108th CONGRESS
1st Session

H. R. 6

AN ACT

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

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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108TH CONGRESS
1ST SESSION

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AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 2. ENERGY POLICY.

It is the sense of the Congress that the United States should take all actions necessary in the areas of conservation, efficiency, alternative source, technology development, and domestic production to reduce the United States dependence on foreign energy sources from 58 percent to 45 percent by January 1, 2013.

DIVISION A—ENERGY AND COMMERCE

SEC. 10001. SHORT TITLE.

This division may be cited as the ''Energy Policy Act of 2003''.

TITLE I—ENERGY CONSERVATION

Subtitle A—Federal Leadership in Energy Conservation

SEC. 11001. ENERGY AND WATER SAVING MEASURES IN CONGRESSIONAL BUILDINGS.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act is amended by adding at the end:

"SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL BUILDINGS.

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

"(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the 'plan') for all facilities administered by the Congress (referred to in this section as 'congressional buildings') to meet the energy performance requirements for Federal buildings established under section 543(a)(1); and

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

"(b) PLAN REQUIREMENTS.—The plan shall include—

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

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

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

"(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

"(5) information packages and 'how-to' guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

"(c) ANNUAL REPORT.—The Architect shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

"(1) energy expenditures and savings estimates for each facility;

"(2) energy management and conservation projects; and

"(3) future priorities to ensure compliance with this section.".

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

"Sec. 552. Energy and water savings measures in congressional buildings.".

(c) REPEAL.—Section 310 of the Legislative Branch Appropriations Act, 1999 (40 U.S.C. 166i), is repealed.

(d) ENERGY INFRASTRUCTURE.—The Architect of the Capitol, building on the Master Plan Study completed

in July 2000, shall commission a study to evaluate the energy infrastructure of the Capital Complex to determine how the infrastructure could be augmented to become more energy efficient, using unconventional and renewable energy resources, in a way that would enable the Complex to have reliable utility service in the event of power fluctuations, shortages, or outages.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Architect of the Capitol to carry out subsection (d), not more than $2,000,000 for fiscal years after the enactment of this Act.

SEC. 11002. ENERGY MANAGEMENT REQUIREMENTS.

(a) ENERGY REDUCTION GOALS.—

(1) AMENDMENT.—Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended by striking ''its Federal buildings so that'' and all that follows through the end and inserting ''the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year

2001, by the percentage specified in the following table:

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

(2) REPORTING BASELINE.—The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act, as amended by paragraph (1) of this subsection, supersede all previous goals and baselines under such paragraph, and related reporting requirements.

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

"(3) Not later than December 31, 2012, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2023.".

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

''(i) compliance with those requirements would be impracticable;

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

''(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive orders, and other Federal law; and

''(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

''(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

"(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

"(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.".

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

(1) by striking "impracticability standards" and inserting "standards for exclusion"; and

(2) by striking "a finding of impracticability" and inserting "the exclusion".

(e) CRITERIA.—Section 543(c) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)) is further amended by adding at the end the following:

"(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).".

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

"(e) RETENTION OF ENERGY SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings. Except as otherwise provided by law, such funds may be used only for energy efficiency or unconventional and renewable energy resources projects.".

(g) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in the subsection heading, by inserting "THE PRESIDENT AND" before "CONGRESS"; and

(2) by inserting "President and" before "Congress".

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

SEC. 11003. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.

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

"(e) METERING OF ENERGY USE.—

"(1) DEADLINE.—By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

"(2) GUIDELINES.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the meter-

ing industry, utility industry, energy services industry, energy efficiency industry, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

"(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

"(i) take into consideration—

"(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

"(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

"(III) the measurement and verification protocols of the Department of Energy;

"(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

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

"(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

"(3) PLAN.—No later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily respon-

sible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.''.

SEC. 11004. FEDERAL BUILDING PERFORMANCE STANDARDS.

Section 305(a) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)) is amended—

(1) in paragraph (2)(A), by striking ''CABO Model Energy Code, 1992'' and inserting ''the 2000 International Energy Conservation Code''; and

(2) by adding at the end the following:

''(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that, if cost-effective, for new Federal buildings—

''(i) such buildings be designed so as to achieve energy consumption levels at least 30 percent below those of the most recent ASHRAE Standard 90.1 or the most recent

version of the International Energy Conservation Code, as appropriate; and

"(ii) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings.

"(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of amendments to ASHRAE Standard 90.1 or the 2000 International Energy Conservation Code, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards established under this paragraph should be updated to reflect the amendments.

"(C) STATEMENT ON COMPLIANCE OF NEW BUILDINGS.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include—

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

"(ii) a statement concerning whether the Federal buildings meet or exceed the revised standards established under this paragraph.".

SEC. 11005. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) REQUIREMENTS.—Part 3 of title V of the National Energy Conservation Policy Act is amended by adding at the end the following:

"SEC. 553. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

"(a) DEFINITIONS.—In this section:

"(1) ENERGY STAR PRODUCT.—The term 'Energy Star product' means a product that is rated for energy efficiency under an Energy Star program.

"(2) ENERGY STAR PROGRAM.—The term 'Energy Star program' means the program established by section 324A of the Energy Policy and Conservation Act.

"(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

"(4) FEMP DESIGNATED PRODUCT.—The term 'FEMP designated product' means a product that is designated under the Federal Energy Management

Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

"(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

"(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

"(A) an Energy Star product; or

"(B) a FEMP designated product.

"(2) EXCEPTIONS.—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the executive agency finds in writing that—

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

"(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

"(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

"(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements,

or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

"(d) DESIGNATION OF ELECTRIC MOTORS.—In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard within 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

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

(b) CONFORMING AMENDMENT.—The table of contents in section 101(b) of the National Energy Conservation Policy Act (42 U.S.C. 8201 note), as amended by section 11001(b) of this division, is further amended by inserting after the item relating to section 552 the following:

"Sec. 553. Federal procurement of energy efficient products.".

SEC. 11006. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) PERMANENT EXTENSION.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

(b) REPLACEMENT FACILITIES.—Section 801(a) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following new paragraph:

"(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced, established through a methodology set forth in the contract.

"(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in that subparagraph.".

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

"(2) The term 'energy savings' means—

"(A) a reduction in the cost of energy or water, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

"(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

"(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

"(iii) the increased efficient use of existing water sources; or

"(B) in the case of a replacement building or facility described in section 801(a)(3), a reduction in the cost of energy, from a base cost

established through a methodology set forth in the contract, that would otherwise be utilized in one or more existing federally owned buildings or other federally owned facilities by reason of the construction and operation of the replacement building or facility.''.

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

''(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for—

''(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations; or

''(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities.

Such contracts shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959

(40 U.S.C. 3301), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 3307).''.

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

''(4) The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

''(B) a water conservation measure that improves water efficiency, is life cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.''.

(f) REVIEW.—Within 180 days after the date of the enactment of this section, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and

administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, and energy efficiency services covered. The Secretary shall report these findings to Congress, and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

SEC. 11007. VOLUNTARY COMMITMENTS TO REDUCE INDUSTRIAL ENERGY INTENSITY.

(a) VOLUNTARY AGREEMENTS.—The Secretary of Energy shall enter into voluntary agreements with one or more persons in industrial sectors that consume significant amounts of primary energy per unit of physical output to reduce the energy intensity of their production activities.

(b) GOAL.—Voluntary agreements under this section shall have a goal of reducing energy intensity by not less than 2.5 percent each year from 2004 through 2014.

(c) RECOGNITION.—The Secretary of Energy, in cooperation with the Administrator of the Environmental Protection Agency and other appropriate Federal agen-

cies, shall develop mechanisms to recognize and publicize the achievements of participants in voluntary agreements under this section.

(d) DEFINITION.—In this section, the term ''energy intensity'' means the primary energy consumed per unit of physical output in an industrial process.

(e) TECHNICAL ASSISTANCE.—An entity that enters into an agreement under this section and continues to make a good faith effort to achieve the energy efficiency goals specified in the agreement shall be eligible to receive from the Secretary a grant or technical assistance as appropriate to assist in the achievement of those goals.

(f) REPORT.—Not later than June 30, 2010 and June 30, 2014, the Secretary shall submit to Congress a report that evaluates the success of the voluntary agreements, with independent verification of a sample of the energy savings estimates provided by participating firms.

SEC. 11008. FEDERAL AGENCY PARTICIPATION IN DEMAND REDUCTION PROGRAMS.

Section 546(c) of the National Energy Conservation Policy Act (42 U.S.C. 8256(c)) is amended by adding at the end of the following new paragraph:

''(6) Federal agencies are encouraged to participate in State or regional demand side reduction programs. The availability of such programs, including measures employ-

ing onsite generation, and the savings resulting from such participation, should be included in the evaluation of energy options for Federal facilities.''.

SEC. 11009. ADVANCED BUILDING EFFICIENCY TESTBED.

(a) ESTABLISHMENT.—The Secretary of Energy, in consultation with the Administrator of the General Services Administration, shall establish an Advanced Building Efficiency Testbed program for the development, testing, and demonstration of advanced engineering systems, components, and materials to enable innovations in building technologies. The program shall evaluate efficiency concepts for government and industry buildings, and demonstrate the ability of next generation buildings to support individual and organizational productivity and health as well as flexibility and technological change to improve environmental sustainability. Such program shall complement and not duplicate existing national programs.

(b) PARTICIPANTS.—The program established under subsection (a) shall be led by a university with the ability to combine the expertise from numerous academic fields including, at a minimum, intelligent workplaces and advanced building systems and engineering, electrical and computer engineering, computer science, architecture, urban design, and environmental and mechanical engineering. Such university shall partner with other univer-

sities and entities who have established programs and the capability of advancing innovative building efficiency technologies.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out this section $6,000,000 for each of the fiscal years 2004 through 2006, to remain available until expended. For any fiscal year in which funds are expended under this section, the Secretary shall provide one-third of the total amount to the lead university described in subsection (b), and provide the remaining two-thirds to the other participants referred to in subsection (b) on an equal basis.

SEC. 11010. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

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

''INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE

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

''(1) AGENCY HEAD.—The term 'agency head' means—

"(A) the Secretary of Transportation; and

"(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

"(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

"(A) involves the procurement of cement or concrete; and

"(B) is carried out in whole or in part using Federal funds.

"(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

"(A) ground granulated blast furnace slag;

"(B) coal combustion fly ash; and

"(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section

for use in cement or concrete projects paid for, in whole or in part, by the agency head.

"(b) IMPLEMENTATION OF REQUIREMENTS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

"(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

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

"(c) FULL IMPLEMENTATION STUDY.—

"(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to de-

termine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

"(2) MATTERS TO BE ADDRESSED.—The study shall—

"(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

"(B) identify all barriers in procurement requirements to fuller realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

"(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

"(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

"(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

"(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

"(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, within 1 year of the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

"(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

"(2) eliminate barriers identified under subsection (c).

"(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Solid Waste Disposal Act is amended by adding after the item relating to section 6004 the following new item:

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

SEC. 11011. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC BUILDINGS.

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

"§ 3177. Use of photovoltaic energy in public buildings

"(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—

"(1) IN GENERAL.—The Administrator of General Services may establish a photovoltaic energy

commercialization program for the procurement and installation of photovoltaic solar electric systems for electric production in new and existing public buildings.

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

"(A) To accelerate the growth of a commercially viable photovoltaic industry to make this energy system available to the general public as an option which can reduce the national consumption of fossil fuel.

"(B) To reduce the fossil fuel consumption and costs of the Federal Government.

"(C) To attain the goal of installing solar energy systems in 20,000 Federal buildings by 2010, as contained in the Federal Government's Million Solar Roof Initiative of 1997.

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

"(E) To develop program performance data to support policy decisions on future incentive programs with respect to energy.

"(3) ACQUISITION OF PHOTOVOLTAIC SOLAR ELECTRIC SYSTEMS.—

"(A) IN GENERAL.—The program shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability for use in public buildings.

"(B) ACQUISITION LEVELS.—The acquisition of photovoltaic electric systems shall be at a level substantial enough to allow use of low-cost production techniques with at least 150 megawatts (peak) cumulative acquired during the 5 years of the program.

"(4) ADMINISTRATION.—The Administrator shall administer the program and shall—

"(A) prescribe such rules and regulations as may be appropriate to monitor and assess the performance and operation of photovoltaic solar electric systems installed pursuant to this subsection;

"(B) develop innovative procurement strategies for the acquisition of such systems; and

"(C) transmit to the Committee on Transportation and Infrastructure of the House of Representatives and to the Committee on Environment and Public Works of the Senate an annual report on the results of the program.

"(b) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—

"(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Energy, shall establish a photovoltaic solar energy systems evaluation program to evaluate such photovoltaic solar energy systems as are required in public buildings.

"(2) PROGRAM REQUIREMENT.—In evaluating photovoltaic solar energy systems under the program, the Administrator shall ensure that such systems reflect the most advanced technology.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) PHOTOVOLTAIC ENERGY COMMERCIALIZATION PROGRAM.—There is authorized to be appropriated to carry out subsection (a) $210,000,000 for each of fiscal years 2004 through 2008. Such sums shall remain available until expended.

"(2) PHOTOVOLTAIC SYSTEMS EVALUATION PROGRAM.—There is authorized to be appropriated to carry out subsection (b) $52,700,000 for each of fiscal years 2004 through 2008. Such sums shall remain available until expended.".

(b) CONFORMING AMENDMENT.—The analysis for such chapter is amended by inserting after the item relating to section 3176 the following:

"3177. Use of photovoltaic energy in public buildings".

SEC. 11012. TELECOMMUTING STUDY.

(a) STUDY REQUIRED.—The Secretary, in consultation with the Commission, the Director of the Office of Personnel Management, the Administrator of General Services, and the Administrator of NTIA, shall conduct a study of the energy conservation implications of the widespread adoption of telecommuting by Federal employees in the United States.

(b) REQUIRED SUBJECTS OF STUDY.—The study required by subsection (a) shall analyze the following subjects in relation to the energy saving potential of telecommuting by Federal employees:

(1) Reductions of energy use and energy costs in commuting and regular office heating, cooling, and other operations.

(2) Other energy reductions accomplished by telecommuting.

(3) Existing regulatory barriers that hamper telecommuting, including barriers to broadband telecommunications services deployment.

(4) Collateral benefits to the environment, family life, and other values.

(c) REPORT REQUIRED.—The Secretary shall submit to the President and the Congress a report on the study required by this section not later than 6 months after the date of the enactment of this Act. Such report shall include a description of the results of the analysis of each of the subject described in subsection (b).

(d) DEFINITIONS.—As used in this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(3) NTIA.—The term ''NTIA'' means the National Telecommunications and Information Administration of the Department of Commerce.

(4) TELECOMMUTING.—The term ''telecommuting'' means the performance of work functions using communications technologies, thereby eliminating or substantially reducing the need to commute to and from traditional worksites.

(5) FEDERAL EMPLOYEE.—The term ''Federal employee'' has the meaning provided the term ''employee'' by section 2105 of title 5, United States Code.

Subtitle B—Energy Assistance and State Programs

SEC. 11021. LIHEAP AND WEATHERIZATION ASSISTANCE.

(a) LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.—Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by striking ''each of fiscal years 2002 through 2004'' and inserting ''each of fiscal years 2002 and 2003, and $3,400,000,000 for each of fiscal years 2004 through 2006''.

(b) WEATHERIZATION.—Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended by striking ''for fiscal years 1999 through 2003 such sums as may be necessary'' and inserting ''$325,000,000 for fiscal year 2004, $400,000,000 for fiscal year 2005, and $500,000,000 for fiscal year 2006''.

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall transmit to the Congress a report on how the Low-Income Home Energy Assistance Program could be used more effectively to prevent loss of life from extreme temperatures. In preparing such report, the Secretary shall consult with appropriate officials in all 50 States and the District of Columbia.

SEC. 11022. STATE ENERGY PROGRAMS.

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

''(g) The Secretary shall, at least once every 3 years, invite the Governor of each State to review and, if necessary, revise the energy conservation plan of such State submitted under subsection (b) or (e). Such reviews should consider the energy conservation plans of other States within the region, and identify opportunities and actions carried out in pursuit of common energy conservation goals.''.

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

''STATE ENERGY EFFICIENCY GOALS

''SEC. 364. Each State energy conservation plan with respect to which assistance is made available under this part on or after the date of enactment of the Energy Policy Act of 2003 shall contain a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in calendar year 2010 as compared to calendar year 1990, and may contain interim goals.''.

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

SEC. 11023. ENERGY EFFICIENT APPLIANCE REBATE PROGRAMS.

(a) DEFINITIONS.—In this section:

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

(2) ENERGY STAR PROGRAM.—The term ''Energy Star program'' means the program established by section 324A of the Energy Policy and Conservation Act.

(3) RESIDENTIAL ENERGY STAR PRODUCT.—The term ''residential Energy Star product'' means a product for a residence that is rated for energy efficiency under the Energy Star program.

(4) STATE ENERGY OFFICE.—The term ''State energy office'' means the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322).

(5) STATE PROGRAM.—The term ''State program'' means a State energy efficient appliance rebate program described in subsection (b)(1).

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

(1) establishes (or has established) a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require; and

(3) provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) AMOUNT OF ALLOCATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), for each fiscal year, the Secretary shall allocate to the State energy office of each eligible State to carry out subsection (d) an amount equal to the product obtained by multiplying the amount made available under subsection (f) for the fiscal year by the ratio that the population of the State in the most recent

calendar year for which data are available bears to the total population of all eligible States in that calendar year.

(2) MINIMUM ALLOCATIONS.—For each fiscal year, the amounts allocated under this subsection shall be adjusted proportionately so that no eligible State is allocated a sum that is less than an amount determined by the Secretary.

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

(e) ISSUANCE OF REBATES.—Rebates may be provided to residential consumers that meet the requirements of the State program. The amount of a rebate shall be determined by the State energy office, taking into consideration—

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

(2) the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and

(3) the difference between the cost of the residential Energy Star product and the cost of an appliance that is not a residential Energy Star prod-

uct, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to the residential Energy Star product.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for each of the fiscal years 2004 through 2008.

SEC. 11024. ENERGY EFFICIENT PUBLIC BUILDINGS.

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

(1) through construction of new energy efficient public buildings that use at least 30 percent less energy than a comparable public building constructed in compliance with standards prescribed in chapter 8 of the 2000 International Energy Conservation Code, or a similar State code intended to achieve substantially equivalent efficiency levels; or

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

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

(1) maintain such records and evidence of compliance as the Secretary may require; and

(2) develop and distribute information and materials and conduct programs to provide technical services and assistance to encourage planning, financing, and design of energy efficient public buildings by units of local government.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy such sums as may be necessary for each of fiscal years 2004 through 2013. Not more than 30 percent of appropriated funds shall be used for administration.

SEC. 11025. LOW INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.

(a) GRANTS.—The Secretary of Energy is authorized to make grants to units of local government, private, non-

profit community development organizations, and Indian tribe economic development entities to improve energy efficiency, identify and develop alternative renewable and distributed energy supplies, and increase energy conservation in low income rural and urban communities.

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

(1) investments that develop alternative renewable and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(c) DEFINITION.—For purposes of this section, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation

as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section there are authorized to be appropriated to the Secretary of Energy $20,000,000 for fiscal year 2004 and each fiscal year thereafter through fiscal year 2006.

Subtitle C—Energy Efficient Products

SEC. 11041. ENERGY STAR PROGRAM.

(a) AMENDMENT.—The Energy Policy and Conservation Act (42 U.S.C. 6201 and following) is amended by inserting the following after section 324:

"SEC. 324A. ENERGY STAR PROGRAM.

''There is established at the Department of Energy and the Environmental Protection Agency a program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through labeling of and other forms of communication about products and buildings that meet the highest energy efficiency standards. Responsibilities under the program shall be divided between

the Department of Energy and the Environmental Protection Agency consistent with the terms of agreements between the two agencies. The Administrator and the Secretary shall—

"(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for achieving energy efficiency and to reduce pollution;

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

"(3) preserve the integrity of the Energy Star label; and

"(4) solicit the comments of interested parties in establishing a new Energy Star product category or in revising a product category, and upon adoption of a new or revised product category provide an explanation of the decision that responds to significant public comments.".

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

"Sec. 324A. Energy Star program.".

SEC. 11042. CONSUMER EDUCATION ON ENERGY EFFICIENCY BENEFITS OF AIR CONDITIONING, HEATING, AND VENTILATION MAINTENANCE.

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

''(c) HVAC MAINTENANCE.—(1) For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, within 180 days of the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings resulting from properly conducted maintenance of air conditioning, heating, and ventilating systems.

''(2) The Secretary shall carry out the program in cooperation with the Administrator of the Environmental Protection Agency and such other entities as the Secretary considers appropriate, including industry trade associations, industry members, and energy efficiency organizations.

''(d) SMALL BUSINESS EDUCATION AND ASSISTANCE.—The Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the existing Energy Star for Small

Business Program, to assist small business to become more energy efficient, understand the cost savings obtainable through efficiencies, and identify financing options for energy efficiency upgrades. The Secretary and the Administrator shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Agency, and the Department of Agriculture.''.

SEC. 11043. ADDITIONAL DEFINITIONS.

Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended by adding at the end the following:

''(32) The term 'battery charger' means a device that charges batteries for consumer products.

''(33) The term 'commercial refrigerator, freezer and refrigerator-freezer' means a refrigerator, freezer or refrigerator-freezer that—

''(A) is not a consumer product regulated under this Act; and

''(B) incorporates most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

''(34) The term 'external power supply' means an external power supply circuit that is used to convert household electric current into either DC cur-

rent or lower-voltage AC current to operate a consumer product.

"(35) The term 'illuminated exit sign' means a sign that—

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

"(B) consists of—

"(i) an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators; and

"(ii) provides contrast between the legend, any directional indicators, and the background.

"(36)(A) Except as provided in subparagraph (B), the term 'low-voltage dry-type transformer' means a transformer that—

"(i) has an input voltage of 600 volts or less;

"(ii) is air-cooled;

"(iii) does not use oil as a coolant; and

"(iv) is rated for operation at a frequency of 60 Hertz.

"(B) The term 'low-voltage dry-type transformer' does not include—

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

"(ii) transformers that are designed to be used in a special purpose application, such as transformers commonly known as drive transformers, rectifier transformers, autotransformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers; or

"(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because the transformer is designed for a special application and the application of standards to the transformer would not result in significant energy savings.

"(37) The term 'standby mode' means the lowest amount of electric power used by a household appliance when not performing its active functions, as

defined on an individual product basis by the Secretary.

''(38) The term 'torchiere' means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

''(39) The term 'transformer' means a device consisting of two or more coils of insulated wire that transfers alternating current by electromagnetic induction from one coil to another to change the original voltage or current value.

''(40) The term 'unit heater' means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.

''(41) The term 'traffic signal module' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.''.

SEC. 11044. ADDITIONAL TEST PROCEDURES.

(a) EXIT SIGNS.—Section 323(b) of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended by adding at the end the following:

"(9) Test procedures for illuminated exit signs shall be based on the test method used under Version 2.0 of the Energy Star program of the Environmental Protection Agency for illuminated exit signs.

"(10) Test procedures for low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998). The Secretary may review and revise this test procedure based on future revisions to such standard test method.

"(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.".

(b) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is further amended by adding at the end the following:

"(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall within 24 months after the date of enactment of this subsection prescribe testing

requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, commercial unit heaters, and commercial refrigerators, freezers and refrigerator-freezers. Such testing requirements shall be based on existing test procedures used in industry to the extent practical and reasonable. In the case of suspended ceiling fans, such test procedures shall include efficiency at both maximum output and at an output no more than 50 percent of the maximum output.''.

SEC. 11045. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.

Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended by adding at the end the following:

''(u) STANDBY MODE ELECTRIC ENERGY CONSUMPTION.—

''(1) INITIAL RULEMAKING.—(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions of standby mode and test procedures for the standby mode power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing test procedures used for meas-

uring energy consumption in standby mode and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards. Prior to the end of this time period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for standby mode energy use for these products.

"(B) The Secretary shall, within 3 years after the date of enactment of this subsection, issue a final rule that determines whether energy conservation standards shall be promulgated for battery chargers and external power supplies or classes thereof. For each product class, any such standards shall be set at the lowest level of standby energy use that—

"(i) meets the criteria of subsections (o), (p), (q), (r), (s) and (t); and

"(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

"(2) DESIGNATION OF ADDITIONAL COVERED PRODUCTS.—(A) Not later than 180 days after the date of enactment of this subsection, the Secretary shall publish for public comment and public hearing a notice to determine whether any noncovered products should be designated as covered products for the purpose of instituting a rulemaking under this section to determine whether an energy conservation standard restricting standby mode energy consumption, should be promulgated; except that any restriction on standby mode energy consumption shall be limited to major sources of such consumption.

"(B) In making the determinations pursuant to subparagraph (A) of whether to designate new covered products and institute rulemakings, the Secretary shall, among other relevant factors and in addition to the criteria in section 322(b), consider—

"(i) standby mode power consumption compared to overall product energy consumption; and

"(ii) the priority and energy savings potential of standards which may be promulgated under this subsection compared to other required rulemakings under this section and the

available resources of the Department to conduct such rulemakings.

"(C) Not later than 1 year after the date of enactment of this subsection, the Secretary shall issue a determination of any new covered products for which he intends to institute rulemakings on standby mode pursuant to this section and he shall state the dates by which he intends to initiate those rulemakings.

"(3) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to this section should be revised, the Secretary shall consider for covered products which are major sources of standby mode energy consumption whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other relevant factors, the criteria for non-covered products in subparagraph (B) of paragraph (2) of this subsection.

"(4) RULEMAKING FOR STANDBY MODE.—(A) Any rulemaking instituted under this subsection or for covered products under this section which restricts standby mode power consumption shall be

subject to the criteria and procedures for issuing energy conservation standards set forth in this section and the criteria set forth in subparagraph (B) of paragraph (2) of this subsection.

"(B) No standard can be proposed for new covered products or covered products in a standby mode unless the Secretary has promulgated applicable test procedures for each product pursuant to section 323.

"(C) The provisions of section 327 shall apply to new covered products which are subject to the rulemakings for standby mode after a final rule has been issued.

"(5) EFFECTIVE DATE.—Any standard promulgated under this subsection shall be applicable to products manufactured or imported 3 years after the date of promulgation.

"(6) VOLUNTARY PROGRAMS TO REDUCE STANDBY MODE ENERGY USE.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A (relating to Energy Star Programs) and other voluntary industry agreements or codes of conduct, which are designed to reduce standby mode energy use.

"(v) SUSPENDED CEILING FANS, VENDING MACHINES, UNIT HEATERS, AND COMMERCIAL REFRIGERATORS, FREEZERS AND REFRIGERATOR-FREEZERS.—The Secretary shall within 24 months after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), prescribe, by rule, energy conservation standards for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, unit heaters, and commercial refrigerators, freezers and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (l) and (m). Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing such standard.

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

"(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

"(1) shall consume not more than 190 watts of power; and

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

"(y) LOW VOLTAGE DRY-TYPE TRANSFORMERS.—The efficiency of low voltage dry-type transformers manufactured on or after January 1, 2005 shall be the Class I Efficiency Levels for low voltage dry-type transformers specified in Table 4–2 of the 'Guide for Determining Energy Efficiency for Distribution Transformers' published by the National Electrical Manufacturers Association (NEMA TP–1–1996).

"(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006 shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this paragraph, and shall be installed with compatible, electrically-connected signal control interface devices and conflict monitoring systems.

"(aa) EFFECTIVE DATE OF SECTION 327.—The provisions of section 327 shall apply to products for which standards are set in subsections (v) through (z) of this section after the effective date for such standards.".

SEC. 11046. ENERGY LABELING.

(a) RULEMAKING ON EFFECTIVENESS OF CONSUMER PRODUCT LABELING.—Paragraph (2) of section 324(a) of

the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding at the end the following:

"(F) Not later than 3 months after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider the effectiveness of the current consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency and to consider changes to the labeling rules that would improve the effectiveness of consumer product labels. Such rulemaking shall be completed within 2 years after the date of enactment of this subparagraph.".

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

"(5) The Secretary or the Commission, as appropriate, may for covered products referred to in subsections (u) through (z) of section 325, prescribe, by rule, pursuant to this section, labeling requirements for such products after a test procedure has been set pursuant to section 323.".

SEC. 11047. STUDY OF ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall contract with the National Academy of Sciences for a study, to be completed within 1 year of enactment of this Act, to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual site of energy consumption, or through the full fuel cycle, beginning at the source of energy production. The Secretary shall submit the report to the Congress.

TITLE II—OIL AND GAS

Subtitle A—Alaska Natural Gas Pipeline

SEC. 12001. SHORT TITLE.

This subtitle may be cited as the ''Alaska Natural Gas Pipeline Act of 2003''.

SEC. 12002. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Construction of a natural gas pipeline system from the Alaskan North Slope to United States markets is in the national interest and will enhance national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(2) The Commission issued a conditional certificate of public convenience and necessity for the

Alaska natural gas transportation system, which remains in effect.

(b) PURPOSES.—The purposes of this subtitle are as follows:

(1) To provide a statutory framework for the expedited approval, construction, and initial operation of an Alaska natural gas transportation project, as an alternative to the framework provided in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), which remains in effect.

(2) To establish a process for providing access to such transportation project in order to promote competition in the exploration, development, and production of Alaska natural gas.

(3) To clarify Federal authorities under the Alaska Natural Gas Transportation Act of 1976.

SEC. 12003. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) ALASKA NATURAL GAS.—The term ''Alaska natural gas'' means natural gas derived from the area of the State of Alaska lying north of 64 degrees North latitude.

(2) ALASKA NATURAL GAS TRANSPORTATION PROJECT.—The term ''Alaska natural gas transpor-

tation project'' means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under either—

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or

(B) section 12004.

(3) ALASKA NATURAL GAS TRANSPORTATION SYSTEM.—The term ''Alaska natural gas transportation system'' means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 and designated and described in section 2 of the President's decision.

(4) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(5) PRESIDENT'S DECISION.—The term ''President's decision'' means the decision and report to Congress on the Alaska natural gas transportation system issued by the President on September 22, 1977, pursuant to section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719e) and approved by Public Law 95–158 (91 Stat. 1268).

SEC. 12004. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) AUTHORITY OF THE COMMISSION.—Notwithstanding the provisions of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, pursuant to section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) ISSUANCE OF CERTIFICATE.—

(1) IN GENERAL.—The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) CONSIDERATIONS.—In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through such project to markets in the contiguous United States.

(c) EXPEDITED APPROVAL PROCESS.—The Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section not more than 60 days after the issuance of the final environmental impact statement for that project pursuant to section 12005.

(d) PROHIBITION ON CERTAIN PIPELINE ROUTE.—No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from lands within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that traverses—

(1) the submerged lands (as defined by the Submerged Lands Act) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees North latitude.

(e) OPEN SEASON.—Except where an expansion is ordered pursuant to section 12006, initial or expansion ca-

pacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations governing the conduct of open seasons for such project. Such procedures shall include the criteria for and timing of any open seasons, be consistent with the purposes set forth in section 12002(b)(2), and, for any open season for capacity beyond the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thompson units. The Commission shall issue such regulations not later than 120 days after the date of enactment of this Act.

(f) PROJECTS IN THE CONTIGUOUS UNITED STATES.—Applications for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made pursuant to the Natural Gas Act. To the extent such pipeline facilities include the expansion of any facility constructed pursuant to the Alaska Natural Gas Transportation Act of 1976, the provisions of that Act shall continue to apply.

(g) STUDY OF IN-STATE NEEDS.—The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that

it has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) ALASKA ROYALTY GAS.—The Commission, upon the request of the State of Alaska and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project for the State of Alaska or its designee for the transportation of the State's royalty gas for local consumption needs within the State; except that the rates of existing shippers of subscribed capacity on such project shall not be increased as a result of such access.

(i) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 12005. ENVIRONMENTAL REVIEWS.

(a) COMPLIANCE WITH NEPA.—The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 12004 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) DESIGNATION OF LEAD AGENCY.—The Commission shall be the lead agency for purposes of complying

with the National Environmental Policy Act of 1969, and shall be responsible for preparing the statement required by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 12004. The Commission shall prepare a single environmental statement under this section, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the project.

(c) OTHER AGENCIES.—All Federal agencies considering aspects of the construction and operation of an Alaska natural gas transportation project under section 12004 shall cooperate with the Commission, and shall comply with deadlines established by the Commission in the preparation of the statement under this section. The statement prepared under this section shall be used by all such agencies to satisfy their responsibilities under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to such project.

(d) EXPEDITED PROCESS.—The Commission shall issue a draft statement under this section not later than 12 months after the Commission determines the application to be complete and shall issue the final statement not later than 6 months after the Commission issues the draft statement, unless the Commission for good cause finds that additional time is needed.

SEC. 12006. PIPELINE EXPANSION.

(a) AUTHORITY.—With respect to any Alaska natural gas transportation project, upon the request of one or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of such project if it determines that such expansion is required by the present and future public convenience and necessity.

(b) REQUIREMENTS.—Before ordering an expansion, the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates as established do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that the proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the then-effective tariff of the Alaska natural gas transportation project;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) REQUIREMENT FOR A FIRM TRANSPORTATION AGREEMENT.—Any order of the Commission issued pursuant to this section shall be null and void unless the person or persons requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within a reasonable period of time as specified in such order.

(d) LIMITATION.—Nothing in this section shall be construed to expand or otherwise affect any authorities of the Commission with respect to any natural gas pipeline located outside the State of Alaska.

(e) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 12007. FEDERAL COORDINATOR.

(a) ESTABLISHMENT.—There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) FEDERAL COORDINATOR.—The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall—

(1) be appointed by the President, by and with the advice of the Senate;

(2) hold office at the pleasure of the President; and

(3) be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) DUTIES.—The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this subtitle.

(d) REVIEWS AND ACTIONS OF OTHER FEDERAL AGENCIES.—

(1) EXPEDITED REVIEWS AND ACTIONS.—All reviews conducted and actions taken by any Federal officer or agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines set forth in this subtitle.

(2) PROHIBITION ON CERTAIN TERMS AND CONDITIONS.—Except with respect to Commission actions under sections 12004, 12005, and 12006, no Federal officer or agency shall have the authority to include terms and conditions that are permitted, but not required, by law on any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the terms and conditions would prevent or impair in any significant respect the expeditious construction and operation of the project.

(3) PROHIBITION ON CERTAIN ACTIONS.—Except with respect to Commission actions under sections 12004, 12005, and 12006, unless required by law, no Federal officer or agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alas-

ka natural gas transportation project if the Federal Coordinator determines that such action would prevent or impair in any significant respect the expeditious construction and operation of the project.

(e) STATE COORDINATION.—The Federal Coordinator shall enter into a Joint Surveillance and Monitoring Agreement, approved by the President and the Governor of Alaska, with the State of Alaska similar to that in effect during construction of the Trans-Alaska Oil Pipeline to monitor the construction of the Alaska natural gas transportation project. The Federal Government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses Federal lands and private lands, and the State government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses State lands.

(f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS AND AUTHORITY.—Upon appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary of Energy pursuant to section 3012(b) of Public Law 102–486 (15 U.S.C. 719e(b)), including all functions and authority described and enumerated in the

Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33,663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36,927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

SEC. 12008. JUDICIAL REVIEW.

(a) EXCLUSIVE JURISDICTION.—Except for review by the Supreme Court of the United States on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this subtitle;

(2) the constitutionality of any provision of this subtitle, or any decision made or action taken under this subtitle; or

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 with respect to any action under this subtitle.

(b) DEADLINE FOR FILING CLAIM.—Claims arising under this subtitle may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) EXPEDITED CONSIDERATION.—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest as described in section 12002(a).

(d) AMENDMENT TO ANGTA.—Section 10(c) of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended by inserting after paragraph (1) the following:

''(2) The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.''.

SEC. 12009. STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

(a) LOCAL DISTRIBUTION.—Any facility receiving natural gas from the Alaska natural gas transportation project for delivery to consumers within the State of Alaska shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)), and therefore not subject to the jurisdiction of the Commission.

(b) ADDITIONAL PIPELINES.—Nothing in this subtitle, except as provided in section 12004(d), shall preclude or affect a future gas pipeline that may be constructed

to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State of Alaska for consumption within or distribution outside the State of Alaska.

(c) RATE COORDINATION.—Pursuant to the Natural Gas Act, the Commission shall establish rates for the transportation of natural gas on the Alaska natural gas transportation project. In exercising such authority, the Commission, pursuant to section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall confer with the State of Alaska regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State of Alaska.

SEC. 12010. STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

(a) REQUIREMENT OF STUDY.—If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission not later than 18 months after the date of enactment of this Act, the Secretary of Energy shall conduct a study of alternative

approaches to the construction and operation of the project.

(b) SCOPE OF STUDY.—The study shall consider the feasibility of establishing a Government corporation to construct an Alaska natural gas transportation project, and alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the project.

(c) CONSULTATION.—In conducting the study, the Secretary of Energy shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Commanding General of the Corps of Engineers).

(d) REPORT.—If the Secretary of Energy is required to conduct a study under subsection (a), the Secretary shall submit a report containing the results of the study, the Secretary's recommendations, and any proposals for legislation to implement the Secretary's recommendations to Congress.

SEC. 12011. CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

(a) SAVINGS CLAUSE.—Nothing in this subtitle affects any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C.

719g) or any Presidential findings or waivers issued in accordance with that Act.

(b) CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS.—Any Federal officer or agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), so long as such action does not compel a change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision, or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(c) UPDATED ENVIRONMENTAL REVIEWS.—The Secretary of Energy shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop de-

tailed terms, conditions, and compliance plans required by section 5 of the President's decision.

SEC. 12012. SENSE OF CONGRESS.

It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to make every effort to use steel that is manufactured or produced in North America and to negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 12013. PARTICIPATION OF SMALL BUSINESS CONCERNS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study on the extent to which small

business concerns participate in the construction of oil and gas pipelines in the United States.

(2) REPORT.—Not later that 1 year after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of the study.

(3) UPDATES.—The Comptroller General shall update the study at least once every 5 years and transmit to Congress a report containing the results of the update.

(4) APPLICABILITY.—After the date of completion of the construction of an Alaska natural gas transportation project, this subsection shall no longer apply.

(c) SMALL BUSINESS CONCERN DEFINED.—In this section, the term ''small business concern'' has the meaning given such term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

SEC. 12014. ALASKA PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Labor (in this section referred to as the ''Secretary'') may make grants to the Alaska Department of Labor and Workforce Development to—

(1) develop a plan to train, through the workforce investment system established in the State of Alaska under the Workforce Investment Act of 1998 (112 Stat. 936 et seq.), adult and dislocated workers, including Alaska Natives, in urban and rural Alaska in the skills required to construct and operate an Alaska gas pipeline system; and

(2) implement the plan developed pursuant to paragraph (1).

(b) REQUIREMENTS FOR PLANNING GRANTS.—The Secretary may make a grant under subsection (a)(1) only if—

(1) the Governor of Alaska certifies in writing to the Secretary that there is a reasonable expectation that construction of an Alaska gas pipeline will commence within 3 years after the date of such certification; and

(2) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (1).

(c) REQUIREMENTS FOR IMPLEMENTATION GRANTS.—The Secretary may make a grant under subsection (a)(2) only if—

(1) the Secretary has approved a plan developed pursuant to subsection (a)(1);

(2) the Governor of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of an Alaska gas pipeline system will commence within 2 years after the date of such certification;

(3) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (2) after considering—

(A) the status of necessary State and Federal permits;

(B) the availability of financing for the pipeline project; and

(C) other relevant factors and circumstances.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Labor such sums as may be necessary, but not to exceed $20,000,000, to carry out this section.

Subtitle B—Strategic Petroleum Reserve

SEC. 12101. FULL CAPACITY OF STRATEGIC PETROLEUM RESERVE.

The President shall—

(1) fill the Strategic Petroleum Reserve established pursuant to part B of title I of the Energy

Policy and Conservation Act (42 U.S.C. 6231 et seq.) to full capacity as soon as practicable;

(2) acquire petroleum for the Strategic Petroleum Reserve by the most practicable and cost-effective means, with consideration being given to domestically produced petroleum, including the acquisition of crude oil the United States is entitled to receive in kind as royalties from production on Federal lands; and

(3) ensure that the fill rate minimizes impacts on petroleum markets.

SEC. 12102. STRATEGIC PETROLEUM RESERVE EXPANSION.

(a) PLAN.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall transmit to the Congress a plan for the expansion of the Strategic Petroleum Reserve to 1,000,000,000 barrels, including—

(1) plans for the elimination of infrastructure impediments to maximum drawdown capability;

(2) a schedule for the completion of all required environmental reviews;

(3) provision for consultation with Federal and State environmental agencies;

(4) a schedule and procedures for site selection; and

(5) anticipated annual budget requests.

(b) CONSTRUCTION OF ADDITIONAL CAPACITY.—The Secretary of Energy shall acquire property and complete construction for the expansion of the Strategic Petroleum Reserve in accordance with the plan transmitted under subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy $1,500,000,000 for carrying out this section, to remain available until expended.

SEC. 12103. PERMANENT AUTHORITY TO OPERATE THE STRATEGIC PETROLEUM RESERVE AND OTHER ENERGY PROGRAMS.

(a) AMENDMENT TO TITLE I OF THE ENERGY POLICY AND CONSERVATION ACT.—Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.) is amended—

(1) by striking section 166 (42 U.S.C. 6246) and inserting—

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 166. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part and part D, to remain available until expended.";

(2) by striking section 186 (42 U.S.C. 6250e); and

(3) by striking part E (42 U.S.C. 6251; relating to the expiration of title I of the Act).

(b) AMENDMENT TO TITLE II OF THE ENERGY POLICY AND CONSERVATION ACT.—Title II of the Energy Policy and Conservation Act (42 U.S.C. 6271 et seq.) is amended—

(1) by inserting before section 273 (42 U.S.C. 6283) the following:

"PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS";

(2) by striking section 273(e) (42 U.S.C. 6283(e); relating to the expiration of summer fill and fuel budgeting programs); and

(3) by striking part D (42 U.S.C. 6285; relating to the expiration of title II of the Act).

(c) TECHNICAL AMENDMENTS.—The table of contents for the Energy Policy and Conservation Act is amended—

(1) by inserting after the items relating to part C of title I the following:

"PART D—NORTHEAST HOME HEATING OIL RESERVE

"Sec. 181. Establishment.
"Sec. 182. Authority.
"Sec. 183. Conditions for release; plan.
"Sec. 184. Northeast Home Heating Oil Reserve Account.
"Sec. 185. Exemptions.";

(2) by amending the items relating to part C of title II to read as follows:

"PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

"Sec. 273. Summer fill and fuel budgeting programs."; and

(3) by striking the items relating to part D of title II.

(d) AMENDMENT TO THE ENERGY POLICY AND CONSERVATION ACT.—Section 183(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6250b(b)(1)) is amended by inserting "(considered as a heating season average)" after "mid-October through March".

Subtitle C—Hydraulic Fracturing

SEC. 12201. HYDRAULIC FRACTURING.

Paragraph (1) of section 1421(d) of the Safe Drinking Water Act (42 U.S.C. 300h(d)) is amended to read as follows:

"(1) The term 'underground injection'—

"(A) means the subsurface emplacement of fluids by well injection; and

"(B) excludes—

"(i) the underground injection of natural gas for purposes of storage; and

"(ii) the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil or gas production activities.".

Subtitle D—Unproven Oil and Natural Gas Reserves Recovery Program

SEC. 12301. PROGRAM.

The Secretary shall carry out a program to demonstrate technologies for the recovery of oil and natural gas reserves from reservoirs described in section 12302.

SEC. 12302. ELIGIBLE RESERVOIRS.

The program under this subtitle shall only address oil and natural gas reservoirs with 1 or more of the following characteristics:

(1) Complex geology involving rapid changes in the type and quality of the oil reservoir across the reservoir.

(2) Low reservoir pressure.

(3) Unconventional natural gas reservoirs in coalbeds, tight sands, or shales.

SEC. 12303. FOCUS AREAS.

The program under this subtitle may focus on areas including coal-bed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, innovative production techniques (including horizontal drilling, fracture detection methodologies, and three-dimensional seismic), and enhanced recovery techniques.

SEC. 12304. LIMITATION ON LOCATION OF ACTIVITIES.

Activities under this subtitle shall be carried out only—

(1) in—

(A) areas onshore in the United States on public land administered by the Secretary of the Interior available for oil and gas leasing, where consistent with applicable law and land use plans; and

(B) areas onshore in the United States on State or private land, subject to applicable law; and

(2) with the approval of the appropriate Federal or State land management agency or private land owner.

SEC. 12305. PROGRAM ADMINISTRATION.

(a) ROLE OF THE SECRETARY.—The Secretary shall have ultimate responsibility for, and oversight of, all aspects of the program under this subtitle.

(b) ROLE OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall contract with a consortium to—

(A) manage awards pursuant to subsection (e)(4);

(B) make recommendations to the Secretary for project solicitations;

(C) disburse funds awarded under subsection (e) as directed by the Secretary in accordance with the annual plan under subsection (d); and

(D) carry out other activities assigned to the program consortium by this section.

(2) LIMITATION.—The Secretary may not assign any activities to the program consortium except as specifically authorized under this section.

(3) CONFLICT OF INTEREST.—(A) The Secretary shall establish procedures—

(i) to ensure that each board member, officer, or employee of the program consortium who is in a decisionmaking capacity under subsection (e)(3) or (4) shall disclose to the Secretary any financial interests in, or financial relationships with, applicants for or recipients of awards under this section, including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and

(ii) to require any board member, officer, or employee with a financial relationship or interest disclosed under clause (i) to recuse himself or herself from any review under subsection

(e)(3) or oversight under subsection (e)(4) with respect to such applicant or recipient.

(B) The Secretary may disqualify an application or revoke an award under this section if a board member, officer, or employee has failed to comply with procedures required under subparagraph (A)(ii).

(c) SELECTION OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall select the program consortium through an open, competitive process.

(2) MEMBERS.—The program consortium may include corporations and institutions of higher education. The Secretary shall give preference in the selection of the program consortium to applicants with broad representation from the various major oil and natural gas basins in the United States. After submitting a proposal under paragraph (4), the program consortium may not add members without the consent of the Secretary.

(3) TAX STATUS.—The program consortium shall be an entity that is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986.

(4) SCHEDULE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall solicit proposals for the creation of the program consortium, which must be submitted not less than 180 days after the date of enactment of this Act. The Secretary shall select the program consortium not later than 240 days after such date of enactment.

(5) APPLICATION.—Applicants shall submit a proposal including such information as the Secretary may require. At a minimum, each proposal shall—

(A) list all members of the consortium;

(B) fully describe the structure of the consortium, including any provisions relating to intellectual property; and –

(C) describe how the applicant would carry out the activities of the program consortium under this section.

(6) ELIGIBILITY.—To be eligible to be selected as the program consortium, an applicant must be an entity whose members collectively have demonstrated capabilities in planning and managing programs for the production of oil or natural gas.

(7) CRITERION.—The Secretary may consider the amount of the fee an applicant proposes to re-

ceive under subsection (f) in selecting a consortium under this section.

(d) ANNUAL PLAN.—

(1) IN GENERAL.—The program under this subtitle shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) DEVELOPMENT.—(A) Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the program consortium for each element to be addressed in the plan, including those described in paragraph (4). The Secretary may request that the program consortium submit its recommendations in the form of a draft annual plan.

(B) The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the Advisory Committee for review, and the Advisory Committee shall provide to the Secretary written comments by a date determined by the Secretary. The Secretary may also solicit comments from any other experts.

(C) The Secretary shall consult regularly with the program consortium throughout the preparation of the annual plan.

(3) PUBLICATION.—The Secretary shall transmit to the Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B). The annual plan shall be transmitted and published not later than 60 days after the date of enactment of an Act making appropriations for a fiscal year for the program under this subtitle.

(4) CONTENTS.—The annual plan shall describe the ongoing and prospective activities of the program under this subtitle and shall include—

(A) a list of any solicitations for awards that the Secretary plans to issue to carry out activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards; and

(B) a description of the activities expected of the program consortium to carry out subsection (e)(4).

(e) AWARDS.—

(1) IN GENERAL.—The Secretary shall make awards to carry out activities under the program under this subtitle. The program consortium shall not be eligible to receive such awards, but members of the program consortium may receive such awards.

(2) PROPOSALS.—

(A) SOLICITATION.—The Secretary shall solicit proposals for awards under this subsection in such manner and at such time as the Secretary may prescribe, in consultation with the program consortium.

(B) CONTENTS.—Each proposal submitted shall include the following:

(i) An estimate of the potential unproven reserves in the reservoir, established by a registered petroleum engineer.

(ii) An estimate of the potential for success of the project.

(iii) A detailed project plan.

(iv) A detailed analysis of the costs associated with the project.

(v) A time frame for project completion.

(vi) Evidence that any lienholder on the project will subordinate its interests to the extent necessary to ensure that the Federal government receives its portion of any revenues pursuant to section 12308.

(vii) Such other matters as the Secretary considers appropriate.

(3) REVIEW.—The Secretary shall make awards under this subsection through a competitive process, which shall include a review by individuals selected by the Secretary. Such individuals shall include, for each application, Federal officials, the program consortium, and non-Federal experts who are not board members, officers, or employees of the program consortium or of a member of the program consortium.

(4) OVERSIGHT.—(A) The program consortium shall oversee the implementation of awards under this subsection, consistent with the annual plan under subsection (d), including disbursing funds and monitoring activities carried out under such awards for compliance with the terms and conditions of the awards.

(B) Nothing in subparagraph (A) shall limit the authority or responsibility of the Secretary to oversee awards, or limit the authority of the Secretary to review or revoke awards.

(C) The Secretary shall provide to the program consortium the information necessary for the program consortium to carry out its responsibilities under this paragraph.

(f) FEE.—To compensate the program consortium for carrying out its activities under this section, the Sec-

retary shall provide to the program consortium a fee in an amount not to exceed 7.5 percent of the amounts awarded under subsection (e) for each fiscal year.

(g) DISALLOWED EXPENSES.—No portion of any award shall be used by a recipient for general or administrative expenses of any kind.

(h) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided to the program consortium, and funds provided under awards made under subsection (e), have been expended in a manner consistent with the purposes and requirements of this subtitle. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

SEC. 12306. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this Act, the Secretary shall establish an Advisory Committee.

(b) MEMBERSHIP.—The Advisory Committee shall be composed of members appointed by the Secretary and including—

(1) individuals with extensive experience or operational knowledge of oil and natural gas production, including independent oil and gas producers;

(2) individuals broadly representative of oil and natural gas production; and

(3) no individuals who are Federal employees.

(c) DUTIES.—The Advisory Committee shall advise the Secretary on the development and implementation of activities under this subtitle.

(d) COMPENSATION.—A member of the Advisory Committee shall serve without compensation but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(e) PROHIBITION.—The Advisory Committee shall not make recommendations on funding awards to consortia or for specific projects.

SEC. 12307. LIMITS ON PARTICIPATION.

An entity shall be eligible to receive an award under this subtitle only if the Secretary finds—

(1) that the entity's participation in the program under this subtitle would be in the economic interest of the United States;

(2) that the entity is a United States-owned entity organized under the laws of the United States with production levels of less than 1,000 barrels per day of oil equivalent; and

(3) that the entity has demonstrated that non-governmental third party sources of financing are not available for the proposal project.

SEC. 12308. PAYMENTS TO FEDERAL GOVERNMENT.

(a) INITIAL RATE.—Until the amount of a grant under this subtitle has been fully repaid to the Federal Government under this subsection, 95 percent of all revenues derived from increased incremental production attributable to participation in the program under this subtitle shall be paid to the Secretary by the purchaser of such increased production.

(b) RATE AFTER REPAYMENT.—After the Federal Government has been fully repaid under subsection (a), 5 percent of all revenues derived from increased incremental production attributable to participation in the program under this subtitle shall be paid to the Secretary by the purchaser of such increased production.

SEC. 12309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for carrying out this subtitle $100,000,000, to remain available until expended.

SEC. 12310. PUBLIC AVAILABILITY OF PROJECT RESULTS AND METHODOLOGIES.

The results of any project undertaken pursuant to this subtitle and the methodologies used to achieve those

results shall be made public by the Secretary. The methodologies used shall not be proprietary so that such methodologies may be used for other projects by persons not seeking awards pursuant to this subtitle.

SEC. 12311. SUNSET.

The authority provided by this subtitle shall terminate on September 30, 2010.

SEC. 12312. DEFINITIONS.

In this subtitle:

(1) PROGRAM CONSORTIUM.—The term ''program consortium'' means the consortium selected under section 12305(c).

(2) REMOTE OR INCONSEQUENTIAL.—The term ''remote or inconsequential'' has the meaning given that term in regulations issued by the Office of Government Ethics under section 208(b)(2) of title 18, United States Code.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

Subtitle E—Miscellaneous

SEC. 12401. APPEALS RELATING TO PIPELINE CONSTRUCTION PROJECTS.

(a) AGENCY OF RECORD.—Any Federal administrative agency proceeding that is an appeal or review of Federal authority for an interstate natural gas pipeline con-

struction project, including construction of natural gas storage and liquefied natural gas facilities, shall use as its exclusive record for all purposes the record compiled by the Federal Energy Regulatory Commission pursuant to such Commission's proceeding under section 7 of the Natural Gas Act.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that all Federal and State agencies with jurisdiction over interstate natural gas pipeline construction activities should coordinate their proceedings within the time frames established by the Federal Energy Regulatory Commission while it is acting pursuant to section 7 of the Natural Gas Act to determine whether a proposed interstate natural gas pipeline is in the public convenience and necessity.

SEC. 12402. NATURAL GAS MARKET DATA TRANSPARENCY.

(a) ESTABLISHMENT OF SYSTEM.—Not later than 180 days after the date of enactment of this Act, the Federal Energy Regulatory Commission shall issue rules authorizing or establishing an electronic information system to provide the Commission and the public with timely access to such information as is necessary or appropriate to facilitate price transparency and participation in natural gas markets. Such system shall provide information

about the market price of natural gas sold in interstate commerce.

(b) DATA SUBJECT TO DISCLOSURE.—Rules issued under subsection (a) shall require public availability only of—

(1) aggregate data; and

(2) transaction-specific data that is otherwise required by the Federal Energy Regulatory Commission to be made public.

(c) CIVIL PENALTY.—Any person who violates any provision of a rule issued under subsection (a) shall be subject to a civil penalty of not more than $1,000,000 for each day that such violation continues. Such penalty shall be assessed by the Federal Energy Regulatory Commission, after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner.

SEC. 12403. OIL AND GAS EXPLORATION AND PRODUCTION DEFINED.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended by adding at the end the following:

"(24) The term 'oil and gas exploration and production' means all field operations necessary for both exploration and production of oil and gas, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such activities may be considered construction activities.".

SEC. 12404. COMPLEX WELL TECHNOLOGY TESTING FACILITY.

The Secretary, in coordination with industry leaders in extended reach drilling technology, shall establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technology to 50,000 feet, so that more energy resources can be realized with fewer drilling facilities.

TITLE III—HYDROELECTRIC

Subtitle A—Alternative Conditions

SEC. 13001. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) FEDERAL RESERVATIONS.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by inserting after "adequate protection and utilization of such reservation." at the end of the first proviso the following: "The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type

hearing of any disputed issues of material fact, with respect to such conditions.''.

(b) FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after ''and such fishways as may be prescribed by the Secretary of Commerce.'' the following: ''The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such fishways.''.

(c) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Part I of the Federal Power Act (16 U.S.C. 791a et seq.) is amended by adding the following new section at the end thereof:

''SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

''(a) ALTERNATIVE CONDITIONS.—(1) Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the department under whose supervision such reservation falls (referred to in this subsection as 'the Secretary') deems a condition to such license to be necessary under the first proviso of section 4(e), the license applicant may propose an alternative condition.

''(2) Notwithstanding the first proviso of section 4(e), the Secretary shall accept the proposed alternative condition referred to in paragraph (1), and the Commission

shall include in the license such alternative condition, if the Secretary determines, based on substantial evidence provided by the license applicant or otherwise available to the Secretary, that such alternative condition—

"(A) provides for the adequate protection and utilization of the reservation; and

"(B) will either—

"(i) cost less to implement; or

"(ii) result in improved operation of the project works for electricity production,

as compared to the condition initially deemed necessary by the Secretary.

"(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information

voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

"(4) Nothing in this section shall prohibit other interested parties from proposing alternative conditions.

"(5) If the Secretary does not accept an applicant's alternative condition under this section, and the Commission finds that the Secretary's condition would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

"(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 18, the license applicant or licensee may propose an alternative to such pre-

scription to construct, maintain, or operate a fishway. The alternative may include a fishway or an alternative to a fishway.

"(2) Notwithstanding section 18, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee or otherwise available to the Secretary, that such alternative—

"(A) will be no less protective of the fish resources than the fishway initially prescribed by the Secretary; and

"(B) will either—

"(i) cost less to implement; or

"(ii) result in improved operation of the project works for electricity production,

as compared to the fishway initially deemed necessary by the Secretary.

"(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accept-

ing any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

''(4) Nothing in this section shall prohibit other interested parties from proposing alternative prescriptions.

''(5) If the Secretary concerned does not accept an applicant's alternative prescription under this section, and the Commission finds that the Secretary's prescription would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary

finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.''.

Subtitle B—Additional Hydropower

SEC. 13201. HYDROELECTRIC PRODUCTION INCENTIVES.

(a) INCENTIVE PAYMENTS.—For electric energy generated and sold by a qualified hydroelectric facility during the incentive period, the Secretary of Energy (referred to in this section as the ''Secretary'') shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

(b) DEFINITIONS.—For purposes of this section:

(1) QUALIFIED HYDROELECTRIC FACILITY.—The term ''qualified hydroelectric facility'' means a turbine or other generating device owned or solely

operated by a non-Federal entity which generates hydroelectric energy for sale and which is added to an existing dam or conduit.

(2) EXISTING DAM OR CONDUIT.—The term ''existing dam or conduit'' means any dam or conduit the construction of which was completed before the date of the enactment of this section and which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device.

(3) CONDUIT.—The term ''conduit'' has the same meaning as when used in section 30(a)(2) of the Federal Power Act.

The terms defined in this subsection shall apply without regard to the hydroelectric kilowatt capacity of the facility concerned, without regard to whether the facility uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after the date of the enactment of this section.

(c) ELIGIBILITY WINDOW.—Payments may be made under this section only for electric energy generated from a qualified hydroelectric facility which begins operation during the period of 10 fiscal years beginning with the

first full fiscal year occurring after the date of enactment of this subtitle.

(d) INCENTIVE PERIOD.—A qualified hydroelectric facility may receive payments under this section for a period of 10 fiscal years (referred to in this section as the ''incentive period''). Such period shall begin with the fiscal year in which electric energy generated from the facility is first eligible for such payments.

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Payments made by the Secretary under this section to the owner or operator of a qualified hydroelectric facility shall be based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. For any such facility, the amount of such payment shall be 1.8 cents per kilowatt hour (adjusted as provided in paragraph (2)), subject to the availability of appropriations under subsection (g), except that no facility may receive more than $750,000 in one calendar year.

(2) ADJUSTMENTS.—The amount of the payment made to any person under this section as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 2003 in the same manner as provided in the provi-

sions of section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions the calendar year 2003 shall be substituted for calendar year 1979.

(f) SUNSET.—No payment may be made under this section to any qualified hydroelectric facility after the expiration of the period of 20 fiscal years beginning with the first full fiscal year occurring after the date of enactment of this subtitle, and no payment may be made under this section to any such facility after a payment has been made with respect to such facility for a period of 10 fiscal years.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section $10,000,000 for each of the fiscal years 2004 through 2013.

SEC. 13202. HYDROELECTRIC EFFICIENCY IMPROVEMENT.

(a) INCENTIVE PAYMENTS.—The Secretary of Energy shall make incentive payments to the owners or operators of hydroelectric facilities at existing dams to be used to make capital improvements in the facilities that are directly related to improving the efficiency of such facilities by at least 3 percent.

(b) LIMITATIONS.—Incentive payments under this section shall not exceed 10 percent of the costs of the cap-

ital improvement concerned and not more than one payment may be made with respect to improvements at a single facility. No payment in excess of $750,000 may be made with respect to improvements at a single facility.

(c) AUTHORIZATION.—There is authorized to be appropriated to carry out this section not more than $10,000,000 for each of the fiscal years 2004 through 2013.

SEC. 13203. SMALL HYDROELECTRIC POWER PROJECTS.

Section 408(a)(6) of the Public Utility Regulatory Policies Act of 1978 is amended by striking ''April 20, 1977'' and inserting ''March 4, 2003''.

SEC. 13204. INCREASED HYDROELECTRIC GENERATION AT EXISTING FEDERAL FACILITIES.

(a) IN GENERAL.—The Secretary of Energy, in consultation with the Secretary of the Interior and Secretary of the Army, shall conduct studies of the cost-effective opportunities to increase hydropower generation at existing federally-owned or operated water regulation, storage, and conveyance facilities. Such studies shall be completed within two years after the date of enactment of this subtitle and transmitted to the Committee on Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. An individual study shall be prepared for each of the Nation's principal river

basins. Each such study shall identify and describe with specificity the following matters:

(1) Opportunities to improve the efficiency of hydropower generation at such facilities through, but not limited to, mechanical, structural, or operational changes.

(2) Opportunities to improve the efficiency of the use of water supplied or regulated by Federal projects where such improvement could, in the absence of legal or administrative constraints, make additional water supplies available for hydropower generation or reduce project energy use.

(3) Opportunities to create additional hydropower generating capacity at existing facilities through, but not limited to, the construction of additional generating facilities, the uprating of generators and turbines, and the construction of pumped storage facilities.

(4) Preliminary assessment of the costs and the economic and environmental consequences of such measures.

(b) PREVIOUS STUDIES.—If studies of the type required by subsection (a) have been prepared by any agency of the United States and published within the five years prior to the date of enactment of this subtitle, the Sec-

retary of Energy may choose not to perform new studies and incorporate the information in such studies into the studies required by subsection (a).

(c) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

SEC. 14001. SHORT TITLE.

This subtitle may be cited as the ''Price-Anderson Amendments Act of 2003''.

SEC. 14002. EXTENSION OF INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking ''LICENSES'' and inserting ''LICENSEES''; and

(2) by striking ''December 31, 2003'' each place it appears and inserting ''August 1, 2017''.

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking ''December 31, 2004'' and inserting ''August 1, 2017''.

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking ''August 1, 2002'' each place it appears and inserting ''August 1, 2017''.

SEC. 14003. MAXIMUM ASSESSMENT.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended—

(1) in subsection b.(1), in the second proviso of the third sentence—

(A) by striking ''$63,000,000'' and inserting ''$94,000,000''; and

(B) by striking ''$10,000,000 in any 1 year'' and inserting ''$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)''; and

(2) in subsection t.—

(A) by inserting ''total and annual'' after ''amount of the maximum'';

(B) by striking ''the date of the enactment of the Price-Anderson Amendments Act of 1988'' and inserting ''July 1, 2002''; and

(C) by striking ''such date of enactment'' and inserting ''July 1, 2002''.

SEC. 14004. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

''(2) In an agreement of indemnification entered into under paragraph (1), the Secretary—

''(A) may require the contractor to provide and maintain the financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

''(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.''.

(b) CONTRACT AMENDMENTS.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (3) and inserting the following:

''(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies)

may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2003, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.''.

(c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is amended—

(1) by striking ''the maximum amount of financial protection required under subsection b. or''; and

(2) by striking ''paragraph (3) of subsection d., whichever amount is more'' and inserting ''paragraph (2) of subsection d.''.

SEC. 14005. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

(b) LIABILITY LIMIT.—Section 170 e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

SEC. 14006. REPORTS.

Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking ''August 1, 1998'' and inserting ''August 1, 2013''.

SEC. 14007. INFLATION ADJUSTMENT.

Section 170 t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by adding after paragraph (1) the following:

''(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2002, in accordance with the aggregate percentage change in the Consumer Price Index since—

''(A) that date, in the case of the first adjustment under this paragraph; or

''(B) the previous adjustment under this paragraph.''.

SEC. 14008. PRICE-ANDERSON TREATMENT OF MODULAR REACTORS.

Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by adding at the end the following new paragraph:

"(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

"(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.".

SEC. 14009. APPLICABILITY.

The amendments made by sections 14003, 14004, and 14005 do not apply to a nuclear incident that occurs before the date of enactment of this Act.

SEC. 14010. PROHIBITION ON ASSUMPTION BY UNITED STATES GOVERNMENT OF LIABILITY FOR CERTAIN FOREIGN ACCIDENTS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this section or any other provision of law, no officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any

contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear accidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act to have repeatedly provided support for acts of international terrorism).''.

SEC. 14011. SECURE TRANSFER OF NUCLEAR MATERIALS.

(a) AMENDMENT.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201–2210b) is amended by adding at the end the following new section:

''SEC. 170C. SECURE TRANSFER OF NUCLEAR MATERIALS.—

"a. The Nuclear Regulatory Commission shall establish a system to ensure that, with respect to activities by any party pursuant to a license issued under this Act—

"(1) materials described in subsection b., when transferred or received in the United States—

"(A) from a facility licensed by the Nuclear Regulatory Commission;

"(B) from a facility licensed by an agreement State; or

"(C) from a country with whom the United States has an agreement for cooperation under section 123,

are accompanied by a manifest describing the type and amount of materials being transferred;

"(2) each individual transferring or accompanying the transfer of such materials has been subject to a security background check by appropriate Federal entities; and

"(3) such materials are not transferred to or received at a destination other than a facility licensed by the Nuclear Regulatory Commission or an agreement State under this Act or other appropriate Federal facility, or a destination outside the United States in a country with whom the United States has an agreement for cooperation under section 123.

"b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a. are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16))).".

(b) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, and from time to time thereafter as it considers necessary, the Nuclear Regulatory Commission shall issue regulations identifying radioactive materials that, consistent with the protection of public health and safety and the common defense and security, are appropriate exceptions to the requirements of section 170C of the Atomic Energy Act of 1954, as added by subsection (a) of this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect upon the issuance of regulations under subsection (b).

(d) EFFECT ON OTHER LAW.—Nothing in this section or the amendment made by this section shall waive, modify, or affect the application of chapter 51 of title 49, United States Code, part A of subtitle V of title 49, United States Code, part B of subtitle VI of title 49, United States Code, and title 23, United States Code.

(e) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 14 of the Atomic Energy Act of 1954 is amended by adding at the end the following new item:

"Sec. 170C. Secure transfer of nuclear materials.".

SEC. 14012. NUCLEAR FACILITY THREATS.

(a) STUDY.—The President, in consultation with the Nuclear Regulatory Commission and other appropriate Federal, State, and local agencies and private entities, shall conduct a study to identify the types of threats that pose an appreciable risk to the security of the various classes of facilities licensed by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954. Such study shall take into account, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

(7) the potential use of explosive devices of considerable size and other modern weaponry;

(8) the potential for attacks by persons with a sophisticated knowledge of facility operations;

(9) the potential for fires, especially fires of long duration; and

(10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals.

(b) SUMMARY AND CLASSIFICATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the Congress and the Nuclear Regulatory Commission a report—

(1) summarizing the types of threats identified under subsection (a); and

(2) classifying each type of threat identified under subsection (a), in accordance with existing laws and regulations, as either—

(A) involving attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or otherwise falling under the responsibilities of the Federal Government; or

(B) involving the type of risks that Nuclear Regulatory Commission licensees should be responsible for guarding against.

(c) FEDERAL ACTION REPORT.—Not later than 90 days after the date on which a report is transmitted under subsection (b), the President shall transmit to the Congress a report on actions taken, or to be taken, to address the types of threats identified under subsection (b)(2)(A). Such report may include a classified annex as appropriate.

(d) REGULATIONS.—Not later than 270 days after the date on which a report is transmitted under subsection (b), the Nuclear Regulatory Commission shall issue regulations, including changes to the design basis threat, to ensure that licensees address the threats identified under subsection (b)(2)(B).

(e) PHYSICAL SECURITY PROGRAM.—The Nuclear Regulatory Commission shall establish an operational safeguards response evaluation program that ensures that the physical protection capability and operational safeguards response for sensitive nuclear facilities, as determined by the Commission consistent with the protection of public health and the common defense and security, shall be tested periodically through Commission approved or designed, observed, and evaluated force-on-force exercises to determine whether the ability to defeat the design basis threat is being maintained. For purposes of this subsection, the term ''sensitive nuclear facilities'' includes at a minimum commercial nuclear power plants, including

associated spent fuel storage facilities, spent fuel storage pools and dry cask storage at closed reactors, independent spent fuel storage facilities and geologic repository operations areas, category I fuel cycle facilities, and gaseous diffusion plants.

(f) CONTROL OF INFORMATION.—In carrying out this section, the President and the Nuclear Regulatory Commission shall control the dissemination of restricted data, safeguards information, and other classified national security information in a manner so as to ensure the common defense and security, consistent with chapter 12 of the Atomic Energy Act of 1954.

SEC. 14013. UNREASONABLE RISK CONSULTATION.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"v. UNREASONABLE RISK CONSULTATION.—(1) Before entering into an agreement of indemnification under this section with respect to a utilization facility, the Nuclear Regulatory Commission shall consult with the Assistant to the President for Homeland Security (or any successor official) concerning whether the location of the proposed facility and the design of that type of facility ensure that the facility provides for adequate protection of public health and safety if subject to a terrorist attack.

"(2) Before issuing a license or a license renewal for a sensitive nuclear facility, the Nuclear Regulatory Commission shall consult with the Secretary of Homeland Security or his designee concerning the emergency evacuation plan for the communities living near the sensitive nuclear facility. For purposes of this paragraph, the term 'sensitive nuclear facility' has the meaning given that term in section 14012 of the Energy Policy Act of 2003.".

SEC. 14014. FINANCIAL ACCOUNTABILITY.

(a) AMENDMENT.—Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"w. FINANCIAL ACCOUNTABILITY.—(1) Notwithstanding subsection d., the Attorney General may bring an action in the appropriate United States district court to recover from a contractor of the Secretary (or subcontractor or supplier of such contractor) amounts paid by the Federal Government under an agreement of indemnification under subsection d. for public liability resulting from conduct which constitutes intentional misconduct of any corporate officer, manager, or superintendent of such contractor (or subcontractor or supplier of such contractor).

"(2) The Attorney General may recover under paragraph (1) an amount not to exceed the amount of the profit derived by the defendant from the contract.

"(3) No amount recovered from any contractor (or subcontractor or supplier of such contractor) under paragraph (1) may be reimbursed directly or indirectly by the Department of Energy.

"(4) Paragraph (1) shall not apply to any nonprofit entity conducting activities under contract for the Secretary.

"(5) No waiver of a defense required under this section shall prevent a defendant from asserting such defense in an action brought under this subsection.

"(6) The Secretary shall, by rule, define the terms 'profit' and 'nonprofit entity' for purposes of this subsection. Such rulemaking shall be completed not later than 180 days after the date of the enactment of this subsection.".

(b) EFFECTIVE DATE.—The amendment made by this section shall not apply to any agreement of indemnification entered into under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) before the date of the enactment of this Act.

SEC. 14015. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234A b. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NONPROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

''d. Notwithstanding subsection a., a civil penalty for a violation under subsection a. shall not exceed the amount of any discretionary fee paid under the contract under which such violation occurs for any nonprofit contractor, subcontractor, or supplier—

''(1) described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

''(2) identified by the Secretary by rule as appropriate to be treated the same under this subsection as an entity described in paragraph (1), consistent with the purposes of this section.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any violation of the Atomic Energy Act of 1954 occurring under a contract entered into before the date of the enactment of this Act.

(d) RULEMAKING.—Not later than 6 months after the date of the enactment of this Act, the Secretary of

Energy shall issue a rule for the implementation of the amendment made by subsection (b).

Subtitle B—Miscellaneous Matters

SEC. 14021. LICENSES.

Section 103 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended by inserting ''from the authorization to commence operations'' after ''forty years''.

SEC. 14022. NUCLEAR REGULATORY COMMISSION MEETINGS.

If a quorum of the Nuclear Regulatory Commission gathers to discuss official Commission business the discussions shall be recorded, and the Commission shall notify the public of such discussions within 15 days after they occur. The Commission shall promptly make a transcript of the recording available to the public on request, except to the extent that public disclosure is exempted or prohibited by law. This section shall not apply to a meeting, within the meaning of that term under section 552b(a)(2) of title 5, United States Code.

SEC. 14023. NRC TRAINING PROGRAM.

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities of the Commission relating to the civilian nuclear energy

program, the Nuclear Regulatory Commission shall carry out a training and fellowship program to address shortages of individuals with critical nuclear safety regulatory skills.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2004 through 2007.

(2) AVAILABILITY.—Funds made available under paragraph (1) shall remain available until expended.

SEC. 14024. COST RECOVERY FROM GOVERNMENT AGENCIES.

Section 161 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(w)) is amended—

(1) by striking ''for or is issued'' and all that follows through ''1702'' and inserting ''to the Commission for, or is issued by the Commission, a license or certificate'';

(2) by striking ''483a'' and inserting ''9701''; and

(3) by striking '', of applicants for, or holders of, such licenses or certificates''.

SEC. 14025. ELIMINATION OF PENSION OFFSET.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following:

"y. exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.".

SEC. 14026. CARRYING OF FIREARMS BY LICENSEE EMPLOYEES.

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

"k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize—

"(1) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such fa-

cilities as it deems necessary in the interests of the common defense and security; and

"(2) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of property of (A) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (B) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;

to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a li-

censee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission or of a licensee or certificate holder of the Commission, laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;''.

SEC. 14027. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after ''custody of the Commission'' the following: ''or subject to its licensing authority or to certification by the Commission under this Act or any other Act''.

SEC. 14028. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

''a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

''(1) any production facility or utilization facility licensed under this Act;

''(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;

''(3) any nuclear fuel for a utilization facility licensed under this Act or any spent nuclear fuel from such a facility;

''(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrich-

ment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility,

shall be fined not more than $1,000,000 or imprisoned for up to life in prison without parole, or both.''.

SEC. 14029. COOPERATIVE RESEARCH AND DEVELOPMENT AND SPECIAL DEMONSTRATION PROJECTS FOR THE URANIUM MINING INDUSTRY.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of fiscal years 2004, 2005, and 2006 for—

(1) cooperative, cost-shared agreements between the Department of Energy and domestic uranium producers to identify, test, and develop improved in situ leaching mining technologies, including low-cost environmental restoration technologies that may be applied to sites after completion of in situ leaching operations; and

(2) funding for competitively selected demonstration projects with domestic uranium producers relating to—

(A) enhanced production with minimal environmental impacts;

(B) restoration of well fields; and

(C) decommissioning and decontamination activities.

(b) DOMESTIC URANIUM PRODUCER.—For purposes of this section, the term ''domestic uranium producer'' has the meaning given that term in section 1018(4) of the Energy Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except that the term shall not include any producer that has not produced uranium from domestic reserves on or after July 30, 1998, in Colorado, Nebraska, Texas, Utah, or Wyoming.

SEC. 14030. URANIUM SALES.

(a) RESTRICTIONS ON INVENTORY SALES.—Section 3112(d) of the USEC Privatization Act (42 U.S.C. 2297h–10(d)) is amended to read as follows:

''(d) INVENTORY SALES.—(1) In addition to the transfers and sales authorized under subsections (b), (c), and (e), the Secretary of Energy or the Secretary of the Army may transfer or sell uranium subject to paragraph (2).

''(2) Except as provided in subsections (b), (c), and (e), no sale or transfer of uranium shall be made under

this subsection by the Secretary of Energy or the Secretary of the Army unless—

"(A) the President determines that the material is not necessary for national security needs;

"(B) the price paid to the appropriate Secretary, if the transaction is a sale, will not be less that the fair market value of the material; and

"(C) the sale or transfer to end users is made pursuant to a contract of at least 3 years duration.

"(3) The Secretary of Energy shall not make any transfer or sale of uranium under this subsection that would cause the total amount of uranium transferred or sold pursuant to this subsection that is delivered for consumption by end users to exceed—

"(A) 3 million pounds of U_3O_8 equivalent in fiscal year 2004, 2005, 2006, 2007, 2008, or 2009;

"(B) 5 million pounds of U_3O_8 equivalent in fiscal year 2010 or 2011;

"(C) 7 million pounds of U_3O_8 equivalent in fiscal year 2012; and

"(D) 10 million pounds of U_3O_8 equivalent in fiscal year 2013 or any fiscal year thereafter.

"(4) For the purposes of this subsection, the recovery of uranium from uranium bearing materials transferred or sold by the Secretary of Energy or the Secretary of

the Army to the domestic uranium industry shall be the preferred method of making uranium available. The recovered uranium shall be counted against the annual maximum deliveries set for in this section, when such uranium is sold to end users.''.

(b) TRANSFERS TO CORPORATION.—Section 3112 of the USEC Privatization Act (42 U.S.C. 2297h–10) is further amended by adding at the end the following new subsection:

''(g) TRANSFERS TO CORPORATION.—Notwithstanding subsection (b)(2) and subsection (d)(2), the Secretary may transfer up to 9,550 metric tons of uranium to the Corporation to replace uranium that the Secretary transferred to the Corporation on or about June 30, 1993, April 20, 1998, and May 18, 1998, and that does not meet commercial specifications.''.

(c) SERVICES.—Section 3112 of the USEC Privatization Act (42 U.S.C. 2297h–10) is further amended by adding at the end the following new subsection:

''(h) SERVICES.—(1) Notwithstanding any other provision of this section, if the Secretary determines that if the Corporation has failed, or may fail, to perform any obligation under the Agreement between the Department of Energy and the Corporation dated June 17, 2002, and as amended thereafter, which failure could result in termi-

nation of the Agreement, the Secretary shall notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, in such a manner that affords the Committees an opportunity to comment, prior to a determination by the Secretary whether termination, waiver, or modification of the Agreement is required. The Secretary is authorized to take such action as he determines necessary under the Agreement to terminate, waive, or modify provisions of the Agreement to achieve its purposes.

''(2) Notwithstanding any other provision of this section, if the Secretary determines in accordance with Article 2D of the Agreement between the Department of Energy and the Corporation dated June 17, 2002, and as amended thereafter, to transition operation of the Paducah gaseous diffusion plant, the Secretary may provide uranium enrichment services in a manner consistent with Article 2D of such Agreement.''.

(d) REPORT.—Within 3 years after the date of enactment of this Act, the Secretary shall report to the Congress on the implementation of this section. The report shall include a discussion of available excess uranium inventories, all sales or transfers made by the Secretary of Energy or the Secretary of the Army, the impact of such

sales or transfers on the domestic uranium industry, the spot market uranium price, and the national security interests of the United States, and any steps taken to remediate any adverse impacts of such sales or transfers.

SEC. 14031. MEDICAL ISOTOPE PRODUCTION.

Section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) is amended—

(1) by redesignating subsection b. as subsection f.;

(2) by inserting after subsection a. the following:

''b. The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a Recipient Country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act, the Commission determines that—

''(1) a Recipient Country that supplies an assurance letter to the United States Government in connection with the Commission's consideration of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use such highly en-

1 riched uranium solely to produce medical isotopes;
2 and
3 ''(2) the highly enriched uranium for medical
4 isotope production will be irradiated only in a reac-
5 tor in a Recipient Country that—
6 ''(A) uses an alternative nuclear reactor
7 fuel; or
8 ''(B) is the subject of an agreement with
9 the United States Government to convert to an
10 alternative nuclear reactor fuel when such fuel
11 can be used in that reactor.
12 ''c. Applications to the Commission for licenses au-
13 thorizing the export to a Recipient Country of highly en-
14 riched uranium for medical isotope production shall be
15 subject to subsection b., and subsection a. shall not be ap-
16 plicable to such exports.
17 ''d. The Commission is authorized to specify, by rule-
18 making or decision in connection with an export license
19 application, that a country other than a Recipient Country
20 may receive exports of highly enriched uranium for med-
21 ical isotope production in accordance with the same cri-
22 teria established by subsection b. for exports to a Recipi-
23 ent Country, upon the Commission's finding that such ad-
24 ditional country is a party to the Treaty on the Non-
25 proliferation of Nuclear Weapons and the Convention on

the Physical Protection of Nuclear Material and will receive such highly enriched uranium pursuant to an agreement with the United States concerning peaceful uses of nuclear energy.

"e. The Commission shall review the adequacy of physical protection requirements that are currently applicable to the transportation of highly enriched uranium for medical isotope production. If it determines that additional physical protection measures are necessary, including any limits that the Commission finds are necessary on the quantity of highly enriched uranium contained in a single shipment for medical isotope production, the Commission shall impose such requirements, as license conditions or through other appropriate means."; and

(3) in subsection f., as so redesignated by paragraph (1) of this section—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3)(B) and inserting a semicolon; and

(C) by adding at the end the following:

"(4) the term 'medical isotopes' means radioactive isotopes, including Molybdenum 99, Iodine 131, and Xenon 133, that are used to produce radio-

pharmaceuticals for diagnostic or therapeutic procedures on patients, or in connection with research and development of radiopharmaceuticals;

''(5) the term 'highly enriched uranium for medical isotope production' means highly enriched uranium contained in, or for use in, targets to be irradiated for the sole purpose of producing medical isotopes; –

''(6) the term 'radiopharmaceuticals' means radioactive isotopes containing byproduct material combined with chemical or biological material that are designed to accumulate temporarily in a part of the body, for therapeutic purposes or for enabling the production of a useful image of the appropriate body organ or function for use in diagnosis of medical conditions; and

''(7) the term 'Recipient Country' means Canada, Belgium, France, Germany, and the Netherlands.''.

SEC. 14032. HIGHLY ENRICHED URANIUM DIVERSION THREAT REPORT.

Section 307 of the Energy Reorganization Act of 1974 (42 U.S.C. 5877) is amended by adding at the end the following new subsection:

"(d) Not later than 6 months after the date of the enactment of this Act, the Secretary of Energy shall transmit to the Congress a report with recommendations on reducing the threat resulting from the theft or diversion of highly enriched uranium. Such report shall address—

"(1) monitoring of highly enriched uranium supplies at any commercial companies who have access to substantial amounts of highly enriched uranium;

"(2) assistance to companies described in paragraph (1) with security and personnel checks;

"(3) acceleration of the process of blending down excess highly enriched uranium into low-enriched uranium;

"(4) purchasing highly enriched uranium (except for production of medical isotopes);

"(5) paying the cost of shipping highly enriched uranium;

"(6) accelerating the conversion of commercial research reactors and energy reactors to the use of low-enriched uranium fuel where they now use highly enriched uranium fuel;

"(7) minimizing, and encouraging transparency in, the further enrichment of low-enriched uranium to highly enriched uranium; and

"(8) accelerating the purchase of excess weapons grade plutonium and uranium from Russia to reduce the likelihood that such plutonium and uranium could be stolen or sold to terrorists.".

SEC. 14033. WHISTLEBLOWER PROTECTION.

(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) in subparagraph (D), by striking "that is indemnified" and all that follows through "12344." and inserting "or the Commission; and"; and

(3) by adding at the end the following new subparagraph:

"(E) the Department of Energy and the Commission.".

(b) DE NOVO REVIEW.—Subsection (b) of such section 211 is amended by adding at the end the following new paragraph:

"(4) If the Secretary has not issued a final decision within 180 days after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the claimant, the claimant may bring an action at law or equity for de novo review in the appro-

priate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.''.

SEC. 14034. PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY.

(a) AMENDMENT.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding at the end the following new section:

''SEC. 170D. PREVENTING THE MISUSE OF NUCLEAR MATERIALS AND TECHNOLOGY.—

''a. In order to successfully promote the development of nuclear energy as a safe and reliable source of electrical energy, it is the policy of the United States to prevent any nuclear materials, technology, components, substances, technical information, or related goods or services from being misused or diverted from peaceful nuclear energy purposes.

''b. In order to further advance the policy set forth in subsection a., notwithstanding any other provision of law, no Federal agency shall issue any license, approval, or authorization for the export or reexport, or the transfer or retransfer, either directly or indirectly, to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of

which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act to have repeatedly provided support for acts of international terrorism) of—

"(1) any special nuclear material or byproduct material;

"(2) any nuclear production or utilization facilities; or

"(3) any components, technologies, substances, technical information, or related goods or services used (or which could be used) in a nuclear production or utilization facility.

"c. Any license, approval, or authorization described in subsection b. made prior to the date of enactment of this section is hereby revoked.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of such chapter 14 is amended by adding at the end the following item:

"Sec. 170D. Preventing the misuse of nuclear materials and technology.".

SEC. 14035. LIMITATION ON LEGAL FEE REIMBURSEMENT.

The Department of Energy shall not, except as required under a contract entered into before the date of enactment of this Act, reimburse any contractor or subcontractor of the Department for any legal fees or ex-

penses incurred with respect to a complaint subsequent to—

(1) an adverse determination on the merits with respect to such complaint against the contractor or subcontractor by the Director of the Department of Energy's Office of Hearings and Appeals pursuant to section 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851); or

(2) an adverse final judgment by any State or Federal court with respect to such complaint against the contractor or subcontractor for wrongful termination or retaliation due to the making of disclosures protected under chapter 12 of title 5, United States Code, section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851), or any comparable State law,

unless the adverse determination or final judgment is reversed upon further administrative or judicial review.

SEC. 14036. TRANSFER.

Not later than December 31, 2003, the Secretary of Energy shall transmit to the Congress a plan for the transfer to the Secretary of title to, and full responsibility for the possession, transportation, disposal, stewardship,

maintenance, and monitoring of, all facilities, property, and radioactive waste at the Western New York Service Center in West Valley, New York. The Secretary shall consult with the President of the New York State Energy Research and Development Authority in developing such plan.

SEC. 14037. STUDY TO DETERMINE FEASIBILITY OF DEVELOPING COMMERCIAL NUCLEAR ENERGY PRODUCTION FACILITIES AT EXISTING DEPARTMENT OF ENERGY SITES.

(a) IN GENERAL.—The Secretary of Energy shall conduct a study to determine the feasibility of developing commercial nuclear energy production facilities at Department of Energy sites in existence on the date of the enactment of this Act, including—

(1) options for how and where nuclear power plants can be developed on existing Department of Energy sites;

(2) estimates on cost savings to the Federal Government that may be realized by locating new nuclear power plants on Federal sites;

(3) the feasibility of incorporating new technology into nuclear power plants located on Federal sites;

(4) potential improvements in the licensing and safety oversight procedures of nuclear power plants located on Federal sites;

(5) an assessment of the effects of nuclear waste management policies and projects as a result of locating nuclear power plants located on Federal sites; and

(6) any other factors that the Secretary believes would be relevant in making the determination.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report describing the results of the study under subsection (a).

TITLE V—VEHICLES AND FUELS

Subtitle A—Energy Policy Act Amendments

SEC. 15011. CREDIT FOR SUBSTANTIAL CONTRIBUTION TOWARD NONCOVERED FLEETS.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is amended by adding at the end the following new subsection:

"(e) CREDIT FOR SUBSTANTIAL CONTRIBUTION TOWARD USE OF DEDICATED VEHICLES IN NONCOVERED FLEETS.—

"(1) DEFINITIONS.—In this subsection:

"(A) MEDIUM OR HEAVY DUTY VEHICLE.—The term 'medium or heavy duty vehicle' means a dedicated vehicle that—

"(i) in the case of a medium duty vehicle, has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds; or

"(ii) in the case of a heavy duty vehicle, has a gross vehicle weight rating of more than 14,000 pounds.

"(B) SUBSTANTIAL CONTRIBUTION.—The term 'substantial contribution' means not less than $15,000 in cash or in kind services, as determined by the Secretary.

"(2) ALLOCATION OF CREDITS.—The Secretary shall allocate a credit to a fleet or covered person under this section if the fleet or person makes a substantial contribution toward the acquisition and use of dedicated vehicles or neighborhood electric vehicles by a person that owns, operates, leases, or otherwise controls a fleet that is not covered by this title.

"(3) MULTIPLE CREDITS FOR MEDIUM AND HEAVY DUTY VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this

section if the fleet or person makes a substantial contribution toward the acquisition and use of a medium or heavy duty vehicle.

"(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle or neighborhood electric vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

"(5) LIMITATION.—Except as provided in paragraph (3), no more than 1 credit shall be allocated under this subsection for each vehicle.".

SEC. 15012. CREDIT FOR ALTERNATIVE FUEL INFRASTRUCTURE.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258), as amended by this division, is further amended by adding at the end the following new subsection:

"(f) CREDIT FOR INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

"(1) DEFINITION.—In this subsection, the term 'qualifying infrastructure' means—

"(A) equipment required to refuel or recharge alternative fueled vehicles;

"(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles;

"(C) training programs, educational materials, or other activities necessary to provide information regarding the operation, maintenance, or benefits associated with alternative fueled vehicles; and

"(D) such other activities the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

"(2) ALLOCATION OF CREDITS.—The Secretary shall allocate a credit to a fleet or covered person under this section for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

"(3) AMOUNT.—For the purposes of credits under this subsection—

"(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or in kind services, as determined by the Secretary; and

"(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

"(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.".

SEC. 15013. ALTERNATIVE FUELED VEHICLE REPORT.

(a) DEFINITIONS.—In this section:

(1) ALTERNATIVE FUEL.—The term "alternative fuel" has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(2) ALTERNATIVE FUELED VEHICLE.—The term "alternative fueled vehicle" has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(3) LIGHT DUTY MOTOR VEHICLE.—The term "light duty motor vehicle" has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the effect that titles III, IV, and V of the Energy Policy Act of 1992 have had on the development of alternative fueled vehicle technology, the availability of alternative fueled vehicles in the market, the cost of light duty motor vehicles that are alternative fueled vehicles, and the availability, cost, and use of alternative fuels and biodiesel. Such report shall include any recommendations of the Secretary for legislation concerning the alternative fueled vehicle requirements under the Energy Policy Act of 1992, and shall examine, discuss, and determine the following:

(1) The number of alternative fueled vehicles acquired by fleets or covered persons required to acquire alternative fueled vehicles.

(2) The extent to which fleets subject to alternative fueled vehicle acquisition requirements have met those requirements through the use of fuel mixtures that contain at least 20 percent biodiesel pursuant to section 312 of the Energy Policy Act of 1992 (42 U.S.C. 13220).

(3) The amount of alternative fuel used in alternative fueled vehicles acquired by fleets required to acquire alternative fueled vehicles under the Energy Policy Act of 1992.

(4) The amount of petroleum displaced by the use of alternative fueled vehicles acquired by fleets or covered persons.

(5) The cost of compliance with vehicle acquisition requirements under the Energy Policy Act of 1992, and the benefits of using such fuel and vehicles.

(6) Projections of the amount of biodiesel, the number of alternative fueled vehicles, and the amount of alternative fuel that will be used over the next decade by fleets required to acquire alternative fueled vehicles under the Energy Policy Act of 1992.

(7) The existence of any obstacles to increased use of alternative fuel and biodiesel in vehicles acquired or maintained by fleets required to acquire alternative fueled vehicles under the Energy Policy Act of 1992, and the benefits of using such fuel and vehicles.

SEC. 15014. ALLOCATION OF INCREMENTAL COSTS.

Section 303(c) of the Energy Policy Act of 1992 (42 U.S.C. 13212(c)) is amended by striking ''may'' and inserting ''shall''.

Subtitle B—Advanced Vehicles

SEC. 15021. DEFINITIONS.

For the purposes of this subtitle, the following definitions apply:

(1) ALTERNATIVE FUELED VEHICLE..—The term ''alternative fueled vehicle'' means a vehicle propelled solely on an alternative fuel as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211), except the term does not include any vehicle that the Secretary determines, by rule, does not yield substantial environmental benefits over a vehicle operating solely on gasoline or diesel derived from fossil fuels.

(2) FUEL CELL VEHICLE.—The term ''fuel cell vehicle'' means a vehicle propelled by an electric motor powered by a fuel cell system that converts chemical energy into electricity by combining oxygen (from air) with hydrogen fuel that is stored on the vehicle or is produced onboard by reformation of a hydrocarbon fuel. Such fuel cell system may or may not include the use of auxiliary energy storage systems to enhance vehicle performance.

(3) HYBRID VEHICLE.—The term ''hybrid vehicle'' means a medium or heavy duty vehicle propelled by an internal combustion engine or heat engine using any combustible fuel and an onboard rechargeable energy storage device.

(4) NEIGHBORHOOD ELECTRIC VEHICLE.—The term ''neighborhood electric vehicle'' means a motor vehicle capable of traveling at speeds of 25 miles per hour that is—

(A) a low-speed vehicle, as such term is defined in section 571.3(b) of title 49, Code of Federal Regulations;

(B) a zero-emission vehicle, as such term is defined in section 86.1702–99 of title 40, Code of Federal Regulations; and

(C) otherwise lawful to use on local streets.

(5) PILOT PROGRAM.—The term ''pilot program'' means the competitive grant program established under section 15022.

(6) ULTRA-LOW SULFUR DIESEL VEHICLE.—The term ''ultra-low sulfur diesel vehicle'' means a vehicle manufactured in model years 2002 through 2006 powered by a heavy-duty diesel engine that—

(A) is fueled by diesel fuel which contains sulfur at not more than 15 parts per million; and

(B) emits not more than the lesser of—

(i) for vehicles manufactured in—

(I) model years 2002 and 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(II) model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; or

(ii) the emissions of nonmethane hydrocarbons, oxides of nitrogen, and particulate matter of the best performing technology of ultra-low sulfur diesel vehicles of the same class and application that are commercially available.

SEC. 15022. PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a competitive grant pilot program, to be administered

through the Clean Cities Program of the Department of Energy, to provide not more than 10 geographically dispersed project grants to State governments, local governments, or metropolitan transportation authorities to carry out a project or projects for the purposes described in subsection (b).

(b) GRANT PURPOSES.—Grants under this section may be used for the following purposes:

(1) The acquisition of alternative fueled vehicles or fuel cell vehicles, including—

(A) passenger vehicles including neighborhood electric vehicles; and

(B) motorized two-wheel bicycles, scooters, or other vehicles for use by law enforcement personnel or other State or local government or metropolitan transportation authority employees.

(2) The acquisition of alternative fueled vehicles, hybrid vehicles, or fuel cell vehicles, including—

(A) buses used for public transportation or transportation to and from schools;

(B) delivery vehicles for goods or services; and

(C) ground support vehicles at public airports, including vehicles to carry baggage or push airplanes away from terminal gates.

(3) The acquisition of ultra-low sulfur diesel vehicles.

(4) Infrastructure necessary to directly support an alternative fueled vehicle, fuel cell vehicle, or hybrid vehicle project funded by the grant, including fueling and other support equipment.

(5) Operation and maintenance of vehicles, infrastructure, and equipment acquired as part of a project funded by the grant.

(c) APPLICATIONS.—

(1) REQUIREMENTS.—The Secretary shall issue requirements for applying for grants under the pilot program. At a minimum, the Secretary shall require that applications be submitted by the head of a State or local government or a metropolitan transportation authority, or any combination thereof, and a registered participant in the Clean Cities Program of the Department of Energy, and shall include—

(A) a description of the projects proposed in the application, including how they meet the requirements of this subtitle;

(B) an estimate of the ridership or degree of use of the projects proposed in the application;

(C) an estimate of the air pollution emissions reduced and fossil fuel displaced as a result of the projects proposed in the application, and a plan to collect and disseminate environmental data, related to the projects to be funded under the grant, over the life of the projects;

(D) a description of how the projects proposed in the application will be sustainable without Federal assistance after the completion of the term of the grant;

(E) a complete description of the costs of each project proposed in the application, including acquisition, construction, operation, and maintenance costs over the expected life of the project;

(F) a description of which costs of the projects proposed in the application will be supported by Federal assistance under this subtitle; and

(G) documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is avail-

able for carrying out the projects, and a commitment by the applicant to use such fuel in carrying out the projects.

(2) PARTNERS.—An applicant under paragraph (1) may carry out projects under the pilot program in partnership with public and private entities.

(d) SELECTION CRITERIA.—In evaluating applications under the pilot program, the Secretary shall consider each applicant's previous experience with similar projects and shall give priority consideration to applications that—

(1) are most likely to maximize protection of the environment;

(2) demonstrate the greatest commitment on the part of the applicant to ensure funding for the proposed projects and the greatest likelihood that each project proposed in the application will be maintained or expanded after Federal assistance under this subtitle is completed; and

(3) exceed the minimum requirements of subsection (c)(1)(A).

(e) PILOT PROJECT REQUIREMENTS.—

(1) MAXIMUM AMOUNT.—The Secretary shall not provide more than $20,000,000 in Federal assistance under the pilot program to any applicant.

(2) COST SHARING.—The Secretary shall not provide more than 50 percent of the cost, incurred during the period of the grant, of any project under the pilot program.

(3) MAXIMUM PERIOD OF GRANTS.—The Secretary shall not fund any applicant under the pilot program for more than 5 years.

(4) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to ensure a broad geographic distribution of project sites.

(5) TRANSFER OF INFORMATION AND KNOWLEDGE.—The Secretary shall establish mechanisms to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants and to other interested parties, including other applicants that submitted applications.

(f) SCHEDULE.—

(1) PUBLICATION.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall publish in the Federal Register, Commerce Business Daily, and elsewhere as appropriate, a request for applications to undertake projects

under the pilot program. Applications shall be due within 6 months of the publication of the notice.

(2) SELECTION.—Not later than 6 months after the date by which applications for grants are due, the Secretary shall select by competitive, peer review all applications for projects to be awarded a grant under the pilot program.

(g) LIMIT ON FUNDING.—The Secretary shall provide not less than 20 percent and not more than 25 percent of the grant funding made available under this section for the acquisition of ultra-low sulfur diesel vehicles.

SEC. 15023. REPORTS TO CONGRESS.

(a) INITIAL REPORT.—Not later than 2 months after the date grants are awarded under this subtitle, the Secretary shall transmit to the Congress a report containing—

(1) an identification of the grant recipients and a description of the projects to be funded;

(2) an identification of other applicants that submitted applications for the pilot program; and

(3) a description of the mechanisms used by the Secretary to ensure that the information and knowledge gained by participants in the pilot program are transferred among the pilot program participants

and to other interested parties, including other applicants that submitted applications.

(b) EVALUATION.—Not later than 3 years after the date of the enactment of this Act, and annually thereafter until the pilot program ends, the Secretary shall transmit to the Congress a report containing an evaluation of the effectiveness of the pilot program, including an assessment of the benefits to the environment derived from the projects included in the pilot program as well as an estimate of the potential benefits to the environment to be derived from widespread application of alternative fueled vehicles and ultra-low sulfur diesel vehicles.

SEC. 15024. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary $200,000,000 to carry out this subtitle, to remain available until expended.

Subtitle C—Hydrogen Fuel Cell Heavy-Duty Vehicles

SEC. 15031. DEFINITION.

For the purposes of this subtitle, the term ''advanced vehicle technologies program'' means the program created pursuant to section 5506 of title 49, United States Code.

SEC. 15032. FINDINGS.

The Congress makes the following findings:

(1) The Department of Energy and the Department of Transportation jointly developed the consortium-based advanced vehicle technologies program to develop energy efficient and clean heavy-duty vehicles in 1998.

(2) The majority of clean fuel vehicles in operation today are transit buses.

(3) Hydrogen fuel cell heavy-duty vehicle bus deployments can most appropriately advance hydrogen fuel cell technology development due to centralized refueling, stable duty cycles, and fixed routes.

(4) Hydrogen fuel cell heavy-duty vehicle bus deployments are the most effective manner in which to advance technology developments for public awareness, consumption, and acceptance.

SEC. 15033. HYDROGEN FUEL CELL BUSES.

The Secretary of Energy, through the advanced vehicle technologies program, in coordination with the Secretary of Transportation, shall advance the development of fuel cell bus technologies by providing funding for 4 demonstration sites that—

(1) have or will soon have hydrogen infrastructure for fuel cell bus operation; and

(2) are operated by entities with experience in the development of fuel cell bus technologies,

to enable the widespread utilization of fuel cell buses. Such demonstrations shall address the reliability of fuel cell heavy-duty vehicles, expense, infrastructure, containment, storage, safety, training, and other issues.

SEC. 15034. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of the fiscal years 2004 through 2008 for carrying out this subtitle.

Subtitle D—Miscellaneous

SEC. 15041. RAILROAD EFFICIENCY.

(a) ESTABLISHMENT.—The Secretary shall, in conjunction with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, establish a public-private research partnership involving the Federal Government, the railroad industry, locomotive manufacturers and equipment suppliers, and the research facility owned by the Federal Railroad Administration and operated by contract. The goal of the research partnership shall include developing and demonstrating locomotive technologies that increase fuel economy, reduce emissions, and lower costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the requirements of this section $25,000,000 for fiscal year 2004,

$30,000,000 for fiscal year 2005, and $35,000,000 for fiscal year 2006.

SEC. 15042. MOBILE EMISSION REDUCTIONS TRADING AND CREDITING.

Within 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall provide a report to the Congress on the Environmental Protection Agency's experience with the trading of mobile source emission reduction credits for use by owners and operators of stationary source emission sources to meet emission offset requirements within a nonattainment area. The report shall describe—

(1) projects approved by the Environmental Protection Agency that include the trading of mobile source emission reduction credits for use by stationary sources in complying with offset requirements, including project and stationary sources location, volumes of emissions offset and traded, a description of the sources of mobile emission reduction credits, and, if available, the cost of the credits;

(2) the significant issues identified by the Environmental Protection Agency in its consideration and approval of trading in such projects;

(3) the requirements for monitoring and assessing the air quality benefits of any approved project;

(4) the statutory authority upon which the Environmental Protection Agency has based approval of such projects;

(5) an evaluation of how the resolution of issues in approved projects could be utilized in other projects; and

(6) any other issues the Environmental Protection Agency considers relevant to the trading and generation of mobile source emission reduction credits for use by stationary sources or for other purposes.

SEC. 15043. IDLE REDUCTION TECHNOLOGIES.

(a) DEFINITIONS.—For purposes of this section:

(1) IDLE REDUCTION TECHNOLOGY.—The term ''idle reduction technology'' means a device or system of devices utilized to reduce long-duration idling of a heavy-duty vehicle.

(2) HEAVY-DUTY VEHICLE.—The term ''heavy-duty vehicle'' means a vehicle that has a gross vehicle weight rating greater than 26,000 pounds and is powered by a diesel engine.

(3) LONG-DURATION IDLING.—The term ''long-duration idling'' means the operation of a main drive engine, for a period greater than 15 consecutive minutes, where the main drive engine is not engaged

in gear. Such term does not apply to routine stoppages associated with traffic movement or congestion.

(b) STUDIES OF THE BENEFITS OF IDLE REDUCTION TECHNOLOGIES.—

(1) POTENTIAL FUEL SAVINGS.—Not later than 90 days after the date of enactment of this section, the Secretary of Energy shall, in consultation with the Secretary of Transportation, commence a study to analyze the potential fuel savings resulting from use of idle reduction technologies.

(2) RECOGNITION OF BENEFITS OF ADVANCED IDLE REDUCTION TECHNOLOGIES.—Within 90 days after the date of enactment of this section, the Administrator of the Environmental Protection Agency is directed to commence a review of the Agency's mobile source air emissions models used under the Clean Air Act to determine whether such models accurately reflect the emissions resulting from long-duration idling of heavy-duty trucks and other vehicles and engines, and shall update those models as the Administrator deems appropriate. Additionally, within 90 days after the date of enactment of this section, the Administrator shall commence a review as to the appropriate emissions reductions credit that

should be allotted under the Clean Air Act for the use of advanced idle reduction technologies, and whether such credits should be subject to an emissions trading system, and shall revise Agency regulations and guidance as the Administrator deems appropriate.

(3) IDLING TECHNOLOGIES.—Not later than 180 days after the date of the enactment of this section, the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall commence a study to analyze where heavy duty and other vehicles stop for long duration idling.

(c) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of title 23, United States Code, is amended by adding at the end the following: ''In instances where an idle reduction technology is installed onboard a motor vehicle, the maximum gross vehicle weight limit and the axle weight limit for any motor vehicle equipped with an idling reduction system may be increased by an amount necessary to compensate for the additional weight of the idling reduction system, except that the weight limit increase shall be no greater than 400 pounds.''.

SEC. 15044. STUDY OF AVIATION FUEL CONSERVATION AND EMISSIONS.

The Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall jointly commence a study within 60 days after the date of enactment of this Act to identify the impact of aircraft emissions on air quality in non-attainment areas and to identify ways to promote fuel conservation measures for aviation, enhance fuel efficiency, and reduce emissions. As part of this study, the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall focus on how air traffic management inefficiencies, such as aircraft idling at airports, result in unnecessary fuel burn and air emissions. Within 180 days after the commencement of the study, the Administrator of the Federal Aviation Administration and the Administrator of the Environmental Protection Agency shall submit a report to the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives and the Committees on Environment and Public Works and Commerce, Science, and Transportation of the Senate containing the results of the study and recommendations as to how unnecessary fuel use and emissions affecting air quality may be reduced, without impacting safety and security, increasing individual aircraft noise, and taking

into account all aircraft emissions and their relative impact on human health.

SEC. 15045. DIESEL FUELED VEHICLES.

(a) DIESEL COMBUSTION AND AFTER TREATMENT TECHNOLOGIES.—The Secretary of Energy shall accelerate efforts to improve diesel combustion and after-treatment technologies for use in diesel fueled motor vehicles.

(b) GOAL.—

(1) COMPLIANCE WITH TIER 2 EMISSION STANDARDS BY 2010.—The Secretary shall carry out subsection (a) with a view to developing and demonstrating diesel technology meeting tier 2 emission standards not later than 2010.

(2) TIER 2 EMISSION STANDARDS DEFINED.—In this subsection, the term ''tier 2 emission standards'' means the motor vehicle emission standards promulgated by the Administrator of the Environmental Protection Agency on February 10, 2000, under sections 202 and 211 of the Clean Air Act to apply to passenger cars, light trucks, and larger passenger vehicles of model years after the 2003 vehicle model year.

SEC. 15046. WAIVERS OF ALTERNATIVE FUELED VEHICLE FUELING REQUIREMENT.

Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:

''(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency needs a waiver of such requirement for vehicles in the fleet of the agency in a particular geographic area where—

''(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

''(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified by the head of the agency.

''(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to the Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.''.

SEC. 15047. TOTAL INTEGRATED THERMAL SYSTEMS.

The Secretary shall—

(1) conduct a study of the benefits of total integrated thermal systems in reducing demand for oil and protecting the environment; and

(2) examine the feasibility of using total integrated thermal systems in Department of Defense and other Federal motor vehicle fleets.

SEC. 15048. OIL BYPASS FILTRATION TECHNOLOGY.

The Secretary of Energy and the Administrator of the Environmental Protection Agency shall—

(1) conduct a joint study of the benefits of oil bypass filtration technology in reducing demand for oil and protecting the environment; and

(2) examine the feasibility of using oil bypass filtration technology in Federal motor vehicle fleets.

SEC. 15049. NATURAL GAS CONDENSATE STUDY.

Not later than 18 months after the date of enactment of this Act, the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall transmit to the Congress the results of a study to consider fuels derived from natural gas condensate and the appropriate blending of such condensates. The study shall consider—

(1) usage options;

(2) potential volume capacities;

(3) costs;

(4) air emissions;

(5) fuel efficiencies; and

(6) potential use in the Federal fleet program under title III of the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.).

SEC. 15050. STUDY ON REDUCING PETROLEUM CONSUMPTION.

(a) IN GENERAL.—The Administrator of General Services, in cooperation with the Secretary of Energy, shall conduct a study to consider the merits of establishing performance measures to guide the reduction of petroleum consumption by Federal fleets.

(b) MATTERS TO BE ADDRESSED.—The study shall assess the feasibility of performance measures—

(1) to enable agency and congressional decision-makers to establish annual and long-term performance goals to define the level of petroleum consumption reduction to be achieved by Federal fleets;

(2) to improve the effectiveness and accountability of Federal efforts to reduce petroleum consumption and dependency;

(3) to enhance decisionmaking by providing objective information on achieving performance objectives; and

(4) to provide an alternative to the mandated alternative fueled vehicle requirements in section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212).

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Administrator shall submit to the Committees on Environment and Public Works and Governmental Affairs of the Senate and the Committees on Energy and Commerce and Government Reform of the House of Representatives a report on the study.

SEC. 15051. CONSERVE BY BICYCLING PROGRAM.

(a) DEFINITIONS.—In this section:

(1) PROGRAM.—The term ''program'' means the Conserve by Bicycling Program established by subsection (b).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(b) ESTABLISHMENT.—There is established within the Department of Transportation a program to be known as the ''Conserve by Bicycling Program''.

(c) PROJECTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall establish not more than 10 pilot projects that are—

(A) dispersed geographically throughout the United States; and

(B) designed to conserve energy resources by encouraging the use of bicycles in place of motor vehicles.

(2) REQUIREMENTS.—A pilot project described in paragraph (1) shall—

(A) use education and marketing to convert motor vehicle trips to bicycle trips;

(B) document project results and energy savings (in estimated units of energy conserved);

(C) facilitate partnerships among interested parties in at least 2 of the fields of—

(i) transportation;

(ii) law enforcement;

(iii) education;

(iv) public health;

(v) environment; and

(vi) energy;

(D) maximize bicycle facility investments;

(E) demonstrate methods that may be used in other regions of the United States; and

(F) facilitate the continuation of ongoing programs that are sustained by local resources.

(3) COST SHARING.—At least 20 percent of the cost of each pilot project described in paragraph (1) shall be provided from State or local sources.

(d) ENERGY AND BICYCLING RESEARCH STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into a contract with the National Academy of Sciences for, and the National Academy of Sciences shall conduct and submit to Congress a report on, a study on the feasibility of converting motor vehicle trips to bicycle trips.

(2) COMPONENTS.—The study shall—

(A) document the results or progress of the pilot projects under subsection (c);

(B) determine the type and duration of motor vehicle trips that people in the United States may feasibly make by bicycle, taking into consideration factors such as—

(i) weather;

(ii) land use and traffic patterns;

(iii) the carrying capacity of bicycles; and

(iv) bicycle infrastructure;

(C) determine any energy savings that would result from the conversion of motor vehicle trips to bicycle trips;

(D) include a cost-benefit analysis of bicycle infrastructure investments; and

(E) include a description of any factors that would encourage more motor vehicle trips to be replaced with bicycle trips.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $6,200,000, to remain available until expended, of which—

(1) $5,150,000 shall be used to carry out pilot projects described in subsection (c);

(2) $300,000 shall be used by the Secretary to coordinate, publicize, and disseminate the results of the program; and

(3) $750,000 shall be used to carry out subsection (d).

TITLE VI—ELECTRICITY

Subtitle A—Transmission Capacity

SEC. 16011. TRANSMISSION INFRASTRUCTURE IMPROVEMENT RULEMAKING.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding the following new section at the end thereof:

"SEC. 215. TRANSMISSION INFRASTRUCTURE IMPROVEMENT RULEMAKING.

''(a) RULEMAKING REQUIREMENT.—Within 1 year after the enactment of this section, the Commission shall establish, by rule, incentive-based (including but not limited to performance-based) transmission rate treatments to promote capital investment in the enlargement and improvement of facilities for the transmission of electric energy in interstate commerce as appropriate to—

''(1) promote economically efficient transmission and generation of electricity;

''(2) provide a return on equity that attracts new investment in transmission facilities and reasonably reflects the risks taken by public utilities in restructuring control of transmission assets; and

''(3) encourage deployment of transmission technologies and other measures to increase the ca-

pacity and efficiency of existing transmission facilities and improve the operation of such facilities.

The Commission may, from time to time, revise such rule.

"(b) FUNDING OF CERTAIN FACILITIES.—The rule promulgated pursuant to this section shall provide that, upon the request of a regional transmission organization or other Commission-approved transmission organization, new transmission facilities that increase the transfer capability of the transmission system shall be participant funded. In such rules, the Commission shall also provide guidance as to what types of facilities may be participant funded.

"(c) JUST AND REASONABLE RATES.—With respect to any transmission rate filed with the Commission on or after the effective date of the rule promulgated under this section, the Commission shall, in its review of such rate under sections 205 and 206, apply the rules adopted pursuant to this section, including any revisions thereto. Nothing in this section shall be construed to override, weaken, or conflict with the procedural and other requirements of this part, including the requirement of sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.".

SEC. 16012. SITING OF INTERSTATE ELECTRICAL TRANSMISSION FACILITIES.

(a) AMENDMENT OF FEDERAL POWER ACT.—Part II of the Federal Power Act is amended by adding at the end the following:

"SEC. 216. SITING OF INTERSTATE ELECTRICAL TRANSMISSION FACILITIES.

"(a) TRANSMISSION STUDIES.—Within one year after the enactment of this section, and every 3 years thereafter, the Secretary of Energy shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties the Secretary shall issue a report, based on such study, which may designate one or more geographic areas experiencing electric energy transmission congestion as 'interstate congestion areas'.

"(b) CONSTRUCTION PERMIT.—The Commission is authorized, after notice and an opportunity for hearing, to issue permits for the construction or modification of electric transmission facilities in interstate congestion areas designated by the Secretary under subsection (a) if the Commission makes each of the following findings:

"(1) A finding that—

"(A) the State in which the transmission facilities are to be constructed or modified is

without authority to approve the siting of the facilities, or

"(B) a State commission or body in the State in which the transmission facilities are to be constructed or modified that has authority to approve the siting of the facilities has withheld approval, conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce and is otherwise not economically feasible, or delayed final approval for more than one year after the filing of an application seeking approval or one year after the designation of the relevant interstate congestion area, whichever is later.

"(2) A finding that the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce.

"(3) A finding that the proposed construction or modification is consistent with the public interest.

"(4) A finding that the proposed construction or modification will significantly reduce transmission congestion in interstate commerce.

The Commission may include in a permit issued under this section conditions consistent with the public interest.

"(c) PERMIT APPLICATIONS.—Permit applications under subsection (b) shall be made in writing to the Commission and verified under oath. The Commission shall issue rules setting forth the form of the application, the information it is to contain, and the manner of service of notice of the permit application upon interested persons.

"(d) COMMENTS.—In any proceeding before the Commission under subsection (b), the Commission shall afford each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

"(e) RIGHTS-OF-WAY.—In the case of a permit under subsection (b) for electric transmission facilities to be located on property other than property owned by the United States or a State, if the permit holder cannot acquire by contract, or is unable to agree with the owner of the property to the compensation to be paid for, the necessary right-of-way to construct or modify such transmission facilities, the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in

the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated.

''(f) STATE LAW.—Nothing in this section shall preclude any person from constructing any transmission facilities pursuant to State law.

''(g) COMPLIANCE WITH OTHER LAWS.—Commission action under this section shall be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable Federal laws.

''(h) COMPENSATION.—Any exercise of eminent domain authority pursuant to this section shall be considered a taking of private property for which just compensation is due. Just compensation shall be an amount equal to the full fair market value of the property taken on the date of the exercise of eminent domain authority, except that the compensation shall exceed fair market value if necessary to make the landowner whole for decreases in the value of any portion of the land not subject to eminent domain. Any parcel of land acquired by eminent domain

under this subsection shall be transferred back to the owner from whom it was acquired (or his heirs or assigns) if the land is not used for power line construction or modification within a reasonable period of time after the acquisition. Property acquired under this subsection may not be used for any heritage area, recreational trail, or park, or for any other purpose (other than power line construction or modification, and for power line operation and maintenance) without the consent of the owner of the parcel from whom the property was acquired (or his heirs or assigns).

''(i) ERCOT.—Nothing in this section shall be construed to authorize any interconnection with any facility owned or operated by an entity referred to in section 212(k)(2)(B).

''(j) RIGHTS OF WAY ON FEDERAL LANDS.—

''(1) LEAD AGENCY.—If an applicant, or prospective applicant, for Federal authorization related to an electricity transmission or distribution facility so requests, the Department of Energy (DOE) shall act as the lead agency for purposes of coordinating all applicable Federal authorization and related environmental review of the facility. The term 'Federal authorization' shall mean any authorization required under Federal law in order to site a transmission or

distribution facility, including but not limited to such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal or a State agency. To the maximum extent practicable under applicable Federal law, the Secretary of Energy shall coordinate this Federal authorization and review process with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.

''(2) AUTHORITY TO SET DEADLINES.—As lead agency, the Department of Energy, in consultation with other Federal and, as appropriate, with Indian tribes, multi-State entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews, shall establish prompt and binding intermediate milestones and ultimate deadlines for the review of and Federal authorization decisions relating to the proposed facility. The Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary deems necessary, all permit decisions

and related environmental reviews under all applicable Federal laws shall be completed within 1 year or, if a requirement of another provision of Federal law makes this impossible, as soon thereafter as is practicable. The Secretary of Energy also shall provide an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each such agency determine and communicate to the prospective applicant within 60 days of when the prospective applicant submits a request for such information concerning—

"(A) the likelihood of approval for a potential facility; and

"(B) key issues of concern to the agencies and public.

"(3) CONSOLIDATED ENVIRONMENTAL REVIEW AND RECORD OF DECISION.—The Secretary of Energy, in consultation with the affected agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law. The document may be an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 if warranted, or such other form of analysis as may be warranted. DOE

and other agencies shall streamline the review and permitting of transmission and distribution facilities within corridors designated under section 503 of the Federal Land Policy and Management Act (43 U.S.C. 1763) by fully taking into account prior analyses and decisions as to the corridors. The document under this section may consist of or include an environmental assessment, if allowed by law, or an environmental impact statement, if warranted or required by law, or such other form of analysis as warranted, consistent with any requirement of the National Environmental Policy Act, the Federal Land Policy and Management Act, or any other applicable law. Such document shall include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable laws.

''(4) APPEALS.—In the event that any agency has denied a Federal authorization required for a transmission or distribution facility, or has failed to act by the deadline established by the Secretary pursuant to this section for deciding whether to issue the authorization, the applicant or any State in which the facility would be located may file an appeal with the Secretary of Energy, who shall, in consultation with the affected agency, review the denial

or take action on the pending application. Based on the overall record and in consultation with the affected agency, the Secretary may then either issue the necessary authorization with any appropriate conditions, or deny the application. The Secretary shall issue a decision within 90 days of the filing of the appeal. In making a decision under this paragraph, the Secretary shall comply with all applicable requirements of Federal law, including any requirements of the Endangered Species Act, the Clean Water Act, the National Forest Management Act, the National Environmental Policy Act, and the Federal Land Management and Policy Act.

"(5) CONFORMING REGULATIONS AND MEMORANDA OF AGREEMENT.—Not later than 18 months after the date of enactment of this section, the Secretary of Energy shall issue any regulations necessary to implement the foregoing provisions. Not later than 1 year after the date of enactment of this section, the Secretary and the heads of all relevant Federal departments and non-departmental agencies shall, and interested Indian tribes, multi-State entities, and State agencies may, enter into Memoranda of Agreement to ensure the timely and coordinated review and permitting of electricity transmission and

distribution facilities. The head of each Federal department or non-departmental agency with approval authority shall designate a senior responsible official and dedicate sufficient other staff and resources to ensure that the DOE regulations and any Memoranda are fully implemented.

"(6) MISCELLANEOUS.—Each Federal authorization for an electricity transmission or distribution facility shall be issued for a duration, as determined by the Secretary of Energy, commensurate with the anticipated use of the facility and with appropriate authority to manage the right-of-way for reliability and environmental protection. Further, when such authorizations expire, they shall be reviewed for renewal taking fully into account reliance on such electricity infrastructure, recognizing its importance for public health, safety and economic welfare and as a legitimate use of Federal lands.

"(7) MAINTAINING AND ENHANCING THE TRANSMISSION INFRASTRUCTURE.—In exercising the responsibilities under this section, the Secretary of Energy shall consult regularly with the Federal Energy Regulatory Commission (FERC) and FERC-approved Regional Transmission Organizations and Independent System Operators.

"(k) INTERSTATE COMPACTS.—The consent of Congress is hereby given for States to enter into interstate compacts establishing regional transmission siting agencies to facilitate coordination among the States within such areas for purposes of siting future electric energy transmission facilities and to carry out State electric energy transmission siting responsibilities. The Secretary of Energy may provide technical assistance to regional transmission siting agencies established under this subsection.

"(l) SAVINGS CLAUSE.—Nothing in this section shall be construed to affect any requirement of the environmental laws of the United States, including, but not limited to, the National Environmental Policy Act of 1969. This section shall not apply to any component of the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or the National Park system (including National Monuments therein).".

(b) FEDERAL CORRIDORS.—The Secretary of the Interior, the Secretary of Energy, the Secretary of Agriculture, and the Chairman of the Council on Environmental Quality shall, within 90 days of the date of enactment of this subsection, submit a joint report to Congress identifying the following:

(1) all existing designated transmission and distribution corridors on Federal land and the status of

work related to proposed transmission and distribution corridor designations, the schedule for completing such work, any impediments to completing the work, and steps that Congress could take to expedite the process;

(2) the number of pending applications to locate transmission and distribution facilities on Federal lands, key information relating to each such facility, how long each application has been pending, the schedule for issuing a timely decision as to each facility, and progress in incorporating existing and new such rights-of-way into relevant land use and resource management plans or their equivalent; and

(3) the number of existing transmission and distribution rights-of-way on Federal lands that will come up for renewal within the following 5, 10, and 15 year periods, and a description of how the Secretaries plan to manage such renewals.

SEC. 16013. TRANSMISSION TECHNOLOGIES.

The Federal Energy Regulatory Commission shall shall take affirmative steps in the exercise of its authorities under the Federal Power Act to encourage the deployment of transmission technologies that utilize real time monitoring and analytical software to increase and maxi-

mize the capacity and efficiency of transmission networks and to reduce line losses.

Subtitle B—Transmission Operation

SEC. 16021. OPEN ACCESS TRANSMISSION BY CERTAIN UTILITIES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following:

"SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

''(a) IN GENERAL.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself, and

''(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

''(b) EXEMPTIONS.—

"(1) IN GENERAL.—The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

"(A)(i) sells no more than 4,000,000 megawatt hours of electricity per year; and

"(ii) is a distribution utility; or

"(B) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

"(C) meets other criteria the Commission determines to be in the public interest.

"(2) LOCAL DISTRIBUTION.— The requirements of subsection (a) shall not apply to facilities used in local distribution.

"(c) RATE CHANGING PROCEDURES.—The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

"(d) REMAND.—In exercising its authority under paragraph (1), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

"(e) SECTION 211 REQUESTS.—The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

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

"(1) The term 'unregulated transmitting utility' means an entity that—

"(A) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

"(B) is either an entity described in section 201(f) or a rural electric cooperative.

"(2) The term 'distribution utility' means an unregulated transmitting utility that serves at least ninety percent of its electric customers at retail.".

SEC. 16022. REGIONAL TRANSMISSION ORGANIZATIONS.

(a) SENSE OF THE CONGRESS ON RTOS.—It is the sense of Congress that, in order to promote fair, open access to electric transmission service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential transmission practices, and provide for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale

power markets, all transmitting utilities in interstate commerce should voluntarily become members of independently administered regional transmission organizations that have operational control of interstate transmission facilities and do not own or control generation facilities used to supply electric energy for sale at wholesale.

(b) SENSE OF THE CONGRESS ON CAPITAL INVESTMENT.—It is the sense of the Congress that the Federal Energy Regulatory Commission should provide to any transmitting utility that becomes a member of an operational regional transmitting organization approved by the Commission a return on equity sufficient to attract new investment capital for expansion of transmission capacity, in accordance with sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e), including the requirement that rates be just and reasonable.

(c) REPORT ON PENDING APPLICATIONS.—Not later than 120 days after the date of enactment of this section, the Federal Energy Regulatory Commission shall submit to the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report containing the following:

(1) A list of all regional transmission organization applications filed at the Commission pursuant

to the Commission's Order No. 2000, including an identification of each public utility and other entity included within the proposed membership of the regional transmission organization.

(2) A table showing the date each such application was filed, the date of any revised filings of such application, the date of each preliminary or final Commission order regarding such application, and a statement of whether the application has been rejected, preliminarily approved, finally approved, or has some other status (including a description of that status).

(3) For any application that has not been finally approved by the Commission, a detailed description of every aspect of the application that the Commission has determined does not conform to the requirements of Order No. 2000.

(4) For any application that has not been finally approved by the Commission, an explanation by the Commission of why the items described pursuant to paragraph (3) constitute material noncompliance with the requirements of the Commission's Order No. 2000 sufficient to justify denial of approval by the Commission.

(5) For all regional transmission organization applications filed pursuant to the Commission's Order No. 2000, whether finally approved or not—

(A) a discussion of that regional transmission organization's efforts to minimize rate seams between itself and—

(i) other regional transmission organizations; and

(ii) entities not participating in a regional transmission organization; and

(B) a discussion of the impact of such seams on consumers and wholesale competition; and

(C) a discussion of minimizing cost-shifting on consumers.

(d) FEDERAL UTILITY PARTICIPATION IN RTOS.—

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

(A) The term ''appropriate Federal regulatory authority'' means—

(i) with respect to a Federal power marketing agency, the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the ap-

propriate Federal regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(ii) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(B) The term ''Federal utility'' means a Federal power marketing agency or the Tennessee Valley Authority.

(C) The term ''transmission system'' means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(2) TRANSFER.—The appropriate Federal regulatory authority is authorized to enter into a contract, agreement or other arrangement transferring control and use of all or part of the Federal utility's transmission system to a regional transmission organization approved by the Federal Energy Regulatory Commission. Such contract, agreement or arrangement shall include—

(A) performance standards for operation and use of the transmission system that the head of the Federal utility determines necessary or appropriate, including standards that assure

recovery of all the Federal utility's costs and expenses related to the transmission facilities that are the subject of the contract, agreement or other arrangement, consistency with existing contracts and third-party financing arrangements, and consistency with said Federal utility's statutory authorities, obligations, and limitations;

(B) provisions for monitoring and oversight by the Federal utility of the regional transmission organization's fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision that may provide for the resolution of disputes through arbitration or other means with the regional transmission organization or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(C) a provision that allows the Federal utility to withdraw from the regional transmission organization and terminate the contract, agreement or other arrangement in accordance with its terms.

Neither this section, actions taken pursuant to it, nor any other transaction of a Federal utility using a regional transmission organization shall serve to confer upon the Federal Energy Regulatory Commission jurisdiction or authority over the Federal utility's electric generation assets, electric capacity or energy that the Federal utility is authorized by law to market, or the Federal utility's power sales activities.

(3) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

(A) SYSTEM OPERATION REQUIREMENTS.—Any statutory provision requiring or authorizing a Federal utility to transmit electric power or to construct, operate or maintain its transmission system shall not be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of paragraph (2).

(B) OTHER OBLIGATIONS.—This subsection shall not be construed to—

(i) suspend, or exempt any Federal utility from, any provision of existing Federal law, including but not limited to any requirement or direction relating to the use

of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(ii) authorize abrogation of any contract or treaty obligation.

SEC. 16023. NATIVE LOAD.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding the following new section at the end thereof:

"SEC. 217. SERVICE OBLIGATIONS OF LOAD-SERVING ENTITIES.

''(a) IN GENERAL.—In exercising authority under this Act, the Commission shall ensure that any load-serving entity that either—

''(1) owns transmission facilities for the transmission of electric energy in interstate commerce used to purchase or deliver electric energy to meet—

''(A) a service obligation to customers; or

''(B) an existing wholesale contractual obligation; or

''(2) holds a contract or service agreement for firm transmission service used to purchase or deliver electric energy to meet—

''(A) a service obligation to customers; or

"(B) an existing wholesale contractual obligation,

shall be entitled to use such transmission facilities or equivalent transmission rights to meet such obligations before transmission capacity is made available for other uses.

"(b) USE BY SUCCESSOR IN INTEREST.—To the extent that all or a portion of the service obligation or contractual obligation covered by subsection (a) is transferred to another load serving entity, the successor shall be entitled to use such transmission facilities or firm transmission rights associated with the transferred service obligation consistent with subsection (a). Subsequent transfers to another load serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

"(c) OTHER ENTITIES.—The Commission may exercise authority under this Act to make transmission rights not used to meet an obligation covered by subsection (a) available to other entities in a manner determined by the Commission to be not unduly discriminatory or preferential.

"(d) DEFINITIONS.—For the purposes of this section:

"(1) The term 'load-serving entity' means an electric utility, transmitting utility or Federal power marketing agency that has an obligation under Fed-

eral, State, or local law, or under long-term contracts, to provide electric service to either—

"(A) electric consumers (as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)); or

"(B) an electric utility as defined in section 3(4) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)) that has an obligation to provide electric service to electric consumers.

Such obligations shall be deemed 'service obligations'.

"(2) The term 'existing wholesale contractual obligation' means an obligation under a firm long-term wholesale contract that was in effect on March 28, 2003. A contract modification after March 28, 2003 (other than one that increases the quantity of electric energy sold under the contract) shall not affect the status of such contract as an existing wholesale contractual obligation.

"(e) RELATIONSHIP TO OTHER PROVISIONS.—To the extent that a transmitting utility reserves transmission capacity (or reserves the equivalent amount of tradable transmission rights) to provide firm transmission service to meet service obligations or firm long-term wholesale

contractual obligations pursuant to subsection (a), that transmitting utility shall not be considered as engaging in undue discrimination or preference under this Act.

''(f) JURISDICTION.—This section shall not apply to an entity located in an area referred to in section 212(k)(2)(A).

''(g) SAVINGS CLAUSE.—Nothing in this section shall affect any allocation of transmission rights by the PJM Interconnection, the New York Independent System Operator, the New England Independent System Operator, the Midwest Independent System Operator, or the California Independent System Operator. Nothing in this section shall provide a basis for abrogating any contract for firm transmission service or rights in effect as of the date of enactment of this section.''.

Subtitle C—Reliability

SEC. 16031. ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act (16 U.S.C 824 et seq.) is amended by inserting the following new section at the end thereof:

''SEC. 218. ELECTRIC RELIABILITY.

''(a) DEFINITIONS.—For purposes of this section—

''(1) The term 'bulk-power system' means—

''(A) facilities and control systems necessary for operating an interconnected electric

energy transmission network (or any portion thereof); and

"(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

"(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

"(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

"(4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

"(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

"(6) The term 'transmission organization' means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

"(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

"(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United

States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification as the Electric Reliability Organization (ERO). The Commission may certify one such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system;

''(2) has established rules that—

''(A) assure its independence of the users and owners and operators of the bulk-power

system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

"(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

"(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

"(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

"(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

"(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes

to be made effective under this section with the Commission.

"(2) The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

"(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

"(4) The Commission shall remand to the Electric Reliability Organization for further consideration a pro-

posed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

"(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

"(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

"(A) the Commission finds a conflict exists between a reliability standard and any such provision;

"(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

"(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

"(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

"(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

"(B) files notice and the record of the proceeding with the Commission.

"(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the electric reliability organization files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of re-

view by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the electric reliability organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the electric reliability organization for further proceedings. The Commission shall implement expedited procedures for such hearings.

"(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

"(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement to delegate

authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

"(A) the regional entity is governed by—

"(i) an independent board;

"(ii) a balanced stakeholder board; or

"(iii) a combination independent and balanced stakeholder board.

"(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

"(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

"(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity

to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

"(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

"(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the Electric Reliability Organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

"(g) RELIABILITY REPORTS.—The Electric Reliability Organization shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

"(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agree-

ments with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the Electric Reliability Organization in the United States and Canada or Mexico.

"(i) SAVINGS PROVISIONS.—(1) The Electric Reliability Organization shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

"(2) This section does not authorize the Electric Reliability Organization or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

"(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards.

"(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall

issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the Electric Reliability Organization.

"(5) The Commission, after consultation with the Electric Reliability Organization and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

"(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed or of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public

interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

"(k) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.".

Subtitle D—PUHCA Amendments

SEC. 16041. SHORT TITLE.

This subtitle may be cited as the "Public Utility Holding Company Act of 2003".

SEC. 16042. DEFINITIONS.

For purposes of this subtitle:

(1) The term "affiliate" of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) The term "associate company" of a company means any company in the same holding company system with such company.

(3) The term "Commission" means the Federal Energy Regulatory Commission.

(4) The term "company" means a corporation, partnership, association, joint stock company, busi-

ness trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting secu-

rities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public con-

sumption for domestic, commercial, industrial, or any other use.

(11) The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) The term ''person'' means an individual or company.

(13) The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) The term ''public utility company'' means an electric utility company or a gas utility company.

(15) The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are

directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 16043. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 16044. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company within such holding company system and nec-

essary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 16045. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail by the State commission;

(2) the State commission deems are relevant to costs incurred by such public utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) LIMITATION.—Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(c) CONFIDENTIALITY OF INFORMATION.—The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

(d) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any other Federal law, contract, or otherwise.

(e) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 16046. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the effective date of this subtitle, the Commission shall promulgate a final rule to exempt from the requirements of

section 16044 (relating to Federal access to books and records) any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—The Commission shall exempt a person or transaction from the requirements of section 16044 (relating to Federal access to books and records) if, upon application or upon the motion of the Commission—

(1) the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

SEC. 16047. AFFILIATE TRANSACTIONS.

(a) COMMISSION AUTHORITY UNAFFECTED.—Nothing in this subtitle shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable,

including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the promulgation of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

(b) RECOVERY OF COSTS.—Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

SEC. 16048. APPLICABILITY.

Except as otherwise specifically provided in this subtitle, no provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of his or her official duty.

SEC. 16049. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 16050. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 16051. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, so long as that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

SEC. 16052. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this subtitle, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this subtitle (other than section 16045, relating to State access to books and records); and

(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 16053. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 16054. EFFECTIVE DATE.

This subtitle shall take effect 12 months after the date of enactment of this subtitle.

SEC. 16055. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this subtitle.

SEC. 16056. CONFORMING AMENDMENTS TO THE FEDERAL POWER ACT.

(a) CONFLICT OF JURISDICTION.—Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

(b) DEFINITIONS.—(1) Section 201(g)(5) of the Federal Power Act (16 U.S.C. 824(g)(5)) is amended by striking ''1935'' and inserting ''2003''.

(2) Section 214 of the Federal Power Act (16 U.S.C. 824m) is amended by striking ''1935'' and inserting ''2003''.

Subtitle E—PURPA Amendments

SEC. 16061. REAL-TIME PRICING AND TIME-OF-USE METERING STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) REAL-TIME PRICING.—(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a real-time rate schedule, under which the rate charged by the electric utility varies by the hour (or smaller time interval) according to changes in the electric utility's wholesale power cost. The real-time pricing service shall enable the electric consumer to manage energy use and cost through real-time metering and communications technology.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the

date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.

''(12) TIME-OF-USE METERING.—(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a time-of-use rate schedule which enables the electric consumer to manage energy use and cost through time-of-use metering and technology.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards

set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.''.

(b) SPECIAL RULES.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

''(i) REAL-TIME PRICING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same real-time metering and communication service as a direct retail electric consumer of the electric utility.

''(j) TIME-OF-USE METERING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same time-of-use metering and communication service as a direct retail electric consumer of the electric utility.''.

SEC. 16062. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

''(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

"(1) OBLIGATION TO PURCHASE.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that—

"(A) the qualifying cogeneration facility or qualifying small power production facility has access to—

"(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy, and

"(ii) long-term wholesale markets for the sale of capacity and electric energy;

"(B) the qualifying cogeneration facility or qualifying small power production facility has access to a competitive wholesale market for the sale of electric energy that provides such qualifying cogeneration facility or qualifying small power production facility with opportunities to sell electric energy that, at a minimum, are comparable to the opportunities provided by the

markets, or some minimum combination thereof, described in subparagraph (A); or

"(C) the qualifying cogeneration facility does not meet criteria established by the Commission pursuant to the rulemaking set forth in subparagraph (n) and has not filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date of enactment of this subsection.

"(2) COMMISSION REVIEW.—(A) Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a utility-wide basis. Such application shall set forth the reasons why such relief is appropriate and describe how the conditions set forth in subparagraphs (A) and (B) of paragraph (1) of this subsection have been met.

"(B) After notice, including sufficient notice to potentially affected qualifying facilities, and an opportunity for comment, and within 90 days of the filing of an application under subparagraph (A), the Commission shall make a final determination as to whether the conditions set forth in subparagraphs (A) and (B) of paragraph (1) have been met. The

Commission shall not be authorized to issue a tolling order regarding such application or otherwise delay a final decision regarding such application.

"(3) REINSTATEMENT OF OBLIGATION TO PURCHASE.—(A) At any time after the Commission makes a finding under paragraph (2) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility or a qualifying small power production facility may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the reasons why such relief is no longer appropriate and describe how the tests set forth in subparagraphs (A) and (B) of paragraph (1) of this subsection are no longer met.

"(B) After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, and within 90 days of the filing of an application under subparagraph (A), the Commission shall issue an order reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the condition in paragraph (1), which relieved the obligation to purchase, is no longer met. The Commission shall not

be authorized to issue a tolling order regarding such application or otherwise delay a final decision regarding such application.

"(4) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility if—

"(A) competing retail electric suppliers are willing and able to provide electric energy to the qualifying cogeneration facility or qualifying small power production facility, and

"(B) the electric utility is not required by State law to sell electric energy in its service territory.

"(5) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a

facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

"(6) RECOVERY OF COSTS.—

"(A) REGULATION.—To ensure recovery by an electric utility that purchases electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed under this section of all prudently incurred costs associated with the purchases, the Commission shall issue and enforce such regulations as may be required to ensure that the electric utility shall recover the prudently incurred costs associated with such purchases.

"(B) ENFORCEMENT.—A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

"(n) RULEMAKING FOR NEW FACILITIES.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue a rule revising the criteria for qualifying cogeneration facilities in 18 C.F.R. 292.205. In particular, the Commission shall evalu-

ate the rules regarding qualifying facility criteria and revise such rules, as necessary, to ensure—

"(A) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

"(B) the electrical and thermal output of the cogeneration facility is used predominantly for commercial or industrial processes and not intended predominantly for sale to an electric utility; and

"(C) continuing progress in the development of efficient electric energy generating technology.

"(2) APPLICABILITY.—Any revisions made to operating and efficiency standards shall be applicable only to a cogeneration facility that—

"(A) was not a qualifying cogeneration facility, or

"(B) had not filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207,

prior to the date of enactment of this subsection.

"(3) DEFINITION.—For purposes of this subsection, the term 'commercial processes' includes

uses of thermal and electric energy for educational and healthcare facilities.

"(o) RULES FOR EXISTING FACILITIES.— Notwithstanding rule revisions under subsection (n), the Commission's rules in effect prior to the effective date of any revised rules prescribed under subsection (n) shall continue to apply to any cogeneration facility or small power production facility that—

"(1) was a qualifying cogeneration facility or a qualifying small power production facility, or

"(2) had filed with the Commission a notice of self-certification or an application for Commission certification under 18 C.F.R. 292.207,

prior to the date of enactment of subsections (m) and (n).".

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.— (1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

"(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.".

(2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

"(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.".

SEC. 16063. SMART METERING.

(a) IN GENERAL.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

"(13) TIME-BASED METERING AND COMMUNICATIONS.—(A) Not later than eighteen (18) months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance in the costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

"(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others, each the following:

"(i) Time-Of-Use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall.

"(ii) Critical Peak Pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption.

"(iii) Real-Time pricing whereby electricity prices are set for a specific time period on an

advanced or forward basis and may change as often as hourly.

''(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

''(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive that same time-based metering and communications device and service as a retail electric consumer of the electric utility.

''(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than twelve (12) months after enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).''.

(b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding the at the end the following:

''(k) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall, not later than twelve (12) months after enactment of this subsection, conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.''.

(c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility Regulatory Polices Act of 1978 (16 U.S.C. 2642(a)) is amended by striking ''and'' at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting ''; and'', and by adding the following at the end thereof:

''(5) technologies, techniques and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.''.

(d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643) is amended by adding the following at the end thereof:

"(d) DEMAND RESPONSE.—The Secretary shall be responsible for each of the following:

"(1) Educating consumers on the availability, advantages and benefits of advanced metering and communications technologies including the funding of demonstration or pilot projects.

"(2) Working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs.

"(3) Within 6 months of enactment, provide the Congress with a report that identifies and quantifies the national benefits of demand response and provides policy recommendations as to how to achieve specific levels of such benefits by January 1, 2005.".

(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

(1) POLICY.—It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

(2) TECHNICAL ASSISTANCE.—The Secretary of Energy shall provide technical assistance to States and regional organizations formed by two or more States to assist them in—

(A) identifying the areas with the greatest demand response potential;

(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response; and

(C) developing plans and programs to use demand response to respond to peak demand or emergency needs.

(3) REPORT.—The Federal Energy Regulatory Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews each of the following:

(A) Saturation and penetration rate of advanced meters and communications technologies, devices and systems.

(B) Existing demand response programs and time-based rate programs.

(C) The annual resource contribution of demand resources, including the prior year and following years.

(D) The potential for demand response as a quantifiable, reliable resource for regional planning purposes.

(E) Steps taken to ensure that, in regional transmission planning and operations, that demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider or transmitting party.

(f) COST RECOVERY OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged and the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated. It is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and devices,

but who are part of the same regional electricity entity, shall be recognized.

Subtitle F—Renewable Energy

SEC. 16071. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

"(14) NET METERING.—(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

"(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

"(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.".

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978

(16 U.S.C. 2625) is amended by adding at the end the following:

"(l) NET METERING.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning net metering established by section 111(d)(14), the term 'net metering service' shall mean a service provided in accordance with the following standards:

"(1) RATES AND CHARGES.—An electric utility—

"(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

"(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

"(2) MEASUREMENT.—An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility

during a billing period in accordance with normal metering practices.

"(3) ELECTRIC ENERGY SUPPLIED EXCEEDING ELECTRIC ENERGY GENERATED.—If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with normal metering practices.

"(4) ELECTRIC ENERGY GENERATED EXCEEDING ELECTRIC ENERGY SUPPLIED.—If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

"(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

"(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing

period, with the kilowatt-hour credit appearing on the bill for the following billing period.

"(5) SAFETY AND PERFORMANCE STANDARDS.—An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

"(6) ADDITIONAL CONTROL AND TESTING REQUIREMENTS.—The Commission, after consultation with State regulatory authorities and nonregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.

"(7) DEFINITIONS.—For purposes of this subsection:

"(A) The term 'eligible on-site generating facility' means—

"(i) a facility on the site of a residential electric consumer with a maximum

generating capacity of 10 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; or

"(ii) a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

"(B) The term 'renewable energy resource' means solar, wind, biomass, or geothermal energy.

"(C) The term 'high efficiency system' means service fuel cells or combined heat and power.

"(D) The term 'net metering' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.".

SEC. 16072. RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended by striking ''and which satisfies'' and all that follows through ''Secretary shall establish.'' and inserting ''. If there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities in any given year, the Secretary shall assign 60 percent of appropriated funds for that year to facilities that use solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity, and assign the remaining 40 percent to other projects. The Secretary may, after transmitting to the Congress an explanation of the reasons therefor, alter the percentage requirements of the preceding sentence.''.

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

(1) by striking ''a State or any political'' and all that follows through ''nonprofit electrical cooperative'' and inserting ''a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States or the District of Columbia, or a political subdivision

thereof, or an Indian tribal government of subdivision thereof,''; and

(2) by inserting ''landfill gas,'' after ''wind, biomass,''.

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking ''during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section'' and inserting ''after October 1, 2003, and before October 1, 2013''.

(d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended by inserting ''landfill gas,'' after ''wind, biomass,''.

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

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

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums

as may be necessary to carry out this section for fiscal years 2003 through 2023.

"(2) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.".

SEC. 16073. RENEWABLE ENERGY ON FEDERAL LANDS.

(a) REPORT TO CONGRESS.—Within 24 months after the date of enactment of this section, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall develop and report to the Congress recommendations on opportunities to develop renewable energy on public lands under the jurisdiction of the Secretary of the Interior and National Forest System lands under the jurisdiction of the Secretary of Agriculture. The report shall include—

(1) 5-year plans developed by the Secretary of the Interior and the Secretary of Agriculture, respectively, for encouraging the development of wind and solar energy consistent with applicable law and management plans; and

(2) an analysis of—

(A) the use of rights-of-ways, leases, or other methods to develop wind and solar energy on such lands;

(B) the anticipated benefits of grants, loans, tax credits, or other provisions to promote wind and solar energy development on such lands; and

(C) any issues that the Secretary of the Interior or the Secretary of Agriculture have encountered in managing wind or solar energy projects on such lands, or believe are likely to arise in relation to the development of wind or solar energy on such lands;

(3) a list, developed in consultation with the Secretary of Energy and the Secretary of Defense, of lands under the jurisdiction of the Department of Energy or Defense that would be suitable for development for wind or solar energy, and any recommended statutory and regulatory mechanisms for such development; and

(4) any recommendations pertaining to the issues addressed in the report.

(b) NATIONAL ACADEMY OF SCIENCES STUDY.—

(1) IN GENERAL.—Within 90 days after the date of the enactment of this Act, the Secretary of the Interior shall contract with the National Academy of Sciences to—

(A) study the potential for the development of wind, solar, and ocean energy on the Outer Continental Shelf;

(B) assess existing Federal authorities for the development of such resources; and

(C) recommend statutory and regulatory mechanisms for such development.

(2) TRANSMITTAL OF RESULTS.—The results of the study shall be transmitted to the Congress within 24 months after the date of the enactment of this Act.

SEC. 16074. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 3 months after the date of enactment of this Act, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources available within the United States, including solar, wind, biomass, ocean, geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

(b) CONTENTS OF REPORTS.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Secretary shall publish a report based on

the assessment under subsection (a). The report shall contain—

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

(2) such other information as the Secretary believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

Subtitle G—Market Transparency, Round Trip Trading Prohibition, and Enforcement

SEC. 16081. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act is amended by adding the following new section at the end thereof:

"SEC. 219. MARKET TRANSPARENCY RULES.

"(a) COMMISSION RULES.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide information about the availability and market price of sales of electric energy at wholesale in interstate commerce and transmission of electric energy in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis. The Commission shall have authority to obtain such information from any person, and any entity described in section 201(f), who sells electric energy at wholesale in interstate commerce or provides transmission services in interstate commerce.

"(b) EXEMPTIONS.—The Commission shall exempt from disclosure information it determines would, if disclosed, (1) be detrimental to the operation of an effective market; or (2) jeopardize system security. This section shall not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase

or sale of wholesale electric energy and transmission services within the area described in section 212(k)(2)(A).''.

SEC. 16082. PROHIBITION ON ROUND TRIP TRADING.

Part II of the Federal Power Act is amended by adding the following new section at the end thereof:

''SEC. 220. PROHIBITION ON ROUND TRIP TRADING.

''(a) PROHIBITION.—It shall be a violation of this Act for any person, and any entity described in section 201(f), willfully and knowingly to enter into any contract or other arrangement to execute a round-trip trade for the purchase or sale of electric energy at wholesale.

''(b) DEFINITION OF ROUND-TRIP TRADE.—For the purposes of this section, the term 'round-trip trade' means a transaction, or combination of transactions, in which a person or other entity—

''(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

''(2) simultaneously with entering into the contract described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same quantity of electric energy so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

"(3) has a specific intent to distort reported revenues, trading volumes, or prices.".

SEC. 16083. CONFORMING CHANGES.

Section 201(e) of the Federal Power Act is amended by striking "or 212" and inserting "212, 215, 216, 217, 218, 219, or 220". Section 201(b)(2) of such Act is amended by striking "and 212" and inserting "212, 215, 216, 217, 218, 219, and 220".

SEC. 16084. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

(1) inserting "electric utility," after "Any person,"; and

(2) inserting ", transmitting utility," after "licensee" each place it appears.

(b) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting "electric utility," after "person," in the first place it appears and by striking "any person unless such person" and inserting "any entity unless such entity".

(c) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years'';

(2) in subsection (b), by striking ''$500'' and inserting ''$25,000''; and

(3) by striking subsection (c).

(d) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825–1) is amended—

(1) in subsections (a) and (b), by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''Part II''; and

(2) in subsection (b), by striking ''$10,000'' and inserting ''$1,000,000''.

Subtitle H—Consumer Protections

SEC. 16091. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

(1) striking ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' in the second sentence and inserting ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint'';

(2) striking ''60 days after'' in the third sentence and inserting ''of'';

(3) striking ''expiration of such 60-day period'' in the third sentence and inserting ''publication date''; and

(4) in the fifth sentence after ''rendered by the'' insert ''date 60 days after the''.

SEC. 16092. JURISDICTION OVER INTERSTATE SALES.

(a) SCOPE OF AUTHORITY.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding the following new subsection at the end thereof:

''(e)(1) If an entity that is not a public utility (including an entity referred to in section 201(f)) voluntarily makes a spot market sale of electric energy and such sale violates Commission rules in effect at the time of such sale, such entity shall be subject to the Commission's refund authority under this section with respect to such violation.

''(2) This section shall not apply to any entity that is either—

''(A) an entity described in section 201(f); or

''(B) a rural electric cooperative,

that does not sell more than 4,000,000 megawatt hours of electricity per year.

''(3) For purposes of this subsection, the term 'spot market sale' means an agreement for the sale of electric energy at wholesale in interstate commerce that is for 24

hours or less and that is entered into the day of, or the day prior to, delivery.''.

(b) CONFORMING AMENDMENTS.—(1) Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended as follows:

(A) In subsection (b), in the seventh sentence, by striking ''the public utility to make''.

(B) In the first sentence of subsection (a), by striking ''hearing had'' and inserting ''hearing held''.

(2) Section 201(b)(2) of such Act (16 U.S.C. 824(b)(2)) is amended as follows:

(A) In the first sentence by striking ''sections 210'' and inserting ''sections 206(f), 210''.

(B) In the second sentence by striking ''section 210'' and inserting ''section 206(f), 210,''.

(3) Section 201(e) of the Federal Power Act is amended by striking ''section 210'' and inserting ''section 206(f), 210''.

(c) UNIFORM INVESTIGATION AUTHORITY.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended as follows:

(1) By inserting '', electric utility, transmitting utility, or other entity'' after ''person'' each time it appears.

(2) By striking the period at the end of the first sentence and inserting the following: ''or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.''.

(d) SANCTITY OF CONTRACT.—(1) The Federal Energy Regulatory Commission shall have no authority to abrogate or modify any provision of a contract, except upon a finding, after notice and opportunity for a hearing, that such action is necessary to protect the public interest, unless such contract expressly provides for a different standard of review.

(2) For purposes of this subsection, a contract is any agreement, in effect and subject to the jurisdiction of the Commission—

(A) under section 4 of the Natural Gas Act or section 205 of the Federal Power Act; and

(B) that is not for sales in an organized exchange or auction spot market.

(3) This subsection shall not apply to any contract executed before the date of enactment of this section unless such contract is an interconnection agreement, nor shall this subsection affect the outcome in any proceeding regarding any contract for sales of electric power executed before the date of enactment of this section.

SEC. 16093. CONSUMER PRIVACY.

(a) IN GENERAL.—The Federal Trade Commission shall issue rules protecting the privacy of electric consumers from the disclosure of consumer information obtained in connection with the sale or delivery of electric energy to electric consumers. The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule under this section.

(b) STATE AUTHORITY.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

SEC. 16094. UNFAIR TRADE PRACTICES.

(a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if approved by the appropriate State regulatory authority.

(b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(c) RULEMAKING.—The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule under this section.

(d) STATE AUTHORITY.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

Subtitle I—Merger Review Reform and Accountability

SEC. 16101. MERGER REVIEW REFORM AND ACCOUNTABILITY.

(a) MERGER REVIEW REFORM.—Within 180 days after the date of enactment of this Act, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Department of Justice, shall prepare, and transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate each of the following:

(1) A study of the extent to which the authorities vested in the Federal Energy Regulatory Com-

mission under section 203 of the Federal Power Act are duplicative of authorities vested in—

(A) other agencies of Federal and State government; and

(B) the Federal Energy Regulatory Commission, including under sections 205 and 206 of the Federal Power Act.

(2) Recommendations on reforms to the Federal Power Act that would eliminate any unnecessary duplication in the exercise of regulatory authority or unnecessary delays in the approval (or disapproval) of applications for the sale, lease, or other disposition of public utility facilities.

(b) MERGER REVIEW ACCOUNTABILITY.—Not later than 1 year after the date of enactment of this Act and annually thereafter, with respect to all orders issued within the preceding year that impose a condition on a sale, lease, or other disposition of public utility facilities under section 203(b) of the Federal Power Act, the Federal Energy Regulatory Commission shall transmit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate explaining each of the following:

(1) The condition imposed.

(2) Whether the Commission could have imposed such condition by exercising its authority under any provision of the Federal Power Act other than under section 203(b).

(3) If the Commission could not have imposed such condition other than under section 203(b), why the Commission determined that such condition was consistent with the public interest.

Subtitle J—Study of Economic Dispatch

SEC. 16111. STUDY ON THE BENEFITS OF ECONOMIC DISPATCH.

(a) STUDY.—The Secretary of Energy, in coordination and consultation with the States, shall conduct a study on—

(1) the procedures currently used by electric utilities to perform economic dispatch;

(2) identifying possible revisions to those procedures to improve the ability of nonutility generation resources to offer their output for sale for the purpose of inclusion in economic dispatch; and

(3) the potential benefits to residential, commercial, and industrial electricity consumers nationally and in each state if economic dispatch procedures were revised to improve the ability of non-

utility generation resources to offer their output for inclusion in economic dispatch.

(b) DEFINITION.—The term ''economic dispatch'' when used in this section means the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation and transmission facilities.

(c) REPORT TO CONGRESS AND THE STATES.—Not later than 90 days after the date of enactment of this Act, and on a yearly basis following, the Secretary of Energy shall submit a report to the Congress and the States on the results of the study conducted under subsection (a), including recommendations to the Congress and the States for any suggested legislative or regulatory changes.

TITLE VII—MOTOR FUELS

Subtitle A—General Provisions

SEC. 17101. RENEWABLE CONTENT OF MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

(1) by redesignating subsection (o) as subsection (q); and

(2) by inserting after subsection (n) the following:

''(o) RENEWABLE FUEL PROGRAM.—

"(1) DEFINITIONS.—In this section:

"(A) CELLULOSIC BIOMASS ETHANOL.—The term 'cellulosic biomass ethanol' means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

"(i) dedicated energy crops and trees;

"(ii) wood and wood residues;

"(iii) plants;

"(iv) grasses;

"(v) agricultural residues;

"(vi) fibers;

"(vii) animal wastes, including poultry fats and poultry wastes, and other waste materials; and

"(viii) municipal solid waste.

"(B) RENEWABLE FUEL.—

"(i) IN GENERAL.—The term 'renewable fuel' means motor vehicle fuel that—

"(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

"(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant,

feedlot, or other place where decaying organic material is found; and

"(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

"(ii) INCLUSION.—The term 'renewable fuel' includes cellulosic biomass ethanol and biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)) and any blending components derived from renewable fuel (provided that only the renewable fuel portion of any such blending component shall be considered part of the applicable volume under the renewable fuel program established by this subsection).

"(C) SMALL REFINERY.—The term 'small refinery' means a refinery for which average aggregate daily crude oil throughput for the calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

"(2) RENEWABLE FUEL PROGRAM.—

"(A) IN GENERAL.—Not later than 1 year from enactment of this provision, the Administrator shall promulgate regulations ensuring that gasoline sold or dispensed to consumers in the contiguous United States, on an annual average basis, contains the applicable volume of renewable fuel as specified in subparagraph (B). Regardless of the date of promulgation, such regulations shall contain compliance provisions for refiners, blenders, and importers, as appropriate, to ensure that the requirements of this section are met, but shall not restrict where renewables can be used, or impose any per-gallon obligation for the use of renewables. If the Administrator does not promulgate such regulations, the applicable percentage, on a volume percentage of gasoline basis, shall be 1.62 in 2005.

"(B) APPLICABLE VOLUME.—

"(i) CALENDAR YEARS 2005 THROUGH 2015.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2015 shall be determined in accordance with the following table:

Applicable volume of renewable fuel

"Calendar year:	(In billions of gallons)
2005	2.7
2006	2.7
2007	2.9
2008	2.9
2009	3.4
2010	3.4
2011	3.4
2012	4.2
2013	4.2
2014	4.2
2015	5.0.

"(ii) CALENDAR YEAR 2016 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2016 and each calendar year thereafter shall be equal to the product obtained by multiplying—

"(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

"(II) the ratio that—

"(aa) 5.0 billion gallons of renewable fuels; bears to

"(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2015.

"(3) APPLICABLE PERCENTAGES.—Not later than October 31 of each calendar year after 2002, the Administrator of the Energy Information Ad-

ministration shall provide the Administrator an estimate of the volumes of gasoline sales in the United States for the coming calendar year. Based on such estimates, the Administrator shall, by November 30 of each calendar year after 2003, determine and publish in the Federal Register, the renewable fuel obligation, on a volume percentage of gasoline basis, applicable to refiners, blenders, and importers, as appropriate, for the coming calendar year, to ensure that the requirements of paragraph (2) are met. For each calendar year, the Administrator shall establish a single applicable percentage that applies to all parties, and make provision to avoid redundant obligations. In determining the applicable percentages, the Administrator shall make adjustments to account for the use of renewable fuels by exempt small refineries during the previous year.

"(4) CELLULOSIC BIOMASS ETHANOL.—For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol shall be considered to be the equivalent of 1.5 gallon of renewable fuel.

"(5) CREDIT PROGRAM.—

"(A) IN GENERAL.—The regulations promulgated to carry out this subsection shall provide for the generation of an appropriate

amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2). Such regulations shall provide for the generation of an appropriate amount of credits for biodiesel fuel. If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

"(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

"(C) LIFE OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance:

"(i) in the calendar year in which the credit was generated or the next calendar year, or

"(ii) in the calendar year in which the credit was generated or next two consecu-

tive calendar years if the Administrator promulgates regulations under paragraph (6).

"(D) INABILITY TO PURCHASE SUFFICIENT CREDITS.—The regulations promulgated to carry out this subsection shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements under paragraph (2) to carry forward a renewables deficit provided that, in the calendar year following the year in which the renewables deficit is created, such person shall achieve compliance with the renewables requirement under paragraph (2), and shall generate or purchase additional renewables credits to offset the renewables deficit of the previous year.

"(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

"(A) STUDY.—For each of calendar years 2005 through 2015, the Administrator of the Energy Information Administration, shall conduct a study of renewable fuels blending to determine whether there are excessive seasonal variations in the use of renewable fuels.

"(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) is used during each of the periods specified in subparagraph (D) of each subsequent calendar year.

"(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

"(i) less than 35 percent of the quantity of renewable fuels necessary to meet the requirement of paragraph (2) has been used during one of the periods specified in subparagraph (D) of the calendar year;

"(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

"(iii) promulgating regulations or other requirements to impose a 35% or

more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

''(D) PERIODS.—The two periods referred to in this paragraph are—

''(i) April through September; and

''(ii) January through March and October through December.

''(E) EXCLUSIONS.—Renewable fuels blended or consumed in 2005 in a State which has received a waiver under section 209(b) shall not be included in the study in subparagraph (A).

''(7) WAIVERS.—

''(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirement of paragraph (2) in whole or in part on petition by one or more States by reducing the national quantity of renewable fuel required under this subsection—

''(i) based on a determination by the Administrator, after public notice and op-

portunity for comment, that implementation of the requirement would have a significant and meaningful adverse impact on the economy or environment of a State, a region, or the United States, or will prevent or interfere with the attainment of a national ambient air quality standard in any area of a State; or

"(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement.

"(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2) within 90 days after the date on which the petition is received by the Administrator. If the Administrator does not act to approve or disapprove a State petition for a waiver within 90 days, the Administrator shall publish a notice setting forth the reasons for not acting within the required 90-day period.

"(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

"(8) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—Not later than 180 days from enactment, the Secretary of Energy shall complete for the Administrator a study assessing whether the renewable fuels requirement under paragraph (2) will likely result in significant adverse consumer impacts in 2005, on a national, regional or State basis. Such study shall evaluate renewable fuel supplies and prices, blendstock supplies, and supply and distribution system capabilities. Based on such study, the Secretary shall make specific recommendations to the Administrator regarding waiver of the requirements of paragraph (2), in whole or in part, to avoid any such adverse impacts. Within 270 days from enactment, the Administrator shall, consistent with the recommendations of the Secretary waive, in whole or in part, the renewable fuels requirement under paragraph (2) by reducing the national quantity of renewable fuel required under this subsection in 2005.

This provision shall not be interpreted as limiting the Administrator's authority to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7) or paragraph (9), pertaining to waivers.

"(9) ASSESSMENT AND WAIVER.—The Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Agriculture on his own motion, or upon petition of any State shall evaluate the requirement of paragraph (2) and determine, prior to January 1, 2007, or prior to January 1 of any subsequent year in which the applicable volume of renewable fuel is increased under paragraph (2)(B), whether the requirement of paragraph (2), including the applicable volume of renewable fuel contained in paragraph (2)(B) should remain in effect, in whole or in part, during 2007 or any year or years subsequent to 2007. In evaluating the requirement of paragraph (2) and in making any determination under this section, the Secretary shall consider the best available information and data collected by accepted methods or best available means regarding—

"(A) the capacity of renewable fuel producers to supply an adequate amount of renew-

able fuel at competitive prices to fulfill the requirement in paragraph (2);

"(B) the potential of the requirement in paragraph (2) to significantly raise the price of gasoline, food or heating oil for consumers in any significant area or region of the country above the price that would otherwise apply to such commodities in the absence of the requirement;

"(C) the potential of the requirement in paragraph (2) to interfere with the supply of fuel in any significant gasoline market or region of the country, including interference with the efficient operation of refiners, blenders, importers, wholesale suppliers, and retail vendors of gasoline, and other motor fuels; and

"(D) the potential of the requirement to cause or promote exceedences of Federal, State, or local air quality standards.

If the Secretary determines, after public notice and the opportunity for comment, that the requirement of paragraph (2) would have significant and meaningful adverse impact on the supply of fuel and related infrastructure or on the economy, environment, public health or environment of any significant area

or region of the country, the Secretary may waive, in whole or in part, the requirement of paragraph (2) in any one year or period of years as well as reduce the applicable volume of renewable fuel contained in paragraph (2)(B) in any one year or period of years.

"(10) SMALL REFINERIES.—

"(A) IN GENERAL.—The requirement of paragraph (2) shall not apply to small refineries until the first calendar year beginning more than 5 years after the first year set forth in the table in paragraph (2)(B)(i). Not later than December 31, 2006, the Secretary of Energy shall complete for the Administrator a study to determine whether the requirement of paragraph (2) would impose a disproportionate economic hardship on small refineries. For any small refinery that the Secretary of Energy determines would experience a disproportionate economic hardship, the Administrator shall extend the small refinery exemption for such small refinery for no less than two additional years.

"(B) ECONOMIC HARDSHIP.—

"(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the

Administrator for an extension of the exemption from the requirement of paragraph (2) for the reason of disproportionate economic hardship. In evaluating a hardship petition, the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study in addition to other economic factors.

"(ii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the receipt of the petition.

"(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that it waives the exemption provided by this Act, the regulations shall provide for the generation of credits by the small refinery beginning in the year following such notification.

"(D) OPT-IN FOR SMALL REFINERS.—A small refinery shall be subject to the requirements of this section if it notifies the Administrator that it waives the exemption under subparagraph (A).".

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''or (n)'' each place it appears and inserting ''(n) or (o)''; and

(B) in the second sentence, by striking ''or (m)'' and inserting ''(m), or (o)''; and

(2) in the first sentence of paragraph (2), by striking ''and (n)'' each place it appears and inserting ''(n), and (o)''.

(c) SURVEY OF RENEWABLE FUEL MARKET.—

(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator of the Environmental Protection Agency (in consultation with the Secretary of Energy acting through the Administrator of the Energy Information Administration) shall—

(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

(i) conventional gasoline containing ethanol;

(ii) reformulated gasoline containing ethanol;

(iii) conventional gasoline containing renewable fuel; and

(iv) reformulated gasoline containing renewable fuel; and

(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator shall rely, to the extent practicable, on existing reporting and recordkeeping requirements to avoid duplicative requirements.

(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

(4) CALCULATION OF MARKET SHARES.—Market shares for conventional gasoline and reformulated gasoline use areas will be calculated on a statewide basis using information collected under para-

graph (2) and other information available to the Administrator. Market share information may be based upon gasoline distribution patterns that include multistate use areas.

SEC. 17102. FUELS SAFE HARBOR.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, no renewable fuel, as defined by section 211(o)(1) of the Clean Air Act, or fuel containing MTBE, used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing such renewable fuel or MTBE, shall be deemed defective in design or manufacture by virtue of the fact that it is, or contains, such a renewable fuel or MTBE, if it does not violate a control or prohibition imposed by the Administrator under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211(b) of the Clean Air Act. If the safe harbor provided by this section does not apply, the existence of a design defect or manufacturing defect shall be determined under otherwise applicable law. Nothing in this paragraph shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence, public nuisance or any other liability other than liability

for a defect in design or manufacture of a motor vehicle fuel.

(b) EFFECTIVE DATE.—This section shall be effective as of the date of enactment and shall apply with respect to all claims filed on or after that date.

SEC. 17103. FINDINGS AND MTBE TRANSITION ASSISTANCE.

(a) FINDINGS.—Congress finds that—

(1) since 1979, methyl tertiary butyl ether (referred to in this section as ''MTBE'') has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

(2) Public Law 101–549 (commonly known as the ''Clean Air Act Amendments of 1990'') (42 U.S.C. 7401 et seq.) established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight;

(3) at the time of the adoption of the fuel oxygen standard, Congress was aware that significant use of MTBE would result from the adoption of that standard, and that the use of MTBE would likely be important to the cost-effective implementation of that program;

(4) Congress was aware that gasoline and its component additives can and do leak from storage tanks;

(5) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

(A) MTBE production capacity; and

(B) systems to deliver MTBE-containing gasoline to the marketplace;

(6) Congress has—

(A) reconsidered the relative value of the oxygenate requirement for reformulated gasoline; and

(B) decided to provide for the elimination of the oxygenate requirement for reformulated gasoline and to provide for a renewable content requirement for motor fuel; and

(7) it is appropriate for Congress to provide some limited transition assistance—

(A) to merchant producers of MTBE who produced MTBE in response to a market created by the oxygenate requirement contained in the Clean Air Act; and

(B) for the purpose of mitigating any fuel supply problems that may result from the elimination of the oxygenate requirement for reformulated gasoline.

(b) PURPOSES.—The purpose of this section is to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended by adding at the end the following:

"(5) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

"(A) IN GENERAL.—

"(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of iso-octane and alkylates.

"(ii) DETERMINATION.—The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane and alkylates is inconsistent with the provisions of subparagraph (B) and, on that

basis, may deny applications for grants authorized by this provision.

"(B) FURTHER GRANTS.—The Secretary of Energy, in consultation with the Administrator, may also further make grants to merchant producers of MTBE in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of such other fuel additives that, consistent with this subsection—

"(i) unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment;

"(ii) have been registered and have been tested or are being tested in accordance with the requirements of this section; and

"(iii) will contribute to replacing gasoline volumes lost as a result of paragraph (5).

"(C) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this paragraph if the production facility—

"(i) is located in the United States; and

"(ii) produced methyl tertiary butyl ether for consumption before April 1, 2003 and ceased production at any time after the date of enactment.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2004 through 2006, to remain available until expended.".

(d) EFFECT ON STATE LAW.—The amendments made to the Clean Air Act by this title have no effect regarding any available authority of States to limit the use of methyl tertiary butyl ether in motor vehicle fuel.

SEC. 17104. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended—

(A) in paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking "(including the oxygen content requirement contained in subparagraph (B))";

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(B) in paragraph (3)(A), by striking clause (v);

(C) in paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) by redesignating clause (iii) as clause (ii); and

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect 270 days after the date of enactment of this Act, except that such amendments shall take effect upon enactment in any State that has received a waiver under section 209(b) of the Clean Air Act.

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended—

(1) by striking ''Within 1 year after the enactment of the Clean Air Act Amendments of 1990,'' and inserting the following:

''(A) IN GENERAL.—Not later than November 15, 1991,''; and

(2) by adding at the end the following:

''(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

''(i) DEFINITIONS.—In this subparagraph the term 'PADD' means a Petroleum Administration for Defense District.

''(ii) REGULATIONS REGARDING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph the Administrator shall establish, for each refinery or importer, standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refinery or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999

and 2000, determined on the basis of data collected by the Administrator with respect to the refinery or importer.

"(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

"(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refinery or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refinery or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refinery or importer during calendar years 1999 and 2000.

"(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refinery or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for toxic air pollutants

promulgated under subparagraph (A) and paragraph (3)(B).

"(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

"(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

"(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

"(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 1999 and 2000; and

"(bb) the reduction of the average annual aggregate emis-

sions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

"(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

"(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

"(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refinery or importer shall meet the standards applicable under clause (ii) not later than April 1 of the year following the report in subclause (II) and for subsequent years.

"(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2004, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as

in effect on the date of enactment of this subparagraph).''.

(c) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations, to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(d) SAVINGS CLAUSE.—Nothing in this section is intended to affect or prejudice either any legal claims or actions with respect to regulations promulgated by the Administrator prior to enactment of this Act regarding emissions of toxic air pollutants from motor vehicles or the adjustment of standards applicable to a specific refinery or importer made under such prior regulations and the Administrator may apply such adjustments to the standards applicable to such refinery or importer under clause (iii)(I) of section 211(k)(1)(B) of the Clean Air Act, except that—

(1) the Administrator shall revise such adjustments to be based only on calendar years 1999–2000, and

(2) for adjustments based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline, the Administrator may revise such adjustments to take account of the scope of any lawful and enforceable Federal or State prohibition on methyl tertiary butyl ether imposed after the effective date of the enactment of this paragraph, except that any such adjustment shall require such refiner or importer, to the greatest extent practicable, to maintain the reduction achieved during calendar year 1999–2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refinery or importer. Any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999–2000.

SEC. 17105. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by inserting after subsection (o) the following:

"(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

"(1) ANTI-BACKSLIDING ANALYSIS.—

"(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this paragraph, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by title VII of the Energy Policy Act of 2003.

"(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

"(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2005.".

SEC. 17106. DATA COLLECTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

''(m) RENEWABLE FUELS SURVEY.—(1) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including—

''(A) the quantity of renewable fuels produced;

''(B) the quantity of renewable fuels blended;

''(C) the quantity of renewable fuels imported;

''(D) the quantity of renewable fuels demanded;

''(E) market price data; and

''(F) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this section.

''(2) The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the five years prior to implementation of this subsection.

"(3) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).".

SEC. 17107. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to consumers in various States and localities;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals;

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refineries;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refineries, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while improving air quality at the national, regional and local levels consistent with the attainment of national ambient air quality standards, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply;

(F) the feasibility of providing incentives, to promote cleaner burning motor vehicle fuel; and

(G) the extent to which improvements in air quality and any increases or decreases in the price of motor fuel can be projected to result from the Environmental Protection Agency's Tier II requirements for conventional gasoline and vehicle emission systems, the reformulated gasoline program, the renewable content requirements established by this subtitle, State programs regarding gasoline volatility, and any other requirements imposed by States or localities affecting the composition of motor fuel.

(b) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2006, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall

submit to Congress a report on the results of the study conducted under subsection (a).

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The report shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) REQUIRED CONSIDERATIONS.—The recommendations under subparagraph (A) shall take into account the need to provide advance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) CONSULTATION.—In developing the report, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall consult with—

(A) the Governors of the States;

(B) automobile manufacturers;

(C) motor vehicle fuel producers and distributors; and

(D) the public.

SEC. 17107A. REDUCING THE PROLIFERATION BOUTIQUE FUELS.

(a) EPA APPROVAL OF STATE PLANS WITH BOUTIQUE FUELS.—Section 211(c)(4) of the Clean Air Act (42 U.S.C. 7545(c)(4)) is amended by adding the following at the end thereof:

''(D) In the case of gasoline, after the enactment of this subparagraph, the Administrator shall give a preference to the approval of implementation plan provisions described in subparagraph (C) if the control or prohibition in such provisions requires the use of either of the following:

''(i) Federal clean burning fuel meeting the requirements of subsection (p)(1).

''(ii) Low RVP gasoline meeting the requirements of subsection (p)(2).''.

(b) PREFERRED GASOLINE OPTIONS.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding the following new subsection at the end thereof:

''(r) PREFERRED GASOLINE OPTIONS.—

''(1) FEDERAL CLEAN BURNING GASOLINE.—For purposes of this section, the term 'Federal clean burning gasoline' means reformulated gasoline as defined in subsection (k), the Reid Vapor Pressure of

which is equal to 6.8 pounds per square inch (psi) for the high ozone season (as determined by the Administrator).

"(2) LOW RVP GASOLINE.—The Administrator shall promulgate regulations providing for a gasoline blend for the high ozone season (as determined by the Administrator) having a Reid Vapor Pressure of 7.8 pounds per square inch (psi).".

SEC. 17108. COMMERCIAL BYPRODUCTS FROM MUNICIPAL SOLID WASTE LOAN GUARANTEE PROGRAM.

(a) DEFINITION OF MUNICIPAL SOLID WASTE.—In this section, the term "municipal solid waste" has the meaning given the term "solid waste" in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol and other commercial byproducts.

(c) REQUIREMENTS.—The Secretary may provide a loan guarantee under subsection (b) to an applicant if—

(1) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in subsection (b);

(2) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(3) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(d) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(1) meet all applicable Federal and State permitting requirements;

(2) are most likely to be successful; and

(3) are located in local markets that have the greatest need for the facility because of—

(A) the limited availability of land for waste disposal; or

(B) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(e) MATURITY.—A loan guaranteed under subsection (b) shall have a maturity of not more than 20 years.

(f) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under subsection (b) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(g) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under subsection (b) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(h) GUARANTEE FEE.—The recipient of a loan guarantee under subsection (b) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(i) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(j) REPORTS.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annu-

ally submit to Congress a report on the activities of the Secretary under this section.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(l) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a loan guarantee under subsection (b) terminates on the date that is 10 years after the date of enactment of this Act.

Subtitle B—MTBE Cleanup

SEC. 17201. FUNDING FOR MTBE CONTAMINATION.

Notwithstanding any other provision of law, there is authorized to be appropriated to the Administrator of the United States Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund not more than $850,000,000 to be used for taking such action limited to site assessment (including exposure assessment), corrective action, inspection of underground storage tank systems, and groundwater monitoring as the Administrator deems necessary to protect human health, welfare, and the environment from underground storage tank releases of fuel containing fuel oxygenates.

TITLE VIII—AUTOMOBILE EFFICIENCY

SEC. 18001. AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION AND ENFORCEMENT OF FUEL ECONOMY STANDARDS.

In addition to any other funds authorized by law, there are authorized to be appropriated to the National Highway Traffic Safety Administration to implement and enforce average fuel economy standards $5,000,000 for fiscal years 2004 through 2006.

SEC. 18002. STUDY OF FEASIBILITY AND EFFECTS OF REDUCING USE OF FUEL FOR AUTOMOBILES.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall study the feasibility and effects of reducing by model year 2012, by a significant percentage, the use of fuel for automobiles.

(b) SUBJECTS OF STUDY.—The study under this section shall include—

(1) examination of, and recommendation of alternatives to, the policy under current Federal law of establishing average fuel economy standards for automobiles and requiring each automobile manufac-

turer to comply with average fuel economy standards that apply to the automobiles it manufactures;

(2) examination of how automobile manufacturers could contribute toward achieving the reduction referred to in subsection (a);

(3) examination of the potential of fuel cell technology in motor vehicles in order to determine the extent to which such technology may contribute to achieving the reduction referred to in subsection (a); and

(4) examination of the effects of the reduction referred to in subsection (a) on—

(A) gasoline supplies;

(B) the automobile industry, including sales of automobiles manufactured in the United States;

(C) motor vehicle safety; and

(D) air quality.

(c) REPORT.—The Administrator shall submit to the Congress a report on the findings, conclusion, and recommendations of the study under this section by not later than 1 year after the date of the enactment of this Act.

DIVISION B—SCIENCE

SEC. 20001. PURPOSES.

The purposes of this division are to—

(1) contribute to a national energy strategy through an energy research and development program that supports basic energy research and provides mechanisms to develop, demonstrate, and promote the commercial application of new energy technologies in partnership with industry;

(2) protect and strengthen the Nation's economy, standard of living, and national security by reducing dependence on imported energy;

(3) meet future needs for energy services at the lowest total cost to the Nation, giving balanced and comprehensive consideration to technologies that improve the efficiency of energy end uses and that enhance energy supply;

(4) reduce the environmental impacts of energy production, distribution, transportation, and use;

(5) help increase domestic production of energy, increase the availability of hydrocarbon reserves, and lower energy prices; and

(6) stimulate economic growth and enhance the ability of United States companies to compete in future markets for advanced energy technologies.

SEC. 20002. GOALS.

(a) IN GENERAL.—In order to achieve the purposes of this division, the Secretary shall conduct a balanced set

of programs of energy research, development, demonstration, and commercial application, guided by the following goals:

(1) ENERGY EFFICIENCY.—

(A) BUILDINGS.—Develop, in partnership with industry, technologies, designs, and production methods that will enable an average 25 percent increase by 2010 in the energy efficiency of all new buildings, as compared to a new building in 1996.

(B) INDUSTRY.—Develop, in partnership with industry, technologies, designs, and production methods that will enable the energy intensity of the major energy-consuming industries to improve by at least 25 percent by 2010 as compared to 1991.

(C) VEHICLES.—Develop, in partnership with industry, technologies that will enable—

(i) by 2010, mid-sized passenger automobiles with a fuel economy of 80 miles per gallon;

(ii) by 2010, light trucks (classes 1 and 2a) with a fuel economy of 60 miles per gallon;

(iii) by 2010, medium trucks and buses (classes 2b through 6 and class 8 transit buses) with a fuel economy, in ton-miles per gallon for trucks and passenger miles per gallon for buses, that is 3 times that of year 2000 equivalent vehicles;

(iv) by 2010, heavy trucks (classes 7 and 8) with a fuel economy, in ton-miles per gallon, that is 2 times that of year 2000 equivalent vehicles; and

(v) by 2020, meeting the goal of the President's Hydrogen Initiative.

(2) DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS.—

(A) DISTRIBUTED GENERATION.—Develop, in partnership with industry, technologies based on natural gas that achieve electricity generating efficiencies greater than 40 percent by 2015 for on-site, or distributed, generation technologies.

(B) ELECTRIC ENERGY SYSTEMS AND STORAGE.—Develop, in partnership with industry—

(i) technologies for generators and transmission, distribution, and storage sys-

tems that combine high capacity with high efficiency (particularly for electric transmission facilities in rural and remote areas);

(ii) new transmission and distribution technologies, including flexible alternating current transmission systems, composite conductor materials, advanced protection devices, and controllers;

(iii) technologies for interconnection of distributed energy resources with electric power systems;

(iv) high-temperature superconducting materials for power delivery equipment such as transmission and distribution cables, transformers, and generators; and

(v) real-time transmission and distribution system control technologies that provide for continual exchange of information between generation, transmission, distribution, and end-user facilities.

(3) RENEWABLE ENERGY.—

(A) WIND POWER.—Develop, in partnership with industry, technologies and designs that will—

(i) reduce the cost of wind power by 40 percent by 2012 as compared to 2000; and

(ii) expand utilization of class 3 and 4 winds.

(B) PHOTOVOLTAICS.—Develop, in partnership with industry, total photovoltaic systems with installed costs of $5,000 per peak kilowatt by 2005 and $2000 per peak kilowatt by 2015.

(C) SOLAR THERMAL SYSTEMS.—Develop, in partnership with industry, solar power technologies (including baseload solar power) that combine high-efficiency and high-temperature receivers with advanced thermal storage and power cycles to accommodate peak loads and reduce lifecycle costs.

(D) GEOTHERMAL ENERGY.—Develop, in partnership with industry, technologies and processes based on advanced hydrothermal systems and advanced heat and power systems, including geothermal or ground source heat pump technology, with a specific focus on—

(i) improving exploration and characterization technology to increase the prob-

ability of drilling successful wells from 20 percent to 40 percent by 2010;

(ii) reducing the cost of drilling by 2008 to an average cost of $225 per foot;

(iii) developing enhanced geothermal systems technology with the potential to double the usable geothermal resource base, as compared to the date of enactment of this Act; and

(iv) reducing the cost of installing the ground loop of ground-source heat pumps by 30 percent by 2007 compared to the cost in 2000.

(E) BIOMASS-BASED POWER SYSTEMS.—Develop, in partnership with industry, integrated power generating systems, advanced conversion, and feedstock technologies capable of producing electric power that is cost-competitive with fossil-fuel generated electricity by 2010, through co-production of fuels, chemicals, and other products under subparagraph (F).

(F) BIOFUELS.—Develop, in partnership with industry, new and emerging technologies and biotechnology processes capable of making—

(i) gaseous and liquid biofuels that are price-competitive, by 2010, with gasoline or diesel in either internal combustion engines or fuel cells; and

(ii) biofuels, biobased polymers, and chemicals, including those derived from lignocellulosic feedstock, with particular emphasis on developing biorefineries that use enzyme-based processing systems.

(G) HYDROPOWER.—Develop, in partnership with industry, a new generation of turbine technologies that will increase generating capacity and be less damaging to fish and aquatic ecosystems.

(4) FOSSIL ENERGY.—

(A) POWER GENERATION.—Develop, in partnership with industry, technologies, including precombustion technologies, by 2015 with the capability of realizing—

(i) electricity generating efficiencies of 75 percent (lower heating value) for natural gas; and

(ii) widespread commercial application of combined heat and power with thermal

efficiencies of more than 85 percent (higher heating value).

(B) OFFSHORE OIL AND GAS RESOURCES.—Develop, in partnership with industry, technologies to—

(i) extract methane hydrates in coastal waters of the United States; and

(ii) develop natural gas and oil reserves in the ultra-deepwater of the Central and Western Gulf of Mexico, with a focus on improving, while lowering costs and reducing environmental impacts, the safety and efficiency of—

(I) the recovery of ultra-deepwater resources; and

(II) sub-sea production technology used for such recovery.

(C) ONSHORE OIL AND GAS RESOURCES.—Advance the science and technology available to domestic onshore petroleum producers, particularly independent producers of oil or gas, through—

(i) advances in technology for exploration and production of domestic petro-

leum resources, particularly those not accessible with current technology;

(ii) improvement in the ability to extract hydrocarbons (including heavy oil) from known reservoirs and classes of reservoirs; and

(iii) development of technologies and practices that reduce the impact on the environment from petroleum exploration and production.

(D) TRANSPORTATION FUELS.—Increase the availability of transportation fuels by focusing research on—

(i) reducing the cost of producing transportation fuels from coal and natural gas; and

(ii) indirect liquefaction of coal and biomass.

(5) NUCLEAR ENERGY.—

(A) EXISTING REACTORS.—Support research to extend the lifetimes of existing United States nuclear power reactors, and increase their reliability while optimizing their current operations for greater efficiencies.

(B) ADVANCED REACTORS.—Develop, in partnership with industry—

(i) advanced, efficient, lower cost, and passively safe reactor designs;

(ii) proliferation-resistant and high-burn-up nuclear fuels; and

(iii) technologies to minimize generation of radioactive materials and improve the management of nuclear waste.

(C) NUCLEAR SCIENTISTS AND ENGINEERS.—Attract new students and faculty to the nuclear sciences, nuclear engineering, and related fields (including health physics, nuclear medicine, nuclear chemistry, and radiochemistry).

(6) HYDROGEN.—Carry out programs related to hydrogen in the Fossil Fuel Program and the Nuclear Energy Program.

(b) REVIEW AND ASSESSMENT OF GOALS.—

(1) EVALUATION AND MODIFICATION.—Based on amounts appropriated and developments in science and technology, the Secretary shall evaluate the goals set forth in subsection (a) at least once every 5 years, and shall report to the Congress any proposed modifications to the goals.

(2) CONSULTATION.—In evaluating and proposing modifications to the goals as provided in paragraph (1), the Secretary shall solicit public input.

(3) PUBLIC COMMENT.—(A) After consultation under paragraph (2), the Secretary shall publish in the Federal Register a set of draft modifications to the goals for public comment.

(B) Not later than 60 days after the date of publication of draft modifications under subparagraph (A), and after consideration of any public comments received, the Secretary shall publish the final modifications, including a summary of the public comments received, in the Federal Register.

(4) EFFECTIVE DATE.—No modification to goals under this section shall take effect before the date which is 5 years after the date of enactment of this Act.

(c) EFFECT OF GOALS.—(1) Nothing in paragraphs (1) through (6) of subsection (a), or any subsequent modification to the goals therein pursuant to subsection (b), shall—

(A) create any new—

(i) authority for any Federal agency; or

(ii) requirement for any other person;

(B) be used by a Federal agency to support the establishment of regulatory standards or regulatory requirements; or

(C) alter the authority of the Secretary to make grants or other awards.

(2) Nothing in this subsection shall be construed to limit the authority of the Secretary to impose conditions on grants or other awards based on the goals in subsection (a) or any subsequent modification thereto.

SEC. 20003. DEFINITIONS.

For purposes of this division:

(1) DEPARTMENT.—The term ''Department'' means the Department of Energy.

(2) DEPARTMENTAL MISSION.—The term ''departmental mission'' means any of the functions vested in the Secretary of Energy by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) or other law.

(3) INDEPENDENT PRODUCER OF OIL OR GAS.—

(A) IN GENERAL.—The term ''independent producer of oil or gas'' means any person who produces oil or gas other than a person to whom subsection (c) of section 613A of the Internal Revenue Code of 1986 does not apply by

reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d) of such Code.

(B) RULES FOR APPLYING PARAGRAPHS (2) AND (4) OF SECTION 613A(d).—For purposes of subparagraph (A), paragraphs (2) and (4) of section 613A(d) of the Internal Revenue Code of 1986 shall be applied by substituting ''calendar year'' for ''taxable year'' each place it appears in such paragraphs.

(4) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(5) JOINT VENTURE.—The term ''joint venture'' has the meaning given that term under section 2 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301).

(6) NATIONAL LABORATORY.—The term ''National Laboratory'' means any of the following laboratories owned by the Department:

(A) Ames National Laboratory.

(B) Argonne National Laboratory.

(C) Brookhaven National Laboratory.

(D) Fermi National Laboratory.

(E) Idaho National Engineering and Environmental Laboratory.

(F) Lawrence Berkeley National Laboratory.

(G) Lawrence Livermore National Laboratory.

(H) Los Alamos National Laboratory.

(I) National Energy Technology Laboratory.

(J) National Renewable Energy Laboratory.

(K) Oak Ridge National Laboratory.

(L) Pacific Northwest National Laboratory.

(M) Princeton Plasma Physics Laboratory.

(N) Sandia National Laboratories.

(O) Thomas Jefferson National Accelerator Facility.

(7) NONMILITARY ENERGY LABORATORY.—The term ''nonmilitary energy laboratory'' means any of the following laboratories of the Department:

(A) Ames National Laboratory.

(B) Argonne National Laboratory.

(C) Brookhaven National Laboratory.

(D) Fermi National Laboratory.

(E) Lawrence Berkeley National Laboratory.

(F) Oak Ridge National Laboratory.

(G) Pacific Northwest National Laboratory.

(H) Princeton Plasma Physics Laboratory.

(I) Stanford Linear Accelerator Center.

(J) Thomas Jefferson National Accelerator Facility.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(9) SINGLE-PURPOSE RESEARCH FACILITY.—The term ''single-purpose research facility'' means any of the following primarily single-purpose entities owned by the Department:

(A) East Tennessee Technology Park.

(B) Fernald Environmental Management Project.

(C) Kansas City Plant.

(D) Nevada Test Site.

(E) New Brunswick Laboratory.

(F) Pantex Weapons Facility.

(G) Savannah River Technology Center.

(H) Stanford Linear Accelerator Center.

(I) Y–12 facility at Oak Ridge National Laboratory.

(J) Waste Isolation Pilot Plant.

(K) Any other similar organization of the Department designated by the Secretary that engages in technology transfer, partnering, or licensing activities.

TITLE I—RESEARCH AND DEVELOPMENT

Subtitle A—Energy Efficiency

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 21101. ENERGY EFFICIENCY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for energy efficiency and conservation research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $616,000,000.

(2) For fiscal year 2005, $695,000,000.

(3) For fiscal year 2006, $772,000,000.

(4) For fiscal year 2007, $865,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) LIGHTING SYSTEMS.—For activities under section 21111, $50,000,000 for each of fiscal years 2004 through 2007.

(2) ELECTRIC MOTOR CONTROL TECHNOLOGY.—For activities under section 21122, $2,000,000 for each of fiscal years 2004 through 2007.

(3) SECONDARY ELECTRIC VEHICLE BATTERY USE PROGRAM.—For activities under section 21132—

(A) for fiscal year 2004, $4,000,000;

(B) for fiscal year 2005, $7,000,000;

(C) for fiscal year 2006, $7,000,000; and

(D) for fiscal year 2007, $7,000,000.

(4) ENERGY EFFICIENCY SCIENCE INITIATIVE.—For activities under section 21141—

(A) for fiscal year 2004, $20,000,000;

(B) for fiscal year 2005, $25,000,000;

(C) for fiscal year 2006, $30,000,000; and

(D) for fiscal year 2007, $35,000,000.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for activities under section 21111, $50,000,000 for each of fiscal years 2008 through 2012.

(d) LIMITS ON USE OF FUNDS.—None of the funds authorized to be appropriated under this section may be used for—

(1) the promulgation and implementation of energy efficiency regulations;

(2) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act;

(3) the State Energy Program under part D of title III of the Energy Policy and Conservation Act; or

(4) the Federal Energy Management Program under part 3 of title V of the National Energy Conservation Policy Act.

PART 2—LIGHTING SYSTEMS

SEC. 21111. NEXT GENERATION LIGHTING INITIATIVE.

(a) IN GENERAL.—The Secretary shall carry out a Next Generation Lighting Initiative in accordance with this section to support research, development, demonstration, and commercial application activities related to advanced solid-state lighting technologies based on white light emitting diodes.

(b) OBJECTIVES.—The objectives of the initiative shall be—

(1) to develop, by 2012, advanced solid-state lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are—

(A) longer lasting;

(B) more energy-efficient; and

(C) cost-competitive;

(2) to develop an inorganic white light emitting diode that has an efficiency of 160 lumens per watt and a 10-year lifetime; and

(3) to develop an organic white light emitting diode with an efficiency of 100 lumens per watt with a 5-year lifetime that—

(A) illuminates over a full color spectrum;

(B) covers large areas over flexible surfaces; and

(C) does not contain harmful pollutants, such as mercury, typical of fluorescent lamps.

(c) FUNDAMENTAL RESEARCH.—

(1) CONSORTIUM.—The Secretary shall carry out the fundamental research activities of the Next Generation Lighting Initiative through a private consortium (which may include private firms, trade associations and institutions of higher education), which the Secretary shall select through a competi-

tive process. Each proposed consortium shall submit to the Secretary such information as the Secretary may require, including a program plan agreed to by all participants of the consortium.

(2) JOINT VENTURE.—The consortium shall be structured as a joint venture among the participants of the consortium. The Secretary shall serve on the governing council of the consortium.

(3) ELIGIBILITY.—To be eligible to be selected as the consortium under paragraph (1), an applicant must be broadly representative of United States solid-state lighting research, development, and manufacturing expertise as a whole.

(4) GRANTS.—(A) The Secretary shall award grants for fundamental research to the consortium, which the consortium may disburse to researchers, including those who are not participants of the consortium.

(B) To receive a grant, the consortium must provide a description to the Secretary of the proposed research and list the parties that will receive funding.

(C) Grants shall be matched by the consortium pursuant to section 21802.

(5) NATIONAL LABORATORIES.—National Laboratories may participate in the research described in this section, and may receive funds from the consortium.

(6) INTELLECTUAL PROPERTY.—Participants in the consortium and the Federal Government shall have royalty-free nonexclusive rights to use intellectual property derived from research funded pursuant to this subsection.

(d) DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.—The Secretary shall carry out the development, demonstration, and commercial application activities of the Next Generation Lighting Initiative through awards to private firms, trade associations, and institutions of higher education. In selecting awardees, the Secretary may give preference to members of the consortium selected pursuant to subsection (c).

(e) PLANS AND ASSESSMENTS.—(1) The consortium shall formulate an annual operating plan which shall include research priorities, technical milestones, and plans for technology transfer, and which shall be subject to approval by the Secretary.

(2) The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Next Generation Lighting Initiative. The

Academy shall review the research priorities, technical milestones, and plans for technology transfer established under paragraph (1) and evaluate the progress toward achieving them. The Secretary shall consider the results of such reviews in evaluating the plans submitted under paragraph (1).

(f) AUDIT.—The Secretary shall retain an independent, commercial auditor to perform an audit of the consortium to determine the extent to which the funds authorized by this section have been expended in a manner consistent with the purposes of this section. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to the Congress, along with a plan to remedy any deficiencies cited in the report.

(g) SUNSET.—The Next Generation Lighting Initiative shall terminate no later than September 30, 2013.

(h) DEFINITIONS.—As used in this section:

(1) ADVANCED SOLID-STATE LIGHTING.—The term ''advanced solid-state lighting'' means a semiconducting device package and delivery system that produces white light using externally applied voltage.

(2) FUNDAMENTAL RESEARCH.—The term ''fundamental research'' includes basic research on

both solid-state materials and manufacturing processes.

(3) INORGANIC WHITE LIGHT EMITTING DIODE.—The term ''inorganic white light emitting diode'' means an inorganic semiconducting package that produces white light using externally applied voltage.

(4) ORGANIC WHITE LIGHT EMITTING DIODE.—The term ''organic white light emitting diode'' means an organic semiconducting compound that produces white light using externally applied voltage.

PART 3—BUILDINGS

SEC. 21121. NATIONAL BUILDING PERFORMANCE INITIATIVE.

(a) INTERAGENCY GROUP.—Not later than 3 months after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall establish an interagency group to develop, in coordination with the advisory committee established under subsection (e), a National Building Performance Initiative (in this section referred to as the ''Initiative''). The interagency group shall be cochaired by appropriate officials of the Department and the Department of Commerce, who shall jointly arrange for the provision of necessary administrative support to the group.

(b) INTEGRATION OF EFFORTS.—The Initiative, working with the National Institute of Building Sciences, shall integrate Federal, State, and voluntary private sector efforts to reduce the costs of construction, operation, maintenance, and renovation of commercial, industrial, institutional, and residential buildings.

(c) PLAN.—Not later than 1 year after the date of enactment of this Act, the interagency group shall submit to Congress a plan for carrying out the appropriate Federal role in the Initiative. The plan shall be based on whole building principles and shall include—

(1) research, development, demonstration, and commercial application of systems and materials for new construction and retrofit relating to the building envelope and building system components; and

(2) the collection, analysis, and dissemination of research results and other pertinent information on enhancing building performance to industry, government entities, and the public.

(d) DEPARTMENT OF ENERGY ROLE.—Within the Federal portion of the Initiative, the Department shall be the lead agency for all aspects of building performance related to use and conservation of energy.

(e) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Director of the Office of Science and Technology Policy shall establish an advisory committee to—

(A) analyze and provide recommendations on potential private sector roles and participation in the Initiative; and

(B) review and provide recommendations on the plan described in subsection (c).

(2) MEMBERSHIP.—Membership of the advisory committee shall include representatives with a broad range of appropriate expertise, including expertise in—

(A) building research and technology;

(B) architecture, engineering, and building materials and systems; and

(C) the residential, commercial, and industrial sectors of the construction industry.

(f) CONSTRUCTION.—Nothing in this section provides any Federal agency with new authority to regulate building performance.

SEC. 21122. ELECTRIC MOTOR CONTROL TECHNOLOGY.

The Secretary shall conduct a research, development, demonstration, and commercial application program on advanced control devices to improve the energy efficiency

of electric motors used in heating, ventilation, air conditioning, and comparable systems.

PART 4—VEHICLES

SEC. 21131. DEFINITIONS.

For purposes of this part, the term—

(1) ''battery'' means an energy storage device that previously has been used to provide motive power in a vehicle powered in whole or in part by electricity; and

(2) ''associated equipment'' means equipment located where the batteries will be used that is necessary to enable the use of the energy stored in the batteries.

SEC. 21132. ESTABLISHMENT OF SECONDARY ELECTRIC VEHICLE BATTERY USE PROGRAM.

(a) PROGRAM.—The Secretary shall establish and conduct a research, development, demonstration, and commercial application program for the secondary use of batteries. Such program shall be—

(1) designed to demonstrate the use of batteries in secondary application, including utility and commercial power storage and power quality;

(2) structured to evaluate the performance, including useful service life and costs, of such batteries in field operations, and evaluate the necessary

supporting infrastructure, including reuse and disposal of batteries; and

(3) coordinated with ongoing secondary battery use programs at the National Laboratories and in industry.

(b) SOLICITATION.—(1) Not later than 6 months after the date of the enactment of this Act, the Secretary shall solicit proposals to demonstrate the secondary use of batteries and associated equipment and supporting infrastructure in geographic locations throughout the United States. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(2)(A) Proposals submitted in response to a solicitation under this section shall include—

(i) a description of the project, including the batteries to be used in the project, the proposed locations and applications for the batteries, the number of batteries to be demonstrated, and the type, characteristics, and estimated life-cycle costs of the batteries compared to other energy storage devices currently used;

(ii) the contribution, if any, of State or local governments and other persons to the demonstration project;

(iii) the type of associated equipment and supporting infrastructure to be demonstrated; and

(iv) any other information the Secretary considers appropriate.

(B) If the proposal includes a lease arrangement, the proposal shall indicate the terms of such lease arrangement for the batteries and associated equipment.

(c) SELECTION OF PROPOSALS.—(1)(A) The Secretary shall, not later than 3 months after the closing date established by the Secretary for receipt of proposals under subsection (b), select at least 5 proposals to receive financial assistance under this section.

(B) No one project selected under this section shall receive more than 25 percent of the funds authorized under this section. No more than 3 projects selected under this section shall demonstrate the same battery type.

(2) In selecting a proposal under this section, the Secretary shall consider—

(A) the ability of the proposer to acquire the batteries and associated equipment and to successfully manage and conduct the demonstration project, including satisfying the reporting requirements set forth in paragraph (3)(B);

(B) the geographic and climatic diversity of the projects selected;

(C) the long-term technical and competitive viability of the batteries to be used in the project and of the original manufacturer of such batteries;

(D) the suitability of the batteries for their intended uses;

(E) the technical performance of the batteries, including the expected additional useful life and the batteries' ability to retain energy;

(F) the environmental effects of the use of and disposal of the batteries proposed to be used in the project selected;

(G) the extent of involvement of State or local government and other persons in the demonstration project and whether such involvement will—

(i) permit a reduction of the Federal cost share per project; or

(ii) otherwise be used to allow the Federal contribution to be provided to demonstrate a greater number of batteries; and

(H) such other criteria as the Secretary considers appropriate.

(3) CONDITIONS.—The Secretary shall require that—

(A) as a part of a demonstration project, the users of the batteries provide to the proposer information regarding the operation, maintenance, per-

formance, and use of the batteries, and the proposer provide such information to the battery manufacturer, for 3 years after the beginning of the demonstration project;

(B) the proposer provide to the Secretary such information regarding the operation, maintenance, performance, and use of the batteries as the Secretary may request;

(C) the proposer provide to the Secretary such information regarding the disposal of the batteries as the Secretary may require to ensure that the proposer disposes of the batteries in accordance with applicable law; and

(D) the proposer provide at least 50 percent of the costs associated with the proposal.

PART 5—ENERGY EFFICIENCY SCIENCE INITIATIVE

SEC. 21141. ENERGY EFFICIENCY SCIENCE INITIATIVE.

(a) ESTABLISHMENT.—The Secretary shall establish an Energy Efficiency Science Initiative to be managed by the Assistant Secretary in the Department with responsibility for energy conservation under section 203(a)(9) of the Department of Energy Organization Act (42 U.S.C. 7133(a)(9)), in consultation with the Director of the Office of Science, for grants to be competitively awarded and

subject to peer review for research relating to energy efficiency.

(b) REPORT.—The Secretary shall submit to the Congress, along with the President's annual budget request under section 1105(a) of title 31, United States Code, a report on the activities of the Energy Efficiency Science Initiative, including a description of the process used to award the funds and an explanation of how the research relates to energy efficiency.

PART 6—ADVANCED ENERGY TECHNOLOGY TRANSFER CENTERS

SEC. 21151. ADVANCED ENERGY TECHNOLOGY TRANSFER CENTERS.

(a) GRANTS.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall make grants to nonprofit institutions, State and local governments, or universities (or consortia thereof), to establish a geographically dispersed network of Advanced Energy Technology Transfer Centers, to be located in areas the Secretary determines have the greatest need of the services of such Centers.

(b) ACTIVITIES.—(1) Each Center shall operate a program to encourage demonstration and commercial application of advanced energy methods and technologies through education and outreach to building and industrial

professionals, and to other individuals and organizations with an interest in efficient energy use.

(2) Each Center shall establish an advisory panel to advise the Center on how best to accomplish the activities under paragraph (1).

(c) APPLICATION.—A person seeking a grant under this section shall submit to the Secretary an application in such form and containing such information as the Secretary may require. The Secretary may award a grant under this section to an entity already in existence if the entity is otherwise eligible under this section.

(d) SELECTION CRITERIA.—The Secretary shall award grants under this section on the basis of the following criteria, at a minimum:

(1) The ability of the applicant to carry out the activities in subsection (b).

(2) The extent to which the applicant will coordinate the activities of the Center with other entities, such as State and local governments, utilities, and educational and research institutions.

(e) MATCHING FUNDS.—The Secretary shall require a non-Federal matching requirement of at least 50 percent of the costs of establishing and operating each Center.

(f) ADVISORY COMMITTEE.—The Secretary shall establish an advisory committee to advise the Secretary on

the establishment of Centers under this section. The advisory committee shall be composed of individuals with expertise in the area of advanced energy methods and technologies, including at least 1 representative from—

(1) State or local energy offices;

(2) energy professionals;

(3) trade or professional associations;

(4) architects, engineers, or construction professionals;

(5) manufacturers;

(6) the research community; and

(7) nonprofit energy or environmental organizations.

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

(1) the term ''advanced energy methods and technologies'' means all methods and technologies that promote energy efficiency and conservation, including distributed generation technologies, and life-cycle analysis of energy use;

(2) the term ''Center'' means an Advanced Energy Technology Transfer Center established pursuant to this section; and

(3) the term ''distributed generation'' means an electric power generation facility that is designed to

serve retail electric consumers at or near the facility site.

Subtitle B—Distributed Energy and Electric Energy Systems

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 21201. DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for distributed energy and electric energy systems activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $190,000,000.

(2) For fiscal year 2005, $200,000,000.

(3) For fiscal year 2006, $220,000,000.

(4) For fiscal year 2007, $240,000,000.

(b) MICRO-COGENERATION ENERGY TECHNOLOGY.—From amounts authorized under subsection (a), the following sums shall be available for activities under section 21213:

(1) For fiscal year 2004, $5,000,000.

(2) For fiscal year 2005, $5,500,000.

(3) For fiscal year 2006, $6,000,000.

(4) For fiscal year 2007, $6,500,000.

PART 2—DISTRIBUTED POWER

SEC. 21211. STRATEGY.

(a) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop and transmit to the Congress a strategy for a comprehensive research, development, demonstration, and commercial application program to develop hybrid distributed power systems that combine—

(1) one or more renewable electric power generation technologies of 10 megawatts or less located near the site of electric energy use; and

(2) nonintermittent electric power generation technologies suitable for use in a distributed power system.

(b) CONTENTS.—The strategy shall—

(1) identify the needs best met with such hybrid distributed power systems and the technological barriers to the use of such systems;

(2) provide for the development of methods to design, test, integrate into systems, and operate such hybrid distributed power systems;

(3) include, as appropriate, research, development, demonstration, and commercial application on related technologies needed for the adoption of such hybrid distributed power systems, including energy

storage devices and environmental control technologies;

(4) include research, development, demonstration, and commercial application of interconnection technologies for communications and controls of distributed generation architectures, particularly technologies promoting real-time response to power market information and physical conditions on the electrical grid; and

(5) describe how activities under the strategy will be integrated with other research, development, demonstration, and commercial application activities supported by the Department of Energy related to electric power technologies.

SEC. 21212. HIGH POWER DENSITY INDUSTRY PROGRAM.

The Secretary shall establish a comprehensive research, development, demonstration, and commercial application program to improve energy efficiency of high power density facilities, including data centers, server farms, and telecommunications facilities. Such program shall consider technologies that provide significant improvement in thermal controls, metering, load management, peak load reduction, or the efficient cooling of electronics.

SEC. 21213. MICRO-COGENERATION ENERGY TECHNOLOGY.

The Secretary shall make competitive, merit-based grants to consortia for the development of micro-cogeneration energy technology. The consortia shall explore the use of small-scale combined heat and power in residential heating appliances.

PART 3—TRANSMISSION SYSTEMS

SEC. 21221. TRANSMISSION INFRASTRUCTURE SYSTEMS RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.

(a) PROGRAM AUTHORIZED.—The Secretary shall develop and implement a comprehensive research, development, demonstration, and commercial application program to promote improved reliability and efficiency of electrical transmission systems. Such program may include—

(1) advanced energy technologies, materials, and systems;

(2) advanced grid reliability and efficiency technology development;

(3) technologies contributing to significant load reductions;

(4) advanced metering, load management, and control technologies;

(5) technologies to enhance existing grid components;

(6) the development and use of high-temperature superconductors to—

(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or

(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;

(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;

(8) any other infrastructure technologies, as appropriate; and

(9) technology transfer and education.

(b) PROGRAM PLAN.—Not later than 1 year after the date of the enactment of this Act, the Secretary, in consultation with other appropriate Federal agencies, shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. In preparing the program plan, the Secretary shall consult with utilities, energy services providers, manufacturers, institutions of higher education, other appropriate State and local agencies, environmental organizations, professional and technical societies, and any other persons the Secretary considers appropriate.

(c) REPORT.—Not later than 2 years after the transmittal of the plan under subsection (b), the Secretary shall transmit a report to Congress describing the progress made under this section and identifying any additional resources needed to continue the development and commercial application of transmission infrastructure technologies.

Subtitle C—Renewable Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 21301. RENEWABLE ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for renewable energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $380,000,000.

(2) For fiscal year 2005, $420,000,000.

(3) For fiscal year 2006, $460,000,000.

(4) For fiscal year 2007, $499,000,000.

(b) BIOENERGY.—From the amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 21311 and section 21706:

(1) For fiscal year 2004, $135,425,000.

(2) For fiscal year 2005, $155,600,000.

(3) For fiscal year 2006, $167,650,000.

(4) For fiscal year 2007, $180,000,000.

(c) PUBLIC BUILDINGS.—From the amounts authorized under subsection (a), $30,000,000 for each of the fiscal years 2004 through 2007 are authorized to be appropriated to carry out section 21322.

(d) LIMITS ON USE OF FUNDS.—

(1) EXCLUSION.—None of the funds authorized to be appropriated under this section may be used for Renewable Support and Implementation.

(2) BIOENERGY.—Of the funds authorized under subsection (b), not less than $5,000,000 for each fiscal year shall be made available for grants to Historically Black Colleges and Universities, Tribal Colleges, and Hispanic-Serving Institutions.

(3) RURAL AND REMOTE LOCATIONS.—In carrying out this section, the Secretary, in consultation with the Secretary of Agriculture, shall demonstrate the use of advanced wind power technology, biomass, geothermal energy systems, and other renewable energy technologies to assist in delivering electricity to rural and remote locations.

(4) REGIONAL FIELD VERIFICATION.—Of the funds authorized under subsection (a), not less than $4,000,000 for each fiscal year shall be made avail-

able for the Regional Field Verification Program of the Department.

(5) HYDROPOWER DEMONSTRATION PROJECTS.—Of the funds authorized under subsection (a), such sums as may be necessary shall be made available for demonstration projects of off-stream pumped storage hydropower.

PART 2—BIOENERGY

SEC. 21311. BIOENERGY PROGRAMS.

The Secretary shall conduct a program of research, development, demonstration, and commercial application for bioenergy, including—

(1) biopower energy systems;

(2) biofuels;

(3) integrated applications of both biopower and biofuels;

(4) cross-cutting research and development in feedstocks; and

(5) economic analysis.

PART 3—MISCELLANEOUS PROJECTS

SEC. 21321. MISCELLANEOUS PROJECTS.

(a) PROGRAMS.—The Secretary shall conduct research, development, demonstration, and commercial application programs for—

(1) ocean energy, including wave energy;

(2) the combined use of renewable energy technologies with one another and with other energy technologies, including the combined use of wind power and coal gasification technologies; and

(3) hydrogen carrier fuels.

(b) STUDY.—(1) The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study on—

(A) the feasibility of various methods of renewable generation of energy from the ocean, including energy from waves, tides, currents, and thermal gradients; and

(B) the research, development, demonstration, and commercial application activities required to make marine renewable energy generation competitive with other forms of electricity generation.

(2) Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit the study to the Congress along with the Secretary's recommendations for implementing the results of the study.

SEC. 21322. RENEWABLE ENERGY IN PUBLIC BUILDINGS.

(a) DEMONSTRATION AND TECHNOLOGY TRANSFER PROGRAM.—The Secretary shall establish a program for the demonstration of innovative technologies for solar and other renewable energy sources in buildings owned or op-

erated by a State or local government, and for the dissemination of information resulting from such demonstration to interested parties.

(b) LIMIT ON FEDERAL FUNDING.—The Secretary shall provide under this section no more than 40 percent of the incremental costs of the solar or other renewable energy source project funded.

(c) REQUIREMENT.—As part of the application for awards under this section, the Secretary shall require all applicants—

(1) to demonstrate a continuing commitment to the use of solar and other renewable energy sources in buildings they own or operate; and

(2) to state how they expect any award to further their transition to the significant use of renewable energy.

Subtitle D—Nuclear Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 21401. NUCLEAR ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for nuclear energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) For fiscal year 2004, $388,000,000.

(2) For fiscal year 2005, $416,000,000.

(3) For fiscal year 2006, $445,000,000.

(4) For fiscal year 2007, $474,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) NUCLEAR INFRASTRUCTURE SUPPORT.—For activities under section 21411(e)—

(A) for fiscal year 2004, $125,000,000;

(B) for fiscal year 2005, $130,000,000;

(C) for fiscal year 2006, $135,000,000; and

(D) for fiscal year 2007, $140,000,000.

(2) ADVANCED FUEL RECYCLING PROGRAM.—For activities under section 21421—

(A) for fiscal year 2004, $80,000,000;

(B) for fiscal year 2005, $93,000,000;

(C) for fiscal year 2006, $106,000,000; and

(D) for fiscal year 2007, $120,000,000.

(3) UNIVERSITY PROGRAMS.—For activities under section 21431—

(A) for fiscal year 2004, $35,200,000, of which—

(i) $3,000,000 shall be for activities under subsection (b)(1) of that section;

(ii) $4,275,000 shall be for activities under subsection (b)(2) of that section;

(iii) $8,000,000 shall be for activities under subsection (b)(3) of that section;

(iv) $500,000 shall be for activities under subsection (b)(5) of that section;

(v) $7,000,000 shall be for activities under subsection (c)(1) of that section;

(vi) $700,000 shall be for activities under subsection (c)(2) of that section;

(vii) $10,000,000 shall be for activities under subsection (c)(3) of that section;

(viii) $1,000,000 shall be for activities under subsection (d)(1) of that section; and

(ix) $725,000 shall be for activities under subsection (d)(2) of that section;

(B) for fiscal year 2005, $44,350,000, of which—

(i) $3,100,000 shall be for activities under subsection (b)(1) of that section;

(ii) $6,275,000 shall be for activities under subsection (b)(2) of that section;

(iii) $12,000,000 shall be for activities under subsection (b)(3) of that section;

(iv) $550,000 shall be for activities under subsection (b)(5) of that section;

(v) $7,500,000 shall be for activities under subsection (c)(1) of that section;

(vi) $1,100,000 shall be for activities under subsection (c)(2) of that section;

(vii) $12,000,000 shall be for activities under subsection (c)(3) of that section;

(viii) $1,100,000 shall be for activities under subsection (d)(1) of that section; and

(ix) $725,000 shall be for activities under subsection (d)(2) of that section;

(C) for fiscal year 2006, $49,200,000, of which—

(i) $3,200,000 shall be for activities under subsection (b)(1) of that section;

(ii) $7,150,000 shall be for activities under subsection (b)(2) of that section;

(iii) $13,000,000 shall be for activities under subsection (b)(3) of that section;

(iv) $600,000 shall be for activities under subsection (b)(5) of that section;

(v) $8,000,000 shall be for activities under subsection (c)(1) of that section;

(vi) $1,200,000 shall be for activities under subsection (c)(2) of that section;

(vii) $14,000,000 shall be for activities under subsection (c)(3) of that section;

(viii) $1,200,000 shall be for activities under subsection (d)(1) of that section; and

(ix) $850,000 shall be for activities under subsection (d)(2) of that section; and

(D) for fiscal year 2007, $54,950,000, of which—

(i) $3,200,000 shall be for activities under subsection (b)(1) of that section;

(ii) $8,150,000 shall be for activities under subsection (b)(2) of that section;

(iii) $15,000,000 shall be for activities under subsection (b)(3) of that section;

(iv) $650,000 shall be for activities under subsection (b)(5) of that section;

(v) $8,500,000 shall be for activities under subsection (c)(1); of that section;

(vi) $1,300,000 shall be for activities under subsection (c)(2) of that section;

(vii) $16,000,000 shall be for activities under subsection (c)(3) of that section;

(viii) $1,300,000 shall be for activities under subsection (d)(1) of that section; and

(ix) $850,000 shall be for activities under subsection (d)(2) of that section.

(c) LIMIT ON USE OF FUNDS.—None of the funds authorized under this section may be used for decommissioning the Fast Flux Test Facility.

PART 2—NUCLEAR ENERGY RESEARCH PROGRAMS

SEC. 21411. NUCLEAR ENERGY RESEARCH PROGRAMS.

(a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.—The Secretary shall carry out a Nuclear Energy Plant Optimization Program to support research and development activities addressing reliability, availability, productivity, and component aging in existing nuclear power plants.

(c) NUCLEAR POWER 2010 PROGRAM.—The Secretary shall carry out a Nuclear Power 2010 Program,

consistent with recommendations in the October 2001 report entitled "A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010" issued by the Nuclear Energy Research Advisory Committee of the Department. The Program shall—

(1) rely on the expertise and capabilities of the National Laboratories in the areas of advanced nuclear fuels cycles and fuels testing;

(2) pursue an approach that considers a variety of reactor designs;

(3) include participation of international collaborators in research, development, and design efforts as appropriate; and

(4) encourage industry participation.

(d) GENERATION IV NUCLEAR ENERGY SYSTEMS INITIATIVE.—The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application. The Initiative shall examine advanced proliferation-resistant and passively safe reactor designs, including designs that—

(1) are economically competitive with other electric power generation plants;

(2) have higher efficiency, lower cost, and improved safety compared to reactors in operation on the date of enactment of this Act;

(3) use fuels that are proliferation resistant and have substantially reduced production of high-level waste per unit of output; and

(4) utilize improved instrumentation.

(e) NUCLEAR INFRASTRUCTURE SUPPORT.—The Secretary shall develop and implement a strategy for the facilities of the Office of Nuclear Energy, Science, and Technology and shall transmit a report containing the strategy along with the President's budget request to the Congress for fiscal year 2005. Such strategy shall provide a cost-effective means for—

(1) maintaining existing facilities and infrastructure, as needed;

(2) closing unneeded facilities;

(3) making facility upgrades and modifications; and

(4) building new facilities.

PART 3—ADVANCED FUEL RECYCLING

SEC. 21421. ADVANCED FUEL RECYCLING PROGRAM.

(a) IN GENERAL.—The Secretary, through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct an advanced fuel recycling tech-

nology research and development program to evaluate proliferation-resistant fuel recycling and transmutation technologies which minimize environmental or public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as of the date of enactment of this Act in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts, subject to annual review by the Secretary's Nuclear Energy Research Advisory Committee or other independent entity, as appropriate. Opportunities to enhance progress of this program through international cooperation should be sought.

(b) REPORTS.—The Secretary shall report on the activities of the advanced fuel recycling technology research and development program, as part of the Department's annual budget submission.

PART 4—UNIVERSITY PROGRAMS

SEC. 21431. UNIVERSITY NUCLEAR SCIENCE AND ENGINEERING SUPPORT.

(a) ESTABLISHMENT.—The Secretary shall support a program to invest in human resources and infrastructure in the nuclear sciences and engineering and related fields (including health physics and nuclear and radiochemistry), consistent with departmental missions related to civilian nuclear research and development.

(b) DUTIES.—In carrying out the program under this section, the Secretary shall—

(1) establish a graduate and undergraduate fellowship program to attract new and talented students;

(2) establish a Junior Faculty Research Initiation Grant Program to assist institutions of higher education in recruiting and retaining new faculty in the nuclear sciences and engineering;

(3) support fundamental nuclear sciences and engineering research through the Nuclear Engineering Education Research Program;

(4) encourage collaborative nuclear research among industry, National Laboratories, and institutions of higher education through the Nuclear Energy Research Initiative; and

(5) support communication and outreach related to nuclear science and engineering.

(c) STRENGTHENING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.—Activities under this section may include—

(1) converting research reactors currently using high-enrichment fuels to low-enrichment fuels, upgrading operational instrumentation, and sharing of reactors among institutions of higher education;

(2) providing technical assistance, in collaboration with the United States nuclear industry, in relicensing and upgrading training reactors as part of a student training program; and

(3) providing funding, through the Innovations in Nuclear Infrastructure and Education Program, for reactor improvements as part of a focused effort that emphasizes research, training, and education.

(d) UNIVERSITY-NATIONAL LABORATORY INTERACTIONS.—The Secretary shall develop—

(1) a sabbatical fellowship program for professors at institutions of higher education to spend extended periods of time at National Laboratories in the areas of nuclear science and technology; and

(2) a visiting scientist program in which National Laboratory staff can spend time in academic nuclear science and engineering departments.

The Secretary may provide fellowships for students to spend time at National Laboratories in the area of nuclear science with a member of the Laboratory staff acting as a mentor.

(e) OPERATING AND MAINTENANCE COSTS.—Funding for a research project provided under this section may be used to offset a portion of the operating and mainte-

nance costs of a research reactor at an institution of higher education used in the research project.

PART 5—GEOLOGICAL ISOLATION OF SPENT FUEL

SEC. 21441. GEOLOGICAL ISOLATION OF SPENT FUEL.

The Secretary shall conduct a study to determine the feasibility of deep borehole disposal of spent nuclear fuel and high-level radioactive waste. The study shall emphasize geological, chemical, and hydrological characterization of, and design of engineered structures for, deep borehole environments. Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit the study to the Congress.

Subtitle E—Fossil Energy

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 21501. FOSSIL ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for fossil energy research, development, demonstration, and commercial application activities, other than those described in subsection (b), including activities authorized under this subtitle but not including activities authorized under division E:

(1) For fiscal year 2004, $530,000,000.

(2) For fiscal year 2005, $556,000,000.

(3) For fiscal year 2006, $583,000,000.

(4) For fiscal year 2007, $611,000,000.

No less than 60 percent of the amount appropriated for each fiscal year under this subsection shall be available for activities related to the coal research program under section 21511(a).

(b) ULTRA-DEEPWATER AND UNCONVENTIONAL RESOURCES.—

(1) OIL AND GAS LEASE INCOME.—For each of fiscal years 2004 through 2010, from any royalties, rents, and bonuses derived from Federal onshore and offshore oil and gas leases issued under the Outer Continental Shelf Lands Act and the Mineral Leasing Act which are deposited in the Treasury, and after distribution of any such funds as described in paragraph (2), an amount equal to 7.5 percent of the amount of royalties, rents, and bonuses derived from those leases deposited in the Treasury shall be deposited into the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund (in this subsection referred to as the Fund). For purposes of this subsection, the term ''royalties'' excludes proceeds from the sale of royalty production taken in kind and royalty production that is transferred under section 27(a)(3) of the Outer Conti-

nental Shelf Lands Act (43 U.S.C. 1353(a)(3)). Monies in the Fund shall be available to the Secretary for obligation under part 3, without fiscal year limitation, to the extent provided in advance in appropriations Acts.

(2) PRIOR DISTRIBUTIONS.—The distributions described in paragraph (1) are those required by law—

(A) to States and to the Reclamation Fund under the Mineral Leasing Act (30 U.S.C. 191(a)); and

(B) to other funds receiving monies from Federal oil and gas leasing programs, including—

(i) any recipients pursuant to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g));

(ii) the Land and Water Conservation Fund, pursuant to section 2(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5(c)); and

(iii) the Historic Preservation Fund, pursuant to section 108 of the National Historic Preservation Act (16 U.S.C. 470h).

(3) ALLOCATION.—Amounts made available under this subsection in each fiscal year shall be allocated as follows:

(A) 67.5 percent shall be for ultra-deep-water natural gas and other petroleum activities under section 21522;

(B) 22.5 percent shall be for unconventional natural gas and other petroleum resource activities under section 21523; and

(C) 10 percent shall be for research complementary to research under section 21521(b)(1) through (3).

(c) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) FUEL CELL PROTON EXCHANGE MEMBRANE TECHNOLOGY.—For activities under section 21511(c)(2), $28,000,000 for each of the fiscal years 2004 through 2007.

(2) COAL MINING TECHNOLOGIES.—For activities under section 21512—

(A) for fiscal year 2004, $12,000,000; and

(B) for fiscal year 2005, $15,000,000.

(3) OFFICE OF ARCTIC ENERGY.—For the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization

Act for Fiscal Year 2001 (Public Law 106–398), $25,000,000 for each of fiscal years 2004 through 2007.

(d) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), $25,000,000 for each of fiscal years 2008 through 2011.

(e) LIMITS ON USE OF FUNDS.—

(1) EXCLUSIONS.—None of the funds authorized under this section may be used for—

(A) Fossil Energy Environmental Restoration; or

(B) Import/Export Authorization.

(2) UNIVERSITY COAL MINING RESEARCH.—Of the funds authorized under subsection (c)(2), not less than 20 percent of the funds appropriated for each fiscal year shall be dedicated to research and development carried out at institutions of higher education.

PART 2—RESEARCH PROGRAMS

SEC. 21511. FOSSIL ENERGY RESEARCH PROGRAMS.

(a) COAL RESEARCH.—(1) In addition to the Clean Coal Power Initiative authorized under division E, the

Secretary shall conduct a program of research, development, demonstration, and commercial application for coal and power systems, including—

(A) central systems;

(B) sequestration research and development;

(C) fuels;

(D) advanced research; and

(E) advanced separation technologies.

(2) Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to the Congress a report providing—

(A) a detailed description of how proposals will be solicited and evaluated;

(B) a list of activities and technical milestones; and

(C) a description of how these activities will complement and not duplicate the Clean Coal Power Initiative authorized under division E.

(b) OIL AND GAS RESEARCH.—The Secretary shall conduct a program of research, development, demonstration, and commercial application on oil and gas, including—

(1) exploration and production;

(2) gas hydrates;

(3) reservoir life and extension;

(4) transportation and distribution infrastructure;

(5) ultraclean fuels;

(6) heavy oil and oil shale; and

(7) environmental research.

(c) FUEL CELLS.—(1) The Secretary shall conduct a program of research, development, demonstration, and commercial application on fuel cells for low-cost, high-efficiency, fuel-flexible, modular power systems.

(2) The demonstrations shall include fuel cell proton exchange membrane technology for commercial, residential, and transportation applications, and distributed generation systems, utilizing improved manufacturing production and processes.

(d) TECHNOLOGY TRANSFER.—To the maximum extent practicable, existing technology transfer mechanisms shall be used to implement oil and gas exploration and production technology transfer programs.

SEC. 21512. RESEARCH AND DEVELOPMENT FOR COAL MINING TECHNOLOGIES.

(a) ESTABLISHMENT.—The Secretary shall carry out a program of research and development on coal mining technologies. The Secretary shall cooperate with appropriate Federal agencies, coal producers, trade associations, equipment manufacturers, institutions of higher education

with mining engineering departments, and other relevant entities.

(b) PROGRAM.—The research and development activities carried out under this section shall—

(1) be based on the mining research and development priorities identified by the Mining Industry of the Future Program and in the recommendations from relevant reports of the National Academy of Sciences on mining technologies; and

(2) expand mining research capabilities at institutions of higher education.

PART 3—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES

SEC. 21521. PROGRAM AUTHORITY.

(a) IN GENERAL.—The Secretary shall carry out a program under this part of research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including safe operations and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon).

(b) PROGRAM ELEMENTS.—The program under this part shall address the following areas, including improving

safety and minimizing environmental impacts of activities within each area:

(1) Ultra-deepwater technology.

(2) Ultra-deepwater architecture.

(3) Unconventional natural gas and other petroleum resource exploration and production technology.

(c) LIMITATION ON LOCATION OF FIELD ACTIVITIES.—Field activities under the program under this part shall be carried out only—

(1) in—

(A) areas in the territorial waters of the United States not under any Outer Continental Shelf moratorium as of September 30, 2002;

(B) areas onshore in the United States on public land administered by the Secretary of the Interior available for oil and gas leasing, where consistent with applicable law and land use plans; and

(C) areas onshore in the United States on State or private land, subject to applicable law; and

(2) with the approval of the appropriate Federal or State land management agency or private land owner.

(d) RESEARCH AT NATIONAL ENERGY TECHNOLOGY LABORATORY.—The Secretary, through the National Energy Technology Laboratory, shall carry out research complementary to research under subsection (b).

(e) CONSULTATION WITH SECRETARY OF THE INTERIOR.—In carrying out this part, the Secretary shall consult regularly with the Secretary of the Interior.

SEC. 21522. ULTRA-DEEPWATER PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out the activities under paragraphs (1) and (2) of section 21521(b), to maximize the value of the ultra-deepwater natural gas and other petroleum resources of the United States by increasing the supply of such resources and by reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) ROLE OF THE SECRETARY.—The Secretary shall have ultimate responsibility for, and oversight of, all aspects of the program under this section.

(c) ROLE OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall contract with a consortium to—

(A) manage awards pursuant to subsection (f)(4);

(B) make recommendations to the Secretary for project solicitations;

(C) disburse funds awarded under subsection (f) as directed by the Secretary in accordance with the annual plan under subsection (e); and

(D) carry out other activities assigned to the program consortium by this section.

(2) LIMITATION.—The Secretary may not assign any activities to the program consortium except as specifically authorized under this section.

(3) CONFLICT OF INTEREST.—(A) The Secretary shall establish procedures—

(i) to ensure that each board member, officer, or employee of the program consortium who is in a decisionmaking capacity under subsection (f)(3) or (4) shall disclose to the Secretary any financial interests in, or financial relationships with, applicants for or recipients of awards under this section, including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential; and

(ii) to require any board member, officer, or employee with a financial relationship or in-

terest disclosed under clause (i) to recuse himself or herself from any review under subsection (f)(3) or oversight under subsection (f)(4) with respect to such applicant or recipient.

(B) The Secretary may disqualify an application or revoke an award under this section if a board member, officer, or employee has failed to comply with procedures required under subparagraph (A)(ii).

(d) SELECTION OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall select the program consortium through an open, competitive process.

(2) MEMBERS.—The program consortium may include corporations, institutions of higher education, National Laboratories, or other research institutions. After submitting a proposal under paragraph (4), the program consortium may not add members without the consent of the Secretary.

(3) TAX STATUS.—The program consortium shall be an entity that is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986.

(4) SCHEDULE.—Not later than 90 days after the date of enactment of this Act, the Secretary

shall solicit proposals for the creation of the program consortium, which must be submitted not less than 180 days after the date of enactment of this Act. The Secretary shall select the program consortium not later than 240 days after such date of enactment.

(5) APPLICATION.—Applicants shall submit a proposal including such information as the Secretary may require. At a minimum, each proposal shall—

(A) list all members of the consortium;

(B) fully describe the structure of the consortium, including any provisions relating to intellectual property; and –

(C) describe how the applicant would carry out the activities of the program consortium under this section.

(6) ELIGIBILITY.—To be eligible to be selected as the program consortium, an applicant must be an entity whose members collectively have demonstrated capabilities in planning and managing research, development, demonstration, and commercial application programs in natural gas or other petroleum exploration or production.

(7) CRITERION.—The Secretary may consider the amount of the fee an applicant proposes to re-

ceive under subsection (g) in selecting a consortium under this section.

(e) ANNUAL PLAN.—

(1) IN GENERAL.—The program under this section shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) DEVELOPMENT.—(A) Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the program consortium for each element to be addressed in the plan, including those described in paragraph (4). The Secretary may request that the program consortium submit its recommendations in the form of a draft annual plan.

(B) The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the Ultra-Deepwater Advisory Committee established under section 21525(a) for review, and such Advisory Committee shall provide to the Secretary written comments by a date determined by the Secretary. The Secretary may also solicit comments from any other experts.

(C) The Secretary shall consult regularly with the program consortium throughout the preparation of the annual plan.

(3) PUBLICATION.—The Secretary shall transmit to the Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B). The annual plan shall be transmitted and published not later than 60 days after the date of enactment of an Act making appropriations for a fiscal year for the program under this section.

(4) CONTENTS.—The annual plan shall describe the ongoing and prospective activities of the program under this section and shall include—

(A) a list of any solicitations for awards that the Secretary plans to issue to carry out research, development, demonstration, or commercial application activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards; and

(B) a description of the activities expected of the program consortium to carry out subsection (f)(4).

(f) AWARDS.—

(1) IN GENERAL.—The Secretary shall make awards to carry out research, development, demonstration, and commercial application activities under the program under this section. The program consortium shall not be eligible to receive such awards, but members of the program consortium may receive such awards.

(2) PROPOSALS.—The Secretary shall solicit proposals for awards under this subsection in such manner and at such time as the Secretary may prescribe, in consultation with the program consortium.

(3) REVIEW.—The Secretary shall make awards under this subsection through a competitive process, which shall include a review by individuals selected by the Secretary. Such individuals shall include, for each application, Federal officials, the program consortium, and non-Federal experts who are not board members, officers, or employees of the program consortium or of a member of the program consortium.

(4) OVERSIGHT.—(A) The program consortium shall oversee the implementation of awards under this subsection, consistent with the annual plan under subsection (e), including disbursing funds and monitoring activities carried out under such awards

for compliance with the terms and conditions of the awards.

(B) Nothing in subparagraph (A) shall limit the authority or responsibility of the Secretary to oversee awards, or limit the authority of the Secretary to review or revoke awards.

(C) The Secretary shall provide to the program consortium the information necessary for the program consortium to carry out its responsibilities under this paragraph.

(g) FEE.—

(1) IN GENERAL.—To compensate the program consortium for carrying out its activities under this section, the Secretary shall provide to the program consortium a fee in an amount not to exceed 7.5 percent of the amounts awarded under subsection (f) for each fiscal year.

(2) ADVANCE.—The Secretary shall advance funds to the program consortium upon selection of the consortium, which shall be deducted from amounts to be provided under paragraph (1).

(h) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided to the program consortium, and funds provided under awards made under subsection (f),

have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

SEC. 21523. UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCES PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out activities under section 21521(b)(3), to maximize the value of the onshore unconventional natural gas and other petroleum resources of the United States by increasing the supply of such resources and by reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.

(b) AWARDS.—

(1) IN GENERAL.—The Secretary shall carry out this section through awards made through an open, competitive process.

(2) CONSORTIA.—In carrying out paragraph (1), the Secretary shall give preference to making awards to consortia.

(c) AUDIT.—The Secretary shall retain an independent, commercial auditor to determine the extent to which funds provided under awards made under this sec-

tion have been expended in a manner consistent with the purposes and requirements of this part. The auditor shall transmit a report annually to the Secretary, who shall transmit the report to Congress, along with a plan to remedy any deficiencies cited in the report.

(d) FOCUS AREAS.—Awards under this section may focus on areas including advanced coal-bed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, innovative exploration and production techniques, enhanced recovery techniques, and environmental mitigation of unconventional natural gas and other petroleum resources exploration and production.

(e) ACTIVITIES BY THE UNITED STATES GEOLOGICAL SURVEY.—The Secretary of the Interior, through the United States Geological Survey, shall, where appropriate, carry out programs of long-term research to complement the programs under this section.

SEC. 21524. ADDITIONAL REQUIREMENTS FOR AWARDS.

(a) DEMONSTRATION PROJECTS.—An application for an award under this part for a demonstration project shall describe with specificity the intended commercial use of the technology to be demonstrated.

(b) FLEXIBILITY IN LOCATING DEMONSTRATION PROJECTS.—Subject to the limitation in section 21521(c), a demonstration project under this part relating to an

ultra-deepwater technology or an ultra-deepwater architecture may be conducted in deepwater depths.

(c) INTELLECTUAL PROPERTY AGREEMENTS.—If an award under this part is made to a consortium (other than the program consortium), the consortium shall provide to the Secretary a signed contract agreed to by all members of the consortium describing the rights of each member to intellectual property used or developed under the award.

(d) TECHNOLOGY TRANSFER.—Each recipient of an award under this part shall conduct technology transfer activities, as appropriate, and outreach activities pursuant to section 21809.

(e) COST-SHARING REDUCTION FOR INDEPENDENT PRODUCERS.—In applying the cost-sharing requirements under section 21802 to an award under this part made solely to an independent producer of oil or gas, the Secretary may reduce the applicable non-Federal requirement in such section to a level not less than 10 percent of the cost of the project.

SEC. 21525. ADVISORY COMMITTEES.

(a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this section, the Secretary shall establish an advisory committee to be known as the Ultra-Deepwater Advisory Committee.

(2) MEMBERSHIP.—The advisory committee under this subsection shall be composed of members appointed by the Secretary and including—

(A) individuals with extensive research experience or operational knowledge of offshore natural gas and other petroleum exploration and production;

(B) individuals broadly representative of the affected interests in ultra-deepwater natural gas and other petroleum production, including interests in environmental protection and safe operations;

(C) no individuals who are Federal employees; and

(D) no individuals who are board members, officers, or employees of the program consortium.

(3) DUTIES.—The advisory committee under this subsection shall—

(A) advise the Secretary on the development and implementation of programs under this part related to ultra-deepwater natural gas and other petroleum resources; and

(B) carry out section 21522(e)(2)(B).

(4) COMPENSATION.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(b) UNCONVENTIONAL RESOURCES TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this section, the Secretary shall establish an advisory committee to be known as the Unconventional Resources Technology Advisory Committee.

(2) MEMBERSHIP.—The advisory committee under this subsection shall be composed of members appointed by the Secretary and including—

(A) individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production, including independent oil and gas producers;

(B) individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration

and production, including interests in environmental protection and safe operations; and

(C) no individuals who are Federal employees.

(3) DUTIES.—The advisory committee under this subsection shall advise the Secretary on the development and implementation of activities under this part related to unconventional natural gas and other petroleum resources.

(4) COMPENSATION.—A member of the advisory committee under this subsection shall serve without compensation but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(c) PROHIBITION.—No advisory committee established under this section shall make recommendations on funding awards to consortia or for specific projects.

SEC. 21526. LIMITS ON PARTICIPATION.

(a) IN GENERAL.—An entity shall be eligible to receive an award under this part only if the Secretary finds—

(1) that the entity's participation in the program under this part would be in the economic interest of the United States; and

(2) that either—

(A) the entity is a United States-owned entity organized under the laws of the United States; or

(B) the entity is organized under the laws of the United States and has a parent entity organized under the laws of a country which affords—

(i) to United States-owned entities opportunities, comparable to those afforded to any other entity, to participate in any cooperative research venture similar to those authorized under this part;

(ii) to United States-owned entities local investment opportunities comparable to those afforded to any other entity; and

(iii) adequate and effective protection for the intellectual property rights of United States-owned entities.

(b) SENSE OF CONGRESS AND REPORT.—It is the Sense of the Congress that ultra-deepwater technology developed under this part is to be developed primarily for

production of ultra-deepwater natural gas and other petroleum resources of the United States, and that this priority is to be reflected in the terms of grants, contracts, and cooperative agreements entered under this part. As part of the annual Departmental budget submission, the Secretary shall report on all steps taken to implement the policy described in this subsection.

SEC. 21527. FUND.

There is hereby established in the Treasury of the United States a separate fund to be known as the ''Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund''.

SEC. 21528. TRANSFER OF ADVANCED OIL AND GAS EXPLORATION AND PRODUCTION TECHNOLOGIES.

(a) ASSESSMENT.—The Secretary shall review technology programs throughout the Federal Government to assess the suitability of technologies developed thereunder for use in ultradeep drilling research, development, demonstration, and commercial application.

(b) TECHNOLOGY TRANSFER.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a solicitation seeking organizations knowledgeable of the technology needs of the ultradeep drilling industry. The Secretary shall select the most qualified applicant to manage a program to transfer technologies the Secretary

determines suitable under subsection (a) to appropriate entities. The organization selected under section 21522(d) shall not be eligible for selection under this subsection.

(c) FUNDING.—From the funds available under section 21501(b)(3)(C), $1,000,000 shall be available to carry out this section in each of the fiscal years 2004 through 2007.

SEC. 21529. SUNSET.

The authority provided by this part shall terminate on September 30, 2010.

SEC. 21530. DEFINITIONS.

In this part:

(1) DEEPWATER.—The term ''deepwater'' means a water depth that is greater than 200 but less than 1,500 meters.

(2) PROGRAM CONSORTIUM.—The term ''program consortium'' means the consortium selected under section 21522(d).

(3) REMOTE OR INCONSEQUENTIAL.—The term ''remote or inconsequential'' has the meaning given that term in regulations issued by the Office of Government Ethics under section 208(b)(2) of title 18, United States Code.

(4) ULTRA-DEEPWATER.—The term ''ultra-deepwater'' means a water depth that is equal to or greater than 1,500 meters.

(5) ULTRA-DEEPWATER ARCHITECTURE.—The term ''ultra-deepwater architecture'' means the integration of technologies for the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(6) ULTRA-DEEPWATER TECHNOLOGY.—The term ''ultra-deepwater technology'' means a discrete technology that is specially suited to address one or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

(7) UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCE.—The term ''unconventional natural gas and other petroleum resource'' means natural gas and other petroleum resource located onshore in an economically inaccessible geological formation.

Subtitle F—Science

PART 1—AUTHORIZATION OF APPROPRIATIONS

SEC. 21601. SCIENCE.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for research, de-

velopment, demonstration, and commercial application activities of the Office of Science, including activities authorized under this subtitle, including the amounts authorized under the amendment made by section 21634(c)(2)(C), and including basic energy sciences, advanced scientific and computing research, biological and environmental research, fusion energy sciences, high energy physics, nuclear physics, and research analysis and infrastructure support:

(1) For fiscal year 2004, $3,785,000,000.

(2) For fiscal year 2005, $4,153,000,000.

(3) For fiscal year 2006, $4,618,000,000.

(4) For fiscal year 2007, $5,310,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) FUSION ENERGY SCIENCES.—(A) For the Fusion Energy Sciences Program, excluding activities under sections 21611 and 21612—

(i) for fiscal year 2004, $276,000,000;

(ii) for fiscal year 2005, $300,000,000;.

(iii) for fiscal year 2006, $340,000,000; and

(iv) for fiscal year 2007, $350,000,000.

(B) For activities under section 21611 and for the project described in section 21612—

(i) for fiscal year 2004, $12,000,000;

(ii) for fiscal year 2005, $20,000,000;

(iii) for fiscal year 2006, $50,000,000; and

(iv) for fiscal year 2007, $75,000,000.

(2) SPALLATION NEUTRON SOURCE.—

(A) CONSTRUCTION.—For construction of the Spallation Neutron Source—

(i) for fiscal year 2004, $124,600,000;

(ii) for fiscal year 2005, $79,800,000; and

(iii) for fiscal year 2006, $41,100,000 for completion of construction.

(B) OTHER PROJECT FUNDING.—For other project costs (including research and development necessary to complete the project, preoperations costs, and capital equipment related to construction) of the Spallation Neutron Source, $103,279,000 for the period encompassing fiscal years 2003 through 2006, to remain available until expended through September 30, 2006.

(3) NANOTECHNOLOGY RESEARCH AND DEVELOPMENT.—For activities under section 21633—

(A) for fiscal year 2004, $265,000,000;

(B) for fiscal year 2005, $292,000,000;

(C) for fiscal year 2006, $322,000,000; and

(D) for fiscal year 2007, $355,000,000.

(4) SCIENCE AND TECHNOLOGY SCHOLARSHIP PROGRAM.—For activities under section 21636—

(A) for fiscal year 2004, $800,000;

(B) for fiscal year 2005, $1,600,000;

(C) for fiscal year 2006, $2,000,000; and

(D) for fiscal year 2007, $2,000,000.

(5) GENOMES TO LIFE.—For activities under section 21641—

(A) $100,000,000 for fiscal year 2004; and

(B) such sums as may be necessary for fiscal years 2005 through 2007.

(c) LIMITS ON USE OF FUNDS.—Of the funds authorized under subsection (b)(1), no funds shall be available for implementation of the plan described in section 21612.

PART 2—FUSION ENERGY SCIENCES

SEC. 21611. ITER.

(a) IN GENERAL.—The United States is authorized to participate in ITER in accordance with the provisions of this section.

(b) AGREEMENT.—(1) The Secretary is authorized to negotiate an agreement for United States participation in ITER.

(2) Any agreement for United States participation in ITER shall, at a minimum—

(A) clearly define the United States financial contribution to construction and operating costs;

(B) ensure that the share of ITER's high-technology components manufactured in the United States is at least proportionate to the United States financial contribution to ITER;

(C) ensure that the United States will not be financially responsible for cost overruns in components manufactured in other ITER participating countries;

(D) guarantee the United States full access to all data generated by ITER;

(E) enable United States researchers to propose and carry out an equitable share of the experiments at ITER;

(F) provide the United States with a role in all collective decisionmaking related to ITER; and

(G) describe the process for discontinuing or decommissioning ITER and any United States role in those processes.

(c) PLAN.—The Secretary, in consultation with the Fusion Energy Sciences Advisory Committee, shall develop a plan for the participation of United States scientists in ITER that shall include the United States research agenda for ITER, methods to evaluate whether ITER is promoting progress toward making fusion a reliable and affordable source of power, and a description of how work at ITER will relate to other elements of the United States fusion program. The Secretary shall request a review of the plan by the National Academy of Sciences.

(d) LIMITATION.—No funds shall be expended for the construction of ITER until the Secretary has transmitted to the Congress—

(1) the agreement negotiated pursuant to subsection (b) and 120 days have elapsed since that transmission;

(2) a report describing the management structure of ITER and providing a fixed dollar estimate of the cost of United States participation in the construction of ITER, and 120 days have elapsed since that transmission;

(3) a report describing how United States participation in ITER will be funded without reducing funding for other programs in the Office of Science,

including other fusion programs, and 60 days have elapsed since that transmission; and

(4) the plan required by subsection (c) (but not the National Academy of Sciences review of that plan), and 60 days have elapsed since that transmission.

(e) DEFINITIONS.—In this section—

(1) the term ''construction'' means the physical construction of the ITER facility, and the physical construction, purchase, or manufacture of equipment or components that are specifically designed for the ITER facility, but does not mean the design of the facility, equipment, or components; and

(2) the term ''ITER'' means the international burning plasma fusion research project in which the President announced United States participation on January 30, 2003.

SEC. 21612. PLAN FOR FUSION EXPERIMENT.

(a) IN GENERAL.—If at any time during the negotiations on ITER, the Secretary determines that construction and operation of ITER is unlikely or infeasible, the Secretary shall send to Congress, as part of the budget request for the following year, a plan for implementing the domestic burning plasma experiment known as FIRE, including costs and schedules for such a plan. The Secretary

shall refine such plan in full consultation with the Fusion Energy Sciences Advisory Committee and shall also transmit such plan to the National Academy of Sciences for review.

(b) DEFINITIONS.—As used in this section—

(1) the term ''ITER'' has the meaning given that term in section 21611; and

(2) the term ''FIRE'' means the Fusion Ignition Research Experiment, the fusion research experiment for which design work has been supported by the Department as a possible alternative burning plasma experiment in the event that ITER fails to move forward.

SEC. 21613. PLAN FOR FUSION ENERGY SCIENCES PROGRAM.

(a) DECLARATION OF POLICY.—It shall be the policy of the United States to conduct research, development, demonstration, and commercial application to provide for the scientific, engineering, and commercial infrastructure necessary to ensure that the United States is competitive with other nations in providing fusion energy for its own needs and the needs of other nations, including by demonstrating electric power or hydrogen production for the United States energy grid utilizing fusion energy at the earliest date possible.

(b) FUSION ENERGY PLAN.—

(1) IN GENERAL.—Within 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a plan for carrying out the policy set forth in subsection (a), including cost estimates, proposed budgets, potential international partners, and specific programs for implementing such policy.

(2) REQUIREMENTS OF PLAN.—Such plan shall also ensure that—

(A) existing fusion research facilities are more fully utilized;

(B) fusion science, technology, theory, advanced computation, modeling, and simulation are strengthened;

(C) new magnetic and inertial fusion research facilities are selected based on scientific innovation, cost effectiveness, and their potential to advance the goal of practical fusion energy at the earliest date possible;

(D) such facilities that are selected are funded at a cost-effective rate;

(E) communication of scientific results and methods between the fusion energy science com-

munity and the broader scientific and technology communities is improved;

(F) inertial confinement fusion facilities are utilized to the extent practicable for the purpose of inertial fusion energy research and development; and

(G) attractive alternative inertial and magnetic fusion energy approaches are more fully explored.

(3) REPORT ON FUSION MATERIALS AND TECHNOLOGY PROJECT.—In addition, the plan required by this subsection shall also address the status of, and to the degree possible, the costs and schedules for—

(A) the design and implementation of international or national facilities for the testing of fusion materials; and

(B) the design and implementation of international or national facilities for the testing and development of key fusion technologies.

PART 3—SPALLATION NEUTRON SOURCE

SEC. 21621. DEFINITION.

For the purposes of this part, the term ''Spallation Neutron Source'' means Department Project 99–E–334, Oak Ridge National Laboratory, Oak Ridge, Tennessee.

SEC. 21622. REPORT.

The Secretary shall report on the Spallation Neutron Source as part of the Department's annual budget submission, including a description of the achievement of milestones, a comparison of actual costs to estimated costs, and any changes in estimated project costs or schedule.

SEC. 21623. LIMITATIONS.

The total amount obligated by the Department, including prior year appropriations, for the Spallation Neutron Source may not exceed—

(1) $1,192,700,000 for costs of construction;

(2) $219,000,000 for other project costs; and

(3) $1,411,700,000 for total project cost.

PART 4—MISCELLANEOUS

SEC. 21631. FACILITY AND INFRASTRUCTURE SUPPORT FOR NONMILITARY ENERGY LABORATORIES.

(a) FACILITY POLICY.—The Secretary shall develop and implement a strategy for the nonmilitary energy laboratories and facilities of the Office of Science. Such strategy shall provide a cost-effective means for—

(1) maintaining existing facilities and infrastructure, as needed;

(2) closing unneeded facilities;

(3) making facility modifications; and

(4) building new facilities.

(b) REPORT.—

(1) TRANSMITTAL.—The Secretary shall prepare and transmit, along with the President's budget request to the Congress for fiscal year 2005, a report containing the strategy developed under subsection (a).

(2) CONTENTS.—For each nonmilitary energy laboratory and facility, such report shall contain—

(A) the current priority list of proposed facilities and infrastructure projects, including cost and schedule requirements;

(B) a current ten-year plan that demonstrates the reconfiguration of its facilities and infrastructure to meet its missions and to address its long-term operational costs and return on investment;

(C) the total current budget for all facilities and infrastructure funding; and

(D) the current status of each facilities and infrastructure project compared to the original baseline cost, schedule, and scope.

SEC. 21632. RESEARCH REGARDING PRECIOUS METAL CATALYSIS.

From the amounts authorized to be appropriated to the Secretary under section 21601, such sums as may be necessary for each of the fiscal years 2004, 2005, and

2006 may be used to carry out research in the use of precious metals (excluding platinum, palladium, and rhodium) in catalysis.

SEC. 21633. NANOTECHNOLOGY RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—The Secretary, acting through the Office of Science, shall implement a Nanotechnology Research and Development Program to promote nanotechnology research, development, demonstration, education, technology transfer, and commercial application activities as necessary to ensure continued United States leadership in nanotechnology across scientific and engineering disciplines.

(b) PROGRAM ACTIVITIES.—The activities of the Nanotechnology Research and Development Program shall be designed to—

(1) provide sustained support for nanotechnology research and development through—

(A) grants to individual investigators and interdisciplinary teams of investigators; and

(B) establishment of interdisciplinary research centers and advanced technology user facilities;

(2) ensure that solicitation and evaluation of proposals under the Program encourage interdisciplinary research;

(3) expand education and training of undergraduate and graduate students in interdisciplinary nanotechnology science and engineering;

(4) accelerate the commercial application of nanotechnology innovations in the private sector;

(5) ensure that societal and ethical concerns will be addressed as the technology is developed by—

(A) establishing a research program to identify societal and ethical concerns related to nanotechnology, and ensuring that the results of such research are widely disseminated; and

(B) integrating, insofar as possible, research on societal and ethical concerns with nanotechnology research and development; and

(6) ensure that the potential of nanotechnology to produce or facilitate the production of clean, inexpensive energy is realized by supporting nanotechnology energy applications research and development.

(c) DEFINITIONS.—For the purposes of this section—

(1) the term ''nanotechnology'' means science and engineering aimed at creating materials, devices, and systems at the atomic and molecular level; and

(2) the term ''advanced technology user facility'' means a nanotechnology research and development facility supported, in whole or in part, by Federal funds that is open to all United States researchers on a competitive, merit-reviewed basis.

(d) REPORT.—Within 2 years after the date of enactment of this Act, the Secretary shall transmit to the Congress a report describing the projects to identify societal and ethical concerns related to nanotechnology and the funding provided to support these projects.

SEC. 21634. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY MISSIONS.

(a) IN GENERAL.—The Secretary, acting through the Office of Science, shall support a program to advance the Nation's computing capability across a diverse set of grand challenge computationally based science problems related to departmental missions.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) advance basic science through computation by developing software to solve grand challenge

science problems on new generations of computing platforms;

(2) enhance the foundations for scientific computing by developing the basic mathematical and computing systems software needed to take full advantage of the computing capabilities of computers with peak speeds of 100 teraflops or more, some of which may be unique to the scientific problem of interest;

(3) enhance national collaboratory and networking capabilities by developing software to integrate geographically separated researchers into effective research teams and to facilitate access to and movement and analysis of large (petabyte) data sets;

(4) develop and maintain a robust scientific computing hardware infrastructure to ensure that the computing resources needed to address departmental missions are available; and

(5) explore new computing approaches and technologies that promise to advance scientific computing.

(c) HIGH-PERFORMANCE COMPUTING ACT OF 1991 AMENDMENTS.—The High-Performance Computing Act of 1991 is amended—

(1) in section 4 (15 U.S.C. 5503)—

(A) in paragraph (3)—

(i) by striking ''means'' and inserting ''and 'networking and information technology' mean''; and

(ii) by striking ''(including vector supercomputers and large scale parallel systems)''; and

(B) in paragraph (4), by striking ''packet switched''; and

(2) in section 203 (15 U.S.C. 5523)—

(A) in subsection (a), by striking all after ''As part of the'' and inserting ''Networking and Information Technology Research and Development Program, the Secretary of Energy shall conduct basic and applied research in networking and information technology, with emphasis on—

''(1) supporting fundamental research in the physical sciences and engineering, and energy applications;

''(2) providing supercomputer access and advanced communication capabilities and facilities to scientific researchers; and

''(3) developing tools for distributed scientific collaboration.'';

(B) in subsection (b), by striking ''Program'' and inserting ''Networking and Information Technology Research and Development Program''; and

(C) by amending subsection (e) to read as follows:

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out the Networking and Information Technology Research and Development Program such sums as may be necessary for fiscal years 2004 through 2007.''.

(d) COORDINATION.—The Secretary shall ensure that the program under this section is integrated and consistent with—

(1) the Accelerated Strategic Computing Initiative of the National Nuclear Security Administration; and

(2) other national efforts related to advanced scientific computing for science and engineering.

(e) REPORT.—(1) Before undertaking any new initiative to develop new advanced architecture for high-speed computing, the Secretary, through the Director of the Office of Science, shall transmit a report to the Congress describing—

(A) the expected duration and cost of the initiative;

(B) the technical milestones the initiative is designed to achieve;

(C) how institutions of higher education and private firms will participate in the initiative; and

(D) why the goals of the initiative could not be achieved through existing programs.

(2) No funds may be expended on any initiative described in paragraph (1) until 30 days after the report required by that paragraph is transmitted to the Congress.

SEC. 21635. NITROGEN FIXATION.

The Secretary, acting through the Office of Science, shall support a program of research, development, demonstration, and commercial application on biological nitrogen fixation, including plant genomics research relevant to the development of commercial crop varieties with enhanced nitrogen fixation efficiency and ability.

SEC. 21636. DEPARTMENT OF ENERGY SCIENCE AND TECHNOLOGY SCHOLARSHIP PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a Department of Energy Science and Technology Scholarship Program to award scholarships to indi-

viduals that is designed to recruit and prepare students for careers in the Department.

(2) COMPETITIVE PROCESS.—Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) SERVICE AGREEMENTS.—To carry out the Program the Secretary shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Department, for the period described in subsection (f)(1), in positions needed by the Department and for which the individuals are qualified, in exchange for receiving a scholarship.

(b) SCHOLARSHIP ELIGIBILITY.—In order to be eligible to participate in the Program, an individual must—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic program or field of study de-

scribed in the list made available under subsection (d);

(2) be a United States citizen; and

(3) at the time of the initial scholarship award, not be a Federal employee as defined in section 2105 of title 5 of the United States Code.

(c) APPLICATION REQUIRED.—An individual seeking a scholarship under this section shall submit an application to the Secretary at such time, in such manner, and containing such information, agreements, or assurances as the Secretary may require.

(d) ELIGIBLE ACADEMIC PROGRAMS.—The Secretary shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized, and shall update the list as necessary.

(e) SCHOLARSHIP REQUIREMENT.—

(1) IN GENERAL.—The Secretary may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Secretary, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

(2) DURATION OF ELIGIBILITY.—An individual may not receive a scholarship under this section for more than 4 academic years, unless the Secretary grants a waiver.

(3) SCHOLARSHIP AMOUNT.—The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Secretary, but shall in no case exceed the cost of attendance.

(4) AUTHORIZED USES.—A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Secretary by regulation.

(5) CONTRACTS REGARDING DIRECT PAYMENTS TO INSTITUTIONS.—The Secretary may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

(f) PERIOD OF OBLIGATED SERVICE.—

(1) DURATION OF SERVICE.—The period of service for which an individual shall be obligated to serve as an employee of the Department is, except

as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided.

(2) SCHEDULE FOR SERVICE.—(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

(B) The Secretary may defer the obligation of an individual to provide a period of service under paragraph (1) if the Secretary determines that such a deferral is appropriate. The Secretary shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

(g) PENALTIES FOR BREACH OF SCHOLARSHIP AGREEMENT.—

(1) FAILURE TO COMPLETE ACADEMIC TRAINING.—Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Secretary by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of

any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Secretary when determined to be necessary, as established by regulation.

(2) FAILURE TO BEGIN OR COMPLETE THE SERVICE OBLIGATION OR MEET THE TERMS AND CONDITIONS OF DEFERMENT.—Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Secretary pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

(A) the total amount of scholarships received by such individual under this section; plus

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

(h) WAIVER OR SUSPENSION OF OBLIGATION.—

(1) DEATH OF INDIVIDUAL.—Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(2) IMPOSSIBILITY OR EXTREME HARDSHIP.—The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(i) DEFINITIONS.—In this section the following definitions apply:

(1) COST OF ATTENDANCE.—The term ''cost of attendance'' has the meaning given that term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

(2) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) PROGRAM.—The term ''Program'' means the Department of Energy Science and Technology Scholarship Program established under this section.

PART 5—GENOMES TO LIFE

SEC. 21641. GENOMES TO LIFE.

(a) PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish a research, development, and demonstration program in genetics, protein science, and computational biology of microbes and plants to support the energy and environmental mission of the Department.

(2) GRANTS.—The program shall support individual investigators and multidisciplinary teams of investigators through competitive, merit-reviewed grants.

(3) CONSULTATION.—In carrying out the program, the Secretary shall consult with other Federal agencies that conduct genetic and protein research.

(b) GOALS.—The program shall have the goal of developing technologies and methods based on the biological functions of microbes and plants that —

(1) can facilitate the production of fuels, including hydrogen;

(2) convert carbon dioxide to organic carbon; and

(3) detoxify soils and water at Department facilities contaminated with heavy metals and radiological materials.

(c) PLAN.—

(1) DEVELOPMENT OF PLAN.—Within one year after the date of enactment of this Act, the Secretary shall prepare and transmit to the Congress a research plan describing how the program authorized pursuant to this section will be undertaken to accomplish the program goals established in subsection (b).

(2) REVIEW OF PLAN.—The Secretary shall contract with the National Academy of Sciences to review the research plan developed under this subsection. The Secretary shall transmit the review to

the Congress not later than 6 months after transmittal of the research plan under paragraph (1), along with the Secretary's response to the recommendations contained in the review.

(d) FACILITIES.—In carrying out the program under this section, the Secretary may construct, acquire, and operate facilities necessary to carry out this section.

(e) PROHIBITION ON BIOMEDICAL OR HUMAN SUBJECT RESEARCH.—(1) In carrying out this program, the Secretary shall not conduct biomedical research.

(2) Nothing in this section shall authorize the Secretary to conduct any research or demonstrations—

(A) on human cells or human subjects; or

(B) designed to have any application with respect to human cells or human subjects.

Subtitle G—Energy and Environment

SEC. 21701. AUTHORIZATION OF APPROPRIATIONS.

(a) UNITED STATES-MEXICO ENERGY TECHNOLOGY COOPERATION.—The following sums are authorized to be appropriated to the Secretary to carry out activities under section 21702:

(1) For fiscal year 2004, $5,000,000.

(2) For fiscal year 2005, $6,000,000.

(3) For fiscal year 2006, $6,000,000.

(4) For fiscal year 2007, $6,000,000.

(b) WASTE REDUCTION AND USE OF ALTERNATIVES.—There are authorized to be appropriated to the Secretary to carry out activities under section 21703, $500,000 for fiscal year 2004.

SEC. 21702. UNITED STATES-MEXICO ENERGY TECHNOLOGY COOPERATION.

(a) PROGRAM.—The Secretary shall establish a research, development, demonstration, and commercial application program to be carried out in collaboration with entities in Mexico and the United States to promote energy efficient, environmentally sound economic development along the United States-Mexico border.

(b) PROGRAM MANAGEMENT.—The program under subsection (a) shall be managed by the Department of Energy Carlsbad Environmental Management Field Office.

(c) TECHNOLOGY TRANSFER.—In carrying out projects and activities under this section, the Secretary shall assess the applicability of technology developed under the Environmental Management Science Program of the Department.

(d) INTELLECTUAL PROPERTY.—In carrying out this section, the Secretary shall comply with the requirements of any agreement entered into between the United States and Mexico regarding intellectual property protection.

SEC. 21703. WASTE REDUCTION AND USE OF ALTERNATIVES.

(a) GRANT AUTHORITY.—The Secretary is authorized to make a single grant to a qualified institution to examine and develop the feasibility of burning post-consumer carpet in cement kilns as an alternative energy source. The purposes of the grant shall include determining—

(1) how post-consumer carpet can be burned without disrupting kiln operations;

(2) the extent to which overall kiln emissions may be reduced;

(3) the emissions of air pollutants and other relevant environmental impacts; and

(4) how this process provides benefits to both cement kiln operations and carpet suppliers.

(b) QUALIFIED INSTITUTION.—For the purposes of subsection (a), a qualified institution is a research-intensive institution of higher education with demonstrated expertise in the fields of fiber recycling and logistical modeling of carpet waste collection and preparation.

SEC. 21704. COAL GASIFICATION.

The Secretary is authorized to provide loan guarantees for a project to produce energy from a plant using integrated gasification combined cycle technology of at least 400 megawatts in capacity that produces power at

competitive rates in deregulated energy generation markets and that does not receive any subsidy (direct or indirect) from ratepayers.

SEC. 21705. PETROLEUM COKE GASIFICATION.

The Secretary is authorized to provide loan guarantees for at least one petroleum coke gasification polygeneration project.

SEC. 21706. OTHER BIOPOWER AND BIOENERGY.

The Secretary shall conduct a program to assist in the planning, design, and implementation of projects to convert rice straw, rice hulls, soybean matter, poultry fat, poultry waste, sugarcane bagasse, forest thinnings, and barley grain into biopower and biofuels.

SEC. 21707. COAL TECHNOLOGY LOAN.

There are authorized to be appropriated to the Secretary $125,000,000 to provide a loan to the owner of the experimental plant constructed under United States Department of Energy cooperative agreement number DE–FC22–91PC99544 on such terms and conditions as the Secretary determines, including interest rates and upfront payments.

SEC. 21708. FUEL CELL TEST CENTER.

(a) STUDY.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to the Congress a report on the results of a study of the estab-

lishment of a test center for next-generation fuel cells at an institution of higher education that has available a continuous source of hydrogen and access to the electric transmission grid. Such report shall include a conceptual design for such test center and a projection of the costs of establishing the test center.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section $500,000.

SEC. 21709. FUEL CELL TRANSIT BUS DEMONSTRATION.

The Secretary shall establish a transit bus demonstration program to make competitive, merit-based awards for five-year projects to demonstrate not more than 12 fuel cell transit buses (and necessary infrastructure) in three geographically dispersed localities. In selecting projects under this section, the Secretary shall give preference to projects that are most likely to mitigate congestion and improve air quality. There are authorized to be appropriated to the Secretary $10,000,000 for each of the fiscal years 2004 through 2007 for carrying out this section.

Subtitle H—Management

SEC. 21801. AVAILABILITY OF FUNDS.

Funds authorized to be appropriated to the Department under this title shall remain available until expended.

SEC. 21802. COST SHARING.

(a) RESEARCH AND DEVELOPMENT.—Except as otherwise provided in this title, for research and development programs carried out under this title, the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this subsection if the Secretary determines that the research and development is of a basic or fundamental nature.

(b) DEMONSTRATION AND COMMERCIAL APPLICATION.—Except as otherwise provided in this title, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this title to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this title.

(c) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under subsection (a) or (b), the Secretary may include personnel, services, equipment, and other resources.

SEC. 21803. MERIT REVIEW OF PROPOSALS.

Awards of funds authorized under this title shall be made only after an impartial review of the scientific and technical merit of the proposals for such awards has been carried out by or for the Department.

SEC. 21804. EXTERNAL TECHNICAL REVIEW OF DEPARTMENTAL PROGRAMS.

(a) NATIONAL ENERGY RESEARCH AND DEVELOPMENT ADVISORY BOARDS.—(1) The Secretary shall establish one or more advisory boards to review Department research, development, demonstration, and commercial application programs in the following areas:

(A) Energy efficiency.

(B) Renewable energy.

(C) Nuclear energy.

(D) Fossil energy.

(2) The Secretary may designate an existing advisory board within the Department to fulfill the responsibilities of an advisory board under this subsection, and may enter into appropriate arrangements with the National Academy of Sciences to establish such an advisory board.

(b) OFFICE OF SCIENCE ADVISORY COMMITTEES.—

(1) UTILIZATION OF EXISTING COMMITTEES.—The Secretary shall continue to use the scientific program advisory committees chartered under the Federal Advisory Committee Act by the Office of

Science to oversee research and development programs under that Office.

(2) SCIENCE ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—There shall be in the Office of Science a Science Advisory Committee that includes the chairs of each of the advisory committees described in paragraph (1).

(B) RESPONSIBILITIES.—The Science Advisory Committee shall—

(i) serve as the science advisor to the Assistant Secretary for Science created under section 209 of the Department of Energy Organization Act, as added by section 22001 of this Act;

(ii) advise the Assistant Secretary with respect to the well-being and management of the National Laboratories and single-purpose research facilities;

(iii) advise the Assistant Secretary with respect to education and workforce training activities required for effective short-term and long-term basic and applied research activities of the Office of Science; and

(iv) advise the Assistant Secretary with respect to the well being of the university research programs supported by the Office of Science.

(c) MEMBERSHIP.—Each advisory board under this section shall consist of persons with appropriate expertise representing a diverse range of interests.

(d) MEETINGS AND PURPOSES.—Each advisory board under this section shall meet at least semi-annually to review and advise on the progress made by the respective research, development, demonstration, and commercial application program or programs. The advisory board shall also review the measurable cost and performance-based goals for such programs as established under section 20002, and the progress on meeting such goals.

(e) PERIODIC REVIEWS AND ASSESSMENTS.—The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct periodic reviews and assessments of the programs authorized by this title, the measurable cost and performance-based goals for such programs as established under section 20002, if any, and the progress on meeting such goals. Such reviews and assessments shall be conducted every 5 years, or more often as the Secretary considers necessary, and the Sec-

retary shall transmit to the Congress reports containing the results of all such reviews and assessments.

SEC. 21805. IMPROVED COORDINATION OF TECHNOLOGY TRANSFER ACTIVITIES.

(a) TECHNOLOGY TRANSFER COORDINATOR.—The Secretary shall designate a Technology Transfer Coordinator to perform oversight of and policy development for technology transfer activities at the Department. The Technology Transfer Coordinator shall coordinate the activities of the Technology Transfer Working Group, and shall oversee the expenditure of funds allocated to the Technology Transfer Working Group, and shall coordinate with each technology partnership ombudsman appointed under section 11 of the Technology Transfer Commercialization Act of 2000 (42 U.S.C. 7261c).

(b) TECHNOLOGY TRANSFER WORKING GROUP.—The Secretary shall establish a Technology Transfer Working Group, which shall consist of representatives of the National Laboratories and single-purpose research facilities, to—

(1) coordinate technology transfer activities occurring at National Laboratories and single-purpose research facilities;

(2) exchange information about technology transfer practices, including alternative approaches

to resolution of disputes involving intellectual property rights and other technology transfer matters; and

(3) develop and disseminate to the public and prospective technology partners information about opportunities and procedures for technology transfer with the Department, including those related to alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters.

(c) TECHNOLOGY TRANSFER RESPONSIBILITY.—Nothing in this section shall affect the technology transfer responsibilities of Federal employees under the Stevenson-Wydler Technology Innovation Act of 1980.

SEC. 21806. SMALL BUSINESS ADVOCACY AND ASSISTANCE.

(a) SMALL BUSINESS ADVOCATE.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to designate a small business advocate to—

(1) increase the participation of small business concerns, including socially and economically disadvantaged small business concerns, in procurement, collaborative research, technology licensing, and technology transfer activities conducted by the National Laboratory or single-purpose research facility;

(2) report to the Director of the National Laboratory or single-purpose research facility on the actual participation of small business concerns in procurement and collaborative research along with recommendations, if appropriate, on how to improve participation;

(3) make available to small business concerns training, mentoring, and clear, up-to-date information on how to participate in the procurement and collaborative research, including how to submit effective proposals, and information related to alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters;

(4) increase the awareness inside the National Laboratory or single-purpose research facility of the capabilities and opportunities presented by small business concerns; and

(5) establish guidelines for the program under subsection (b) and report on the effectiveness of such program to the Director of the National Laboratory or single-purpose research facility.

(b) ESTABLISHMENT OF SMALL BUSINESS ASSISTANCE PROGRAM.—The Secretary shall require the Director of each National Laboratory, and may require the Di-

rector of a single-purpose research facility, to establish a program to provide small business concerns—

(1) assistance directed at making them more effective and efficient subcontractors or suppliers to the National Laboratory or single-purpose research facility; or

(2) general technical assistance, the cost of which shall not exceed $10,000 per instance of assistance, to improve the small business concern's products or services.

(c) USE OF FUNDS.—None of the funds expended under subsection (b) may be used for direct grants to the small business concerns.

(d) DEFINITIONS.—In this section:

(1) SMALL BUSINESS CONCERN.—The term ''small business concern'' has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632).

(2) SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS.—The term ''socially and economically disadvantaged small business concerns'' has the meaning given such term in section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)).

SEC. 21807. MOBILITY OF SCIENTIFIC AND TECHNICAL PERSONNEL.

Not later than 2 years after the date of enactment of this section, the Secretary shall transmit a report to the Congress identifying any policies or procedures of a contractor operating a National Laboratory or single-purpose research facility that create disincentives to the temporary transfer of scientific and technical personnel among the contractor-operated National Laboratories or contractor-operated single-purpose research facilities.

SEC. 21808. NATIONAL ACADEMY OF SCIENCES REPORT.

Within 90 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences for the Academy to—

(1) conduct studies on—

(A) the obstacles to accelerating the commercial application of energy technology; and

(B) the adequacy of Department policies and procedures for, and oversight of, technology transfer-related disputes between contractors of the Department and the private sector; and

(2) report to the Congress on recommendations developed as a result of the studies.

SEC. 21809. OUTREACH.

The Secretary shall ensure that each program authorized by this title includes an outreach component to

provide information, as appropriate, to manufacturers, consumers, engineers, architects, builders, energy service companies, institutions of higher education, facility planners and managers, State and local governments, and other entities.

SEC. 21810. LIMITS ON USE OF FUNDS.

(a) COMPETITIVE PROCEDURE REQUIREMENT.—None of the funds authorized to be appropriated to the Secretary by this title may be used to award a management and operating contract for a nonmilitary energy laboratory of the Department unless such contract is competitively awarded or the Secretary grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver.

(b) CONGRESSIONAL NOTICE.—At least 2 months before a contract award for which the Secretary intends to grant such a waiver, the Secretary shall submit to the Congress a report notifying the Congress of the waiver and setting forth the reasons for the waiver.

SEC. 21811. REPROGRAMMING.

(a) DISTRIBUTION REPORT.—Not later than 60 days after the date of the enactment of an Act appropriating amounts authorized under this title, the Secretary shall transmit to the appropriate authorizing committees of the

Congress a report explaining how such amounts will be distributed among the authorizations contained in this title.

(b) PROHIBITION.—(1) No amount identified under subsection (a) shall be reprogrammed if such reprogramming would result in an obligation which changes an individual distribution required to be reported under subsection (a) by more than 5 percent unless the Secretary has transmitted to the appropriate authorizing committees of the Congress a report described in subsection (c) and a period of 30 days has elapsed after such committees receive the report.

(2) In the computation of the 30-day period described in paragraph (1), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain.

(c) REPROGRAMMING REPORT.—A report referred to in subsection (b)(1) shall contain a full and complete statement of the action proposed to be taken and the facts and circumstances relied on in support of the proposed action.

SEC. 21812. CONSTRUCTION WITH OTHER LAWS.

Except as otherwise provided in this title, the Secretary shall carry out the research, development, demonstration, and commercial application programs,

projects, and activities authorized by this title in accordance with the applicable provisions of the Atomic Energy Act of 1954 (42 U.S.C. et seq.), the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.), the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), chapter 18 of title 35, United States Code (commonly referred to as the Bayh-Dole Act), and any other Act under which the Secretary is authorized to carry out such activities.

SEC. 21813. UNIVERSITY COLLABORATION.

Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit to the Congress a report that examines the feasibility of promoting collaborations between large institutions of higher education and small institutions of higher education through grants, contracts, and cooperative agreements made by the Secretary for energy projects. The Secretary shall also consider providing incentives for the inclusion of small institutions of higher education, including minority-serving institutions, in energy research grants, contracts, and cooperative agreements.

SEC. 21814. FEDERAL LABORATORY EDUCATIONAL PARTNERS.

(a) DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.—Section 14(a)(1)(B)(v) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(B)(v)), is amended to read as follows:

> ''(v) for scientific research and development and for educational assistance and other purposes consistent with the missions and objectives of the Department of Energy and the laboratory.''.

(b) COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.—Section 12(b)(5)(C) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(b)(5)(C)) is amended to read as follows:

> ''(C) for scientific research and development and for educational assistance consistent with the missions and objectives of the Department of Energy and the laboratory.''.

SEC. 21815. INTERAGENCY COOPERATION.

The Secretary shall enter into discussions with the Administrator of the National Aeronautics and Space Administration with the goal of reaching an interagency working agreement between the 2 agencies that would make the National Aeronautics and Space Administration's expertise in energy, gained from its existing and

planned programs, more readily available to the relevant research, development, demonstration, and commercial applications programs of the Department. Technologies to be discussed should include the National Aeronautics and Space Administration's modeling, research, development, testing, and evaluation of new energy technologies, including solar, wind, fuel cells, and hydrogen storage and distribution.

TITLE II—DEPARTMENT OF ENERGY MANAGEMENT

SEC. 22001. EXTERNAL REGULATION OF DEPARTMENT OF ENERGY.

(a) DEPARTMENT OF ENERGY REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall transmit to the Congress a report on the assumption by the Nuclear Regulatory Commission of the Department's regulatory and enforcement responsibilities with respect to nuclear safety, and the assumption by the Occupational Safety and Health Administration of the Department's regulatory and enforcement responsibilities with respect to occupational safety and health, at any nonmilitary energy laboratory owned or operated by the Department. The report shall include—

(1) a detailed transition plan, drafted in coordination with the Nuclear Regulatory Commission and

the Occupational Safety and Health Administration, for termination of self-regulation authority, including the activities to be coordinated with the Nuclear Regulatory Commission and the Occupational Safety and Health Administration;

(2) a description of any issues that would require resolution with the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, or other external regulators; and

(3) an estimate of—

(A) the annual cost of administering and implementing external regulation of the nuclear safety and occupational safety and health responsibilities at nonmilitary energy laboratories owned or operated by the Department;

(B) the number of Federal and contractor employees required to administer and implement such external regulation; and

(C) the extent and schedule by which the Department and the staffs at its nonmilitary energy laboratories would be reduced, and the anticipated cost savings from that reduction.

(b) GENERAL ACCOUNTING OFFICE REPORTING REQUIREMENT.—The Comptroller General shall provide a report not later than 20 months after the date of enactment

of this Act that compares the Department's transition plan with the Department's implementation of nuclear safety and occupational safety and health responsibilities under sections 234A and 234C of the Atomic Energy Act of 1954.

SEC. 22002. IMPROVED COORDINATION AND MANAGEMENT OF CIVILIAN SCIENCE AND TECHNOLOGY PROGRAMS.

(a) RECONFIGURATION OF POSITION OF DIRECTOR OF THE OFFICE OF SCIENCE.—Section 209 of the Department of Energy Organization Act (42 U.S.C. 7139) is amended by—

(1) striking ''a Director'' and inserting ''an Assistant Secretary, in addition to those appointed under section 203(a),''; and

(2) striking ''Director'' and inserting ''Assistant Secretary''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 5315 of title 5, United States Code, is amended by—

(A) striking ''Director, Office of Science, Department of Energy.''; and

(B) striking ''Assistant Secretaries of Energy (6)'' and inserting ''Assistant Secretaries of Energy (7)''.

(2) The table of contents for the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended—

(A) by striking ''Section 209'' and inserting ''Sec. 209'';

(B) by striking ''213.'' and inserting ''Sec. 213.'';

(C) by striking ''214.'' and inserting ''Sec. 214.'';

(D) by striking ''215.'' and inserting ''Sec. 215.''; and

(E) by striking ''216.'' and inserting ''Sec. 216.''.

SEC. 22003. REPORT ON EQUAL EMPLOYMENT OPPORTUNITY PRACTICES.

Not later than twelve months after the date of enactment of this Act, and biennially thereafter, the Secretary shall transmit to Congress a report on the equal employment opportunity practices at Department of Energy National laboratories. Such report shall include—

(1) a thorough review of each laboratory contractor's equal employment opportunity policies, including promotion to management and professional positions and pay raises;

(2) a statistical report on complaints and their disposition in the laboratories;

(3) a description of how equal employment opportunity practices at the laboratories are treated in the contract and in calculating award fees for each contractor;

(4) a summary of disciplinary actions and their disposition by either the Department or the relevant contractors for each laboratory;

(5) a summary of outreach efforts to attract women and minorities to the laboratories;

(6) a summary of efforts to retain women and minorities in the laboratories; and

(7) a summary of collaboration efforts with the Office of Federal Contract Compliance Programs to improve equal employment opportunity practices at the laboratories.

SEC. 22004. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the Secretary of Energy should develop and implement more stringent procurement and inventory controls, including controls on the purchase card program, to prevent waste, fraud, and abuse of taxpayer funds by employees and contractors of the Department of Energy; and

(2) the Department's Inspector General should continue to closely review purchase card purchases and other procurement and inventory practices at the Department.

TITLE III—CLEAN SCHOOL BUSES

SEC. 23001. ESTABLISHMENT OF PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall establish a pilot program for awarding grants on a competitive basis to eligible entities for the demonstration and commercial application of alternative fuel school buses and ultra-low sulfur diesel school buses.

(b) REQUIREMENTS.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall establish and publish in the Federal register grant requirements on eligibility for assistance, and on implementation of the program established under subsection (a), including certification requirements to ensure compliance with this title.

(c) SOLICITATION.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall solicit proposals for grants under this section.

(d) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to a local or State governmental entity responsible for providing school bus service to one or more public school systems or responsible for the purchase of school buses; or

(2) to a contracting entity that provides school bus service to one or more public school systems, if the grant application is submitted jointly with the school system or systems which the buses will serve.

(e) TYPES OF GRANTS.—

(1) IN GENERAL.—Grants under this section shall be for the demonstration and commercial application of technologies to facilitate the use of alternative fuel school buses and ultra-low sulfur diesel school buses in lieu of buses manufactured before model year 1977 and diesel-powered buses manufactured before model year 1991.

(2) NO ECONOMIC BENEFIT.—Other than the receipt of the grant, a recipient of a grant under this section may not receive any economic benefit in connection with the receipt of the grant.

(3) PRIORITY OF GRANT APPLICATIONS.—The Secretary shall give priority to awarding grants to applicants who can demonstrate the use of alter-

native fuel buses and ultra-low sulfur diesel school buses in lieu of buses manufactured before model year 1977.

(f) CONDITIONS OF GRANT.—A grant provided under this section shall include the following conditions:

(1) All buses acquired with funds provided under the grant shall be operated as part of the school bus fleet for which the grant was made for a minimum of 5 years.

(2) Funds provided under the grant may only be used—

(A) to pay the cost, except as provided in paragraph (3), of new alternative fuel school buses or ultra-low sulfur diesel school buses, including State taxes and contract fees; and

(B) to provide—

(i) up to 10 percent of the price of the alternative fuel buses acquired, for necessary alternative fuel infrastructure if the infrastructure will only be available to the grant recipient; and

(ii) up to 15 percent of the price of the alternative fuel buses acquired, for necessary alternative fuel infrastructure if the

infrastructure will be available to the grant recipient and to other bus fleets.

(3) The grant recipient shall be required to provide at least the lesser of 15 percent of the total cost of each bus received or $15,000 per bus.

(4) In the case of a grant recipient receiving a grant to demonstrate ultra-low sulfur diesel school buses, the grant recipient shall be required to provide documentation to the satisfaction of the Secretary that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant, and a commitment by the applicant to use such fuel in carrying out the purposes of the grant.

(g) BUSES.—Funding under a grant made under this section may be used to demonstrate the use only of new alternative fuel school buses or ultra-low sulfur diesel school buses—

(1) with a gross vehicle weight of greater than 14,000 pounds;

(2) that are powered by a heavy duty engine;

(3) that, in the case of alternative fuel school buses manufactured in model years 2003 through 2006, emit not more than 1.8 grams per brake horsepower-hour of nonmethane hydrocarbons and

oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(4) that, in the case of ultra-low sulfur diesel school buses, emit not more than—

(A) for buses manufactured in model year 2003, 3.0 grams per brake horsepower-hour of oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter; and

(B) for buses manufactured in model years 2004 through 2006, 2.5 grams per brake horsepower-hour of nonmethane hydrocarbons and oxides of nitrogen and .01 grams per brake horsepower-hour of particulate matter,

except that under no circumstances shall buses be acquired under this section that emit nonmethane hydrocarbons, oxides of nitrogen, or particulate matter at a rate greater than the best performing technology of the same class of ultra-low sulfur diesel school buses commercially available at the time the grant is made.

(h) DEPLOYMENT AND DISTRIBUTION.—The Secretary shall seek to the maximum extent practicable to achieve nationwide deployment of alternative fuel school buses and ultra-low sulfur diesel school buses through the program under this section, and shall ensure a broad geo-

graphic distribution of grant awards, with a goal of no State receiving more than 10 percent of the grant funding made available under this section for a fiscal year.

(i) LIMIT ON FUNDING.—The Secretary shall provide not less than 20 percent and not more than 25 percent of the grant funding made available under this section for any fiscal year for the acquisition of ultra-low sulfur diesel school buses.

(j) REDUCTION OF SCHOOL BUS IDLING.—Each local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that receives Federal funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is encouraged to develop a policy, consistent with the health, safety, and welfare of students and the proper operation and maintenance of school buses, to reduce the incidence of unnecessary school bus idling at schools when picking up and unloading students.

(k) ANNUAL REPORT.—Not later than January 31 of each year, the Secretary of Energy shall provide a report evaluating implementation of the program under this title to the Congress. Such report shall include the total number of grant applications received, the number and types of alternative fuel buses and ultra-low sulfur diesel school buses requested in grant applications, a list of

grants awarded and the criteria used to select the grant recipients, certified engine emission levels of all buses purchased under the program, and any other information the Secretary considers appropriate.

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

(1) the term ''alternative fuel school bus'' means a bus powered substantially by electricity (including electricity supplied by a fuel cell), or by liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, propane, or methanol or ethanol at no less than 85 percent by volume;

(2) the term ''idling'' means operating an engine while remaining stationary for more than approximately 15 minutes, except that such term does not apply to routine stoppages associated with traffic movement or congestion; and

(3) the term ''ultra-low sulfur diesel school bus'' means a school bus powered by diesel fuel which contains sulfur at not more than 15 parts per million.

SEC. 23002. FUEL CELL BUS DEVELOPMENT AND DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program for entering into cooperative agreements with private sector fuel cell bus developers for

the development of fuel cell-powered school buses, and subsequently with not less than 2 units of local government using natural gas-powered school buses and such private sector fuel cell bus developers to demonstrate the use of fuel cell-powered school buses.

(b) COST SHARING.—The non-Federal contribution for activities funded under this section shall be not less than—

(1) 20 percent for fuel infrastructure development activities; and

(2) 50 percent for demonstration activities and for development activities not described in paragraph (1).

(c) FUNDING.—No more than $25,000,000 of the amounts authorized under section 23004(a) may be used for carrying out this section for the period encompassing fiscal years 2004 through 2006.

(d) REPORTS TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act, and not later than October 1, 2006, the Secretary shall transmit to the Congress a report that—

(1) evaluates the process of converting natural gas infrastructure to accommodate fuel cell-powered school buses; and

(2) assesses the results of the development and demonstration program under this section.

SEC. 23003. DIESEL RETROFIT PROGRAM.

(a) ESTABLISHMENT.—The Administrator of the Environmental Protection Agency and the Secretary shall establish a pilot program for awarding grants on a competitive basis to eligible recipients for the demonstration and commercial application of retrofit technologies for diesel school buses.

(b) ELIGIBLE RECIPIENTS.—A grant shall be awarded under this section only—

(1) to a local or State governmental entity responsible for providing school bus service to one or more public school systems; or

(2) to a contracting entity that provides school bus service to one or more public school systems, if the grant application is submitted jointly with the school system or systems which the buses will serve.

(c) CONDITIONS OF GRANT.—A grant provided under this section may be used only to demonstrate the use of retrofit emissions-control technology on diesel buses that—

(1) operate on ultra-low sulfur diesel fuel; and

(2) were manufactured in model year 1991 or later.

(d) VERIFICATION.—Not later than 3 months after the date of enactment of this Act, the Administrator shall publish in the Federal Register procedures to verify—

(1) the retrofit emissions-control technology to be demonstrated; and

(2) that buses on which retrofit emissions-control technology are to be demonstrated will operate on diesel fuel containing not more than 15 parts per million of sulfur.

SEC. 23004. AUTHORIZATION OF APPROPRIATIONS.

(a) SCHOOL BUS GRANTS.—There are authorized to be appropriated to the Secretary for carrying out this title, to remain available until expended—

(1) $90,000,000 for fiscal year 2004;

(2) $100,000,000 for fiscal year 2005; and

(3) $110,000,000 for fiscal year 2006.

(b) RETROFIT GRANTS.—There are authorized to be appropriated to the Administrator of the Environmental Protection Agency and the Secretary such sums as may be necessary for carrying out section 23003.

DIVISION C—RESOURCES

TITLE I—INDIAN ENERGY

SEC. 30101. INDIAN ENERGY.

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read as follows:

"TITLE XXVI—INDIAN ENERGY

"SEC. 2601. DEFINITIONS.

''In this title:

''(1) INDIAN.—The term 'Indian' means an individual member of an Indian tribe who owns land or an interest in land, the title to which land—

''(A) is held in trust by the United States; or

''(B) is subject to a restriction against alienation imposed by the United States.

''(2) INDIAN LAND.—The term 'Indian land' means—

''(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria; or

''(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

''(i) in trust by the United States for the benefit of an Indian tribe;

''(ii) by an Indian tribe, subject to restriction by the United States against alienation; or

''(iii) by a dependent Indian community.

"(3) INDIAN RESERVATION.—The term 'Indian reservation' includes—

"(A) an Indian reservation in existence as of the date of the enactment of this paragraph;

"(B) a public domain Indian allotment;

"(C) a former reservation in the State of Oklahoma; and

"(D) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—

"(i) on original or acquired territory of the community; or

"(ii) within or outside the boundaries of any particular State.

"(4) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except the term, for the purposes of this title, shall not include any Native Corporation.

"(5) NATIVE CORPORATION.—The term 'Native Corporation' has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

"(6) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(7) TRIBAL CONSORTIUM.—The term 'tribal consortium' means an organization that consists of at least 3 entities, at least 1 of which is an Indian tribe.

"SEC. 2602. INDIAN TRIBAL RESOURCE REGULATION.

"To the maximum extent practicable, the Secretary and the Secretary of Energy shall make available to Indian tribes, tribal consortia, and Native Corporations scientific and technical data for use in the development and management of energy resources on Indian land and on land conveyed to a Native Corporation.

"SEC. 2603. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.

"(a) IN GENERAL.—Notwithstanding any other provision of law—

"(1) an Indian or Indian tribe may enter into a lease or business agreement for the purpose of energy development, including a lease or business agreement for—

"(A) exploration for, extraction of, processing of, or other development of energy resources; and

"(B) construction or operation of—

"(i) an electric generation, transmission, or distribution facility located on Indian land; or

"(ii) a facility to process or refine energy resources developed on Indian land; and

"(2) a lease or business agreement described in paragraph (1) shall not require the approval of the Secretary if—

"(A) the lease or business agreement is executed under tribal regulations approved by the Secretary under subsection (e); and

"(B) the term of the lease or business agreement does not exceed 30 years.

"(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—An Indian tribe may grant a right-of-way over the Indian land of the Indian tribe for a pipeline or an electric transmission or distribution line without specific approval by the Secretary if—

"(1) the right-of-way is executed under and complies with tribal regulations approved by the Secretary under subsection (e);

"(2) the term of the right-of-way does not exceed 30 years; and

"(3) the pipeline or electric transmission or distribution line serves—

"(A) an electric generation, transmission, or distribution facility located on Indian land; or

"(B) a facility located on Indian land that processes or refines renewable or nonrenewable energy resources developed on Indian land.

"(c) RENEWALS.—A lease or business agreement entered into or a right-of-way granted by an Indian tribe under this section may be renewed at the discretion of the Indian tribe, in accordance with this section.

"(d) VALIDITY.—No lease, business agreement, or right-of-way under this section shall be valid unless the lease, business agreement, or right-of-way is authorized in accordance with tribal regulations approved by the Secretary under subsection (e).

"(e) TRIBAL REGULATORY REQUIREMENTS.—

"(1) IN GENERAL.—An Indian tribe may submit to the Secretary for approval tribal regulations governing leases, business agreements, and rights-of-way under this section.

"(2) APPROVAL OR DISAPPROVAL.—

"(A) IN GENERAL.—Not later than 120 days after the date on which the Secretary receives tribal regulations submitted by an Indian tribe under paragraph (1) (or such later date as may be agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the regulations.

"(B) CONDITIONS FOR APPROVAL.—The Secretary shall approve tribal regulations submitted under paragraph (1) only if the regulations include provisions that, with respect to a lease, business agreement, or right-of-way under this section—

"(i) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

"(ii) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

"(iii) address amendments and renewals;

"(iv) address consideration for the lease, business agreement, or right-of-way;

"(v) address technical or other relevant requirements;

"(vi) establish requirements for environmental review in accordance with subparagraph (C);

"(vii) ensure compliance with all applicable environmental laws;

"(viii) identify final approval authority;

"(ix) provide for public notification of final approvals; and

"(x) establish a process for consultation with any affected States concerning potential off-reservation impacts associated with the lease, business agreement, or right-of-way.

"(C) ENVIRONMENTAL REVIEW PROCESS.—Tribal regulations submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for—

"(i) the identification and evaluation of all significant environmental impacts (as compared with a no-action alternative);

"(ii) the identification of proposed mitigation;

"(iii) a process for ensuring that the public is informed of and has an opportunity to comment on any proposed lease, business agreement, or right-of-way before tribal approval of the lease, business agreement, or right-of-way (or any amendment to or renewal of a lease, business agreement, or right-of-way); and

"(iv) sufficient administrative support and technical capability to carry out the environmental review process.

"(3) PUBLIC PARTICIPATION.—The Secretary may provide notice and opportunity for public comment on tribal regulations submitted under paragraph (1).

"(4) DISAPPROVAL.—If the Secretary disapproves tribal regulations submitted by an Indian tribe under paragraph (1), the Secretary shall—

"(A) notify the Indian tribe in writing of the basis for the disapproval;

"(B) identify what changes or other actions are required to address the concerns of the Secretary; and

"(C) provide the Indian tribe with an opportunity to revise and resubmit the regulations.

"(5) EXECUTION OF LEASE OR BUSINESS AGREEMENT OR GRANTING OF RIGHT-OF-WAY.—If an Indian tribe executes a lease or business agreement or grants a right-of-way in accordance with tribal regulations approved under this subsection, the Indian tribe shall provide to the Secretary—

"(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

"(B) in the case of tribal regulations or a lease, business agreement, or right-of-way that permits payment to be made directly to the Indian tribe, documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States as appropriate under applicable law.

"(6) LIABILITY.—The United States shall not be liable for any loss or injury sustained by any

party (including an Indian tribe or any member of an Indian tribe) to a lease, business agreement, or right-of-way executed in accordance with tribal regulations approved under this subsection.

"(7) COMPLIANCE REVIEW.—

"(A) IN GENERAL.—After exhaustion of tribal remedies, any person may submit to the Secretary, in a timely manner, a petition to review compliance of an Indian tribe with tribal regulations of the Indian tribe approved under this subsection.

"(B) ACTION BY SECRETARY.—The Secretary shall—

"(i) not later than 60 days after the date on which the Secretary receives a petition under subparagraph (A), review compliance of an Indian tribe described in subparagraph (A); and

"(ii) on completion of the review, if the Secretary determines that an Indian tribe is not in compliance with tribal regulations approved under this subsection, take such action as is necessary to compel compliance, including—

"(I)(aa) rescinding a lease, business agreement, or right-of-way under this section; or

"(bb) suspending a lease, business agreement, or right-of-way under this section until an Indian tribe is in compliance with tribal regulations; and

"(II) rescinding approval of the tribal regulations and reassuming the responsibility for approval of leases, business agreements, or rights-of-way associated with an energy pipeline or distribution line described in subsection (b).

"(C) COMPLIANCE.—If the Secretary seeks to compel compliance of an Indian tribe with tribal regulations under subparagraph (B)(ii), the Secretary shall—

"(i) make a written determination that describes the manner in which the tribal regulations have been violated;

"(ii) provide the Indian tribe with a written notice of the violation together with the written determination; and

"(iii) before taking any action described in subparagraph (B)(ii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal regulations.

"(D) APPEAL.—An Indian tribe described in subparagraph (C) shall retain all rights to appeal as provided in regulations promulgated by the Secretary.

"(f) AGREEMENTS.—

"(1) IN GENERAL.—Any agreement by an Indian tribe that relates to the development of an electric generation, transmission, or distribution facility, or a facility to process or refine renewable or nonrenewable energy resources developed on Indian land, shall not require the specific approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) if the activity that is the subject of the agreement is carried out in accordance with this section.

"(2) LIABILITY.—The United States shall not be liable for any loss or injury sustained by any person (including an Indian tribe or any member of an Indian tribe) resulting from an action taken in per-

formance of an agreement entered into under this subsection.

"(g) NO EFFECT ON OTHER LAW.—Nothing in this section affects the application of any provision of—

"(1) the Act of May 11, 1938 (commonly known as the Indian Mineral Leasing Act of 1938; 25 U.S.C. 396a et seq.);

"(2) the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.);

"(3) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

"(4) any Federal environmental law.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.".

TITLE II—OIL AND GAS

SEC. 30201. PROGRAM ON OIL AND GAS ROYALTIES IN-KIND.

(a) APPLICABILITY OF SECTION.—Notwithstanding any other provision of law, the provisions of this section shall apply to all royalty in-kind accepted by the Secretary of the Interior on or after the date of the enactment of this Act under any Federal oil or gas lease or permit under section 36 of the Mineral Leasing Act (30 U.S.C. 192),

section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353), or any other Federal law governing leasing of Federal lands for oil and gas development.

(b) TERMS AND CONDITIONS.—All royalty accruing to the United States shall, on the demand of the Secretary of the Interior, be paid in oil or gas. If the Secretary of the Interior makes such a demand, the following provisions apply to such payment:

(1) Delivery by, or on behalf of, the lessee of the royalty amount and quality due under the lease satisfies the lessee's royalty obligation for the amount delivered, except that transportation and processing reimbursements paid to, or deductions claimed by, the lessee shall be subject to review and audit.

(2)(A) Royalty production shall be placed in marketable condition by the lessee at no cost to the United States.

(B) In this paragraph, the term ''in marketable condition'' means sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical of the field or area in which the royalty production was produced.

(3) The Secretary of the Interior may—

(A) sell or otherwise dispose of any royalty production taken in-kind (other than oil or gas transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)) for not less than the market price; and

(B) transport or process (or both) any royalty production taken in-kind.

(4) The Secretary of the Interior may, notwithstanding section 3302 of title 31, United States Code, retain and use a portion of the revenues from the sale of oil and gas royalties taken in-kind that otherwise would be deposited to miscellaneous receipts, without regard to fiscal year limitation, or may use royalty production, to pay the cost of—

(A) transporting the royalty production;

(B) processing the royalty production;

(C) disposing of the royalty production; or

(D) any combination of transporting, processing, and disposing of the royalty production.

(5) The Secretary of the Interior may use a portion of the revenues from the sale of oil royalties taken in-kind, without fiscal year limitation, to pay transportation costs, salaries, and other administra-

tive costs directly related to filling the Strategic Petroleum Reserve.

(c) REIMBURSEMENT OF COST.—If the lessee, pursuant to an agreement with the United States or as provided in the lease, processes the royalty gas or delivers the royalty oil or gas at a point not on or adjacent to the lease area, the Secretary of the Interior shall—

(1) reimburse the lessee for the reasonable costs of transportation (not including gathering) from the lease to the point of delivery or for processing costs; or

(2) at the discretion of the Secretary of the Interior, allow the lessee to deduct such transportation or processing costs in reporting and paying royalties in value for other Federal oil and gas leases.

(d) BENEFIT TO THE UNITED STATES REQUIRED.—The Secretary of the Interior may receive oil or gas royalties in-kind only if the Secretary determines that receiving such royalties provides benefits to the United States greater than or equal to those likely to have been received had royalties been taken in value.

(e) REPORT TO CONGRESS.—By June 30, 2004, the Secretary of the Interior shall provide a report to the Congress that describes actions taken to develop an organization, business processes, and automated systems to sup-

port a full royalty in-kind capability to be used in tandem with the royalty in value approach to managing Federal oil and gas revenues.

(f) DEDUCTION OF EXPENSES.—

(1) IN GENERAL.—Before making payments under section 35 of the Mineral Leasing Act (30 U.S.C. 191) or section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)) of revenues derived from the sale of royalty production taken in-kind from a lease, the Secretary of the Interior shall deduct amounts paid or deducted under subsections (b)(4) and (c), and shall deposit such amounts to miscellaneous receipts.

(2) ACCOUNTING FOR DEDUCTIONS.—If the Secretary of the Interior allows the lessee to deduct transportation or processing costs under subsection (c), the Secretary may not reduce any payments to recipients of revenues derived from any other Federal oil and gas lease as a consequence of that deduction.

(g) CONSULTATION WITH STATES.—The Secretary of the Interior—

(1) shall consult with a State before conducting a royalty in-kind program under this title within the State, and may delegate management of any portion

of the Federal royalty in-kind program to such State except as otherwise prohibited by Federal law; and

(2) shall consult annually with any State from which Federal oil or gas royalty is being taken in-kind to ensure to the maximum extent practicable that the royalty in-kind program provides revenues to the State greater than or equal to those likely to have been received had royalties been taken in-value.

(h) PROVISIONS FOR SMALL REFINERIES.—

(1) PREFERENCE.—If the Secretary of the Interior determines that sufficient supplies of crude oil are not available in the open market to refineries not having their own source of supply for crude oil, the Secretary may grant preference to such refineries in the sale of any royalty oil accruing or reserved to the United States under Federal oil and gas leases issued under any mineral leasing law, for processing or use in such refineries at private sale at not less than the market price.

(2) PRORATION AMONG REFINERIES IN PRODUCTION AREA.—In disposing of oil under this subsection, the Secretary of the Interior may, at the discretion of the Secretary, prorate such oil among such refineries in the area in which the oil is produced.

(i) DISPOSITION TO FEDERAL AGENCIES.—

(1) ONSHORE ROYALTY.—Any royalty oil or gas taken by the Secretary of the Interior in-kind from onshore oil and gas leases may be sold at not less than the market price to any department or agency of the United States.

(2) OFFSHORE ROYALTY.—Any royalty oil or gas taken in-kind from Federal oil and gas leases on the outer Continental Shelf may be disposed of only under section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353).

(j) PREFERENCE FOR FEDERAL LOW-INCOME ENERGY ASSISTANCE PROGRAMS.—In disposing of royalty oil or gas taken in-kind under this section, the Secretary may grant a preference to any person, including any State or Federal agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.

SEC. 30202. CLARIFICATION OF FAIR MARKET RENTAL VALUE DETERMINATIONS FOR PUBLIC LANDS AND FOREST SERVICE RIGHTS-OF-WAY.

(a) LINEAR RIGHTS-OF-WAY UNDER FEDERAL LAND POLICY AND MANAGEMENT ACT.—Section 504 of the Federal Land Policy and Management Act of 1976

(43 U.S.C. 1764) is amended by adding at the end the following:

"(k) DETERMINATION OF FAIR MARKET VALUE OF LINEAR RIGHTS-OF-WAY.—(1) Effective upon the issuance of the rules required by paragraph (2), for purposes of subsection (g), the Secretary concerned shall determine the fair market rental for the use of land encumbered by a linear right-of-way granted, issued, or renewed under this title using the valuation method described in paragraphs (2), (3), and (4).

"(2) Not later than 1 year after the date of enactment of this subsection, and in accordance with subsection (k), the Secretary of the Interior shall amend section 2803.1–2 of title 43, Code of Federal Regulations, as in effect on the date of enactment of this subsection, to revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone. The Secretary of Agriculture shall make the same revisions for linear rights-of-way granted, issued, or renewed under this title on National Forest System lands.

"(3) The Secretary concerned shall update annually the schedule revised under paragraph (2) by multiplying the current year's rental per acre by the annual change, second quarter to the second quarter (June 30 to June

30) in the Gross National Product Implicit Price Deflator Index published in the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

"(4) Whenever the cumulative change in the index referred to in paragraph (3) exceeds 30 percent, or the change in the 3-year average of the 1-year Treasury interest rate used to determine per acre rental fee zone values exceeds plus or minus 50 percent, the Secretary concerned shall conduct a review of the zones and rental per acre figures to determine whether the value of Federal land has differed sufficiently from the index referred to in paragraph (3) to warrant a revision in the base zones and rental per acre figures. If, as a result of the review, the Secretary concerned determines that such a revision is warranted, the Secretary concerned shall revise the base zones and rental per acre figures accordingly.".

(b) RIGHTS-OF-WAY UNDER MINERAL LEASING ACT.—Section 28(l) of the Mineral Leasing Act (30 U.S.C. 185(l)) is amended by inserting before the period at the end the following: "using the valuation method described in section 2803.1–2 of title 43, Code of Federal Regulations, as revised pursuant to section 504(k) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(k))".

SEC. 30203. USGS ESTIMATES OF OIL AND GAS RESOURCES UNDERLYING ONSHORE FEDERAL LANDS.

Section 604(a) of the Energy Act of 2000 (42 U.S.C. 6217) is amended—

(1) in subsection (a)(1)—

(A) by striking ''reserve''; and

(B) by striking ''and'' after the semicolon;

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

''(2) the extent and nature of any restrictions or impediments to the development of such resources, including—

''(A) impediments to the timely granting of leases; and

''(B) post-lease restrictions, impediments, or delays on development, involving conditions of approval, applications for permits to drill, or processing of environmental permits; and

''(C) permits or restrictions associated with transporting the resources for entry into commerce; and

''(3) the amount of resources not produced or introduced into commerce because of those restrictions.''; and

(3) in subsection (b)—

(A) by striking ''reserve'' and inserting ''resource''; and

(B) by striking ''publically'' and inserting ''publicly''.

SEC. 30204. ROYALTY INCENTIVES FOR CERTAIN OFFSHORE AREAS.

(a) OUTER CONTINENTAL SHELF SHALLOW WATER DEEP GAS ROYALTY RELIEF.—

(1) SHORT TITLE.—This subsection may be cited as the ''Outer Continental Shelf Shallow Water Deep Gas Royalty Relief Act''.

(2) PURPOSES.—The purposes of this subsection are the following:

(A) To accelerate natural gas exploration, development, and production from wells drilled to deep depths on existing shallow water lease tracts on the Outer Continental Shelf.

(B) To provide royalty incentives for the production of natural gas from such tracts.

(C) To provide royalty incentives for development of new technologies and the exploration and development of the new frontier of deep drilling on the Outer Continental Shelf.

(3) ROYALTY INCENTIVES UNDER EXISTING LEASES FOR PRODUCTION OF DEEP GAS IN SHALLOW WATER IN THE GULF OF MEXICO.—

(A) SUSPENSION OF ROYALTIES.—

(i) IN GENERAL.—The Secretary of the Interior shall grant royalty relief for natural gas produced under leases issued under the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.) prior to January 1, 2001, from deep wells on oil and gas lease tracts in shallow waters of the Gulf of Mexico located wholly west of 87 degrees, 30 minutes west longitude.

(ii) AMOUNT OF RELIEF.—The Secretary shall grant royalty relief to eligible leases in the following amounts:

(I) A suspension volume of at least 15 billion cubic feet of natural gas produced from a successful deep well with a total vertical depth of 15,000 feet to 17,999 feet.

(II) A suspension volume of at least 25 billion cubic feet of natural gas produced from a successful deep

well with a total vertical depth of 18,000 feet to 19,999 feet.

(III) A suspension volume of at least 35 billion cubic feet of natural gas produced from any ultra deep well.

(IV) A suspension volume of at least 5 billion cubic feet of natural gas per well for up to 2 unsuccessful wells drilled to a depth of at least 18,000 feet on a lease tract that subsequently produces natural gas from a successful deep well.

(iii) LIMITATION.—The Secretary shall not grant the royalty incentives outlined in this subparagraph if the average annual NYMEX natural gas price exceeds for one full calendar year the threshold price of $5 per million Btu, adjusted from the year 2000 for inflation.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) The term ''deep well'' means a well drilled with a perforated interval, the top of which is at least 15,000 feet true

vertical depth below the datum at mean sea level.

(ii) The term ''eligible lease'' means a lease that—

(I) was issued in a lease sale held before January 1, 2001;

(II) is for a tract located in the Gulf of Mexico entirely in water depths less than 200 meters on a block wholly west of 87 degrees, 30 minutes west longitude; and

(III) is for a tract that has not produced gas or oil from a well that commenced drilling before March 26, 2003, with a completion 15,000 feet true vertical depth below the datum at mean sea level or deeper.

(iii) The term ''shallow water'' means water less than 200 meters deep.

(iv) The term ''ultra deep well'' means a well drilled with a perforated interval, the top of which is at least 20,000 feet true vertical depth below the datum at mean sea level.

(4) SUNSET.—This subsection shall have no force or effect after the end of the 5-year period beginning on the date of the enactment of this Act.

(b) DEEP WATER AREAS.—Section 8(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)) is amended by adding at the end the following:

''(9)(A) For all tracts located in water depths of greater than 400 meters in the Western and Central Planning Area of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, and for all tracts in a frontier area offshore Alaska, any oil or gas lease sale under this Act occurring after the date of the enactment of this paragraph and before July 1, 2007, shall use the bidding system authorized in paragraph (1)(H), except that the suspension of royalties shall be set at a volume of not less than the following:

''(i) 5 million barrels of oil equivalent for each lease in water depths of 400 to 800 meters.

''(ii) 9 million barrels of oil equivalent for each lease in water depths of 800 to 1,600 meters.

''(iii) 12 million barrels of oil equivalent for each lease in water depths greater than 1,600 meters.

"(B) For purposes of this paragraph, the term 'frontier area offshore Alaska' includes, at a minimum, those areas offshore Alaska with seasonal ice, long distances to existing pipelines and ports, or a lack of production infrastructure.".

(c) APPLICATION OF OTHER EXISTING AUTHORITY TO OFFSHORE ALASKA.—Section 8(a)(3)(B) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(3)(B)) is amended—

(1) by striking "and the portion" and inserting ", the portion"; and

(2) by inserting after "longitude," the following: "and in the planning areas offshore Alaska,".

(d) RELATIONSHIP TO EXISTING AUTHORITY.—Except as expressly provided in this section, nothing in this section is intended to limit the authority of the Secretary of the Interior under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) to provide royalty suspension.

(e) SAVINGS CLAUSE.—Nothing in this section shall be construed to affect any offshore preleasing, leasing, or development moratorium, including any moratorium applicable to the Eastern Planning Area of the Gulf of Mexico located off the Gulf Coast of Florida.

SEC. 30205. MARGINAL PROPERTY PRODUCTION INCENTIVES.

(a) PURPOSE.—The purpose of this section is to provide to independent producers incentives for extended production from Federal oil and gas leases that are still producible but approaching abandonment due to economic factors.

(b) MARGINAL PROPERTY DEFINED.—

(1) IN GENERAL.—Until such time as the Secretary of the Interior promulgates rules under subsection (f) that prescribe a different definition, for purposes of the royalty relief granted under this section the term ''marginal property'' means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement, that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 million British thermal units of gas per well per day.

(2) CALCULATION OF AVERAGE PER WELL PRODUCTION.—In calculating the average per well production under paragraph (1), the lessee and the Secretary shall—

(A) include those wells that produce more than half the days in the three most recent production months; and

(B) calculate the average over the three most recent production months.

(c) CONDITIONS FOR REDUCTION OF ROYALTY RATE.—Until such time as the Secretary of the Interior promulgates rules under subsection (f) that prescribe different thresholds or standards—

(1) the Secretary shall, upon request by the operator of a marginal property who is an independent producer, reduce the royalty rate on oil production from the marginal property as prescribed in subsection (d) when the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than $15 per barrel for 90 consecutive trading days; and

(2) the Secretary shall, upon request by the operator of a marginal property who is an independent producer, reduce the royalty rate on gas production from the marginal property to the rate prescribed in subsection (d) when the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than $2 per million British thermal units for 90 consecutive trading days.

(d) REDUCED ROYALTY RATE.—

(1) IN GENERAL.—The reduced royalty rate under this subsection shall be the lesser of—

(A) 5 percent; or

(B) the applicable rate under any other statutory or regulatory royalty relief provision that applies to the affected production.

(2) EFFECTIVE DATE.—The reduced royalty rate under this subsection shall be effective on the first day of the production month following the date on which the applicable price standard prescribed in subsection (c) is met.

(e) TERMINATION OF REDUCED ROYALTY RATE.—A royalty rate prescribed in subsection (d)(1) shall terminate—

(1) for oil production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, on average, exceeds $15 per barrel for 90 consecutive trading days, or

(B) the property no longer qualifies as a marginal property under subsection (b); and

(2) for gas production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of natural gas delivered at Henry Hub, Louisiana, on average, exceeds $2 per million British thermal units for 90 consecutive trading days, or

(B) the property no longer qualifies as a marginal property under subsection (b).

(f) RULES PRESCRIBING DIFFERENT RELIEF.—

(1) IN GENERAL.—The Secretary of the Interior, after consultation with the Secretary of Energy, may by rule prescribe different parameters, standards, and requirements for, and a different degree or extent of, royalty relief for marginal properties in lieu of those prescribed in subsections (b) through (d).

(2) MARGINAL PROPERTIES.—The Secretary of the Interior, after consultation with the Secretary of Energy, and within 1 year after the date of enactment of this Act, shall—

(A) by rule prescribe standards and requirements for, and the extent of royalty relief for, marginal properties for oil and gas leases on the outer Continental Shelf; and

(B) by rule define what constitutes a marginal property on the outer Continental Shelf for purposes of this section.

(3) CONSIDERATIONS.—In promulgating rules under this subsection, the Secretary of the Interior may consider—

(A) oil and gas prices and market trends;

(B) production costs;

(C) abandonment costs;

(D) Federal and State tax provisions and their effects on production economics;

(E) other royalty relief programs;

(F) regional differences in average wellhead prices;

(G) national energy security issues; and

(H) other relevant matters.

(g) SAVINGS PROVISION.—Nothing in this section shall prevent a lessee from receiving royalty relief or a royalty reduction pursuant to any other law or regulation that provides more relief than the amounts provided by this section.

(h) INDEPENDENT PRODUCER DEFINED.—In this section the term ''independent producer'' means a person who is not an integrated oil company, as that term is defined in section 219(b)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 291(b)(4)).

SEC. 30206. FEDERAL ONSHORE OIL AND GAS LEASING AND PERMITTING PRACTICES.

(a) REVIEW OF ONSHORE OIL AND GAS LEASING PRACTICES.—The Secretary of the Interior, in cooperation with the Secretary of Agriculture with respect to National Forest System lands under the jurisdiction of the Department of Agriculture, shall perform an internal review of Federal onshore oil and gas leasing and permitting practices. The review shall include the following:

(1) The process by which Federal land managers accept or reject an offer to lease, including the timeframes in which such offers are acted upon, and any recommendations for improving and expediting the process.

(2) The process for considering applications for permits to drill, including the timeframes in which such applications are considered, and any recommendations for improving and expediting the process.

(3) The process for considering surface use plans of operation, including the timeframes in which such plans are considered, and any recommendations for improving and expediting the process.

(4) The process for administrative appeal of decisions or orders of officers or employees of the Bu-

reau of Land Management with respect to a Federal oil or gas lease, including the timeframes in which such appeals are heard and decided, and any recommendations for improving and expediting the process.

(5) The process by which Federal land managers identify stipulations to address site-specific concerns and conditions, including those relating to the environment and resource use conflicts, whether stipulations are effective in addressing resource values, and any recommendations for expediting and improving the identification and effectiveness of stipulations.

(6) The process by which the Federal land management agencies coordinate planning and analysis with planning of Federal, State, and local agencies having jurisdiction over adjacent areas and other land uses, and any recommendations for improving and expediting the process.

(7) The documentation provided to lease applicants and lessees with respect to determinations to reject lease applications or to require modification of proposed surface use plans of operation and recommendations regarding improvement of such docu-

mentation to more clearly set forth the basis for the decision.

(b) REPORT.—The Secretaries shall report to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate no later than 1 year after the date of the enactment of this Act, summarizing the findings of their respective reviews undertaken pursuant to this section and the actions they have taken or plan to take to improve the Federal onshore oil and gas leasing program.

SEC. 30207. MANAGEMENT OF FEDERAL OIL AND GAS LEASING PROGRAMS.

(a) TIMELY ACTION ON LEASES AND PERMITS.—To ensure timely action on oil and gas leases and applications for permits to drill on lands otherwise available for leasing, the Secretary of the Interior shall—

(1) ensure expeditious compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(2) improve consultation and coordination with the States and the public; and

(3) improve the collection, storage, and retrieval of information related to such leasing activities.

(b) BEST MANAGEMENT PRACTICES.—

(1) IN GENERAL.—Within 18 months after the date of enactment of this Act, the Secretary of the Interior shall develop and implement best management practices to improve the administration of the onshore oil and gas leasing program pursuant to the Mineral Leasing Act (30 U.S.C. 181, et seq.) and ensure timely action on oil and gas leases and applications for permits to drill on lands otherwise available for leasing.

(2) CONSIDERATION AND CONSULTATION.—In developing such best management practices the Secretary shall consider the recommendations resulting from the review under section 30206.

(3) REGULATIONS.—Within 180 days after the development of best management practices under paragraph (1), the Secretary shall publish for public comment proposed regulations that set forth specific timeframes for processing leases and applications in accordance with those practices, including deadlines for—

(A) approving or disapproving—

(i) resource management plans and related documents;

(ii) lease applications;

(iii) applications for permits to drill; and

(iv) surface use plans; and

(B) related administrative appeals.

SEC. 30208. CONSULTATION REGARDING OIL AND GAS LEASING ON PUBLIC LANDS.

(a) IN GENERAL.—Not later than six months after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall enter into, and submit to the Congress, a memorandum of understanding in accordance with this section regarding oil and gas leasing on public lands within the jurisdiction of the Secretary of the Interior and National Forest System lands within the jurisdiction of the Secretary of Agriculture.

(b) CONTENTS.—The memorandum of understanding shall include provisions that—

(1) establish an administrative procedure for timely processing of oil and gas lease applications, including lines of authority, steps in application processing, and timeframes for application processing;

(2) establish an administrative procedure for timely processing of surface use plans of operation and applications for permits to drill, including lines

of authority and steps for processing such plans and applications within 30 days after receipt by the Secretary concerned;

(3) provide for coordination of planning relating to oil and gas development;

(4) provide for coordination of environmental compliance efforts to avoid duplication of effort;

(5) provide for coordination of use of lease stipulations to achieve consistency;

(6) ensure that lease stipulations are only as restrictive as is necessary to protect the resource for which the stipulations are applied; and

(7) establish reasonable timeframes to process applications for permits to drill.

(c) DATA RETRIEVAL SYSTEM.—

(1) IN GENERAL.—The Secretary of the Interior and the Secretary of Agriculture shall establish a joint data retrieval system that is capable of tracking applications and formal requests made pursuant to procedures of the Federal onshore oil and gas leasing program and providing information as to the status of such applications and requests within the Department of the Interior and the Department of Agriculture.

(2) AVAILABILITY OF DATA.—Data in the joint data retrieval system shall be made available to the public, consistent with applicable laws and regulations regarding confidentiality and proprietary data.

(3) RESOURCE MAPPING.—The Secretary of the Interior and the Secretary of Agriculture shall establish a joint GIS mapping system for use in tracking surface resource values to aid in resource management and processing of surface use plans of operation and applications for permits to drill.

SEC. 30209. OIL AND GAS LEASE ACREAGE LIMITATIONS.

Section 27(d)(1) of the Mineral Leasing Act (30 U.S.C. 184(d)(1)) is amended by inserting after ''acreage held in special tar sand areas'' the following: ''as well as acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement, or for which royalty, including compensatory royalty or royalty in kind, was paid in the preceding calendar year,''.

SEC. 30210. FEDERAL REIMBURSEMENT FOR ORPHAN WELL RECLAMATION.

(a) DEFINITIONS.—In this section:

(1) LESSEE.—The term ''lessee'' means a person who owns a lease, working interest, or operating

rights in an oil and gas lease on lands owned by the United States.

(2) ORPHAN WELL.—The term ''orphan well'' means any oil or gas well—

(A) that is located on lands owned by the United States;

(B) that requires plugging and abandonment under the regulations of the Department of the Interior; and

(C) for which the Secretary is unable to find any person who is legally responsible and has the financial resources to reclaim the well.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior or the Secretary's designee.

(b) REIMBURSEMENT FOR RECLAIMING WELLS ON LANDS SUBJECT TO NEW LEASES.—If the Secretary issues a new oil and gas lease on federally owned lands on which 1 or more orphaned wells are located, the Secretary—

(1) may require, as a condition of the lease, that the lessee reclaim pursuant to the Secretary's standards all orphaned wells on the land leased; and

(2) shall provide to the lessee a credit against royalties due under the lease for 100 percent of the

reasonable actual costs of reclaiming the orphaned well pursuant to such requirement.

(c) ROYALTY CREDITS FOR RECLAIMING ORPHAN WELLS ON OTHER LANDS.—The Secretary—

(1) may authorize any lessee under an oil and gas lease on federally owned lands to reclaim pursuant to the Secretary's standards—

(A) an orphan well on unleased federally owned lands or unleased lands on the outer Continental Shelf; or

(B) an orphan well located on an existing lease on federally owned lands or the outer Continental Shelf for the reclamation of which the lessee is not legally responsible; and

(2) shall provide to the lessee a credit against royalties under the lessee's lease of 115 percent of the reasonable actual costs of reclaiming the orphan well.

(d) REPORTING AND APPLICATION OF ROYALTY CREDITS.—

(1) IN GENERAL.—Any credit against royalties required to be provided to a lessee under this section may be reported against royalties on production from any oil and gas lease on federally owned lands,

or on the outer Continental Shelf, administered by the Secretary, that are owed by—

(A) a lessee;

(B) any wholly owned affiliate or wholly commonly owned affiliate of a lessee; or

(C) any wholly owned affiliate or wholly commonly owned affiliate of the person conducting the reclamation work on an orphan well.

(2) REPORTING BY DESIGNEES.—Credits against royalties required to be provided to a lessee under this section may be reported by a designee (as defined in section 3 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1982 (30 U.S.C. 1702)), when the designee reports and pays royalty on behalf of the lessee.

(e) IMPLEMENTING REGULATIONS.—The Secretary may promulgate such regulations as may be necessary and appropriate to implement this section.

(f) PROTECTION AGAINST LIABILITY.—No person who reclaims an orphan well under this section shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a reclamation plan approved by the Secretary under this section. This section shall not pre-

clude liability for costs or damages as a result of a gross negligence or intentional misconduct by the person carrying out an approved reclamation plan. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

SEC. 30211. PRESERVATION OF GEOLOGICAL AND GEOPHYSICAL DATA.

(a) SHORT TITLE.—This section may be cited as the ''National Geological and Geophysical Data Preservation Program Act of 2003''.

(b) PROGRAM.—The Secretary of the Interior shall carry out a National Geological and Geophysical Data Preservation Program in accordance with this section—

(1) to archive geologic, geophysical, and engineering data, maps, well logs, and samples;

(2) to provide a national catalog of such archival material; and

(3) to provide technical and financial assistance related to the archival material.

(c) PLAN.—Within 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a plan for the implementation of the Program.

(d) DATA ARCHIVE SYSTEM.—

(1) ESTABLISHMENT.—The Secretary shall establish, as a component of the Program, a data archive system, which shall provide for the storage, preservation, and archiving of subsurface, surface, geological, geophysical and engineering data and samples. The Secretary, in consultation with the Advisory Committee, shall develop guidelines relating to the data archive system, including the types of data and samples to be preserved.

(2) SYSTEM COMPONENTS.—The system shall be comprised of State agencies and agencies within the Department of the Interior that maintain geological and geophysical data and samples that are designated by the Secretary in accordance with this subsection. The Program shall provide for the storage of data and samples through data repositories operated by such agencies.

(3) LIMITATION OF DESIGNATION.—The Secretary may not designate a State agency as a component of the data archive system unless it is the agency that acts as the geological survey in the State.

(4) DATA FROM FEDERAL LANDS.—The data archive system shall provide for the archiving of rel-

evant subsurface data and samples obtained from Federal lands—

(A) in the most appropriate repository designated under paragraph (2), with preference being given to archiving data in the State in which the data was collected; and

(B) consistent with all applicable law and requirements relating to confidentiality and proprietary data.

(e) NATIONAL CATALOG.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this section, the Secretary shall develop and maintain, as a component of the Program, a national catalog that identifies—

(A) data and samples available in the data archive system established under subsection (d);

(B) the repository for particular material in such system; and

(C) the means of accessing the material.

(2) AVAILABILITY.—The Secretary shall make the national catalog accessible to the public on the site of the Survey on the World Wide Web, consistent with all applicable requirements related to confidentiality and proprietary data.

(f) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Advisory Committee shall advise the Secretary on planning and implementation of the Program.

(2) NEW DUTIES.—In addition to its duties under the National Geologic Mapping Act of 1992 (43 U.S.C. 31b et seq.), the Advisory Committee shall perform the following duties:

(A) Advise the Secretary on developing guidelines and procedures for providing assistance for facilities in subsection (g)(1).

(B) Review and critique the draft implementation plan prepared by the Secretary pursuant to subsection (c).

(C) Identify useful studies of data archived under the Program that will advance understanding of the Nation's energy and mineral resources, geologic hazards, and engineering geology.

(D) Review the progress of the Program in archiving significant data and preventing the loss of such data, and the scientific progress of the studies funded under the Program.

(E) Include in the annual report to the Secretary required under section 5(b)(3) of the National Geologic Mapping Act of 1992 (43

U.S.C. 31d(b)(3)) an evaluation of the progress of the Program toward fulfilling the purposes of the Program under subsection (b).

(g) FINANCIAL ASSISTANCE.—

(1) ARCHIVE FACILITIES.—Subject to the availability of appropriations, the Secretary shall provide financial assistance to a State agency that is designated under subsection (d)(2), for providing facilities to archive energy material.

(2) STUDIES.—Subject to the availability of appropriations, the Secretary shall provide financial assistance to any State agency designated under subsection (d)(2) for studies that enhance understanding, interpretation, and use of materials archived in the data archive system established under subsection (d).

(3) FEDERAL SHARE.—The Federal share of the cost of an activity carried out with assistance under this subsection shall be no more than 50 percent of the total cost of that activity.

(4) PRIVATE CONTRIBUTIONS.—The Secretary shall apply to the non-Federal share of the cost of an activity carried out with assistance under this subsection the value of private contributions of property and services used for that activity.

(h) REPORT.—The Secretary shall include in each report under section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g)—

(1) a description of the status of the Program;

(2) an evaluation of the progress achieved in developing the Program during the period covered by the report; and

(3) any recommendations for legislative or other action the Secretary considers necessary and appropriate to fulfill the purposes of the Program under subsection (b).

(i) DEFINITIONS.—As used in this section:

(1) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the advisory committee established under section 5 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior acting through the Director of the United States Geological Survey.

(3) PROGRAM.—The term ''Program'' means the National Energy Data Preservation Program carried out under this section.

(4) SURVEY.—The term ''Survey'' means the United States Geological Survey.

(j) MAINTENANCE OF STATE EFFORT.—It is the intent of the Congress that the States not use this section as an opportunity to reduce State resources applied to the activities that are the subject of the Program.

(k) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $30,000,000 for each of fiscal years 2004 through 2008 for carrying out this section.

SEC. 30212. COMPLIANCE WITH EXECUTIVE ORDER 13211; ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE.

(a) REQUIREMENT.—The Secretary of the Interior shall—

(1) require that before any person takes any action that could have a significant adverse effect on the supply of domestic energy resources from Federal public lands, the person shall comply with Executive Order No. 13211; and

(2) within 180 days after the date of the enactment of this Act, publish guidance for purposes of this section describing what constitutes a significant adverse effect on the supply of domestic energy resources under Executive Order No. 13211.

(b) MOU.—The Secretary of the Interior and the Secretary of Agriculture shall include in the memorandum of understanding under section 30208 provisions regarding implementation of subsection (a)(1) of this section.

SEC. 30213. REIMBURSEMENT FOR COSTS OF NEPA ANALYSES, DOCUMENTATION, AND STUDIES.

(a) IN GENERAL.—The Mineral Leasing Act (30 U.S.C. 181 et seq.) is amended by inserting after section 37 the following:

"REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES, DOCUMENTATION, AND STUDIES

"SEC. 38. (a) IN GENERAL.—The Secretary of the Interior may, through royalty credits, reimburse a person who is a lessee, operator, operating rights owner, or applicant for any lease under this Act for reasonable amounts paid by the person for preparation by the Secretary (or a contractor or other person selected by the Secretary) of any project-level analysis, documentation, or related study required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the lease.

"(b) CONDITIONS.—The Secretary may provide reimbursement under subsection (b) only if—

"(1) adequate funding to enable the Secretary to timely prepare the analysis, documentation, or related study is not appropriated;

"(2) the person paid the costs voluntarily; and

"(3) the person maintains records of its costs in accordance with regulations prescribed by the Secretary.".

(b) APPLICATION.—The amendment made by this section shall apply with respect to any lease entered into before, on, or after the date of the enactment of this Act.

(c) DEADLINE FOR REGULATIONS.—The Secretary of the Interior shall issue regulations implementing the amendment made by this section by not later than 90 days after the date of the enactment of this Act.

SEC. 30214. ALTERNATE ENERGY-RELATED USES ON THE OUTER CONTINENTAL SHELF.

(a) PURPOSES.—The purposes of this section are as follows:

(1) To protect the economic and land use interests of the Federal Government in the management of the Outer Continental Shelf for energy-related and certain other purposes.

(2) To provide an administrative framework for the oversight and management of energy-related activities on the Outer Continental Shelf, consistent with other applicable laws.

(3) To expedite projects to increase the production, transmission, or conservation of energy on the Outer Continental Shelf.

(4) To provide for interagency coordination in the siting and permitting of energy-related activities on the Outer Continental Shelf.

(5) To ensure that energy-related activities on the Outer Continental Shelf are conducted in a manner that provides for safety, protection of the environment, prevention of waste, conservation of natural resources, protection of correlative rights, and protection of national security interests.

(6) To authorize alternate uses of existing structures and facilities previously permitted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 note).

(7) To ensure that the Federal Government receives a fair return for any easement or right-of-way granted under section 8(p) of the Outer Continental Shelf Lands Act.

(b) AMENDMENT TO OUTER CONTINENTAL SHELF LANDS ACT.—Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by adding at the end the following new subsection:

"(p) EASEMENTS OR RIGHTS-OF-WAY FOR ENERGY AND RELATED PURPOSES.—

"(1) The Secretary, in consultation with the Secretary of the Department in which the Coast

Guard is operating and other relevant departments and agencies of the Federal Government, may grant an easement or right-of-way on the Outer Continental Shelf for activities not otherwise authorized in this Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), or the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law when such activities—

"(A) support exploration, development, production, transportation, or storage of oil, natural gas, or other minerals;

"(B) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

"(C) use facilities currently or previously used for activities authorized under this Act.

"(2)(A) The Secretary shall establish reasonable forms of annual or one-time payments for any easement or right-of-way granted under this subsection. Such payments shall not be assessed on the basis of throughput or production. The Secretary may establish fees, rentals, bonus, or other payments by rule or by agreement with the party to whom the easement or right-of-way is granted.

"(B) Before exercising the authority granted under this subsection, the Secretary shall consult with the Secretary of Defense and other appropriate agencies concerning issues related to national security and navigational obstruction.

"(C) The Secretary is authorized to issue an easement or right-of-way for energy and related purposes as described in paragraph (1) on a competitive or noncompetitive basis. In determining whether such easement or right-of-way shall be granted competitively or noncompetitively, the Secretary shall consider such factors as prevention of waste and conservation of natural resources, economic viability of an energy project, protection of the environment, national interest, national security, human safety, protection of correlative rights, and potential return for the easement or right-of-way.

"(3) The Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant departments and agencies of the Federal Government and affected States, shall prescribe any necessary regulations to assure safety, protection of the environment, prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, protection

of national security interests, and protection of correlative rights therein.

"(4) The Secretary shall require the holder of an easement or right-of-way granted under this subsection to furnish a surety bond or other form of security, as prescribed by the Secretary, and to comply with such other requirements as the Secretary may deem necessary to protect the interests of the United States.

"(5) Nothing in this subsection shall be construed to displace, supersede, limit, or modify the jurisdiction, responsibility, or authority of any Federal or State agency under any other Federal law.

"(6) This subsection shall not apply to any area on the Outer Continental Shelf designated as a National Marine Sanctuary.".

(c) CONFORMING AMENDMENT.—The text of the heading for section 8 of the Outer Continental Shelf Lands Act is amended to read as follows: "LEASES, EASEMENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTINENTAL SHELF.".

SEC. 30215. DEADLINE FOR DECISION ON APPEALS OF CONSISTENCY DETERMINATIONS UNDER THE COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) IN GENERAL.—Section 319 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1465) is amended to read as follows:

"APPEALS TO THE SECRETARY

"SEC. 319. (a) NOTICE.—The Secretary shall publish an initial notice in the Federal Register within 30 days after the date of the filing of any appeal to the Secretary of a consistency determination under section 307.

"(b) CLOSURE OF RECORD.—(1) No later than the end of 360-day period beginning on the date of publication of an initial notice under subsection (a), the Secretary shall receive no more filings on the appeal and the record of decision regarding the appeal shall be closed.

"(2) Upon the closure of the record of decision, the Secretary shall immediately publish a notice that the record of decision has been closed.

"(3) The Secretary may extend the period specified in paragraph (1) with respect to an appeal—

"(A) in accordance with the mutual agreement of the parties to the appeal; or

"(B) as needed to complete the development of any environmental analyses required under the Na-

tional Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.).

"(c) DEADLINE FOR DECISION.—The Secretary shall issue a decision in any appeal filed under section 307 no later than 90 days after the publication of a notice under subsection (b)(2).

"(d) APPLICATION.— This section applies to appeals initiated by the Secretary and appeals filed by an applicant.".

(b) APPLICATION.—The amendment made by subsection (a)—

(1) shall apply with respect to any appeal initiated or filed on or after the date of the enactment of this Act; and

(2) shall not affect any appeal initiated or filed before the date of the enactment of this Act.

SEC. 30216. TASK FORCE ON ENERGY PROJECT STREAMLINING.

(a) FINDINGS.—The Congress finds that—

(1) increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people;

(2) on May 18, 2001, President George W. Bush signed Executive Order No. 13212 requiring agencies to expedite their review of permits of other

actions as necessary to accelerate the completion of energy-related projects, while maintaining safety, public health, and environmental protections; and

(3) Executive Order No. 13212 established an interagency task force chaired by the Chairman of the Council on Environmental Quality to monitor and assist agencies in their efforts to expedite review of actions consistent with the Executive order, and to monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Task Force established pursuant to Executive Order No. 13212 should remain in existence until such time as the President finds that the needs for which it was established have been met.

SEC. 30217. PILOT PROGRAM ON NORTHERN ROCKY MOUNTAINS ENERGY RESOURCE MANAGEMENT.

(a) FINDINGS.—The Congress finds that the task force established by President George W. Bush by the issuance of Executive Order No. 13212, and headed by the Chairman of the Council on Environmental Quality, has developed a pilot project the goals of which are—

(1) to reduce conflict, uncertainty, and the time involved in making decisions on energy resource management in the Northern Rocky Mountains;

(2) to establish a mechanism to provide for the coordination of Federal and State policy guidance regarding the development of regional energy resources and their transmission to markets;

(3) to institutionalize early collaboration and participation of all parties involved in regional decisions on environmental, economic and energy issues related to the exploration, development, and production of energy resources; and

(4) to take a long-term and regional view on how best to manage the energy resources in the Northern Rocky Mountains.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the task force should carry out this pilot project and report to the Congress no later than 36 months after the date of enactment of this Act on the progress it has made in accomplishing the goals set forth in subsection (a) of this section.

SEC. 30218. ENERGY DEVELOPMENT FACILITATOR STUDY.

(a) IN GENERAL.—The Chairman of the Council on Environmental Quality shall conduct a study to determine the feasibility of establishing under the Council the posi-

tion of Facilitator for Energy Development, to coordinate Federal agency actions relating to energy project permitting. The study shall consider, among other matters—

(1) the ways in which a facilitator can facilitate the long-term coordination of energy projects on Federal lands; and

(2) the role of a facilitator in ensuring that the questions or concerns of permit applicants and other persons involved in energy projects are addressed in the agency.

(b) REPORT.—Not later than 12 months after the date of enactment of this section, the Chairman shall submit a report to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate detailing the findings of the study required by subsection (a), and including any legislative recommendations of the Chairman with respect to the establishment of the position studied.

SEC. 30219. COMBINED HYDROCARBON LEASING.

(a) SPECIAL PROVISIONS REGARDING LEASING.—Section 17(b)(2) of the Mineral Leasing Act (30 U.S.C. 226(b)(2)) is amended—

(1) by inserting ''(A)'' after ''(2)''; and

(2) by adding at the end the following:

"(B) For any area that contains any combination of tar sand and oil or gas (or both), the Secretary may issue under this Act, separately—

"(i) a lease for exploration for and extraction of tar sand; and

"(ii) a lease for exploration for and development of oil and gas.

"(C) A lease issued for tar sand shall be issued using the same bidding process, annual rental, and posting period as a lease issued for oil and gas, except that the minimum acceptable bid required for a lease issued for tar sand shall be $2 per acre.

"(D) The Secretary may waive, suspend, or alter any requirement under section 26 that a permittee under a permit authorizing prospecting for tar sand must exercise due diligence, to promote any resource covered by a combined hydrocarbon lease.".

(b) CONFORMING AMENDMENT.—Section 17(b)(1)(B) of the Mineral Leasing Act (30 U.S.C. 226(b)(1)(B)) is amended in the second sentence by inserting ", subject to paragraph (2)(B)," after "The Secretary".

(c) REGULATIONS.—Within 45 days after the date of the enactment of this Act, the Secretary of the Interior shall issue final regulations to implement this section.

SEC. 30220. ROYALTY PAYMENTS UNDER LEASES UNDER THE OUTER CONTINENTAL SHELF LANDS ACT.

(a) ROYALTY RELIEF.—

(1) IN GENERAL.—For purposes of providing compensation for lessees and a State for which amounts are authorized by section 6004(c) of the Oil Pollution Act of 1980 (Public Law 101–380), a lessee may withhold from payment any royalty due and owing to the United States under any lease under the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.) for offshore oil or gas production from a covered lease tract if, on or before the date that the payment is due and payable to the United States, the lessee makes a payment to the State of 44 cents for every $1 of royalty withheld.

(2) TREATMENT OF WITHHELD AMOUNTS.—Any royalty withheld by a lessee in accordance with this section shall be treated as paid for purposes of satisfaction of the royalty obligations of the lessee to the United States.

(3) CERTIFICATION OF WITHHELD AMOUNTS.—The Secretary of the Treasury shall—

(A) determine the amount of royalty withheld by a lessee under this section; and

(B) promptly publish a certification when the total amount of royalty withheld by the lessee under this section is equal to the lessee's share of the total drainage claim for the West Delta field (with interest) as described at page 47 of Senate Report number 101–534.

(b) PERIOD OF ROYALTY RELIEF.—Subsection (a) shall apply to royalty amounts that are due and payable in the period beginning on January 1, 2003, and ending on the date on which the Secretary publishes a certification under subsection (a)(3)(B).

(c) DEFINITIONS.—As used in this section:

(1) COVERED LEASE TRACT.—The term ''covered lease tract'' means a leased tract (or portion of a leased tract)—

(A) lying seaward of the zone defined and governed by section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)); or

(B) lying within such zone but to which such section does not apply.

(2) LESSEE.—The term ''lessee'' means a person (including a successor or assign of a person) that, on the date of the enactment of the Oil Pollution Act of 1980, was a lessee referred to in section 6004(c) of that Act (as in effect on that date of the

enactment), but did not hold lease rights in Federal offshore lease OCS–G–5669.

TITLE III—BIOMASS ENERGY

SEC. 30301. GRANTS TO IMPROVE THE COMMERCIAL VALUE OF FOREST BIOMASS FOR ELECTRIC ENERGY, USEFUL HEAT, TRANSPORTATION FUELS, PETROLEUM-BASED PRODUCT SUBSTITUTES, AND OTHER COMMERCIAL PURPOSES.

(a) FINDINGS.—Congress finds the following:

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

(2) In addition, more than 70,000,000 acres across all land ownerships are at risk to higher than normal mortality over the next 15 years from insect infestation and disease. High levels of tree mortality from insects and disease result in increased fire risk, loss of old growth, degraded watershed conditions, and changes in species diversity and productivity, as

well as diminished fish and wildlife habitat and decreased timber values.

(3) Preventive treatments such as removing fuel loading, ladder fuels, and hazard trees, planting proper species mix and restoring and protecting early successional habitat, and other specific restoration treatments designed to reduce the susceptibility of forest land, woodland, and rangeland to insect outbreaks, disease, and catastrophic fire present the greatest opportunity for long-term forest health by creating a mosaic of species-mix and age distribution. Such prevention treatments are widely acknowledged to be more successful and cost effective than suppression treatments in the case of insects, disease, and fire.

(4) The by-products of preventive treatment (wood, brush, thinnings, chips, slash, and other hazardous fuels) removed from forest lands, woodlands and rangelands represent an abundant supply of biomass for biomass-to-energy facilities and raw material for business. There are currently few markets for the extraordinary volumes of by-products being generated as a result of the necessary large-scale preventive treatment activities.

(5) The United States should—

(A) promote economic and entrepreneurial opportunities in using by-products removed through preventive treatment activities related to hazardous fuels reduction, disease, and insect infestation; and

(B) develop and expand markets for traditionally underused wood and biomass as an outlet for by-products of preventive treatment activities.

(b) DEFINITIONS.—In this section:

(1) BIOMASS.—The term ''biomass'' means trees and woody plants, including limbs, tops, needles, and other woody parts, and by-products of preventive treatment, such as wood, brush, thinnings, chips, and slash, that are removed—

(A) to reduce hazardous fuels; or

(B) to reduce the risk of or to contain disease or insect infestation.

(2) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) PERSON.—The term ''person'' includes—

(A) an individual;

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

(C) an Indian tribe;

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

(E) a nonprofit organization.

(4) PREFERRED COMMUNITY.—The term ''preferred community'' means—

(A) any town, township, municipality, or other similar unit of local government (as determined by the Secretary concerned) that—

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

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation; or

(B) any county that—

(i) is not contained within a metropolitan statistical area; and

(ii) the Secretary concerned, in the sole discretion of the Secretary concerned, determines contains or is located near land, the condition of which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(5) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

(A) the Secretary of Agriculture with respect to National Forest System lands; and

(B) the Secretary of the Interior with respect to Federal lands under the jurisdiction of the Secretary of the Interior and Indian lands.

(c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to any person that owns or operates a facility that uses biomass as a raw material to produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based products to offset the costs incurred to purchase biomass for use by such facility.

(2) GRANT AMOUNTS.—A grant under this subsection may not exceed $20 per green ton of biomass delivered.

(3) MONITORING OF GRANT RECIPIENT ACTIVITIES.—As a condition of a grant under this subsection, the grant recipient shall keep such records as the Secretary concerned may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by a representative of the Secretary concerned, the grant recipient shall afford the representative reasonable access to the facility that purchases or uses biomass and an opportunity to examine the inventory and records of the facility.

(d) IMPROVED BIOMASS USE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary concerned may make grants to persons to offset the cost of projects to develop or research opportunities to improve the use of, or add value to, biomass. In making such grants, the Secretary concerned shall give preference to persons in preferred communities.

(2) SELECTION.—The Secretary concerned shall select a grant recipient under paragraph (1) after giving consideration to the anticipated public benefits of the project, including the potential to develop thermal or electric energy resources or affordable energy, opportunities for the creation or expansion of

small businesses and micro-businesses, and the potential for new job creation.

(3) GRANT AMOUNT.—A grant under this subsection may not exceed $100,000.

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

(f) REPORT.—Not later than October 1, 2010, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall submit to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Resources and the Committee on Agriculture of the House of Representatives a report describing the results of the grant programs authorized by this section. The report shall include the following:

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

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

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

TITLE IV—ARCTIC COASTAL PLAIN DOMESTIC ENERGY

SEC. 30401. SHORT TITLE.

This title may be cited as the ''Arctic Coastal Plain Domestic Energy Security Act of 2003''.

SEC. 30402. DEFINITIONS.

In this title:

(1) COASTAL PLAIN.—The term ''Coastal Plain'' means that area identified as such in the map entitled ''Arctic National Wildlife Refuge'', dated August 1980, as referenced in section 1002(b) of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142(b)(1)), comprising approximately 1,549,000 acres, and as described in appendix I to part 37 of title 50, Code of Federal Regulations.

(2) SECRETARY.—The term ''Secretary'', except as otherwise provided, means the Secretary of the Interior or the Secretary's designee.

SEC. 30403. LEASING PROGRAM FOR LANDS WITHIN THE COASTAL PLAIN.

(a) IN GENERAL.—The Secretary shall take such actions as are necessary—

(1) to establish and implement in accordance with this Act a competitive oil and gas leasing pro-

gram under the Mineral Leasing Act (30 U.S.C. 181 et seq.) that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain; and

(2) to administer the provisions of this title through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, subsistence resources, and the environment, and including, in furtherance of this goal, by requiring the application of the best commercially available technology for oil and gas exploration, development, and production to all exploration, development, and production operations under this title in a manner that ensures the receipt of fair market value by the public for the mineral resources to be leased.

(b) REPEAL.—Section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) is repealed.

(c) COMPLIANCE WITH REQUIREMENTS UNDER CERTAIN OTHER LAWS.—

(1) COMPATIBILITY.—For purposes of the National Wildlife Refuge System Administration Act of 1966, the oil and gas leasing program and activities authorized by this section in the Coastal Plain are deemed to be compatible with the purposes for which the Arctic National Wildlife Refuge was established, and that no further findings or decisions are required to implement this determination.

(2) ADEQUACY OF THE DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT.—The ''Final Legislative Environmental Impact Statement'' (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142) and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is deemed to satisfy the requirements under the National Environmental Policy Act of 1969 that apply with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program authorized by this title before the conduct of the first lease sale.

(3) COMPLIANCE WITH NEPA FOR OTHER ACTIONS.—Before conducting the first lease sale under

this title, the Secretary shall prepare an environmental impact statement under the National Environmental Policy Act of 1969 with respect to the actions authorized by this title that are not referred to in paragraph (2). Notwithstanding any other law, the Secretary is not required to identify nonleasing alternative courses of action or to analyze the environmental effects of such courses of action. The Secretary shall only identify a preferred action for such leasing and a single leasing alternative, and analyze the environmental effects and potential mitigation measures for those two alternatives. The identification of the preferred action and related analysis for the first lease sale under this title shall be completed within 18 months after the date of the enactment of this Act. The Secretary shall only consider public comments that specifically address the Secretary's preferred action and that are filed within 20 days after publication of an environmental analysis. Notwithstanding any other law, compliance with this paragraph is deemed to satisfy all requirements for the analysis and consideration of the environmental effects of proposed leasing under this title.

(d) RELATIONSHIP TO STATE AND LOCAL AUTHORITY.—Nothing in this title shall be considered to expand or limit State and local regulatory authority.

(e) SPECIAL AREAS.—

(1) IN GENERAL.—The Secretary, after consultation with the State of Alaska, the city of Kaktovik, and the North Slope Borough, may designate up to a total of 45,000 acres of the Coastal Plain as a Special Area if the Secretary determines that the Special Area is of such unique character and interest so as to require special management and regulatory protection. The Secretary shall designate as such a Special Area the Sadlerochit Spring area, comprising approximately 4,000 acres as depicted on the map referred to in section 402(1).

(2) MANAGEMENT.—Each such Special Area shall be managed so as to protect and preserve the area's unique and diverse character including its fish, wildlife, and subsistence resource values.

(3) EXCLUSION FROM LEASING OR SURFACE OCCUPANCY.—The Secretary may exclude any Special Area from leasing. If the Secretary leases a Special Area, or any part thereof, for purposes of oil and gas exploration, development, production, and

related activities, there shall be no surface occupancy of the lands comprising the Special Area.

(4) DIRECTIONAL DRILLING.—Notwithstanding the other provisions of this subsection, the Secretary may lease all or a portion of a Special Area under terms that permit the use of horizontal drilling technology from sites on leases located outside the area.

(f) LIMITATION ON CLOSED AREAS.—The Secretary's sole authority to close lands within the Coastal Plain to oil and gas leasing and to exploration, development, and production is that set forth in this title.

(g) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall prescribe such regulations as may be necessary to carry out this title, including rules and regulations relating to protection of the fish and wildlife, their habitat, subsistence resources, and environment of the Coastal Plain, by no later than 15 months after the date of the enactment of this Act.

(2) REVISION OF REGULATIONS.—The Secretary shall periodically review and, if appropriate, revise the rules and regulations issued under subsection (a) to reflect any significant biological, environmental, or engineering data that come to the Secretary's attention.

SEC. 30404. LEASE SALES.

(a) IN GENERAL.—Lands may be leased pursuant to this title to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act (30 U.S.C. 181 et seq.).

(b) PROCEDURES.—The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal Plain for inclusion in, or exclusion (as provided in subsection (c)) from, a lease sale;

(2) the holding of lease sales after such nomination process; and

(3) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale.

(c) LEASE SALE BIDS.—Bidding for leases under this title shall be by sealed competitive cash bonus bids.

(d) ACREAGE MINIMUM IN FIRST SALE.—In the first lease sale under this title, the Secretary shall offer for lease those tracts the Secretary considers to have the greatest potential for the discovery of hydrocarbons, taking into consideration nominations received pursuant to subsection (b)(1), but in no case less than 200,000 acres.

(e) TIMING OF LEASE SALES.—The Secretary shall—

(1) conduct the first lease sale under this title within 22 months after the date of the enactment of this Act; and

(2) conduct additional sales so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

SEC. 30405. GRANT OF LEASES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary may grant to the highest responsible qualified bidder in a lease sale conducted pursuant to section 30404 any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary.

(b) SUBSEQUENT TRANSFERS.—No lease issued under this title may be sold, exchanged, assigned, sublet, or otherwise transferred except with the approval of the Secretary. Prior to any such approval the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

SEC. 30406. LEASE TERMS AND CONDITIONS.

(a) IN GENERAL.—An oil or gas lease issued pursuant to this title shall—

(1) provide for the payment of a royalty of not less than 12½ percent in amount or value of the production removed or sold from the lease, as deter-

mined by the Secretary under the regulations applicable to other Federal oil and gas leases;

(2) provide that the Secretary may close, on a seasonal basis, portions of the Coastal Plain to exploratory drilling activities as necessary to protect caribou calving areas and other species of fish and wildlife;

(3) require that the lessee of lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands that are adversely affected in connection with exploration, development, production, or transportation activities conducted under the lease and within the Coastal Plain by the lessee or by any of the subcontractors or agents of the lessee;

(4) provide that the lessee may not delegate or convey, by contract or otherwise, the reclamation responsibility and liability to another person without the express written approval of the Secretary;

(5) provide that the standard of reclamation for lands required to be reclaimed under this title shall be, as nearly as practicable, a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or

production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary;

(6) contain terms and conditions relating to protection of fish and wildlife, their habitat, and the environment as required pursuant to section 30403(a)(2);

(7) provide that the lessee, its agents, and its contractors use best efforts to provide a fair share, as determined by the level of obligation previously agreed to in the 1974 agreement implementing section 29 of the Federal Agreement and Grant of Right of Way for the Operation of the Trans-Alaska Pipeline, of employment and contracting for Alaska Natives and Alaska Native Corporations from throughout the State;

(8) prohibit the export of oil produced under the lease; and

(9) contain such other provisions as the Secretary determines necessary to ensure compliance with the provisions of this title and the regulations issued under this title.

(b) PROJECT LABOR AGREEMENTS.—The Secretary, as a term and condition of each lease under this title and in recognizing the Government's proprietary interest in

labor stability and in the ability of construction labor and management to meet the particular needs and conditions of projects to be developed under the leases issued pursuant to this title and the special concerns of the parties to such leases, shall require that the lessee and its agents and contractors negotiate to obtain a project labor agreement for the employment of laborers and mechanics on production, maintenance, and construction under the lease.

SEC. 30407. COASTAL PLAIN ENVIRONMENTAL PROTECTION.

(a) NO SIGNIFICANT ADVERSE EFFECT STANDARD TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—The Secretary shall, consistent with the requirements of section 30403, administer the provisions of this title through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that—

(1) ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, and the environment;

(2) require the application of the best commercially available technology for oil and gas exploration, development, and production on all new ex-

ploration, development, and production operations; and

(3) ensure that the maximum amount of surface acreage covered by production and support facilities, including airstrips and any areas covered by gravel berms or piers for support of pipelines, does not exceed 2,000 acres on the Coastal Plain.

(b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—The Secretary shall also require, with respect to any proposed drilling and related activities, that—

(1) a site-specific analysis be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment;

(2) a plan be implemented to avoid, minimize, and mitigate (in that order and to the extent practicable) any significant adverse effect identified under paragraph (1); and

(3) the development of the plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

(c) REGULATIONS TO PROTECT COASTAL PLAIN FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS, AND THE ENVIRONMENT.—Before implementing the leasing program authorized by this title, the Secretary shall

prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken on the Coastal Plain under this title are conducted in a manner consistent with the purposes and environmental requirements of this title.

(d) COMPLIANCE WITH FEDERAL AND STATE ENVIRONMENTAL LAWS AND OTHER REQUIREMENTS.—The proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program under this title shall require compliance with all applicable provisions of Federal and State environmental law and shall also require the following:

(1) Standards at least as effective as the safety and environmental mitigation measures set forth in items 1 through 29 at pages 167 through 169 of the ''Final Legislative Environmental Impact Statement'' (April 1987) on the Coastal Plain.

(2) Seasonal limitations on exploration, development, and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning, and migration.

(3) That exploration activities, except for surface geological studies, be limited to the period be-

tween approximately November 1 and May 1 each year and that exploration activities shall be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods, except that such exploration activities may occur at other times, if the Secretary finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain.

(4) Design safety and construction standards for all pipelines and any access and service roads, that—

(A) minimize, to the maximum extent possible, adverse effects upon the passage of migratory species such as caribou; and

(B) minimize adverse effects upon the flow of surface water by requiring the use of culverts, bridges, and other structural devices.

(5) Prohibitions on public access and use on all pipeline access and service roads.

(6) Stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this title, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures, and equipment upon completion

of oil and gas production operations, except that the Secretary may exempt from the requirements of this paragraph those facilities, structures, or equipment that the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and that are donated to the United States for that purpose.

(7) Appropriate prohibitions or restrictions on access by all modes of transportation.

(8) Appropriate prohibitions or restrictions on sand and gravel extraction.

(9) Consolidation of facility siting.

(10) Appropriate prohibitions or restrictions on use of explosives.

(11) Avoidance, to the extent practicable, of springs, streams, and river system; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling.

(12) Avoidance or reduction of air traffic-related disturbance to fish and wildlife.

(13) Treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, and domestic wastewater, includ-

ing an annual waste management report, a hazardous materials tracking system, and a prohibition on chlorinated solvents, in accordance with applicable Federal and State environmental law.

(14) Fuel storage and oil spill contingency planning.

(15) Research, monitoring, and reporting requirements.

(16) Field crew environmental briefings.

(17) Avoidance of significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users.

(18) Compliance with applicable air and water quality standards.

(19) Appropriate seasonal and safety zone designations around well sites, within which subsistence hunting and trapping shall be limited.

(20) Reasonable stipulations for protection of cultural and archeological resources.

(21) All other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

(e) CONSIDERATIONS.—In preparing and promulgating regulations, lease terms, conditions, restrictions,

prohibitions, and stipulations under this section, the Secretary shall consider the following:

(1) The stipulations and conditions that govern the National Petroleum Reserve-Alaska leasing program, as set forth in the 1999 Northeast National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement.

(2) The environmental protection standards that governed the initial Coastal Plain seismic exploration program under parts 37.31 to 37.33 of title 50, Code of Federal Regulations.

(3) The land use stipulations for exploratory drilling on the KIC–ASRC private lands that are set forth in Appendix 2 of the August 9, 1983, agreement between Arctic Slope Regional Corporation and the United States.

(f) FACILITY CONSOLIDATION PLANNING.—

(1) IN GENERAL.—The Secretary shall, after providing for public notice and comment, prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources.

(2) OBJECTIVES.—The plan shall have the following objectives:

(A) Avoiding unnecessary duplication of facilities and activities.

(B) Encouraging consolidation of common facilities and activities.

(C) Locating or confining facilities and activities to areas that will minimize impact on fish and wildlife, their habitat, and the environment.

(D) Utilizing existing facilities wherever practicable.

(E) Enhancing compatibility between wildlife values and development activities.

(g) ACCESS TO PUBLIC LANDS.—The Secretary shall—

(1) manage public lands in the Coastal Plain subject to section subsections (a) and (b) of section 811 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121); and

(2) ensure that local residents shall have reasonable access to public lands in the Coastal Plain for traditional uses.

SEC. 30408. EXPEDITED JUDICIAL REVIEW.

(a) FILING OF COMPLAINT.—

(1) DEADLINE.—Subject to paragraph (2), any complaint seeking judicial review of any provision of

this title or any action of the Secretary under this title shall be filed in any appropriate district court of the United States—

(A) except as provided in subparagraph (B), within the 90-day period beginning on the date of the action being challenged; or

(B) in the case of a complaint based solely on grounds arising after such period, within 90 days after the complainant knew or reasonably should have known of the grounds for the complaint.

(2) VENUE.—Any complaint seeking judicial review of an action of the Secretary under this title may be filed only in the United States Court of Appeals for the District of Columbia.

(3) LIMITATION ON SCOPE OF CERTAIN REVIEW.—Judicial review of a Secretarial decision to conduct a lease sale under this title, including the environmental analysis thereof, shall be limited to whether the Secretary has complied with the terms of this title and shall be based upon the administrative record of that decision. The Secretary's identification of a preferred course of action to enable leasing to proceed and the Secretary's analysis of environmental effects under this title shall be pre-

sumed to be correct unless shown otherwise by clear and convincing evidence to the contrary.

(b) LIMITATION ON OTHER REVIEW.—Actions of the Secretary with respect to which review could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

SEC. 30409. FEDERAL AND STATE DISTRIBUTION OF REVENUES.

(a) IN GENERAL.—Notwithstanding any other provision of law, of the amount of adjusted bonus, rental, and royalty revenues from oil and gas leasing and operations authorized under this title—

(1) 50 percent shall be paid to the State of Alaska; and

(2) except as provided in section 30412(d) the balance shall be deposited into the Treasury as miscellaneous receipts.

(b) PAYMENTS TO ALASKA.—Payments to the State of Alaska under this section shall be made semiannually.

(c) USE OF BONUS PAYMENTS FOR LOW-INCOME HOME ENERGY ASSISTANCE.—Amounts that are received by the United States as bonuses for leases under this title and deposited into the Treasury under subsection (a)(2) may be appropriated to the Secretary of the Health and Human Services, in addition to amounts otherwise avail-

able, to provide assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

SEC. 30410. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.

(a) EXEMPTION.—Title XI of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3161 et seq.) shall not apply to the issuance by the Secretary under section 28 of the Mineral Leasing Act (30 U.S.C. 185) of rights-of-way and easements across the Coastal Plain for the transportation of oil and gas.

(b) TERMS AND CONDITIONS.—The Secretary shall include in any right-of-way or easement referred to in subsection (a) such terms and conditions as may be necessary to ensure that transportation of oil and gas does not result in a significant adverse effect on the fish and wildlife, subsistence resources, their habitat, and the environment of the Coastal Plain, including requirements that facilities be sited or designed so as to avoid unnecessary duplication of roads and pipelines.

(c) REGULATIONS.—The Secretary shall include in regulations under section 30403(g) provisions granting rights-of-way and easements described in subsection (a) of this section.

SEC. 30411. CONVEYANCE.

In order to maximize Federal revenues by removing clouds on title to lands and clarifying land ownership pat-

terns within the Coastal Plain, the Secretary, notwithstanding the provisions of section 1302(h)(2) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192(h)(2)), shall convey—

(1) to the Kaktovik Inupiat Corporation the surface estate of the lands described in paragraph 1 of Public Land Order 6959, to the extent necessary to fulfill the Corporation's entitlement under section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611) in accordance with the terms and conditions of the Agreement between the Department of the Interior, the United States Fish and Wildlife Service, the Bureau of Land Management, and the Kaktovik Inupiat Corporation effective January 22, 1993; and

(2) to the Arctic Slope Regional Corporation the remaining subsurface estate to which it is entitled pursuant to the August 9, 1983, agreement between the Arctic Slope Regional Corporation and the United States of America.

SEC. 30412. LOCAL GOVERNMENT IMPACT AID AND COMMUNITY SERVICE ASSISTANCE.

(a) FINANCIAL ASSISTANCE AUTHORIZED.—

(1) IN GENERAL.—The Secretary may use amounts available from the Coastal Plain Local Gov-

ernment Impact Aid Assistance Fund established by subsection (d) to provide timely financial assistance to entities that are eligible under paragraph (2) and that are directly impacted by the exploration for or production of oil and gas on the Coastal Plain under this title.

(2) ELIGIBLE ENTITIES.—The North Slope Borough, Kaktovik, and other boroughs, municipal subdivisions, villages, and any other community organized under Alaska State law shall be eligible for financial assistance under this section.

(b) USE OF ASSISTANCE.—Financial assistance under this section may be used only for—

(1) planning for mitigation of the potential effects of oil and gas exploration and development on environmental, social, cultural, recreational and subsistence values;

(2) implementing mitigation plans and maintaining mitigation projects;

(3) developing, carrying out, and maintaining projects and programs that provide new or expanded public facilities and services to address needs and problems associated with such effects, including firefighting, police, water, waste treatment, medivac, and medical services; and

(4) establishment of a coordination office, by the North Slope Borough, in the City of Kaktovik, which shall—

(A) coordinate with and advise developers on local conditions, impact, and history of the areas utilized for development; and

(B) provide to the Committee on Resources of the Senate and the Committee on Energy and Resources of the Senate an annual report on the status of coordination between developers and the communities affected by development.

(c) APPLICATION.—

(1) IN GENERAL.—Any community that is eligible for assistance under this section may submit an application for such assistance to the Secretary, in such form and under such procedures as the Secretary may prescribe by regulation.

(2) NORTH SLOPE BOROUGH COMMUNITIES.—A community located in the North Slope Borough may apply for assistance under this section either directly to the Secretary or through the North Slope Borough.

(3) APPLICATION ASSISTANCE.—The Secretary shall work closely with and assist the North Slope

Borough and other communities eligible for assistance under this section in developing and submitting applications for assistance under this section.

(d) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—There is established in the Treasury the Coastal Plain Local Government Impact Aid Assistance Fund.

(2) USE.—Amounts in the fund may be used only for providing financial assistance under this section.

(3) DEPOSITS.—Subject to paragraph (4), there shall be deposited into the fund amounts received by the United States as revenues derived from rents, bonuses, and royalties under on leases and lease sales authorized under this title.

(4) LIMITATION ON DEPOSITS.—The total amount in the fund may not exceed $11,000,000.

(5) INVESTMENT OF BALANCES.—The Secretary of the Treasury shall invest amounts in the fund in interest bearing government securities.

(e) AUTHORIZATION OF APPROPRIATIONS.—To provide financial assistance under this section there is authorized to be appropriated to the Secretary from the Coastal Plain Local Government Impact Aid Assistance Fund $5,000,000 for each fiscal year.

TITLE V—HYDROPOWER

SEC. 30501. STUDY AND REPORT ON INCREASING ELECTRIC POWER PRODUCTION CAPABILITY OF EXISTING FACILITIES.

(a) IN GENERAL.—The Secretary of the Interior, in consultation with the Administrator of each Federal power marketing administration, shall conduct a study of the potential for increasing electric power production capability at existing facilities under the administrative jurisdiction of the Secretary.

(b) CONTENT.—The study under this section shall include identification and description in detail of each facility that is capable, with or without modification, of producing additional hydroelectric power, including estimation of the existing potential for the facility to generate hydroelectric power.

(c) REPORT.—The Secretary shall submit to the Congress a report on the findings, conclusions, and recommendations of the study under this section by not later than 12 months after the date of the enactment of this Act. The Secretary shall include in the report the following:

(1) The identifications, descriptions, and estimations referred to in subsection (b).

(2) A description of activities the Secretary is currently conducting or considering, or that could be considered, to produce additional hydroelectric power from each identified facility.

(3) A summary of action that has already been taken by the Secretary to produce additional hydroelectric power from each identified facility.

(4) The costs to install, upgrade, or modify equipment or take other actions to produce additional hydroelectric power from each identified facility and the level of Federal power customer involvement in the Secretary's determination of such costs.

(5) The benefits that would be achieved by such installation, upgrade, modification, or other action, including quantified estimates of any additional energy or capacity from each facility identified under subsection (b).

(6) A description of actions that are planned, underway, or might reasonably be considered to increase hydroelectric power production by replacing turbine runners.

(7) A description of actions that are planned, underway, or might reasonably be considered to increase hydroelectric power production by performing generator uprates and rewinds.

(8) The impact of increased hydroelectric power production on irrigation, fish, wildlife, Indian tribes, river health, water quality, navigation, recreation, fishing, and flood control.

(9) Any additional recommendations the Secretary considers advisable to increase hydroelectric power production from, and reduce costs and improve efficiency at, facilities under the jurisdiction of the Secretary.

SEC. 30502. STUDY AND IMPLEMENTATION OF INCREASED OPERATIONAL EFFICIENCIES IN HYDROELECTRIC POWER PROJECTS.

(a) IN GENERAL.—The Secretary of Interior shall conduct a study of operational methods and water scheduling techniques at all hydroelectric power plants under the administrative jurisdiction of the Secretary that have an electric power production capacity greater than 50 megawatts, to—

(1) determine whether such power plants and associated river systems are operated so as to optimize energy and capacity capabilities; and

(2) identify measures that can be taken to improve operational flexibility at such plants to achieve such optimization.

(b) REPORT.—The Secretary shall submit a report on the findings, conclusions, and recommendations of the study under this section by not later than 18 months after the date of the enactment of this Act, including a summary of the determinations and identifications under paragraphs (1) and (2) of subsection (a). The Secretary shall include in the report the impact of optimized hydroelectric power production on irrigation, fish, wildlife, Indian tribes, river health, water quality, navigation, recreation, fishing, and flood control.

(c) COOPERATION WITH FEDERAL POWER MARKETING ADMINISTRATIONS.—The Secretary shall coordinate with the Administrator of each Federal power marketing administration in determining how the value of electric power produced by each hydroelectric power facility that produces power marketed by the administration can be optimized.

SEC. 30503. SHIFT OF PROJECT LOADS TO OFF-PEAK PERIODS.

(a) IN GENERAL.—The Secretary of the Interior shall—

(1) review electric power consumption by Bureau of Reclamation facilities for water pumping purposes; and

(2) make such adjustments in such pumping as possible to minimize the amount of electric power consumed for such pumping during periods of peak electric power consumption, including by performing as much of such pumping as possible during off-peak hours at night.

(b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS REQUIRED.—The Secretary may not under this section make any adjustment in pumping at a facility without the consent of each person that has contracted with the United States for delivery of water from the facility for use for irrigation and that would be affected by such adjustment.

(c) EXISTING OBLIGATIONS NOT AFFECTED.—This section shall not be construed to affect any existing obligation of the Secretary to provide electric power, water, or other benefits from Bureau of Reclamation facilities.

TITLE VI—GEOTHERMAL ENERGY

SEC. 30601. COMPETITIVE LEASE SALE REQUIREMENTS.

(a) IN GENERAL.—Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is amended to read as follows:

"LEASING PROCEDURES

"SEC. 4. (a) IN GENERAL.—

"(1) NOMINATIONS.—The Secretary shall accept nominations at any time from qualified companies and individuals of areas to be leased under this Act.

"(2) COMPETITIVE LEASE SALE REQUIRED.—The Secretary shall hold a competitive lease sale at least once every 2 years for lands in a State in that are located areas with respect to which there are nominations pending under paragraph (1).

"(3) NONCOMPETITIVE LEASING.—The Secretary shall make available for a period of 2 years for noncompetitive leasing any lands for which a competitive lease sale is held, but for which the Secretary does not receive any bids in a competitive lease sale.".

(b) PENDING LEASE APPLICATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Interior shall initiate competitive lease sales under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), as amended by this Act, for areas with respect to which applications for leasing are pending on the date of the enactment of this Act.

SEC. 30602. SPECIAL PROVISIONS REGARDING DIRECT USE OF LOW TEMPERATURE GEOTHERMAL ENERGY RESOURCES.

(a) LEASING PROCEDURE.—Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is further amended by adding at the end the following:

''(b) LEASING OF LOW TEMPERATURE GEOTHERMAL RESOURCES.—Lands leased under this Act exclusively for qualified development and direct utilization of low temperature geothermal resources shall be leased to any qualified applicant who first applies for such lease under regulations formulated by the Secretary.''.

(b) LIMITATION ON LEASE AREA.—Section 7 of the Geothermal Steam Act of 1970 (30 U.S.C. 1006) is amended—

(1) in the first sentence by striking ''A geothermal lease'' and inserting ''(a) IN GENERAL.—Except as provided in subsection (b), a geothermal lease''; and

(2) by adding at the end the following:

''(b) LEASING OF LOW TEMPERATURE GEOTHERMAL RESOURCES.—A geothermal lease for qualified development and direct utilization of low temperature geothermal resources shall embrace not more than the minimum amount of acreage determined by the Secretary to be reasonably necessary for such utilization.''.

(c) ANNUAL PAYMENT.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is amended—

(1) in paragraph (c) by redesignating subparagraphs (1) and (2) as subparagraphs (A) and (B);

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

(3) by inserting ''(a) IN GENERAL.—'' after ''SEC. 5.''; and

(4) by adding at the end the following:

''(b) EXEMPTION FOR USE OF LOW TEMPERATURE RESOURCES.—

''(1) IN GENERAL.—In lieu of any royalty or rental under subsection (a), a lease for qualified development and direct utilization of low temperature geothermal resources shall provide for payment by the lessee of an annual fee per well of not less than $100, and not more than $1,000, in accordance with the schedule issued under paragraph (2).

''(2) SCHEDULE.—The Secretary shall issue a schedule of fees under this section under which a fee is based on the scale of development and utilization to which the fee applies.''.

(d) DEFINITIONS.—Section 2 of the Geothermal Steam Act of 1970 (30 U.S.C. 1001) is amended—

(1) in paragraph (f) by redesignating subparagraphs (1) through (4) in order as subparagraphs (A) through (D);

(2) by redesignating paragraphs (a) through (f) in order as paragraphs (1) through (6); and

(3) by adding at the end the following:

''(7) LOW TEMPERATURE GEOTHERMAL RESOURCES.—The term 'low temperature geothermal resources' means geothermal steam and associated geothermal resources having a wellhead temperature of less than 195 degrees Fahrenheit.

''(8) QUALIFIED DEVELOPMENT AND DIRECT UTILIZATION.—The term 'qualified development and direct utilization' means development and utilization in which all products of geothermal resources, other than any heat utilized, are returned to the geothermal formation from which they are produced.''.

(e) EXISTING LEASES.—

(1) APPLICATION TO CONVERT.—Any lessee under a lease under the Geothermal Steam Act of 1970 that was issued before the date of the enactment of this Act may apply to the Secretary of the Interior, by not later than 18 months after the date of the enactment of this Act, to convert such lease to a lease for qualified development and direct utili-

zation of low temperature geothermal resources in accordance with the amendments made by this section.

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

SEC. 30603. ROYALTIES AND NEAR-TERM PRODUCTION INCENTIVES.

(a) ROYALTY.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended in subsection (a) by striking paragraph (1) and inserting the following:

''(1) a royalty on direct use of geothermal steam and associated geothermal resources, other than low temperature geothermal resources, which shall be—

''(A) 3.5 percent of the gross proceeds from the sale of electricity produced by such resources; and

''(B) 0.75 percent of the gross proceeds from the sale of items produced by the direct use of such resources;''.

(b) NEAR-TERM PRODUCTION INCENTIVE.—

(1) IN GENERAL.—Notwithstanding section 5(a) of the Geothermal Steam Act of 1970, as amended by subsection (a), or any provision of any lease under that Act, the royalty required to be paid—

(A) under any qualified geothermal energy lease with respect to commercial production of heat or energy from a facility that begins such production in the 6-year period beginning on the date of the enactment of this Act; or

(B) on qualified expansion geothermal energy;

shall be 50 percent of the amount of royalty otherwise required to be paid under those provisions.

(2) STATE SHARE.—Notwithstanding section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019), section 35 of the Mineral Leasing Act (30 U.S.C.191), or section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355), in the case of monies received by the United States from royalty described in subparagraph (A) or (B) of paragraph (1), the percentage required to be paid by the Secretary of the Treasury to a State under those sections shall be 100 percent.

(3) 4-YEAR APPLICATION.—Paragraphs (1) and (2) apply only to commercial production of heat or energy from a facility in the first 4 years of such production.

(4) NO EFFECT ON STATE PORTION.—This subsection shall not be construed to reduce the amount of royalty required to be paid to a State.

(c) DEFINITIONS.—In this section:

(1) QUALIFIED EXPANSION GEOTHERMAL ENERGY.—The term ''qualified expansion geothermal energy'' means geothermal energy produced from a generation facility for which—

(A) the production is increased by more than 10 percent as a result of expansion of the facility carried out in the 6-year period beginning on the date of the enactment of this Act; and

(B) such production increase is greater than 10 percent of the average production by the facility during the 5-year period preceding the expansion of the facility.

(2) QUALIFIED GEOTHERMAL ENERGY LEASE.—The term ''qualified geothermal energy lease'' means a lease under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.)—

(A) that was executed before the end of the 6-year period beginning on the date of the enactment of this Act; and

(B) under which no commercial production of any form of heat or energy occurred before the date of the enactment of this Act.

(d) ROYALTY EXISTING LEASES.—

(1) IN GENERAL.—Any lessee under a lease issued under the Geothermal Steam Act of 1970 before the date of the enactment of this Act may modify the terms of the lease relating to payment of royalties to comply with the amendment made by subsection (a), by applying to the Secretary of the Interior by not later than 18 months after the date of the enactment of this Act.

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

SEC. 30604. CONSULTATION REGARDING GEOTHERMAL LEASING AND PERMITTING ON PUBLIC LANDS.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the

Interior and the Secretary of Agriculture shall enter into and submit to the Congress a memorandum of understanding in accordance with this section regarding leasing and permitting, for geothermal development, of public lands under their respective administrative jurisdictions.

(b) LEASE AND PERMIT APPLICATIONS.—The memorandum of understanding shall include provisions that—

(1) identify known geothermal areas on public lands within the National Forest System and when necessary review management plans to consider leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) as a land use;

(2) establish an administrative procedure for processing geothermal lease applications, including lines of authority, steps in application processing, and timeframes for application processing;

(3) provide that the Secretary concerned shall—

(A) within 14 days after receiving an application for a lease, determine whether the application contains sufficient information to allow processing of the application; and

(B) if the application is found not to contain sufficient information to allow processing the application the Secretary shall, before the

end of such 14-day period, provide written notification to the lease applicant that the application is being returned to the applicant without processing and itemizing the deficiencies in the application that prevent processing;

(4) provide that the Secretary concerned shall within 30 days after receiving a lease application, provide written notice to the lease applicant regarding the status of the application, including an estimation of the time that will be required to complete action on the application; and

(5) establish an administrative procedure for processing geothermal development permits, including lines of authority, steps in permit processing, and timeframes for permit processing.

(c) FIVE-YEAR LEASING PLAN.—The memorandum of understanding shall develop a 5-year plan for leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) of public land in the National Forest System. The plan for geothermal leasing shall be updated every 5 years.

(d) DATA RETRIEVAL SYSTEM.—The memorandum of understanding shall establish a joint data retrieval system that is capable of tracking lease and permit applications and requests and providing to the applicant or requester information as to their status within the Depart-

ments of the Interior and Agriculture, including an estimate of the time required for administrative action.

SEC. 30605. REVIEW AND REPORT TO CONGRESS.

The Secretary of the Interior shall promptly review and report to the Congress within 3 years after the date of the enactment of this Act regarding the status of all moratoria on and withdrawals from leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) of known geothermal resources areas (as that term is defined in section 2 of that Act (30 U.S.C. 1001), specifying for each such area whether the basis for such moratoria or withdrawal still applies.

SEC. 30606. REIMBURSEMENT FOR COSTS OF NEPA ANALYSES, DOCUMENTATION, AND STUDIES.

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

"REIMBURSEMENT FOR COSTS OF CERTAIN ANALYSES, DOCUMENTATION, AND STUDIES

"SEC. 30. (a) IN GENERAL.—The Secretary of the Interior may, through royalty credits, reimburse a person who is a lessee, operator, operating rights owner, or applicant for a lease under this Act for reasonable amounts paid by the person for preparation by the Secretary (or a contractor or other person selected by the Secretary) of any project-level analysis, documentation, or related study

required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the lease.

"(b) CONDITIONS.—The Secretary may provide reimbursement under subsection (a) only if—

"(1) adequate funding to enable the Secretary to timely prepare the analysis, documentation, or related study is not appropriated;

"(2) the person paid the amounts voluntarily; and

"(3) the person maintains records of its costs in accordance with regulations prescribed by the Secretary.".

(b) APPLICATION.—The amendments made by this section shall apply with respect to any lease entered into before, on, or after the date of the enactment of this Act.

(c) DEADLINE FOR REGULATIONS.—The Secretary shall issue regulations implementing the amendments made by this section by not later than 90 days after the date of the enactment of this Act.

SEC. 30607. ASSESSMENT OF GEOTHERMAL ENERGY POTENTIAL.

The Secretary of Interior, acting through the Director of the United States Geological Survey, shall update the 1978 Assessment of Geothermal Resources, and submit that updated assessment to the Committee on Re-

sources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate—

(1) within 3 years after the date of enactment of this Act; and

(2) thereafter as the availability of data and developments in technology warrant.

SEC. 30608. COOPERATIVE OR UNIT PLANS.

(a) IN GENERAL.—Section 18 of the Geothermal Steam Act of 1970 (30 U.S.C. 1017) is amended to read as follows:

"COOPERATIVE OR UNIT PLANS

"SEC. 18. (a) ADOPTION OF PLAN BY LESSEES.—

"(1) IN GENERAL.—For the purpose of more properly conserving the natural resources of any geothermal field, or like area, or any part thereof (whether or not any part of the geothermal field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such field, or like area, or any part thereof, if determined and certified by the Secretary to be necessary or advisable in the public interest.

"(2) MODIFICATION OF LEASE REQUIREMENTS BY SECRETARY.—The Secretary may, in the discretion of the Secretary, and with the consent of the holders of leases involved, establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases and to make such regulations with reference to such leases, with the consent of the lessees, in connection with the institution and operation of any such cooperative or unit plan as the Secretary may deem necessary or proper to secure the proper protection of the public interest.

"(b) REQUIREMENT OF PLANS UNDER NEW LEASES.—The Secretary—

"(1) may provide that geothermal leases issued under this Act after the date of the enactment of this section shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan; and

"(2) may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

"(c) MODIFICATION OF RATE OF PROSPECTING, DEVELOPMENT, AND PRODUCTION.—The Secretary may re-

quire that any plan authorized by the this section that applies to lands owned by the United States contain a provision under which authority is vested in the Secretary, or any person, committee, or State or Federal officer or agency as may be designated in the plan, to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan.

"(d) EXCLUSION FROM DETERMINATION OF HOLDING OR CONTROL.—Any lands that are subject to any plan approved or prescribed by the Secretary under this section shall not be considered in determining holdings or control under any provision of this Act.

"(e) POOLING OF CERTAIN LANDS.—If separate tracts of lands cannot be independently developed and operated to use geothermal steam and associated geothermal resources pursuant to this Act in conformity with an established development program—

"(1) any such lands, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, for purposes of such development and operation under a communitization agreement providing for an apportionment of production or royalties among the separate tracts of land comprising

the production unit, if such pooling is determined by the Secretary to be in the public interest; and

"(2) operation or production pursuant to such an agreement shall be treated as operation or production with respect to each tract of land that is subject to the agreement.

"(f) PLAN REVIEW.—No more than 5 years after approval of any cooperative or unit plan of development or operation, and at least every 5 years thereafter, the Secretary shall review each such plan and, after notice and opportunity for comment, eliminate from inclusion in such plan any lands that the Secretary determines are not reasonably necessary for cooperative or unit operations under the plan. Such elimination shall be based on scientific evidence, and shall occur only if it is determined by the Secretary to be for the purpose of conserving and properly managing the geothermal resource. Any land so eliminated shall be eligible for an extension under subsection (c) or (g) of section 6 if it meets the requirements for such an extension.

"(g) APPROVAL BY SECRETARY.—The Secretary may, on such conditions as the Secretary may prescribe, approve operating, drilling, or development contracts made by one or more lessees of geothermal leases, with one or more persons, associations, or corporations if, in the dis-

cretion of the Secretary, the conservation of natural resources or the public convenience or necessity may require or the interests of the United States may be best served thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under section 7 of this Act.''.

SEC. 30609. ROYALTY ON BYPRODUCTS.

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

''(2) a royalty on any byproduct that is a mineral named in the first section of the Mineral Leasing Act (30 U.S.C. 181), and that is derived from production under the lease, at the rate of the royalty that applies under that Act to production of such mineral under a lease under that Act;''.

SEC. 30610. REPEAL OF AUTHORITIES OF SECRETARY TO READJUST TERMS, CONDITIONS, RENTALS, AND ROYALTIES.

Section 8 of the Geothermal Steam Act of 1970 (30 U.S.C. 1007) is amended by repealing subsections (a) and (b), and by striking ''(c)''.

SEC. 30611. CREDITING OF RENTAL TOWARD ROYALTY.

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

(1) in subsection (a)(2) by inserting ''and'' after the semicolon at the end;

(2) in subsection (a)(3) by striking ''; and'' and inserting a period;

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

(4) by adding at the end the following:

''(c) CREDITING OF RENTAL TOWARD ROYALTY.—Any annual rental under this section that is paid with respect to a lease before the first day of the year for which the annual rental is owed shall be credited to the amount of royalty that is required to be paid under the lease for that year.''.

SEC. 30612. LEASE DURATION AND WORK COMMITMENT REQUIREMENTS.

(a) IN GENERAL.—Section 6 of the Geothermal Steam Act of 1970 (30 U.S.C. 1005) is amended—

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

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

(3) by inserting before subsection (g), as so redesignated, the following:

"LEASE TERM AND WORK COMMITMENT REQUIREMENTS

"SEC. 6. (a) PRIMARY TERM.—

"(1) IN GENERAL.—A geothermal lease shall be for a primary term of ten years.

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

"(A) the Secretary determined under subsection (c) that the lessee satisfied the work commitment requirements that applied to the lease for that year; or

"(B) the lessee paid in accordance with subsection (d) the value of any work that was not completed in accordance with those requirements.

"(3) ADDITIONAL EXTENSION.—The Secretary shall extend the primary term of a geothermal lease (after an extension under paragraph (2)) for an additional 5 years if, for each year after the fifteenth year of the lease, the Secretary determined under subsection (c) that the lessee satisfied the work commitment requirements that applied to the lease for that year.

"(b) REQUIREMENT TO SATISFY ANNUAL WORK COMMITMENT REQUIREMENT.—

"(1) IN GENERAL.—The lessee for a geothermal lease shall, for each year after the fifth year of the lease, satisfy work commitment requirements prescribed by the Secretary that apply to the lease for that year.

"(2) PRESCRIPTION OF WORK COMMITMENT REQUIREMENTS.—The Secretary shall issue regulations prescribing minimum work commitment requirements for geothermal leases, that—

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

"(B) require that in each year to which work commitment requirements under the regulations apply, the lessee shall significantly reduce the amount of work that remains to be done to achieve such production or utilization;

"(C) describe specific work that must be completed by a lessee by the end of each year to which the work commitment requirements apply;

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

"(E) establish transition rules for leases issued before the date of the enactment of this subsection.

"(3) TERMINATION OF APPLICATION OF REQUIREMENTS.—Work commitment requirements prescribed under this subsection shall not apply to a geothermal lease after the date on which geothermal steam is produced or utilized under the lease in commercial quantities.

"(c) DETERMINATION OF WHETHER REQUIREMENTS SATISFIED.—The Secretary shall, by not later than 21 days after the end of each year for which work commitment requirements under subsection (b) apply to a geothermal lease—

"(1) determine whether the lessee has satisfied the requirements that apply for that year;

"(2) notify the lessee of that determination; and

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

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

"(B) the amount of the dollar value of such work that was not completed, reduced by the amount of expenditures made for work completed in a prior year that is carried forward pursuant to subsection (b)(2)(D).

"(d) PAYMENT OF VALUE OF UNCOMPLETED WORK.—

"(1) IN GENERAL.—If the Secretary notifies a lessee that the lessee failed to satisfy work commitment requirements under subsection (b), the lessee shall pay to the Secretary, by not later than the end of the 60-day period beginning on the date of the notification, the dollar value of work that was not completed by the lessee, in the amount stated in the notification (as reduced under subsection (c)(3)(B)).

"(2) FAILURE TO PAY VALUE OF UNCOMPLETED WORK.—If a lessee fails to pay such amount to the Secretary before the end of that period, the lease shall terminate upon the expiration of the period.

"(e) CONTINUATION AFTER COMMERCIAL PRODUCTION OR UTILIZATION.—If geothermal steam is produced

or utilized in commercial quantities within the primary term of the lease under subsection (a) (including any extension of the lease under subsection (a)), such lease shall continue until the date on which geothermal steam is no longer produced or utilized in commercial quantities.

"(f) CONVERSION OF GEOTHERMAL LEASE TO MINERAL LEASE.—The lessee under a lease that has produced geothermal steam for electrical generation, has been determined by the Secretary to be incapable of any further commercial production or utilization of geothermal steam, and that is producing any valuable byproduct in payable quantities may, within 6 months after such determination—

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

"(2) convert the lease to a mining claim under the general mining laws, if the byproduct is a locatable mineral.".

(b) CONFORMING AMENDMENT.—

(1) Section 18 of the Geothermal Steam Act of 1970 (30 U.S.C. 1017) is amended by striking "subsection (c) or (g)" and inserting "subsection (g)".

(2) Section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) is amended by striking ", including the payments referred to in section 6(i),".

SEC. 30613. ADVANCED ROYALTIES REQUIRED FOR SUSPENSION OF PRODUCTION.

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

"(d) ADVANCED ROYALTIES REQUIRED FOR SUSPENSION OF PRODUCTION.—(1) If production of heat or energy under a geothermal lease is suspended after the date of any such production for which royalty is required under section 5(a), the Secretary shall require the lessee, until the end of such suspension, to pay royalty in advance at the monthly pro-rata rate of the average annual rate at which such royalty was paid each year in the 5-year-period preceding the date of suspension.

"(2) Paragraph (1) shall not apply if the suspension is required or otherwise caused by the Secretary, the Secretary of a military department, or a State or local government.".

SEC. 30614. ANNUAL RENTAL.

(a) ANNUAL RENTAL RATE.—Section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) is further amended in subsection (a) in paragraph (3) by striking

"$1 per acre or fraction thereof for each year of the lease" and all that follows through the end of the paragraph and inserting "$1 per acre or fraction thereof for each year of the lease in the case of a lease awarded in a noncompetitive lease sale; or $2 per acre or fraction thereof for the first year, $3 per acre or fraction thereof for each of the second through tenth years, and $5 per acre or fraction thereof for each year after the 10th year thereof, in the case of a lease awarded in a competitive lease sale; and".

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

"(e) TERMINATION OF LEASE FOR FAILURE TO PAY RENTAL.—

"(1) IN GENERAL.—The Secretary shall terminate any lease with respect to which rental is not paid in accordance with this Act and the terms of the lease under which the rental is required, upon the expiration of the 45-day period beginning on the date of the failure to pay such rental.

"(2) NOTIFICATION.—The Secretary shall promptly notify a lessee that has not paid rental required under the lease that the lease will be termi-

nated at the end of the period referred to in paragraph (1).

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

TITLE VII—COAL

SEC. 30701. SHORT TITLE.

This title may be cited as the "Coal Leasing Amendments Act of 2003".

SEC. 30702. REPEAL OF THE 160-ACRE LIMITATION FOR COAL LEASES.

Section 3 of the Mineral Leasing Act (30 U.S.C. 203) is amended in the first sentence by striking "such lease," and all that follows through the end of the sentence and inserting "such lease.".

SEC. 30703. MINING PLANS.

Section 2(d)(2) of the Mineral Leasing Act (30 U.S.C. 202a(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following:

"(B) The Secretary may establish a period of more than 40 years if the Secretary determines that the longer period—

"(i) will ensure the maximum economic recovery of a coal deposit; or

"(ii) the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.".

SEC. 30704. PAYMENT OF ADVANCE ROYALTIES UNDER COAL LEASES.

(a) IN GENERAL.—Section 7(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 207(b)) is amended to read as follows:

"(b)(1) Each lease shall be subjected to the condition of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee.

"(2)(A) The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties.

"(B) Such advance royalties shall be computed based on the average price for coal sold in the spot market from

the same region during the last month of each applicable continued operation year.

"(C) The aggregate number of years during the initial and any extended term of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed 20.

"(3) The amount of any production royalty paid for any year shall be reduced (but not below zero) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year.

"(4) This subsection shall be applicable to any lease or logical mining unit in existence on the date of the enactment of this paragraph or issued or approved after such date.

"(5) Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of 10 years.".

(b) AUTHORITY TO WAIVE, SUSPEND, OR REDUCE ADVANCE ROYALTIES.—Section 39 of the Mineral Leasing Act (30 U.S.C. 209) is amended by striking the last sentence.

SEC. 30705. ELIMINATION OF DEADLINE FOR SUBMISSION OF COAL LEASE OPERATION AND RECLAMATION PLAN.

Section 7(c) of the Mineral Leasing Act (30 U.S.C. 207(c)) is amended by striking ''and not later than three years after a lease is issued,''.

SEC. 30706. AMENDMENTS RELATING TO FINANCIAL ASSURANCES WITH RESPECT TO BONUS BIDS.

(a) PROHIBITION ON REQUIRING SURETY BONDS.—Section 2(a) of the Mineral Leasing Act (30 U.S.C. 201(a)) is amended by adding at the end the following:

''(4) The Secretary shall not require a surety bond or any other financial assurance to guarantee payment of deferred bonus bid installments with respect to any coal lease issued based upon a cash bonus bid.

''(5) Notwithstanding any other provision of law, if the lessee under a coal lease fails to pay any installment of a deferred cash bonus bid within 10 days after the Secretary provides written notice that payment of such installment is past due—

''(A) such lease shall automatically terminate;

''(B) any deferred bonus payments that have not been paid to the United States with respect to such lease shall no longer be owed to the United States; and

"(C) any bonus payments already made to the United States with respect to such lease shall not be returned to the lessee or credited in any future lease sale.".

(b) CONFORMING AMENDMENT.—Section 2(a)(1) of the Mineral Leasing Act (30 U.S.C. 201(a)(1)) is amended by striking "Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States.".

SEC. 30707. INVENTORY REQUIREMENT.

(a) REVIEW OF ASSESSMENTS.—

(1) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall review coal assessments and other available data to identify—

(A) public lands with coal resources;

(B) the extent and nature of any restrictions or impediments to the development of coal resources on public lands identified under paragraph (1); and

(C) with respect to areas of such lands for which sufficient data exists, resources of compliant coal and supercompliant coal.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term ''compliant coal'' means coal that contains not less than 1.0 and not more than 1.2 pounds of sulfur dioxide per million Btu; and

(B) the term ''supercompliant coal'' means coal that contains less than 1.0 pounds of sulfur dioxide per million Btu.

(b) COMPLETION AND UPDATING OF THE INVENTORY.—The Secretary—

(1) shall complete the inventory under subsection (a) by not later than 2 years after the date of the enactment of this Act; and

(2) shall update the inventory as the availability of data and developments in technology warrant.

(c) REPORT.—The Secretary shall submit to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate and make publicly available—

(1) a report containing the inventory under this section, by not later than 2 years after the effective date of this section; and

(2) each update of such inventory.

SEC. 30708. APPLICATION OF AMENDMENTS.

The amendments made by this title apply with respect to any coal lease issued before, on, or after the date of the enactment of this Act.

TITLE VIII—INSULAR AREAS ENERGY SECURITY

SEC. 30801. INSULAR AREAS ENERGY SECURITY.

Section 604 of the Act entitled ''An Act to authorize appropriations for certain insular areas of the United States, and for other purposes'', approved December 24, 1980 (Public Law 96–597; 94 Stat. 3480–3481), is amended—

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

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

''(5) electric power transmission and distribution lines in insular areas are inadequate to withstand damage caused by the hurricanes and typhoons which frequently occur in insular areas and such damage often costs millions of dollars to repair; and

''(6) the refinement of renewable energy technologies since the publication of the 1982 Territorial Energy Assessment prepared pursuant to subsection (c) reveals the need to reassess the state of energy

production, consumption, infrastructure, reliance on imported energy, and indigenous sources in regard to the insular areas.'';

(3) by amending subsection (e) to read as follows:

''(e)(1) The Secretary of the Interior, in consultation with the Secretary of Energy and the chief executive officer of each insular area, shall update the plans required under subsection (c) by—

''(A) updating the contents required by subsection (c);

''(B) drafting long-term energy plans for such insular areas with the objective of reducing, to the extent feasible, their reliance on energy imports by the year 2010 and maximizing, to the extent feasible, use of indigenous energy sources; and

''(C) drafting long-term energy transmission line plans for such insular areas with the objective that the maximum percentage feasible of electric power transmission and distribution lines in each insular area be protected from damage caused by hurricanes and typhoons.

''(2) Not later than May 31, 2004, the Secretary of the Interior shall submit to the Congress the updated

plans for each insular area required by this subsection.''; and

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

''(4) POWER LINE GRANTS FOR TERRITORIES.—

''(A) IN GENERAL.—The Secretary of the Interior is authorized to make grants to governments of territories of the United States to carry out eligible projects to protect electric power transmission and distribution lines in such territories from damage caused by hurricanes and typhoons.

''(B) ELIGIBLE PROJECTS.—The Secretary may award grants under subparagraph (A) only to governments of territories of the United States that submit written project plans to the Secretary for projects that meet the following criteria:

''(i) The project is designed to protect electric power transmission and distribution lines located in one or more of the territories of the United States from damage caused by hurricanes and typhoons.

"(ii) The project is likely to substantially reduce the risk of future damage, hardship, loss, or suffering.

"(iii) The project addresses one or more problems that have been repetitive or that pose a significant risk to public health and safety.

"(iv) The project is not likely to cost more than the value of the reduction in direct damage and other negative impacts that the project is designed to prevent or mitigate. The cost benefit analysis required by this criterion shall be computed on a net present value basis.

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

"(vi) The project plan includes an analysis of a range of options to address the problem it is designed to prevent or mitigate and a justification for the selection of the project in light of that analysis.

"(vii) The applicant has demonstrated to the Secretary that the matching funds required by subparagraph (D) are available.

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

"(i) have the greatest impact on reducing future disaster losses; and

"(ii) best conform with plans that have been approved by the Federal Government or the government of the territory where the project is to be carried out for development or hazard mitigation for that territory.

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

"(E) TREATMENT OF FUNDS FOR CERTAIN PURPOSES.—Grants provided under this paragraph shall not be considered as income, a re-

source, or a duplicative program when determining eligibility or benefit levels for Federal major disaster and emergency assistance.

"(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $5,000,000 for each fiscal year beginning after the date of the enactment of this paragraph.".

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 30901. REPORT ON ENERGY FACILITY RIGHTS-OF-WAY AND CORRIDORS ON FEDERAL LANDS.

(a) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Secretary of Agriculture and the Secretary of the Interior, in consultation with the Secretaries of Commerce, Defense, and Energy and the Federal Energy Regulatory Commission, shall submit to the Committees on Energy and Commerce and Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a joint report—

(A) addressing—

(i) the location of existing rights-of-way and designated and de facto corridors for oil and gas pipelines and electric transmission and distribution facilities on Federal lands; and

(ii) opportunities for additional oil and gas pipeline and electric transmission capacity within such rights-of-way and corridors; and

(B) containing a plan for making available, upon request, to the appropriate Federal, State, and local agencies, tribal governments, and other persons involved in the siting of oil and gas pipelines and electricity transmission facilities Geographic Information System-based information regarding the location of such existing rights-of-way and corridors and any planned rights-of-way and corridors.

(2) CONSULTATIONS AND CONSIDERATIONS.—In undertaking the report, the Secretary of the Interior and the Secretary of Agriculture shall consult with—

(A) other agencies of Federal, State, tribal, or local units of government as appropriate;

(B) persons involved in the siting of oil and gas pipelines and electric transmission facilities; and

(C) other interested members of the public.

(3) LIMITATION.—The Secretary of the Interior and the Secretary of Agriculture shall limit the distribution of the report and Geographic Information System-based information referred to in paragraph (1) as necessary for national and infrastructure security reasons, if either Secretary determines that such information is authorized to be withheld from public disclosure pursuant to a national security or other exception under section 552(b) of title 5, United States Code (popularly known as the ''Freedom of Information Act'').

(b) CORRIDOR DESIGNATIONS.—

(1) WITHIN THE 11 CONTIGUOUS WESTERN STATES.—Not later than 24 months after the date of the enactment of this section, the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, jointly shall—

(A) designate, pursuant to title 5 of the Federal Land Policy and Management Act of

1976 (43 U.S.C. 1761 et seq.), and other applicable Federal laws, corridors needed or useful for oil and gas pipelines and electricity transmission and facilities on Federal lands in the eleven contiguous Western States as that term is defined in section 103(o) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(o));

(B) perform any environmental reviews that may be required to complete the designations of corridors for such facilities on Federal lands in those States; and

(C) incorporate the designated corridors into the relevant departmental and agency land use and resource management plans or the equivalent.

(2) WITHIN THE REMAINING STATES.—Not later than 4 years after the date of the enactment of this section, the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, jointly shall identify corridors needed or useful for oil and gas pipelines and electricity transmission and distribution facilities on Federal lands in the States

other than those described in paragraph (1), and shall schedule prompt action to identify, designate, and incorporate these corridors into the land use plan.

(3) ONGOING RESPONSIBILITIES.—The Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior, in consultation with the Federal Energy Regulatory Commission and the affected utility industries, shall ensure that additional corridors as may be needed or useful for oil and gas pipelines and electricity transmission and distribution facilities on Federal lands are promptly designated. The Secretaries shall provide a process for the prompt review of applications for such corridors.

(c) FACTORS TO CONSIDER.—When carrying out this section, the Secretaries shall take into account the need for upgraded and new electricity transmission and distribution facilities to improve reliability, relieve congestion, and enhance the capability of the national grid to deliver electricity.

(d) DEFINITION OF CORRIDOR.—As used in this section and for purposes of title V of the Federal Land Policy and Management Act of 1976, the term 'corridor' shall mean a linear strip of land without definite width, but limited by technological, environmental, and topographical

factors, and that contains or may in the future contain one or more utility, communication, or transportation facilities. A corridor is a land use designation identified for the purpose of establishing policy direction as to the preferred location of compatible linear facilities and compatible and conflicting land uses. It does not imply entitlement of use or limits as to siting facilities in additional locations. Appropriate environmental review and regulatory permitting reflecting work already undertaken in the designation of a corridor shall precede occupancy on a project-specific basis.

SEC. 30902. ELECTRICITY TRANSMISSION LINE RIGHT-OF-WAY, CLEVELAND NATIONAL FOREST AND ADJACENT PUBLIC LANDS, CALIFORNIA.

(a) ISSUANCE.—Subject to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall issue all necessary grants, easements, permits, plan amendments, and other approvals to allow for the siting and construction of a high-voltage electricity transmission line right-of-way running approximately north to south through the Trabuco Ranger District of the Cleveland National Forest in the State of California and adjacent lands under the jurisdiction of the Bureau of Land Management and the Forest Service. The right-of-way approvals shall provide all necessary Federal authorization from the Sec-

retary of the Interior and the Secretary of Agriculture for the routing, construction, operation, and maintenance of a 500 KV transmission line capable of meeting the long-term electricity transmission needs of the region between the existing Valley-Serrano transmission line to the north and the Telega–Escondido transmission line to the south, and for connecting to future generating capacity that may be developed in the region.

(b) PROTECTION OF WILDERNESS AREAS.—The Secretary of the Interior and the Secretary of Agriculture shall not allow any portion of a transmission line right-of-way corridor identified in subsection (a) to enter any identified wilderness area in existence as of the date of the enactment of this section.

(c) ENVIRONMENTAL AND ADMINISTRATIVE REVIEWS.—

(1) DEPARTMENT OF INTERIOR OR LOCAL AGENCY.—The Secretary of the Interior, acting through the Bureau of Land Management, shall be the lead Federal agency with overall responsibility to ensure completion of required environmental and other reviews of the approvals to be issued under subsection (a).

(2) NATIONAL FOREST SYSTEM LAND.—For the portions of the corridor on National Forest System

lands, the Secretary of Agriculture shall complete all required environmental reviews and administrative actions in coordination with the Secretary of the Interior.

(3) EXPEDITIOUS COMPLETION.—The reviews required for issuance of the approvals under subsection (a) shall be completed not later than 1 year after the date of the enactment of this Act.

(d) TIME FOR ISSUANCE.—The necessary grants, easements, permits, plan amendments, and other approvals for the transmission line right-of-way shall be issued not later than 60 days after the completion of the environmental reviews under subsection (c).

(e) OTHER TERMS AND CONDITIONS.—The transmission line right-of-way shall be subject to such terms and conditions as the Secretary of the Interior and the Secretary of Agriculture consider necessary, as a result of the environmental reviews under subsection (c), to protect the value of historic, cultural, and natural resources under the jurisdiction of the Department of the Interior or the Department of Agriculture.

(f) PREFERENCE AMONG PROPOSALS.—The Secretary of the Interior and the Secretary of Agriculture shall give a preference to any application or preapplication proposal for a transmission line right-of-way, as described

in subsection (a), that was submitted before December 31, 2002, over all other applications and proposals for the same or similar right-of-way submitted on or after that date.

SEC. 30903. CONSULTATION REGARDING ENERGY RIGHTS-OF-WAY ON PUBLIC LANDS.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall enter into, and submit to the Congress, a memorandum of understanding in accordance with this section regarding the processing of new applications for linear rights of way for electrical transmission lines and oil or gas pipelines on public lands within the jurisdiction of the Secretary of the Interior and National Forest System lands within the jurisdiction of the Secretary of Agriculture.

(b) CONTENTS.—The memorandum of understanding shall include provisions that—

(1) establish an administrative procedure for processing right-of-way applications, including lines of authority, steps in application processing, and timeframes for application processing;

(2) provide for coordination of planning relating to the granting of these rights-of-way;

(3) provide for coordination of environmental compliance efforts to avoid duplication of effort; and

(4) provide for coordination of use of right-of-way stipulations to achieve consistency.

SEC. 30904. ENHANCING ENERGY EFFICIENCY IN MANAGEMENT OF FEDERAL LANDS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that Federal agencies should enhance the use of energy efficient technologies in the management of natural resources.

(b) ENERGY EFFICIENT BUILDINGS.—To the extent practicable, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture shall seek to incorporate energy efficient technologies in public and administrative buildings associated with management of the National Park System, National Wildlife Refuge System, National Forest System, National Marine Sanctuaries System, and other public lands and resources managed by the Secretaries.

(c) ENERGY EFFICIENT VEHICLES.—To the extent practicable, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture shall seek to use energy efficient motor vehicles, including vehicles equipped with biodiesel or hybrid engine technologies, in the management of the National Park System, National

Wildlife Refuge System, National Forest System, National Marine Sanctuaries System, and other public lands and resources managed by the Secretaries.

SEC. 30905. PERMITTING OF WIND ENERGY DEVELOPMENT PROJECTS ON PUBLIC LANDS.

(a) REQUIRED POLICIES AND PROCEDURES.—The Secretary of the Interior shall process right-of-way applications for wind energy site testing and monitoring facilities on public lands administered by the Bureau of Land Management in accordance with policies and procedures that are substantially the same as those set forth in Bureau of Land Management Instruction Memorandum No. 2003-020, dated October 16, 2002.

(b) LIMITATION ON RENT AND OTHER CHARGES.—

(1) IN GENERAL.—The Secretary of the Interior may not impose rent and other charges with respect to any wind energy development project on public lands that, in the aggregate, exceed 50 percent of the maximum amount of rent that could be charged with respect to that project under the terms of the Bureau of Land Management Instruction Memorandum referred to in subsection (a).

(2) TERMINATION.—Paragraph (1) shall not apply after the earlier of—

(A) the date on which the Secretary of the Interior determines there exists at least 10,000 megawatts of electricity generating capacity from non-hydropower renewable energy resources on public lands; or

(B) the end of the 10-year period beginning on the date of the enactment of this Act.

(3) STATE SHARE NOT AFFECTED.—This subsection shall not affect any State share of rent and other charges with respect to any wind energy development project on public lands.

SEC. 30906. SENSE OF THE CONGRESS REGARDING GENERATION CAPACITY OF ELECTRICITY FROM RENEWABLE ENERGY RESOURCES ON PUBLIC LANDS.

It is the sense of the Congress that the Secretary of the Interior shall, within the next 10 years after the date of the enactment of this Act, seek to have approved non-hydropower renewable energy projects located on the public lands with a generation capacity of at least 10,000 megawatts of electricity.

SEC. 30907. ASSESSMENT OF OCEAN THERMAL ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 3 months after the date of the enactment of this Act, and each year thereafter, the Secretary of the Interior shall—

(1) review assessments of ocean thermal energy resources, other than resources of any area of the Outer Continental Shelf that is subject to a moratorium on leasing for energy exploration or development, that are available in the United States and its territories and possessions; and

(2) undertake new assessments of such resources as necessary.

(b) CONSIDERATIONS.—In reviewing and undertaking assessments under subsection (a), the Secretary shall take into account changes in market conditions, available technologies, and other relevant factors.

(c) REPORTS.—Not later than 1 year after the date of the enactment of this Act, and each year thereafter, the Secretary shall publish a report on reviews and assessments under subsection (a). Each report shall contain—

(1) a detailed inventory of the available amount and characteristics of ocean thermal energy resources;

(2) estimates of the costs of actions needed to develop and accelerate efforts to commercialize ocean thermal energy conversion; and

(3) such other information as the Secretary considers would be useful in developing ocean thermal energy resources.

SEC. 30908. SENSE OF THE CONGRESS REGARDING DEVELOPMENT OF MINERALS UNDER PADRE ISLAND NATIONAL SEASHORE.

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

(1) Pursuant to Public Law 87–712 (16 U.S.C. 459d et seq.; popularly known as the ''Federal Enabling Act'') and various deeds and actions thereunder, the United States is the owner of the surface estate only of certain lands constituting the Padre Island National Seashore.

(2) Ownership of the oil, gas, and other minerals in the subsurface estate of the lands constituting the Padre Island National Seashore was never acquired by the United States and ownership of those interests are held by the State of Texas and private parties.

(3) The Federal Enabling Act expressly contemplated that the United States would recognize the ownership and future development of the oil,

gas, and other minerals in the subsurface estate of the lands constituting the Padre Island National Seashore by the owners and their mineral lessees and recognized that approval of the State of Texas was required to create Padre Island National Seashore.

(4) Approval was given for the creation of Padre Island National Seashore by the State of Texas through TEX. REV. CIV. STAT. ANN. Art. 6077(t) (Vernon 1970), which expressly recognized that development of the oil, gas, and other minerals in the subsurface of the lands constituting Padre Island National Seashore would be conducted with full rights of ingress and egress under the laws of the State of Texas.

(b) SENSE OF THE CONGRESS.—With regard to Federal law, any regulation of the development of oil, gas, or other minerals in the subsurface of the lands constituting Padre Island National Seashore should be made as if those lands retained the status that they had on September 27, 1962.

SEC. 30909. ENCOURAGING PROHIBITION OF OFF-SHORE DRILLING IN THE GREAT LAKES.

(a) FINDINGS.—The Congress finds that—

(1) the water resources of the Great Lakes Basin are precious public natural resources, shared and held in trust by the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin, and the Canadian Province of Ontario;

(2) the environmental dangers associated with off-shore drilling in the Great Lakes for oil and gas outweigh the potential benefits of such drilling;

(3) in accordance with the Submerged Lands Act (43 U.S.C. 1301 et seq.), each State that borders any of the Great Lakes has authority over the area between that State's coastline and the boundary of Canada or another State;

(4) the States of Illinois, Michigan, New York, Pennsylvania, and Wisconsin each have a statutory prohibition of off-shore drilling in the Great Lakes for oil and gas;

(5) the States of Indiana, Minnesota, and Ohio do not have such a prohibition; and

(6) the Canadian Province of Ontario does not have such a prohibition, and drilling for and production of gas occurs in the Canadian portion of Lake Erie.

(b) ENCOURAGEMENT OF PROHIBITIONS ON OFF-SHORE DRILLING.—The Congress encourages—

(1) the States of Illinois, Michigan, New York, Pennsylvania, and Wisconsin to continue to prohibit off-shore drilling in the Great Lakes for oil and gas;

(2) the States of Indiana, Minnesota, and Ohio and the Canadian Province of Ontario to enact a prohibition of such drilling; and

(3) the Canadian Province of Ontario to require the cessation of any such drilling and any production resulting from such drilling.

DIVISION D—TAX

SEC. 40001. SHORT TITLE; ETC.

(a) SHORT TITLE.—This division may be cited as the ''Energy Tax Policy Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—CONSERVATION

SEC. 41001. CREDIT FOR RESIDENTIAL SOLAR ENERGY PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

"SEC. 25C. RESIDENTIAL SOLAR ENERGY PROPERTY.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year, and

''(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during the taxable year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed—

''(A) $2,000 for each system of property described in subsection (c)(1), and

''(B) $2,000 for each system of property described in subsection (c)(2).

"(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

"(A) in the case of solar water heating equipment, such equipment is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed, and

"(B) in the case of a photovoltaic system, such system meets appropriate fire and electric code requirements.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun.

"(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property

which uses solar energy to generate electricity for use in a dwelling unit.

"(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

"(4) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1) or (2) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

"(5) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

"(d) SPECIAL RULES.—

"(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year

as a residence by 2 or more individuals the following shall apply:

"(A) The amount of the credit allowable under subsection (a) by reason of expenditures made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

"(B) There shall be allowable with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

"(C) Subparagraphs (A) and (B) shall be applied separately with respect to qualified solar water heating property expenditures and qualified photovoltaic property expenditures.

"(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an indi-

vidual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

"(3) CONDOMINIUMS.—

"(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

"(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

"(4) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures

for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

"(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

"(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

"(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

"(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(A)).

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(f) TERMINATION.—The credit allowed under this section shall not apply to taxable years beginning after December 31, 2006 (December 31, 2008, with respect to qualified photovoltaic property expenditures).".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting ", and", and by adding at the end the following new paragraph:

"(29) to the extent provided in section 25C(e), in the case of amounts with respect to which a credit has been allowed under section 25C.".

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25B the following new item:

"Sec. 25C. Residential solar energy property.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2003.

SEC. 41002. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM RENEWABLE RESOURCES.

(a) EXTENSION OF CREDIT FOR WIND AND CLOSED-LOOP BIOMASS FACILITIES.—Subparagraphs (A) and (B) of section 45(c)(3) are each amended by striking ''2004'' and inserting ''2007''.

(b) EXPANSION OF CREDIT FOR OPEN-LOOP BIOMASS, LANDFILL GAS FACILITIES, AND TRASH COMBUSTION FACILITIES.—Paragraph (3) of section 45(c) is amended by adding at the end the following new subparagraphs:

''(D) OPEN-LOOP BIOMASS FACILITIES.—In the case of a facility using open-loop biomass to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

''(E) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term 'qualified facility' means

any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

"(F) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this subparagraph and before January 1, 2007.".

(c) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 45 is amended by adding at the end the following new paragraphs:

"(5) OPEN-LOOP BIOMASS.—The term 'open-loop biomass' means any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

"(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush,

"(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way

tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled, or

"(C) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass.

"(6) REDUCED CREDIT FOR CERTAIN PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (D) or (E) of paragraph (3) which is placed in service before the date of the enactment of this paragraph—

"(A) subsection (a)(1) shall be applied by substituting '1.0 cents' for '1.5 cents', and

"(B) the 5-year period beginning on the date of the enactment of this paragraph shall be substituted in lieu of the 10-year period in subsection (a)(2)(A)(ii).

"(7) CREDIT ELIGIBILITY FOR OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in paragraph (3)(D) which is placed in service before the date of enactment of this paragraph, if the owner of such facility is not the producer of the electricity, the person eligible for the credit al-

lowable under subsection (a) is the lessee or the operator of such facility.

"(8) LIMIT ON REDUCTIONS FOR GRANTS, ETC., FOR OPEN-LOOP BIOMASS FACILITIES.—If the amount of the credit determined under subsection (a) with respect to any open-loop biomass facility is required to be reduced under paragraph (3) of subsection (b), the fraction under such paragraph shall in no event be greater than ½.

"(9) COORDINATION WITH SECTION 29.—The term 'qualified facility' shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.".

(d) QUALIFIED ENERGY RESOURCES.—Paragraph (1) of section 45(c) (relating to qualified energy resources) is amended to read as follows:

"(1) QUALIFIED ENERGY RESOURCES.—The term 'qualified energy resources' means any resource described in paragraph (3) which is used to generate electricity at a qualified facility.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 41003. CREDIT FOR QUALIFIED FUEL CELL POWER PLANTS.

(a) BUSINESS PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) equipment which is part of a qualified fuel cell power plant,''.

(2) QUALIFIED FUEL CELL POWER PLANT.—Subsection (a) of section 48 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED FUEL CELL POWER PLANT.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified fuel cell power plant' means a fuel cell power plant that has an electricity-only generation efficiency greater than 30 percent.

''(B) LIMITATION.—The energy credit with respect to any qualified fuel cell power plant for any taxable year shall not exceed—

''(i) $500 for each ½ kilowatt of capacity of the power plant, reduced by

"(ii) the aggregate energy credits allowed with respect to such power plant for all prior taxable years.

"(C) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

"(D) TERMINATION.—Such term shall not include any property placed in service after December 31, 2006.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(b) NONBUSINESS PROPERTY.—

(1) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25C the following new section:

"SEC. 25D. NONBUSINESS QUALIFIED FUEL CELL POWER PLANT.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the qualified fuel cell power plant expenditures which are paid or incurred during such year.

"(b) LIMITATIONS.—The credit allowed under subsection (a) with respect to any qualified fuel cell power plant for any taxable year shall not exceed—

"(1) $500 for each ½ kilowatt of capacity of the power plant, reduced by

"(2) the aggregate energy credits allowed with respect to such power plant for all prior taxable years.

"(c) QUALIFIED FUEL CELL POWER PLANT EXPENDITURES.—For purposes of this section, the term 'qualified fuel cell power plant expenditures' means expenditures by the taxpayer for any qualified fuel cell power plant (as defined in section 48(a)(4))—

"(1) which meets the requirements of subparagraphs (B) and (D) of section 48(a)(3), and

"(2) which is installed on or in connection with a dwelling unit—

"(A) which is located in the United States, and

"(B) which is used by the taxpayer as a residence.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

"(d) SPECIAL RULES.—For purposes of this section, rules similar to the rules of section 25C(d) shall apply.

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(f) TERMINATION.—This section shall not apply to any expenditure made after December 31, 2006.".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting ", and", and by adding at the end the following new paragraph:

"(30) to the extent provided in section 25D(e), in the case of amounts with respect to which a credit has been allowed under section 25D.".

(B) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25C the following new item:

"Sec. 25D. Nonbusiness qualified fuel cell power plant.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures paid or incurred after December 31, 2003, in taxable years ending after such date.

SEC. 41004. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

"SEC. 25E. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 20 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—The credit allowed by this section with respect to a dwelling shall not exceed $2,000.

"(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed to the taxpayer under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of $2,000 reduced by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all prior taxable years.

"(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

"(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term 'qualified energy efficiency improvements' means any energy efficient building envelope component which meets the pre-

scriptive criteria for such component established by the 2000 International Energy Conservation Code (or, in the case of metal roofs with appropriate pigmented coatings, meets the Energy Star program requirements), if—

"(1) such component is installed in or on a dwelling—

"(A) located in the United States, and

"(B) owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

"(2) the original use of such component commences with the taxpayer, and

"(3) such component reasonably can be expected to remain in use for at least 5 years.

If the aggregate cost of such components with respect to any dwelling exceeds $1,000, such components shall be treated as qualified energy efficiency improvements only if such components are also certified in accordance with subsection (e) as meeting such criteria.

"(e) CERTIFICATION.—The certification described in subsection (d) shall be—

"(1) determined on the basis of the technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency, based upon energy use or building

envelope component performance, for the energy efficient building envelope component,

''(2) provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider who is accredited by or otherwise authorized to use approved energy performance measurement methods by the Residential Energy Services Network (RESNET), and

''(3) made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components installed and their respective energy efficiency levels.

''(f) DEFINITIONS AND SPECIAL RULES.—

''(1) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

''(2) CONDOMINIUMS.—

"(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having paid his proportionate share of the cost of qualified energy efficiency improvements made by such association.

"(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

"(3) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.

"(4) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term 'dwelling' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003).

"(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(h) APPLICATION OF SECTION.—This section shall apply to qualified energy efficiency improvements installed after December 31, 2003, and before January 1, 2007.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 23 is amended by striking "section 1400C" and inserting "sections 25E and 1400C".

(2) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting ", and", and by adding at the end the following new paragraph:

"(31) to the extent provided in section 25E(g), in the case of amounts with respect to which a credit has been allowed under section 25E.".

(3) Subsection (d) of section 1400C is amended by inserting "and section 25E" after "this section".

(4) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25D the following new item:

"Sec. 25E. Energy efficiency improvements to existing homes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2003.

SEC. 41005. BUSINESS CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOME.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 45F the following new section:

"SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.

"(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualified new energy efficient home during construction of such home.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—

"(A) IN GENERAL.—The credit allowed by this section with respect to a dwelling shall not exceed $2,000.

"(B) PRIOR CREDIT AMOUNTS ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of $2,000 reduced by the sum of the credits allowed under subsection (a) with respect to the dwelling for all prior taxable years.

"(2) COORDINATION WITH REHABILITATION AND ENERGY CREDITS.—For purposes of this section—

"(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)) or to the energy percentage of energy property (as determined under section 48(a)), and

"(B) expenditures taken into account under either section 47 or 48(a) shall not be taken into account under this section.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means the person who constructed the new energy efficient home, or in the case of a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003), the manufactured home producer of such home.

"(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any energy efficient heating or cooling appliance.

"(3) QUALIFIED NEW ENERGY EFFICIENT HOME.—The term 'qualified new energy efficient home' means a dwelling—

"(A) located in the United States,

"(B) the construction of which is substantially completed after December 31, 2003,

"(C) the original use of which is as a principal residence (within the meaning of section 121) which commences with the person who ac-

quires such dwelling from the eligible contractor, and

"(D) which is certified to have a level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 2000 International Energy Conservation Code and to have building envelope component improvements account for ⅓ of such 30 percent.

"(4) CONSTRUCTION.—The term 'construction' includes reconstruction and rehabilitation.

"(5) ACQUIRE.—The term 'acquire' includes purchase and, in the case of reconstruction and rehabilitation, such term includes a binding written contract for such reconstruction or rehabilitation.

"(6) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to re-

duce the heat gain of a dwelling when installed in or on such dwelling.

"(7) MANUFACTURED HOME INCLUDED.—The term 'dwelling' includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003).

"(d) CERTIFICATION.—

"(1) METHOD.—A certification described in subsection (c)(3)(D) shall be determined on the basis of one of the following methods:

"(A) The technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency for the energy efficient building envelope component or energy efficient heating or cooling appliance, based upon energy use or building envelope component performance.

"(B) An energy performance measurement method that utilizes computer software approved by organizations designated by the Secretary.

"(2) PROVIDER.—Such certification shall be provided by—

"(A) in the case of a method described in paragraph (1)(A), a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating systems provider who is accredited by, or otherwise authorized to use, approved energy performance measurement methods by the Home Energy Ratings Systems Council or the National Association of State Energy Officials, or

"(B) in the case of a method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

"(3) FORM.—Such certification shall be made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling appliances installed and their respective energy efficiency levels, and in the case of a method described in subparagraph (B) of paragraph (1), accompanied by written analysis documenting the proper application of a permissible energy performance measurement method to the specific circumstances of such dwelling.

"(4) REGULATIONS.—

"(A) IN GENERAL.—In prescribing regulations under this subsection for energy performance measurement methods, the Secretary shall prescribe procedures for calculating annual energy costs for heating and cooling and cost savings and for the reporting of the results. Such regulations shall—

"(i) be based on the National Home Energy Rating Technical Guidelines of the National Association of State Energy Officials, the Home Energy Rating Guidelines of the Home Energy Rating Systems Council, or the modified 2001 California Residential ACM manual,

"(ii) provide that any calculation procedures be developed such that the same energy efficiency measures allow a home to qualify for the credit under this section regardless of whether the house uses a gas or oil furnace or boiler or an electric heat pump, and

"(iii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under

this section and explanations for the homebuyer of the energy efficient features that were used to comply with the requirements of this section.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the National Association of State Energy Officials.

''(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

''(f) APPLICATION OF SECTION.—Subsection (a) shall apply to dwellings purchased during the period beginning on January 1, 2004, and ending on December 31, 2006.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end thereof the following new paragraph:

"(16) the new energy efficient home credit determined under section 45G.".

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end thereof the following new subsection:

"(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a new energy efficient home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45G.".

(d) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

"(11) NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45G may be carried back to any taxable year ending before January 1, 2004.".

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Subsection (c) of section 196 is amended by striking "and" at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting ",

and'', and by adding after paragraph (10) the following new paragraph:

''(11) the new energy efficient home credit determined under section 45G.''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45F the following new item:

''Sec. 45G. New energy efficient home credit.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2003.

SEC. 41006. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking ''or'' at the end of clause (ii), by adding ''or'' at the end of clause (iii), and by inserting after clause (iii) the following new clause:

''(iv) combined heat and power system property,''.

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Subsection (a) of section 48 is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of this subsection—

"(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

"(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

"(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

"(iii) which produces—

"(I) at least 20 percent of its total useful energy in the form of thermal energy, and

"(II) at least 20 percent of its total useful energy in the form of elec-

trical or mechanical power (or combination thereof),

"(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

"(v) which is placed in service after December 31, 2003, and before January 1, 2007.

"(B) SPECIAL RULES.—

"(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

"(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and

"(II) the denominator of which is the lower heating value of the primary fuel source for the system.

"(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(iii) shall be determined on a Btu basis.

"(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

"(iv) PUBLIC UTILITY PROPERTY.—

"(I) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(1)), the taxpayer may only claim the credit under the subsection if, with respect to such property, the taxpayer uses a normalization method of accounting.

"(II) CERTAIN EXCEPTION NOT TO APPLY.—The matter in paragraph

(3) which follows subparagraph (D) shall not apply to combined heat and power system property.

"(C) EXTENSION OF DEPRECIATION RECOVERY PERIOD.—If a taxpayer is allowed credit under this section for combined heat and power system property and such property would (but for this subparagraph) have a class life of 15 years or less under section 168, such property shall be treated as having a 22-year class life for purposes of section 168.".

(c) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

"(12) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(5) may be carried back to a taxable year ending before January 1, 2004.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

SEC. 41007. NEW NONREFUNDABLE PERSONAL CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAXES.

(a) IN GENERAL.—

(1) SECTION 25C.—Section 25C(b), as added by section 41001, is amended by adding at the end the following new paragraph:

"(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section and section 25D and 25E) and section 27 for the taxable year.".

(2) SECTION 25D.—Section 25D(b), as added by section 103, is amended to read as follows:

"(b) LIMITATIONS.—

"(1) IN GENERAL.—The credit allowed under subsection (a) with respect to any qualified fuel cell power plant for any taxable year shall not exceed—

"(A) $500 for each ½ kilowatt of capacity of the power plant, reduced by

"(B) the aggregate energy credits allowed with respect to such power plant for all prior taxable years.

"(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section and section 25E) and section 27 for the taxable year.".

(3) SECTION 25E.—Section 25E(b), as added by section 41004, is amended by adding at the end the following new paragraph:

"(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 23(b)(4)(B) is amended by inserting "and sections 25C, 25D, and 25E" after "this section".

(2) Section 24(b)(3)(B) is amended by striking "and 25B" and inserting ", 25B, 25C, 25D, and 25E".

(3) Section 25(e)(1)(C) is amended by inserting "25C, 25D, and 25E" after "25B,".

(4) Section 25B(g)(2) is amended by striking "section 23" and inserting "sections 23, 25C, 25D, and 25E".

(5) Section 25E(c), as added by section 41004, is amended by striking "section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)" and inserting "subsection (b)(3)".

(6) Section 26(a)(1) is amended by striking "and 25B" and inserting "25B, 25C, 25D, and 25E".

(7) Section 904(h) is amended by striking "and 25B" and inserting "25B, 25C, 25D, and 25E".

(8) Section 1400C(d) is amended by striking "and 25B" and inserting "25B, 25C, 25D, and 25E".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 41008. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking ''or a diesel-powered train'' each place it appears and by striking ''or train''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows ''section 6421(e)(2)'' and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.".

(D) Subsection (f) of section 4082 is amended by striking "section 4041(a)(1)" and inserting "subsections (d)(3) and (a)(1) of section 4041, respectively".

(E) Paragraph (3) of section 4083(a) is amended by striking "or a diesel-powered train".

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

"(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Under-

ground Storage Tank Trust Fund financing rate under section 4081.''.

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

''(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.''.

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 41009. REDUCED MOTOR FUEL EXCISE TAX ON CERTAIN MIXTURES OF DIESEL FUEL.

(a) IN GENERAL.—Paragraph (2) of section 4081(a) is amended by adding at the end the following:

"(C) DIESEL-WATER FUEL EMULSION.—In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting '19.7 cents' for '24.3 cents'.".

(b) SPECIAL RULES FOR DIESEL-WATER FUEL EMULSIONS.—

(1) REFUNDS FOR TAX-PAID PURCHASES.—Section 6427 is amended by redesignating subsections (m) through (p) as subsections (n) through (q), respectively, and by inserting after subsection (l) the following new subsection:

"(m) DIESEL FUEL USED TO PRODUCE EMULSION.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used

by any person in producing an emulsion described in section 4081(a)(2)(C) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means the aggregate rate of tax imposed by section 4081 determined without regard to section 4081(a)(2)(C).

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means the aggregate rate of tax imposed by section 4081 determined with regard to section 4081(a)(2)(C).".

(2) LATER SEPARATION OF FUEL.—

(A) IN GENERAL.—Section 4081 (relating to imposition of tax) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) LATER SEPARATION OF FUEL FROM DIESEL-WATER FUEL EMULSION.—If any person separates the taxable fuel from a diesel-water fuel emulsion on which

tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(C) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.''.

(B) CONFORMING AMENDMENT.—Subsection (d) of section 6416 is amended by striking ''section 4081(e)'' and inserting ''section 4081(f)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2003.

SEC. 41010. REPEAL OF PHASEOUTS FOR QUALIFIED ELECTRIC VEHICLE CREDIT AND DEDUCTION FOR CLEAN FUEL-VEHICLES.

(a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Subsection (b) of section 30 (relating to limitations) is amended by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(b) DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.—Paragraph (1) of section 179A(b) (relating to qualified clean-fuel vehicle property) is amended to read as follows:

"(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.— The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

"(A) in the case of a motor vehicle not described in subparagraph (B) or (C), $2,000,

"(B) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

"(C) $50,000 in the case of—

"(i) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

"(ii) any bus which has a seating capacity of at least 20 adults (not including the driver).".

SEC. 41011. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following:

"SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the new qualified fuel cell motor vehicle credit determined under subsection (b), and

"(2) the advanced lean burn technology motor vehicle credit determined under subsection (c).

"(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

"(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

"(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

"(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

"(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

"(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

"(2) INCREASE FOR FUEL EFFICIENCY.—

"(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

"(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

"(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

"(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

"(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy,

"(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2000 model year city fuel economy,

"(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2000 model year city fuel economy, and

"(vii) $4,000, if such vehicle achieves at least 300 percent of the 2000 model year city fuel economy.

"(B) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2000 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

"(i) In the case of a passenger automobile:

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 or 8,500 lbs	11.1 mpg.

"(ii) In the case of a light truck:

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 or 8,500 lbs	12.0 mpg.

"(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

"(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified fuel cell motor vehicle' means a motor vehicle—

"(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

"(B) which, in the case of a passenger automobile or light truck—

"(i) for 2004 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

"(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

"(C) the original use of which commences with the taxpayer,

"(D) which is acquired for use or lease by the taxpayer and not for resale, and

"(E) which is made by a manufacturer.

"(c) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

"(1) IN GENERAL.—For purposes of subsection (a), the advanced lean burn technology motor vehicle credit determined under this subsection with respect

to a new qualified advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

"(2) CREDIT AMOUNT.—

"(A) INCREASE FOR FUEL EFFICIENCY.—The credit amount determined under this paragraph shall be—

"(i) $500, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

"(ii) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

"(iii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

"(iv) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

"(v) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

"(vi) $3,000, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

For purposes of clause (i), the 2000 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

"(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to an advanced lean burn technology motor vehicle shall be increased by—

"(i) $250, if such vehicle achieves a lifetime fuel savings of at least 1,500 gallons of gasoline, and

"(ii) $500, if such vehicle achieves a lifetime fuel savings of at least 2,500 gallons of gasoline.

"(C) OPTION TO USE LIKE VEHICLE.—At the option of the vehicle manufacturer, the increase for fuel efficiency and conservation credit may be calculated by comparing the new ad-

vanced lean-burn technology motor vehicle to a like vehicle.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.—The term 'advanced lean burn technology motor vehicle' means a motor vehicle with an internal combustion engine that—

"(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

"(ii) incorporates direct injection,

"(iii) achieves at least 125 percent of the 2000 model year city fuel economy, and

"(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 8 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle.

"(B) LIKE VEHICLE.—The term 'like vehicle' for an advanced lean burn technology motor vehicle derived from a conventional production vehicle produced in the same model year means a model that is equivalent in the following areas:

"(i) Body style (2-door or 4-door).

"(ii) Transmission (automatic or manual).

"(iii) Acceleration performance (± 0.05 seconds).

"(iv) Drivetrain (2-wheel drive or 4-wheel drive).

"(v) Certification by the Administrator of the Environmental Protection Agency.

"(C) LIFETIME FUEL SAVINGS.—The term 'lifetime fuel savings' shall be calculated by dividing 120,000 by the difference between the 2000 model year city fuel economy for the vehicle inertia weight class and the city fuel economy for the new qualified hybrid motor vehicle.

"(d) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under subpart A and sections 27, 29, and 30A for the taxable year.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CONSUMABLE FUEL.—The term 'consumable fuel' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

"(2) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

"(3) 2000 MODEL YEAR CITY FUEL ECONOMY.—The 2000 model year city fuel economy with respect to any vehicle shall be measured under rules similar to the rules under section 4064(c).

"(4) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the ad-

ministration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

"(5) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(6) NO DOUBLE BENEFIT.—The amount of any deduction or credit allowable under this chapter (other than the credit allowable under this section), with respect to a vehicle described under subsection (b), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

"(7) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in

any sale or lease document the specific amount of any credit otherwise allowable to the entity under this section.

"(8) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

"(9) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

"(10) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

"(11) CARRYFORWARD ALLOWED.—

"(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year (referred to

as the 'unused credit year' in this paragraph), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

"(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under subparagraph (A).

"(12) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

"(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

"(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

"(2) DETERMINATION OF MOTOR VEHICLE ELIGIBILITY.—The Secretary, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

"(g) TERMINATION.—This section shall not apply to any property placed in service after—

"(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2012, and

"(2) in the case of any other property, December 31, 2006.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking "and" at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting ", and", and by adding at the end the following:

"(32) to the extent provided in section 30B(e)(5).".

(2) Section 6501(m) is amended by inserting "30B(e)(10)," after "30(d)(4),".

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by in-

serting after the item relating to section 30A the following:

"Sec. 30B. Alternative motor vehicle credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

TITLE II—RELIABILITY

SEC. 42001. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by striking "and" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) any natural gas gathering line, and".

(b) NATURAL GAS GATHERING LINE.—Subsection (i) of section 168 is amended by adding after paragraph (15) the following new paragraph:

"(16) NATURAL GAS GATHERING LINE.—The term 'natural gas gathering line' means—

"(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, or

"(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

"(i) a gas processing plant,

"(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

"(iii) an interconnection with an intrastate transmission pipeline, or

"(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.".

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (C)(i) the following:

"(C)(ii) ..... 10".

(d) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: ", or in section 168(e)(3)(C)(ii)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 42002. NATURAL GAS DISTRIBUTION LINES TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and by inserting '', and'', and by adding at the end the following new clause:

''(iv) any natural gas distribution line.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iii) the following:

''(E)(iv) ..... 20''.

(c) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: '', or in section 168(e)(3)(E)(iv)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 42003. ELECTRIC TRANSMISSION PROPERTY TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is

amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting '', and'', and by adding at the end the following new clause:

''(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iv) the following:

''(E)(v) ..... 20''.

(c) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: '', or in section 168(e)(3)(E)(v)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 42004. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and

corporations) is amended by inserting after section 179A the following new section:

"SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

"(a) TREATMENT AS EXPENSES.—A small business refiner (as defined in section 45H(c)(1)) may elect to treat 75 percent of qualified capital costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year as expenses which are not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which paid or incurred.

"(b) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on March 31, 2003, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

"(c) BASIS REDUCTION.—

"(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the

portion of the cost of such property taken into account under subsection (a).

"(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.".

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) is amended by striking "or" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting "; or", and by adding at the end the following new subparagraph:

"(I) expenditures for which a deduction is allowed under section 179B.".

(2) Section 312(k)(3)(B) is amended—

(A) by striking "section 179 or 179A" each place it appears and inserting "section 179, 179A, or 179B", and

(B) in the heading, by striking "179 OR 179A" and inserting "179, 179A, OR 179B".

(3) Section 1016(a) is amended by striking "and" at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting ",

and'', and by adding at the end the following new paragraph:

''(33) to the extent provided in section 179B(c).''

(4) Paragraphs (2)(C) and (3)(C) of section 1245(a) are each amended by inserting ''179B,'' after ''179A,''.

(5) The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 179A the following new item:

''Sec. 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after March 31, 2003, in taxable years ending after such date.

SEC. 42005. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following new section:

''SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

''(a) IN GENERAL.—For purposes of section 38, the amount of the low sulfur diesel fuel production credit de-

termined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

"(b) MAXIMUM CREDIT.—

"(1) IN GENERAL.—The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

"(A) 25 percent of the qualified capital costs incurred by the small business refiner with respect to such facility, reduced by

"(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

"(2) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on March 31, 2003, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

"(c) DEFINITIONS.—For purposes of this section—

"(1) SMALL BUSINESS REFINER.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil with respect to which not more than 1,500 persons are engaged in the refinery operations of the business on any day during such taxable year and whose average daily domestic refinery run for the 1-year period ending on March 31, 2003, did not exceed 205,000 barrels.

"(2) QUALIFIED CAPITAL COSTS.—The term 'qualified capital costs' means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

"(3) APPLICABLE EPA REGULATIONS.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

"(4) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any facility, the period beginning on April 1, 2003, and ending with the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility.

"(5) LOW SULFUR DIESEL FUEL.—The term 'low sulfur diesel fuel' means diesel fuel with a sulfur content of 15 parts per million or less.

"(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

"(e) CERTIFICATION.—

"(1) REQUIRED.—Not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is allowed with respect to a facility, the small business refiner must obtain certification from the Secretary, in consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with re-

spect to such facility will result in compliance with the applicable EPA regulations.

"(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

"(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application.

"(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

"(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends, and

"(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or

rule of law which would otherwise prevent such assessment.

"(f) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 taxpayer.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit) is amended by striking "plus" at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting ", plus", and by adding at the end the following new paragraph:

"(17) in the case of a small business refiner, the low sulfur diesel fuel production credit determined under section 45H(a).".

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding after subsection (d) the following new subsection:

"(e) LOW SULFUR DIESEL FUEL PRODUCTION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45H(a).".

(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to adjustments to basis) is amended by striking ''and'' at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting '', and'', and by adding at the end the following new paragraph:

''(34) in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d).''.

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

''Sec. 45H. Credit for production of low sulfur diesel fuel.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after March 31, 2003, in taxable years ending after such date.

SEC. 42006. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to certain refiners excluded) is amended to read as follows:

''(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and the related person for the taxable year exceed 75,000 barrels. For purposes

of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 42007. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

''(1) IN GENERAL.—In the case of any qualifying electric transmission transaction to which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

''(A) in the taxable year which includes the date of such transaction to the extent the

amount realized from such transaction exceeds—

"(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

"(ii) any portion of such cost previously taken into account under this subsection, and

"(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

"(2) QUALIFIED GAIN.—For purposes of this subsection, the term 'qualified gain' means, with respect to any qualifying electric transmission transaction in any taxable year—

"(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

"(B) any income derived from such transaction in excess of the amount described in sub-

paragraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

"(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2007, of—

"(A) property used in the trade or business of providing electric transmission services, or

"(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

"(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

"(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

"(B) a person—

"(i) who the Federal Energy Regulatory Commission determines in its au-

thorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

"(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2), or

"(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

"(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

"(ii) a political subdivision or affiliate thereof whose transmission facilities are

under the operational control of a person described in clause (i).

"(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'exempt utility property' means property used in the trade or business of—

"(i) generating, transmitting, distributing, or selling electricity, or

"(ii) producing, transmitting, distributing, or selling natural gas.

"(B) NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.—Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

"(6) SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as pur-

chased by such corporation for purposes of applying paragraph (1)(A).

"(7) TIME FOR ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

"(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

"(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

"(8) PURCHASE.—For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of

such property is its cost within the meaning of section 1012.

"(9) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 42008. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A is amended to read as follows:

"(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

"(1) IN GENERAL.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.

"(2) CONTRIBUTIONS AFTER FUNDING PERIOD.—Notwithstanding any other provision of this section, a taxpayer may pay into the Fund in any taxable year after the last taxable year to which the

ruling amount applies. Payments may not be made under the preceding sentence to the extent such payments would cause the assets of the Fund to exceed the nuclear decommissioning costs allocable to the taxpayer's current or former interest in the nuclear power plant to which the Fund relates. The limitation under the preceding sentence shall be determined by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended.''.

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Subsection (e) of section 468A is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

''(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

"(B) no amount shall be treated as distributed from such Fund, or be includible in gross income, by reason of such transfer.".

(c) TREATMENT OF CERTAIN DECOMMISSIONING COSTS.—

(1) IN GENERAL.—Section 468A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

"(f) TRANSFERS INTO QUALIFIED FUNDS.—

"(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund up to an amount equal to the excess of the total nuclear decommissioning costs with respect to such nuclear power plant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

"(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the

remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

"(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

"(C) TRANSFERS OF QUALIFIED FUNDS.—If—

"(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

"(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferor for the taxable year which includes such date.

"(D) SPECIAL RULES.—

"(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

"(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall be the adjusted basis of such property.

"(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

"(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.".

(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) is amended to read as follows:

"(A) fund the total nuclear decommissioning costs with respect to such power plant

over the estimated useful life of such power plant, and''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 42009. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking ''or'' at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

''(ii) from any provision or sale of transmission service or ancillary services if such services are provided on a non-discriminatory open access basis under an independent transmission provider agreement approved by FERC (other than income received or accrued directly or indirectly from a member),

''(iii) from any nuclear decommissioning transaction, or

''(iv) from any asset exchange or conversion transaction.''.

(2) DEFINITIONS AND SPECIAL RULES.—Paragraph (12) of section 501(c) is amended by adding at the end the following new subparagraphs:

"(E) For purposes of subparagraph (C)(ii), the term 'FERC' means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

"(F) For purposes of subparagraph (C)(iii), the term 'nuclear decommissioning transaction' means—

"(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

"(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

"(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

"(G) For purposes of subparagraph (C)(iv), the term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

"(i) generating, transmitting, distributing, or selling electric energy, or

"(ii) producing, transmitting, distributing, or selling natural gas.".

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS, ETC.—Paragraph (12) of section 501(c), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

"(H)(i) In the case of a mutual or cooperative electric company described in this para-

graph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

''(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

''(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

''(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

''(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

''(II) the megawatt hours of electric energy sold during the base year to such members.

"(v) For purposes of clause (iv)(II), the term 'base year' means—

"(I) the calendar year preceding the start-up year, or

"(II) at the election of the electric company, the second or third calendar years preceding the start-up year.

"(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

"(vii) For purposes of this subparagraph, the start-up year is the calendar year which includes the date of the enactment of this subparagraph or, if later, at the election of the mutual or cooperative electric company—

"(I) the first year that such electric company offers nondiscriminatory open access, or

"(II) the first year in which at least 10 percent of such electric company's sales are not to members of such electric company.

"(viii) A company shall not fail to be treated as a mutual or cooperative company for purposes of this paragraph or as a corporation op-

erating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

"(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.".

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end the following new paragraph:

"(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.".

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

"(c) CROSS REFERENCE.—

"For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 42010. ARBITRAGE RULES NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.

(a) IN GENERAL.—Subsection (b) of section 148 (relating to higher yielding investments) is amended by adding at the end the following new paragraph:

"(4) SAFE HARBOR FOR PREPAID NATURAL GAS.—

"(A) IN GENERAL.—The term 'investment-type property' does not include a prepayment under a qualified natural gas supply contract.

"(B) QUALIFIED NATURAL GAS SUPPLY CONTRACT.—For purposes of this paragraph, the term 'qualified natural gas supply contract' means any contract to acquire natural gas for resale by a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of—

"(i) the annual average amount during the testing period of natural gas pur-

chased (other than for resale) by customers of such utility who are located within the service area of such utility, and

"(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

"(C) NATURAL GAS USED TO GENERATE ELECTRICITY.—Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

"(i) only if the electricity is generated by a utility owned by a governmental unit, and

"(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

"(D) ADJUSTMENTS FOR CHANGES IN CUSTOMER BASE.—

"(i) NEW BUSINESS CUSTOMERS.—If—

"(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a

governmental unit enters into a contract to supply natural gas (other than for resale) for a business use at a property within the service area of such utility, and

"(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

"(ii) LOST CUSTOMERS.—The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and

who, as of the date of issuance of the issue, are customers of such utility.

"(E) RULING REQUESTS.—The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

"(F) ADJUSTMENT FOR NATURAL GAS OTHERWISE ON HAND.—

"(i) IN GENERAL.—The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

"(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

"(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

"(ii) APPLICABLE SHARE.—For purposes of the clause (i), the term 'applicable share' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

"(G) INTENTIONAL ACTS.—Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

"(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

"(ii) the amount of natural gas used to transport such natural gas to the utility.

"(H) TESTING PERIOD.—For purposes of this paragraph, the term 'testing period' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

"(I) SERVICE AREA.—For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

"(i) any area throughout which such utility provided at all times during the testing period—

"(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

"(II) in the case of an electric utility, electricity distribution services,

"(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

"(iii) any area recognized as the service area of such utility under State or Federal law.".

(b) PRIVATE LOAN FINANCING TEST NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.—Paragraph (2) of section 141(c) (providing exceptions to the private loan financing test) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of

subparagraph (B) and inserting ", or", and by adding at the end the following new subparagraph:

"(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

TITLE III—PRODUCTION

SEC. 43001. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits) is amended by adding at the end the following:

"SEC. 45I. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

"(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

"(1) the credit amount, and

"(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

"(b) CREDIT AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The credit amount is—

"(A) $3 per barrel of qualified crude oil production, and

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

"(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

"(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

"(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

"(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2003, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar

amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting '2002' for '1990').

"(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

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

"(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

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

"(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or natural gas which is produced from a qualified marginal well.

"(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

"(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any

well shall not be treated or qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

"(B) PROPORTIONATE REDUCTIONS.—

"(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

"(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

"(3) DEFINITIONS.—

"(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

"(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

"(ii) which, during the taxable year—

"(I) has average daily production of not more than 25 barrel equivalents, and

"(II) produces water at a rate not less than 95 percent of total well effluent.

"(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

"(C) BARREL EQUIVALENT.—The term 'barrel equivalent' means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

"(d) OTHER RULES.—

"(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying

natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

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

"(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.".

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) is amended by striking "plus" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ", plus", and by adding at the end the following:

"(18) the marginal oil and gas well production credit determined under section 45I(a).".

(c) CARRYBACK.—Subsection (a) of section 39 (relating to carryback and carryforward of unused credits generally) is amended by adding at the end the following:

"(3) 10-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—In the case of the marginal oil and gas well production credit—

"(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

"(B) paragraph (1) shall be applied by substituting '10 taxable years' for '1 taxable years' in subparagraph (A) thereof, and

"(C) paragraph (2) shall be applied—

"(i) by substituting '31 taxable years' for '21 taxable years' in subparagraph (A) thereof, and

"(ii) by substituting '30 taxable years' for '20 taxable years' in subparagraph (A) thereof.".

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

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

"Sec. 45I. Credit for producing oil and gas from marginal wells.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2003.

SEC. 43002. TEMPORARY SUSPENSION OF LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME AND EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.

(a) LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME.—Subsection (d) of section 613A (relating to limitation on percentage depletion in case of oil and gas wells) is amended by adding at the end the following new paragraph:

"(6) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT.—Paragraph (1) shall not apply to taxable years beginning after December 31, 2003, and before January 1, 2007, including with respect to amounts carried under the second sentence of paragraph (1) to such taxable years.".

(b) EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.—Subparagraph (H) of section 613A(c)(6) (relating to temporary suspension of taxable income limit with respect to marginal production) is amended by striking "2004" and inserting "2007".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 43003. AMORTIZATION OF DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

''(1) IN GENERAL.—Any delay rental payment paid or incurred in connection with the development of oil or gas wells within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such payment was paid or incurred.

''(2) HALF-YEAR CONVENTION.—For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

''(3) EXCLUSIVE METHOD.—Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

"(4) TREATMENT UPON ABANDONMENT.—If any property to which a delay rental payment relates is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

"(5) DELAY RENTAL PAYMENTS.—For purposes of this subsection, the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2003.

SEC. 43004. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

"(1) IN GENERAL.—Any geological and geophysical expenses paid or incurred in connection

with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

"(2) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of paragraphs (2), (3), and (4) of subsection (h) shall apply.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2003.

SEC. 43005. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 is amended by adding at the end the following new subsection:

"(h) EXTENSION FOR OTHER FACILITIES.—

"(1) EXTENSION FOR OIL AND CERTAIN GAS.—In the case of a well for producing qualified fuels described in subparagraph (A) or (B)(i) of subsection (c)(1)—

"(A) APPLICATION OF CREDIT FOR NEW WELLS.—Notwithstanding subsection (f), this section shall apply with respect to such fuels—

"(i) which are produced from a well drilled after the date of the enactment of this subsection and before January 1, 2007, and

"(ii) which are sold not later than the close of the 4-year period beginning on the date that such well is drilled, or, if earlier, January 1, 2010.

"(B) EXTENSION OF CREDIT FOR OLD WELLS.—Subsection (f)(2) shall be applied by substituting '2007' for '2003' with respect to wells described in subsection (f)(1)(A) with respect to such fuels.

"(2) EXTENSION FOR FACILITIES PRODUCING QUALIFIED FUEL FROM LANDFILL GAS.—

"(A) IN GENERAL.—In the case of a facility for producing qualified fuel from landfill gas which was placed in service after June 30, 1998, and before January 1, 2007, this section shall apply to fuel produced at such facility during the 5-year period beginning on the later of—

"(i) the date such facility was placed in service, or

"(ii) the date of the enactment of this subsection.

"(B) REDUCTION OF CREDIT FOR CERTAIN LANDFILL FACILITIES.—In the case of a facility to which paragraph (1) applies and which is located at a landfill which is required pursuant to section 60.751(b)(2) or section 60.33c of title 40, Code of Federal Regulations (as in effect on April 3, 2003) to install and operate a collection and control system which captures gas generated within the landfill, subsection (a)(1) shall be applied to gas so captured by substituting '$2' for '$3' for the taxable year during which such system is required to be installed and operated.

"(3) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

"(A) DAILY LIMIT.—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service

shall not be taken into account in determining such average.

"(B) EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT.—In the case of fuels sold during 2003, the dollar amount applicable under subsection (a)(1) shall be $3 (without regard to subsection (b)(2)). In the case of fuels sold after 2003, subparagraph (B) of subsection (d)(2) shall be applied by substituting '2003' for '1979'.".

(b) TREATMENT AS BUSINESS CREDIT.—

(1) CREDIT MOVED TO SUBPART RELATING TO BUSINESS RELATED CREDITS.—The Internal Revenue Code of 1986 is amended by redesignating section 29 as section 45J and by moving section 45J (as so redesignated) from subpart B of part IV of subchapter A of chapter 1 to the end of subpart D of part IV of subchapter A of chapter 1.

(2) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) is amended by striking "plus" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ", plus", and by adding at the end the following:

"(19) the nonconventional source production credit determined under section 45J(a).".

(3) CONFORMING AMENDMENTS.—

(A) Section 30(b)(2)(A), as redesignated by section 110(a), is amended by striking ''sections 27 and 29'' and inserting ''section 27''.

(B) Section 30B(d), as added by section 41011, is amended by striking '', 29,''.

(C) Section 39(d) is amended by adding at the end the following new paragraph:

''(13) NO CARRYBACK FOR NONCONVENTIONAL SOURCE PRODUCTION CREDIT.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45J may be carried back to a taxable year ending before April 1, 2003.''.

(D) Sections 43(b)(2), 45I(b)(2)(C) (as added by section 43001), and 613A(c)(6)(C) are each amended by striking ''section 29(d)(2)(C)'' and inserting ''section 45J(d)(2)(C)''.

(E) Paragraph (9) of section 45(c), as added by section 41002(c), is amended by striking ''section 29'' and inserting ''section 45J'' and by striking ''SECTION 29'' in the heading of such paragraph and inserting ''SECTION 45J''.

(F) Section 45I(d)(3), as added by section 43001, is amended by striking ''section 29'' each place it appears and inserting ''section 45J''.

(G) Section 45J(a), as amended by section 43001(d) and redesignated by paragraph (1), is amended by striking ''At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year'' and inserting ''For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is''.

(H) Section 45J(b), as so redesignated, is amended by striking paragraph (6).

(I) Section 53(d)(1)(B)(iii) is amended by striking ''under section 29'' and all that follows through ''or not allowed''.

(J) Section 55(c)(2) is amended by striking ''29(b)(6),''.

(K) Subsection (a) of section 772 is amended by inserting ''and'' at the end of paragraph (9), by striking paragraph (10), and by

redesignating paragraph (11) as paragraph (10).

(L) Paragraph (5) of section 772(d) is amended by striking ''the foreign tax credit, and the credit allowable under section 29'' and inserting ''and the foreign tax credit''.

(M) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 29.

(N) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45I the following new item:

''Sec. 45J. Credit for producing fuel from a nonconventional source.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to fuel sold after March 31, 2003, in taxable years ending after such date.

(2) TREATMENT AS BUSINESS CREDIT.—The amendments made by subsection (b) shall apply to taxable years ending after March 31, 2003.

SEC. 43006. BUSINESS RELATED ENERGY CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULES FOR SPECIFIED ENERGY CREDITS.—

"(A) IN GENERAL.—In the case of specified energy credits—

"(i) this section and section 39 shall be applied separately with respect to such credits, and

"(ii) in applying paragraph (1) to such credits—

"(I) the tentative minimum tax shall be treated as being zero, and

"(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified energy credits).

"(B) SPECIFIED ENERGY CREDITS.—For purposes of this subsection, the term 'specified

energy credits' means the credits determined under sections 45G, 45H, and 45I.

"(C) SPECIAL RULE FOR QUALIFIED WIND FACILITIES.—For purposes of this subsection, the term 'specified energy credits' shall include the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

"(i) at a facility using wind to produce electricity which is originally placed in service after the date of the enactment of this paragraph, and

"(ii) during the 4-year period beginning on the date that such facility was originally placed in service.".

(b) CONFORMING AMENDMENTS.—Paragraphs (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each amended by inserting "or the specified energy credits" after "employee credit".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 43007. TEMPORARY REPEAL OF ALTERNATIVE MINIMUM TAX PREFERENCE FOR INTANGIBLE DRILLING COSTS.

(a) IN GENERAL.—Clause (ii) of section 57(a)(2)(E) is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply to taxable years beginning after December 31, 2003, and before January 1, 2006.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 43008. ALLOWANCE OF ENHANCED RECOVERY CREDIT AGAINST THE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subparagraph (B) of section 38(c)(4), as amended by section 43006, is amended by adding at the end the following new sentence: ''For taxable years beginning after December 31, 2003, and before January 1, 2006, such term includes the credit determined under section 43.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

TITLE IV—CORPORATE EXPATRIATION

SEC. 44001. TAX TREATMENT OF CORPORATE EXPATRIATION.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

"SEC. 7874. TAX TREATMENT OF CORPORATE EXPATRIATION.

"(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

"(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

"(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

"(A) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substan-

tially all of the properties constituting a trade or business of a domestic partnership,

"(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

"(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

"(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

"(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

"(3) TERMINATION.—This subsection shall not apply to any acquisition completed after December 31, 2004.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) FOREIGN INCORPORATED ENTITY.—The term 'foreign incorporated entity' means any entity which is, or but for subsection (a) would be, treated as a foreign corporation for purposes of this title.

"(2) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to paragraphs (2), (3), and (4) of section 1504(b), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

"(3) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership under subsection (a)(3)(B)—

"(A) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

"(B) stock of such foreign incorporated entity which is sold in a public offering related to

the acquisition described in subsection (a)(3)(A).

"(4) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(3)(B) are met, such actions shall be treated as pursuant to a plan.

"(5) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

"(6) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(3)(B) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to de-

termine whether a corporation is an inverted domestic corporation, including regulations—

"(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

"(B) to treat stock as not stock.

"(c) SPECIAL RULE FOR TREATIES.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

"(d) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

"(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

"(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.".

(b) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

"Sec. 7874. Tax treatment of corporate expatriation."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 4, 2003.

SEC. 44002. EXPRESSING THE SENSE OF THE CONGRESS THAT TAX REFORM IS NEEDED TO ADDRESS THE ISSUE OF CORPORATE EXPATRIATION.

(a) FINDINGS.—The Congress finds that—

(1) the tax laws of the United States are overly complex;

(2) the tax laws of the United States are among the most burdensome and uncompetitive in the world;

(3) the tax laws of the United States make it difficult for domestically-owned United States companies to compete abroad and in the United States;

(4) a domestically-owned corporation is disadvantaged compared to a United States subsidiary of a foreign-owned corporation; and

(5) international competitiveness is forcing many United States corporations to make a choice they do not want to make–go out of business, sell the business to a foreign competitor, or become a

subsidiary of a foreign corporation (i.e., engage in an inversion transaction).

(b) SENSE OF CONGRESS.—It is the sense of Congress that passage of legislation to fix the underlying problems with our tax laws is essential and should occur as soon as possible, so United States corporations will not face the current pressures to engage in inversion transactions.

DIVISION E—CLEAN COAL

SEC. 50001. AUTHORIZATION OF APPROPRIATIONS.

(a) CLEAN COAL POWER INITIATIVE.—Except as provided in subsection (b), there are authorized to be appropriated to the Secretary to carry out the activities authorized by this division $200,000,000 for each of the fiscal years 2004 through 2012, to remain available until expended.

(b) LIMIT ON USE OF FUNDS.—The Secretary shall transmit to the Committee on Energy and Commerce and the Committee on Science of the House of Representatives, and to the Senate, the report required by this subsection not later than March 31, 2005. Notwithstanding subsection (a), no funds may be used to carry out the activities authorized by this division after September 30, 2005, unless the report has been transmitted and one month has elapsed since that transmission. The report

shall include, with respect to subsection (a), a 10-year plan containing—

(1) a detailed assessment of whether the aggregate funding levels provided under subsection (a) are the appropriate funding levels for that program;

(2) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(4) a detailed description of how the program will avoid problems enumerated in General Accounting Office reports on the Clean Coal Technology Program, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

(c) APPLICABILITY.—Subsection (b) shall not apply to any project begun before September 30, 2005.

SEC. 50002. PROJECT CRITERIA.

(a) IN GENERAL.—The Secretary shall not provide funding under this division for any project that does not advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service or have been demonstrated on

a scale that the Secretary determines is sufficient to demonstrate that commercial service is viable as of the date of the enactment of this Act.

(b) TECHNICAL CRITERIA FOR CLEAN COAL POWER INITIATIVE.—

(1) GASIFICATION.—(A) In allocating the funds made available under section 50001(a), the Secretary shall ensure that at least 60 percent of the funds are used only for projects on coal-based gasification technologies, including gasification combined cycle, gasification fuel cells, gasification coproduction, and hybrid gasification/combustion.

(B) The Secretary shall periodically set technical milestones specifying the emission and thermal efficiency levels that coal gasification projects must be designed to and reasonably expected to achieve. The technical milestones shall get more restrictive during the life of the program. The Secretary shall set the periodic milestones so as to achieve by 2020 coal gasification projects able—

(i) to remove 99 percent of sulfur dioxide;

(ii) to emit no more than .05 lbs of NOx per million BTU;

(iii) to achieve substantial reductions in mercury emissions; and

(iv) to achieve a thermal efficiency of—

(I) 60 percent for coal of more than 9,000 Btu;

(II) 59 percent for coal of 7,000 to 9,000 Btu; and

(III) 50 percent for coal of less than 7,000 Btu.

(2) OTHER PROJECTS.—The Secretary shall periodically set technical milestones for projects not described in paragraph (1). The milestones shall specify the emission and thermal efficiency levels that projects funded under this paragraph must be designed to and reasonably expected to achieve. The technical milestones shall get more restrictive during the life of the program. The Secretary shall set the periodic milestones so as to achieve by 2010 projects able—

(A) to remove 97 percent of sulfur dioxide;

(B) to emit no more than .08 lbs of NOx per million BTU;

(C) to achieve substantial reductions in mercury emissions; and

(D) to achieve a thermal efficiency of—

(i) 45 percent for coal of more than 9,000 Btu;

(ii) 44 percent for coal of 7,000 to 9,000 Btu; and

(iii) 40 percent for coal of less than 7,000 Btu.

(3) CONSULTATION.—Before setting the technical milestones under paragraphs (1)(B) and (2), the Secretary shall consult with the Administrator of the Environmental Protection Agency and interested entities, including coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers.

(4) EXISTING UNITS.—In the case of projects at existing units, in lieu of the thermal efficiency requirements set forth in paragraph (1)(B)(iv) and (2)(D), the milestones shall be designed to achieve an overall thermal design efficiency improvement compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(5) PERMITTED USES.—In allocating funds made available under section 50001, the Secretary may fund projects that include, as part of the project, the separation and capture of carbon dioxide.

(c) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this division unless the recipient has documented to the satisfaction of the Secretary that—

(1) the award recipient is financially viable without the receipt of additional Federal funding;

(2) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(d) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects that meet the requirements of subsections (a), (b), and (c) and are likely to—

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy;

(2) improve the competitiveness of coal among various forms of energy in order to maintain a diversity of fuel choices in the United States to meet electricity generation requirements; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities, using different types of coal, that use coal as the primary feedstock as of the date of the enactment of this Act.

(e) FEDERAL SHARE.—The Federal share of the cost of a coal or related technology project funded by the Secretary under this division shall not exceed 50 percent.

(f) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act, achievable for purposes of section 169 of that Act, or achievable in practice for purposes of section 171 of that Act solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this division.

SEC. 50003. REPORT.

Not later than 1 year after the date of the enactment of this Act, and once every 2 years thereafter through 2011, the Secretary, in consultation with other appropriate Federal agencies, shall transmit to the Committee

on Energy and Commerce and the Committee on Science of the House of Representatives, and to the Senate, a report describing—

(1) the technical milestones set forth in section 50002 and how those milestones ensure progress toward meeting the requirements of subsections (b)(1)(B) and (b)(2) of section 50002; and

(2) the status of projects funded under this division.

SEC. 50004. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 50001, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities that can show the greatest potential for advancing new clean coal technologies.

DIVISION F—HYDROGEN

SEC. 60001. DEFINITIONS.

In this division:

(1) The term ''Advisory Committee'' means the Hydrogen Technical and Fuel Cell Advisory Committee established under section 60005 of this Act.

(2) The term ''Department'' means the Department of Energy.

(3) The term ''fuel cell'' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by an electrochemical process taking place at separate electrodes in the device.

(4) The term ''infrastructure'' means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen and other advanced clean fuels.

(5) The term ''light duty vehicle'' means a car or truck, classified by the Department of Transportation as a Class I or IIA vehicle.

(6) The term ''Secretary'' means the Secretary of Energy.

SEC. 60002. PLAN.

Not later than six months after the date of enactment of this Act, the Secretary shall transmit to the Congress a coordinated plan for the programs described in this division and any other programs of the Department that are directly related to fuel cells or hydrogen. The plan shall describe, at a minimum—

(1) the agenda for the next five years for the programs authorized under this division, including the agenda for each activity enumerated in section 60003(a);

(2) the types of entities that will carry out the activities under this division and what role each entity is expected to play;

(3) the milestones that will be used to evaluate the programs for the next five years;

(4) the most significant technical and nontechnical hurdles that stand in the way of achieving the goals described in section 60003(b), and how the programs will address those hurdles; and

(5) the policy assumptions that are implicit in the plan, including any assumptions that would affect the sources of hydrogen or the marketability of hydrogen-related products.

SEC. 60003. PROGRAM.

(a) ACTIVITIES.—The Secretary, in partnership with the private sector, shall conduct a program to address—

(1) production of hydrogen from diverse energy sources, including—

(A) fossil fuels, which may include carbon capture and sequestration;

(B) hydrogen-carrier fuels (including ethanol and methanol);

(C) renewable energy resources; and

(D) nuclear energy;

(2) the safe delivery of hydrogen or hydrogen-carrier fuels, including—

(A) transmission by pipeline and other distribution methods; and

(B) convenient and economic refueling of vehicles either at central refueling stations or through distributed on-site generation;

(3) advanced vehicle technologies, including—

(A) engine and emission control systems;

(B) energy storage, electric propulsion, and hybrid systems;

(C) automotive materials;

(D) clean fuels in addition to hydrogen; and

(E) other advanced vehicle technologies;

(4) storage of hydrogen or hydrogen-carrier fuels, including development of materials for safe and economic storage in gaseous, liquid, or solid form at refueling facilities and onboard vehicles;

(5) development of safe, durable, affordable, and efficient fuel cells, including research and development on fuel-flexible fuel cell power systems, improved manufacturing processes, high-temperature membranes, cost-effective fuel processing for natural

gas, fuel cell stack and system reliability, low temperature operation, and cold start capability; and

(6) development of necessary codes and standards (including international codes and standards) and safety practices for the production, distribution, storage, and use of hydrogen, hydrogen-carrier fuels and related products.

(b) PROGRAM GOALS.—

(1) VEHICLES.—For vehicles, the goals of the program are—

(A) to enable a commitment by automakers no later than year 2015 to offer safe, affordable, and technically viable hydrogen fuel cell vehicles in the mass consumer market; and

(B) to enable production, delivery, and acceptance by consumers of model year 2020 hydrogen fuel cell and other vehicles that will have—

(i) a range of at least three hundred miles;

(ii) improved performance and ease of driving;

(iii) safety and performance comparable to vehicle technologies in the market;

(iv) when compared to light duty vehicles in model year 2003—

(I) a fuel economy that is two and one half times the equivalent fuel economy of comparable light duty vehicles in model year 2003; and

(II) near zero emissions of air pollutants; and

(v) vehicle fuel system crash integrity and occupant protection.

(2) HYDROGEN ENERGY AND ENERGY INFRASTRUCTURE.—For hydrogen energy and energy infrastructure, the goals of the program are to enable a commitment not later than 2015 that will lead to infrastructure by 2020 that will provide—

(A) safe and convenient refueling;

(B) improved overall efficiency;

(C) widespread availability of hydrogen from domestic energy sources through—

(i) production, with consideration of emissions levels;

(ii) delivery, including transmission by pipeline and other distribution methods for hydrogen; and

(iii) storage, including storage in surface transportation vehicles;

(D) hydrogen for fuel cells, internal combustion engines, and other energy conversion devices for portable, stationary, and transportation applications; and

(E) other technologies consistent with the Department's plan.

(3) FUEL CELLS.—The goals for fuel cells and their portable, stationary, and transportation applications are to enable—

(A) safe, economical, and environmentally sound hydrogen fuel cells;

(B) fuel cells for light duty and other vehicles; and

(C) other technologies consistent with the Department's plan.

(c) DEMONSTRATION.—In carrying out the program under this section, the Secretary shall fund a limited number of demonstration projects. In selecting projects under this subsection, the Secretary shall, to the extent practicable and in the public interest, select projects that—

(1) involve using hydrogen and related products at facilities or installations that would exist without the demonstration program, such as existing office

buildings, military bases, vehicle fleet centers, transit bus authorities, or parks;

(2) depend on reliable power from hydrogen to carry out essential activities;

(3) lead to the replication of hydrogen technologies and draw such technologies into the marketplace;

(4) integrate in a single project both mobile and stationary applications of hydrogen fuel cells;

(5) address the interdependency of demand for hydrogen fuel cell applications and hydrogen fuel infrastructure; and

(6) raise awareness of hydrogen technology among the public.

(d) DEPLOYMENT.—In carrying out the program under this section, the Secretary shall, in partnership with the private sector, conduct activities to facilitate the deployment of—

(1) hydrogen energy and energy infrastructure;

(2) fuel cells;

(3) advanced vehicle technologies; and

(4) clean fuels in addition to hydrogen.

(e) FUNDING.—(1) The Secretary shall carry out the program under this section using a competitive, merit-review process and consistent with the generally applicable

Federal laws and regulations governing awards of financial assistance, contracts, or other agreements.

(2) Activities under this section may be carried out by funding nationally recognized university-based research centers.

(3) The Secretary shall endeavor to avoid duplication or displacement of other research and development programs and activities.

(f) COST SHARING.—

(1) REQUIREMENT.—For projects carried out through grants, cooperative agreements, or contracts under this section, the Secretary shall require a commitment from non-Federal sources of at least—

(A) 20 percent of the cost of a project, except projects carried out under subsections (c) and (d); and

(B) 50 percent of the cost of a project carried out under subsection (c) or (d).

(2) REDUCTION.—The Secretary may reduce the non-Federal requirement under paragraph (1) if the Secretary determines that—

(A) the reduction is appropriate considering the technological risks involved; or

(B) the project is for technical analyses or other activities that the Secretary does not expect to result in a marketable product.

(3) SIZE OF NON-FEDERAL SHARE.—The Secretary may consider the size of the non-Federal share in selecting projects.

SEC. 60004. INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the President shall establish an interagency task force chaired by the Secretary or his designee with representatives from each of the following:

(1) The Office of Science and Technology Policy within the Executive Office of the President.

(2) The Department of Transportation.

(3) The Department of Defense.

(4) The Department of Commerce (including the National Institute of Standards and Technology).

(5) The Environmental Protection Agency.

(6) The National Aeronautics and Space Administration.

(7) Other Federal agencies as the Secretary determines appropriate.

(b) DUTIES.—

(1) PLANNING.—The interagency task force shall work toward—

(A) a safe, economical, and environmentally sound fuel infrastructure for hydrogen and hydrogen-carrier fuels, including an infrastructure that supports buses and other fleet transportation;

(B) fuel cells in government and other applications, including portable, stationary, and transportation applications;

(C) distributed power generation, including the generation of combined heat, power, and clean fuels including hydrogen;

(D) uniform hydrogen codes, standards, and safety protocols; and

(E) vehicle hydrogen fuel system integrity safety performance.

(2) ACTIVITIES.—The interagency task force may organize workshops and conferences, may issue publications, and may create databases to carry out its duties. The interagency task force shall—

(A) foster the exchange of generic, nonproprietary information and technology among industry, academia, and government;

(B) develop and maintain an inventory and assessment of hydrogen, fuel cells, and other advanced technologies, including the commercial capability of each technology for the economic and environmentally safe production, distribution, delivery, storage, and use of hydrogen;

(C) integrate technical and other information made available as a result of the programs and activities under this division;

(D) promote the marketplace introduction of infrastructure for hydrogen and other clean fuel vehicles; and

(E) conduct an education program to provide hydrogen and fuel cell information to potential end-users.

(c) AGENCY COOPERATION.—The heads of all agencies, including those whose agencies are not represented on the interagency task force, shall cooperate with and furnish information to the interagency task force, the Advisory Committee, and the Department.

SEC. 60005. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Hydrogen Technical and Fuel Cell Advisory Committee is established to advise the Secretary on the programs and activities under this division.

(b) MEMBERSHIP.—

(1) MEMBERS.—The Advisory Committee is comprised of not fewer than 12 nor more than 25 members. These members shall be appointed by the Secretary to represent domestic industry, academia, professional societies, government agencies, and financial, environmental, and other appropriate organizations based on the Department's assessment of the technical and other qualifications of committee members and the needs of the Advisory Committee.

(2) TERMS.—The term of a member of the Advisory Committee shall not be more than 3 years. The Secretary may appoint members of the Advisory Committee in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the Advisory Committee. A member of the Advisory Committee whose term is expiring may be reappointed.

(3) CHAIRPERSON.—The Advisory Committee shall have a chairperson, who is elected by the members from among their number.

(c) REVIEW.—The Advisory Committee shall review and make recommendations to the Secretary on—

(1) the implementation of programs and activities under this division;

(2) the safety, economical, and environmental consequences of technologies for the production, distribution, delivery, storage, or use of hydrogen energy and fuel cells; and

(3) the plan under section 60002.

(d) RESPONSE.—(1) The Secretary shall consider, but need not adopt, any recommendations of the Advisory Committee under subsection (c).

(2) The Secretary shall transmit a biennial report to the Congress describing any recommendations made by the Advisory Committee since the previous report. The report shall include a description of how the Secretary has implemented or plans to implement the recommendations, or an explanation of the reasons that a recommendation will not be implemented. The report shall be transmitted along with the President's budget proposal.

(e) SUPPORT.—The Secretary shall provide resources necessary in the judgment of the Secretary for the Advisory Committee to carry out its responsibilities under this division.

SEC. 60006. EXTERNAL REVIEW.

(a) PLAN.—The Secretary shall enter into an arrangement with a competitively selected nongovernmental

entity, such as the National Academy of Sciences, to review the plan prepared under section 60002, which shall be completed not later than six months after the entity receives the plan. Not later than 45 days after receiving the review, the Secretary shall transmit the review to the Congress along with a plan to implement the review's recommendations or an explanation of the reasons that a recommendation will not be implemented.

(b) ADDITIONAL REVIEW.—The Secretary shall enter into an arrangement with a competitively selected nongovernmental entity, such as the National Academy of Sciences, under which the entity will review the program under section 60003 during the fourth year following the date of enactment of this Act. The entity's review shall include the research priorities and technical milestones, and evaluate the progress toward achieving them. The review shall be completed no later than five years after the date of enactment of this Act. Not later than 45 days after receiving the review, the Secretary shall transmit the review to the Congress along with a plan to implement the review's recommendations or an explanation for the reasons that a recommendation will not be implemented.

SEC. 60007. MISCELLANEOUS PROVISIONS.

(a) REPRESENTATION.—The Secretary may represent the United States interests with respect to activities

and programs under this division, in coordination with the Department of Transportation, the National Institute of Standards and Technology, and other relevant Federal agencies, before governments and nongovernmental organizations including—

(1) other Federal, State, regional, and local governments and their representatives;

(2) industry and its representatives, including members of the energy and transportation industries; and

(3) in consultation with the Department of State, foreign governments and their representatives including international organizations.

(b) REGULATORY AUTHORITY.—Nothing in this division shall be construed to alter the regulatory authority of the Department.

SEC. 60008. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this division, in addition to any amounts made available for these purposes under other Acts—

(1) $273,500,000 for fiscal year 2004;

(2) $325,000,000 for fiscal year 2005;

(3) $375,000,000 for fiscal year 2006;

(4) $400,000,000 for fiscal year 2007; and

(5) $425,000,000 for fiscal year 2008.''.

SEC. 60009. FUEL CELL PROGRAM AT NATIONAL PARKS.

The Secretary of Energy, in cooperation with the Secretary of Interior and the National Park Service, is authorized to establish a program to provide matching funds to assist in the deployment of fuel cells at one or more prominent National Parks. The Secretary of Energy shall transmit to Congress within 1 year, and annually thereafter, a report describing any activities taken pursuant to such program. The report shall address whether activities taken pursuant to such program reduce the environmental impacts of energy use at National Parks. There are authorized to be appropriated $2,000,000 for each of fiscal years 2004 through 2010 to carry out the purposes of this section.

SEC. 60010. ADVANCED POWER SYSTEM TECHNOLOGY INCENTIVE PROGRAM.

(a) PROGRAM.—The Secretary of Energy is authorized to establish an Advanced Power System Technology Incentive Program to support the deployment of certain advanced power system technologies and to improve and protect certain critical governmental, industrial, and commercial processes. Funds provided under this section shall be used by the Secretary to make incentive payments to eligible owners or operators of advanced power system technologies to increase power generation through enhanced operational, economic, and environmental perform-

ance. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application establishing an applicant as either—

(1) a qualifying advanced power system technology facility; or

(2) a qualifying security and assured power facility.

(b) INCENTIVES.—Subject to availability of funds, a payment of 1.8 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying advanced power system technology facility under this section for electricity generated at such facility. An additional 0.7 cents per kilowatt-hour shall be paid to the owner or operator of a qualifying security and assured power facility for electricity generated at such facility. Any facility qualifying under this section shall be eligible for an incentive payment for up to, but not more than, the first 10,000,000 kilowatt-hours produced in any fiscal year.

(c) ELIGIBILITY.—For purposes of this section—

(1) the term ''qualifying advanced power system technology facility'' means a facility using an advanced fuel cell, turbine, or hybrid power system or power storage system to generate or store electric energy; and

(2) the term ''qualifying security and assured power facility'' means a qualifying advanced power system technology facility determined by the Secretary of Energy, in consultation with the Secretary of Homeland Security, to be in critical need of secure, reliable, rapidly available, high-quality power for critical governmental, industrial, or commercial applications.

(d) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Energy for the purposes of this section, $10,000,000 for each of the fiscal years 2004 through 2010.

DIVISION G—HOUSING

SEC. 70001. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AFFORDABLE HOUSING.

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

(1) in paragraph (1), by inserting before the semicolon at the end the following: '', including capabilities regarding the provision of energy efficient, affordable housing and residential energy conservation measures''; and

(2) in paragraph (2), by inserting before the semicolon the following: '', including such activities relating to the provision of energy efficient, afford-

able housing and residential energy conservation measures that benefit low-income families''.

SEC. 70002. INCREASE OF CDBG PUBLIC SERVICES CAP FOR ENERGY CONSERVATION AND EFFICIENCY ACTIVITIES.

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

(1) by inserting ''or efficiency'' after ''energy conservation'';

(2) by striking '', and except that'' and inserting ''; except that''; and

(3) by inserting before the period at the end the following: ''; and except that each percentage limitation under this paragraph on the amount of assistance provided under this title that may be used for the provision of public services is hereby increased by 10 percent, but such percentage increase may be used only for the provision of public services concerning energy conservation or efficiency''.

SEC. 70003. FHA MORTGAGE INSURANCE INCENTIVES FOR ENERGY EFFICIENT HOUSING.

(a) SINGLE FAMILY HOUSING MORTGAGE INSURANCE.—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended, in the first undesig-

nated paragraph beginning after subparagraph (B)(ii)(IV) (relating to solar energy systems), by striking ''20 percent'' and inserting ''30 percent''.

(b) MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 207(c) of the National Housing Act (12 U.S.C. 1713(c)) is amended, in the second undesignated paragraph beginning after paragraph (3) (relating to solar energy systems and residential energy conservation measures), by striking ''20 percent'' and inserting ''30 percent''.

(c) COOPERATIVE HOUSING MORTGAGE INSURANCE.—Section 213(p) of the National Housing Act (12 U.S.C. 1715e(p)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(d) REHABILITATION AND NEIGHBORHOOD CONSERVATION HOUSING MORTGAGE INSURANCE.—Section 220(d)(3)(B)(iii)(IV) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)(IV)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(e) LOW-INCOME MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 221(k) of the National Housing Act (12 U.S.C. 1715l(k)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(f) ELDERLY HOUSING MORTGAGE INSURANCE.—Section 231(c)(2)(C) of the National Housing Act (12

U.S.C. 1715v(c)(2)(C)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(g) CONDOMINIUM HOUSING MORTGAGE INSURANCE.—Section 234(j) of the National Housing Act (12 U.S.C. 1715y(j)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

SEC. 70004. PUBLIC HOUSING CAPITAL FUND.

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

(1) in subsection (d)(1)—

(A) in subparagraph (I), by striking ''and'' at the end;

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

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

''(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2-1998 and A112.18.1-2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other

means as the Secretary determines are appropriate; and

"(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures."; and

(2) in subsection (e)(2)(C)—

(A) by striking "The" and inserting the following:

"(i) IN GENERAL.—The"; and

(B) by adding at the end the following:

"(ii) THIRD PARTY CONTRACTS.—Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

"(iii) TERM OF CONTRACT.—The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements,

wall insulation, site-based generations, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''.

SEC. 70005. GRANTS FOR ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

Section 251(b)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8231(1)) is amended—

(1) by striking ''financed with loans'' and inserting ''assisted'';

(2) by inserting after ''1959,'' the following: ''which are eligible multifamily housing projects (as such term is defined in section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note)) and are subject to mortgage restructuring and rental assistance sufficiency plans under such Act,''; and

(3) by inserting after the period at the end of the first sentence the following new sentence: ''Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2-1998 and A112.18.1-2000, or

any revision thereto, applicable at the time of installation.''.

SEC. 70006. NORTH AMERICAN DEVELOPMENT BANK.

Part 2 of subtitle D of title V of the North American Free Trade Agreement Implementation Act (22 U.S.C. 290m–290m-3) is amended by adding at the end the following:

''SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.

''Consistent with the focus of the Bank's Charter on environmental infrastructure projects, the Board members representing the United States should use their voice and vote to encourage the Bank to finance projects related to clean and efficient energy, including energy conservation, that prevent, control, or reduce environmental pollutants or contaminants.''.

SEC. 70007. ENERGY-EFFICIENT APPLIANCES.

In purchasing appliances, a public housing agency shall purchase energy-efficient appliances that are Energy Star products or FEMP-designated products, as such terms are defined in section 552 of the National Energy Policy and Conservation Act (as amended by this Act), unless the purchase of energy-efficient appliances is not cost-effective to the agency.

SEC. 70008. ENERGY EFFICIENCY STANDARDS.

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

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2004'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

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

(B) in paragraph (2), by striking ''Council of American'' and all that follows through

"90.1–1989')" and inserting "2000 International Energy Conservation Code";

(2) in subsection (b)—

(A) by striking "1 year after the date of the enactment of the Energy Policy Act of 1992" and inserting "September 30, 2004"; and

(B) by striking "CABO" and all that follows through "1989" and inserting "the 2000 International Energy Conservation Code"; and

(3) in subsection (c)—

(A) in the heading, by striking "MODEL ENERGY CODE" and inserting "THE INTERNATIONAL ENERGY CONSERVATION CODE"; and

(B) by striking "CABO" and all that follows through "1989" and inserting "the 2000 International Energy Conservation Code".

SEC. 70009. ENERGY STRATEGY FOR HUD.

The Secretary of Housing and Urban Development shall develop and implement an integrated strategy to reduce utility expenses through cost-effective energy conservation and efficiency measures and energy efficient design and construction of public and assisted housing. The energy strategy shall include the development of energy

reduction goals and incentives for public housing agencies. The Secretary shall submit a report to Congress, not later than one year after the date of the enactment of this Act, on the energy strategy and the actions taken by the Department of Housing and Urban Development to monitor the energy usage of public housing agencies and shall submit an update every two years thereafter on progress in implementing the strategy.

Passed the House of Representatives April 11, 2003.

Attest:

Clerk.