-
8 stalled at any site at or near an entrance or public use
9 focal point area for which such funds are used, a state-
10 ment that the existence or development of the site (or
11 both), as appropriate, is a product of such funds.

12 “(m) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated from the Fund to the
14 Secretary to carry out this section, for fiscal year 2004
15 and each fiscal year thereafter, the amounts deposited into
16 the Fund during the preceding fiscal year.”.

17 (b) ADDITIONAL AMENDMENTS.—Section 31 of the
18 Outer Continental Shelf Lands Act (43 U.S.C. 1356a) is
19 amended—

20 (1) by striking subsection (a);

21 (2) in subsection (c) by striking “For fiscal
22 year 2001, \$150,000,000 is” and inserting “Such
23 sums as may be necessary to carry out this section
24 are”;

1 (3) in subsection (d)(1)(B) by striking “, ex-
2 cept” and all that follows through the end of the
3 sentence and inserting a period;

4 (4) by redesignating subsections (b) through (g)
5 in order as subsection (a) through (f); and

6 (5) by striking “subsection (f)” each place it
7 appears and inserting “subsection (e)”.

8 (c) UTILIZATION OF COASTAL RESTORATION AND
9 ENHANCEMENT THROUGH SCIENCE AND TECHNOLOGY
10 PROGRAM.—

11 (1) AUTHORIZATION.—The Secretary of the In-
12 terior and the Secretary of Commerce may each use
13 the Coastal Restoration and Enhancement through
14 Science and Technology program for the purposes
15 of—

16 (A) assessing the effects of coastal habitat
17 restoration techniques;

18 (B) developing improved ecosystem mod-
19 eling capabilities for improved predictions of
20 coastal conditions and habitat change and for
21 developing new technologies for restoration ac-
22 tivities; and

23 (C) identifying economic options to address
24 socioeconomic consequences of coastal degrada-
25 tion.

1 (2) CONDITION.—The Secretary of the Interior,
2 in consultation with the Secretary of Commerce,
3 shall ensure that the program—

4 (A) establishes procedures designed to
5 avoid duplicative activities among Federal agen-
6 cies and entities receiving Federal funds;

7 (B) coordinates with persons involved in
8 similar activities; and

9 (C) establishes a mechanism to collect, or-
10 ganize, and make available information and
11 findings on coastal restoration.

12 (3) REPORT.—Not later than September 30,
13 2008, the Secretary of the Interior, in consultation
14 with the Secretary of Commerce, shall transmit a re-
15 port to the Congress on the effectiveness of any Fed-
16 eral and State restoration efforts conducted pursu-
17 ant to this subsection and make recommendations to
18 improve coordinated coastal restoration efforts.

19 (4) FUNDING.—For each of fiscal years 2004
20 through 2013, there is authorized to be appropriated
21 to the Secretary \$10,000,000 to carry out activities
22 under this subsection.

1 **Subtitle C—Reforms to the Board**
2 **of Directors of the Tennessee**
3 **Valley Authority**

4 **SEC. 1431. CHANGE IN COMPOSITION, OPERATION, AND DU-**
5 **TIES OF THE BOARD OF DIRECTORS OF THE**
6 **TENNESSEE VALLEY AUTHORITY.**

7 The Tennessee Valley Authority Act of 1933 (16
8 U.S.C. 831 et seq.) is amended by striking section 2 and
9 inserting the following:

10 **“SEC. 2. MEMBERSHIP, OPERATION, AND DUTIES OF THE**
11 **BOARD OF DIRECTORS.**

12 “(a) MEMBERSHIP.—

13 “(1) APPOINTMENT.—The Board of Directors
14 of the Corporation (referred to in this Act as the
15 ‘Board’) shall be composed of 9 members appointed
16 by the President by and with the advice and consent
17 of the Senate, at least 5 of whom shall be a legal
18 resident of a State any part of which is in the serv-
19 ice area of the Corporation.

20 “(2) CHAIRMAN.—The members of the Board
21 shall select 1 of the members to act as Chairman of
22 the Board.

23 “(b) QUALIFICATIONS.—To be eligible to be ap-
24 pointed as a member of the Board, an individual—

25 “(1) shall be a citizen of the United States;

1 “(2) shall have management expertise relative
2 to a large for-profit or nonprofit corporate, govern-
3 ment, or academic structure;

4 “(3) shall not be an employee of the Corpora-
5 tion; and

6 “(4) shall make full disclosure to Congress of
7 any investment or other financial interest that the
8 individual holds in the energy industry.

9 “(c) RECOMMENDATIONS.—In appointing members
10 of the Board, the President shall—

11 “(1) consider recommendations from such pub-
12 lic officials as—

13 “(A) the Governors of States in the service
14 area;

15 “(B) individual citizens;

16 “(C) business, industrial, labor, electric
17 power distribution, environmental, civic, and
18 service organizations; and

19 “(D) the congressional delegations of the
20 States in the service area; and

21 “(2) seek qualified members from among per-
22 sons who reflect the diversity, including the geo-
23 graphical diversity, and needs of the service area of
24 the Corporation.

25 “(d) TERMS.—

1 “(1) IN GENERAL.—A member of the Board
2 shall serve a term of 5 years. A member of the
3 Board whose term has expired may continue to serve
4 after the member’s term has expired until the date
5 on which a successor takes office, except that the
6 member shall not serve beyond the end of the ses-
7 sion of Congress in which the term of the member
8 expires.

9 “(2) VACANCIES.—A member appointed to fill a
10 vacancy on the Board occurring before the expira-
11 tion of the term for which the predecessor of the
12 member was appointed shall be appointed for the re-
13 mainder of that term.

14 “(e) QUORUM.—

15 “(1) IN GENERAL.—Five of the members of the
16 Board shall constitute a quorum for the transaction
17 of business.

18 “(2) VACANCIES.—A vacancy on the Board
19 shall not impair the power of the Board to act.

20 “(f) COMPENSATION.—

21 “(1) IN GENERAL.—A member of the Board
22 shall be entitled to receive—

23 “(A) a stipend of—

24 “(i) \$45,000 per year; or

1 “(ii)(I) in the case of the chairman of
2 any committee of the Board created by the
3 Board, \$46,000 per year; or

4 “(II) in the case of the chairman of
5 the Board, \$50,000 per year; and

6 “(B) travel expenses, including per diem in
7 lieu of subsistence, in the same manner as per-
8 sons employed intermittently in Government
9 service under section 5703 of title 5, United
10 States Code.

11 “(2) ADJUSTMENTS IN STIPENDS.—The
12 amount of the stipend under paragraph (1)(A)(i)
13 shall be adjusted by the same percentage, at the
14 same time and manner, and subject to the same lim-
15 itations as are applicable to adjustments under sec-
16 tion 5318 of title 5, United States Code.

17 “(g) DUTIES.—

18 “(1) IN GENERAL.—The Board shall—

19 “(A) establish the broad goals, objectives,
20 and policies of the Corporation that are appro-
21 priate to carry out this Act;

22 “(B) develop long-range plans to guide the
23 Corporation in achieving the goals, objectives,
24 and policies of the Corporation and provide as-

1 assistance to the chief executive officer to achieve
2 those goals, objectives, and policies;

3 “(C) ensure that those goals, objectives,
4 and policies are achieved;

5 “(D) approve an annual budget for the
6 Corporation;

7 “(E) adopt and submit to Congress a con-
8 flict-of-interest policy applicable to members of
9 the Board and employees of the Corporation;

10 “(F) establish a compensation plan for em-
11 ployees of the Corporation in accordance with
12 subsection (i);

13 “(G) approve all compensation (including
14 salary or any other pay, bonuses, benefits, in-
15 centives, and any other form of remuneration)
16 of all managers and technical personnel that re-
17 port directly to the chief executive officer (in-
18 cluding any adjustment to compensation);

19 “(H) ensure that all activities of the Cor-
20 poration are carried out in compliance with ap-
21 plicable law;

22 “(I) create an audit committee, composed
23 solely of Board members independent of the
24 management of the Corporation, which shall—

1 “(i) in consultation with the inspector
2 general of the Corporation, recommend to
3 the Board an external auditor;

4 “(ii) receive and review reports from
5 the external auditor of the Corporation and
6 inspector general of the Corporation; and

7 “(iii) make such recommendations to
8 the Board as the audit committee con-
9 siders necessary;

10 “(J) create such other committees of
11 Board members as the Board considers to be
12 appropriate;

13 “(K) conduct such public hearings as it
14 deems appropriate on issues that could have a
15 substantial effect on—

16 “(i) the electric ratepayers in the serv-
17 ice area; or

18 “(ii) the economic, environmental, so-
19 cial, or physical well-being of the people of
20 the service area;

21 “(L) establish the electricity rates charged
22 by the Corporation; and

23 “(M) engage the services of an external
24 auditor for the Corporation.

1 “(2) MEETINGS.—The Board shall meet at
2 least 4 times each year.

3 “(h) CHIEF EXECUTIVE OFFICER.—

4 “(1) APPOINTMENT.—The Board shall appoint
5 a person to serve as chief executive officer of the
6 Corporation.

7 “(2) QUALIFICATIONS.—

8 “(A) IN GENERAL.—To serve as chief execu-
9 tive officer of the Corporation, a person—

10 “(i) shall have senior executive-level
11 management experience in large, complex
12 organizations;

13 “(ii) shall not be a current member of
14 the Board or have served as a member of
15 the Board within 2 years before being ap-
16 pointed chief executive officer; and

17 “(iii) shall comply with the conflict-of-
18 interest policy adopted by the Board.

19 “(B) EXPERTISE.—In appointing a chief
20 executive officer, the Board shall give particular
21 consideration to appointing an individual with
22 expertise in the electric industry and with
23 strong financial skills.

24 “(3) TENURE.—The chief executive officer shall
25 serve at the pleasure of the Board.

1 “(i) COMPENSATION PLAN.—

2 “(1) IN GENERAL.—The Board shall approve a
3 compensation plan that specifies all compensation
4 (including salary or any other pay, bonuses, benefits,
5 incentives, and any other form of remuneration) for
6 the chief executive officer and employees of the Cor-
7 poration.

8 “(2) ANNUAL SURVEY.—The compensation plan
9 shall be based on an annual survey of the prevailing
10 compensation for similar positions in private indus-
11 try, including engineering and electric utility compa-
12 nies, publicly owned electric utilities, and Federal,
13 State, and local governments.

14 “(3) CONSIDERATIONS.—The compensation
15 plan shall provide that education, experience, level of
16 responsibility, geographic differences, and retention
17 and recruitment needs will be taken into account in
18 determining compensation of employees.

19 “(4) POSITIONS AT OR BELOW LEVEL IV.—The
20 chief executive officer shall determine the salary and
21 benefits of employees whose annual salary is not
22 greater than the annual rate payable for positions at
23 level IV of the Executive Schedule under section
24 5315 of title 5, United States Code.

1 **SEC. 1433. CONFORMING AMENDMENTS.**

2 (a) The Tennessee Valley Authority Act of 1933 (16
3 U.S.C. 831 et seq.) is amended—

4 (1) by striking “board of directors” each place
5 it appears and inserting “Board of Directors”; and

6 (2) by striking “board” each place it appears
7 and inserting “Board”.

8 (b) Section 9 of the Tennessee Valley Authority Act
9 of 1933 (16 U.S.C. 831h) is amended—

10 (1) by striking “The Comptroller General of the
11 United States shall audit” and inserting the fol-
12 lowing:

13 “(c) AUDITS.—The Comptroller General of the
14 United States shall audit”; and

15 (2) by striking “The Corporation shall deter-
16 mine” and inserting the following:

17 “(d) ADMINISTRATIVE ACCOUNTS AND BUSINESS
18 DOCUMENTS.—The Corporation shall determine”.

19 (c) Title 5, United States Code, is amended—

20 (1) in section 5314, by striking “Chairman,
21 Board of Directors of the Tennessee Valley Author-
22 ity.”; and

23 (2) in section 5315, by striking “Members,
24 Board of Directors of the Tennessee Valley Author-
25 ity.”.

1 **SEC. 1434. APPOINTMENTS; EFFECTIVE DATE; TRANSITION.**

2 (a) APPOINTMENTS.—

3 (1) IN GENERAL.—As soon as practicable after
4 the date of enactment of this Act, the President
5 shall submit to the Senate nominations of 6 persons
6 to serve as members of the Board of Directors of the
7 Tennessee Valley Authority in addition to the mem-
8 bers serving on the date of enactment of this Act.

9 (2) INITIAL TERMS.—Notwithstanding section
10 2(d) of the Tennessee Valley Authority Act of 1933
11 (as amended by this subtitle), in making the ap-
12 pointments under paragraph (1), the President shall
13 appoint—

14 (A) 2 members for a term to expire on
15 May 18, 2006;

16 (B) 2 members for a term to expire on
17 May 18, 2008; and

18 (C) 2 members for a term to expire on
19 May 18, 2010.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section and sections 1431, 1432, and 1433 take effect
22 on the later of the date on which at least 3 persons nomi-
23 nated under subsection (a) take office or May 18, 2005.

24 (c) SELECTION OF CHAIRMAN.—The Board of Direc-
25 tors of the Tennessee Valley Authority shall select 1 of

1 the members to act as Chairman of the Board not later
2 than 30 days after the effective date of this section.

3 (d) CONFLICT-OF-INTEREST POLICY.—The Board of
4 Directors of the Tennessee Valley Authority shall adopt
5 and submit to Congress a conflict-of-interest policy, as re-
6 quired by section 2(g)(1)(E) of the Tennessee Valley Au-
7 thority Act of 1933 (as amended by this subtitle), as soon
8 as practicable after the effective date of this section.

9 (e) TRANSITION.—A person who is serving as a mem-
10 ber of the Board of Directors of the Tennessee Valley Au-
11 thority on the date of enactment of this Act—

12 (1) shall continue to serve until the end of the
13 current term of the member; but

14 (2) after the effective date specified in sub-
15 section (b), shall serve under the terms of the Ten-
16 nessee Valley Authority Act of 1933 (as amended by
17 this subtitle); and

18 (3) may not be reappointed.

19 **Subtitle D—Other Provisions**

20 **SEC. 1441. CONTINUATION OF TRANSMISSION SECURITY**

21 **ORDER.**

22 Department of Energy Order No. 202–03–2, issued
23 by the Secretary of Energy on August 28, 2003, shall re-
24 main in effect unless rescinded by Federal statute.

1 **SEC. 1442. REVIEW OF AGENCY DETERMINATIONS.**

2 Section 7 of the Natural Gas Act (15 U.S.C. 717f)
3 is amended by adding at the end the following:

4 “(i)(1) The United States Court of Appeals for the
5 District of Columbia Circuit shall have original and exclu-
6 sive jurisdiction over any civil action—

7 “(A) for review of any order or action of any
8 Federal or State administrative agency or officer to
9 issue, condition, or deny any permit, license, concur-
10 rence, or approval issued under authority of any
11 Federal law, other than the Coastal Zone Manage-
12 ment Act of 1972 (16 U.S.C. 1451 et seq.), required
13 for the construction of a natural gas pipeline for
14 which a certificate of public convenience and neces-
15 sity is issued by the Commission under this section;

16 “(B) alleging unreasonable delay by any Fed-
17 eral or State administrative agency or officer in en-
18 tering an order or taking other action described in
19 subparagraph (A); or

20 “(C) challenging any decision made or action
21 taken under this subsection.

22 “(2)(A) If the Court finds that the order, action, or
23 failure to act is not consistent with the public convenience
24 and necessity (as determined by the Commission under
25 this section), or would prevent the construction and oper-
26 ation of natural gas facilities authorized by the certificate

1 of public convenience and necessity, the permit, license,
2 concurrence, or approval that is the subject of the order,
3 action, or failure to act shall be deemed to have been
4 issued subject to any conditions set forth in the reviewed
5 order or action that the Court finds to be consistent with
6 the public convenience and necessity.

7 “(B) For purposes of paragraph (1)(B), the failure
8 of an agency or officer to issue any such permit, license,
9 concurrence, or approval within the later of 1 year after
10 the date of filing of an application for the permit, license,
11 concurrence, or approval or 60 days after the date of
12 issuance of the certificate of public convenience and neces-
13 sity under this section, shall be considered to be unreason-
14 able delay unless the Court, for good cause shown, deter-
15 mines otherwise.

16 “(C) The Court shall set any action brought under
17 paragraph (1) for expedited consideration.”.

18 **SEC. 1443. ATTAINMENT DATES FOR DOWNWIND OZONE**

19 **NONATTAINMENT AREAS.**

20 Section 181 of the Clean Air Act (42 U.S.C. 7511)
21 is amended by adding the following new subsection at the
22 end thereof:

23 “(d) **EXTENDED ATTAINMENT DATE FOR CERTAIN**
24 **DOWNWIND AREAS.—**

1 “(1) DEFINITIONS.—(A) The term ‘upwind
2 area’ means an area that—

3 “(i) significantly contributes to nonattain-
4 ment in another area, hereinafter referred to as
5 a ‘downwind area’; and

6 “(ii) is either—

7 “(I) a nonattainment area with a later
8 attainment date than the downwind area,
9 or

10 “(II) an area in another State that
11 the Administrator has found to be signifi-
12 cantly contributing to nonattainment in
13 the downwind area in violation of section
14 110(a)(2)(D) and for which the Adminis-
15 trator has established requirements
16 through notice and comment rulemaking to
17 eliminate the emissions causing such sig-
18 nificant contribution.

19 “(B) The term ‘current classification’ means
20 the classification of a downwind area under this sec-
21 tion at the time of the determination under para-
22 graph (2).

23 “(2) EXTENSION.—If the Administrator—

1 “(A) determines that any area is a down-
2 wind area with respect to a particular national
3 ambient air quality standard for ozone; and

4 “(B) approves a plan revision for such
5 area as provided in paragraph (3) prior to a re-
6 classification under subsection (b)(2)(A)—

7 the Administrator, in lieu of such reclassification,
8 shall extend the attainment date for such downwind
9 area for such standard in accordance with paragraph
10 (5).

11 “(3) REQUIRED APPROVAL.—In order to extend
12 the attainment date for a downwind area under this
13 subsection, the Administrator must approve a revi-
14 sion of the applicable implementation plan for the
15 downwind area for such standard that—

16 “(A) complies with all requirements of this
17 Act applicable under the current classification
18 of the downwind area, including any require-
19 ments applicable to the area under section
20 172(c) for such standard; and

21 “(B) includes any additional measures
22 needed to demonstrate attainment by the ex-
23 tended attainment date provided under this
24 subsection.

1 “(4) PRIOR RECLASSIFICATION DETERMINA-
2 TION.—If, no more than 18 months prior to the date
3 of enactment of this subsection, the Administrator
4 made a reclassification determination under sub-
5 section (b)(2)(A) for any downwind area, and the
6 Administrator approves the plan revision referred to
7 in paragraph (3) for such area within 12 months
8 after the date of enactment of this subsection, the
9 reclassification shall be withdrawn and the attain-
10 ment date extended in accordance with paragraph
11 (5) upon such approval. The Administrator shall
12 also withdraw a reclassification determination under
13 subsection (b)(2)(A) made after the date of enact-
14 ment of this subsection and extend the attainment
15 date in accordance with paragraph (5) if the Admin-
16 istrator approves the plan revision referred to in
17 paragraph (3) within 12 months of the date the re-
18 classification determination under subsection
19 (b)(2)(A) is issued. In such instances the ‘current
20 classification’ used for evaluating the revision of the
21 applicable implementation plan under paragraph (3)
22 shall be the classification of the downwind area
23 under this section immediately prior to such reclassi-
24 fication.

1 “(5) EXTENDED DATE.—The attainment date
2 extended under this subsection shall provide for at-
3 tainment of such national ambient air quality stand-
4 ard for ozone in the downwind area as expeditiously
5 as practicable but no later than the date on which
6 the last reductions in pollution transport necessary
7 for attainment in the downwind area are required to
8 be achieved by the upwind area or areas.”.

9 **SEC. 1444. ENERGY PRODUCTION INCENTIVES.**

10 (a) IN GENERAL.—A State may provide to any enti-
11 ty—

12 (1) a credit against any tax or fee owed to the
13 State under a State law, or

14 (2) any other tax incentive—

15 determined by the State to be appropriate, in the amount
16 calculated under and in accordance with a formula deter-
17 mined by the State, for production described in subsection

18 (b) in the State by the entity that receives such credit or
19 such incentive.

20 (b) ELIGIBLE ENTITIES.—Subsection (a) shall apply
21 with respect to the production in the State of—

22 (1) electricity from coal mined in the State and
23 used in a facility, if such production meets all appli-
24 cable Federal and State laws and if such facility

1 uses scrubbers or other forms of clean coal tech-
2 nology,

3 (2) electricity from a renewable source such as
4 wind, solar, or biomass, or

5 (3) ethanol.

6 (c) EFFECT ON INTERSTATE COMMERCE.—Any ac-
7 tion taken by a State in accordance with this section with
8 respect to a tax or fee payable, or incentive applicable,
9 for any period beginning after the date of the enactment
10 of this Act shall—

11 (1) be considered to be a reasonable regulation
12 of commerce; and

13 (2) not be considered to impose an undue bur-
14 den on interstate commerce or to otherwise impair,
15 restrain, or discriminate, against interstate com-
16 merce.

17 **SEC. 1445. USE OF GRANULAR MINE TAILINGS.**

18 (a) AMENDMENT.—Subtitle F of the Solid Waste
19 Disposal Act (42 U.S.C. 6961 et seq.) is amended by add-
20 ing at the end the following:

21 **“SEC. 6006. USE OF GRANULAR MINE TAILINGS.**

22 **“(a) MINE TAILINGS.—**

23 **“(1) IN GENERAL.—**Not later than 180 days
24 after the date of enactment of this section, the Ad-
25 ministrator, in consultation with the Secretary of

1 Transportation and heads of other Federal agencies,
2 shall establish criteria (including an evaluation of
3 whether to establish a numerical standard for con-
4 centration of lead and other hazardous substances)
5 for the safe and environmentally protective use of
6 granular mine tailings from the Tar Creek, Okla-
7 homa Mining District, known as ‘chat’, for—

8 “(A) cement or concrete projects; and

9 “(B) transportation construction projects
10 (including transportation construction projects
11 involving the use of asphalt) that are carried
12 out, in whole or in part, using Federal funds.

13 “(2) REQUIREMENTS.—In establishing criteria
14 under paragraph (1), the Administrator shall con-
15 sider—

16 “(A) the current and previous uses of
17 granular mine tailings as an aggregate for as-
18 phalt; and

19 “(B) any environmental and public health
20 risks and benefits derived from the removal,
21 transportation, and use in transportation
22 projects of granular mine tailings.

23 “(3) PUBLIC PARTICIPATION.—In establishing
24 the criteria under paragraph (1), the Administrator
25 shall solicit and consider comments from the public.

1 “(4) APPLICABILITY OF CRITERIA.—On the es-
 2 tablishment of the criteria under paragraph (1), any
 3 use of the granular mine tailings described in para-
 4 graph (1) in a transportation project that is carried
 5 out, in whole or in part, using Federal funds, shall
 6 meet the criteria established under paragraph (1).

7 “(b) EFFECT OF SECTIONS.—Nothing in this section
 8 or section 6005 affects any requirement of any law (in-
 9 cluding a regulation) in effect on the date of enactment
 10 of this section.”.

11 (b) CONFORMING AMENDMENT.—The table of con-
 12 tents of the Solid Waste Disposal Act (42 U.S.C. prec.
 13 6901) is amended by adding at the end of the items relat-
 14 ing to subtitle F the following:

“Sec. 6006. Use of granular mine tailings.”.

15 **TITLE XV—ETHANOL AND**
 16 **MOTOR FUELS**

17 **Subtitle A—General Provisions**

18 **SEC. 1501. RENEWABLE CONTENT OF MOTOR VEHICLE**
 19 **FUEL.**

20 (a) IN GENERAL.—Section 211 of the Clean Air Act
 21 (42 U.S.C. 7545) is amended—

22 (1) by redesignating subsection (o) as sub-
 23 section (q); and

24 (2) by inserting after subsection (n) the fol-
 25 lowing:

1 “(o) RENEWABLE FUEL PROGRAM.—

2 “(1) DEFINITIONS.—In this section:

3 “(A) ETHANOL.—(i) The term ‘cellulosic
4 biomass ethanol’ means ethanol derived from
5 any lignocellulosic or hemicellulosic matter that
6 is available on a renewable or recurring basis,
7 including—

8 “(I) dedicated energy crops and trees;

9 “(II) wood and wood residues;

10 “(III) plants;

11 “(IV) grasses;

12 “(V) agricultural residues; and

13 “(VI) fibers.

14 “(ii) The term ‘waste derived ethanol’
15 means ethanol derived from—

16 “(I) animal wastes, including poultry
17 fats and poultry wastes, and other waste
18 materials; or

19 “(II) municipal solid waste.

20 “(B) RENEWABLE FUEL.—

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

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

1 “(bb) is natural gas produced
2 from a biogas source, including a
3 landfill, sewage waste treatment plant,
4 feedlot, or other place where decaying
5 organic material is found; and

6 “(II) is used to replace or reduce
7 the quantity of fossil fuel present in a
8 fuel mixture used to operate a motor
9 vehicle.

10 “(ii) INCLUSION.—The term ‘renew-
11 able fuel’ includes cellulosic biomass eth-
12 anol, waste derived ethanol, and biodiesel
13 (as defined in section 312(f) of the Energy
14 Policy Act of 1992 (42 U.S.C. 13220(f))
15 and any blending components derived from
16 renewable fuel (provided that only the re-
17 newable fuel portion of any such blending
18 component shall be considered part of the
19 applicable volume under the renewable fuel
20 program established by this subsection).

21 “(C) SMALL REFINERY.—The term ‘small
22 refinery’ means a refinery for which average ag-
23 gregate daily crude oil throughput for the cal-
24 endar year (as determined by dividing the ag-
25 gregate throughput for the calendar year by the

1 number of days in the calendar year) does not
2 exceed 75,000 barrels.

3 “(2) RENEWABLE FUEL PROGRAM.—

4 “(A) IN GENERAL.—Not later than 1 year
5 after the enactment of this subsection, the Ad-
6 ministrators shall promulgate regulations ensur-
7 ing that motor vehicle fuel sold or dispensed to
8 consumers in the contiguous United States, on
9 an annual average basis, contains the applicable
10 volume of renewable fuel as specified in sub-
11 paragraph (B). Regardless of the date of pro-
12 mulgation, such regulations shall contain com-
13 pliance provisions for refiners, blenders, and
14 importers, as appropriate, to ensure that the re-
15 quirements of this section are met, but shall not
16 restrict where renewable fuel can be used, or
17 impose any per-gallon obligation for the use of
18 renewable fuel. If the Administrator does not
19 promulgate such regulations, the applicable per-
20 centage referred to in paragraph (4), on a vol-
21 ume percentage of gasoline basis, shall be 2.2
22 in 2005.

23 “(B) APPLICABLE VOLUME.—

24 “(i) CALENDAR YEARS 2005 THROUGH
25 2012.—For the purpose of subparagraph

1 (A), the applicable volume for any of cal-
2 endar years 2005 through 2012 shall be
3 determined in accordance with the fol-
4 lowing table:

“Applicable volume of renewable fuel

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

5 “(ii) CALENDAR YEAR 2013 AND
6 THEREAFTER.—For the purpose of sub-
7 paragraph (A), the applicable volume for
8 calendar year 2013 and each calendar year
9 thereafter shall be equal to the product ob-
10 tained by multiplying—

11 “(I) the number of gallons of
12 gasoline that the Administrator esti-
13 mates will be sold or introduced into
14 commerce in the calendar year; and

15 “(II) the ratio that—

16 “(aa) 5.0 billion gallons of
17 renewable fuels; bears to

18 “(bb) the number of gallons
19 of gasoline sold or introduced

1 into commerce in calendar year
2 2012.

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

17 “(4) APPLICABLE PERCENTAGES.—

18 “(A) PROVISION OF ESTIMATE OF VOL-
19 UMES OF GASOLINE SALES.—Not later than Oc-
20 tober 31 of each of calendar years 2004
21 through 2011, the Administrator of the Energy
22 Information Administration shall provide to the
23 Administrator of the Environmental Protection
24 Agency an estimate of the volumes of gasoline
25 that will be sold or introduced into commerce in

1 the United States during the following calendar
2 year.

3 “(B) DETERMINATION OF APPLICABLE
4 PERCENTAGES.—

5 “(i) IN GENERAL.—Not later than
6 November 30 of each of the calendar years
7 2004 through 2011, based on the estimate
8 provided under subparagraph (A), the Ad-
9 ministrator shall determine and publish in
10 the Federal Register, with respect to the
11 following calendar year, the renewable fuel
12 obligation that ensures that the require-
13 ments of paragraph (2) are met.

14 “(ii) REQUIRED ELEMENTS.—The re-
15 newable fuel obligation determined for a
16 calendar year under clause (i) shall—

17 “(I) be applicable to refiners,
18 blenders, and importers, as appro-
19 priate;

20 “(II) be expressed in terms of a
21 volume percentage of gasoline sold or
22 introduced into commerce; and

23 “(III) subject to subparagraph
24 (C)(i), consist of a single applicable
25 percentage that applies to all cat-

1 egories of persons specified in sub-
2 clause (I).

3 “(C) ADJUSTMENTS.—In determining the
4 applicable percentage for a calendar year, the
5 Administrator shall make adjustments—

6 “(i) to prevent the imposition of re-
7 dundant obligations to any person specified
8 in subparagraph (B)(ii)(I); and

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

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

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

18 “(B) if the cellulosic biomass ethanol or
19 waste derived ethanol is derived from agricul-
20 tural residue or is an agricultural byproduct (as
21 that term is used in section 919 of the Energy
22 Policy Act of 2003), shall be considered to be
23 the equivalent of 2.5 gallons of renewable fuel.

24 “(6) CREDIT PROGRAM.—

1 “(A) IN GENERAL.—The regulations pro-
2 mulgated to carry out this subsection shall pro-
3 vide for the generation of an appropriate
4 amount of credits by any person that refines,
5 blends, or imports gasoline that contains a
6 quantity of renewable fuel that is greater than
7 the quantity required under paragraph (2).
8 Such regulations shall provide for the genera-
9 tion of an appropriate amount of credits for
10 biodiesel fuel. If a small refinery notifies the
11 Administrator that it waives the exemption pro-
12 vided paragraph (11), the regulations shall pro-
13 vide for the generation of credits by the small
14 refinery beginning in the year following such
15 notification.

16 “(B) USE OF CREDITS.—A person that
17 generates credits under subparagraph (A) may
18 use the credits, or transfer all or a portion of
19 the credits to another person, for the purpose
20 of complying with paragraph (2).

21 “(C) LIFE OF CREDITS.—A credit gen-
22 erated under this paragraph shall be valid to
23 show compliance—

1 “(i) in the calendar year in which the
2 credit was generated or the next calendar
3 year; or

4 “(ii) in the calendar year in which the
5 credit was generated or next two consecu-
6 tive calendar years if the Administrator
7 promulgates regulations under paragraph
8 (7).

9 “(D) INABILITY TO PURCHASE SUFFICIENT
10 CREDITS.—The regulations promulgated to
11 carry out this subsection shall include provi-
12 sions allowing any person that is unable to gen-
13 erate or purchase sufficient credits to meet the
14 requirements under paragraph (2) to carry for-
15 ward a renewable fuel deficit provided that, in
16 the calendar year following the year in which
17 the renewable fuel deficit is created, such per-
18 son shall achieve compliance with the renewable
19 fuel requirement under paragraph (2), and shall
20 generate or purchase additional renewable fuel
21 credits to offset the renewable fuel deficit of the
22 previous year.

23 “(7) SEASONAL VARIATIONS IN RENEWABLE
24 FUEL USE.—

1 “(A) STUDY.—For each of the calendar
2 years 2005 through 2012, the Administrator of
3 the Energy Information Administration shall
4 conduct a study of renewable fuels blending to
5 determine whether there are excessive seasonal
6 variations in the use of renewable fuels.

7 “(B) REGULATION OF EXCESSIVE SEA-
8 SONAL VARIATIONS.—If, for any calendar year,
9 the Administrator of the Energy Information
10 Administration, based on the study under sub-
11 paragraph (A), makes the determinations speci-
12 fied in subparagraph (C), the Administrator
13 shall promulgate regulations to ensure that 35
14 percent or more of the quantity of renewable
15 fuels necessary to meet the requirement of
16 paragraph (2) is used during each of the peri-
17 ods specified in subparagraph (D) of each sub-
18 sequent calendar year.

19 “(C) DETERMINATIONS.—The determina-
20 tions referred to in subparagraph (B) are
21 that—

22 “(i) less than 35 percent of the quan-
23 tity of renewable fuels necessary to meet
24 the requirement of paragraph (2) has been

1 used during one of the periods specified in
2 subparagraph (D) of the calendar year;

3 “(ii) a pattern of excessive seasonal
4 variation described in clause (i) will con-
5 tinue in subsequent calendar years; and

6 “(iii) promulgating regulations or
7 other requirements to impose a 35 percent
8 or more seasonal use of renewable fuels
9 will not prevent or interfere with the at-
10 tainment of national ambient air quality
11 standards or significantly increase the
12 price of motor fuels to the consumer.

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

15 “(i) April through September; and

16 “(ii) January through March and Oc-
17 tober through December.

18 “(E) EXCLUSIONS.—Renewable fuels
19 blended or consumed in 2005 in a State which
20 has received a waiver under section 209(b) shall
21 not be included in the study in subparagraph
22 (A).

23 “(8) WAIVERS.—

24 “(A) IN GENERAL.—The Administrator, in
25 consultation with the Secretary of Agriculture

1 and the Secretary of Energy, may waive the re-
2 quirement of paragraph (2) in whole or in part
3 on petition by one or more States by reducing
4 the national quantity of renewable fuel required
5 under this subsection—

6 “(i) based on a determination by the
7 Administrator, after public notice and op-
8 portunity for comment, that implementa-
9 tion of the requirement would severely
10 harm the economy or environment of a
11 State, a region, or the United States; or

12 “(ii) based on a determination by the
13 Administrator, after public notice and op-
14 portunity for comment, that there is an in-
15 adequate domestic supply or distribution
16 capacity to meet the requirement.

17 “(B) PETITIONS FOR WAIVERS.—The Ad-
18 ministrator, in consultation with the Secretary
19 of Agriculture and the Secretary of Energy,
20 shall approve or disapprove a State petition for
21 a waiver of the requirement of paragraph (2)
22 within 90 days after the date on which the peti-
23 tion is received by the Administrator.

24 “(C) TERMINATION OF WAIVERS.—A waiv-
25 er granted under subparagraph (A) shall termi-

1 nate after 1 year, but may be renewed by the
2 Administrator after consultation with the Sec-
3 retary of Agriculture and the Secretary of En-
4 ergy.

5 “(9) STUDY AND WAIVER FOR INITIAL YEAR OF
6 PROGRAM.—Not later than 180 days after the enact-
7 ment of this subsection, the Secretary of Energy
8 shall complete for the Administrator a study assess-
9 ing whether the renewable fuels requirement under
10 paragraph (2) will likely result in significant adverse
11 consumer impacts in 2005, on a national, regional,
12 or State basis. Such study shall evaluate renewable
13 fuel supplies and prices, blendstock supplies, and
14 supply and distribution system capabilities. Based
15 on such study, the Secretary shall make specific rec-
16 ommendations to the Administrator regarding waiv-
17 er of the requirements of paragraph (2), in whole or
18 in part, to avoid any such adverse impacts. Within
19 270 days after the enactment of this subsection, the
20 Administrator shall, consistent with the rec-
21 ommendations of the Secretary, waive, in whole or in
22 part, the renewable fuels requirement under para-
23 graph (2) by reducing the national quantity of re-
24 newable fuel required under this subsection in 2005.
25 This paragraph shall not be interpreted as limiting

1 the Administrator's authority to waive the require-
2 ments of paragraph (2) in whole, or in part, under
3 paragraph (8) or paragraph (10), pertaining to
4 waivers.

5 “(10) ASSESSMENT AND WAIVER.—The Admin-
6 istrator, in consultation with the Secretary of En-
7 ergy and the Secretary of Agriculture, shall evaluate
8 the requirement of paragraph (2) and determine,
9 prior to January 1, 2007, and prior to January 1
10 of any subsequent year in which the applicable vol-
11 ume of renewable fuel is increased under paragraph
12 (2)(B), whether the requirement of paragraph (2),
13 including the applicable volume of renewable fuel
14 contained in paragraph (2)(B) should remain in ef-
15 fect, in whole or in part, during 2007 or any year
16 or years subsequent to 2007. In evaluating the re-
17 quirement of paragraph (2) and in making any de-
18 termination under this section, the Administrator
19 shall consider the best available information and
20 data collected by accepted methods or best available
21 means regarding—

22 “(A) the capacity of renewable fuel pro-
23 ducers to supply an adequate amount of renew-
24 able fuel at competitive prices to fulfill the re-
25 quirement of paragraph (2);

1 “(B) the potential of the requirement of
2 paragraph (2) to significantly raise the price of
3 gasoline, food (excluding the net price impact
4 on the requirement in paragraph (2) on com-
5 modities used in the production of ethanol), or
6 heating oil for consumers in any significant
7 area or region of the country above the price
8 that would otherwise apply to such commodities
9 in the absence of such requirement;

10 “(C) the potential of the requirement of
11 paragraph (2) to interfere with the supply of
12 fuel in any significant gasoline market or region
13 of the country, including interference with the
14 efficient operation of refiners, blenders, import-
15 ers, wholesale suppliers, and retail vendors of
16 gasoline, and other motor fuels; and

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

20 If the Administrator determines, by clear and con-
21 vincing information, after public notice and the op-
22 portunity for comment, that the requirement of
23 paragraph (2) would have significant and meaning-
24 ful adverse impact on the supply of fuel and related
25 infrastructure or on the economy, public health, or

1 environment of any significant area or region of the
2 country, the Administrator may waive, in whole or
3 in part, the requirement of paragraph (2) in any one
4 year for which the determination is made for that
5 area or region of the country, except that any such
6 waiver shall not have the effect of reducing the ap-
7 plicable volume of renewable fuel specified in para-
8 graph (2)(B) with respect to any year for which the
9 determination is made. In determining economic im-
10 pact under this paragraph, the Administrator shall
11 not consider the reduced revenues available from the
12 Highway Trust Fund (section 9503 of the Internal
13 Revenue Code of 1986) as a result of the use of eth-
14 anol.

15 “(11) SMALL REFINERIES.—

16 “(A) IN GENERAL.—The requirement of
17 paragraph (2) shall not apply to small refineries
18 until the first calendar year beginning more
19 than 5 years after the first year set forth in the
20 table in paragraph (2)(B)(i). Not later than De-
21 cember 31, 2007, the Secretary of Energy shall
22 complete for the Administrator a study to de-
23 termine whether the requirement of paragraph
24 (2) would impose a disproportionate economic
25 hardship on small refineries. For any small re-

1 finery that the Secretary of Energy determines
2 would experience a disproportionate economic
3 hardship, the Administrator shall extend the
4 small refinery exemption for such small refinery
5 for no less than two additional years.

6 “(B) ECONOMIC HARDSHIP.—

7 “(i) EXTENSION OF EXEMPTION.—A
8 small refinery may at any time petition the
9 Administrator for an extension of the ex-
10 emption from the requirement of para-
11 graph (2) for the reason of dispropor-
12 tionate economic hardship. In evaluating a
13 hardship petition, the Administrator, in
14 consultation with the Secretary of Energy,
15 shall consider the findings of the study in
16 addition to other economic factors.

17 “(ii) DEADLINE FOR ACTION ON PETI-
18 TIONS.—The Administrator shall act on
19 any petition submitted by a small refinery
20 for a hardship exemption not later than 90
21 days after the receipt of the petition.

22 “(C) CREDIT PROGRAM.—If a small refin-
23 ery notifies the Administrator that it waives the
24 exemption provided by this Act, the regulations
25 shall provide for the generation of credits by

1 the small refinery beginning in the year fol-
2 lowing such notification.

3 “(D) OPT-IN FOR SMALL REFINERS.—A
4 small refinery shall be subject to the require-
5 ments of this section if it notifies the Adminis-
6 trator that it waives the exemption under sub-
7 paragraph (A).

8 “(12) ETHANOL MARKET CONCENTRATION
9 ANALYSIS.—

10 “(A) ANALYSIS.—

11 “(i) IN GENERAL.—Not later than
12 180 days after the date of enactment of
13 this subsection, and annually thereafter,
14 the Federal Trade Commission shall per-
15 form a market concentration analysis of
16 the ethanol production industry using the
17 Herfindahl-Hirschman Index to determine
18 whether there is sufficient competition
19 among industry participants to avoid price
20 setting and other anticompetitive behavior.

21 “(ii) SCORING.—For the purpose of
22 scoring under clause (i) using the
23 Herfindahl-Hirschman Index, all mar-
24 keting arrangements among industry par-
25 ticipants shall be considered.

1 “(B) REPORT.—Not later than December
2 1, 2004, and annually thereafter, the Federal
3 Trade Commission shall submit to Congress
4 and the Administrator a report on the results
5 of the market concentration analysis performed
6 under subparagraph (A)(i).”.

7 (b) PENALTIES AND ENFORCEMENT.—Section
8 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is
9 amended as follows:

10 (1) In paragraph (1)—

11 (A) in the first sentence, by striking “or
12 (n)” each place it appears and inserting “(n),
13 or (o)”; and

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

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

19 (c) SURVEY OF RENEWABLE FUEL MARKET.—

20 (1) SURVEY AND REPORT.—Not later than De-
21 cember 1, 2006, and annually thereafter, the Admin-
22 istrator of the Environmental Protection Agency (in
23 consultation with the Secretary of Energy acting
24 through the Administrator of the Energy Informa-
25 tion Administration) shall—

1 (A) conduct, with respect to each conven-
2 tional gasoline use area and each reformulated
3 gasoline use area in each State, a survey to de-
4 termine the market shares of—

5 (i) conventional gasoline containing
6 ethanol;

7 (ii) reformulated gasoline containing
8 ethanol;

9 (iii) conventional gasoline containing
10 renewable fuel; and

11 (iv) reformulated gasoline containing
12 renewable fuel; and

13 (B) submit to Congress, and make publicly
14 available, a report on the results of the survey
15 under subparagraph (A).

16 (2) RECORDKEEPING AND REPORTING RE-
17 QUIREMENTS.—The Administrator of the Environ-
18 mental Protection Agency (hereinafter in this sub-
19 section referred to as the “Administrator”) may re-
20 quire any refiner, blender, or importer to keep such
21 records and make such reports as are necessary to
22 ensure that the survey conducted under paragraph
23 (1) is accurate. The Administrator, to avoid duplica-
24 tive requirements, shall rely, to the extent prac-
25 ticable, on existing reporting and recordkeeping re-

1 requirements and other information available to the
2 Administrator including gasoline distribution pat-
3 terns that include multistate use areas.

4 (3) APPLICABLE LAW.—Activities carried out
5 under this subsection shall be conducted in a man-
6 ner designed to protect confidentiality of individual
7 responses.

8 **SEC. 1502. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

9 (a) FINDINGS.—Congress finds that—

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

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

20 (3) at the time of the adoption of the fuel oxy-
21 gen standard, Congress was aware that significant
22 use of MTBE would result from the adoption of that
23 standard, and that the use of MTBE would likely be
24 important to the cost-effective implementation of
25 that program;

1 (4) Congress was aware that gasoline and its
2 component additives can and do leak from storage
3 tanks;

4 (5) the fuel industry responded to the fuel oxy-
5 genate standard established by Public Law 101-549
6 by making substantial investments in—

7 (A) MTBE production capacity; and

8 (B) systems to deliver MTBE-containing
9 gasoline to the marketplace;

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

12 (A) reconsidered the relative value of
13 MTBE in gasoline;

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

17 (C) decided to provide for the elimination
18 of the oxygenate requirement for reformulated
19 gasoline and to provide for a renewable fuels
20 content requirement for motor fuel; and

21 (7) it is appropriate for Congress to provide
22 some limited transition assistance—

23 (A) to merchant producers of MTBE who
24 produced MTBE in response to a market cre-

1 ated by the oxygenate requirement contained in
2 the Clean Air Act; and

3 (B) for the purpose of mitigating any fuel
4 supply problems that may result from the elimi-
5 nation of the oxygenate requirement for refor-
6 mulated gasoline and from the decision to es-
7 tablish a date certain for action by the Environ-
8 mental Protection Agency to prohibit the use of
9 MTBE in gasoline.

10 (b) PURPOSES.—The purpose of this section is to
11 provide assistance to merchant producers of MTBE in
12 making the transition from producing MTBE to producing
13 other fuel additives.

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

18 “(5) MTBE MERCHANT PRODUCER CONVER-
19 SION ASSISTANCE.—

20 “(A) IN GENERAL.—

21 “(i) GRANTS.—The Secretary of En-
22 ergy, in consultation with the Adminis-
23 trator, may make grants to merchant pro-
24 ducers of methyl tertiary butyl ether (here-
25 inafter in this subsection referred to as

1 ‘MTBE’) in the United States to assist the
2 producers in the conversion of eligible pro-
3 duction facilities described in subpara-
4 graph (C) to the production of iso-octane,
5 iso-octene, alkylates, or renewable fuels.

6 “(ii) DETERMINATION.—The Admin-
7 istrator, in consultation with the Secretary
8 of Energy, may determine that transition
9 assistance for the production of iso-octane,
10 iso-octene, alkylates, or renewable fuels is
11 inconsistent with the provisions of sub-
12 paragraph (B) and, on that basis, may
13 deny applications for grants authorized by
14 this paragraph.

15 “(B) FURTHER GRANTS.—The Secretary
16 of Energy, in consultation with the Adminis-
17 trator, may also further make grants to mer-
18 chant producers of MTBE in the United States
19 to assist the producers in the conversion of eli-
20 gible production facilities described in subpara-
21 graph (C) to the production of such other fuel
22 additives (unless the Administrator determines
23 that such fuel additives may reasonably be an-
24 ticipated to endanger public health or the envi-
25 ronment) that, consistent with this subsection—

1 “(i) have been registered and have
2 been tested or are being tested in accord-
3 ance with the requirements of this section;
4 and

5 “(ii) will contribute to replacing gaso-
6 line volumes lost as a result of amend-
7 ments made to subsection (k) of this sec-
8 tion by sections 1503(a) and 1505 of the
9 Energy Policy Act of 2003.

10 “(C) ELIGIBLE PRODUCTION FACILI-
11 TIES.—A production facility shall be eligible to
12 receive a grant under this paragraph if the pro-
13 duction facility—

14 “(i) is located in the United States;
15 and

16 “(ii) produced MTBE for consump-
17 tion before April 1, 2003 and ceased pro-
18 duction at any time after the date of en-
19 actment of this paragraph.

20 “(D) AUTHORIZATION OF APPROPRIA-
21 TIONS.—There are authorized to be appro-
22 priated to carry out this paragraph
23 \$250,000,000 for each of fiscal years 2005
24 through 2012, to remain available until ex-
25 pended.”.

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

5 **SEC. 1503. USE OF MTBE.**

6 (a) IN GENERAL.—Subject to subsections (e) and (f),
7 not later than December 31, 2014, the use of methyl ter-
8 tiary butyl ether (hereinafter in this section referred to
9 as “MTBE”) in motor vehicle fuel in any State other than
10 a State described in subsection (c) is prohibited.

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

15 (c) STATES THAT AUTHORIZE USE.—A State de-
16 scribed in this subsection is a State in which the Governor
17 of the State submits a notification to the Administrator
18 authorizing the use of MTBE in motor vehicle fuel sold
19 or used in the State.

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

23 (e) TRACE QUANTITIES.—In carrying out subsection
24 (a), the Administrator may allow trace quantities of
25 MTBE, not to exceed 0.5 percent by volume, to be present

1 in motor vehicle fuel in cases that the Administrator deter-
2 mines to be appropriate.

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

7 **SEC. 1504. NATIONAL ACADEMY OF SCIENCES REVIEW AND**
8 **PRESIDENTIAL DETERMINATION.**

9 (a) NAS REVIEW.—Not later than May 31, 2013, the
10 Secretary shall enter into an arrangement with the Na-
11 tional Academy of Sciences to review the use of methyl
12 tertiary butyl ether (hereafter referred to in this section
13 as “MTBE”) in fuel and fuel additives. The review shall
14 only use the best available scientific information and data
15 collected by accepted methods or the best available means.
16 The review shall examine the use of MTBE in fuel and
17 fuel additives, significant beneficial and detrimental ef-
18 fects of this use on environmental quality or public health
19 or welfare including the costs and benefits of such effects,
20 likely effects of controls or prohibitions on MTBE regard-
21 ing fuel availability and price, and other appropriate and
22 reasonable actions that are available to protect the envi-
23 ronment or public health or welfare from any detrimental
24 effects of the use of MTBE in fuel or fuel additives. The
25 review shall be peer-reviewed prior to publication and all

1 supporting data and analytical models shall be available
2 to the public. The review shall be completed no later than
3 May 31, 2014.

4 (b) **PRESIDENTIAL DETERMINATION.**—No later than
5 June 30, 2014, the President may make a determination
6 that restrictions on the use of MTBE to be implemented
7 pursuant to section 1503 shall not take place and that
8 the legal authority contained in section 1503 to prohibit
9 the use of MTBE in motor vehicle fuel shall become null
10 and void.

11 **SEC. 1505. ELIMINATION OF OXYGEN CONTENT REQUIRE-**
12 **MENT FOR REFORMULATED GASOLINE.**

13 (a) **ELIMINATION.**—

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

16 (A) In paragraph (2)—

17 (i) in the second sentence of subpara-
18 graph (A), by striking “(including the oxy-
19 gen content requirement contained in sub-
20 paragraph (B))”;

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

22 (iii) by redesignating subparagraphs
23 (C) and (D) as subparagraphs (B) and
24 (C), respectively.

1 (B) In paragraph (3)(A), by striking
2 clause (v).

3 (C) In paragraph (7)—

4 (i) in subparagraph (A)—

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

6 (II) by redesignating clauses (ii)

7 and (iii) as clauses (i) and (ii), respec-
8 tively; and

9 (ii) in subparagraph (C)—

10 (I) by striking clause (ii).

11 (II) by redesignating clause (iii)

12 as clause (ii).

13 (2) EFFECTIVE DATE.—The amendments made
14 by paragraph (1) take effect 270 days after the date
15 of enactment of this Act, except that such amend-
16 ments shall take effect upon such date of enactment
17 in any State that has received a waiver under sec-
18 tion 209(b) of the Clean Air Act.

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

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

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

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

4 “(B) MAINTENANCE OF TOXIC AIR POL-
5 LUTANT EMISSIONS REDUCTIONS FROM REFOR-
6 MULATED GASOLINE.—

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

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

1 “(iii) STANDARDS APPLICABLE TO
2 SPECIFIC REFINERIES OR IMPORTERS.—

3 “(I) APPLICABILITY OF STAND-
4 ARDS.—For any calendar year, the
5 standards applicable to a refinery or
6 importer under clause (ii) shall apply
7 to the quantity of gasoline produced
8 or distributed by the refinery or im-
9 porter in the calendar year only to the
10 extent that the quantity is less than
11 or equal to the average annual quan-
12 tity of reformulated gasoline produced
13 or distributed by the refinery or im-
14 porter during calendar years 1999
15 and 2000.

16 “(II) APPLICABILITY OF OTHER
17 STANDARDS.—For any calendar year,
18 the quantity of gasoline produced or
19 distributed by a refinery or importer
20 that is in excess of the quantity sub-
21 ject to subclause (I) shall be subject
22 to standards for toxic air pollutants
23 promulgated under subparagraph (A)
24 and paragraph (3)(B).

1 “(iv) CREDIT PROGRAM.—The Admin-
2 istrator shall provide for the granting and
3 use of credits for emissions of toxic air pol-
4 lutants in the same manner as provided in
5 paragraph (7).

6 “(v) REGIONAL PROTECTION OF
7 TOXICS REDUCTION BASELINES.—

8 “(I) IN GENERAL.—Not later
9 than 60 days after the date of enact-
10 ment of this subparagraph, and not
11 later than April 1 of each calendar
12 year that begins after that date of en-
13 actment, the Administrator shall pub-
14 lish in the Federal Register a report
15 that specifies, with respect to the pre-
16 vious calendar year—

17 “(aa) the quantity of refor-
18 mulated gasoline produced that is
19 in excess of the average annual
20 quantity of reformulated gasoline
21 produced in 1999 and 2000; and

22 “(bb) the reduction of the
23 average annual aggregate emis-
24 sions of toxic air pollutants in
25 each PADD, based on retail sur-

1 vey data or data from other ap-
2 propriate sources.

3 “(II) EFFECT OF FAILURE TO
4 MAINTAIN AGGREGATE TOXICS RE-
5 DUCTIONS.—If, in any calendar year,
6 the reduction of the average annual
7 aggregate emissions of toxic air pol-
8 lutants in a PADD fails to meet or
9 exceed the reduction of the average
10 annual aggregate emissions of toxic
11 air pollutants in the PADD in cal-
12 endar years 1999 and 2000, the Ad-
13 ministrators, not later than 90 days
14 after the date of publication of the re-
15 port for the calendar year under sub-
16 clause (I), shall—

17 “(aa) identify, to the max-
18 imum extent practicable, the rea-
19 sons for the failure, including the
20 sources, volumes, and character-
21 istics of reformulated gasoline
22 that contributed to the failure;
23 and

24 “(bb) promulgate revisions
25 to the regulations promulgated

1 under clause (ii), to take effect
2 not earlier than 180 days but not
3 later than 270 days after the
4 date of promulgation, to provide
5 that, notwithstanding clause
6 (iii)(II), all reformulated gasoline
7 produced or distributed at each
8 refinery or importer shall meet
9 the standards applicable under
10 clause (ii) not later than April 1
11 of the year following the report
12 in subclause (II) and for subse-
13 quent years.

14 “(vi) REGULATIONS TO CONTROL
15 HAZARDOUS AIR POLLUTANTS FROM
16 MOTOR VEHICLES AND MOTOR VEHICLE
17 FUELS.—Not later than July 1, 2004, the
18 Administrator shall promulgate final regu-
19 lations to control hazardous air pollutants
20 from motor vehicles and motor vehicle
21 fuels, as provided for in section 80.1045 of
22 title 40, Code of Federal Regulations (as
23 in effect on the date of enactment of this
24 subparagraph).”.

1 (c) CONSOLIDATION IN REFORMULATED GASOLINE
2 REGULATIONS.—Not later than 180 days after the date
3 of enactment of this Act, the Administrator of the Envi-
4 ronmental Protection Agency shall revise the reformulated
5 gasoline regulations under subpart D of part 80 of title
6 40, Code of Federal Regulations, to consolidate the regula-
7 tions applicable to VOC-Control Regions 1 and 2 under
8 section 80.41 of that title by eliminating the less stringent
9 requirements applicable to gasoline designated for VOC-
10 Control Region 2 and instead applying the more stringent
11 requirements applicable to gasoline designated for VOC-
12 Control Region 1.

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

1 (1) the Administrator shall revise such adjust-
2 ments to be based only on calendar years 1999–
3 2000; and

4 (2) for adjustments based on toxic air pollutant
5 emissions from reformulated gasoline significantly
6 below the national annual average emissions of toxic
7 air pollutants from all reformulated gasoline, the
8 Administrator may revise such adjustments to take
9 account of the scope of Federal or State prohibitions
10 on the use of methyl tertiary butyl ether imposed
11 after the date of the enactment of this paragraph,
12 except that any such adjustment shall require such
13 refiner or importer, to the greatest extent prac-
14 ticable, to maintain the reduction achieved during
15 calendar years 1999–2000 in the average annual ag-
16 gregate emissions of toxic air pollutants from refor-
17 mulated gasoline produced or distributed by the re-
18 finery or importer: *Provided*, That any such adjust-
19 ment shall not be made at a level below the average
20 percentage of reductions of emissions of toxic air
21 pollutants for reformulated gasoline supplied to
22 PADD I during calendar years 1999–2000.

23 **SEC. 1506. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

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

1 “(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES
2 AND EMISSIONS MODEL.—

3 “(1) ANTI-BACKSLIDING ANALYSIS.—

4 “(A) DRAFT ANALYSIS.—Not later than 4
5 years after the date of enactment of this sub-
6 section, the Administrator shall publish for pub-
7 lic comment a draft analysis of the changes in
8 emissions of air pollutants and air quality due
9 to the use of motor vehicle fuel and fuel addi-
10 tives resulting from implementation of the
11 amendments made by subtitle A of title XV of
12 the Energy Policy Act of 2003.

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

18 “(2) EMISSIONS MODEL.—For the purposes of
19 this subsection, as soon as the necessary data are
20 available, the Administrator shall develop and final-
21 ize an emissions model that reasonably reflects the
22 effects of gasoline characteristics or components on
23 emissions from vehicles in the motor vehicle fleet
24 during calendar year 2005.”.

1 **SEC. 1507. DATA COLLECTION.**

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

5 “(m) RENEWABLE FUELS SURVEY.—(1) In order to
6 improve the ability to evaluate the effectiveness of the Na-
7 tion’s renewable fuels mandate, the Administrator shall
8 conduct and publish the results of a survey of renewable
9 fuels demand in the motor vehicle fuels market in the
10 United States monthly, and in a manner designed to pro-
11 tect the confidentiality of individual responses. In con-
12 ducting the survey, the Administrator shall collect infor-
13 mation both on a national and regional basis, including
14 each of the following:

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

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

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

18 “(D) The quantity of renewable fuels de-
19 manded.

20 “(E) Market price data.

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

24 “(2) The Administrator shall also collect or estimate
25 information both on a national and regional basis, pursu-

1 ant to subparagraphs (A) through (F) of paragraph (1),
2 for the 5 years prior to implementation of this subsection.

3 “(3) This subsection does not affect the authority of
4 the Administrator to collect data under section 52 of the
5 Federal Energy Administration Act of 1974 (15 U.S.C.
6 790a).”.

7 **SEC. 1508. REDUCING THE PROLIFERATION OF STATE FUEL**
8 **CONTROLS.**

9 (a) EPA APPROVAL OF STATE PLANS WITH FUEL
10 CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act
11 (42 U.S.C. 7545(c)(4)(C)) is amended by adding at the
12 end the following: “The Administrator shall not approve
13 a control or prohibition respecting the use of a fuel or fuel
14 additive under this subparagraph unless the Adminis-
15 trator, after consultation with the Secretary of Energy,
16 publishes in the Federal Register a finding that, in the
17 Administrator’s judgment, such control or prohibition will
18 not cause fuel supply or distribution interruptions or have
19 a significant adverse impact on fuel producibility in the
20 affected area or contiguous areas.”.

21 (b) STUDY.—The Administrator of the Environ-
22 mental Protection Agency (hereinafter in this subsection
23 referred to as the “Administrator”), in cooperation with
24 the Secretary of Energy, shall undertake a study of the
25 projected effects on air quality, the proliferation of fuel

1 blends, fuel availability, and fuel costs of providing a pref-
2 erence for each of the following:

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

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

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

11 In carrying out such study, the Administrator shall obtain
12 comments from affected parties. The Administrator shall
13 submit the results of such study to the Congress not later
14 than 18 months after the date of enactment of this Act,
15 together with any recommended legislative changes.

16 **SEC. 1509. FUEL SYSTEM REQUIREMENTS HARMONIZATION**
17 **STUDY.**

18 (a) STUDY.—

19 (1) IN GENERAL.—The Administrator of the
20 Environmental Protection Agency (hereinafter in
21 this section referred to as the “Administrator”) and
22 the Secretary of Energy shall jointly conduct a study
23 of Federal, State, and local requirements concerning
24 motor vehicle fuels, including—

1 (A) requirements relating to reformulated
2 gasoline, volatility (measured in Reid vapor
3 pressure), oxygenated fuel, and diesel fuel; and

4 (B) other requirements that vary from
5 State to State, region to region, or locality to
6 locality.

7 (2) REQUIRED ELEMENTS.—The study shall as-
8 sess—

9 (A) the effect of the variety of require-
10 ments described in paragraph (1) on the supply,
11 quality, and price of motor vehicle fuels avail-
12 able to consumers in various States and local-
13 ities;

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

16 (i) national, regional, and local air
17 quality standards and goals; and

18 (ii) related environmental and public
19 health protection standards and goals;

20 (C) the effect of Federal, State, and local
21 motor vehicle fuel regulations, including mul-
22 tiple motor vehicle fuel requirements, on—

23 (i) domestic refineries;

24 (ii) the fuel distribution system; and

1 (iii) industry investment in new capac-
2 ity;

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

6 (E) the feasibility of developing national or
7 regional motor vehicle fuel slates for the 48
8 contiguous States that, while improving air
9 quality at the national, regional and local levels
10 consistent with the attainment of national am-
11 bient air quality standards, could—

12 (i) enhance flexibility in the fuel dis-
13 tribution infrastructure and improve fuel
14 fungibility;

15 (ii) reduce price volatility and costs to
16 consumers and producers;

17 (iii) provide increased liquidity to the
18 gasoline market; and

19 (iv) enhance fuel quality, consistency,
20 and supply;

21 (F) the feasibility of providing incentives
22 to promote cleaner burning motor vehicle fuel;
23 and

24 (G) the extent to which improvements in
25 air quality and any increases or decreases in

1 the price of motor fuel can be projected to re-
2 sult from the Environmental Protection Agen-
3 cy's Tier II requirements for conventional gaso-
4 line and vehicle emission systems, the reformu-
5 lated gasoline program, the renewable content
6 requirements established by this subtitle, State
7 programs regarding gasoline volatility, and any
8 other requirements imposed by States or local-
9 ities affecting the composition of motor fuel.

10 (b) REPORT.—

11 (1) IN GENERAL.—Not later than December 31,
12 2007, the Administrator and the Secretary of En-
13 ergy shall submit to Congress a report on the results
14 of the study conducted under subsection (a).

15 (2) RECOMMENDATIONS.—

16 (A) IN GENERAL.—The report under this
17 subsection shall contain recommendations for
18 legislative and administrative actions that may
19 be taken—

20 (i) to improve air quality;

21 (ii) to reduce costs to consumers and
22 producers; and

23 (iii) to increase supply liquidity.

24 (B) REQUIRED CONSIDERATIONS.—The
25 recommendations under subparagraph (A) shall

1 take into account the need to provide advance
2 notice of required modifications to refinery and
3 fuel distribution systems in order to ensure an
4 adequate supply of motor vehicle fuel in all
5 States.

6 (3) CONSULTATION.—In developing the report
7 under this subsection, the Administrator and the
8 Secretary of Energy shall consult with—

- 9 (A) the Governors of the States;
10 (B) automobile manufacturers;
11 (C) motor vehicle fuel producers and dis-
12 tributors; and
13 (D) the public.

14 **SEC. 1510. COMMERCIAL BYPRODUCTS FROM MUNICIPAL**
15 **SOLID WASTE AND CELLULOSIC BIOMASS**
16 **LOAN GUARANTEE PROGRAM.**

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

21 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
22 of Energy (hereinafter in this section referred to as the
23 “Secretary”) shall establish a program to provide guaran-
24 tees of loans by private institutions for the construction
25 of facilities for the processing and conversion of municipal

1 solid waste and cellulosic biomass into fuel ethanol and
2 other commercial byproducts.

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

5 (1) without a loan guarantee, credit is not
6 available to the applicant under reasonable terms or
7 conditions sufficient to finance the construction of a
8 facility described in subsection (b);

9 (2) the prospective earning power of the appli-
10 cant and the character and value of the security
11 pledged provide a reasonable assurance of repayment
12 of the loan to be guaranteed in accordance with the
13 terms of the loan; and

14 (3) the loan bears interest at a rate determined
15 by the Secretary to be reasonable, taking into ac-
16 count the current average yield on outstanding obli-
17 gations of the United States with remaining periods
18 of maturity comparable to the maturity of the loan.

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

22 (1) meet all applicable Federal and State per-
23 mitting requirements;

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

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

3 (A) the limited availability of land for
4 waste disposal;

5 (B) the availability of sufficient quantities
6 of cellulosic biomass; or

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

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

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

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

21 (h) GUARANTEE FEE.—The recipient of a loan guar-
22 antee under subsection (b) shall pay the Secretary an
23 amount determined by the Secretary to be sufficient to
24 cover the administrative costs of the Secretary relating to
25 the loan guarantee.

1 (i) FULL FAITH AND CREDIT.—The full faith and
2 credit of the United States is pledged to the payment of
3 all guarantees made under this section. Any such guar-
4 antee made by the Secretary shall be conclusive evidence
5 of the eligibility of the loan for the guarantee with respect
6 to principal and interest. The validity of the guarantee
7 shall be incontestable in the hands of a holder of the guar-
8 anteed loan.

9 (j) REPORTS.—Until each guaranteed loan under this
10 section has been repaid in full, the Secretary shall annu-
11 ally submit to Congress a report on the activities of the
12 Secretary under this section.

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

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

20 **SEC. 1511. RESOURCE CENTER.**

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

1 (b) AUTHORIZATION OF APPROPRIATIONS FOR RE-
2 SOURCE CENTER.—There are authorized to be appro-
3 priated, for a resource center to further develop bioconver-
4 sion technology using low-cost biomass for the production
5 of ethanol at the Center for Biomass-Based Energy at the
6 University of Mississippi and the University of Oklahoma,
7 \$4,000,000 for each of fiscal years 2004 through 2006.

8 (c) RENEWABLE FUEL PRODUCTION RESEARCH AND
9 DEVELOPMENT GRANTS.—

10 (1) IN GENERAL.—The Administrator of the
11 Environmental Protection Agency shall provide
12 grants for the research into, and development and
13 implementation of, renewable fuel production tech-
14 nologies in RFG States with low rates of ethanol
15 production, including low rates of production of cel-
16 lulosic biomass ethanol.

17 (2) ELIGIBILITY.—

18 (A) IN GENERAL.—The entities eligible to
19 receive a grant under this subsection are aca-
20 demic institutions in RFG States, and consortia
21 made up of combinations of academic institu-
22 tions, industry, State government agencies, or
23 local government agencies in RFG States, that
24 have proven experience and capabilities with
25 relevant technologies.

1 (B) APPLICATION.—To be eligible to re-
 2 ceive a grant under this subsection, an eligible
 3 entity shall submit to the Administrator an ap-
 4 plication in such manner and form, and accom-
 5 panied by such information, as the Adminis-
 6 trator may specify.

7 (3) AUTHORIZATION OF APPROPRIATIONS.—
 8 There are authorized to be appropriated to carry out
 9 this subsection \$25,000,000 for each of fiscal years
 10 2004 through 2008.

11 **SEC. 1512. CELLULOSIC BIOMASS AND WASTE-DERIVED**
 12 **ETHANOL CONVERSION ASSISTANCE.**

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

15 “(r) CELLULOSIC BIOMASS AND WASTE-DERIVED
 16 ETHANOL CONVERSION ASSISTANCE.—

17 “(1) IN GENERAL.—The Secretary of Energy
 18 may provide grants to merchant producers of cel-
 19 lulosic biomass ethanol and waste-derived ethanol in
 20 the United States to assist the producers in building
 21 eligible production facilities described in paragraph
 22 (2) for the production of ethanol.

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

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

2 “(B) uses cellulosic biomass or waste-de-
3 rived feedstocks derived from agricultural resi-
4 dues, municipal solid waste, or agricultural by-
5 products as that term is used in section 919 of
6 the Energy Policy Act of 2003.

7 “(3) AUTHORIZATION OF APPROPRIATIONS.—

8 There are authorized to be appropriated the fol-
9 lowing amounts to carry out this subsection:

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

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

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

13 **SEC. 1513. BLENDING OF COMPLIANT REFORMULATED GAS-**
14 **OLINES.**

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

17 “(s) BLENDING OF COMPLIANT REFORMULATED
18 GASOLINES.—

19 “(1) IN GENERAL.—Notwithstanding sub-
20 sections (h) and (k) and subject to the limitations in
21 paragraph (2) of this subsection, it shall not be a
22 violation of this subtitle for a gasoline retailer, dur-
23 ing any month of the year, to blend at a retail loca-
24 tion batches of ethanol-blended and non-ethanol-
25 blended reformulated gasoline, provided that—

1 “(A) each batch of gasoline to be blended
2 has been individually certified as in compliance
3 with subsections (h) and (k) prior to being
4 blended;

5 “(B) the retailer notifies the Administrator
6 prior to such blending, and identifies the exact
7 location of the retail station and the specific
8 tank in which such blending will take place;

9 “(C) the retailer retains and, as requested
10 by the Administrator or the Administrator’s
11 designee, makes available for inspection such
12 certifications accounting for all gasoline at the
13 retail outlet; and

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

20 “(2) LIMITATIONS.—

21 “(A) FREQUENCY LIMITATION.—A retailer
22 shall only be permitted to blend batches of com-
23 pliant reformulated gasoline under this sub-
24 section a maximum of two blending periods be-

1 tween May 1 and September 15 of each cal-
2 endar year.

3 “(B) DURATION OF BLENDING PERIOD.—
4 Each blending period authorized under sub-
5 paragraph (A) shall extend for a period of no
6 more than 10 consecutive calendar days.

7 “(3) SURVEYS.—A sample of gasoline taken
8 from a retail location that has blended gasoline with-
9 in the past 30 days and is in compliance with sub-
10 paragraphs (A), (B), (C), and (D) of paragraph (1)
11 shall not be used in a VOC survey mandated by 40
12 CFR Part 80.

13 “(4) STATE IMPLEMENTATION PLANS.—A State
14 shall be held harmless and shall not be required to
15 revise its State implementation plan under section
16 110 to account for the emissions from blended gaso-
17 line authorized under paragraph (1).

18 “(5) PRESERVATION OF STATE LAW.—Nothing
19 in this subsection shall—

20 “(A) preempt existing State laws or regu-
21 lations regulating the blending of compliant
22 gasolines; or

23 “(B) prohibit a State from adopting such
24 restrictions in the future.

1 “(6) REGULATIONS.—The Administrator shall
2 promulgate, after notice and comment, regulations
3 implementing this subsection within one year after
4 the date of enactment of this subsection.

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

12 “(8) LIABILITY.—No person other than the
13 person responsible for blending under this subsection
14 shall be subject to an enforcement action or pen-
15 alties under subsection (d) solely arising from the
16 blending of compliant reformulated gasolines by the
17 retailers.

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

1 **Subtitle B—Underground Storage**
2 **Tank Compliance**

3 **SEC. 1521. SHORT TITLE.**

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

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

7 (a) IN GENERAL.—Section 9004 of the Solid Waste
8 Disposal Act (42 U.S.C. 6991e) is amended by adding at
9 the end the following:

10 “(f) TRUST FUND DISTRIBUTION.—

11 “(1) IN GENERAL.—

12 “(A) AMOUNT AND PERMITTED USES OF
13 DISTRIBUTION.—The Administrator shall dis-
14 tribute to States not less than 80 percent of the
15 funds from the Trust Fund that are made
16 available to the Administrator under section
17 9014(2)(A) for each fiscal year for use in pay-
18 ing the reasonable costs, incurred under a coop-
19 erative agreement with any State for—

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

22 “(ii) necessary administrative ex-
23 penses, as determined by the Adminis-
24 trator, that are directly related to State

1 fund or State assurance programs under
2 subsection (c)(1);

3 “(iii) any State fund or State assur-
4 ance program carried out under subsection
5 (c)(1) for a release from an underground
6 storage tank regulated under this subtitle
7 to the extent that, as determined by the
8 State in accordance with guidelines devel-
9 oped jointly by the Administrator and the
10 States, the financial resources of the owner
11 and operator of the underground storage
12 tank (including resources provided by a
13 program in accordance with subsection
14 (c)(1)) are not adequate to pay the cost of
15 a corrective action without significantly im-
16 pairing the ability of the owner or operator
17 to continue in business; or

18 “(iv) enforcement, by a State or a
19 local government, of State or local regula-
20 tions pertaining to underground storage
21 tanks regulated under this subtitle.

22 “(B) USE OF FUNDS FOR ENFORCE-
23 MENT.—In addition to the uses of funds au-
24 thorized under subparagraph (A), the Adminis-
25 trator may use funds from the Trust Fund that

1 are not distributed to States under subpara-
2 graph (A) for enforcement of any regulation
3 promulgated by the Administrator under this
4 subtitle.

5 “(C) PROHIBITED USES.—Funds provided
6 to a State by the Administrator under subpara-
7 graph (A) shall not be used by the State to pro-
8 vide financial assistance to an owner or oper-
9 ator to meet any requirement relating to under-
10 ground storage tanks under subparts B, C, D,
11 H, and G of part 280 of title 40, Code of Fed-
12 eral Regulations (as in effect on the date of en-
13 actment of this subsection).

14 “(2) ALLOCATION.—

15 “(A) PROCESS.—Subject to subparagraphs
16 (B) and (C), in the case of a State with which
17 the Administrator has entered into a coopera-
18 tive agreement under section 9003(h)(7)(A),
19 the Administrator shall distribute funds from
20 the Trust Fund to the State using an allocation
21 process developed by the Administrator.

22 “(B) DIVERSION OF STATE FUNDS.—The
23 Administrator shall not distribute funds under
24 subparagraph (A)(iii) of subsection (f)(1) to
25 any State that has diverted funds from a State

1 fund or State assurance program for purposes
2 other than those related to the regulation of un-
3 derground storage tanks covered by this sub-
4 title, with the exception of those transfers that
5 had been completed earlier than the date of en-
6 actment of this subsection.

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

10 “(i) consulting with State agencies re-
11 sponsible for overseeing corrective action
12 for releases from underground storage
13 tanks; and

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

16 “(I) The number of confirmed re-
17 leases from federally regulated leaking
18 underground storage tanks in the
19 States.

20 “(II) The number of federally
21 regulated underground storage tanks
22 in the States.

23 “(III) The performance of the
24 States in implementing and enforcing
25 the program.

1 “(IV) The financial needs of the
2 States.

3 “(V) The ability of the States to
4 use the funds referred to in subpara-
5 graph (A) in any year.

6 “(3) DISTRIBUTIONS TO STATE AGENCIES.—
7 Distributions from the Trust Fund under this sub-
8 section shall be made directly to a State agency
9 that—

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

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

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

19 (b) WITHDRAWAL OF APPROVAL OF STATE
20 FUNDS.—Section 9004(c) of the Solid Waste Disposal Act
21 (42 U.S.C. 6991c(c)) is amended by inserting the fol-
22 lowing new paragraph at the end thereof:

23 “(6) WITHDRAWAL OF APPROVAL.—After an
24 opportunity for good faith, collaborative efforts to
25 correct financial deficiencies with a State fund, the

1 Administrator may withdraw approval of any State
2 fund or State assurance program to be used as a fi-
3 nancial responsibility mechanism without with-
4 drawing approval of a State underground storage
5 tank program under section 9004(a).”.

6 **SEC. 1523. INSPECTION OF UNDERGROUND STORAGE**
7 **TANKS.**

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

12 “(c) INSPECTION REQUIREMENTS.—

13 “(1) UNINSPECTED TANKS.—In the case of un-
14 derground storage tanks regulated under this sub-
15 title that have not undergone an inspection since De-
16 cember 22, 1998, not later than 2 years after the
17 date of enactment of this subsection, the Adminis-
18 trator or a State that receives funding under this
19 subtitle, as appropriate, shall conduct on-site inspec-
20 tions of all such tanks to determine compliance with
21 this subtitle and the regulations under this subtitle
22 (40 CFR 280) or a requirement or standard of a
23 State program developed under section 9004.

24 “(2) PERIODIC INSPECTIONS.—After completion
25 of all inspections required under paragraph (1), the

1 Administrator or a State that receives funding under
2 this subtitle, as appropriate, shall conduct on-site in-
3 spections of each underground storage tank regu-
4 lated under this subtitle at least once every 3 years
5 to determine compliance with this subtitle and the
6 regulations under this subtitle (40 CFR 280) or a
7 requirement or standard of a State program devel-
8 oped under section 9004. The Administrator may ex-
9 tend for up to one additional year the first 3-year
10 inspection interval under this paragraph if the State
11 demonstrates that it has insufficient resources to
12 complete all such inspections within the first 3-year
13 period.

14 “(3) INSPECTION AUTHORITY.—Nothing in this
15 section shall be construed to diminish the Adminis-
16 trator’s or a State’s authorities under section
17 9005(a).”.

18 (b) STUDY OF ALTERNATIVE INSPECTION PRO-
19 GRAMS.—The Administrator of the Environmental Protec-
20 tion Agency, in coordination with a State, shall gather in-
21 formation on compliance assurance programs that could
22 serve as an alternative to the inspection programs under
23 section 9005(c) of the Solid Waste Disposal Act (42
24 U.S.C. 6991d(c)) and shall, within 4 years after the date

1 of enactment of this Act, submit a report to the Congress
2 containing the results of such study.

3 **SEC. 1524. OPERATOR TRAINING.**

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

7 **“SEC. 9010. OPERATOR TRAINING.**

8 “(a) GUIDELINES.—

9 “(1) IN GENERAL.—Not later than 2 years
10 after the date of enactment of the Underground
11 Storage Tank Compliance Act of 2003, in consulta-
12 tion and cooperation with States and after public no-
13 tice and opportunity for comment, the Administrator
14 shall publish guidelines that specify training require-
15 ments for persons having primary daily on-site man-
16 agement responsibility for the operation and mainte-
17 nance of underground storage tanks.

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

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

22 “(B) training programs that are being em-
23 ployed by tank owners and tank operators as of
24 the date of enactment of the Underground Stor-
25 age Tank Compliance Act of 2003;

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

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

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

7 “(F) such other factors as the Adminis-
8 trator determines to be necessary to carry out
9 this section.

10 “(b) STATE PROGRAMS.—

11 “(1) IN GENERAL.—Not later than 2 years
12 after the date on which the Administrator publishes
13 the guidelines under subsection (a)(1), each State
14 that receives funding under this subtitle shall de-
15 velop State-specific training requirements that are
16 consistent with the guidelines developed under sub-
17 section (a)(1).

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

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

21 “(B) be developed in cooperation with tank
22 owners and tank operators;

23 “(C) take into consideration training pro-
24 grams implemented by tank owners and tank

1 operators as of the date of enactment of this
2 section; and

3 “(D) be appropriately communicated to
4 tank owners and operators.

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

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

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

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

20 “(A) a requirement or standard promul-
21 gated by the Administrator under section 9003;

22 or

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

1 (b) STATE PROGRAM REQUIREMENT.—Section
2 9004(a) of the Solid Waste Disposal Act (42 U.S.C.
3 6991c(a)) is amended by striking “and” at the end of
4 paragraph (7), by striking the period at the end of para-
5 graph (8) and inserting “; and”, and by adding the fol-
6 lowing new paragraph at the end thereof:

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

9 (c) ENFORCEMENT.—Section 9006(d)(2) of such Act
10 (42 U.S.C. 6991e) is amended as follows:

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

13 (2) By adding the following new subparagraph
14 after subparagraph (C):

15 “(D) the training requirements established by
16 States pursuant to section 9010 (relating to oper-
17 ator training); or”.

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

“Sec. 9010. Operator training.”.

21 **SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDI-**
22 **TIVES.**

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

25 (1) In paragraph (7)(A)—

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

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

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

10 “(12) REMEDIATION OF OXYGENATED FUEL
11 CONTAMINATION.—

12 “(A) IN GENERAL.—The Administrator
13 and the States may use funds made available
14 under section 9014(2)(B) to carry out correc-
15 tive actions with respect to a release of a fuel
16 containing an oxygenated fuel additive that pre-
17 sents a threat to human health or welfare or
18 the environment.

19 “(B) APPLICABLE AUTHORITY.—The Ad-
20 ministrator or a State shall carry out subpara-
21 graph (A) in accordance with paragraph (2),
22 and in the case of a State, in accordance with
23 a cooperative agreement entered into by the Ad-
24 ministrator and the State under paragraph
25 (7).”.

1 **SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND EN-**
2 **FORCEMENT.**

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

6 **“SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND**
7 **COMPLIANCE.**

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

11 “(1) by a State, in accordance with a grant or
12 cooperative agreement with the Administrator, of
13 State regulations pertaining to underground storage
14 tanks regulated under this subtitle; and

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

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

21 “(i) **GOVERNMENT-OWNED TANKS.**—

22 “(1) **STATE COMPLIANCE REPORT.**—(A) Not
23 later than 2 years after the date of enactment of
24 this subsection, each State that receives funding
25 under this subtitle shall submit to the Administrator
26 a State compliance report that—

1 “(i) lists the location and owner of each
2 underground storage tank described in subpara-
3 graph (B) in the State that, as of the date of
4 submission of the report, is not in compliance
5 with section 9003; and

6 “(ii) specifies the date of the last inspec-
7 tion and describes the actions that have been
8 and will be taken to ensure compliance of the
9 underground storage tank listed under clause
10 (i) with this subtitle.

11 “(B) An underground storage tank described in
12 this subparagraph is an underground storage tank
13 that is—

14 “(i) regulated under this subtitle; and

15 “(ii) owned or operated by the Federal,
16 State, or local government.

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

20 “(2) FINANCIAL INCENTIVE.—The Adminis-
21 trator may award to a State that develops a report
22 described in paragraph (1), in addition to any other
23 funds that the State is entitled to receive under this
24 subtitle, not more than \$50,000, to be used to carry
25 out the report.

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

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

7 “(d) PUBLIC RECORD.—

8 “(1) IN GENERAL.—The Administrator shall re-
9 quire each State that receives Federal funds to carry
10 out this subtitle to maintain, update at least annu-
11 ally, and make available to the public, in such man-
12 ner and form as the Administrator shall prescribe
13 (after consultation with States), a record of under-
14 ground storage tanks regulated under this subtitle.

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

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

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

22 “(i) this subtitle; or

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

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

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

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

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

12 “(2) Any other factor the Administrator con-
13 siders appropriate.”.

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

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

17 **SEC. 1527. DELIVERY PROHIBITION.**

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

21 **“SEC. 9012. DELIVERY PROHIBITION.**

22 “(a) REQUIREMENTS.—

23 “(1) PROHIBITION OF DELIVERY OR DE-
24 POSIT.—Beginning 2 years after the date of enact-
25 ment of this section, it shall be unlawful to deliver

1 to, deposit into, or accept a regulated substance into
2 an underground storage tank at a facility which has
3 been identified by the Administrator or a State im-
4 plementing agency to be ineligible for fuel delivery or
5 deposit.

6 “(2) GUIDANCE.—Within 1 year after the date
7 of enactment of this section, the Administrator and
8 States that receive funding under this subtitle shall,
9 in consultation with the underground storage tank
10 owner and product delivery industries, for territory
11 for which they are the primary implementing agen-
12 cies, publish guidelines detailing the specific proc-
13 esses and procedures they will use to implement the
14 provisions of this section. The processes and proce-
15 dures include, at a minimum—

16 “(A) the criteria for determining which un-
17 derground storage tank facilities are ineligible
18 for delivery or deposit;

19 “(B) the mechanisms for identifying which
20 facilities are ineligible for delivery or deposit to
21 the underground storage tank owning and fuel
22 delivery industries;

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

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

4 “(3) DELIVERY PROHIBITION NOTICE.—

5 “(A) ROSTER.—The Administrator and
6 each State implementing agency that receives
7 funding under this subtitle shall establish with-
8 in 24 months after the date of enactment of
9 this section a Delivery Prohibition Roster list-
10 ing underground storage tanks under the Ad-
11 ministrators’ or the State’s jurisdiction that are
12 determined to be ineligible for delivery or de-
13 posit pursuant to paragraph (2).

14 “(B) NOTIFICATION.—The Administrator
15 and each State, as appropriate, shall make
16 readily known, to underground storage tank
17 owners and operators and to product delivery
18 industries, the underground storage tanks listed
19 on a Delivery Prohibition Roster by:

20 “(i) posting such Rosters, including
21 the physical location and street address of
22 each listed underground storage tank, on
23 official web sites and, if the Administrator
24 or the State so chooses, other electronic
25 means;

1 “(ii) updating these Rosters periodically;
2 and

3 “(iii) installing a tamper-proof tag,
4 seal, or other device blocking the fill pipes
5 of such underground storage tanks to prevent
6 the delivery of product into such underground
7 storage tanks.

8 “(C) ROSTER UPDATES.—The Administrator
9 and the State shall update the Delivery
10 Prohibition Rosters as appropriate, but not less
11 than once a month on the first day of the
12 month.

13 “(D) TAMPERING WITH DEVICE.—

14 “(i) PROHIBITION.—It shall be unlawful
15 for any person, other than an authorized
16 representative of the Administrator or
17 a State, as appropriate, to remove, tamper
18 with, destroy, or damage a device installed
19 by the Administrator or a State, as appropriate,
20 under subparagraph (B)(iii) of this
21 subsection.

22 “(ii) CIVIL PENALTIES.—Any person
23 violating clause (i) of this subparagraph
24 shall be subject to a civil penalty not to exceed
25 \$10,000 for each violation.

1 “(4) LIMITATION.—

2 “(A) RURAL AND REMOTE AREAS.—Sub-
3 ject to subparagraph (B), the Administrator or
4 a State shall not include an underground stor-
5 age tank on a Delivery Prohibition Roster
6 under paragraph (3) if an urgent threat to pub-
7 lic health, as determined by the Administrator,
8 does not exist and if such a delivery prohibition
9 would jeopardize the availability of, or access
10 to, fuel in any rural and remote areas.

11 “(B) APPLICABILITY OF LIMITATION.—
12 The limitation under subparagraph (A) shall
13 apply only during the 180-day period following
14 the date of a determination by the Adminis-
15 trator or the appropriate State that exercising
16 the authority of paragraph (3) is limited by
17 subparagraph (A).

18 “(b) EFFECT ON STATE AUTHORITY.—Nothing in
19 this section shall affect the authority of a State to prohibit
20 the delivery of a regulated substance to an underground
21 storage tank.

22 “(c) DEFENSE TO VIOLATION.—A person shall not
23 be in violation of subsection (a)(1) if the underground
24 storage tank into which a regulated substance is delivered
25 is not listed on the Administrator’s or the appropriate

1 State’s Prohibited Delivery Roster 7 calendar days prior
2 to the delivery being made.”.

3 (b) ENFORCEMENT.—Section 9006(d)(2) of such Act
4 (42 U.S.C. 6991e(d)(2)) is amended as follows:

5 (1) By adding the following new subparagraph
6 after subparagraph (D):

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

9 (2) By adding the following new sentence at the
10 end thereof: “Any person making or accepting a de-
11 livery or deposit of a regulated substance to an un-
12 derground storage tank at an ineligible facility in
13 violation of section 9012 shall also be subject to the
14 same civil penalty for each day of such violation.”.

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

“Sec. 9012. Delivery prohibition.”.

18 **SEC. 1528. FEDERAL FACILITIES.**

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

21 **“SEC. 9007. FEDERAL FACILITIES.**

22 “(a) IN GENERAL.—Each department, agency, and
23 instrumentality of the executive, legislative, and judicial
24 branches of the Federal Government (1) having jurisdic-
25 tion over any underground storage tank or underground

1 storage tank system, or (2) engaged in any activity result-
2 ing, or which may result, in the installation, operation,
3 management, or closure of any underground storage tank,
4 release response activities related thereto, or in the deliv-
5 ery, acceptance, or deposit of any regulated substance to
6 an underground storage tank or underground storage tank
7 system shall be subject to, and comply with, all Federal,
8 State, interstate, and local requirements, both substantive
9 and procedural (including any requirement for permits or
10 reporting or any provisions for injunctive relief and such
11 sanctions as may be imposed by a court to enforce such
12 relief), respecting underground storage tanks in the same
13 manner, and to the same extent, as any person is subject
14 to such requirements, including the payment of reasonable
15 service charges. The Federal, State, interstate, and local
16 substantive and procedural requirements referred to in
17 this subsection include, but are not limited to, all adminis-
18 trative orders and all civil and administrative penalties
19 and fines, regardless of whether such penalties or fines
20 are punitive or coercive in nature or are imposed for iso-
21 lated, intermittent, or continuing violations. The United
22 States hereby expressly waives any immunity otherwise
23 applicable to the United States with respect to any such
24 substantive or procedural requirement (including, but not
25 limited to, any injunctive relief, administrative order or

1 civil or administrative penalty or fine referred to in the
2 preceding sentence, or reasonable service charge). The rea-
3 sonable service charges referred to in this subsection in-
4 clude, but are not limited to, fees or charges assessed in
5 connection with the processing and issuance of permits,
6 renewal of permits, amendments to permits, review of
7 plans, studies, and other documents, and inspection and
8 monitoring of facilities, as well as any other nondiscrim-
9 inatory charges that are assessed in connection with a
10 Federal, State, interstate, or local underground storage
11 tank regulatory program. Neither the United States, nor
12 any agent, employee, or officer thereof, shall be immune
13 or exempt from any process or sanction of any State or
14 Federal Court with respect to the enforcement of any such
15 injunctive relief. No agent, employee, or officer of the
16 United States shall be personally liable for any civil pen-
17 alty under any Federal, State, interstate, or local law con-
18 cerning underground storage tanks with respect to any act
19 or omission within the scope of the official duties of the
20 agent, employee, or officer. An agent, employee, or officer
21 of the United States shall be subject to any criminal sanc-
22 tion (including, but not limited to, any fine or imprison-
23 ment) under any Federal or State law concerning under-
24 ground storage tanks, but no department, agency, or in-
25 strumentality of the executive, legislative, or judicial

1 branch of the Federal Government shall be subject to any
2 such sanction. The President may exempt any under-
3 ground storage tank of any department, agency, or instru-
4 mentality in the executive branch from compliance with
5 such a requirement if he determines it to be in the para-
6 mount interest of the United States to do so. No such
7 exemption shall be granted due to lack of appropriation
8 unless the President shall have specifically requested such
9 appropriation as a part of the budgetary process and the
10 Congress shall have failed to make available such re-
11 quested appropriation. Any exemption shall be for a period
12 not in excess of one year, but additional exemptions may
13 be granted for periods not to exceed one year upon the
14 President's making a new determination. The President
15 shall report each January to the Congress all exemptions
16 from the requirements of this section granted during the
17 preceding calendar year, together with his reason for
18 granting each such exemption.

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

21 “(1) REVIEW.—Not later than 12 months after
22 the date of enactment of the Underground Storage
23 Tank Compliance Act of 2003, each Federal agency
24 that owns or operates 1 or more underground stor-
25 age tanks, or that manages land on which 1 or more

1 underground storage tanks are located, shall submit
2 to the Administrator, the Committee on Energy and
3 Commerce of the United States House of Represent-
4 atives, and the Committee on the Environment and
5 Public Works of the United States Senate a compli-
6 ance strategy report that—

7 “(A) lists the location and owner of each
8 underground storage tank described in this
9 paragraph;

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

13 “(C) specifies the date of the last inspec-
14 tion by a State or Federal inspector of each un-
15 derground storage tank owned or operated by
16 the agency;

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

20 “(E) describes the operator training that
21 has been provided to the operator and other
22 persons having primary daily on-site manage-
23 ment responsibility for the operation and main-
24 tenance of underground storage tanks owned or
25 operated by the agency; and

1 “(F) describes the actions that have been
2 and will be taken to ensure compliance for each
3 underground storage tank identified under sub-
4 paragraph (B).

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

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

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

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

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

17 “(1) giving priority to releases that present the
18 greatest threat to human health or the environment,
19 to take necessary corrective action in response to re-
20 leases from leaking underground storage tanks lo-
21 cated wholly within the boundaries of—

22 “(A) an Indian reservation; or

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

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

4 “(A) an Indian reservation; or

5 “(B) any other area under the jurisdiction
6 of an Indian tribe.

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

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

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

15 The Administrator shall make the report under this sub-
16 section available to the public.

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

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

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

“Sec. 9013. Tanks on Tribal lands.”.

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

5 Not later than 2 years after the date of enactment
6 of this Act, the Administrator of the Environmental Pro-
7 tection Agency, after consultation with States, shall make
8 available to the public and to the Committee on Energy
9 and Commerce of the House of Representatives and the
10 Committee on Environment and Public Works of the Sen-
11 ate information on the effectiveness of alternative possible
12 methods and means for containing releases from under-
13 ground storage tanks systems.

14 **SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.**

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

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

19 “There are authorized to be appropriated to the Ad-
20 ministrator the following amounts:

21 “(1) To carry out subtitle I (except sections
22 9003(h), 9005(e), 9011 and 9012) \$50,000,000 for
23 each of fiscal years 2004 through 2008.

1 “(2) From the Trust Fund, notwithstanding
2 section 9508(c)(1) of the Internal Revenue Code of
3 1986:

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

7 “(B) to carry out section 9003(h)(12),
8 \$200,000,000 for each of fiscal years 2004
9 through 2008;

10 “(C) to carry out sections 9004(f) and
11 9005(c) \$100,000,000 for each of fiscal years
12 2004 through 2008; and

13 “(D) to carry out sections 9011 and 9012
14 \$55,000,000 for each of fiscal years 2004
15 through 2008.”.

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

“Sec. 9014. Authorization of appropriations.”.

19 **SEC. 1532. CONFORMING AMENDMENTS.**

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

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

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

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

7 “(1) INDIAN TRIBE.—

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

14 “(B) INCLUSIONS.—The term ‘Indian
15 tribe’ includes an Alaska Native village, as de-
16 fined in or established under the Alaska Native
17 Claims Settlement Act (43 U.S.C. 1601 et
18 seq.); and”.

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

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

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

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

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

8 (B) in paragraphs (2) and (3), by striking
9 “9001(2)(A)” each place it appears and insert-
10 ing “9001(7)(A)”.

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

16 (3) Section 9009 (42 U.S.C. 6991h) is amend-
17 ed—

18 (A) in subsection (a), by striking
19 “9001(2)(B)” and inserting “9001(7)(B)”; and

20 (B) in subsection (d), by striking “section
21 9001(1) (A) and (B)” and inserting “subpara-
22 graphs (A) and (B) of section 9001(10)”.

23 **SEC. 1533. TECHNICAL AMENDMENTS.**

24 The Solid Waste Disposal Act is amended as follows:

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

4 (2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1))
5 is amended by striking “subsection (c) and (d) of
6 this section” and inserting “subsections (c) and
7 (d)”.

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

12 (4) Section 9005 (42 U.S.C. 6991d) is amend-
13 ed—

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

16 (B) in subsection (b)(1), by striking
17 “relevent” and inserting “relevant”; and

18 (C) in subsection (b)(4), by striking
19 “Evironmental” and inserting “Environ-
20 mental”.

TITLE XVI—STUDIES**SEC. 1601. STUDY ON INVENTORY OF PETROLEUM AND
NATURAL GAS STORAGE.**

(a) DEFINITION.—For purposes of this section “petroleum” means crude oil, motor gasoline, jet fuel, distillates, and propane.

(b) STUDY.—The Secretary of Energy shall conduct a study on petroleum and natural gas storage capacity and operational inventory levels, nationwide and by major geographical regions.

(c) CONTENTS.—The study shall address—

(1) historical normal ranges for petroleum and natural gas inventory levels;

(2) historical and projected storage capacity trends;

(3) estimated operation inventory levels below which outages, delivery slowdown, rationing, interruptions in service, or other indicators of shortage begin to appear;

(4) explanations for inventory levels dropping below normal ranges; and

(5) the ability of industry to meet United States demand for petroleum and natural gas without shortages or price spikes, when inventory levels are below normal ranges.

1 (d) REPORT TO CONGRESS.—Not later than 1 year
2 after the date of enactment of this Act, the Secretary of
3 Energy shall submit a report to Congress on the results
4 of the study, including findings and any recommendations
5 for preventing future supply shortages.

6 **SEC. 1602. NATURAL GAS SUPPLY SHORTAGE REPORT.**

7 (a) REPORT.—Not later than 6 months after the date
8 of enactment of this Act, the Secretary of Energy shall
9 submit to Congress a report on natural gas supplies and
10 demand. In preparing the report, the Secretary shall con-
11 sult with experts in natural gas supply and demand as
12 well as representatives of State and local units of govern-
13 ment, tribal organizations, and consumer and other orga-
14 nizations. As the Secretary deems advisable, the Secretary
15 may hold public hearings and provide other opportunities
16 for public comment. The report shall contain recommenda-
17 tions for Federal actions that, if implemented, will result
18 in a balance between natural gas supply and demand at
19 a level that will ensure, to the maximum extent prac-
20 ticable, achievement of the objectives established in sub-
21 section (b).

22 (b) OBJECTIVES OF REPORT.—In preparing the re-
23 port, the Secretary shall seek to develop a series of rec-
24 ommendations that will result in a balance between nat-
25 ural gas supply and demand adequate to—

1 (1) provide residential consumers with natural
2 gas at reasonable and stable prices;

3 (2) accommodate long-term maintenance and
4 growth of domestic natural gas-dependent industrial,
5 manufacturing, and commercial enterprises;

6 (3) facilitate the attainment of national ambient
7 air quality standards under the Clean Air Act;

8 (4) permit continued progress in reducing emis-
9 sions associated with electric power generation; and

10 (5) support development of the preliminary
11 phases of hydrogen-based energy technologies.

12 (c) CONTENTS OF REPORT.—The report shall provide
13 a comprehensive analysis of natural gas supply and de-
14 mand in the United States for the period from 2004 to
15 2015. The analysis shall include, at a minimum—

16 (1) estimates of annual domestic demand for
17 natural gas that take into account the effect of Fed-
18 eral policies and actions that are likely to increase
19 and decrease demand for natural gas;

20 (2) projections of annual natural gas supplies,
21 from domestic and foreign sources, under existing
22 Federal policies;

23 (3) an identification of estimated natural gas
24 supplies that are not available under existing Fed-
25 eral policies;

1 (4) scenarios for decreasing natural gas demand
2 and increasing natural gas supplies comparing rel-
3 ative economic and environmental impacts of Fed-
4 eral policies that—

5 (A) encourage or require the use of natural
6 gas to meet air quality, carbon dioxide emission
7 reduction, or energy security goals;

8 (B) encourage or require the use of energy
9 sources other than natural gas, including coal,
10 nuclear, and renewable sources;

11 (C) support technologies to develop alter-
12 native sources of natural gas and synthetic gas,
13 including coal gasification technologies;

14 (D) encourage or require the use of energy
15 conservation and demand side management
16 practices; and

17 (E) affect access to domestic natural gas
18 supplies; and

19 (5) recommendations for Federal actions to
20 achieve the objectives of the report, including rec-
21 ommendations that—

22 (A) encourage or require the use of energy
23 sources other than natural gas, including coal,
24 nuclear, and renewable sources;

1 (B) encourage or require the use of energy
2 conservation or demand side management prac-
3 tices;

4 (C) support technologies for the develop-
5 ment of alternative sources of natural gas and
6 synthetic gas, including coal gasification tech-
7 nologies; and

8 (D) will improve access to domestic natural
9 gas supplies.

10 **SEC. 1603. SPLIT-ESTATE FEDERAL OIL AND GAS LEASING**
11 **AND DEVELOPMENT PRACTICES.**

12 (a) REVIEW.—In consultation with affected private
13 surface owners, oil and gas industry, and other interested
14 parties, the Secretary of the Interior shall undertake a re-
15 view of the current policies and practices with respect to
16 management of Federal subsurface oil and gas develop-
17 ment activities and their effects on the privately owned
18 surface. This review shall include—

19 (1) a comparison of the rights and responsibil-
20 ities under existing mineral and land law for the
21 owner of a Federal mineral lease, the private surface
22 owners and the Department;

23 (2) a comparison of the surface owner consent
24 provisions in section 714 of the Surface Mining Con-
25 trol and Reclamation Act of 1977 (30 U.S.C. 1304)

1 concerning surface mining of Federal coal deposits
2 and the surface owner consent provisions for oil and
3 gas development, including coalbed methane produc-
4 tion; and

5 (3) recommendations for administrative or leg-
6 islative action necessary to facilitate reasonable ac-
7 cess for Federal oil and gas activities while address-
8 ing surface owner concerns and minimizing impacts
9 to private surface.

10 (b) REPORT.—The Secretary of the Interior shall re-
11 port the results of such review to Congress not later than
12 180 days after the date of enactment of this Act.

13 **SEC. 1604. RESOLUTION OF FEDERAL RESOURCE DEVELOP-**
14 **MENT CONFLICTS IN THE POWDER RIVER**
15 **BASIN.**

16 The Secretary of the Interior shall—

17 (1) undertake a review of existing authorities to
18 resolve conflicts between the development of Federal
19 coal and the development of Federal and non-Fed-
20 eral coalbed methane in the Powder River Basin in
21 Wyoming and Montana; and

22 (2) not later than 6 months after the date of
23 enactment of this Act, report to Congress on alter-
24 natives to resolve these conflicts and identification of
25 a preferred alternative with specific legislative lan-

1 guage, if any, required to implement the preferred
2 alternative.

3 **SEC. 1605. STUDY OF ENERGY EFFICIENCY STANDARDS.**

4 The Secretary of Energy shall contract with the Na-
5 tional Academy of Sciences for a study, to be completed
6 within 1 year after the date of enactment of this Act, to
7 examine whether the goals of energy efficiency standards
8 are best served by measurement of energy consumed, and
9 efficiency improvements, at the actual site of energy con-
10 sumption, or through the full fuel cycle, beginning at the
11 source of energy production. The Secretary shall submit
12 the report to Congress.

13 **SEC. 1606. TELECOMMUTING STUDY.**

14 (a) **STUDY REQUIRED.**—The Secretary, in consulta-
15 tion with the Commission, the Director of the Office of
16 Personnel Management, the Administrator of General
17 Services, and the Administrator of NTIA, shall conduct
18 a study of the energy conservation implications of the
19 widespread adoption of telecommuting by Federal employ-
20 ees in the United States.

21 (b) **REQUIRED SUBJECTS OF STUDY.**—The study re-
22 quired by subsection (a) shall analyze the following sub-
23 jects in relation to the energy saving potential of telecom-
24 muting by Federal employees:

1 (1) Reductions of energy use and energy costs
2 in commuting and regular office heating, cooling,
3 and other operations.

4 (2) Other energy reductions accomplished by
5 telecommuting.

6 (3) Existing regulatory barriers that hamper
7 telecommuting, including barriers to broadband tele-
8 communications services deployment.

9 (4) Collateral benefits to the environment, fam-
10 ily life, and other values.

11 (c) REPORT REQUIRED.—The Secretary shall submit
12 to the President and Congress a report on the study re-
13 quired by this section not later than 6 months after the
14 date of enactment of this Act. Such report shall include
15 a description of the results of the analysis of each of the
16 subject described in subsection (b).

17 (d) DEFINITIONS.—As used in this section:

18 (1) SECRETARY.—The term “Secretary” means
19 the Secretary of Energy.

20 (2) COMMISSION.—The term “Commission”
21 means the Federal Communications Commission.

22 (3) NTIA.—The term “NTIA” means the Na-
23 tional Telecommunications and Information Admin-
24 istration of the Department of Commerce.

1 (4) TELECOMMUTING.—The term “telecom-
2 muting” means the performance of work functions
3 using communications technologies, thereby elimi-
4 nating or substantially reducing the need to com-
5 mute to and from traditional worksites.

6 (5) FEDERAL EMPLOYEE.—The term “Federal
7 employee” has the meaning provided the term “em-
8 ployee” by section 2105 of title 5, United States
9 Code.

10 **SEC. 1607. LIHEAP REPORT.**

11 Not later than 1 year after the date of enactment
12 of this Act, the Secretary of Health and Human Services
13 shall transmit to Congress a report on how the Low-In-
14 come Home Energy Assistance Program could be used
15 more effectively to prevent loss of life from extreme tem-
16 peratures. In preparing such report, the Secretary shall
17 consult with appropriate officials in all 50 States and the
18 District of Columbia.

19 **SEC. 1608. OIL BYPASS FILTRATION TECHNOLOGY.**

20 The Secretary of Energy and the Administrator of
21 the Environmental Protection Agency shall—

22 (1) conduct a joint study of the benefits of oil
23 bypass filtration technology in reducing demand for
24 oil and protecting the environment;

1 (2) examine the feasibility of using oil bypass
2 filtration technology in Federal motor vehicle fleets;
3 and

4 (3) include in such study, prior to any deter-
5 mination of the feasibility of using oil bypass filtra-
6 tion technology, the evaluation of products and var-
7 ious manufacturers.

8 **SEC. 1609. TOTAL INTEGRATED THERMAL SYSTEMS.**

9 The Secretary of Energy shall—

10 (1) conduct a study of the benefits of total inte-
11 grated thermal systems in reducing demand for oil
12 and protecting the environment; and

13 (2) examine the feasibility of using total inte-
14 grated thermal systems in Department of Defense
15 and other Federal motor vehicle fleets.

16 **SEC. 1610. UNIVERSITY COLLABORATION.**

17 Not later than 2 years after the date of enactment
18 of this Act, the Secretary of Energy shall transmit to Con-
19 gress a report that examines the feasibility of promoting
20 collaborations between large institutions of higher edu-
21 cation and small institutions of higher education through
22 grants, contracts, and cooperative agreements made by the
23 Secretary for energy projects. The Secretary shall also
24 consider providing incentives for the inclusion of small in-
25 stitutions of higher education, including minority-serving

1 institutions, in energy research grants, contracts, and co-
2 operative agreements.

3 **SEC. 1611. RELIABILITY AND CONSUMER PROTECTION AS-**
4 **SESSMENT.**

5 Not later than 5 years after the date of enactment
6 of this Act, and each 5 years thereafter, the Federal En-
7 ergy Regulatory Commission shall assess the effects of the
8 exemption of electric cooperatives and government-owned
9 utilities from Commission regulation under section 201(f)
10 of the Federal Power Act. The assessment shall include
11 any effects on—

12 (1) reliability of interstate electric transmission
13 networks;

14 (2) benefit to consumers, and efficiency, of
15 competitive wholesale electricity markets;

16 (3) just and reasonable rates for electricity con-
17 sumers; and

18 (4) the ability of the Commission to protect
19 electricity consumers.

20 If the Commission finds that the 201(f) exemption results
21 in adverse effects on consumers or electric reliability, the
22 Commission shall make appropriate recommendations to
23 Congress pursuant to section 311 of the Federal Power
24 Act.

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