

[CHAIRMEN'S PROPOSED CONFERENCE REPORT]

NOVEMBER 17, 2003

1 **TITLE XIV—MISCELLANEOUS**
2 **Subtitle A—Rural and Remote**
3 **Electricity Construction**

4 **SEC. 1401. DENALI COMMISSION PROGRAMS.**

5 (a) POWER COST EQUALIZATION PROGRAM.—There
6 are authorized to be appropriated to the Denali Commis-
7 sion established by the Denali Commission Act of 1998
8 (42 U.S.C. 3121 note) not more than \$5,000,000 for each
9 of fiscal years 2005 through 2011 for the purposes of
10 funding the power cost equalization program established
11 under section 42.45.100 of the Alaska Statutes.

12 (b) AVAILABILITY OF FUNDS.—

13 (1) PURPOSE.—Amounts described in para-
14 graph (2) shall be available to the Denali Commis-
15 sion to permit energy generation and development
16 (including fuel cells, hydroelectric, solar, wind, wave,
17 and tidal energy, and alternative energy sources),
18 energy transmission (including interties), fuel tank
19 replacement and clean-up, fuel transportation net-
20 works and related facilities, power cost equalization
21 programs, and other energy programs, notwith-
22 standing any other provision of law.

1 (2) AMOUNTS.—(A) Except as provided in sub-
2 paragraph (B), the amounts referred to in para-
3 graph (1) shall be any Federal royalties, rents, and
4 bonuses derived from the Federal share of Federal
5 oil and gas leases in the National Petroleum Reserve
6 in Alaska, up to a maximum of \$50,000,000, for
7 each of the fiscal years 2004 through 2023.

8 (B) If amounts available under subparagraph
9 (A) for one of the fiscal years 2004 through 2013
10 are less than \$50,000,000, the Secretary of Energy
11 shall make available an amount sufficient to ensure
12 that the amount available under this subsection for
13 that fiscal year equals \$50,000,000, from amounts
14 remaining after deposits are made under section
15 949(a)(1), from the same source from which those
16 deposits are made.

17 **SEC. 1402. RURAL AND REMOTE COMMUNITY ASSISTANCE.**

18 (a) PROGRAM.—Section 19 of the Rural Electrifica-
19 tion Act of 1936 (7 U.S.C 918a) is amended by striking
20 all that precedes subsection (b) and inserting the fol-
21 lowing:

1 **“SEC. 19. ELECTRIC GENERATION, TRANSMISSION, AND**
2 **DISTRIBUTION FACILITIES EFFICIENCY**
3 **GRANTS AND LOANS TO RURAL AND REMOTE**
4 **COMMUNITIES WITH EXTREMELY HIGH ELEC-**
5 **TRICITY COSTS.**

6 “(a) IN GENERAL.—The Secretary, acting through
7 the Rural Utilities Service, may—

8 “(1) in coordination with State rural develop-
9 ment initiatives, make grants and loans to persons,
10 States, political subdivisions of States, and other en-
11 tities organized under the laws of States, to acquire,
12 construct, extend, upgrade, and otherwise improve
13 electric generation, transmission, and distribution fa-
14 cilities serving communities in which the average
15 revenue per kilowatt hour of electricity for all con-
16 sumers is greater than 150 percent of the average
17 revenue per kilowatt hour of electricity for all con-
18 sumers in the United States (as determined by the
19 Energy Information Administration using the most
20 recent data available);

21 “(2) make grants and loans to the Denali Com-
22 mission established by the Denali Commission Act of
23 1998 (42 U.S.C. 3121 note; Public 105–277) to be
24 used for the purpose of providing funds to acquire,
25 construct, extend, upgrade, finance, and otherwise
26 improve electric generation, transmission, and dis-

1 tribution facilities serving communities described in
2 paragraph (1); and

3 “(3) make grants to State entities to establish
4 and support a revolving fund to provide a more cost-
5 effective means of purchasing fuel in areas where
6 the fuel cannot be shipped by means of surface
7 transportation.”.

8 (b) DEFINITION OF PERSON.—Section 13 of the
9 Rural Electrification Act of 1936 (7 U.S.C. 913) is
10 amended by striking “or association” and inserting “asso-
11 ciation, or Indian tribe (as defined in section 4 of the In-
12 dian Self-Determination and Education Assistance Act)”.

13 **Subtitle B—Coastal Programs**

14 **SEC. 1411. ROYALTY PAYMENTS UNDER LEASES UNDER** 15 **THE OUTER CONTINENTAL SHELF LANDS** 16 **ACT.**

17 (a) ROYALTY RELIEF.—

18 (1) IN GENERAL.—For purposes of providing
19 compensation for lessees and a State for which
20 amounts are authorized by section 6004(c) of the Oil
21 Pollution Act of 1990 (Public Law 101–380), a les-
22 see may withhold from payment any royalty due and
23 owing to the United States under any leases under
24 the Outer Continental Shelf Lands Act (43 U.S.C.
25 1301 et seq.) for offshore oil or gas production from

1 a covered lease tract if, on or before the date that
2 the payment is due and payable to the United
3 States, the lessee makes a payment to the Secretary
4 of the Interior of 44 cents for every \$1 of royalty
5 withheld.

6 (2) USE OF AMOUNTS PAID TO SECRETARY.—
7 Within 30 days after the Secretary of the Interior
8 receives payments under paragraph (1), the Sec-
9 retary of the Interior shall—

10 (A) make 47.5 percent of such payments
11 available to the State referred to in section
12 6004(c) of the Oil Pollution Act of 1990; and

13 (B) make 52.5 percent of such payments
14 available equally, only for the programs and
15 purposes identified as number 282 at page
16 1389 of House Report number 108–10 and for
17 a program described at page 1159 of that Re-
18 port in the State referred to in such section
19 6004(c).

20 (3) TREATMENT OF AMOUNTS.—Any royalty
21 withheld by a lessee in accordance with this section
22 (including any portion thereof that is paid to the
23 Secretary of the Interior under paragraph (1)) shall
24 be treated as paid for purposes of satisfaction of the
25 royalty obligations of the lessee to the United States.

1 (4) CERTIFICATION OF WITHHELD AMOUNTS.—

2 The Secretary of the Treasury shall—

3 (A) determine the amount of royalty with-
4 held by a lessee under this section; and

5 (B) promptly publish a certification when
6 the total amount of royalty withheld by the les-
7 see under this section is equal to—

8 (i) the dollar amount stated at page
9 47 of Senate Report number 101-534,
10 which is designated therein as the total
11 drainage claim for the West Delta field;
12 plus

13 (ii) interest as described at page 47 of
14 that Report.

15 (b) PERIOD OF ROYALTY RELIEF.—Subsection (a)
16 shall apply to royalty amounts that are due and payable
17 in the period beginning on January 1, 2004, and ending
18 on the date on which the Secretary of the Treasury pub-
19 lishes a certification under subsection (a)(4)(B).

20 (c) DEFINITIONS.—As used in this section:

21 (1) COVERED LEASE TRACT.—The term “cov-
22 ered lease tract” means a leased tract (or portion of
23 a leased tract)—

1 (A) lying seaward of the zone defined and
2 governed by section 8(g) of the Outer Conti-
3 nental Shelf Lands Act (43 U.S.C. 1337(g)); or

4 (B) lying within such zone but to which
5 such section does not apply.

6 (2) LESSEE.—The term “lessee”—

7 (A) means a person or entity that, on the
8 date of the enactment of the Oil Pollution Act
9 of 1990, was a lessee referred to in section
10 6004(c) of that Act (as in effect on that date
11 of the enactment), but did not hold lease rights
12 in Federal offshore lease OCS–G–5669; and

13 (B) includes successors and affiliates of a
14 person or entity described in subparagraph (A).

15 **SEC. 1412. DOMESTIC OFFSHORE ENERGY REINVESTMENT.**

16 (a) DOMESTIC OFFSHORE ENERGY REINVESTMENT
17 PROGRAM.—The Outer Continental Shelf Lands Act (43
18 U.S.C. 1331 et seq.) is amended by adding at the end
19 the following:

20 **“SEC. 32. DOMESTIC OFFSHORE ENERGY REINVESTMENT**
21 **PROGRAM.**

22 “(a) DEFINITIONS.—In this section:

23 “(1) APPROVED PLAN.—The term ‘approved
24 plan’ means a Secure Energy Reinvestment Plan ap-
25 proved by the Secretary under this section.

1 “(2) COASTAL ENERGY STATE.—The term
2 ‘Coastal Energy State’ means a Coastal State off
3 the coastline of which, as determined by the map
4 referenced in subsection (c)(2)(A), outer Continental
5 Shelf bonus bids or royalties are generated, other
6 than bonus bids or royalties from a leased tract
7 within any area of the outer Continental Shelf for
8 which a moratorium on new leasing was in effect as
9 of January 1, 2002, unless the lease was issued be-
10 fore the establishment of the moratorium and was in
11 production on such date.

12 “(3) COASTAL POLITICAL SUBDIVISION.—The
13 term ‘coastal political subdivision’ means a county,
14 parish, or other equivalent subdivision of a Coastal
15 Energy State, all or part of which lies within the
16 boundaries of the coastal zone of the State, as iden-
17 tified in the State’s approved coastal zone manage-
18 ment program under the Coastal Zone Management
19 Act of 1972 (16 U.S.C. 1451 et seq.) on the date
20 of the enactment of this section.

21 “(4) COASTAL POPULATION.—The term ‘coastal
22 population’ means the population of a coastal polit-
23 ical subdivision, as determined by the most recent
24 official data of the Census Bureau.

1 “(5) COASTLINE.—The term ‘coastline’ has the
2 same meaning as the term ‘coast line’ in subsection
3 2(c) of the Submerged Lands Act (43 U.S.C.
4 1301(e)).

5 “(6) FUND.—The term ‘Fund’ means the Se-
6 cure Energy Reinvestment Fund established by this
7 section.

8 “(7) LEASED TRACT.—The term ‘leased tract’
9 means a tract maintained under section 6 or leased
10 under section 8 for the purpose of drilling for, devel-
11 oping, and producing oil and natural gas resources.

12 “(8) QUALIFIED OUTER CONTINENTAL SHELF
13 REVENUES.—(A) Except as provided in subpara-
14 graph (B), the term ‘qualified outer Continental
15 Shelf revenues’ means all amounts received by the
16 United States on or after October 1, 2003, from
17 each leased tract or portion of a leased tract lying
18 seaward of the zone defined and governed by section
19 8(g), or lying within such zone but to which section
20 8(g) does not apply, including bonus bids, rents, roy-
21 alties (including payments for royalties taken in kind
22 and sold), net profit share payments, and related in-
23 terest.

24 “(B) Such term does not include any revenues
25 from a leased tract or portion of a leased tract that

1 is included within any area of the outer Continental
2 Shelf for which a moratorium on new leasing was in
3 effect as of January 1, 2002, unless the lease was
4 issued before the establishment of the moratorium
5 and was in production on such date.

6 “(9) SECRETARY.—The term ‘Secretary’ means
7 the Secretary of the Interior.

8 “(b) SECURE ENERGY REINVESTMENT FUND.—

9 “(1) ESTABLISHMENT.—There is established in
10 the Treasury of the United States a separate ac-
11 count which shall be known as the ‘Secure Energy
12 Reinvestment Fund’. The Fund shall consist of
13 amounts deposited under paragraph (2), and such
14 other amounts as may be appropriated to the Fund.

15 “(2) DEPOSITS.—For each fiscal year after fis-
16 cal year 2003, the Secretary of the Treasury shall
17 deposit into the Fund the following:

18 “(A) Notwithstanding section 9, all quali-
19 fied outer Continental Shelf revenues attrib-
20 utable to royalties received by the United States
21 in the fiscal year that are in excess of the fol-
22 lowing amount:

23 “(i) \$3,455,000,000 in the case of
24 royalties received in fiscal year 2004.

1 “(ii) \$3,726,000,000 in the case of
2 royalties received in fiscal year 2005.

3 “(iii) \$4,613,000,000 in the case of
4 royalties received in fiscal year 2006.

5 “(iv) \$5,226,000,000 in the case of
6 royalties received in fiscal year 2007.

7 “(v) \$5,841,000,000 in the case of
8 royalties received in fiscal year 2008.

9 “(vi) \$5,763,000,000 in the case of
10 royalties received in fiscal year 2009.

11 “(vii) \$6,276,000,000 in the case of
12 royalties received in fiscal year 2010.

13 “(viii) \$6,351,000,000 in the case of
14 royalties received in fiscal year 2011.

15 “(ix) \$6,551,000,000 in the case of
16 royalties received in fiscal year 2012.

17 “(x) \$5,120,000,000 in the case of
18 royalties received in fiscal year 2013.

19 “(B) Notwithstanding section 9, all quali-
20 fied outer Continental shelf revenues attrib-
21 utable to bonus bids received by the United
22 States in each of the fiscal years 2004 through
23 2013 that are in excess of \$1,000,000,000.

24 “(C) Notwithstanding section 9, in addi-
25 tion to amounts deposited under subparagraphs

1 (A) and (B), \$35,000,000 of amounts received
2 by the United States each fiscal year as royalti-
3 ties for oil or gas production on the outer Con-
4 tinenta Shelf, except that no amounts shall be
5 deposited under this subparagraph before fiscal
6 year 2004 or after fiscal year 2013.

7 “(D) All interest earned under paragraph
8 (4).

9 “(E) All repayments under subsection (f).

10 “(3) REDUCTION IN DEPOSIT.—(A) For each
11 fiscal year after fiscal year 2013 in which amounts
12 received by the United States as royalties for oil or
13 gas production on the outer Continental Shelf are
14 less than the sum of the amounts described in sub-
15 paragraph (B) (before the application of this sub-
16 paragraph), the Secretary of the Treasury shall re-
17 duce each of the amounts described in subparagraph
18 (B) proportionately.

19 “(B) The amounts referred to in subparagraph
20 (A) are the following:

21 “(i) The amount required to be covered
22 into the Historic Preservation Fund under sec-
23 tion 108 of the National Historic Preservation
24 Act (16 U.S.C. 470h) on the date of the enact-
25 ment of this paragraph.

1 “(ii) The amount required to be credited to
2 the Land and Water Conservation Fund under
3 section 2(c)(2) of the Land and Water Con-
4 servation Fund Act of 1965 (16 U.S.C. 4601–
5 5(e)(2)) on the date of the enactment of this
6 paragraph.

7 “(iii) The amount required to be deposited
8 under subparagraph (C) of paragraph (2) of
9 this subsection.

10 “(4) INVESTMENT.—The Secretary of the
11 Treasury shall invest moneys in the Fund (including
12 interest) in public debt securities with maturities
13 suitable to the needs of the Fund, as determined by
14 the Secretary of the Treasury, and bearing interest
15 at rates determined by the Secretary of the Treas-
16 ury, taking into consideration current market yields
17 on outstanding marketable obligations of the United
18 States of comparable maturity. Such invested mon-
19 eys shall remain invested until needed to meet re-
20 quirements for disbursement under this section.

21 “(5) REVIEW AND REVISION OF BASELINE
22 AMOUNTS.—Not later than December 31, 2008, the
23 Secretary of the Interior, in consultation with the
24 Secretary of the Treasury, shall—

1 “(A) determine the amount and composi-
2 tion of outer Continental Shelf revenues that
3 were received by the United States in each of
4 the fiscal years 2004 through 2008;

5 “(B) project the amount and composition
6 of outer Continental Shelf revenues that will be
7 received in the United States in each of the fis-
8 cal years 2009 through 2013; and

9 “(C) submit to the Congress a report re-
10 garding whether any of the dollar amounts set
11 forth in clauses (v) through (x) of paragraph
12 (2)(A) or paragraph (2)(B) should be modified
13 to reflect those projections.

14 “(6) AUTHORIZATION OF APPROPRIATION OF
15 ADDITIONAL AMOUNTS.—In addition to the amounts
16 deposited into the Fund under paragraph (2) there
17 are authorized to be appropriated to the Fund—

18 “(A) for each of fiscal years 2004 through
19 2013 up to \$500,000,000; and

20 “(B) for each fiscal year after fiscal year
21 2013 up to 25 percent of qualified outer Conti-
22 nental Shelf revenues received by the United
23 States in the preceding fiscal year.

24 “(c) USE OF SECURE ENERGY REINVESTMENT
25 FUND.—

1 “(1) IN GENERAL.—(A) The Secretary shall use
2 amounts in the Fund remaining after the application
3 of subsections (h) and (i) to pay to each Coastal En-
4 ergy State that has a Secure Energy Reinvestment
5 Plan approved by the Secretary under this section,
6 and to coastal political subdivisions of such State,
7 the amount allocated to the State or coastal political
8 subdivision, respectively, under this subsection.

9 “(B) The Secretary shall make payments under
10 this paragraph in December of 2004, and of each
11 year thereafter, from revenues received by the
12 United States in the immediately preceding fiscal
13 year.

14 “(2) ALLOCATION.—The Secretary shall allo-
15 cate amounts deposited into the Fund in a fiscal
16 year, and other amounts determined by the Sec-
17 retary to be available, among Coastal Energy States
18 that have an approved plan, and to coastal political
19 subdivisions of such States, as follows:

20 “(A)(i) Of the amounts made available for
21 each of the first 10 fiscal years for which
22 amounts are available for allocation under this
23 paragraph, the allocation for each Coastal En-
24 ergy State shall be calculated based on the ratio
25 of qualified outer Continental Shelf revenues

1 generated off the coastline of the Coastal En-
2 ergy State to the qualified outer Continental
3 Shelf revenues generated off the coastlines of
4 all Coastal Energy States for the period begin-
5 ning January 1, 1992, and ending December
6 31, 2001.

7 “(ii) Of the amounts available for a fiscal
8 year in a subsequent 10-fiscal-year period, the
9 allocation for each Coastal Energy State shall
10 be calculated based on such ratio determined by
11 the Secretary with respect to qualified outer
12 Continental Shelf revenues generated in each
13 subsequent corresponding 10-year period.

14 “(iii) For purposes of this subparagraph,
15 qualified outer Continental Shelf revenues shall
16 be considered to be generated off the coastline
17 of a Coastal Energy State if the geographic
18 center of the lease tract from which the reve-
19 nues are generated is located within the area
20 formed by the extension of the State’s seaward
21 lateral boundaries, calculated using the strict
22 and scientifically derived conventions estab-
23 lished to delimit international lateral boundaries
24 under the Law of the Sea, as indicated on the
25 map entitled ‘Calculated Seaward Lateral

1 Boundaries' and dated October 2003, on file in
2 the Office of the Director, Minerals Manage-
3 ment Service.

4 “(B) 35 percent of each Coastal Energy
5 State’s allocable share as determined under
6 subparagraph (A) shall be allocated among and
7 paid directly to the coastal political subdivisions
8 of the State by the Secretary based on the fol-
9 lowing formula:

10 “(i) 25 percent shall be allocated
11 based on the ratio of each coastal political
12 subdivision’s coastal population to the
13 coastal population of all coastal political
14 subdivisions of the Coastal Energy State.

15 “(ii) 25 percent shall be allocated
16 based on the ratio of each coastal political
17 subdivision’s coastline miles to the coast-
18 line miles of all coastal political subdivi-
19 sions of the State. In the case of a coastal
20 political subdivision without a coastline,
21 the coastline of the political subdivision for
22 purposes of this clause shall be one-third
23 the average length of the coastline of the
24 other coastal political subdivisions of the
25 State.

1 “(iii) 50 percent shall be allocated
2 based on a formula that allocates 75 per-
3 cent of the funds based on such coastal po-
4 litical subdivision’s relative distance from
5 any leased tract used to calculate that
6 State’s allocation and 25 percent of the
7 funds based on the relative level of outer
8 Continental Shelf oil and gas activities in
9 a coastal political subdivision to the level of
10 outer Continental Shelf oil and gas activi-
11 ties in all coastal political subdivisions in
12 such State, as determined by the Sec-
13 retary, except that in the case of a coastal
14 political subdivision in the State of Cali-
15 fornia that has a coastal shoreline, that is
16 not within 200 miles of the geographic cen-
17 ter of a leased tract or portion of a leased
18 tract, and in which there is located one or
19 more oil refineries the allocation under this
20 clause shall be determined as if that coast-
21 al political subdivision were located within
22 a distance of 50 miles from the geographic
23 center of the closest leased tract with
24 qualified outer Continental Shelf revenues.

1 “(3) REALLOCATION.—Any amount allocated to
2 a Coastal Energy State or coastal political subdivi-
3 sion of such a State but not disbursed because of a
4 failure of a Coastal Energy State to have an ap-
5 proved plan shall be reallocated by the Secretary
6 among all other Coastal Energy States in a manner
7 consistent with this subsection, except that the
8 Secretary—

9 “(A) shall hold the amount in escrow with-
10 in the Fund until the earlier of the end of the
11 next fiscal year in which the allocation is made
12 or the final resolution of any appeal regarding
13 the disapproval of a plan submitted by the
14 State under this section; and

15 “(B) shall continue to hold such amount in
16 escrow until the end of the subsequent fiscal
17 year thereafter, if the Secretary determines that
18 such State is making a good faith effort to de-
19 velop and submit, or update, a Secure Energy
20 Reinvestment Plan under subsection (d).

21 “(4) MINIMUM SHARE.—Notwithstanding any
22 other provision of this subsection, the amount allo-
23 cated under this subsection to each Coastal Energy
24 State each fiscal year shall be not less than 5 per-
25 cent of the total amount available for that fiscal year

1 for allocation under this subsection to Coastal En-
2 ergy States, except that for any Coastal Energy
3 State determined by the Secretary to have an area
4 formed by the extension of the State's seaward lat-
5 eral boundary, as designated by the map referenced
6 in paragraph (2)(A)(iii), of less than 490 square
7 statute miles, the amount allocated to such State
8 shall not be less than 10 percent of the total amount
9 available for that fiscal year for allocation under this
10 subsection.

11 “(5) RECOMPUTATION.—If the allocation to one
12 or more Coastal Energy States under paragraph (4)
13 with respect to a fiscal year is greater than the
14 amount that would be allocated to such States under
15 this subsection if paragraph (4) did not apply, then
16 the allocations under this subsection to all other
17 Coastal Energy States shall be paid from the
18 amount remaining after deduction of the amounts
19 allocated under paragraph (4), but shall be reduced
20 on a pro rata basis by the sum of the allocations
21 under paragraph (4) so that not more than 100 per-
22 cent of the funds available in the Fund for allocation
23 with respect to that fiscal year is allocated.

24 “(d) SECURE ENERGY REINVESTMENT PLAN.—

1 “(1) DEVELOPMENT AND SUBMISSION OF
2 STATE PLANS.—The Governor of each State seeking
3 to receive funds under this section shall prepare, and
4 submit to the Secretary, a Secure Energy Reinvest-
5 ment Plan describing planned expenditures of funds
6 received under this section. The Governor shall in-
7 clude in the State plan submitted to the Secretary
8 plans prepared by the coastal political subdivisions
9 of the State. The Governor and the coastal political
10 subdivision shall solicit local input and provide for
11 public participation in the development of the State
12 plan. In describing the planned expenditures, the
13 State and coastal political subdivisions shall include
14 only items that are uses authorized under subsection
15 (e).

16 “(2) APPROVAL OR DISAPPROVAL.—

17 “(A) IN GENERAL.—The Secretary may
18 not disburse funds to a State or coastal political
19 subdivision of a State under this section before
20 the date the State has an approved plan. The
21 Secretary shall approve a Secure Energy Reinvest-
22 ment Plan submitted by a State under
23 paragraph (1) if the Secretary determines that
24 the expenditures provided for in the plan are

1 uses authorized under subsection (e), and that
2 the plan contains each of the following:

3 “(i) The name of the State agency
4 that will have the authority to represent
5 and act for the State in dealing with the
6 Secretary for purposes of this section.

7 “(ii) A program for the implementa-
8 tion of the plan, that (I) has as a goal im-
9 proving the environment, (II) has as a goal
10 addressing the impacts of oil and gas pro-
11 duction from the outer Continental Shelf,
12 and (III) includes a description of how the
13 State and coastal political subdivisions of
14 the State will evaluate the effectiveness of
15 the plan.

16 “(iii) Certification by the Governor
17 that ample opportunity has been accorded
18 for public participation in the development
19 and revision of the plan.

20 “(iv) Measures for taking into account
21 other relevant Federal resources and pro-
22 grams. The plan shall be correlated so far
23 as practicable with other State, regional,
24 and local plans.

1 “(v) For any State for which the ratio
2 determined under subsection (c)(2)(A)(i)
3 or (c)(2)(A)(ii), as appropriate, expressed
4 as a percentage, exceeds 25 percent, a plan
5 to spend not less than 30 percent of the
6 total funds provided under this section
7 each fiscal year to that State and appro-
8 priate coastal political subdivisions, to ad-
9 dress the socioeconomic or environmental
10 impacts identified in the plan that remain
11 significant or progressive after implemen-
12 tation of mitigation measures identified in
13 the most current environmental impact
14 statement (as of the date of the enactment
15 of this clause) required under the National
16 Environmental Protection Act of 1969 for
17 lease sales under this Act.

18 “(vi) A plan to utilize at least one-half
19 of the funds provided pursuant to sub-
20 section (c)(2)(B), and a portion of other
21 funds provided to such State under this
22 section, on programs or projects that are
23 coordinated and conducted in partnership
24 between the State and coastal political sub-
25 division.

1 “(B) PROCEDURE AND TIMING.—The Sec-
2 retary shall approve or disapprove each plan
3 submitted in accordance with this subsection
4 within 90 days after its submission.

5 “(3) AMENDMENT OR REVISION.—Any amend-
6 ment to or revision of an approved plan shall be pre-
7 pared and submitted in accordance with the require-
8 ments under this paragraph for the submittal of
9 plans, and shall be approved or disapproved by the
10 Secretary in accordance with paragraph (2)(B).

11 “(e) AUTHORIZED USES.—A Coastal Energy State,
12 and a coastal political subdivision of such a State, shall
13 use amounts paid under this section (including any such
14 amounts deposited into a trust fund administered by the
15 State or coastal political subdivision dedicated to uses con-
16 sistent with this subsection), in compliance with Federal
17 and State law and the approved plan of the State, only
18 for one or more of the following purposes:

19 “(1) Projects and activities, including edu-
20 cational activities, for the conservation, protection,
21 or restoration of coastal areas including wetlands.

22 “(2) Mitigating damage to, or the protection of,
23 fish, wildlife, or natural resources.

24 “(3) To the extent of such sums as are consid-
25 ered reasonable by the Secretary, planning assist-

1 ance and administrative costs of complying with this
2 section.

3 “(4) Implementation of federally approved
4 plans or programs for marine, coastal, subsidence,
5 or conservation management or for protection of re-
6 sources from natural disasters.

7 “(5) Mitigating impacts of outer Continental
8 Shelf activities through funding onshore infrastruc-
9 ture and public service needs.

10 “(f) COMPLIANCE WITH AUTHORIZED USES.—If the
11 Secretary determines that an expenditure of an amount
12 made by a Coastal Energy State or coastal political sub-
13 division is not in accordance with the approved plan of
14 the State (including the plans of coastal political subdivi-
15 sions included in such plan), the Secretary shall not dis-
16 burse any further amounts under this section to that
17 Coastal Energy State or coastal political subdivision
18 until—

19 “(1) the amount is repaid to the Secretary; or

20 “(2) the Secretary approves an amendment to
21 the plan that authorizes the expenditure.

22 “(g) ARBITRATION OF STATE AND LOCAL DIS-
23 PUTES.—The Secretary may require, as a condition of any
24 payment under this section, that a State or coastal polit-
25 ical subdivision in a State must submit to arbitration—

1 “(1) any dispute between the State or coastal
2 political subdivision (or both) and the Secretary re-
3 garding implementation of this section; and

4 “(2) any dispute between the State and political
5 subdivision regarding implementation of this section,
6 including any failure to include, in the plan sub-
7 mitted by the State for purposes of subsection (d),
8 any spending plan of the coastal political subdivi-
9 sion.

10 “(h) ADMINISTRATIVE EXPENSES.—Of amounts in
11 the Fund each fiscal year, the Secretary may use up to
12 one-half of one percent for the administrative costs of im-
13 plementing this section.

14 “(i) FUNDING FOR CONSORTIUM.—

15 “(1) IN GENERAL.—Of amounts deposited into
16 the Fund in each fiscal year 2004 through 2013, 2
17 percent shall be available to the Secretary of the In-
18 terior to provide funding for the Coastal Restoration
19 and Enhancement through Science and Technology
20 program.

21 “(2) TREATMENT.—Any amount available
22 under this subsection for a fiscal year shall, for pur-
23 poses of determining the amount appropriated under
24 any other provision of law that authorizes appropria-
25 tions to carry out the program referred to in para-

1 graph (1), be treated as appropriated under that
2 other provision.

3 “(j) DISPOSITION OF FUNDS.—A Coastal Energy
4 State or coastal political subdivision may use funds pro-
5 vided to such entity under this section, subject to sub-
6 section (e), for any payment that is eligible to be made
7 with funds provided to States under section 35 of the Min-
8 eral Leasing Act (30 U.S.C. 191).

9 “(k) REPORTS.—Each fiscal year following a fiscal
10 year in which a Coastal Energy State or coastal political
11 subdivision of a Coastal Energy State receives funds under
12 this section, the Governor of the Coastal Energy State,
13 in coordination with such State’s coastal political subdivi-
14 sions, shall account for all funds so received for the pre-
15 vious fiscal year in a written report to the Secretary. The
16 report shall include, in accordance with regulations pre-
17 scribed by the Secretary, a description of all projects and
18 activities that received such funds. In order to avoid dupli-
19 cation, such report may incorporate, by reference, any
20 other reports required to be submitted under other provi-
21 sions of law.

22 “(l) SIGNS.—The Secretary shall require, as a condi-
23 tion of any allocation of funds provided with amounts
24 made available by this section, that each State and coastal
25 political subdivision shall include on any sign otherwise in-

1 stalled at any site at or near an entrance or public use
2 focal point area for which such funds are used, a state-
3 ment that the existence or development of the site (or
4 both), as appropriate, is a product of such funds.”.

5 (b) ADDITIONAL AMENDMENTS.—Section 31 of the
6 Outer Continental Shelf Lands Act (43 U.S.C. 1356a) is
7 amended—

8 (1) by striking subsection (a);

9 (2) in subsection (c) by striking “For fiscal
10 year 2001, \$150,000,000 is” and inserting “Such
11 sums as may be necessary to carry out this section
12 are”;

13 (3) in subsection (d)(1)(B) by striking “, ex-
14 cept” and all that follows through the end of the
15 sentence and inserting a period;

16 (4) by redesignating subsections (b) through (g)
17 in order as subsection (a) through (f); and

18 (5) by striking “subsection (f)” each place it
19 appears and inserting “subsection (e)”.

20 (c) UTILIZATION OF COASTAL RESTORATION AND
21 ENHANCEMENT THROUGH SCIENCE AND TECHNOLOGY
22 PROGRAM.—

23 (1) AUTHORIZATION.—The Secretary of the In-
24 terior and the Secretary of Commerce may each use
25 the Coastal Restoration and Enhancement through

1 Science and Technology program for the purposes
2 of—

3 (A) assessing the effects of coastal habitat
4 restoration techniques;

5 (B) developing improved ecosystem mod-
6 eling capabilities for improved predictions of
7 coastal conditions and habitat change and for
8 developing new technologies for restoration ac-
9 tivities; and

10 (C) identifying economic options to address
11 socioeconomic consequences of coastal degrada-
12 tion.

13 (2) CONDITION.—The Secretary of the Interior,
14 in consultation with the Secretary of Commerce,
15 shall ensure that the program—

16 (A) establishes procedures designed to
17 avoid duplicative activities among Federal agen-
18 cies and entities receiving Federal funds;

19 (B) coordinates with persons involved in
20 similar activities; and

21 (C) establishes a mechanism to collect, or-
22 ganize, and make available information and
23 findings on coastal restoration.

24 (3) REPORT.—Not later than September 30,
25 2008, the Secretary of the Interior, in consultation

1 with the Secretary of Commerce, shall transmit a re-
2 port to the Congress on the effectiveness of any Fed-
3 eral and State restoration efforts conducted pursu-
4 ant to this subsection and make recommendations to
5 improve coordinated coastal restoration efforts.

6 (4) FUNDING.—For each of fiscal years 2004
7 through 2013, there is authorized to be appropriated
8 to the Secretary \$10,000,000 to carry out activities
9 under this subsection.

10 **Subtitle C—Reforms to the Board**
11 **of Directors of the Tennessee**
12 **Valley Authority**

13 **SEC. 1431. CHANGE IN COMPOSITION, OPERATION, AND DU-**
14 **TIES OF THE BOARD OF DIRECTORS OF THE**
15 **TENNESSEE VALLEY AUTHORITY.**

16 The Tennessee Valley Authority Act of 1933 (16
17 U.S.C. 831 et seq.) is amended by striking section 2 and
18 inserting the following:

19 **“SEC. 2. MEMBERSHIP, OPERATION, AND DUTIES OF THE**
20 **BOARD OF DIRECTORS.**

21 **“(a) MEMBERSHIP.—**

22 **“(1) APPOINTMENT.—**The Board of Directors
23 of the Corporation (referred to in this Act as the
24 ‘Board’) shall be composed of 9 members appointed
25 by the President by and with the advice and consent

1 of the Senate, at least 5 of whom shall be a legal
2 resident of a State any part of which is in the serv-
3 ice area of the Corporation.

4 “(2) CHAIRMAN.—The members of the Board
5 shall select 1 of the members to act as chairman of
6 the Board.

7 “(b) QUALIFICATIONS.—To be eligible to be ap-
8 pointed as a member of the Board, an individual—

9 “(1) shall be a citizen of the United States;

10 “(2) shall have management expertise relative
11 to a large for-profit or nonprofit corporate, govern-
12 ment, or academic structure;

13 “(3) shall not be an employee of the Corpora-
14 tion; and

15 “(4) shall make full disclosure to Congress of
16 any investment or other financial interest that the
17 individual holds in the energy industry.

18 “(c) RECOMMENDATIONS.—In appointing members
19 of the Board, the President shall—

20 “(1) consider recommendations from such pub-
21 lic officials as—

22 “(A) the Governors of States in the service
23 area;

24 “(B) individual citizens;

1 “(C) business, industrial, labor, electric
2 power distribution, environmental, civic, and
3 service organizations; and

4 “(D) the congressional delegations of the
5 States in the service area; and

6 “(2) seek qualified members from among per-
7 sons who reflect the diversity, including the geo-
8 graphical diversity, and needs of the service area of
9 the Corporation.

10 “(d) TERMS.—

11 “(1) IN GENERAL.—A member of the Board
12 shall serve a term of 5 years. A member of the
13 Board whose term has expired may continue to serve
14 after the member’s term has expired until the date
15 on which a successor takes office, except that the
16 member shall not serve beyond the end of the ses-
17 sion of Congress in which the term of the member
18 expires.

19 “(2) VACANCIES.—A member appointed to fill a
20 vacancy on the Board occurring before the expira-
21 tion of the term for which the predecessor of the
22 member was appointed shall be appointed for the re-
23 mainder of that term.

24 “(e) QUORUM.—

1 “(1) IN GENERAL.—Five of the members of the
2 Board shall constitute a quorum for the transaction
3 of business.

4 “(2) VACANCIES.—A vacancy on the Board
5 shall not impair the power of the Board to act.

6 “(f) COMPENSATION.—

7 “(1) IN GENERAL.—A member of the Board
8 shall be entitled to receive—

9 “(A) a stipend of—

10 “(i) \$45,000 per year; or

11 “(ii)(I) in the case of the chairman of
12 any committee of the Board created by the
13 Board, \$46,000 per year; or

14 “(II) in the case of the chairman of
15 the Board, \$50,000 per year; and

16 “(B) travel expenses, including per diem in
17 lieu of subsistence, in the same manner as per-
18 sons employed intermittently in Government
19 service under section 5703 of title 5, United
20 States Code.

21 “(2) ADJUSTMENTS IN STIPENDS.—The
22 amount of the stipend under paragraph (1)(A)(i)
23 shall be adjusted by the same percentage, at the
24 same time and manner, and subject to the same lim-

1 itations as are applicable to adjustments under sec-
2 tion 5318 of title 5, United States Code.

3 “(g) DUTIES.—

4 “(1) IN GENERAL.—The Board shall—

5 “(A) establish the broad goals, objectives,
6 and policies of the Corporation that are appro-
7 priate to carry out this Act;

8 “(B) develop long-range plans to guide the
9 Corporation in achieving the goals, objectives,
10 and policies of the Corporation and provide as-
11 sistance to the chief executive officer to achieve
12 those goals, objectives, and policies;

13 “(C) ensure that those goals, objectives,
14 and policies are achieved;

15 “(D) approve an annual budget for the
16 Corporation;

17 “(E) adopt and submit to Congress a con-
18 flict-of-interest policy applicable to members of
19 the Board and employees of the Corporation;

20 “(F) establish a compensation plan for em-
21 ployees of the Corporation in accordance with
22 subsection (i);

23 “(G) approve all compensation (including
24 salary or any other pay, bonuses, benefits, in-
25 centives, and any other form of remuneration)

1 of all managers and technical personnel that re-
2 port directly to the chief executive officer (in-
3 cluding any adjustment to compensation);

4 “(H) ensure that all activities of the Cor-
5 poration are carried out in compliance with ap-
6 plicable law;

7 “(I) create an audit committee, composed
8 solely of Board members independent of the
9 management of the Corporation, which shall—

10 “(i) in consultation with the inspector
11 general of the Corporation, recommend to
12 the Board an external auditor;

13 “(ii) receive and review reports from
14 the external auditor of the Corporation and
15 inspector general of the Corporation; and

16 “(iii) make such recommendations to
17 the Board as the audit committee con-
18 siders necessary;

19 “(J) create such other committees of
20 Board members as the Board considers to be
21 appropriate;

22 “(K) conduct such public hearings as it
23 deems appropriate on issues that could have a
24 substantial effect on—

1 “(i) the electric ratepayers in the serv-
2 ice area; or

3 “(ii) the economic, environmental, so-
4 cial, or physical well-being of the people of
5 the service area;

6 “(L) establish the electricity rate charged
7 by the Corporation; and

8 “(M) engage the services of an external
9 auditor for the Corporation.

10 “(2) MEETINGS.—The Board shall meet at
11 least 4 times each year.

12 “(h) CHIEF EXECUTIVE OFFICER.—

13 “(1) APPOINTMENT.—The Board shall appoint
14 a person to serve as chief executive officer of the
15 Corporation.

16 “(2) QUALIFICATIONS.—

17 “(A) IN GENERAL.—To serve as chief exec-
18 utive officer of the Corporation, a person—

19 “(i) shall have senior executive-level
20 management experience in large, complex
21 organizations;

22 “(ii) shall not be a current member of
23 the Board or have served as a member of
24 the Board within 2 years before being ap-
25 pointed chief executive officer; and

1 “(iii) shall comply with the conflict-of-
2 interest policy adopted by the Board.

3 “(B) EXPERTISE.—In appointing a chief
4 executive officer, the Board shall give particular
5 consideration to appointing an individual with
6 expertise in the electric industry and with
7 strong financial skills.

8 “(3) TENURE.—The chief executive officer shall
9 serve at the pleasure of the Board.

10 “(i) COMPENSATION PLAN.—

11 “(1) IN GENERAL.—The Board shall approve a
12 compensation plan that specifies all compensation
13 (including salary or any other pay, bonuses, benefits,
14 incentives, and any other form of remuneration) for
15 the chief executive officer and employees of the Cor-
16 poration.

17 “(2) ANNUAL SURVEY.—The compensation plan
18 shall be based on an annual survey of the prevailing
19 compensation for similar positions in private indus-
20 try, including engineering and electric utility compa-
21 nies, publicly owned electric utilities, and Federal,
22 State, and local governments.

23 “(3) CONSIDERATIONS.—The compensation
24 plan shall provide that education, experience, level of
25 responsibility, geographic differences, and retention

1 and recruitment needs will be taken into account in
2 determining compensation of employees.

3 “(4) POSITIONS AT OR BELOW LEVEL IV.—The
4 chief executive officer shall determine the salary and
5 benefits of employees whose annual salary is not
6 greater than the annual rate payable for positions at
7 level IV of the Executive Schedule under section
8 5315 of title 5, United States Code.

9 “(5) POSITIONS ABOVE LEVEL IV.—On the rec-
10 ommendation of the chief executive officer, the
11 Board shall approve the salaries of employees whose
12 annual salaries would be in excess of the annual rate
13 payable for positions at level IV of the Executive
14 Schedule under section 5315 of title 5, United
15 States Code.”.

16 **SEC. 1432. CHANGE IN MANNER OF APPOINTMENT OF**
17 **STAFF.**

18 Section 3 of the Tennessee Valley Authority Act of
19 1933 (16 U.S.C. 831b) is amended—

20 (1) by striking the first undesignated paragraph
21 and inserting the following:

22 “(a) APPOINTMENT BY THE CHIEF EXECUTIVE OF-
23 FICER.—The chief executive officer shall appoint, with the
24 advice and consent of the Board, and without regard to
25 the provisions of the civil service laws applicable to officers

1 and employees of the United States, such managers, as-
2 sistant managers, officers, employees, attorneys, and
3 agents as are necessary for the transaction of the business
4 of the Corporation.”; and

5 (2) by striking “All contracts” and inserting
6 the following:

7 “(b) WAGE RATES.—All contracts”.

8 **SEC. 1433. CONFORMING AMENDMENTS.**

9 (a) The Tennessee Valley Authority Act of 1933 (16
10 U.S.C. 831 et seq.) is amended—

11 (1) by striking “board of directors” each place
12 it appears and inserting “Board of Directors”; and

13 (2) by striking “board” each place it appears
14 and inserting “Board”.

15 (b) Section 9 of the Tennessee Valley Authority Act
16 of 1933 (16 U.S.C. 831h) is amended—

17 (1) by striking “The Comptroller General of the
18 United States shall audit” and inserting the fol-
19 lowing:

20 “(c) AUDITS.—The Comptroller General of the
21 United States shall audit”; and

22 (2) by striking “The Corporation shall deter-
23 mine” and inserting the following:

24 “(d) ADMINISTRATIVE ACCOUNTS AND BUSINESS
25 DOCUMENTS.—The Corporation shall determine”.

1 (c) Title 5, United States Code, is amended—

2 (1) in section 5314, by striking “Chairman,
3 Board of Directors of the Tennessee Valley Author-
4 ity.”; and

5 (2) in section 5315, by striking “Members,
6 Board of Directors of the Tennessee Valley Author-
7 ity.”.

8 **SEC. 1434. APPOINTMENTS; EFFECTIVE DATE; TRANSITION.**

9 (a) APPOINTMENTS.—

10 (1) IN GENERAL.—As soon as practicable after
11 the date of enactment of this Act, the President
12 shall submit to the Senate nominations of 6 persons
13 to serve as members of the Board of Directors of the
14 Tennessee Valley Authority in addition to the mem-
15 bers serving on the date of enactment of this Act.

16 (2) INITIAL TERMS.—Notwithstanding section
17 2(d) of the Tennessee Valley Authority Act of 1933
18 (as amended by this subtitle), in making the ap-
19 pointments under paragraph (1), the President shall
20 appoint—

21 (A) 2 members for a term to expire on
22 May 18, 2006;

23 (B) 2 members for a term to expire on
24 May 18, 2008; and

1 (C) 2 members for a term to expire on
2 May 18, 2010.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section and sections 1431, 1432, and 1433 take effect
5 on the later of the date on which at least 3 persons nomi-
6 nated under subsection (a) take office or May 18, 2005.

7 (c) SELECTION OF CHAIRMAN.—The Board of Direc-
8 tors of the Tennessee Valley Authority shall select 1 of
9 the members to act as chairman of the Board not later
10 than 30 days after the effective date of this section.

11 (d) CONFLICT-OF-INTEREST POLICY.—The Board of
12 Directors of the Tennessee Valley Authority shall adopt
13 and submit to Congress a conflict-of-interest policy, as re-
14 quired by section 2(g)(1)(E) of the Tennessee Valley Au-
15 thority Act of 1933 (as amended by this subtitle), as soon
16 as practicable after the effective date of this section.

17 (e) TRANSITION.—A person who is serving as a mem-
18 ber of the board of directors of the Tennessee Valley Au-
19 thority on the date of enactment of this Act—

20 (1) shall continue to serve until the end of the
21 current term of the member; but

22 (2) after the effective date specified in sub-
23 section (b), shall serve under the terms of the Ten-
24 nessee Valley Authority Act of 1933 (as amended by
25 this subtitle); and

1 (3) may not be reappointed.

2 **Subtitle D—Other Provisions**

3 **SEC. 1441. CONTINUATION OF TRANSMISSION SECURITY**

4 **ORDER.**

5 Department of Energy Order No. 202-03-2, issued
6 by the Secretary of Energy on August 28, 2003, shall re-
7 main in effect unless rescinded by Federal statute.

8 **SEC. 1442. REVIEW OF AGENCY DETERMINATIONS.**

9 Section 7 of the Natural Gas Act (15 U.S.C. 717f)
10 is amended by adding at the end the following:

11 “(i)(1) The United States Court of Appeals for the
12 District of Columbia Circuit shall have original and exclu-
13 sive jurisdiction over any civil action—

14 “(A) for review of any order or action of any
15 Federal or State administrative agency or officer to
16 issue, condition, or deny any permit, license, concur-
17 rence, or approval issued under authority of any
18 Federal law, other than the Coastal Zone Manage-
19 ment Act of 1972 (16 U.S.C. 1451 et seq.), required
20 for the construction of a natural gas pipeline for
21 which a certificate of public convenience and neces-
22 sity is issued by the Commission under this section;

23 “(B) alleging unreasonable delay by any Fed-
24 eral or State administrative agency or officer in en-

1 tering an order or taking other action described in
2 subparagraph (A); or

3 “(C) challenging any decision made or action
4 taken under this subsection.

5 “(2)(A) If the Court finds that the order, action, or
6 failure to act is not consistent with the public convenience
7 and necessity (as determined by the Commission under
8 this section), or would prevent the construction and oper-
9 ation of natural gas facilities authorized by the certificate
10 of public convenience and necessity, the permit, license,
11 concurrence, or approval that is the subject of the order,
12 action, or failure to act shall be deemed to have been
13 issued subject to any conditions set forth in the reviewed
14 order or action that the Court finds to be consistent with
15 the public convenience and necessity.

16 “(B) For purposes of paragraph (1)(B), the failure
17 of an agency or officer to issue any such permit, license,
18 concurrence, or approval within the later of 1 year after
19 the date of filing of an application for the permit, license,
20 concurrence, or approval or 60 days after the date of
21 issuance of the certificate of public convenience and neces-
22 sity under this section, shall be considered to be unreason-
23 able delay unless the Court, for good cause shown, deter-
24 mines otherwise.

1 “(C) The Court shall set any action brought under
2 paragraph (1) for expedited consideration.”.

3 **SEC. 1443. ATTAINMENT DATES FOR DOWNWIND OZONE**
4 **NONATTAINMENT AREAS.**

5 Section 181 of the Clean Air Act (42 U.S.C.7511)
6 is amended by adding the following new subsection at the
7 end thereof:

8 “(d) EXTENDED ATTAINMENT DATE FOR CERTAIN
9 DOWNWIND AREAS.—

10 “(1) DEFINITIONS.—(A) The term ‘upwind
11 area’ means an area that—

12 “(i) significantly contributes to nonattain-
13 ment in another area, hereinafter referred to as
14 a ‘downwind area’; and

15 “(ii) is either—

16 “(I) a nonattainment area with a later
17 attainment date than the downwind area,
18 or

19 “(II) an area in another State that
20 the Administrator has found to be signifi-
21 cantly contributing to nonattainment in
22 the downwind area in violation of section
23 110(a)(2)(D) and for which the Adminis-
24 trator has established requirements
25 through notice and comment rulemaking to

1 eliminate the emissions causing such sig-
2 nificant contribution.

3 “(B) The term ‘current classification’ means
4 the classification of a downwind area under this sec-
5 tion at the time of the determination under para-
6 graph (2).

7 “(2) EXTENSION.—If the Administrator—

8 “(A) determines that any area is a down-
9 wind area with respect to a particular national
10 ambient air quality standard for ozone; and

11 “(B) approves a plan revision for such
12 area as provided in paragraph (3) prior to a re-
13 classification under subsection (b)(2)(A),
14 the Administrator, in lieu of such reclassification,
15 shall extend the attainment date for such downwind
16 area for such standard in accordance with paragraph
17 (5).

18 “(3) REQUIRED APPROVAL.—In order to extend
19 the attainment date for a downwind area under this
20 subsection, the Administrator must approve a revi-
21 sion of the applicable implementation plan for the
22 downwind area for such standard that—

23 “(A) complies with all requirements of this
24 Act applicable under the current classification
25 of the downwind area, including any require-

1 ments applicable to the area under section
2 172(c) for such standard; and

3 “(B) includes any additional measures
4 needed to demonstrate attainment by the ex-
5 tended attainment date provided under this
6 subsection.

7 “(4) PRIOR RECLASSIFICATION DETERMINA-
8 TION.—If, no more than 18 months prior to the date
9 of enactment of this subsection, the Administrator
10 made a reclassification determination under sub-
11 section (b)(2)(A) for any downwind area, and the
12 Administrator approves the plan revision referred to
13 in paragraph (3) for such area within 12 months
14 after the date of enactment of this subsection, the
15 reclassification shall be withdrawn and the attain-
16 ment date extended in accordance with paragraph
17 (5) upon such approval. The Administrator shall
18 also withdraw a reclassification determination under
19 subsection (b)(2)(A) made after the date of enact-
20 ment of this subsection and extend the attainment
21 date in accordance with paragraph (5) if the Admin-
22 istrator approves the plan revision referred to in
23 paragraph (3) within 12 months of the date the re-
24 classification determination under subsection
25 (b)(2)(A) is issued. In such instances the ‘current

1 classification' used for evaluating the revision of the
2 applicable implementation plan under paragraph (3)
3 shall be the classification of the downwind area
4 under this section immediately prior to such reclassi-
5 fication.

6 “(5) EXTENDED DATE.—The attainment date
7 extended under this subsection shall provide for at-
8 tainment of such national ambient air quality stand-
9 ard for ozone in the downwind area as expeditiously
10 as practicable but no later than the date on which
11 the last reductions in pollution transport necessary
12 for attainment in the downwind area are required to
13 be achieved by the upwind area or areas.”.

14 **SEC. 1444. ENERGY PRODUCTION INCENTIVES**

15 (a) IN GENERAL.—A State may provide to any
16 entity—

17 (1) a credit against any tax or fee owed to the
18 State under a State law, or

19 (2) any other tax incentive,
20 determined by the State to be appropriate, in the amount

21 calculated under and in accordance with a formula deter-
22 mined by the State, for production described in subsection

23 (b) in the State by the entity that receives such credit or
24 such incentive.

1 (b) ELIGIBLE ENTITIES.—Subsection (a) shall apply
2 with respect to the production in the State of—

3 (1) electricity from coal mined in the State and
4 used in a facility, if such production meets all appli-
5 cable Federal and State laws and if such facility
6 uses scrubbers or other forms of clean coal tech-
7 nology,

8 (2) electricity from a renewable source such as
9 wind, solar, or biomass, or

10 (3) ethanol.

11 (c) EFFECT ON INTERSTATE COMMERCE—Any ac-
12 tion taken by a State in accordance with this section with
13 respect to a tax or fee payable, or incentive applicable,
14 for any period beginning after the date of the enactment
15 of this Act shall—

16 (1) be considered to be a reasonable regulation
17 of commerce; and

18 (2) not be considered to impose an undue bur-
19 den on interstate commerce or to otherwise impair,
20 restrain, or discriminate, against interstate com-
21 merce.

22 **SEC. 1445. USE OF GRANULAR MINE TAILINGS.**

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

1 **“SEC. 6006. USE OF GRANULAR MINE TAILINGS.**

2 “(a) MINE TAILINGS.—

3 “(1) IN GENERAL.—Not later than 180 days
4 after the date of enactment of this section, the Ad-
5 ministrator, in consultation with the Secretary of
6 Transportation and heads of other Federal agencies,
7 shall establish criteria (including an evaluation of
8 whether to establish a numerical standard for con-
9 centration of lead and other hazardous substances)
10 for the safe and environmentally protective use of
11 granular mine tailings from the Tar Creek, Okla-
12 homa Mining District, known as ‘chat’, for—

13 “(A) cement or concrete projects; and

14 “(B) transportation construction projects
15 (including transportation construction projects
16 involving the use of asphalt) that are carried
17 out, in whole or in part, using Federal funds.

18 “(2) REQUIREMENTS.—In establishing criteria
19 under paragraph (1), the Administrator shall
20 consider—

21 “(A) the current and previous uses of
22 granular mine tailings as an aggregate for as-
23 phalt; and

24 “(B) any environmental and public health
25 risks and benefits derived from the removal,

1 transportation, and use in transportation
2 projects of granular mine tailings.

3 “(3) PUBLIC PARTICIPATION.—In establishing
4 the criteria under paragraph (1), the Administrator
5 shall solicit and consider comments from the public.

6 “(4) APPLICABILITY OF CRITERIA.—On the es-
7 tablishment of the criteria under paragraph (1), any
8 use of the granular mine tailings described in para-
9 graph (1) in a transportation project that is carried
10 out, in whole or in part, using Federal funds, shall
11 meet the criteria established under paragraph (1).

12 “(b) EFFECT OF SECTIONS.—Nothing in this section
13 or section 6005 affects any requirement of any law (in-
14 cluding a regulation) in effect on the date of enactment
15 of this section.”.

16 (b) CONFORMING AMENDMENT.—The table of con-
17 tents of the Solid Waste Disposal Act (42 U.S.C. prec.
18 6901) is amended by adding at the end of the items relat-
19 ing to subtitle F the following:

“Sec. 6006. Use of granular mine tailings.”.