

109TH CONGRESS
1ST SESSION

S. 387

To amend the Internal Revenue Code of 1986 to provide tax incentives for the investment in greenhouse gas intensity reduction projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. HAGEL (for himself, Mr. ALEXANDER, Mr. CRAIG, and Mrs. DOLE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide tax incentives for the investment in greenhouse gas intensity reduction projects, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; AMENDMENT OF CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Climate Change Technology Tax Incentives Act of
6 2005”.

7 (b) AMENDMENT OF CODE.—Except as otherwise ex-
8 pressly provided, whenever in this Act an amendment or
9 repeal is expressed in terms of an amendment to, or repeal

1 of, a section or other provision, the reference shall be con-
 2 sidered to be made to a section or other provision of the
 3 Internal Revenue Code of 1986.

4 **TITLE I—GREENHOUSE GAS IN-**
 5 **TENSITY REDUCTION TAX IN-**
 6 **CENTIVES**

7 **SEC. 101. GREENHOUSE GAS INTENSITY REDUCTION IN-**
 8 **VESTMENT TAX CREDIT.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-
 10 chapter A of chapter 1 (relating to business-related cred-
 11 its) is amended by adding at the end the following new
 12 section:

13 **“SEC. 45J. GREENHOUSE GAS INTENSITY REDUCTION IN-**
 14 **VESTMENT CREDIT.**

15 “(a) ALLOWANCE OF CREDIT.—

16 “(1) IN GENERAL.—For purposes of section 38,
 17 in the case of a taxpayer’s investment in a green-
 18 house gas intensity reduction project approved by
 19 the accreditation panel, the greenhouse gas intensity
 20 reduction investment credit determined under this
 21 section for the taxable year is an amount equal to—

22 “(A) percentage reduction in greenhouse
 23 gas intensity certified for such project for such
 24 year by the accreditation panel, multiplied by

1 “(B) the investment in such project during
2 such year which is attributable, directly or indi-
3 rectly, to the taxpayer, as determined by the ac-
4 creditation panel.

5 “(2) AGGREGATE DOLLAR LIMITATION.—The
6 credit determined under paragraph (1) for any tax-
7 able year, when added to any credit allowed to the
8 taxpayer with respect to the such project in any pre-
9 ceding taxable year, shall not exceed 50 percent of
10 the investment attributable to the taxpayer with re-
11 spect to such project through such taxable year.

12 “(b) LIMITATION ON AGGREGATE CREDIT ALLOW-
13 ABLE.—

14 “(1) IN GENERAL.—The amount of the green-
15 house gas intensity reduction investment credit de-
16 termined under subsection (a) for any project, when
17 added to all such credits allowed to all taxpayers
18 with respect to the such project shall not exceed the
19 credit dollar amount allocated to such project under
20 this subsection by the accreditation panel from the
21 greenhouse gas intensity reduction investment credit
22 limitation for the calendar year in which such alloca-
23 tion is made.

24 “(2) TIME FOR MAKING ALLOCATION.—An allo-
25 cation shall be taken into account under paragraph

1 (1) only if it is made not later than the close of the
 2 calendar year in which the greenhouse gas intensity
 3 reduction project proposal with respect to such
 4 project is approved by the accreditation panel.

5 “(3) OVERALL LIMITATION ON AGGREGATE
 6 CREDIT ALLOWABLE.—The accreditation panel may
 7 allocate the aggregate credit dollar amount to any
 8 such project for a period not to exceed a 10-year pe-
 9 riod beginning with the calendar year described in
 10 paragraph (2).

11 “(c) LIMITATION ON AMOUNT OF CREDITS ALLO-
 12 CATED.—

13 “(1) IN GENERAL.—There is a greenhouse gas
 14 intensity reduction investment credit limitation
 15 amount for each calendar year. Such limitation
 16 amount is—

17 “(A) \$245,000,000 for 2006,

18 “(B) \$224,000,000 for 2007,

19 “(C) \$216,000,000 for 2008,

20 “(D) \$103,000,000 for 2009,

21 “(E) \$27,000,000 for 2010, and

22 “(F) except as provided in paragraph (2),
 23 zero thereafter.

24 “(2) CARRYOVER OF UNUSED ISSUANCE LIM-
 25 TATION.—If for any calendar year the limitation

1 amount imposed by paragraph (1) exceeds the
2 amount of greenhouse gas intensity reduction invest-
3 ment credits allocated during such year, such excess
4 shall be carried forward to the succeeding calendar
5 year as an addition to the limitation imposed by
6 paragraph (1).

7 “(d) GREENHOUSE GAS INTENSITY REDUCTION
8 PROJECT; GREENHOUSE GAS INTENSITY; ACCREDITA-
9 TION PANEL.—For purposes of this section—

10 “(1) GREENHOUSE GAS INTENSITY REDUCTION
11 PROJECT.—The term ‘greenhouse gas intensity re-
12 duction project’ means any project approved under
13 this section by the accreditation panel. Such ap-
14 proval shall be based on the following criteria:

15 “(A) The extent of the reduction in green-
16 house gas intensity proposed for the project.

17 “(B) Improvements in system efficiency.

18 “(C) In the case of projects located outside
19 the United States, the extent of technology
20 transfer.

21 “(D) The existence and nature of agree-
22 ments for sharing project benefits and liability
23 between the taxpayer and any host government.

24 “(2) GREENHOUSE GAS INTENSITY.—The
25 greenhouse gas intensity for any period is equal to

1 the volume of emissions divided by the economic ac-
2 tivity associated with a project.

3 “(3) ACCREDITATION PANEL.—The term ‘ac-
4 creditation panel’ means a panel certified by the
5 Secretary of Commerce.

6 “(e) RECAPTURE OF CREDIT IN CERTAIN CASES.—

7 “(1) IN GENERAL.—If, at any time during the
8 20-year period of a greenhouse gas intensity reduc-
9 tion project, there is a recapture event with respect
10 to such project, then the tax imposed by this chapter
11 for the taxable year in which such event occurs shall
12 be increased by the credit recapture amount.

13 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
14 poses of paragraph (1)—

15 “(A) IN GENERAL.—The credit recapture
16 amount is an amount equal to the recapture
17 percentage of all greenhouse gas intensity re-
18 duction investment credits previously allowable
19 to a taxpayer with respect to any investment in
20 such project that is attributable to such tax-
21 payer.

22 “(B) RECAPTURE PERCENTAGE.—The re-
23 capture percentage shall be 100 percent if the
24 recapture event occurs during the first 5 years
25 of the project, 75 percent if the recapture event

1 occurs during the second 5 years of the project,
2 50 percent if the recapture event occurs during
3 the third 5 years of the project, 25 percent if
4 the recapture event occurs during the fourth 5
5 years of the project, and 0 percent if the recap-
6 ture event occurs at any time after the 20th
7 year of the project.

8 “(3) RECAPTURE EVENT.—For purposes of
9 paragraph (1), there is a recapture event with re-
10 spect to a greenhouse gas intensity reduction project
11 if—

12 “(A) the taxpayer violates a term or condi-
13 tion of the approval of the project by the ac-
14 creditation panel at any time,

15 “(B) the taxpayer adopts a practice which
16 the accreditation panel has specified in its ap-
17 proval of the project as a practice which would
18 tend to defeat the purposes of the program, or

19 “(C) the taxpayer disposes of any owner-
20 ship interest arising out of its investment that
21 the accreditation panel has determined is attrib-
22 utable to the project, unless the accreditation
23 panel determines that such disposition will not
24 have any adverse effect on the greenhouse gas
25 intensity reduction project.

1 If an event which otherwise would be a recapture
2 event is outside the control of the taxpayer, as deter-
3 mined by the accreditation panel, such event shall
4 not be treated as a recapture event with respect to
5 such taxpayer.

6 “(4) SPECIAL RULES.—

7 “(A) TAX BENEFIT RULE.—The tax for
8 the taxable year shall be increased under para-
9 graph (1) only with respect to credits allowed
10 by reason of this section which were used to re-
11 duce tax liability. In the case of credits not so
12 used to reduce tax liability, the carryforwards
13 and carrybacks under section 39 shall be appro-
14 priately adjusted.

15 “(B) NO CREDITS AGAINST TAX.—Any in-
16 crease in tax under this subsection shall not be
17 treated as a tax imposed by this chapter for
18 purposes of determining the amount of any
19 credit under this chapter or for purposes of sec-
20 tion 55.

21 “(f) DISALLOWANCE OF DOUBLE BENEFIT.—

22 “(1) BASIS REDUCTION.—The basis of any in-
23 vestment in a greenhouse gas intensity reduction
24 project shall be reduced by the amount of any credit

1 determined under this section with respect to such
2 investment.

3 “(2) CHARITABLE DEDUCTION DISALLOWED.—

4 No deduction shall be allowed to a taxpayer under
5 section 170 with respect to any contribution which
6 the accreditation panel certifies to the Secretary con-
7 stitutes an investment in a greenhouse gas intensity
8 reduction project that is attributable to such tax-
9 payer.

10 “(g) CERTIFICATION TO SECRETARY.—The accredi-
11 tation panel shall certify to the Secretary before January
12 31 of each year with respect to each taxpayer which has
13 made an investment in a greenhouse gas intensity reduc-
14 tion project—

15 “(1) the amount of the greenhouse gas intensity
16 reduction investment credit allowable to such tax-
17 payer for the preceding calendar year,

18 “(2) whether a recapture event occurred with
19 respect to such taxpayer during the preceding cal-
20 endar year, and

21 “(3) the credit recapture amount, if any, with
22 respect to such taxpayer for the preceding calendar
23 year.

1 “(h) REGULATIONS.—The Secretary shall prescribe
2 such regulations as may be appropriate to carry out this
3 section, including regulations—

4 “(1) which limit the credit for investments
5 which are directly or indirectly subsidized by other
6 Federal benefits,

7 “(2) which prevent the abuse of the provisions
8 of this section through the use of related parties,
9 and

10 “(3) which impose appropriate reporting re-
11 quirements.”.

12 (b) CREDIT MADE PART OF GENERAL BUSINESS
13 CREDIT.—Subsection (b) of section 38 is amended by
14 striking “plus” at the end of paragraph (18), by striking
15 the period at the end of paragraph (19) and inserting “,
16 plus”, and by adding at the end the following new para-
17 graph:

18 “(20) the greenhouse gas intensity reduction in-
19 vestment credit determined under section 45J(a).”.

20 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
21 (c) of section 196 is amended by striking “and” at the
22 end of paragraph (11), by striking the period at the end
23 of paragraph (12) and inserting “, and”, and by adding
24 at the end the following new paragraph:

1 “(13) the greenhouse gas intensity reduction in-
2 vestment credit determined under section 45J(a).”.

3 (d) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1
5 is amended by adding at the end the following new item:
“Sec. 45J. Greenhouse gas intensity reduction investment credit.”.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to investments made after Decem-
8 ber 31, 2005.

9 **TITLE II—ENERGY EFFICIENCY**
10 **PROVISIONS**

11 **Subtitle A—Renewable Energy**

12 **SEC. 201. SENSE OF THE SENATE REGARDING EXTENSION**
13 **OF RENEWABLE ENERGY CREDIT.**

14 It is the sense of the Senate that the income tax cred-
15 it for electricity produced from certain renewable re-
16 sources under section 45 of the Internal Revenue Code
17 of 1986 should be extended through 2010.

1 **Subtitle B—Clean Coal Incentives**
 2 **PART I—CREDIT FOR EMISSION REDUCTIONS**
 3 **AND EFFICIENCY IMPROVEMENTS IN EXIST-**
 4 **ING COAL-BASED ELECTRICITY GENERATION**
 5 **FACILITIES**
 6 **SEC. 211. CREDIT FOR PRODUCTION FROM A QUALIFYING**
 7 **CLEAN COAL TECHNOLOGY UNIT.**

8 (a) CREDIT FOR PRODUCTION FROM A QUALIFYING
 9 CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV
 10 of subchapter A of chapter 1 (relating to business related
 11 credits), as amended by this Act, is amended by adding
 12 at the end the following new section:

13 **“SEC. 45K. CREDIT FOR PRODUCTION FROM A QUALIFYING**
 14 **CLEAN COAL TECHNOLOGY UNIT.**

15 “(a) GENERAL RULE.—For purposes of section 38,
 16 the qualifying clean coal technology production credit of
 17 any taxpayer for any taxable year is equal to—

18 “(1) the applicable amount of clean coal tech-
 19 nology production credit, multiplied by

20 “(2) the applicable percentage of the sum of—

21 “(A) the kilowatt hours of electricity, plus

22 “(B) each 3,413 Btu of fuels or chemicals,

23 produced by the taxpayer during such taxable

24 year at a qualifying clean coal technology unit,

25 but only if such production occurs during the

1 10-year period beginning on the date the unit
2 was returned to service after becoming a quali-
3 fying clean coal technology unit.

4 “(b) APPLICABLE AMOUNT.—

5 “(1) IN GENERAL.—For purposes of this sec-
6 tion, the applicable amount of clean coal technology
7 production credit is equal to \$0.0034.

8 “(2) INFLATION ADJUSTMENT.—For calendar
9 years after 2005, the applicable amount of clean coal
10 technology production credit shall be adjusted by
11 multiplying such amount by the inflation adjustment
12 factor for the calendar year in which the amount is
13 applied. If any amount as increased under the pre-
14 ceding sentence is not a multiple of 0.01 cent, such
15 amount shall be rounded to the nearest multiple of
16 0.01 cent.

17 “(c) APPLICABLE PERCENTAGE.—For purposes of
18 this section, with respect to any qualifying clean coal tech-
19 nology unit, the applicable percentage is the percentage
20 equal to the ratio which the portion of the national mega-
21 watt capacity limitation allocated to the taxpayer with re-
22 spect to such unit under subsection (e) bears to the total
23 megawatt capacity of such unit.

24 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
25 poses of this section—

1 “(1) QUALIFYING CLEAN COAL TECHNOLOGY
2 UNIT.—The term ‘qualifying clean coal technology
3 unit’ means a clean coal technology unit of the tax-
4 payer which—

5 “(A) on January 1, 2005—

6 “(i) was a coal-based electricity gener-
7 ating steam generator-turbine unit which
8 was not a clean coal technology unit, and

9 “(ii) had a nameplate capacity rating
10 of not more than 300 megawatts,

11 “(B) becomes a clean coal technology unit
12 as the result of the retrofitting, repowering, or
13 replacement of the unit with clean coal tech-
14 nology during the 10-year period beginning on
15 January 1, 2005,

16 “(C) is not receiving nor is scheduled to
17 receive funding under the Clean Coal Tech-
18 nology Program, the Power Plant Improvement
19 Initiative, or the Clean Coal Power Initiative
20 administered by the Secretary of Energy, and

21 “(D) receives an allocation of a portion of
22 the national megawatt capacity limitation under
23 subsection (e).

1 “(2) CLEAN COAL TECHNOLOGY UNIT.—The
2 term ‘clean coal technology unit’ means a unit
3 which—

4 “(A) uses clean coal technology, including
5 advanced pulverized coal or atmospheric fluid-
6 ized bed combustion, pressurized fluidized bed
7 combustion, integrated gasification combined
8 cycle, or any other technology, for the produc-
9 tion of electricity,

10 “(B) uses an input of at least 75 percent
11 coal to produce at least 50 percent of its ther-
12 mal output as electricity,

13 “(C) has a design net heat rate of at least
14 500 less than that of such unit as described in
15 paragraph (1)(A),

16 “(D) has a maximum design net heat rate
17 of not more than 9,500, and

18 “(E) meets the pollution control require-
19 ments of paragraph (3).

20 “(3) POLLUTION CONTROL REQUIREMENTS.—

21 “(A) IN GENERAL.—A unit meets the re-
22 quirements of this paragraph if—

23 “(i) its emissions of sulfur dioxide, ni-
24 trogen oxide, or particulates meet the

1 lower of the emission levels for each such
2 emission specified in—

3 “(I) subparagraph (B), or

4 “(II) the new source performance
5 standards of the Clean Air Act (42
6 U.S.C. 7411) which are in effect for
7 the category of source at the time of
8 the retrofitting, repowering, or re-
9 placement of the unit, and

10 “(ii) its emissions do not exceed any
11 relevant emission level specified by regula-
12 tion pursuant to the hazardous air pollut-
13 ant requirements of the Clean Air Act (42
14 U.S.C. 7412) in effect at the time of the
15 retrofitting, repowering, or replacement.

16 “(B) SPECIFIC LEVELS.—The levels speci-
17 fied in this subparagraph are—

18 “(i) in the case of sulfur dioxide emis-
19 sions, 50 percent of the sulfur dioxide
20 emission levels specified in the new source
21 performance standards of the Clean Air
22 Act (42 U.S.C. 7411) in effect on the date
23 of the enactment of this section for the
24 category of source,

1 “(ii) in the case of nitrogen oxide
2 emissions—

3 “(I) 0.1 pound per million Btu of
4 heat input if the unit is not a cyclone-
5 fired boiler, and

6 “(II) if the unit is a cyclone-fired
7 boiler, 15 percent of the uncontrolled
8 nitrogen oxide emissions from such
9 boilers, and

10 “(iii) in the case of particulate emis-
11 sions, 0.02 pound per million Btu of heat
12 input.

13 “(4) DESIGN NET HEAT RATE.—The design net
14 heat rate with respect to any unit, measured in Btu
15 per kilowatt hour (HHV)—

16 “(A) shall be based on the design annual
17 heat input to and the design annual net elec-
18 trical power, fuels, and chemicals output from
19 such unit (determined without regard to such
20 unit’s co-generation of steam),

21 “(B) shall be adjusted for the heat content
22 of the design coal to be used by the unit if it
23 is less than 12,000 Btu per pound according to
24 the following formula:

1 Design net heat rate = Unit net heat rate [1–
2 {((12,000-design coal heat content, Btu per pound)/
3 1,000) 0.013}],

4 “(C) shall be corrected for the site ref-
5 erence conditions of—

6 “(i) elevation above sea level of 500
7 feet,

8 “(ii) air pressure of 14.4 pounds per
9 square inch absolute (psia),

10 “(iii) temperature, dry bulb of 63°F,

11 “(iv) temperature, wet bulb of 54°F,

12 and

13 “(v) relative humidity of 55 percent,

14 and

15 “(D) if carbon capture controls have been
16 installed with respect to any qualifying unit and
17 such controls remove at least 50 percent of the
18 unit’s carbon dioxide emissions, shall be ad-
19 justed up to the design heat rate level which
20 would have resulted without the installation of
21 such controls.

22 “(5) HHV.—The term ‘HHV’ means higher
23 heating value.

1 “(6) APPLICATION OF CERTAIN RULES.—The
2 rules of paragraphs (3), (4), and (5) of section 45(e)
3 shall apply.

4 “(7) INFLATION ADJUSTMENT FACTOR.—

5 “(A) IN GENERAL.—The term ‘inflation
6 adjustment factor’ means, with respect to a cal-
7 endar year, a fraction the numerator of which
8 is the GDP implicit price deflator for the pre-
9 ceding calendar year and the denominator of
10 which is the GDP implicit price deflator for the
11 calendar year 2003.

12 “(B) GDP IMPLICIT PRICE DEFLATOR.—

13 The term ‘GDP implicit price deflator’ means,
14 for any calendar year, the most recent revision
15 of the implicit price deflator for the gross do-
16 mestic product as of June 30 of such calendar
17 year as computed by the Department of Com-
18 merce before October 1 of such calendar year.

19 “(8) NONCOMPLIANCE WITH POLLUTION
20 LAWS.—For purposes of this section, a unit which is
21 not in compliance with the applicable State and Fed-
22 eral pollution prevention, control, and permit re-
23 quirements for any period of time shall not be con-
24 sidered to be a qualifying clean coal technology unit
25 during such period.

1 “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-
2 PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY
3 UNITS.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, the national megawatt capacity limitation for
6 qualifying clean coal technology units is 4,000
7 megawatts.

8 “(2) ALLOCATION OF LIMITATION.—The Sec-
9 retary shall allocate the national megawatt capacity
10 limitation for qualifying clean coal technology units
11 in such manner as the Secretary may prescribe
12 under the regulations under paragraph (3).

13 “(3) REGULATIONS.—Not later than 6 months
14 after the date of the enactment of this section, the
15 Secretary shall prescribe such regulations as may be
16 necessary or appropriate—

17 “(A) to carry out the purposes of this sub-
18 section,

19 “(B) to limit the capacity of any qualifying
20 clean coal technology unit to which this section
21 applies so that the megawatt capacity allocated
22 to any unit under this subsection does not ex-
23 ceed 300 megawatts and the combined mega-
24 watt capacity allocated to all such units when
25 all such units are placed in service during the

1 10-year period described in subsection
2 (d)(1)(B), does not exceed 4,000 megawatts,

3 “(C) to provide a certification process
4 under which the Secretary, in consultation with
5 the Secretary of Energy, shall approve and allo-
6 cate the national megawatt capacity limita-
7 tion—

8 “(i) to encourage that units with the
9 highest thermal efficiencies, when adjusted
10 for the heat content of the design coal and
11 site reference conditions described in sub-
12 section (d)(4)(C), and environmental per-
13 formance, be placed in service as soon as
14 possible, and

15 “(ii) to allocate capacity to taxpayers
16 which have a definite and credible plan for
17 placing into commercial operation a quali-
18 fying clean coal technology unit, includ-
19 ing—

20 “(I) a site,

21 “(II) contractual commitments
22 for procurement and construction or,
23 in the case of regulated utilities, the
24 agreement of the State utility commis-
25 sion,

1 “(III) filings for all necessary
2 preconstruction approvals,

3 “(IV) a demonstrated record of
4 having successfully completed com-
5 parable projects on a timely basis, and

6 “(V) such other factors that the
7 Secretary determines are appropriate,

8 “(D) to allocate the national megawatt ca-
9 pacity limitation to a portion of the capacity of
10 a qualifying clean coal technology unit if the
11 Secretary determines that such an allocation
12 would maximize the amount of efficient produc-
13 tion encouraged with the available tax credits,

14 “(E) to set progress requirements and con-
15 ditional approvals so that capacity allocations
16 for clean coal technology units which become
17 unlikely to meet the necessary conditions for
18 qualifying can be reallocated by the Secretary
19 to other clean coal technology units, and

20 “(F) to provide taxpayers with opportuni-
21 ties to correct administrative errors and omis-
22 sions with respect to allocations and record
23 keeping within a reasonable period after dis-
24 covery, taking into account the availability of

1 regulations and other administrative guidance
2 from the Secretary.”.

3 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
4 tion 38(b) (relating to current year business credit), as
5 amended by this Act, is amended by striking “plus” at
6 the end of paragraph (19), by striking the period at the
7 end of paragraph (20) and inserting “, plus”, and by add-
8 ing at the end the following new paragraph:

9 “(21) the qualifying clean coal technology pro-
10 duction credit determined under section 45K(a).”.

11 (c) CLERICAL AMENDMENT.—The table of sections
12 for subpart D of part IV of subchapter A of chapter 1,
13 as amended by this Act, is amended by adding at the end
14 the following new item:

“Sec. 45K. Credit for production from a qualifying clean coal technology unit.”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to production after December 31,
17 2004, in taxable years ending after such date.

18 **PART II—INCENTIVES FOR EARLY COMMERCIAL**
19 **APPLICATIONS OF ADVANCED CLEAN COAL**
20 **TECHNOLOGIES**

21 **SEC. 212. CREDIT FOR INVESTMENT IN QUALIFYING AD-**
22 **VANCED CLEAN COAL TECHNOLOGY.**

23 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN
24 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating
25 to amount of credit) is amended by striking “and” at the

1 end of paragraph (1), by striking the period at the end
 2 of paragraph (2) and inserting “, and”, and by adding
 3 at the end the following new paragraph:

4 “(3) the qualifying advanced clean coal tech-
 5 nology unit credit.”.

6 (b) AMOUNT OF QUALIFYING ADVANCED CLEAN
 7 COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part
 8 IV of subchapter A of chapter 1 (relating to rules for com-
 9 puting investment credit) is amended by inserting after
 10 section 48 the following new section:

11 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-**
 12 **NOLOGY UNIT CREDIT.**

13 “(a) IN GENERAL.—For purposes of section 46, the
 14 qualifying advanced clean coal technology unit credit for
 15 any taxable year is an amount equal to 10 percent of the
 16 applicable percentage of the qualified investment in a
 17 qualifying advanced clean coal technology unit for such
 18 taxable year.

19 “(b) QUALIFYING ADVANCED CLEAN COAL TECH-
 20 NOLOGY UNIT.—

21 “(1) IN GENERAL.—For purposes of subsection
 22 (a), the term ‘qualifying advanced clean coal tech-
 23 nology unit’ means an advanced clean coal tech-
 24 nology unit of the taxpayer—

1 “(A)(i) in the case of a unit first placed in
2 service after December 31, 2004, the original
3 use of which commences with the taxpayer, or

4 “(ii) in the case of the retrofitting or
5 repowering of a unit first placed in service be-
6 fore January 1, 2005, the retrofitting or
7 repowering of which is completed by the tax-
8 payer after such date, or

9 “(B) which is depreciable under section
10 167,

11 “(C) which has a useful life of not less
12 than 4 years,

13 “(D) which is located in the United States,

14 “(E) which is not receiving nor is sched-
15 uled to receive funding under the Clean Coal
16 Technology Program, the Power Plant Improve-
17 ment Initiative, or the Clean Coal Power Initia-
18 tive administered by the Secretary of Energy,

19 “(F) which is not a qualifying clean coal
20 technology unit, and

21 “(G) which receives an allocation of a por-
22 tion of the national megawatt capacity limita-
23 tion under subsection (f).

1 “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—
2 For purposes of subparagraph (A) of paragraph (1),
3 in the case of a unit which—

4 “(A) is originally placed in service by a
5 person, and

6 “(B) is sold and leased back by such per-
7 son, or is leased to such person, within 3
8 months after the date such unit was originally
9 placed in service, for a period of not less than
10 12 years, such unit shall be treated as originally
11 placed in service not earlier than the date on
12 which such unit is used under the leaseback (or
13 lease) referred to in subparagraph (B). The
14 preceding sentence shall not apply to any prop-
15 erty if the lessee and lessor of such property
16 make an election under this sentence. Such an
17 election, once made, may be revoked only with
18 the consent of the Secretary.

19 “(3) NONCOMPLIANCE WITH POLLUTION
20 LAWS.—For purposes of this subsection, a unit
21 which is not in compliance with the applicable State
22 and Federal pollution prevention, control, and per-
23 mit requirements for any period of time shall not be
24 considered to be a qualifying advanced clean coal
25 technology unit during such period.

1 “(c) APPLICABLE PERCENTAGE.—For purposes of
2 this section, with respect to any qualifying advanced clean
3 coal technology unit, the applicable percentage is the per-
4 centage equal to the ratio which the portion of the national
5 megawatt capacity limitation allocated to the taxpayer
6 with respect to such unit under subsection (f) bears to
7 the total megawatt capacity of such unit.

8 “(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—
9 For purposes of this section—

10 “(1) IN GENERAL.—The term ‘advanced clean
11 coal technology unit’ means a new, retrofit, or
12 repowering unit of the taxpayer which—

13 “(A) is—

14 “(i) an eligible advanced pulverized
15 coal or atmospheric fluidized bed combus-
16 tion technology unit,

17 “(ii) an eligible pressurized fluidized
18 bed combustion technology unit,

19 “(iii) an eligible integrated gasifi-
20 cation combined cycle technology unit, or

21 “(iv) an eligible other technology unit,

22 and

23 “(B) meets the carbon emission rate re-
24 quirements of paragraph (6).

1 “(2) ELIGIBLE ADVANCED PULVERIZED COAL
2 OR ATMOSPHERIC FLUIDIZED BED COMBUSTION
3 TECHNOLOGY UNIT.—The term ‘eligible advanced
4 pulverized coal or atmospheric fluidized bed combus-
5 tion technology unit’ means a clean coal technology
6 unit using advanced pulverized coal or atmospheric
7 fluidized bed combustion technology which—

8 “(A) is placed in service after December
9 31, 2004, and before January 1, 2013, and

10 “(B) has a design net heat rate of not
11 more than 8,500 (8,900 in the case of units
12 placed in service before 2009).

13 “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED
14 COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-
15 ble pressurized fluidized bed combustion technology
16 unit’ means a clean coal technology unit using pres-
17 surized fluidized bed combustion technology which—

18 “(A) is placed in service after December
19 31, 2004, and before January 1, 2017, and

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).

1 “(4) ELIGIBLE INTEGRATED GASIFICATION
2 COMBINED CYCLE TECHNOLOGY UNIT.—The term
3 ‘eligible integrated gasification combined cycle tech-
4 nology unit’ means a clean coal technology unit
5 using integrated gasification combined cycle tech-
6 nology, with or without fuel or chemical co-produc-
7 tion, which—

8 “(A) is placed in service after December
9 31, 2004, and before January 1, 2017,

10 “(B) has a design net heat rate of not
11 more than 7,720 (8,900 in the case of units
12 placed in service before 2009, and 8,500 in the
13 case of units placed in service after 2008 and
14 before 2013), and

15 “(C) has a net thermal efficiency (HHV)
16 using coal with fuel or chemical co-production
17 of not less than 44.2 percent (38.4 percent in
18 the case of units placed in service before 2009,
19 and 40.2 percent in the case of units placed in
20 service after 2008 and before 2013).

21 “(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—
22 The term ‘eligible other technology unit’ means a
23 clean coal technology unit using any other tech-
24 nology for the production of electricity which is

1 placed in service after December 31, 2004, and be-
2 fore January 1, 2017.

3 “(6) CARBON EMISSION RATE REQUIRE-
4 MENTS.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), a unit meets the require-
7 ments of this paragraph if—

8 “(i) in the case of a unit using design
9 coal with a heat content of not more than
10 9,000 Btu per pound, the carbon emission
11 rate is less than 0.60 pound of carbon per
12 kilowatt hour, and

13 “(ii) in the case of a unit using design
14 coal with a heat content of more than
15 9,000 Btu per pound, the carbon emission
16 rate is less than 0.54 pound of carbon per
17 kilowatt hour.

18 “(B) ELIGIBLE OTHER TECHNOLOGY
19 UNIT.—In the case of an eligible other tech-
20 nology unit, subparagraph (A) shall be applied
21 by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and
22 ‘0.54’, respectively.

23 “(e) GENERAL DEFINITIONS.—Any term used in this
24 section which is also used in section 45K shall have the
25 meaning given such term in section 45M.

1 “(f) NATIONAL LIMITATION ON THE AGGREGATE CA-
2 PACITY OF ADVANCED CLEAN COAL TECHNOLOGY
3 UNITS.—

4 “(1) IN GENERAL.—For purposes of subsection
5 (b)(1)(G), the national megawatt capacity limitation
6 is—

7 “(A) for qualifying advanced clean coal
8 technology units using advanced pulverized coal
9 or atmospheric fluidized bed combustion tech-
10 nology, not more than 1,000 megawatts (not
11 more than 500 megawatts in the case of units
12 placed in service before 2009),

13 “(B) for such units using pressurized flu-
14 idized bed combustion technology, not more
15 than 500 megawatts (not more than 250
16 megawatts in the case of units placed in service
17 before 2009),

18 “(C) for such units using integrated gasifi-
19 cation combined cycle technology, with or with-
20 out fuel or chemical co-production, not more
21 than 2,000 megawatts (not more than 1,000
22 megawatts in the case of units placed in service
23 before 2009), and

24 “(D) for such units using other technology
25 for the production of electricity, not more than

1 500 megawatts (not more than 250 megawatts
2 in the case of units placed in service before
3 2009).

4 “(2) ALLOCATION OF LIMITATION.—The Sec-
5 retary shall allocate the national megawatt capacity
6 limitation for qualifying advanced clean coal tech-
7 nology units in such manner as the Secretary may
8 prescribe under the regulations under paragraph (3).

9 “(3) REGULATIONS.—Not later than 6 months
10 after the date of the enactment of this section, the
11 Secretary shall prescribe such regulations as may be
12 necessary or appropriate—

13 “(A) to carry out the purposes of this sub-
14 section and section 45L,

15 “(B) to limit the capacity of any qualifying
16 advanced clean coal technology unit to which
17 this section applies so that the combined mega-
18 watt capacity of all such units to which this sec-
19 tion applies does not exceed 4,000 megawatts,

20 “(C) to provide a certification process de-
21 scribed in section 45K(e)(3)(C),

22 “(D) to carry out the purposes described
23 in subparagraphs (D), (E), and (F) of section
24 45K(e)(3), and

1 “(E) to reallocate capacity which is not al-
2 located to any technology described in subpara-
3 graphs (A) through (D) of paragraph (1) be-
4 cause an insufficient number of qualifying units
5 request an allocation for such technology, to an-
6 other technology described in such subpara-
7 graphs in order to maximize the amount of en-
8 ergy efficient production encouraged with the
9 available tax credits.

10 “(4) SELECTION CRITERIA.—For purposes of
11 this subsection, the selection criteria for allocating
12 the national megawatt capacity limitation to quali-
13 fying advanced clean coal technology units—

14 “(A) shall be established by the Secretary
15 of Energy as part of a competitive solicitation,

16 “(B) shall include primary criteria of min-
17 imum design net heat rate, maximum design
18 thermal efficiency, environmental performance,
19 and lowest cost to the Government, and

20 “(C) shall include supplemental criteria as
21 determined appropriate by the Secretary of En-
22 ergy.

23 “(g) QUALIFIED INVESTMENT.—For purposes of
24 subsection (a), the term ‘qualified investment’ means, with
25 respect to any taxable year, the basis of a qualifying ad-

1 vanced clean coal technology unit placed in service by the
2 taxpayer during such taxable year (in the case of a unit
3 described in subsection (b)(1)(A)(ii), only that portion of
4 the basis of such unit which is properly attributable to
5 the retrofitting or repowering of such unit).

6 “(h) QUALIFIED PROGRESS EXPENDITURES.—

7 “(1) INCREASE IN QUALIFIED INVESTMENT.—

8 In the case of a taxpayer who has made an election
9 under paragraph (5), the amount of the qualified in-
10 vestment of such taxpayer for the taxable year (de-
11 termined under subsection (g) without regard to this
12 subsection) shall be increased by an amount equal to
13 the aggregate of each qualified progress expenditure
14 for the taxable year with respect to progress expend-
15 iture property.

16 “(2) PROGRESS EXPENDITURE PROPERTY DE-

17 FINED.—For purposes of this subsection, the term

18 ‘progress expenditure property’ means any property

19 being constructed by or for the taxpayer and which

20 it is reasonable to believe will qualify as a qualifying

21 advanced clean coal technology unit which is being

22 constructed by or for the taxpayer when it is placed

23 in service.

24 “(3) QUALIFIED PROGRESS EXPENDITURES DE-

25 FINED.—For purposes of this subsection—

1 “(A) SELF-CONSTRUCTED PROPERTY.—In
2 the case of any self-constructed property, the
3 term ‘qualified progress expenditures’ means
4 the amount which, for purposes of this subpart,
5 is properly chargeable (during such taxable
6 year) to capital account with respect to such
7 property.

8 “(B) NONSELF-CONSTRUCTED PROP-
9 ERTY.—In the case of nonself-constructed prop-
10 erty, the term ‘qualified progress expenditures’
11 means the amount paid during the taxable year
12 to another person for the construction of such
13 property.

14 “(4) OTHER DEFINITIONS.—For purposes of
15 this subsection—

16 “(A) SELF-CONSTRUCTED PROPERTY.—
17 The term ‘self-constructed property’ means
18 property for which it is reasonable to believe
19 that more than half of the construction expendi-
20 tures will be made directly by the taxpayer.

21 “(B) NONSELF-CONSTRUCTED PROP-
22 ERTY.—The term ‘nonself-constructed property’
23 means property which is not self-constructed
24 property.

1 “(C) CONSTRUCTION, ETC.—The term
2 ‘construction’ includes reconstruction and erec-
3 tion, and the term ‘constructed’ includes recon-
4 structed and erected.

5 “(D) ONLY CONSTRUCTION OF QUALI-
6 FYING ADVANCED CLEAN COAL TECHNOLOGY
7 UNIT TO BE TAKEN INTO ACCOUNT.—Construc-
8 tion shall be taken into account only if, for pur-
9 poses of this subpart, expenditures therefor are
10 properly chargeable to capital account with re-
11 spect to the property.

12 “(5) ELECTION.—An election under this sub-
13 section may be made at such time and in such man-
14 ner as the Secretary may by regulations prescribe.
15 Such an election shall apply to the taxable year for
16 which made and to all subsequent taxable years.
17 Such an election, once made, may not be revoked ex-
18 cept with the consent of the Secretary.

19 “(i) COORDINATION WITH OTHER CREDITS.—This
20 section shall not apply to any property with respect to
21 which the rehabilitation credit under section 47 or the en-
22 ergy credit under section 48 is allowed unless the taxpayer
23 elects to waive the application of such credit to such prop-
24 erty.”.

1 (c) RECAPTURE.—Section 50(a) (relating to other
2 special rules) is amended by adding at the end the fol-
3 lowing new paragraph:

4 “(6) SPECIAL RULES RELATING TO QUALIFYING
5 ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For
6 purposes of applying this subsection in the case of
7 any credit allowable by reason of section 48A, the
8 following rules shall apply:

9 “(A) GENERAL RULE.—In lieu of the
10 amount of the increase in tax under paragraph
11 (1), the increase in tax shall be an amount
12 equal to the investment tax credit allowed under
13 section 38 for all prior taxable years with re-
14 spect to a qualifying advanced clean coal tech-
15 nology unit (as defined by section 48A(b)(1))
16 multiplied by a fraction the numerator of which
17 is the number of years remaining to fully depre-
18 ciate under this title the qualifying advanced
19 clean coal technology unit disposed of, and the
20 denominator of which is the total number of
21 years over which such unit would otherwise
22 have been subject to depreciation. For purposes
23 of the preceding sentence, the year of disposi-
24 tion of the qualifying advanced clean coal tech-

1 nology unit shall be treated as a year of re-
 2 maining depreciation.

3 “(B) PROPERTY CEASES TO QUALIFY FOR
 4 PROGRESS EXPENDITURES.—Rules similar to
 5 the rules of paragraph (2) shall apply in the
 6 case of qualified progress expenditures for a
 7 qualifying advanced clean coal technology unit
 8 under section 48A, except that the amount of
 9 the increase in tax under subparagraph (A) of
 10 this paragraph shall be substituted for the
 11 amount described in such paragraph (2).

12 “(C) APPLICATION OF PARAGRAPH.—This
 13 paragraph shall be applied separately with re-
 14 spect to the credit allowed under section 38 re-
 15 garding a qualifying advanced clean coal tech-
 16 nology unit.”.

17 (d) TECHNICAL AMENDMENTS.—

18 (1) Section 49(a)(1)(C) is amended by striking
 19 “and” at the end of clause (ii), by striking the pe-
 20 riod at the end of clause (iii) and inserting “, and”,
 21 and by adding at the end the following new clause:

22 “(iv) the portion of the basis of any
 23 qualifying advanced clean coal technology
 24 unit attributable to any qualified invest-
 25 ment (as defined by section 48A(g)).”.

1 **“SEC. 45L. CREDIT FOR PRODUCTION FROM A QUALIFYING**
2 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

3 “(a) GENERAL RULE.—For purposes of section 38,
4 the qualifying advanced clean coal technology production
5 credit of any taxpayer for any taxable year is equal to—

6 “(1) the applicable amount of advanced clean
7 coal technology production credit, multiplied by

8 “(2) the applicable percentage (as determined
9 under section 48A(c)) of the sum of—

10 “(A) the kilowatt hours of electricity, plus

11 “(B) each 3,413 Btu of fuels or chemicals,
12 produced by the taxpayer during such taxable
13 year at a qualifying advanced clean coal tech-
14 nology unit, but only if such production occurs
15 during the 10-year period beginning on the date
16 the unit was originally placed in service (or re-
17 turned to service after becoming a qualifying
18 advanced clean coal technology unit).

19 “(b) APPLICABLE AMOUNT.—For purposes of this
20 section—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), the applicable amount of advanced clean
23 coal technology production credit with respect to
24 production from a qualifying advanced clean coal
25 technology unit shall be determined as follows:

1 “(A) If the qualifying advanced clean coal
 2 technology unit is producing electricity only:

3 “(i) In the case of a unit originally
 4 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.

5 “(ii) In the case of a unit originally
 6 placed in service after 2008 and before
 7 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.

8 “(iii) In the case of a unit originally
 9 placed in service after 2012 and before
 10 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.

11 “(B) If the qualifying advanced clean coal
 12 technology unit is producing fuel or chemicals:

13 “(i) In the case of a unit originally
 14 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.

1 “(ii) In the case of a unit originally
2 placed in service after 2008 and before
3 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.

4 “(iii) In the case of a unit originally
5 placed in service after 2012 and before
6 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.

7 “(2) SPECIAL RULE FOR UNITS QUALIFYING
8 FOR GREATER APPLICABLE AMOUNT WHEN PLACED
9 IN SERVICE.—If, at the time a qualifying advanced
10 clean coal technology unit is placed in service, pro-
11 duction from the unit would be entitled to a greater
12 applicable amount if such unit had been placed in
13 service at a later date, the applicable amount for
14 such unit shall be such greater amount.

1 “(c) INFLATION ADJUSTMENT.—For calendar years
2 after 2005, each dollar amount in subsection (b)(1) shall
3 be adjusted by multiplying such amount by the inflation
4 adjustment factor for the calendar year in which the
5 amount is applied. If any amount as increased under the
6 preceding sentence is not a multiple of 0.01 cent, such
7 amount shall be rounded to the nearest multiple of 0.01
8 cent.

9 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
10 poses of this section—

11 “(1) IN GENERAL.—Any term used in this sec-
12 tion which is also used in section 45K or 48A shall
13 have the meaning given such term in such section.

14 “(2) APPLICABLE RULES.—The rules of para-
15 graphs (3), (4), and (5) of section 45(e) shall
16 apply.”.

17 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
18 tion 38(b) (relating to current year business credit), as
19 amended by this Act, is amended by striking “plus” at
20 the end of paragraph (20), by striking the period at the
21 end of paragraph (21) and inserting “, plus”, and by add-
22 ing at the end the following new paragraph:

23 “(22) the qualifying advanced clean coal tech-
24 nology production credit determined under section
25 45L(a).”.

1 (c) DENIAL OF DOUBLE BENEFIT.—Section 29(d)
 2 (relating to other definitions and special rules) is amended
 3 by adding at the end the following new paragraph:

4 “(9) DENIAL OF DOUBLE BENEFIT.—This sec-
 5 tion shall not apply with respect to any qualified fuel
 6 the production of which may be taken into account
 7 for purposes of determining the credit under section
 8 45L.”.

9 (d) CLERICAL AMENDMENT.—The table of sections
 10 for subpart D of part IV of subchapter A of chapter 1,
 11 as amended by this Act, is amended by adding at the end
 12 the following new item:

“Sec. 45L. Credit for production from a qualifying advanced clean coal tech-
 nology unit.”.

13 (e) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to production after December 31,
 15 2004, in taxable years ending after such date.

16 **PART III—TREATMENT OF PERSONS NOT ABLE**

17 **TO USE ENTIRE CREDIT**

18 **SEC. 214. TREATMENT OF PERSONS NOT ABLE TO USE EN-**
 19 **TIRE CREDIT.**

20 (a) IN GENERAL.—Section 45K, as added by this
 21 Act, is amended by adding at the end the following new
 22 subsection:

23 “(f) TREATMENT OF PERSON NOT ABLE TO USE EN-
 24 TIRE CREDIT.—

1 “(1) ALLOWANCE OF CREDITS.—

2 “(A) IN GENERAL.—Any credit allowable
3 under this section, section 45L, or section 48A
4 with respect to a facility owned by a person de-
5 scribed in subparagraph (B) may be transferred
6 or used as provided in this subsection, and the
7 determination as to whether the credit is allow-
8 able shall be made without regard to the tax-
9 exempt status of the person.

10 “(B) PERSONS DESCRIBED.—A person is
11 described in this subparagraph if the person
12 is—

13 “(i) an organization described in sec-
14 tion 501(c)(12)(C) and exempt from tax
15 under section 501(a),

16 “(ii) an organization described in sec-
17 tion 1381(a)(2)(C),

18 “(iii) a public utility (as defined in
19 section 136(c)(2)(B)),

20 “(iv) any State or political subdivision
21 thereof, the District of Columbia, or any
22 agency or instrumentality of any of the
23 foregoing,

1 “(v) any Indian tribal government
2 (within the meaning of section 7871) or
3 any agency or instrumentality thereof, or

4 “(vi) the Tennessee Valley Authority.

5 “(2) TRANSFER OF CREDIT.—

6 “(A) IN GENERAL.—A person described in
7 clause (i), (ii), (iii), (iv), or (v) of paragraph
8 (1)(B) may transfer any credit to which para-
9 graph (1)(A) applies through an assignment to
10 any other person not described in paragraph
11 (1)(B). Such transfer may be revoked only with
12 the consent of the Secretary.

13 “(B) REGULATIONS.—The Secretary shall
14 prescribe such regulations as necessary to en-
15 sure that any credit described in subparagraph
16 (A) is claimed once and not reassigned by such
17 other person.

18 “(C) TRANSFER PROCEEDS TREATED AS
19 ARISING FROM ESSENTIAL GOVERNMENT FUNC-
20 TION.—Any proceeds derived by a person de-
21 scribed in clause (iii), (iv), or (v) of paragraph
22 (1)(B) from the transfer of any credit under
23 subparagraph (A) shall be treated as arising
24 from the exercise of an essential government
25 function.

1 “(3) USE OF CREDIT AS AN OFFSET.—Notwith-
2 standing any other provision of law, in the case of
3 a person described in clause (i), (ii), or (v) of para-
4 graph (1)(B), any credit to which paragraph (1)(A)
5 applies may be applied by such person, to the extent
6 provided by the Secretary of Agriculture, as a pre-
7 payment of any loan, debt, or other obligation the
8 entity has incurred under subchapter I of chapter 31
9 of title 7 of the Rural Electrification Act of 1936 (7
10 U.S.C. 901 et seq.), as in effect on the date of the
11 enactment of this section.

12 “(4) USE BY TVA.—

13 “(A) IN GENERAL.—Notwithstanding any
14 other provision of law, in the case of a person
15 described in paragraph (1)(B)(vi), any credit to
16 which paragraph (1)(A) applies may be applied
17 as a credit against the payments required to be
18 made in any fiscal year under section 15d(e) of
19 the Tennessee Valley Authority Act of 1933 (16
20 U.S.C. 831n-4(e)) as an annual return on the
21 appropriations investment and an annual repay-
22 ment sum.

23 “(B) TREATMENT OF CREDITS.—The ag-
24 gregate amount of credits described in para-
25 graph (1)(A) with respect to such person shall

1 be treated in the same manner and to the same
2 extent as if such credits were a payment in cash
3 and shall be applied first against the annual re-
4 turn on the appropriations investment.

5 “(C) CREDIT CARRYOVER.—With respect
6 to any fiscal year, if the aggregate amount of
7 credits described paragraph (1)(A) with respect
8 to such person exceeds the aggregate amount of
9 payment obligations described in subparagraph
10 (A), the excess amount shall remain available
11 for application as credits against the amounts
12 of such payment obligations in succeeding fiscal
13 years in the same manner as described in this
14 paragraph.

15 “(5) CREDIT NOT INCOME.—Any transfer
16 under paragraph (2) or use under paragraph (3) of
17 any credit to which paragraph (1)(A) applies shall
18 not be treated as income for purposes of section
19 501(c)(12).

20 “(6) TREATMENT OF UNRELATED PERSONS.—
21 For purposes of this subsection, transfers among
22 and between persons described in clauses (i), (ii),
23 (iii), (iv), and (v) of paragraph (1)(B) shall be treat-
24 ed as transfers between unrelated parties.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to production after December 31,
 3 2004, in taxable years ending after such date.

4 **Subtitle C—Nuclear Power**

5 **SEC. 221. CREDIT FOR PRODUCTION FROM ADVANCED NU-** 6 **CLEAR POWER FACILITIES.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
 8 chapter A of chapter 1 (relating to business related cred-
 9 its), as amended by this Act, is amended by adding at
 10 the end the following new section:

11 **“SEC. 45M. CREDIT FOR PRODUCTION FROM ADVANCED** 12 **NUCLEAR POWER FACILITIES.**

13 “(a) GENERAL RULE.—For purposes of section 38,
 14 the advanced nuclear power facility production credit of
 15 any taxpayer for any taxable year is equal to the product
 16 of—

17 “(1) 1.8 cents, multiplied by

18 “(2) the kilowatt hours of electricity—

19 “(A) produced by the taxpayer at an ad-
 20 vanced nuclear power facility during the 8-year
 21 period beginning on the date the facility was
 22 originally placed in service, and

23 “(B) sold by the taxpayer to an unrelated
 24 person during the taxable year.

25 “(b) NATIONAL LIMITATION.—

1 “(1) IN GENERAL.—The amount of credit
2 which would (but for this subsection and subsection
3 (c)) be allowed with respect to any facility for any
4 taxable year shall not exceed the amount which
5 bears the same ratio to such amount of credit as—

6 “(A) the national megawatt capacity limi-
7 tation allocated to the facility, bears to

8 “(B) the total megawatt nameplate capac-
9 ity of such facility.

10 “(2) AMOUNT OF NATIONAL LIMITATION.—The
11 national megawatt capacity limitation shall be 6,000
12 megawatts.

13 “(3) ALLOCATION OF LIMITATION.—The Sec-
14 retary shall allocate the national megawatt capacity
15 limitation in such manner as the Secretary may pre-
16 scribe.

17 “(4) 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 to carry out the purposes
21 of this subsection. Such regulations shall provide a
22 certification process under which the Secretary, after
23 consultation with the Secretary of Energy, shall ap-
24 prove and allocate the national megawatt capacity
25 limitation.

1 “(c) OTHER LIMITATIONS.—

2 “(1) ANNUAL LIMITATION.—The amount of the
3 credit allowable under subsection (a) (after the ap-
4 plication of subsection (b)) for any taxable year with
5 respect to any facility shall not exceed an amount
6 which bears the same ratio to \$125,000,000 as—

7 “(A) the national megawatt capacity limi-
8 tation allocated under subsection (b) to the fa-
9 cility, bears to

10 “(B) 1000.

11 “(2) OTHER LIMITATIONS.—Rules similar to
12 the rules of section 45(b) shall apply for purposes of
13 this section, except that paragraph (2) thereof shall
14 not apply to the 1.8 cents under subsection (a)(1).

15 “(d) ADVANCED NUCLEAR POWER FACILITY.—For
16 purposes of this section—

17 “(1) IN GENERAL.—The term ‘advanced nu-
18 clear power facility’ means any advanced nuclear fa-
19 cility—

20 “(A) which is owned by the taxpayer and
21 which uses nuclear energy to produce elec-
22 tricity, and

23 “(B) which is originally placed in service
24 after the date of the enactment of this para-
25 graph and before January 1, 2021.

1 “(2) **ADVANCED NUCLEAR FACILITY.**—For pur-
2 poses of paragraph (1), the term ‘advanced nuclear
3 facility’ means any nuclear facility the reactor design
4 for which is approved after the date of the enact-
5 ment of this paragraph by the Nuclear Regulatory
6 Commission (and such design or a substantially
7 similar design of comparable capacity was not ap-
8 proved on or before such date).

9 “(e) **OTHER RULES TO APPLY.**—Rules similar to the
10 rules of paragraphs (1), (2), (3), (4), and (5) of section
11 45(e) shall apply for purposes of this section.”

12 (b) **CREDIT TREATED AS BUSINESS CREDIT.**—Sec-
13 tion 38(b), as amended by this Act, is amended by striking
14 “plus” at the end of paragraph (21), by striking the period
15 at the end of paragraph (22) and inserting “, plus”, and
16 by adding at the end the following:

17 “(23) the advanced nuclear power facility pro-
18 duction credit determined under section 45M(a).”.

19 (c) **CLERICAL AMENDMENT.**—The table of sections
20 for subpart D of part IV of subchapter A of chapter 1,
21 as amended by this Act, is amended by adding at the end
22 the following:

 “Sec. 45M. Credit for production from advanced nuclear power facilities.”.

23 (d) **EFFECTIVE DATE.**—The amendments made by
24 this section shall apply to production in taxable years be-
25 ginning after December 31, 2004.

Subtitle D—Sunset

SEC. 231. SUNSET.

(a) IN GENERAL.—All provisions of, and amendments made by, this title shall not apply to taxable years beginning after December 31, 2010.

(b) APPLICATION OF CERTAIN LAWS.—The Internal Revenue Code of 1986 shall be applied and administered to taxable years beginning after December 31, 2010, as if the provisions and amendments described in subsection (a) had never been enacted.

TITLE III—RESEARCH CREDITS

SEC. 301. SENSE OF THE SENATE REGARDING PERMANENT EXTENSION OF RESEARCH CREDIT.

It is the sense of the Senate that the income tax credit for increasing research activities under section 41 of the Internal Revenue Code of 1986 should be permanently extended, the rates of the alternative incremental credit under such section should be increased, and an alternative simplified credit for qualified research expenses should be instituted.

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