

ENERGY CONSERVATION REAUTHORIZATION ACT OF 1998

SEPTEMBER 17, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
 submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4017]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 4017) to extend certain programs under the Energy Policy and Conservation Act and the Energy Conservation and Production Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Energy Conservation Reauthorization Act of 1998”.

SEC. 2. ENERGY POLICY AND CONSERVATION ACT AMENDMENTS.

(a) INTERAGENCY WORKING GROUPS.—Section 256(h) of the Energy Policy and Conservation Act (42 U.S.C. 6276(h)) is amended to read as follows:

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal years 1999 through 2003 such sums as may be necessary to carry out subsections (d) and (e), to be divided equitably between the interagency working subgroups based on program requirements.”.

(b) STATE ENERGY CONSERVATION PROGRAM.—Section 365(f) of the Energy Policy and Conservation Act (42 U.S.C. 6325(f)) is amended to read as follows:

“(f) For the purpose of carrying out this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.”.

(c) SCHOOLS AND HOSPITALS.—Section 397 the Energy Policy and Conservation Act (42 U.S.C. 6371f) is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 397. For the purpose of carrying out this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.”.

SEC. 3. ENERGY CONSERVATION AND PRODUCTION ACT AMENDMENT.

Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 422. For the purpose of carrying out the weatherization program under this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.”.

SEC. 4. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) SUNSET.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is amended by striking “five years after” and all that follows through “subsection (b)” and inserting “on October 1, 2003”.

(b) DEFINITION.—Section 804(1) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(1)) is amended to read as follows:

“(1) The term ‘Federal agency’ means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.”.

SEC. 5. TECHNICAL AMENDMENTS.

(a) ENERGY POLICY AND CONSERVATION ACT.—The Energy Policy and Conservation Act is amended—

(1) in the table of contents—

(A) by striking “Sec. 301.” and all that follows through “Reports to Congress.”;

(B) by striking “efficiency” and inserting “conservation” in the item relating to section 325;

(C) by striking “and private labelers” in the item relating to section 326;

(D) by striking the items relating to part E of title III;

(E) by inserting after the items relating to part I of title III the following:

“PART J—ENCOURAGING THE USE OF ALTERNATIVE FUELS

“Sec. 400AA. Alternative fuel use by light duty Federal vehicles.

“Sec. 400BB. Alternative fuels truck commercial application program.

“Sec. 400CC. Alternative fuels bus program.

“Sec. 400DD. Interagency Commission on Alternative Motor Fuels.

“Sec. 400EE. Studies and reports.”;

(F) by inserting “Environmental” after “Energy Supply and” in the item relating to section 505; and

(G) by striking the item relating to section 527;

(2) in section 321(1) (42 U.S.C. 6291(1))—

- (A) by striking “section 501(1) of the Motor Vehicle Information and Cost Savings Act” and inserting “section 32901(a)(3) of title 49, United States Code”; and
- (B) by striking the second period at the end thereof;
- (3) in section 322(b)(2)(A) (42 U.S.C. 6292(b)(2)(A)) by inserting close quotation marks after “type of product”;
- (4) in section 324(a)(2)(C)(ii) (42 U.S.C. 6294(a)(2)(C)(ii)) by striking “section 325(j)” and inserting “section 325(i)”;
- (5) in section 325 (42 U.S.C. 6295)—
- (A) by striking “paragraphs” in subsection (e)(4)(A) and inserting “paragraph”; and
- (B) by striking “BALLASTS;” in the heading of subsection (g) and inserting “BALLASTS”;
- (6) in section 336(c)(2) (42 U.S.C. 6306(c)(2)) by striking “section 325(k)” and inserting “section 325(n)”;
- (7) in section 345(c) (42 U.S.C. 6316(c)) by inserting “standard” after “meets the applicable”;
- (8) in section 362 (42 U.S.C. 6322)—
- (A) by inserting “of” after “of the implementation” in subsection (a)(1); and
- (B) by striking “subsection (g)” and inserting “subsection (f)(2)” in subsection (d)(12);
- (9) in section 391(2)(B) (42 U.S.C. 6371(2)(B)) by striking the period at the end and inserting a semicolon;
- (10) in section 394(a) (42 U.S.C. 6371c(a))—
- (A) by striking the commas at the end of paragraphs (1), (3), and (5) and inserting semicolons;
- (B) by striking the period at the end of paragraph (2) and inserting a semicolon; and
- (C) by striking the colon at the end of paragraph (6) and inserting a semicolon;
- (11) in section 400 (42 U.S.C. 6371i) by striking “(a)”;
- (12) in section 400D(a) (42 U.S.C. 6372c(a)) by striking the commas at the end of paragraphs (1), (2), and (3) and inserting semicolons;
- (13) in section 400I(b) (42 U.S.C. 6372h(b)) by striking “Secretary shall,” and inserting “Secretary shall”;
- (14) in section 400AA (42 U.S.C. 6374) by redesignating subsection (i) as subsection (h);
- (15) in section 503 (42 U.S.C. 6383)—
- (A) by striking “with respect to” and inserting “with respect to” in subsection (b); and
- (B) by striking “controlling” and inserting “, controlling,” in subsection (c)(1); and
- (16) in section 552(d)(5)(A) (42 U.S.C. 6422(d)(5)(A)) by striking “notion” and inserting “motion”.
- (b) ENERGY CONSERVATION AND PRODUCTION ACT.—The Energy Conservation and Production Act is amended—
- (1) in the table of contents—
- (A) by striking “rules and regulations” and inserting “regulations and rulings” in the item relating to section 106; and
- (B) by striking the item relating to section 207 and inserting the following:
- “Sec. 207. State utility regulatory assistance.
“Sec. 208. Authorization of appropriations.”; and
- (2) in section 202 (42 U.S.C. 6802) by striking “(b) DEFINITIONS.—”.
- (c) NATIONAL ENERGY CONSERVATION POLICY ACT.—The National Energy Conservation Policy Act is amended—
- (1) in the table of contents—
- (A) by striking “, installation, and financing” and inserting “and installation” in the item relating to section 216;
- (B) by striking “Ratings” and inserting “Rating Guidelines” in the item relating to part 6 of title II;
- (C) by striking the item relating to section 304; and
- (D) by striking “goals” and inserting “requirements” in the item relating to section 543;
- (2) in section 216(d)(1)(C) (42 U.S.C. 8217(d)(1)(C)) by striking “explicitly” and inserting “explicitly”;
- (3) in section 251(b)(1) (42 U.S.C. 8231(b)(1))—

- (A) by striking “National Housing Act to projects” and inserting “National Housing Act) to projects”; and
- (B) by striking “accure” and inserting “accrue”;
- (4) in section 266 (42 U.S.C. 8235e) by striking “(17 U.S.C.” and inserting “(15 U.S.C.”; and
- (5) in section 551(8) (42 U.S.C. 8259(8)) by striking “goethermal” and inserting “geothermal”.

SEC. 6. MATERIALS ALLOCATION AUTHORITY EXTENSION.

Section 104(b) of the Energy Policy and Conservation Act is amended by striking “(1) The authority” and all that follows through “(2)”.

SEC. 7. BIODIESEL FUEL USE CREDITS.

(a) AMENDMENT.—Title III of the Energy Policy Act of 1992 (42 U.S.C. 13211–13219) is amended by adding at the end the following new section:

“SEC. 312. BIODIESEL FUEL USE CREDITS.

“(a) ALLOCATION OF CREDITS.—

“(1) IN GENERAL.—The Secretary shall allocate one credit under this section to a fleet or covered person for each qualifying volume of the biodiesel component of fuel containing at least 20 percent biodiesel by volume purchased after the date of the enactment of this section for use by the fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

“(2) EXCEPTIONS.—No credits shall be allocated under paragraph (1) for a purchase of biodiesel—

“(A) for use in alternative fueled vehicles; or

“(B) that is required by Federal or State law.

“(3) AUTHORITY TO MODIFY PERCENTAGE.—The Secretary may, by rule, lower the 20 percent biodiesel volume requirement in paragraph (1) for reasons related to cold start, safety, or vehicle function considerations.

“(4) DOCUMENTATION.—A fleet or covered person seeking a credit under this section shall provide written documentation to the Secretary supporting the allocation of a credit to such fleet or covered person under paragraph (1).

“(b) USE OF CREDITS.—

“(1) IN GENERAL.—At the request of a fleet or covered person allocated a credit under subsection (a), the Secretary shall, for the year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under this title, title IV, or title V.

“(2) LIMITATION.—Credits allocated under subsection (a) may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this title, title IV, and title V. This paragraph shall not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 501(a)(2)(A).

“(c) CREDIT NOT A SECTION 508 CREDIT.—A credit under this section shall not be considered a credit under section 508.

“(d) ISSUANCE OF RULE.—The Secretary shall, before January 1, 1999, issue a rule establishing procedures for the implementation of this section.

“(e) COLLECTION OF DATA.—The Secretary shall collect such data as are required to make a determination described in subsection (f)(2)(B).

“(f) DEFINITIONS.—For purposes of this section—

“(1) the term ‘biodiesel’ means a diesel fuel substitute produced from non-petroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act; and

“(2) the term ‘qualifying volume’ means—

“(A) 450 gallons; or

“(B) if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use.”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 is amended by adding at the end of the items relating to title III the following new item:

“Sec. 312. Biodiesel fuel use credits.”.

PURPOSE AND SUMMARY

The purpose of H.R. 4017 is to extend energy conservation and export promotion programs authorized by the Energy Policy and Conservation Act and the Energy Conservation and Production Act, expand use of energy savings performance contracts authorized by the National Energy Conservation Policy Act, restore the authority of the President to allocate energy materials and equipment under the Defense Production Act of 1950 under certain circumstances to maximize domestic energy supplies, promote the use of biodiesel fuel, and make technical corrections.

BACKGROUND AND NEED FOR LEGISLATION

The Energy Policy and Conservation Act (EPCA) was enacted in 1975 in response to the oil embargo of 1973–74. The purpose of EPCA was to improve U.S. energy security by establishing the Strategic Petroleum Reserve, authorizing the International Energy Program, providing for increased energy efficiency of automobiles, encouraging greater appliance energy efficiency, authorizing various energy conservation programs, and by other means. The Energy Conservation and Production Act (ECPA) was enacted in 1976 to improve U.S. energy security by amending the Federal Energy Administration Act, providing an incentive for domestic energy production, establishing an electric utility rate design initiative, developing energy conservation standards for new buildings, providing for energy conservation assistance for existing buildings and industrial plants, and other means. The National Energy Conservation Policy Act (NECPA) was enacted in 1978 to improve U.S. energy security by promoting energy conservation and other means. The Energy Policy Act (EPAc) was enacted in 1992 to improve U.S. energy security through a broad range of programs, including energy conservation and alternative fueled vehicle programs.

CONSERVATION PROGRAMS

Title III of EPCA authorizes the State Energy Conservation Program (SECP) and the Institutional Conservation Program (ICP), which were consolidated by the Department of Energy (DOE) into the State Energy Program (SEP). The SEP provides grants and technical assistance to States, U.S. territories, and the District of Columbia to develop and implement State energy plans that promote energy efficiency. SEP is a block grant program, giving States broad discretion to shape programs but requiring States to provide matching funds of at least 20 percent. States, territories, and the District develop and implement comprehensive plans for achieving specific energy goals appropriate to their particular needs. The ICP provides grants on a matching basis to States to upgrade the energy efficiency of schools and hospitals. Grants are awarded on a matching basis directly to eligible schools and hospitals. Early in its history, SECP concentrated its resources on five mandatory measures, including promoting car pools, enacting right-on-red legislation, and implementing lighting and thermal efficiency standards for non-Federal public buildings. The SEP program now provides greater flexibility and has increasingly focused on optional measures as these mandatory measures were implemented. Au-

thorization for the SECP and ICP expired at the end of Fiscal Year 1993.

Section 422 of ECPA authorizes the Weatherization Assistance Program. The primary purpose of the weatherization assistance program is to increase energy conservation by reducing the burden of energy costs to low-income families, particularly the elderly, persons with disabilities, and families with children. Grant awards are provided to all States, the District of Columbia, and, under certain circumstances, to Indian tribal organizations. The governor of each State applies for grant funds and distributes them to local agencies to weatherize homes. Local service organizations, usually community action agencies, implement the program. There are about 750 local community action agencies participating in the weatherization program. Based on priorities established through energy audits conducted by local agencies, the program provides for installation of cost-effective weatherization measures such as caulking and weatherstripping, wall and attic insulation, and heating system improvements. Authorization for the weatherization assistance program expired at the end of Fiscal Year 1994.

EXPORT PROMOTION PROGRAMS

Title II of EPCA authorizes the Committee on Renewable Energy Commerce and Trade (CORECT) and the Committee on Energy Efficiency Commerce and Trade (COEECT). CORECT, established by the Renewable Energy Industry Development Act of 1983, is an interagency working group chaired by DOE composed of representatives of 14 agencies. Its primary mission is to promote the export of U.S. renewable energy technology. CORECT consults with industry and non-profit organizations to make recommendations on how to promote exports of renewable energy technology and services. COEECT was established by the Energy Policy Act of 1992, and its intended purposes are much the same as CORECT. The difference is a focus on promoting the export of energy efficiency technology instead of renewable energy technology. Like CORECT, COEECT is an interagency working group, chaired by DOE, and composed of representatives from 15 agencies. The interagency committee is charged with consulting with industry and non-profit organizations to make recommendations on how to promote exports of energy efficiency technology and services. Authorization for CORECT and COEECT expired at the end of Fiscal Year 1995.

ENERGY SAVINGS PERFORMANCE CONTRACTS

Energy savings performance contracts (ESPCs) are an alternative to the traditional method of financing energy efficiency improvements in Federal buildings through the appropriation of funds. Under this alternative, Federal agencies contract with energy service companies, which pay all the up-front costs of making energy efficiency improvements. These costs include identifying building energy requirements and acquiring, installing, operating, and maintaining energy-efficient equipment. In return, the energy service company receives a share of the energy cost savings resulting from these improvements until the contract period expires, which can be up to 25 years. After that point, the Federal government retains all the energy cost savings and energy-efficient equip-

ment. Significantly, energy service companies bear the risk of performance, and guarantee energy cost savings to Federal agencies.

Section 155 of the Energy Policy Act of 1992 amended Title VIII of NECPA, giving Federal agencies the authority to enter into ESPCs. The Committee recognizes that ESPCs have tremendous potential to produce significant energy savings at Federal facilities at the expense of energy service companies. DOE estimates the ESPCs awarded to date will produce \$3 billion in energy cost savings.

DOE has also developed Super Energy Savings Performance Contracts (Super ESPCs), a simplified process for Federal agencies to acquire equipment that will reduce facility costs by reducing energy consumption. DOE developed Super ESPCs in response to concerns by Federal agencies that ESPCs were a difficult procedure, since they must be executed under Federal Acquisition Regulations that are burdensome for both agencies and energy service companies. Super ESPCs are similar to conventional ESPCs, with two exceptions. First, a Super ESPC blankets a large geographic area, while a conventional ESPC is used for a specific site. Any Federal agency in the area can use the Super ESPCs. DOE plans to issue Super ESPCs that cover the entire country. Second, the Super ESPC substantially reduces the lead time to contract with energy service companies for energy efficiency improvements. Under conventional ESPCs, agency personnel had to do their own contracting for energy efficiency improvements, a process that can take as long as 18 months. Contracting takes only 3 to 6 months using a Super ESPC, and DOE specialists can provide guidance to agencies on the most difficult aspect of the contracting process—proposal evaluation and award. DOE also has developed technology-specific Super ESPCs, which emphasize a particular technology, such as solar collectors.

TECHNICAL ERRORS

Three of the statutes being amended—the Energy Policy and Conservation Act, the Energy Conservation and Production Act, and the National Energy Conservation Policy Act—contain a large number of technical errors, including misspellings, punctuation errors, and incorrect cross-references. Many of these errors have been in the statutes since they were enacted as long as twenty-five years ago.

ENERGY MATERIALS ALLOCATION AUTHORITY

Section 104 of EPCA amended section 101 of the Defense Production Act of 1950, adding a new subsection (c) granting the President authority to, by rule or order, require the allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment in order to maximize domestic energy supplies if the President makes certain findings. Section 104(b)(1) sunsets the authority of the President to issue the rules and orders necessary to execute this authority. The President's authority to allocate materials was used in the late 1970s, and again in the 1980s and early 1990s, to facilitate development of the Alaskan North Slope oil fields. This authority could also be used to assist electric utilities or oil refineries obtain material or equipment to repair facilities damaged by natural disasters, or to expedite repair of pipe-

lines or other facilities during a drawdown of the Strategic Petroleum Reserve. The President's authority to issue rules and orders expired on September 30, 1994.

BIODIESEL FUEL USE CREDIT

The Energy Policy Act of 1992 authorized programs to reduce consumption of petroleum motor fuel by promoting the use of replacement fuels and alternative fuels. Title III sets forth mandatory requirements for Federal fleet acquisitions of alternative fueled vehicles. Title V provides for separate regulatory mandates for the purchase of alternative fueled vehicles which apply to: (1) alternative fuel providers; (2) State government fleets; and (3) private and municipal fleets. These mandates set forth annual percentages of new light duty vehicle acquisitions which must be alternative fueled vehicles. Title V also allows for credits for alternative fueled vehicles acquired beyond what is legally required. These credits may be sold and used by other persons or fleets subject to an alternative fueled vehicle acquisition mandate.

Biodiesel is a renewable diesel fuel substitute that can be made by chemically combining any natural oil or fat with an alcohol such as methanol or ethanol. Methanol has been the most commonly used alcohol in the commercial production of biodiesel. In Europe, biodiesel is widely available in both its neat form (100 percent biodiesel, also known as B-100) and in blends with petroleum diesel. Most European biodiesel is made from rapeseed oil (a cousin of canola oil). In the United States, initial interest in producing and using biodiesel has focused on the use of soybean oil as the primary feedstock, mainly because the United States is the world's largest producer of soybean oil. Biodiesel fuel would be used largely in medium and heavy duty vehicles, such as buses and trucks, and also in marine vessels. It has limited potential for light duty vehicles.

Section 301(2) of the Energy Policy Act defines "alternative fuel" by listing various fuels. The definition also gives DOE discretion to add a fuel to this list if the Secretary determines, by rule, that it (1) is substantially not petroleum; (2) would yield substantial energy security benefits; and (3) would yield substantial environmental benefits. Biodiesel—either neat biodiesel or blends—is not one of the fuels listed in section 301(2). However, DOE determined in 1996 that neat biodiesel is an alternative fuel. The National Biodiesel Board petitioned DOE to issue a rulemaking determining that a biodiesel blend (B-20) that is, by volume, 80 percent petroleum and 20 percent biodiesel, is an alternative fuel. Last March, DOE announced it would issue a notice of proposed rulemaking addressing the petition by May 1998. No such rule, however, was issued. At hearings held by the Subcommittee on Energy and Power in July 1998, DOE promised to issue the proposed rule within days. Again, no rule was issued. DOE has floated various approaches that might be taken in a rule, including limiting B-20 as an alternative fuel for use in heavy duty vehicles, making use of biodiesel mandatory, and establishing a credit ratio for alternative fueled vehicles that use biodiesel. However, DOE still has taken no action on the petition.

According to a May 1998 analysis by the National Renewable Energy Laboratory (NREL), use of biodiesel has some significant ad-

vantages. First, it would reduce U.S. dependence on foreign oil. The U.S. transportation sector relies almost exclusively on petroleum, and biodiesel would replace petroleum. Second, biodiesel reduces greenhouse gas emissions. According to the NREL report, “[d]isplacing petroleum diesel with biodiesel in urban buses is an extremely effective strategy for reducing CO₂ emissions.” Third, biodiesel would help reduce air pollution and related health risks. Biodiesel substantially reduces some pollutants—particulates, carbon monoxide, and sulfur dioxide. The Environmental Protection Agency targets these three emissions because they pose public health risks, especially in urban areas. Biodiesel increases hydrocarbon life cycle emissions, but lowers tailpipe emissions. Biodiesel increases NO_x emissions slightly. Fourth, biodiesel benefits the domestic economy, by reducing spending on foreign oil imports.

Section 502 of the Energy Policy Act directs DOE to establish a program to promote the development and use of domestic replacement fuels in light duty motor vehicles. The Act provides this program “shall promote the replacement of petroleum motor fuels with replacement fuels to the maximum extent practicable.” Section 502 directs DOE to determine the technical and economic feasibility of achieving the goals of producing sufficient replacement fuels to replace 10 percent of the projected consumption of motor fuel in the U.S. by 2000, and 30 percent in 2010. Section 502 left it to DOE, in consultation with other Federal agencies, to determine the appropriate program elements to achieve these replacement fuel goals. Section 301(14) defines the term “replacement fuel” as “the portion of any motor fuel” that is derived from any one of a list of specific fuels, including “fuels (other than alcohol) derived from biological materials.” Twenty percent of biodiesel blend is derived from biological materials, so that portion appears to meet the definition of “replacement fuel.”

It is clear DOE will not achieve the replacement fuel goals established in section 502. DOE estimates actual use of replacement fuel in 1996 was only 3.1 percent of total highway motor fuel—2.9 percent was oxygenates blended into gasoline and 0.2 percent was alternative fuel use. This compares to the targets of 10 percent in 2000 and 30 percent in 2010. DOE estimates alternative fueled vehicle sales would have to grow to between 35 and 40 percent of total light duty vehicle sales by 1999 and stay at that level to meet the 2000 goal. The Department concedes that this is extremely unlikely to occur. DOE estimates Federal, State, and local alternative fueled vehicle programs could displace about 3 percent of light duty vehicle motor fuel use in 2010, and replacement fuels in the form of oxygenates could account for an additional 4.8 to 6.7 percent of fuel use. It appears replacement fuel use in 2010 will account for 10 percent or less of motor fuel use—far short of 30 percent.

One reason the DOE alternative fueled vehicle programs are failing to reduce consumption of petroleum motor fuel is that the Energy Policy Act programs do not require use of alternative fuel in alternative fueled vehicles. Under section 301(3) of the Act, “alternative fueled vehicles” is defined to include dual fueled vehicles capable of operating on petroleum motor fuel. This reflects a recognition by Congress that alternative fuels would not be available to all covered vehicles all the time. The Energy Policy Act mandates pur-

chases of alternative fueled vehicles. However, it does not mandate that these vehicles actually use alternative fuels. Although the Act has succeeded in boosting the number of alternative fueled vehicles in the U.S. by more than 60 percent between 1992 and 1998—two-thirds of alternative fueled vehicles in 1996 were dual fueled vehicles, and many of these vehicles largely use petroleum motor fuel.

There is a need for a comprehensive review of the effectiveness of the alternative fueled vehicle programs authorized by the Act. These programs have spurred development of alternative fueled vehicles. However, they have also failed to reduce consumption of petroleum motor fuel, since many alternative fueled vehicles use petroleum motor fuel, not alternative fuel.

The bill does not designate biodiesel blend as an “alternative fuel” under EPAct. Instead, it embraces an alternative approach that allocates credits for use of biodiesel fuel in blends with diesel fuel. In particular, the bill provides that credits for use of biodiesel fuel may be substituted for the acquisition of alternative fueled vehicles by fleets and covered persons required to purchase alternative fueled vehicles. This approach encourages greater use of a replacement fuel, displaces use of petroleum motor fuels, and may lead to approaches that encourage greater use of alternative fuels by alternative fueled vehicles.

HEARINGS

The Subcommittee on Energy and Power held a hearing on September 16, 1997, on energy conservation and export promotion programs authorized by the Energy Policy and Conservation Act and Energy Conservation and Production Act and proposed amendments to the National Energy Conservation Policy Act. The Subcommittee received testimony from: The Honorable Elizabeth Anne Moler, Deputy Secretary, U.S. Department of Energy; Mr. Wayne Curtis, Chief, Office of Human Services, Division of Economic Opportunity, Illinois Department of Commerce and Community Affairs, on behalf of the National Association for State Community Services Programs; Ms. Cheryl DeVol-Glowinski, Director, Office of Energy Policy, Indiana Department of Commerce, representing the National Association of State Energy Officials; Mr. David Bradley, Executive Director, National Community Action Foundation; and Mr. S. Lynn Sutcliffe, President and CEO, SYSCOM Enterprises, on behalf of the National Association of Energy Services Companies.

The Subcommittee also held a hearing on July 21, 1998, on H.R. 2568, the Energy Policy Act Amendments of 1997. The Subcommittee received testimony from: Mr. Thomas Gross, Deputy Assistant Secretary for Transportation Technologies, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy; Mr. Jim Gay, President, National Biodiesel Board; Mr. Russell Teall, Chairman, Biodiesel Development Corporation; Mr. John Campbell, Corporate Vice President, AG Processing, Inc.; Mr. Robert Sellers, Maintenance Supervisor, Kansas City Area Transportation Authority; Mr. Gilbert Sperling, General Counsel, Natural Gas Vehicle Coalition.

COMMITTEE CONSIDERATION

On June 11, 1998, the Subcommittee on Energy and Power met in open markup session and approved H.R. 4017 for Full Committee consideration, without amendment, by a voice vote. On August 5, 1998, the Full Committee met in open markup session and ordered H.R. 4017, the Energy Conservation Reauthorization Act of 1998, reported to the House, amended, by a voice vote, a quorum being present.

ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 4017 reported. An amendment by Mr. Schaefer to expand the use of energy savings performance contracts and restore the President's authority to allocate energy equipment under certain circumstances, was agreed to by a voice vote. An amendment by Mr. Shimkus to amend Title III of the Energy Policy Act of 1992 by adding a new section to promote biodiesel fuel use by providing credits for use of fuel, was agreed to by a voice vote. A motion by Mr. Bliley to order H.R. 4017 reported to the House, amended, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held legislative and oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 4017, the Energy Conservation Reauthorization Act of 1998, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by

the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 9, 1998.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4017, the Energy Conservation Reauthorization Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Kim Cawley (for federal costs), and Pepper Santalucia (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 4017—Energy Conservation Reauthorization Act of 1998

Summary: H.R. 4017 would reauthorize various energy conservation programs of the Department of Energy (DOE) through fiscal year 2003. The bill would authorize the appropriation of such sums as necessary for certain international programs, the Committee on Renewable Energy Commerce and Trade (CORECT), the Committee on Energy Efficiency Commerce and Trade, and grants to states for weatherization assistance and other conservation initiatives. In addition, the bill would extend the authorization for the Energy Savings Performance Contracts (ESPC) program through 2003 and would expand the scope of the program to include legislative and judicial branch agencies. Other provisions would amend existing law regarding the use of alternative fuels, including biodiesel fuel, and the President's authority to allocate materials during energy emergencies.

CBO estimates that implementing this bill would cost a total of about \$600 million over the 1999–2003 period, assuming appropriation of the necessary funds. That amount is net of estimated savings of about \$40 million over the same period for the provision that would encourage increase use of biodiesel fuel in government vehicles. H.R. 4017 could affect direct spending; therefore, pay-as-you-go procedures would apply, but CBO estimates that there would be no significant effect in any year. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4017 is shown in the following table. The costs of this legislation fall within budget functions 270 (energy) and 800 (general government).

	By fiscal years, in millions of dollars—					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority ¹	156	0	0	0	0	0
Estimated Outlays	158	116	31	8	0	0
"Such Sums" Authorizations Projected at the 1998 Level						
Proposed Changes:						
Authorization Level ²	0	158	148	148	148	148
Estimated Outlays	0	40	119	140	148	148
Spending Under H.R. 4017:						
Authorization Level ²	156	158	148	148	148	148
Estimated Outlays	158	156	150	148	148	148
"Such Sums" Authorizations Adjusted for Inflation						
Proposed Changes:						
Authorization Level ²	0	161	155	158	162	166
Estimated Outlays	0	41	123	147	158	162
Spending Under H.R. 4017:						
Authorization Level ¹	156	161	155	158	162	166
Estimated Outlays	158	157	154	155	158	162

¹ The 1998 level is the net amount appropriated for that year.

² The estimated net authorization declines in 2000 because of estimated savings from increased use of biodiesel fuel in government vehicles.

Basis of estimate: For purposes of this estimate, CBO assumes that appropriations will be provided near the beginning of each fiscal year and that outlays will follow historical trends for the affected programs. In the absence of specified authorization for these activities, we assume that the amounts appropriated for fiscal year 1998 represent the level of funding currently needed to carry out the functions outlined in the bill. The one exception to this approach is the estimate for CORECT, which did not receive an appropriation for fiscal year 1998. In that case, we based our estimates on the President's request for 1999 of \$2 million, which is the amount DOE estimates would be needed to fund the authorized activities. The table shows two alternative sets of authorization levels for fiscal years 1999–2003: one without an adjustment for anticipated inflation and a second that includes an adjustment for inflation.

In addition, H.R. 4017 would give managers of motor vehicle fleets for federal agencies credit for purchasing an alternatively fueled vehicle if they switch from diesel to biodiesel and diesel fuel mixtures to operate their existing vehicles. Biodiesel fuel is a diesel-fuel substitute made from renewable materials (such as vegetable oils) and can be used in convention diesel engines. Under the Energy Policy Act, federal vehicle fleet managers are directed to procure about 15,000 alternatively fueled vehicles (AFVs) annually. These vehicles are generally more costly to acquire and operate than comparable conventional vehicles. The premium paid for alternative fuel vehicles depends on the type of fuel used and ranges from 2 percent to 200 percent above the cost of a conventional vehicle. Based on information from DOE, CBO estimates that, under current law, federal agencies will spend about \$35 million per year to cover the additional cost of acquiring AFVs that are capable of operating with either compressed natural gas, liquefied-petroleum gas, methanol, ethanol, or electricity.

Although biodiesel fuel is more expensive than conventional diesel fuel, agencies could save money if they chose to use biodiesel fuel mixtures in existing vehicles instead of purchasing the types of alternatively fueled vehicles they have acquired in the past. Because agencies would incur no additional capital costs, using biodiesel fuel mixtures in conventional vehicles would be significantly less expensive than acquiring and operating many types of AFVs. H.R. 4017 would limit the amount of credit that could be generated by use of biodiesel mixtures to 50 percent of AFV purchases. Thus, savings from this provision could total nearly \$20 million annually if federal fleet managers were able to achieve the maximum amount of biodiesel credits allowed. For purposes of this estimate, CBO estimates that such savings would average about \$10 million a year beginning in fiscal year 2000, assuming that appropriations are reduced by a corresponding amount.

Finally, extending and expanding the use of ESPCs could reduce future spending on energy services, but CBO estimates that these changes would have no net effect on federal outlays over the 1999–2003 period. The ESPC program, which under current law will expire in 2000, allows agencies to use some of the funds appropriated for energy expenses for investments in measures that reduce energy consumption. Because of the way these contracts are structured, EPSCs have no net effect on agency spending until after the payback period for the investment, typically about 15 years. At that point, appropriations for energy services may be lower than they otherwise would be if the investments were not made. Hence, CBO estimates that implementing these provisions would not change the amounts authorized for energy expenses in the near term and would not result in any significant savings to the federal government until after 2003. Other provisions of the bill would not have a significant effect on federal spending.

Pay-as-you-go-considerations: The Balance Budget and Emergency Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending or receipts. The provision regarding use of biodiesel fuel mixtures in federal vehicles could affect direct spending for agencies, such as the Bonneville Power Administration and the Tennessee Valley Authority, that have direct spending authority. CBO estimates, however, that any effect on direct spending for such agencies would not be significant.

Estimated impact on State, local, and tribal governments: H.R. 4017 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would authorize the appropriation of such sums as may be necessary for fiscal years 1999 through 2003 for energy conservation programs that provide assistance to states. The Weatherization Assistance Program provides funds to states to make improvements in energy efficiency for low-income households. This program received about \$125 million in fiscal year 1998. The bill would also authorize funds for the State Energy Conservation Program, which funds the development and implementation of statewide energy conservation plans. Appropriations for this program are about \$30 million in fiscal year 1998.

Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Kathleen Gramp and Kim Cawley. Impact on State, Local, and Tribal Governments: Pepper Santalucia.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides a short title for the bill, the “Energy Conservation Reauthorization Act of 1998.”

Section 2. Energy Policy and Conservation Act amendments

Subsection (a) amends section 256(h) of the Energy Policy and Conservation Act to extend the authorization of the Committee on Renewable Energy Commerce and Trade and the Committee on Energy Efficiency Commerce and Trade through Fiscal Year 2003. The subsection authorizes such sums as may be necessary to carry out the functions of these interagency working subgroups, to be divided equitably between the subgroups based on program requirements.

Subsection (b) amends section 365(f) of EPCA to extend the authorization of the State Energy Conservation Program through Fiscal Year 2003. The subsection authorizes such sums as may be necessary to carry out the purposes of the program.

Subsection (c) amends section 397 of EPCA to extend the authorization of the Institutional Conservation Program through Fiscal Year 2003. The subsection authorizes such sums as may be necessary to carry out the purposes of the program.

Section 3. Energy Conservation and Production Act Amendment

The section amends section 422 of the Energy Conservation and Production Act to extend the authorization of the Weatherization Assistance Program through Fiscal Year 2003. The section authorizes such sums as may be necessary to carry out the purposes of the program.

Section 4. Energy savings performance contracts

Subsection (a) amends section 801(c) of the National Energy Conservation Policy Act to extend the authority of Federal agencies to enter into energy savings performance contracts through Fiscal Year 2003. The authority of Federal agencies to enter into energy savings performance contracts was added to NECPA by the Energy Policy Act of 1992. Under the current language of section 801(c), the authority of Federal agencies to enter into new contracts under section 801 “shall cease to be effective five years after the date procedures and methods are established under subsection (b).” Since DOE established the contract procedures and methods provided in section 801(b) in a final rule issued on April 10, 1995 (60 FR 18326), the authority of Federal agencies to enter into energy savings performance contracts expires on April 10, 2000.

Subsection (b) amends section 801(c) of NECPA to provide a new definition of “Federal agency.” The current definition of “Federal agency” is the definition used in the Administrative Procedures Act (APA) (5 U.S.C. 551(1)). That definition provides a general rule, defining “Federal agency” as “each authority of the Government of the United States, whether or not it is within or subject to review by another agency.” However, the definition also has a list of exceptions to the general rule, which includes the Congress and the courts of the United States.

The new definition of “Federal agency” in subsection (b) is based on the APA definition, but it eliminates the exceptions listed in the APA definition. By doing so, it includes all authorities of the Government of the United States, including legislative and judicial agencies. This expands the universe of Federal entities that can enter into energy savings performance contracts, and should result in greater energy efficiencies.

The courts have determined an “authority of the Government of the United States” is “any administrative unit with substantial independent authority in the exercise of specific functions.” *Soucie v. David*, 448 F.2d 1067, 1073 (D.C. Cir. 1971). A leading treatise has suggested that in determining whether an “entity is an agency * * * the most important word in the [APA] definition may be ‘authority.’” 1 Kenneth C. Davis & Richard J. Pierce, Jr., *Administrative Law Treatise*, §1.2 at 4 (1994). According to the legislative history of the APA, “‘authority’ means any officer or board, whether within another agency or not, which by law has authority to take final and binding action with or without appeal to some superior administrative authority.” Staff of the Senate Comm. on the Judiciary, Report on the Admin. Proc. Act, 79th Cong., 1st Sess. 13 (Comm. Print 1945).

Under the APA definition, agencies that are subunits of other agencies are Federal agencies if they have substantial independent authority. For example, the Immigration and Naturalization Serv-

ice is a Federal agency, despite the fact it is under the supervision of the Department of Justice. *Koden v. Dep't of Justice*, 564 F.2d 228, 232 (D.C. Cir. 1977); *Blackwell College of Business v. Attorney General*, 454 F.2d 928, 933 (D.C. Cir. 1971). Likewise, the Bureau of Prisons is a Federal agency, although it also is part of the Department of Justice. *White v. Henman*, 977 F.2d 292, 293 (7th Cir. 1992); *Ramer v. Saxbe*, 522 F.2d 695, 697 (D.C. Cir. 1975). According to the D.C. Circuit, "the APA makes the fact that a government authority's decisions are subject to review irrelevant in determining whether that authority is an agency * * *." *Washington Research Project v. HEW*, 504 F.2d 238, 248 (D.C. Cir. 1974).

The status of government contractors under the APA definition has been the subject of some dispute. The D.C. Circuit has suggested a contractor may become a governmental unit if it has authority to make decisions and comes under the day-to-day supervision of the Federal government. *Public Citizen Health Research Group v. HEW*, 668 F.2d 537, 543-44 (D.C. Cir. 1981). One court grappling with the question of whether a Federal contractor was a Federal agency concluded "any general definition can be of only limited utility to a court confronted with one of the myriad organizational arrangements for getting the business of the government done. * * * The unavoidable fact is that each new arrangement must be examined anew and in its own context." *Washington Research Project*, 504 F.2d at 245-46.

Section 5. Technical amendments

Section 5 makes a host of technical changes to three of the statutes that are amended by the bill—the Energy Policy and Conservation Act, the Energy Conservation and Production Act, and the National Energy Conservation Policy Act. A review of these statutes indicates there are many technical errors—such as spelling errors, punctuation errors, and incorrect cross-references. Some of these errors can be traced back to enactment of these statutes nearly 25 years ago. The bill eliminates many of them.

Subsection (a) makes technical corrections to EPCA. Paragraph (1) makes a number of changes to the table of contents. First, subparagraph (A) strikes the items relating to section 301, since that section was repealed by the National Cooperative Production Amendments of 1993. Second, subparagraph (B) corrects the heading for section 325. Third, subparagraph (C) corrects the heading for section 326. Fourth, subparagraph (D) strikes the items relating to part E of title III, since that part was repealed by the Petroleum Overcharge Distribution and Restitution Act of 1986. Fifth, subparagraph (E) inserts items relating to part J of title III, since that part was added to EPCA by the Alternative Motor Fuels Act of 1988, but that law did not amend the EPCA table of contents. Sixth, subparagraph (F) corrects the heading for section 505. Seventh, subparagraph (G) strikes the item relating to section 527, since that section was repealed by NECPA.

Paragraph (2) makes changes to section 321(1). Subparagraph (A) strikes the cross-reference to "section 501(1) of the Motor Vehicle Information and Cost Savings Act" in favor of a reference to "section 32901(a)(3) of title 49, United States Code." A transportation law enacted in the 103rd Congress provided that a reference

to section 501(1) of the Motor Vehicle Information and Cost Savings Act be deemed to refer to 49 U.S.C. 32901(a)(3). Subparagraph (B) strikes the second period at the end of section 321(1).

Paragraph (3) inserts close quotation marks after “type of product” in section 322(b)(2)(A). Currently, there are no close quotation marks in subparagraph (A). Paragraph (4) corrects the cross-reference in section 324(a)(2)(C)(ii), striking section 325(j) and inserting section 325(i). Paragraph (5) corrects two errors in section 325. Subparagraph (A) strikes the word “paragraphs” in section 325(e)(4)(A) and replaces it with “paragraph.” Subparagraph (A) strikes the semicolon at the end of the heading for section 325(g), since semicolons are not used at the end of headings.

Paragraph (6) corrects the cross-reference in section 336(c)(2), striking section 325(k) and replacing it with section 325(n). Section 123(f)(1) of the Energy Policy Act of 1992 renumbered section 325(k) as section 325(n), but did not make this conforming change. Paragraph (7) amends section 345(c) by adding “standard” after “meets the applicable.” Paragraph (8) corrects two errors in section 362. Subparagraph (A) inserts “of” after “of the implementation” in subsection (a)(1). Subparagraph (B) corrects the cross-reference in subsection (d)(12), by striking the reference to subsection (g) and replacing it with a reference to subsection (f)(2). Paragraph (9) corrects a punctuation error at the end of section 391(2)(B), striking the period and replacing it with a semicolon.

Paragraph (10) corrects five punctuation errors in section 394(a) to ensure that all paragraphs end with semicolons. Subparagraph (A) strikes the commas at the end of paragraphs (1), (3), and (5) and replaces them with semicolons. Subparagraph (B) strikes the period at the end of paragraph (2) and replaces it with a semicolon. Subparagraph (C) strikes the colon at the end of paragraph (6) and replaces it with a semicolon. Paragraph (11) strikes the “(a)” in section 400, since there are no subsections in that section. Paragraph (12) corrects punctuation errors in section 400D(a), striking the commas at the end of paragraphs (1), (2), and (3) and inserting semicolons. Paragraph (13) corrects a punctuation error in section 400I(b) by striking the comma after “Secretary shall.” Paragraph (14) redesignates subsection (i) in section 400AA as subsection (h), since currently there is no subsection (h). Paragraph (15) corrects two errors in section 503. Subparagraph (A) corrects a spelling error in subsection (b). Subparagraph (B) corrects a punctuation error in subsection (c)(1), inserting commas before and after “controlling.”

Subsection (b) makes technical corrections to ECPA. Paragraph (1) makes corrections to the table of contents. Subparagraph (A) corrects the heading of section 106. Subparagraph (B) strikes the item relating to section 207 and provides new section headings for sections 207 and 208. Paragraph (2) strikes an unnecessary subsection heading in section 202, since that section has no subsections.

Subsection (c) makes technical corrections to NECPA. Paragraph (1) makes corrections to the table of contents. Subparagraph (A) corrects the heading of section 216. Subparagraph (B) corrects the heading of part 6 of title II. Subparagraph (C) strikes the item relating to section 304, since there is no section 304 in the statute.

Subparagraph (D) corrects the heading for section 543. Paragraph (2) corrects a spelling error in section 216(d)(1)(C). Paragraph (3) makes technical corrections to section 251(b)(1). Subparagraph (A) corrects a punctuation error, inserting a close parenthesis after “National Housing Act.” Subparagraph (B) corrects a spelling error. Paragraph (4) corrects the U.S. Code reference in section 266, striking the reference to title 17 and replacing it with a reference to title 15. Paragraph (5) corrects a spelling error in section 551(8).

Section 6. Materials allocation authority extension

This section strikes section 104(b)(1) and makes a conforming change to paragraph (2), providing the President with permanent authority to issue rules or orders under section 101(c) of the Defense Production Act of 1950.

Section 7. Biodiesel fuel use credits

Subsection (a) adds a new section 312 to the Energy Policy Act of 1992 (EPAAct). Subsection (a) of section 312 provides for credits for use of biodiesel fuel. Paragraph (1) of that subsection directs DOE to allocate one credit to a fleet or covered person for each qualifying volume of the biodiesel component of fuel containing at least 20 percent biodiesel purchased after the date of enactment of this section for use by the fleet or covered person in vehicles operated by the fleet or covered person weighing more than 8,500 pounds. Paragraph (2) bars allocation of credits for purchase of biodiesel under two circumstances. First, subparagraph (A) bars allocation of credits for use in alternative fueled vehicles. This assures that fleets or covered persons that operate vehicles capable of operating on neat biodiesel do not receive credits for use of biodiesel in those vehicles. DOE has determined that neat biodiesel fuel is an alternative fuel, and vehicles warranted by their original equipment manufacturer or a certified converter to operate on neat biodiesel qualify as alternative fueled vehicles. Allocation of credits for use of biodiesel in alternative fueled vehicles would create an inconsistency with respect to other alternative fuels, since use of alternative fuels in other alternative fueled vehicles does not generate credits. Second, subparagraph (B) bars allocation of credits for purchase of biodiesel that is required by Federal or State law.

Paragraph (3) grants DOE authority to lower the 20 percent biodiesel requirement in paragraph (1) for reasons related to cold start, safety, or vehicle function considerations. These are the same grounds provided in section 301(2) of EPAAct upon which DOE is authorized to lower the nonpetroleum content of methanol, ethanol, and other alcohols. Paragraph (4) requires that fleets and covered persons seeking a credit under section 312 provide written documentation to DOE supporting the allocation of a credit.

Subsection (b) of new section 312 governs the use of credits. Paragraph (1) directs DOE, for the year in which the purchase of a qualifying volume of the biodiesel component of fuel is made, to treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under titles III, IV and V of EPAAct. Paragraph (2) provides that credits allocated under subsection (a) may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet

or covered person under titles III, IV and V of EAct. This limitation does not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 501(a)(2)(A) of EAct.

Subsection (c) provides that a section 312 credit is not considered a credit under section 508. Credits issued by DOE may only be used by the fleet or covered person that earned the credits and only in the year the credit is issued, so they cannot be traded or banked. Subsection (d) directs DOE to issue a rule by January 1, 1999, establishing procedures implementing this section. Subsection (e) directs DOE to collect such data as are required to make a determination whether average annual alternative fuel use exceeds 450 gallons. Subsection (f) provides definitions of key terms used in section 312. The term “qualifying volume” is defined to mean 450 gallons of biodiesel. DOE is authorized to increase this amount by rule to an amount equal to the average use of alternative fuels by fleets and covered persons if it determines that average annual alternative fuel use exceeds 450 gallons.

Subsection (b) of section 7 makes a conforming change to the EAct table of contents, adding an item relating to the new section 312.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ENERGY POLICY AND CONSERVATION ACT

* * * * *

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Energy Policy and Conservation Act”.

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TITLE I—MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

PART A—DOMESTIC SUPPLY

* * * * *

MATERIALS ALLOCATION

SEC. 104. (a) * * *

(b)[(1) The authority to issue any rules or orders under section 101(c) of the Defense Production Act of 1950, as amended by this Act, shall expire at midnight September 30, 1994, but such expiration shall not affect any action or pending proceedings, civil or

criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to such date.】

【(2)】 The expiration of the Defense Production Act of 1950 or any amendment of such Act after the date of enactment of this Act shall not affect the authority of the President under section 101(c) of such Act, as amended by subsection (a) of this section and in effect on the date of enactment of this Act, unless Congress by law expressly provides to the contrary.

* * * * *

TITLE II—STANDBY ENERGY AUTHORITIES

* * * * *

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

* * * * *

DOMESTIC RENEWABLE ENERGY INDUSTRY AND RELATED SERVICE INDUSTRIES

SEC. 256. (a) * * *

* * * * *

【(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for purposes of carrying out the programs under subsections (d) and (e) \$10,000,000, to be divided equitably between the interagency working subgroups based on program requirements, for each of the fiscal years 1993 and 1994, and such sums as may be necessary for fiscal year 1995 to carry out the purposes of this subtitle. There are authorized to be appropriated for fiscal year 1997 such sums as may be necessary to carry out this part.】

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal years 1999 through 2003 such sums as may be necessary to carry out subsections (d) and (e), to be divided equitably between the interagency working subgroups based on program requirements.

* * * * *

TITLE III—IMPROVING ENERGY EFFICIENCY

PART B—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

DEFINITIONS

SEC. 321. For purposes of this part:

- (1) The term “consumer product” means any article (other than an automobile, as defined in [section 501(1) of the Motor Vehicle Information and Cost Savings Act] *section 32901(a)(3) of title 49, United States Code*) of a type—
 - (A) * * *

* * * * *

without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.【.】

* * * * *

COVERAGE

SEC. 322. (a) * * *

(b) SPECIAL CLASSIFICATION OF CONSUMER PRODUCT.—(1) * * *

(2) For purposes of this subsection:

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

* * * * *

LABELING

SEC. 324. (a) IN GENERAL.—(1) * * *

(2)(A) * * *

* * * * *

(C)(i) * * *

(ii) If the Secretary determines that compliance with the standards specified in section 【325(j)】 325(i) for any lamp will result in the discontinuance of the manufacture of such lamp, the Commission may exempt such lamp from the labeling rules prescribed under clause (i).

* * * * *

ENERGY CONSERVATION STANDARDS

SEC. 325. (a) * * *

* * * * *

(e) STANDARDS FOR WATER HEATERS; POOL HEATERS; DIRECT HEATING EQUIPMENT.—(1) * * *

* * * * *

(4)(A) The Secretary shall publish final rules no later than January 1, 1992, to determine whether the standards established by 【paragraphs】 paragraph (1), (2), or (3) for water heaters, pool heaters, and direct heating equipment should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995.

* * * * *

(g) STANDARDS FOR DISHWASHERS; CLOTHES WASHERS; CLOTHES DRYERS, FLUORESCENT LAMP 【BALLASTS;】 BALLASTS.—(1) Dish-

washers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

* * * * *

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 336. (a) * * *

* * * * *

(c) Jurisdiction is vested in the Federal district courts of the United States over actions brought by—

(1) * * *

(2) any person who files a petition under section [325(k)] 325(n) which is denied by the Secretary.

* * * * *

PART C—CERTAIN INDUSTRIAL EQUIPMENT

* * * * *

ADMINISTRATION, PENALTIES, ENFORCEMENT, AND PREEMPTION

SEC. 345. (a) * * *

* * * * *

(c) With respect to any electric motor to which standards are applicable under section 342(b), the Secretary shall require manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable *standard*.

* * * * *

PART D—STATE ENERGY CONSERVATION PLANS

* * * * *

STATE ENERGY CONSERVATION PLANS

SEC. 362. (a) The Secretary shall, by rule, within 60 days after the date of enactment of this Act, prescribe guidelines for the preparation of a State energy conservation feasibility report. The Secretary shall invite the Governor of each State to submit, within 3 months after the effective date of such guidelines, such a report. Such report shall include—

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

* * * * *

(d) Each proposed State energy conservation plan may include—

(1) * * *

* * * * *

(12) in accordance with subsection [(g)] (f)(2), programs to implement the Energy Technology Commercialization Services Program;

* * * * *

GENERAL PROVISIONS

SEC. 365. (a) * * *

* * * * *

[(f)(1) Except as provided in paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated not to exceed \$25,000,000 for fiscal year 1991, \$35,000,000 for fiscal year 1992, and \$45,000,000 for fiscal year 1993.

[(2) For the purposes of carrying out section 363(f), there is authorized to be appropriated for fiscal year 1994 and each fiscal year thereafter such sums as may be necessary, to remain available until expended.]

(f) For the purpose of carrying out this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.

* * * * *

PART G—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

DEFINITIONS

SEC. 391. For the purposes of this part—

(1) * * *

(2) The term “energy conservation measure” means an installation or modification of an installation in a building which is primarily intended to maintain or reduce energy consumption and reduce energy costs or allow the use of an alternative energy source, including, but not limited to—

(A) * * *

(B) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door system modifications[.];

* * * * *

STATE PLANS

SEC. 394. (a) The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 392, or such longer period as the Secretary may, for good cause, allow, a State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed under section 392(a)(1), and an estimate of the energy savings that may result from the modification of maintenance and operating procedures and installation of energy conservation measures in the schools and hospitals in such State[.];

(2) a recommendation as to the types of energy conservation projects considered appropriate for schools and hospitals in such State, together with an estimate of the costs of carrying out such projects in each year for which funds are appropriated[.];

(3) a program for identifying persons qualified to carry out energy conservation projects[.];

* * * * *

(5) a statement of the extent to which, and by which methods, such State will encourage utilization of solar space heating, cooling, and electric systems and solar water heating systems where appropriate[.];

(6) procedures to assure that all assistance under this part in such State will be expended in compliance with the requirements of an approved State plan for such State, and in compliance with the requirements of this part[:];

* * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 397. For the purpose of carrying out this part, there are authorized to be appropriated not to exceed \$40,000,000 for fiscal year 1991, \$50,000,000 for fiscal year 1992, and \$60,000,000 for fiscal year 1993.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 397. For the purpose of carrying out this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.

* * * * *

RECORDS

SEC. 400. [(a)] Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

* * * * *

PART H—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

* * * * *

STATE PLANS

SEC. 400D. (a) The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 400B, or such longer period as the Secretary may, for good cause, allow, a proposed State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed pursuant to section 400B(a)(1), and an estimate of the energy savings that may result from the modification of maintenance and operating proce-

dures in buildings owned by units of local government and public care institutions[.];

(2) a recommendation as to the types of technical assistance programs considered appropriate for buildings owned by units of local government and public care institutions in such State, together with an estimate of the costs of carrying out such programs[.];

(3) a program for identifying persons qualified to carry out technical assistance programs[.];

* * * * *

ADMINISTRATION; ANNUAL REPORTS

SEC. 400I. (a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary [shall,] shall include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out with funds allocated, and an estimate of the energy savings, if any, achieved.

* * * * *

PART J—ENCOURAGING THE USE OF ALTERNATIVE FUELS

SEC. 400AA. ALTERNATIVE FUEL USE BY LIGHT DUTY FEDERAL VEHICLES.

(a) * * *

* * * * *

[(i)] (h) FUNDING.—(1) For the purposes of this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

* * * * *

TITLE V—GENERAL PROVISIONS

PART A—ENERGY DATA BASE AND ENERGY INFORMATION

* * * * *

ACCOUNTING PRACTICES

SEC. 503. (a) * * *

(b) In carrying out its responsibilities under subsection (a), the Securities and Exchange Commission shall—

(1) * * *

* * * * *

The Securities and Exchange Commission shall afford interested persons an opportunity to submit written comment with respect to whether it should exercise its discretion to recognize or otherwise rely on such accounting practice in lieu of prescribing such practices by rule and may extend the 24-month period referred to in subsection (a) as it determines may be necessary to allow for a meaningful comment period [with respect to] *with respect to* such determination.

(c) The Securities and Exchange Commission shall assure that accounting practices developed pursuant to this section, to the greatest extent practicable, permit the compilation, treating domestic and foreign operations as separate categories, of an energy data base consisting of:

- (1) The separate calculation of capital, revenue, and operating cost information pertaining to—
 - (A) prospecting,
 - (B) acquisition,
 - (C) exploration,
 - (D) development, and
 - (E) production,

including geological and geophysical costs, carrying costs, unsuccessful exploratory drilling costs, intangible drilling and development costs on productive wells, the cost of unsuccessful development wells, and the cost of acquiring oil and gas reserves by means other than development. Any such calculation shall take into account disposition of capitalized costs, contractual arrangements involving special conveyance of rights and joint operations, differences between book and tax income, and prices used in the transfer of products or other assets from one person to any other person, including a person controlled by [controlling], *controlling*, or under common control with such person.

* * * * *

PART C—CONGRESSIONAL REVIEW

* * * * *

EXPEDITED PROCEDURE FOR CONGRESSIONAL CONSIDERATION OF CERTAIN AUTHORITIES

SEC. 552. (a) * * *

* * * * *

(d)(1) * * *

* * * * *

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the [motion] *motion* shall not

be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

* * * * *

ENERGY CONSERVATION AND PRODUCTION ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Energy Conservation and Production Act".

CONTENTS

TITLE I—FEDERAL ENERGY ADMINISTRATION ACT AMENDMENTS AND RELATED MATTERS

PART A—FEDERAL ENERGY ADMINISTRATION ACT AMENDMENTS

Sec. 101. Short title.

* * * * *

Sec. 106. Limitation on the Administrator's authority with respect to enforcement of [rules and regulations] *regulations and rulings.*

* * * * *

TITLE II—ELECTRIC UTILITIES RATE DESIGN INITIATIVES

Sec. 201. Findings.

* * * * *

[Sec. 207. Authorizations of appropriations.]

Sec. 207. State utility regulatory assistance.

Sec. 208. Authorization of appropriations.

* * * * *

TITLE II—ELECTRIC UTILITY RATE DESIGN INITIATIVES

DEFINITIONS

SEC. 202. As used in this title:

[(b) DEFINITIONS.—]

(1) The term "Secretary" means the Secretary of Energy.

* * * * *

TITLE IV—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

* * * * *

PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

* * * * *

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 422. (a) There are authorized to be appropriated for purposes of carrying out the weatherization program under this part, other than under subsections (d) and (e) of section 415, not to exceed \$200,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992, 1993, and 1994.

[(b) There are authorized to be appropriated for purposes of carrying out the weatherization program under subsections (d) and (e)

of section 415, not to exceed \$20,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.】

AUTHORIZATION OF APPROPRIATIONS

SEC. 422. For the purpose of carrying out the weatherization program under this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.

* * * * *

NATIONAL ENERGY CONSERVATION POLICY ACT

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL PROVISIONS

Sec. 101. Short title and table of contents.

* * * * *

TITLE II—RESIDENTIAL ENERGY CONSERVATION

PART 1—UTILITY PROGRAM

Sec. 210. Definitions.

* * * * *

Sec. 216. Supply【, installation, and financing】 and installation by public utilities.

* * * * *

PART 6—RESIDENTIAL ENERGY EFFICIENCY 【RATINGS】 RATING GUIDELINES

* * * * *

TITLE III—ENERGY CONSERVATION PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENTS AND PUBLIC CARE INSTITUTIONS

PART 1—SCHOOLS AND HOSPITALS

Sec. 301. Statement of findings and purposes.

* * * * *

【Sec. 304. Cross reference】.

* * * * *

TITLE V—FEDERAL ENERGY INITIATIVES

* * * * *

PART 3—FEDERAL ENERGY MANAGEMENT

Sec. 541. Findings.

* * * * *

Sec. 543. Energy management 【goals】 requirements.

* * * * *

TITLE II—RESIDENTIAL ENERGY CONSERVATION

PART 1—UTILITY PROGRAM

* * * * *

SEC. 216. SUPPLY AND INSTALLATION BY PUBLIC UTILITIES.

(a) * * *

* * * * *

(d) GENERAL EXEMPTIONS.—(1) Except as provided in paragraph (2), the prohibitions contained in subsection (a) shall not apply to—

(A) * * *

* * * * *

(C) supply, installation, or financing activities by a public utility with respect to energy conservation measures where a law or regulation in effect on or before the date of enactment of this Act either requires, or [explicitly] *explicitly* permits, the public utility to carry out such activities.

* * * * *

PART 4—MISCELLANEOUS

SEC. 251. ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

(a) * * *

(b) GRANTS.—(1) The Secretary of Housing and Urban Development is authorized to make grants to finance energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of the [National Housing Act to projects] *National Housing Act*) to projects which are financed with loans under section 202 of the Housing Act of 1959, or which are subject to mortgages insured under section 221(d)(3) or section 236 of the National Housing Act. The Secretary shall make assistance available under this subsection on a priority basis to those projects which are in financial difficulty as a result of high energy costs. In carrying out the program authorized by this subsection, the Secretary shall issue regulations requiring that any grant made under this subsection shall be made only on the condition that the recipient of such grant shall take steps (prescribed by the Secretary) to assure that the benefits derived from such grants in terms of lower energy costs shall [accure] *accrue* to tenants in the form of lower operating subsidy if such a subsidy is being paid to such recipient.

* * * * *

PART 5—RESIDENTIAL ENERGY EFFICIENCY PROGRAMS

* * * * *

SEC. 266. AUTHORITY OF THE FEDERAL ENERGY REGULATORY COMMISSION TO EXEMPT APPLICATION OF CERTAIN LAWS.

The Federal Energy Regulatory Commission may exempt from any provisions in sections 4, 5, and 7 of the Natural Gas Act [(17 U.S.C.)] (15 U.S.C. 717c, 717d, and 717f) and titles II and IV of the

Natural Gas Policy Act of 1978 (15 U.S.C. 3341 through 3348 and 3391 through 3394) the sale or transportation, by any public utility, local distribution company, interstate or intrastate pipeline, or any other person, of any natural gas which is determined (in the case of a regulated utility, company, pipeline, or person) by the State regulatory authority having ratemaking authority over such utility, company, pipeline, or person, or (in the case of a nonregulated utility, company, pipeline, or person) by such utility, company, pipeline, or person, to have been conserved because of a prototype residential energy efficiency program which is established under a plan approved under section 262(a), if the Commission determines that such exemption is necessary to make feasible the demonstration of such prototype residential energy efficiency program.

* * * * *

TITLE V—FEDERAL ENERGY INITIATIVE

* * * * *

PART 3—FEDERAL ENERGY MANAGEMENT

* * * * *

SEC. 551. DEFINITIONS.

For the purposes of this part—

(1) * * *

* * * * *

(8) the term “renewable energy sources” includes, but is not limited to, sources such as agriculture and urban waste, **[geothermal]** *geothermal* energy, solar energy, and wind energy; and

* * * * *

TITLE VIII—ENERGY SAVINGS PERFORMANCE CONTRACTS

SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.

(a) * * *

* * * * *

(c) **SUNSET AND REPORTING REQUIREMENTS.**—The authority to enter into new contracts under this section shall cease to be effective **[five years after the date procedures and methods are established under subsection (b)]** *on October 1, 2003.*

* * * * *

SEC. 804. DEFINITIONS.

For purposes of this title, the following definitions apply:

[(1) The term “Federal agency” means an agency defined in section 551(1) of title 5, United States Code.]

(1) The term “Federal agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.

* * * * *

ENERGY POLICY ACT OF 1992

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Energy Policy Act of 1992”.

(b) TABLE OF CONTENTS.—

TITLE I—ENERGY EFFICIENCY

Subtitle A—Buildings

Sec. 101. Building energy efficiency standards.

* * * * *

TITLE III—ALTERNATIVE FUELS—GENERAL

Sec. 301. Definitions.

* * * * *

Sec. 312. Biodiesel fuel use credits.

* * * * *

**TITLE III—ALTERNATIVE FUELS—
GENERAL**

* * * * *

SEC. 312. BIODIESEL FUEL USE CREDITS.

(a) ALLOCATION OF CREDITS.—

(1) IN GENERAL.—The Secretary shall allocate one credit under this section to a fleet or covered person for each qualifying volume of the biodiesel component of fuel containing at least 20 percent biodiesel by volume purchased after the date of the enactment of this section for use by the fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

(2) EXCEPTIONS.—No credits shall be allocated under paragraph (1) for a purchase of biodiesel—

- (A) for use in alternative fueled vehicles; or
- (B) that is required by Federal or State law.

(3) AUTHORITY TO MODIFY PERCENTAGE.—The Secretary may, by rule, lower the 20 percent biodiesel volume requirement in paragraph (1) for reasons related to cold start, safety, or vehicle function considerations.

(4) DOCUMENTATION.—A fleet or covered person seeking a credit under this section shall provide written documentation to the Secretary supporting the allocation of a credit to such fleet or covered person under paragraph (1).

(b) USE OF CREDITS.—

(1) IN GENERAL.—At the request of a fleet or covered person allocated a credit under subsection (a), the Secretary shall, for the year in which the purchase of a qualifying volume is made,

treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under this title, title IV, or title V.

(2) LIMITATION.—Credits allocated under subsection (a) may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this title, title IV, and title V. This paragraph shall not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 501(a)(2)(A).

(c) CREDIT NOT A SECTION 508 CREDIT.—A credit under this section shall not be considered a credit under section 508.

(d) ISSUANCE OF RULE.—The Secretary shall, before January 1, 1999, issue a rule establishing procedures for the implementation of this section.

(e) COLLECTION OF DATA.—The Secretary shall collect such data as are required to make a determination described in subsection (f)(2)(B).

(f) DEFINITIONS.—For purposes of this section—

(1) the term “biodiesel” means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act; and

(2) the term “qualifying volume” means—

(A) 450 gallons; or

(B) if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use.

* * * * *

ADDITIONAL VIEWS OF REPRESENTATIVES MARKEY,
WAXMAN, PALLONE, DEGETTE, AND FURSE

While all of us would support a clean reauthorization of the Energy Policy and Conservation Act, we have concerns about the Shimkus amendment that was adopted during the Committee's markup. Though some of us were willing to support the underlying legislation despite adoption of the amendment, others felt that the amendment raised sufficient policy concerns to lead us to oppose the bill. All of us agree, however, that while the Shimkus amendment represents an improvement over the original Shimkus bill (H.R. 2568), this legislation raises significant concerns which must be addressed if it is to avoid a negative impact on efforts to promote development of cleaner alternative fueled vehicles and reduce our nation's dependence on imported oil.

We note that one of the primary goals of the Energy Policy Act of 1992 ("EPA Act" or "the Act") was to enact a comprehensive national energy policy that strengthens U.S. energy security by reducing dependence on imported oil. Currently, the United States consumes seven million barrels of oil more per day than it produces. Section 502 of the Act establishes goals of a 10 percent displacement in U.S. motor fuel consumption by the year 2000 and a 30 percent displacement in U.S. motor fuel consumption by the year 2010 through the production and increased use of replacement fuels. Section 504 of the Act allows the Secretary to revise these goals downward. According to the latest projections by the Energy Information Administration, the transportation sector will consume 15.8 million barrels per day of petroleum in 2010. Of this total, about 9.2 million barrels per day of petroleum are projected to be used by light duty vehicles. The Energy Information Administration also estimates that 60 percent of our total petroleum demand will be imported in 2010.

Significant gains in displacing petroleum motor fuel consumption by the year 2010 are expected to occur by replacing gasoline with alternative fuels such as electricity, ethanol, hydrogen, methanol, natural gas and propane, in a portion of the U.S. car and truck population, which is projected to be in excess of 200 million vehicles in the year 2010. Currently, alternative fueled vehicles comprise a small fraction of the total U.S. vehicle stock. To enable the Act's displacement goals to be met, alternative fuels must be readily accessible and motor vehicles that operate on these alternative fuels must be available for purchase. Thus, two important elements of reducing petroleum motor fuel consumption are: a nationwide alternative fuels infrastructure and the availability of alternative fueled vehicles for purchase at a reasonable cost by the general public in a wide variety of vehicle types and fueling options. Under EPA Act, a motor fuel must meet three requirements to be considered to be an alternative fuel. First, it must foster substantial environ-

mental benefits. Second, it must be substantially non-petroleum. Third, it must promote energy security goals of the Act.

While we share the stated concerns of some supporters of the Shimkus amendment that many alternative fueled vehicles acquired in response to EAct do not actually operate on alternative fuels, we must point out that neither H.R. 2568 nor the Shimkus amendment adopted by the Committee addresses this shortcoming in current law.

The original Shimkus bill, H.R. 2568, would have designated a fuel mixture that contained 80 percent petroleum and 20 percent biodiesel (B-20) as an alternative motor fuel under EAct. Since any diesel-fueled vehicle is capable of operating on the biodiesel fuel known as B-20, and since EAct defines an alternative fueled vehicle as one which is capable of operating using an alternative fuel, H.R. 2568 would have transformed every diesel vehicle in America into an alternative fueled vehicle. Even if such vehicles did not use biodiesel fuel (which they would be unlikely to do, as B-20 costs 20–28 cents per gallon more than traditional petroleum diesel), they would have been considered an alternative fueled vehicle for the purposes of EAct. This would have created a huge loophole in the law which would have undermined our national policy of seeking to promote investment in natural gas, electric, or other alternative fueled vehicles and would have undermined much of the private sector investment in such vehicle technologies that has occurred since EAct's enactment in 1992.

We note that the Shimkus amendment adopted by the Committee takes a different approach from H.R. 2568, and one which represents an improvement over the original bill. The amendment would allow the Secretary of Energy to allocate credits for each qualifying volume of the biodiesel fuel purchased for heavy vehicles to satisfy EAct requirements imposed on certain covered persons and fleets. We were pleased that the sponsors agreed to make certain modifications in this amendment, such as striking the transferability of these credits, making certain modifications in the definition of biodiesel that clarifies that it covers only fuel substitutes produced from non-petroleum renewable resources, and making certain clarifications in the DOE authority to lower the percentage of qualifying biodiesel volume for reasons relating to cold start, safety and vehicle function considerations. While these changes have helped to improve the amendment, we still have significant concerns about the language adopted by the Committee.

First, we question whether it makes sense to allow biodiesel fuel to be used to meet up to 50 percent of the alternative fueled vehicle requirements under EAct. The purpose of the alternative fuels program was to create incentives for private sector investments in new and more environmentally benign technologies which could meet our nation's long term energy and transportation needs without reliance on imported oil—much of which comes from the Middle East. The Shimkus amendment could undermine this important energy security goal by reducing by up to half the number of alternative fueled vehicles acquired in this country each year. Congress decided in 1992 to encourage the shift from petroleum by first getting alternative fueled vehicles on the road so that the infrastructure for alternative fuels could be supported. Allowing use of a fuel

which is 80% petroleum to displace the acquisition of vehicles which don't rely on petroleum-based fuels will do little to help the U.S. achieve energy independence from oil imports. In fact, according to DOE staff, switching every single diesel vehicle in the United States to B-20 would only displace 4.2% of petroleum usage.

Second, alternative fuels under EPO Act are required to foster substantial environmental benefits. It is our understanding that NOx emissions, a leading source of health-threatening smog, are not reduced in biodiesel blends with less than 35 percent bio-mass derived fuel. Moreover, we note that diesel-fueled vehicles are the source of more than 40 percent of the pollutants from motor vehicles and are also the primary transportation source of fine particulate matter (PM), which has been determined to be a major public health problem. Additionally, in August 1998 the California Air Resources Board designated diesel particulates as carcinogenic toxic air contaminants. The decision means that California state regulators must examine strategies to limit human exposure to the chemicals and illustrates the growing consensus on the need to further reduce dangerous diesel emissions.

Allowing a fuel which is largely petroleum-based to receive credits to meet up to 50 percent of the alternative fuels requirements of EPO Act will complicate efforts to achieve the fundamental purposes of the alternative fuels program. Therefore, if this legislation moves forward, we would be far more comfortable if biodiesel credits were limited to a much lower level of between 20 to 30 percent.

Third, we have concerns about the definition of "qualifying volume" of biodiesel fuel. Under the amendment, a minimum of 450 gallons of biodiesel fuel qualifies for one credit. We think this quantity is far too low. Under current law, the purchase of an alternative fueled vehicle—which may serve in a fleet for an average of 5 or 6 years—is worth one credit. Under the Shimkus amendment, a vehicle which burns 450 gallons of biodiesel per year would receive one credit for every year it is in service, or 5–6 credits.

The practical impact of this difference is that credits will be more easily, cheaply, and plentifully generated through the use of biodiesel than through acquisition of alternative fueled vehicles. Consider that over a lifetime of 6 years, a natural gas dedicated vehicle could consume up to 4800 gallons of alternative fuel. The B-20 heavy-duty vehicle would consume 12,000 gallons of B-20, which would equate to only 2,400 gallons of biodiesel. The dedicated natural gas vehicle would get 1 credit. The B-20 vehicle could claim 1 credit per year, or 6 credits total over the same time frame. Also, a heavy-duty dedicated natural gas vehicle that consumes 12,000 gallons of natural gas over 6 years would also get 1 credit. This is a perverse policy result.

To equate a biodiesel credit with a dedicated alternative fueled vehicle on a strict energy basis, therefore, the qualifying volume would need to be set at 4800 gallons. However, since many alternative fueled vehicles are not dedicated, but dual-fuel, they consume much less. The Department of Energy informs us that most dual-fuel natural gas vehicles consume an alternative fuel 50% of the time. Thus, we believe a much higher qualifying volume, such as 2250 gallons, would be appropriate so that biodiesel credits do

not entirely displace investment in cleaner alternative fueled vehicles. We also note that to maintain the integrity of this credit system, the Department of Energy may need to collect fuel use records from fleets using biodiesel.

When Congress enacted the alternative fuels provisions of EPAct, it recognized that vehicles had to come first—and that requiring fuel use would steer many fleets to “avoid” the program. Now that the U.S. is manufacturing significant numbers of alternative fueled vehicles, we must continue working to create a sound and viable refueling infrastructure. While some of us considered offering amendments to address our concerns regarding the Shimkus amendment, we decided not to do so at the Committee markup in the hope that we could continue to work with the sponsors of the amendment to address these issues. We appreciate the willingness of the sponsors of the amendment to work with us to address our concerns, and we are hopeful that a compromise can be reached to address these concerns as best as possible.

ED MARKEY.
FRANK PALLONE, Jr.
DIANA DEGETTE.
HENRY A. WAXMAN.
ELIZABETH FURSE.

