

[DISCUSSION DRAFT]

SEPTEMBER 29, 2003

1 **TITLE II—RENEWABLE ENERGY**
2 **Subtitle A—General Provisions**

3 **SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RE-**
4 **SOURCES.**

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

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

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

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

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

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

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

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

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

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

21 (2) By inserting “landfill gas,” after “wind,
22 biomass,”.

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

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

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

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

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

15 “(g) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

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

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

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

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

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

11 (b) DEFINITION.—For purposes of this section:

12 (1) The term “biomass” means any solid, non-
13 hazardous, cellulosic material that is derived from—

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

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

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

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

7 (2) The term “renewable energy” means elec-
8 tric energy generated from solar, wind, biomass,
9 landfill gas, geothermal, municipal solid waste, or
10 new hydroelectric generation capacity achieved from
11 increased efficiency or additions of new capacity at
12 an existing hydroelectric project.

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

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

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

20 (3) the renewable energy is produced on Indian
21 land as defined in title XXVI of the Energy Policy
22 Act of 1992 (25 U.S.C. 3501 et. seq.) and used at
23 a Federal facility.

24 (d) REPORT.—Not later than April 15, 2005, and
25 every 2 years thereafter, the Secretary of Energy shall

1 provide a report to the Congress on the progress of the
2 Federal Government in meeting the goals established by
3 this section.

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

5 Section 604 of the Act entitled “An Act to authorize
6 appropriations for certain insular areas of the United
7 States, and for other purposes”, approved December 24,
8 1980 (Public Law 96–597; 94 Stat. 3480–3481), is
9 amended as follows:

10 (1) In subsection (a)(4) by striking the period
11 and inserting a semicolon;

12 (2) By adding at the end of subsection (a) the
13 following new paragraphs:

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

20 “(6) the refinement of renewable energy tech-
21 nologies since the publication of the 1982 Territorial
22 Energy Assessment prepared pursuant to subsection
23 (c) reveals the need to reassess the state of energy
24 production, consumption, infrastructure, reliance on
25 imported energy, opportunities for energy conserva-

1 tion and increased energy efficiency, and indigenous
2 sources in regard to the insular areas.”.

3 (3) By amending subsection (e) to read as fol-
4 lows:

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

9 “(A) updating the contents required by sub-
10 section (c);

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

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

23 “(2) Not later than December 31, 2005, the Sec-
24 retary of the Interior shall submit to the Congress the up-

1 dated plans for each insular area required by this sub-
2 section.”.

3 (4) By amending subsection (g)(4) to read as
4 follows:

5 “(4) POWER LINE GRANTS FOR INSULAR
6 AREAS.—

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

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

20 “(i) The project is designed to protect
21 electric power transmission and distribu-
22 tion lines located in one or more of the in-
23 sular areas of the United States from dam-
24 age caused by hurricanes and typhoons.

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

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

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

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

20 “(vi) The project plan includes an
21 analysis of a range of options to address
22 the problem it is designed to prevent or
23 mitigate and a justification for the selec-
24 tion of the project in light of that analysis.

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

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

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

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

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

23 “(E) TREATMENT OF FUNDS FOR CERTAIN
24 PURPOSES.—Grants provided under this para-
25 graph shall not be considered as income, a re-

1 source, or a duplicative program when deter-
2 mining eligibility or benefit levels for Federal
3 major disaster and emergency assistance.

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

9 **SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**
10 **BUILDINGS.**

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

14 **“§ 3177. Use of photovoltaic energy in public build-**
15 **ings**

16 “(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION
17 PROGRAM.—

18 “(1) IN GENERAL.—The Administrator of Gen-
19 eral Services may establish a photovoltaic energy
20 commercialization program for the procurement and
21 installation of photovoltaic solar electric systems for
22 electric production in new and existing public build-
23 ings.

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

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

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

8 “(C) To attain the goal of installing solar
9 energy systems in 20,000 Federal buildings by
10 2010, as contained in the Federal Government’s
11 Million Solar Roof Initiative of 1997.

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

15 “(E) To develop program performance
16 data to support policy decisions on future incen-
17 tive programs with respect to energy.

18 “(3) ACQUISITION OF PHOTOVOLTAIC SOLAR
19 ELECTRIC SYSTEMS.—

20 “(A) IN GENERAL.—The program shall
21 provide for the acquisition of photovoltaic solar
22 electric systems and associated storage capa-
23 bility for use in public buildings.

24 “(B) ACQUISITION LEVELS.—The acquisi-
25 tion of photovoltaic electric systems shall be at

1 a level substantial enough to allow use of low-
2 cost production techniques with at least 150
3 megawatts (peak) cumulative acquired during
4 the 5 years of the program.

5 “(4) ADMINISTRATION.—The Administrator
6 shall administer the program and shall—

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

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

14 “(C) transmit to the Congress an annual
15 report on the results of the program.

16 “(b) PHOTOVOLTAIC SYSTEMS EVALUATION PRO-
17 GRAM.—

18 “(1) IN GENERAL.—Not later than 60 days
19 after the date of enactment of this section, the Ad-
20 ministrator, in consultation with the Secretary of
21 Energy, shall establish a photovoltaic solar energy
22 systems evaluation program to evaluate such photo-
23 voltaic solar energy systems as are required in public
24 buildings.

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

5 “(c) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

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

19 **SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE**
20 **OF FOREST BIOMASS FOR ELECTRIC ENERGY,**
21 **USEFUL HEAT, TRANSPORTATION FUELS, PE-**
22 **TROLEUM-BASED PRODUCT SUBSTITUTES,**
23 **AND OTHER COMMERCIAL PURPOSES.**

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

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

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

19 (3) Preventive treatments such as removing fuel
20 loading, ladder fuels, and hazard trees, planting
21 proper species mix and restoring and protecting
22 early successional habitat, and other specific restora-
23 tion treatments designed to reduce the susceptibility
24 of forest land, woodland, and rangeland to insect
25 outbreaks, disease, and catastrophic fire present the

1 greatest opportunity for long-term forest health by
2 creating a mosaic of species-mix and age distribu-
3 tion. Such prevention treatments are widely acknowl-
4 edged to be more successful and cost effective than
5 suppression treatments in the case of insects, dis-
6 ease, and fire.

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

16 (5) The United States should—

17 (A) promote economic and entrepreneurial
18 opportunities in using byproducts removed
19 through preventive treatment activities related
20 to hazardous fuels reduction, disease, and insect
21 infestation; and

22 (B) develop and expand markets for tradi-
23 tionally underused wood and biomass as an out-
24 let for byproducts of preventive treatment ac-
25 tivities.

1 (b) DEFINITIONS.—In this section:

2 (1) BIOMASS.—The term “biomass” means
3 trees and woody plants, including limbs, tops, needles,
4 and other woody parts, and byproducts of preventive
5 treatment, such as wood, brush, thinnings,
6 chips, and slash, that are removed—

7 (A) to reduce hazardous fuels; or

8 (B) to reduce the risk of or to contain disease
9 or insect infestation.

10 (2) INDIAN TRIBE.—The term “Indian tribe”
11 has the meaning given the term in section 4(e) of
12 the Indian Self-Determination and Education Assistance
13 Act (25 U.S.C. 450b(e)).

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

15 (A) an individual;

16 (B) a community (as determined by the
17 Secretary concerned);

18 (C) an Indian tribe;

19 (D) a small business, micro-business, or a
20 corporation that is incorporated in the United
21 States; and

22 (E) a nonprofit organization.

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

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

4 (i) has a population of not more than
5 50,000 individuals; and

6 (ii) the Secretary concerned, in the
7 sole discretion of the Secretary concerned,
8 determines contains or is located near
9 land, the condition of which is at signifi-
10 cant risk of catastrophic wildfire, disease,
11 or insect infestation or which suffers from
12 disease or insect infestation; or

13 (B) any county that—

14 (i) is not contained within a metro-
15 politan statistical area; and

16 (ii) the Secretary concerned, in the
17 sole discretion of the Secretary concerned,
18 determines contains or is located near
19 land, the condition of which is at signifi-
20 cant risk of catastrophic wildfire, disease,
21 or insect infestation or which suffers from
22 disease or insect infestation.

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

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

3 (B) the Secretary of the Interior with re-
4 spect to Federal lands under the jurisdiction of
5 the Secretary of the Interior and Indian lands.

6 (c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

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

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

17 (3) MONITORING OF GRANT RECIPIENT ACTIVI-
18 TIES.—As a condition of a grant under this sub-
19 section, the grant recipient shall keep such records
20 as the Secretary concerned may require to fully and
21 correctly disclose the use of the grant funds and all
22 transactions involved in the purchase of biomass.
23 Upon notice by a representative of the Secretary
24 concerned, the grant recipient shall afford the rep-
25 resentative reasonable access to the facility that pur-

1 chases or uses biomass and an opportunity to exam-
2 ine the inventory and records of the facility.

3 (d) IMPROVED BIOMASS USE GRANT PROGRAM.—

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

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

18 (3) GRANT AMOUNT.—A grant under this sub-
19 section may not exceed \$100,000.

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

24 (f) REPORT.—Not later than October 1, 2010, the
25 Secretary of Agriculture, in consultation with the Sec-

1 retery of the Interior, shall submit to the Committee on
2 Energy and Natural Resources and the Committee on Ag-
3 riculture, Nutrition, and Forestry of the Senate and the
4 Committee on Resources and the Committee on Agri-
5 culture of the House of Representatives a report describ-
6 ing the results of the grant programs authorized by this
7 section. The report shall include the following:

8 (1) An identification of the size, type, and the
9 use of biomass by persons that receive grants under
10 this section.

11 (2) The distance between the land from which
12 the biomass was removed and the facility that used
13 the biomass.

14 (3) The economic impacts, particularly new job
15 creation, resulting from the grants to and operation
16 of the eligible operations.

17 **Subtitle B—Geothermal Energy**

18 **SEC. 211. SHORT TITLE.**

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

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

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

1 **“SEC. 4. LEASING PROCEDURES.**

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

5 “(b) COMPETITIVE LEASE SALE REQUIRED.—The
6 Secretary shall hold a competitive lease sale at least once
7 every 2 years for lands in a State that are located in areas
8 with respect to which there are nominations pending under
9 subsection (a) if such lands are otherwise available for
10 leasing.

11 “(c) NONCOMPETITIVE LEASING.—The Secretary
12 shall make available for a period of 2 years for non-
13 competitive leasing any tract for which a competitive lease
14 sale is held, but for which the Secretary does not receive
15 any bids in a competitive lease sale.

16 “(d) LEASES SOLD AS A BLOCK.—If information is
17 available to the Secretary indicating a geothermal resource
18 that could be produced as one unit can reasonably be ex-
19 pected to underlie more than one lease to be offered in
20 a competitive lease sale, the leases for such resource may
21 be offered for bidding as a block in the competitive lease
22 sale.

23 “(e) PENDING LEASE APPLICATIONS ON APRIL 1,
24 2003.—It shall be a priority for the Secretary of the Inte-
25 rior, and for the Secretary of Agriculture and with respect
26 to National Forest Systems lands, to ensure timely com-

1 pletion of administrative actions necessary to process ap-
2 plications for geothermal leasing pending on April 1,
3 2003. Such an application, and any lease issued pursuant
4 to such an application—

5 “(1) except as provided in paragraph (2), shall
6 be subject to this section as in effect on April 1,
7 2003; or

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

11 **SEC. 213. DIRECT USE.**

12 (a) FEES FOR DIRECT USE.—Section 5 of the Geo-
13 thermal Steam Act of 1970 (30 U.S.C. 1004) is
14 amended—

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

17 (2) by redesignating paragraphs (a) through (d)
18 in order as paragraphs (1) through (4);

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

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

22 “(b) DIRECT USE.—Notwithstanding subsection
23 (a)(1), with respect to the direct use geothermal resources
24 for purposes other than the commercial generation of elec-
25 tricity, the Secretary of the Interior shall establish a

1 schedule of fees and collect fees pursuant to such a sched-
2 ule in lieu of royalties based upon the total amount of the
3 geothermal resources used. The schedule of fees shall en-
4 sure that there is a fair return to the public for the use
5 of a geothermal resource based upon comparable fees
6 charged for direct use of geothermal resources by States
7 or private persons. For direct use by a State or local gov-
8 ernment for public purposes there shall be no fee charged.
9 Leases in existence on the date of enactment of [the En-
10 ergy Policy Act of 2003] shall be modified in order to
11 reflect the provisions of this subsection.”.

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

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

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

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

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

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

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

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

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

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

18 “(1) to provide lessees a simplified administra-
19 tive system;

20 “(2) to encourage new development; and

21 “(3) to achieve the same long-term level of roy-
22 alty revenues as the regulation in effect on the date
23 of enactment of this subsection.

24 “(c) CREDITS FOR IN-KIND PAYMENTS OF ELEC-
25 TRICITY.—The Secretary may provide to a lessee a credit

1 in the same manner as such moneys received pursuant to
2 section 35 of the Mineral Leasing Act (30 U.S.C. 191)
3 or section 6 of the Mineral Leasing Act for Acquired
4 Lands (30 U.S.C. 355), as the case may be.

5 “(b) SALES, BONUSES, AND ROYALTIES.—

6 “(1) IN GENERAL.—Except with respect to
7 lands in the State of Alaska, all monies received by
8 the United States from sales, bonuses, and royalties
9 under this Act shall be paid into the Treasury of the
10 United States. Of amounts deposited under this sub-
11 section, subject to the provisions of section 35 of the
12 Mineral Leasing Act (30 U.S.C. 191(b)) and section
13 5(a)(2) of this Act—

14 “(A) 50 percent shall be paid to the State
15 within the boundaries of which the leased lands
16 or geothermal resources are or were located;
17 and

18 “(B) 25 percent shall be paid to the Coun-
19 ty within the boundaries of which the leased
20 lands or geothermal resources are or were lo-
21 cated.

22 “(2) USE OF PAYMENTS.—Amounts paid to a
23 State or county under paragraph (1) shall be used
24 consistent with the terms of section 35 of the Min-
25 eral Leasing Act (30 U.S.C. 191).”.

1 (c) NEAR-TERM PRODUCTION INCENTIVE FOR EX-
2 ISTING LEASES.—

3 (1) IN GENERAL.—Notwithstanding section
4 5(a) of the Geothermal Steam Act of 1970, the roy-
5 alty required to be paid shall be 50 percent of the
6 amount of the royalty otherwise required, on any
7 lease issued before the date of enactment of this Act
8 that does not convert to new royalty terms under
9 subsection (e)—

10 (A) with respect to commercial production
11 of heat or energy from a facility that begins
12 such production in the 6-year period beginning
13 on the date of the enactment of this Act; or

14 (B) on qualified expansion geothermal en-
15 ergy.

16 (2) 4-YEAR APPLICATION.—Paragraph (1) ap-
17 plies only to commercial production of heat or en-
18 ergy from a facility in the first 4 years of such pro-
19 duction.

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

24 (A) the production is increased by more
25 than 10 percent as a result of expansion of the

1 facility carried out in the 6-year period begin-
2 ning on the date of the enactment of this Act;
3 and

4 (B) such production increase is greater
5 than 10 percent of the average production by
6 the facility during the 5-year period preceding
7 the expansion of the facility.

8 (e) ROYALTY UNDER EXISTING LEASES.—

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

17 (2) APPLICATION OF MODIFICATION.—Such
18 modification shall apply to any use of geothermal
19 steam and associated a geothermal resource to which
20 the amendment applies that occurs after the date of
21 that application.

22 (3) CONSULTATION.—The Secretary—

23 (A) shall consult with the State and local
24 governments affected by any proposed changes
25 in lease royalty terms under this subsection;

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

5 **SEC. 215. GEOTHERMAL LEASING AND PERMITTING ON**
6 **FEDERAL LANDS.**

7 (a) IN GENERAL.—Not later than 180 days after the
8 date of the enactment of this section, the Secretary of the
9 Interior and the Secretary of Agriculture shall enter into
10 and submit to the Congress a memorandum of under-
11 standing in accordance with this section regarding leasing
12 and permitting for geothermal development of public lands
13 and National Forest System lands under their respective
14 jurisdictions.

15 (b) LEASE AND PERMIT APPLICATIONS.—The memo-
16 randum of understanding shall—

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

22 (2) establish an administrative procedure for
23 processing geothermal lease applications, including
24 lines of authority, steps in application processing,
25 and time limits for application procession.

1 (c) DATA RETRIEVAL SYSTEM.—The memorandum
2 of understanding shall establish a joint data retrieval sys-
3 tem that is capable of tracking lease and permit applica-
4 tions and providing to the applicant information as to
5 their status within the Departments of the Interior and
6 Agriculture, including an estimate of the time required for
7 administrative action.

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

9 The Secretary of the Interior shall promptly review
10 and report to the Congress within 3 years after the date
11 of the enactment of this Act regarding the status of all
12 withdrawals from leasing under the Geothermal Steam Act
13 of 1970 (30 U.S.C. 1001 et seq.) of Federal lands, speci-
14 fying for each such area whether the basis for such with-
15 drawal still applies.

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

18 (a) IN GENERAL.—The Geothermal Steam Act of
19 1970 (30 U.S.C. 1001 et seq.) is amended by adding at
20 the end the following:

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

23 “(a) IN GENERAL.—The Secretary of the Interior
24 may, through royalty credits, reimburse a person who is
25 a lessee, operator, operating rights owner, or applicant for

1 a lease under this Act for reasonable amounts paid by the
2 person for preparation by the Secretary (or a contractor
3 or other person selected by the Secretary) of any project-
4 level analysis, documentation, or related study required
5 under the National Environmental Policy Act of 1969 (42
6 U.S.C. 4321 et seq.) with respect to the lease.

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

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

12 “(2) the person paid the amounts voluntarily;
13 and

14 “(3) the person maintains records of its costs
15 in accordance with regulations prescribed by the
16 Secretary.”.

17 (b) APPLICATION.—The amendments made by this
18 section shall apply with respect to any lease entered into
19 before, on, or after the date of the enactment of this Act.

20 (c) DEADLINE FOR REGULATIONS.—The Secretary
21 shall issue regulations implementing the amendments
22 made by this section by not later than 90 days after the
23 date of the enactment of this Act.

1 **SEC. 218. ASSESSMENT OF GEOTHERMAL ENERGY POTEN-**
2 **TIAL.**

3 The Secretary of Interior, acting through the Direc-
4 tor of the United States Geological Survey and in coopera-
5 tion with the States, shall update the 1978 Assessment
6 of Geothermal Resources, and submit that updated assess-
7 ment to the Committee on Resources of the House of Rep-
8 resentatives and the Committee on Energy and Natural
9 Resources of the Senate—

10 (1) within 3 years after the date of enactment
11 of this Act; and

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

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

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

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

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

19 **“(1) IN GENERAL.—**For the purpose of more
20 properly conserving the natural resources of any
21 geothermal reservoir, field, or like area, or any part
22 thereof (whether or not any part of the geothermal
23 field, or like area, is then subject to any Unit Agree-
24 ment (cooperative plan of development or operation),
25 lessees thereof and their representatives may unite
26 with each other, or jointly or separately with others,

1 in collectively adopting and operating under a Unit
2 Agreement for such field, or like area, or any part
3 thereof including direct use resources, if determined
4 and certified by the Secretary to be necessary or ad-
5 visable in the public interest. A majority interest of
6 owners of any single lease shall have the authority
7 to commit that lease to a Unit Agreement. The Sec-
8 retary of the Interior may also initiate the formation
9 of a Unit Agreement if in the public interest.

10 “(2) MODIFICATION OF LEASE REQUIREMENTS
11 BY SECRETARY.—The Secretary may, in the discre-
12 tion of the Secretary, and with the consent of the
13 holders of leases involved, establish, alter, change, or
14 revoke rates of operations (including drilling, oper-
15 ations, producing, and other requirements) of such
16 leases and make conditions with reference to such
17 leases, with the consent of the lessees, in connection
18 with the creation and operation of any such Unit
19 Agreement as the Secretary may deem necessary or
20 proper to secure the proper protection of the public
21 interest. Leases with unlike lease terms or royalty
22 rates do not need to be modified to be in the same
23 unit.

24 “(b) REQUIREMENT OF PLANS UNDER NEW
25 LEASES.—The Secretary—

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

5 “(2) may prescribe such an Agreement under
6 which such lessee shall operate, which shall ade-
7 quately protect the rights of all parties in interest,
8 including the United States.

9 “(c) MODIFICATION OF RATE OF PROSPECTING, DE-
10 VELOPMENT, AND PRODUCTION.—The Secretary may re-
11 quire that any Agreement authorized by the this section
12 that applies to lands owned by the United States contain
13 a provision under which authority is vested in the Sec-
14 retary, or any person, committee, or State or Federal offi-
15 cer or agency as may be designated in the Agreement to
16 alter or modify from time to time the rate of prospecting
17 and development and the quantity and rate of production
18 under such an Agreement.

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

24 “(e) POOLING OF CERTAIN LANDS.—If separate
25 tracts of lands cannot be independently developed and op-

1 erated to use geothermal steam and associated geothermal
2 resources pursuant to any section of this Act—

3 “(1) such lands, or a portion thereof, may be
4 pooled with other lands, whether or not owned by
5 the United States, for purposes of development and
6 operation under a Communitization Agreement pro-
7 viding for an apportionment of production or royal-
8 ties among the separate tracts of land comprising
9 the production unit, if such pooling is determined by
10 the Secretary to be in the public interest; and

11 “(2) operation or production pursuant to such
12 an Agreement shall be treated as operation or pro-
13 duction with respect to each tract of land that is
14 subject to the agreement.

15 “(f) UNIT AGREEMENT REVIEW.—No more than 5
16 years after approval of any cooperative or Unit Agreement
17 and at least every 5 years thereafter, the Secretary shall
18 review each such Agreement and, after notice and oppor-
19 tunity for comment, eliminate from inclusion in such
20 Agreement any lands that the Secretary determines are
21 not reasonably necessary for Unit operations under the
22 Agreement. Such elimination shall be based on scientific
23 evidence, and shall occur only if it is determined by the
24 Secretary to be for the purpose of conserving and properly
25 managing the geothermal resource. Any land so eliminated

1 shall be eligible for an extension under subsection (c) or
2 (g) of section 6 if it meets the requirements for such an
3 extension.

4 “(g) DRILLING OR DEVELOPMENT CONTRACTS.—
5 The Secretary may, on such conditions as the Secretary
6 may prescribe, approve operating, drilling, or development
7 contracts made by one or more lessees of geothermal
8 leases, with one or more persons, associations, or corpora-
9 tions if, in the discretion of the Secretary, the conservation
10 of natural resources or the public convenience or necessity
11 may require or the interests of the United States may be
12 best served thereby. All leases operated under such ap-
13 proved operating, drilling, or development contracts, and
14 interests thereunder, shall be excepted in determining
15 holdings or control under section 7.

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

21 **SEC. 220. ROYALTY ON BYPRODUCTS.**

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

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

7 **SEC. 221. REPEAL OF AUTHORITIES OF SECRETARY TO RE-**
8 **ADJUST TERMS, CONDITIONS, RENTALS, AND**
9 **ROYALTIES.**

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

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

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

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

18 (2) in subsection (a)(3) by striking “; and” and
19 inserting a period;

20 (3) by striking paragraph (4) of subsection (a);
21 and

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

23 “(d) CREDITING OF RENTAL TOWARD ROYALTY.—
24 Any annual rental under this section that is paid with re-
25 spect to a lease before the first day of the year for which

1 the annual rental is owed shall be credited to the amount
2 of royalty that is required to be paid under the lease for
3 that year.”.

4 **SEC. 223. LEASE DURATION AND WORK COMMITMENT RE-**
5 **QUIREMENTS.**

6 (a) IN GENERAL.—Section 6 of the Geothermal
7 Steam Act of 1970 (30 U.S.C. 1005) is amended—

8 (1) by striking so much as precedes subsection
9 (c), and striking subsections (e), (g), (h), (i), and
10 (j);

11 (2) by redesignating subsections (c), (d), and
12 (f) in order as subsections (g), (h), and
13 (i); and

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

16 **“SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIRE-**
17 **MENTS.**

18 **“(a) PRIMARY TERM.—**

19 **“(1) IN GENERAL.—**A geothermal lease shall be
20 for a primary term of ten years.

21 **“(2) INITIAL EXTENSION.—**The Secretary shall
22 extend the primary term of a geothermal lease for
23 5 years if, for each year after the fifth year of the
24 lease—

1 “(A) the Secretary determined under sub-
2 section (c) that the lessee satisfied the work
3 commitment requirements that applied to the
4 lease for that year; or

5 “(B) the lessee paid in accordance with
6 subsection (d) the value of any work that was
7 not completed in accordance with those require-
8 ments.

9 “(3) ADDITIONAL EXTENSION.—The Secretary
10 shall extend the primary term of a geothermal lease
11 (after an extension under paragraph (2)) for an ad-
12 ditional 5 years if, for each year after the fifteenth
13 year of the lease, the Secretary determined under
14 subsection (c) that the lessee satisfied the work com-
15 mitment requirements that applied to the lease for
16 that year.

17 “(b) REQUIREMENT TO SATISFY ANNUAL WORK
18 COMMITMENT REQUIREMENT.—

19 “(1) IN GENERAL.—The lessee for a geothermal
20 lease shall, for each year after the fifth year of the
21 lease, satisfy work commitment requirements pre-
22 scribed by the Secretary that apply to the lease for
23 that year.

24 “(2) PRESCRIPTION OF WORK COMMITMENT RE-
25 QUIREMENTS.—The Secretary shall issue regulations

1 prescribing minimum equivalent dollar value work
2 commitment requirements for geothermal leases,
3 that—

4 “(A) require that a lessee, in each year
5 after the fifth year of the primary term of a
6 geothermal lease, diligently work to achieve
7 commercial production or utilization of steam
8 under the lease;

9 “(B) require that in each year to which
10 work commitment requirements under the regu-
11 lations apply, the lessee shall significantly re-
12 duce the amount of work that remains to be
13 done to achieve such production or utilization;

14 “(C) describe specific work that must be
15 completed by a lessee by the end of each year
16 to which the work commitment requirements
17 apply;

18 “(D) carry forward and apply to work
19 commitment requirements for a year, work
20 completed in any year in the preceding 3-year
21 period that was in excess of the work required
22 to be performed in that preceding year;

23 “(E) establish transition rules for leases
24 issued before the date of the enactment of this
25 subsection, including terms under which a lease

1 that is near the end of its term on the date of
2 enactment of this subsection may be extended
3 for up to two years—

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

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

8 “(F) establish an annual payment that, at
9 the option of the lessee, may be exercised in lieu
10 of meeting any work requirement for a limited
11 number of years that the Secretary determines
12 will not impair achieving diligent development
13 of the geothermal resource.

14 “(3) TERMINATION OF APPLICATION OF RE-
15 QUIREMENTS.—Work commitment requirements pre-
16 scribed under this subsection shall not apply to a
17 geothermal lease after the date on which geothermal
18 steam is produced or utilized under the lease in com-
19 mercial quantities.

20 “(c) DETERMINATION OF WHETHER REQUIREMENTS
21 SATISFIED.—The Secretary shall, by not later than 21
22 days after the end of each year for which work commit-
23 ment requirements under subsection (b) apply to a geo-
24 thermal lease—

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

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

4 “(3) in the case of a notification that the lessee
5 did not satisfy work commitment requirements for
6 the year, include in the notification—

7 “(A) a description of the specific work that
8 was not completed by the lessee in accordance
9 with the requirements; and

10 “(B) the amount of the dollar value of
11 such work that was not completed, reduced by
12 the amount of expenditures made for work com-
13 pleted in a prior year that is carried forward
14 pursuant to subsection (b)(2)(D).

15 “(d) PAYMENT OF VALUE OF UNCOMPLETED
16 WORK.—

17 “(1) IN GENERAL.—If the Secretary notifies a
18 lessee that the lessee failed to satisfy work commit-
19 ment requirements under subsection (b), the lessee
20 shall pay to the Secretary, by not later than the end
21 of the 60-day period beginning on the date of the
22 notification, the dollar value of work that was not
23 completed by the lessee, in the amount stated in the
24 notification (as reduced under subsection (c)(3)(B)).

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

6 “(e) CONTINUATION AFTER COMMERCIAL PRODUC-
7 TION OR UTILIZATION.—If geothermal steam is produced
8 or utilized in commercial quantities within the primary
9 term of the lease under subsection (a) (including any ex-
10 tension of the lease under subsection (a)), such lease shall
11 continue until the date on which geothermal steam is no
12 longer produced or utilized in commercial quantities.

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

20 “(1) convert the lease to a mineral lease under
21 the Mineral Leasing Act (30 U.S.C. 181 et seq.) or
22 under the Mineral Leasing Act for Acquired Lands
23 (30 U.S.C. 351 et seq.), if the lands that are subject
24 to the lease can be leased under that Act for the
25 production of such byproduct; or

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

4 (b) CONFORMING AMENDMENTS.—(1) Section 18 of
5 the Geothermal Steam Act of 1970 (30 U.S.C. 1017) is
6 amended by striking “subsection (c) or (g)” and inserting
7 “subsection (g)”.

8 (2) Section 20 of the Geothermal Steam Act of 1970
9 (30 U.S.C. 1019) is amended by striking “, including the
10 payments referred to in section 6(i),”.

11 **SEC. 224. ADVANCED ROYALTIES REQUIRED FOR SUSPEN-**
12 **SION OF PRODUCTION.**

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

16 “(e) ADVANCED ROYALTIES REQUIRED FOR SUSPEN-

17 SION OF PRODUCTION.—

18 “(1) CONTINUATION OF LEASE FOLLOWING
19 CESSATION OF PRODUCTION.—If, at any time after
20 commercial production under a lease is achieved,
21 production ceases for any cause the lease shall re-
22 main in full force and effect—

23 “(A) during the one-year period beginning
24 on the date production ceases; and

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

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

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

21 **SEC. 225. ANNUAL RENTAL.**

22 (a) ANNUAL RENTAL RATE.—Section 5 of the Geo-
23 thermal Steam Act of 1970 (30 U.S.C. 1004) is further
24 amended in subsection (a) in paragraph (3) by striking
25 “\$1 per acre or fraction thereof for each year of the lease”

1 and all that follows through the end of the paragraph and
2 inserting “\$1 per acre or fraction thereof for each year
3 of the lease through the tenth year in the case of a lease
4 awarded in a noncompetitive lease sale; or \$2 per acre or
5 fraction thereof for the first year, \$3 per acre or fraction
6 thereof for each of the second through tenth years, in the
7 case of a lease awarded in a competitive lease sale; and
8 \$5 per acre or fraction thereof for each year after the 10th
9 year thereof for all leases; and”.

10 (b) TERMINATION OF LEASE FOR FAILURE TO PAY
11 RENTAL.—Section 5 of the Geothermal Steam Act of
12 1970 (30 U.S.C. 1004) is further amended by adding at
13 the end the following:

14 “(f) TERMINATION OF LEASE FOR FAILURE TO PAY
15 RENTAL.—

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

22 “(2) NOTIFICATION.—The Secretary shall
23 promptly notify a lessee that has not paid rental re-
24 quired under the lease that the lease will be termi-

1 nated at the end of the period referred to in para-
2 graph (1).

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

9 **SEC. 226. LEASING AND PERMITTING ON FEDERAL LANDS**
10 **WITHDRAWN FOR MILITARY PURPOSES.**

11 Not later than 1 year after the date of the enactment
12 of this Act, the Secretary of the Interior and each of the
13 military service Secretaries of the Department of Defense,
14 in consultation with interested States, counties, represent-
15 atives of the geothermal industry, and interested members
16 of the public, shall submit to the Congress a joint report
17 concerning leasing and permitting activities for geo-
18 thermal energy on Federal lands withdrawn for military
19 purposes. Such report shall—

20 (1) describe any difference, including dif-
21 ferences in royalty structure and revenue sharing
22 with States and counties, between—

23 (A) the implementation of the Geothermal
24 Steam Act of 1970 (30 U.S.C. 1001 et seq.)

1 and other applicable Federal land by the Sec-
2 retary of the Interior; and

3 (B) the administration of geothermal leas-
4 ing under section 2689 of title 10, United
5 States Code, by the Secretary of Defense;

6 (2) identify procedures for interagency coordi-
7 nation to ensure efficient processing and administra-
8 tion of leases or contracts for geothermal energy on
9 Federal lands withdrawn for military purposes, con-
10 sistent with the defense purposes of such with-
11 drawals; and

12 (3) provide recommendations for legislative or
13 administrative actions that could facilitate program
14 administration, including a common royalty struc-
15 ture.

16 **Subtitle C—Hydroelectric**

17 **PART I—ALTERNATIVE CONDITIONS**

18 **SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.**

19 (a) FEDERAL RESERVATIONS.—Section 4(e) of the
20 Federal Power Act (16 U.S.C. 797(e)) is amended by in-
21 serting after “adequate protection and utilization of such
22 reservation.” at the end of the first proviso the following:
23 “The license applicant shall be entitled to a determination
24 on the record, after opportunity for an expedited agency
25 trial-type hearing of any disputed issues of material fact,

1 with respect to such conditions. Such hearing may be con-
2 ducted in accordance with procedures established by agen-
3 cy regulation in consultation with the Federal Energy
4 Regulatory Commission.”.

5 (b) FISHWAYS.—Section 18 of the Federal Power Act
6 (16 U.S.C. 811) is amended by inserting after “and such
7 fishways as may be prescribed by the Secretary of Com-
8 merce.” the following: “The license applicant shall be enti-
9 tled to a determination on the record, after opportunity
10 for an expedited agency trial-type hearing of any disputed
11 issues of material fact, with respect to such fishways. Such
12 hearing may be conducted in accordance with procedures
13 established by agency regulation in consultation with the
14 Federal Energy Regulatory Commission.”.

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

19 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

20 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any
21 person applies for a license for any project works within
22 any reservation of the United States, and the Secretary
23 of the department under whose supervision such reserva-
24 tion falls (referred to in this subsection as ‘the Secretary’)
25 deems a condition to such license to be necessary under

1 the first proviso of section 4(e), the license applicant may
2 propose an alternative condition.

3 “(2) Notwithstanding the first proviso of section 4(e),
4 the Secretary shall accept the proposed alternative condi-
5 tion referred to in paragraph (1), and the Commission
6 shall include in the license such alternative condition, if
7 the Secretary determines, based on substantial evidence
8 provided by the license applicant or otherwise available to
9 the Secretary, that such alternative condition—

10 “(A) provides for the adequate protection and
11 utilization of the reservation; and

12 “(B) will either—

13 “(i) cost less to implement; or

14 “(ii) result in improved operation of the
15 project works for electricity production,

16 as compared to the condition initially deemed nec-
17 essary by the Secretary.

18 “(3) The Secretary shall submit into the public
19 record of the Commission proceeding with any condition
20 under section 4(e) or alternative condition it accepts under
21 this section, a written statement explaining the basis for
22 such condition, and reason for not accepting any alter-
23 native condition under this section. The written statement
24 must demonstrate that the Secretary gave equal consider-
25 ation to the effects of the condition adopted and alter-

1 natives not accepted on energy supply, distribution, cost,
2 and use; flood control; navigation; water supply; and air
3 quality (in addition to the preservation of other aspects
4 of environmental quality); based on such information as
5 may be available to the Secretary, including information
6 voluntarily provided in a timely manner by the applicant
7 and others. The Secretary shall also submit, together with
8 the aforementioned written statement, all studies, data,
9 and other factual information available to the Secretary
10 and relevant to the Secretary's decision.

11 “(4) Nothing in this section shall prohibit other inter-
12 ested parties from proposing alternative conditions.

13 “(5) If the Secretary does not accept an applicant's
14 alternative condition under this section, and the Commis-
15 sion finds that the Secretary's condition would be incon-
16 sistent with the purposes of this part, or other applicable
17 law, the Commission may refer the dispute to the Commis-
18 sion's Dispute Resolution Service. The Dispute Resolution
19 Service shall consult with the Secretary and the Commis-
20 sion and issue a non-binding advisory within 90 days. The
21 Secretary may accept the Dispute Resolution Service advi-
22 sory unless the Secretary finds that the recommendation
23 will not provide for the adequate protection and utilization
24 of the reservation. The Secretary shall submit the advisory

1 and the Secretary's final written determination into the
2 record of the Commission's proceeding.

3 “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever
4 the Secretary of the Interior or the Secretary of Commerce
5 prescribes a fishway under section 18, the license appli-
6 cant or licensee may propose an alternative to such pre-
7 scription to construct, maintain, or operate a fishway.

8 “(2) Notwithstanding section 18, the Secretary of the
9 Interior or the Secretary of Commerce, as appropriate,
10 shall accept and prescribe, and the Commission shall re-
11 quire, the proposed alternative referred to in paragraph
12 (1), if the Secretary of the appropriate department deter-
13 mines, based on substantial evidence provided by the li-
14 censee or otherwise available to the Secretary, that such
15 alternative—

16 “(A) will be no less protective than the fishway
17 initially prescribed by the Secretary; and

18 “(B) will either—

19 “(i) cost less to implement; or

20 “(ii) result in improved operation of the
21 project works for electricity production,
22 as compared to the fishway initially deemed nec-
23 essary by the Secretary.

24 “(3) The Secretary concerned shall submit into the
25 public record of the Commission proceeding with any pre-

1 scription under section 18 or alternative prescription it ac-
2 cepts under this section, a written statement explaining
3 the basis for such prescription, and reason for not accept-
4 ing any alternative prescription under this section. The
5 written statement must demonstrate that the Secretary
6 gave equal consideration to the effects of the condition
7 adopted and alternatives not accepted on energy supply,
8 distribution, cost, and use; flood control; navigation; water
9 supply; and air quality (in addition to the preservation of
10 other aspects of environmental quality); based on such in-
11 formation as may be available to the Secretary, including
12 information voluntarily provided in a timely manner by the
13 applicant and others. The Secretary shall also submit, to-
14 gether with the aforementioned written statement, all
15 studies, data, and other factual information available to
16 the Secretary and relevant to the Secretary's decision.

17 “(4) Nothing in this section shall prohibit other inter-
18 ested parties from proposing alternative prescriptions.

19 “(5) If the Secretary concerned does not accept an
20 applicant's alternative prescription under this section, and
21 the Commission finds that the Secretary's prescription
22 would be inconsistent with the purposes of this part, or
23 other applicable law, the Commission may refer the dis-
24 pute to the Commission's Dispute Resolution Service. The
25 Dispute Resolution Service shall consult with the Sec-

1 retary 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 be less protective than the fishway initially prescribed by the Secretary. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.".

9 **PART II—ADDITIONAL HYDROPOWER**

10 **SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.**

11 (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.

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

2 (1) QUALIFIED HYDROELECTRIC FACILITY.—

3 The term “qualified hydroelectric facility” means a
4 turbine or other generating device owned or solely
5 operated by a non-Federal entity which generates
6 hydroelectric energy for sale and which is added to
7 an existing dam or conduit.

8 (2) EXISTING DAM OR CONDUIT.—The term

9 “existing dam or conduit” means any dam or con-
10 duit the construction of which was completed before
11 the date of the enactment of this section and which
12 does not require any construction or enlargement of
13 impoundment or diversion structures (other than re-
14 pair or reconstruction) in connection with the instal-
15 lation of a turbine or other generating device.

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

19 The terms defined in this subsection shall apply without
20 regard to the hydroelectric kilowatt capacity of the facility
21 concerned, without regard to whether the facility uses a
22 dam owned by a governmental or nongovernmental entity,
23 and without regard to whether the facility begins oper-
24 ation on or after the date of the enactment of this section.

1 (c) ELIGIBILITY WINDOW.—Payments may be made
2 under this section only for electric energy generated from
3 a qualified hydroelectric facility which begins operation
4 during the period of 10 fiscal years beginning with the
5 first full fiscal year occurring after the date of enactment
6 of this subtitle.

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

13 (e) AMOUNT OF PAYMENT.—

14 (1) IN GENERAL.—Payments made by the Sec-
15 retary under this section to the owner or operator of
16 a qualified hydroelectric facility shall be based on
17 the number of kilowatt hours of hydroelectric energy
18 generated by the facility during the incentive period.
19 For any such facility, the amount of such payment
20 shall be 1.8 cents per kilowatt hour (adjusted as
21 provided in paragraph (2)), subject to the avail-
22 ability of appropriations under subsection (g), except
23 that no facility may receive more than \$750,000 in
24 one calendar year.

1 (2) ADJUSTMENTS.—The amount of the pay-
2 ment made to any person under this section as pro-
3 vided in paragraph (1) shall be adjusted for inflation
4 for each fiscal year beginning after calendar year
5 2003 in the same manner as provided in the provi-
6 sions of section 29(d)(2)(B) of the Internal Revenue
7 Code of 1986, except that in applying such provi-
8 sions the calendar year 2003 shall be substituted for
9 calendar year 1979.

10 (f) SUNSET.—No payment may be made under this
11 section to any qualified hydroelectric facility after the ex-
12 piration of the period of 20 fiscal years beginning with
13 the first full fiscal year occurring after the date of enact-
14 ment of this subtitle, and no payment may be made under
15 this section to any such facility after a payment has been
16 made with respect to such facility for a period of 10 fiscal
17 years.

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

22 **SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

23 (a) INCENTIVE PAYMENTS.—The Secretary of En-
24 ergy shall make incentive payments to the owners or oper-
25 ators of hydroelectric facilities at existing dams to be used

1 to make capital improvements in the facilities that are di-
2 rectly related to improving the efficiency of such facilities
3 by at least 3 percent.

4 (b) LIMITATIONS.—Incentive payments under this
5 section shall not exceed 10 percent of the costs of the cap-
6 ital improvement concerned and not more than one pay-
7 ment may be made with respect to improvements at a sin-
8 gle facility. No payment in excess of \$750,000 may be
9 made with respect to improvements at a single facility.

10 (c) AUTHORIZATION.—There is authorized to be ap-
11 propriated to carry out this section not more than
12 \$10,000,000 for each of the fiscal years 2004 through
13 2013.

14 **SEC. 243. SMALL HYDROELECTRIC POWER PROJECTS.**

15 Section 408(a)(6) of the Public Utility Regulatory
16 Policies Act of 1978 is amended by striking “April 20,
17 1977” and inserting “March 4, 2003”.

18 **SEC. 244. INCREASED HYDROELECTRIC GENERATION AT**
19 **EXISTING FEDERAL FACILITIES.**

20 (a) IN GENERAL.—The Secretary of the Interior and
21 the Secretary of Energy, in consultation with the Sec-
22 retary of the Army, shall jointly conduct a study of the
23 potential for increasing electric power production capa-
24 bility at federally owned or operated water regulation,
25 storage, and conveyance facilities.

1 (b) CONTENT.—The study under this section shall in-
2 clude identification and description in detail of each facil-
3 ity that is capable, with or without modification, of pro-
4 ducing additional hydroelectric power, including esti-
5 mation of the existing potential for the facility to generate
6 hydroelectric power.

7 (c) REPORT.—The Secretaries shall submit to the
8 Committees on Energy and Commerce, Resources, and
9 Transportation and Infrastructure of the House of Rep-
10 resentatives and the Committee on Energy and Natural
11 Resources of the Senate a report on the findings, conclu-
12 sions, and recommendations of the study under this sec-
13 tion by not later than 18 months after the date of the
14 enactment of this Act. The report shall include each of
15 the following:

16 (1) The identifications, descriptions, and esti-
17 mations referred to in subsection (b).

18 (2) A description of activities currently con-
19 ducted or considered, or that could be considered, to
20 produce additional hydroelectric power from each
21 identified facility.

22 (3) A summary of prior actions taken by the
23 Secretaries to produce additional hydroelectric power
24 from each identified facility.

1 (4) The costs to install, upgrade, or modify
2 equipment or take other actions to produce addi-
3 tional hydroelectric power from each identified facil-
4 ity and the level of Federal power customer involve-
5 ment in the determination of such costs.

6 (5) The benefits that would be achieved by such
7 installation, upgrade, modification, or other action,
8 including quantified estimates of any additional en-
9 ergy or capacity from each facility identified under
10 subsection (b).

11 (6) A description of actions that are planned,
12 underway, or might reasonably be considered to in-
13 crease hydroelectric power production by replacing
14 turbine runners, by performing generator upgrades
15 or rewinds, or construction of pumped storage facili-
16 ties.

17 (7) The impact of increased hydroelectric power
18 production on irrigation, fish, wildlife, Indian tribes,
19 river health, water quality, navigation, recreation,
20 fishing, and flood control.

21 (8) Any additional recommendations to increase
22 hydroelectric power production from, and reduce
23 costs and improve efficiency at, federally owned or
24 operated water regulation, storage, and conveyance
25 facilities.

1 **SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**
2 **ODS.**

3 (a) IN GENERAL.—The Secretary of the Interior
4 shall—

5 (1) review electric power consumption by Bu-
6 reau of Reclamation facilities for water pumping
7 purposes; and

8 (2) make such adjustments in such pumping as
9 possible to minimize the amount of electric power
10 consumed for such pumping during periods of peak
11 electric power consumption, including by performing
12 as much of such pumping as possible during off-
13 peak hours at night.

14 (b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS
15 REQUIRED.—The Secretary may not under this section
16 make any adjustment in pumping at a facility without the
17 consent of each person that has contracted with the
18 United States for delivery of water from the facility for
19 use for irrigation and that would be affected by such ad-
20 justment.

21 (c) EXISTING OBLIGATIONS NOT AFFECTED.—This
22 section shall not be construed to affect any existing obliga-
23 tion of the Secretary to provide electric power, water, or
24 other benefits from Bureau of Reclamation facilities, in-
25 cluding recreational releases.