

108TH CONGRESS
2D SESSION

H. R. 4206

To provide for various energy efficiency programs and tax incentives, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2004

Mr. CUNNINGHAM (for himself, Mr. MARKEY, Mr. MATSUI, and Mr. LEWIS of California) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for various energy efficiency programs and tax
incentives, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Efficient Energy Through Certified Technologies and
6 Electricity Reliability (EFFECTER) Act of 2004”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—TAX INCENTIVES

- Sec. 101. Energy efficient commercial buildings deduction.
- Sec. 102. Credit for construction of new energy efficient homes.
- Sec. 103. Incentive for certain energy efficient property used in business.
- Sec. 104. Credit for certain nonbusiness energy property.
- Sec. 105. Energy credit for combined heat and power system property.
- Sec. 106. Credit for energy efficient appliances.

TITLE II—ENERGY EFFICIENT PRODUCTS

- Sec. 201. Energy conservation standards for additional products.
- Sec. 202. Energy labeling.

TITLE III—ENERGY EFFICIENCY FEDERAL PROGRAMS

- Sec. 301. Procurement of energy efficient products.
- Sec. 302. Energy savings performance contracts.
- Sec. 303. Federal building performance standards.

TITLE IV—PUBLIC HOUSING

- Sec. 401. Public Housing Capital Fund.
- Sec. 402. Grants for energy-conserving improvements for assisted housing.
- Sec. 403. Energy-efficient appliances.
- Sec. 404. Energy efficiency standards.

TITLE V—RELIABILITY STANDARDS

- Sec. 501. Electric reliability standards.

1 **TITLE I—TAX INCENTIVES**

2 **SEC. 101. ENERGY EFFICIENT COMMERCIAL BUILDINGS DE-** 3 **DUCTION.**

4 (a) IN GENERAL.—Part VI of subchapter B of chap-
 5 ter 1 of the Internal Revenue Code of 1986 (relating to
 6 itemized deductions for individuals and corporations) is
 7 amended by inserting after section 179A the following new
 8 section:

1 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
2 **DEDUCTION.**

3 “(a) IN GENERAL.—There shall be allowed as a de-
4 duction an amount equal to the cost of energy efficient
5 commercial building property placed in service during the
6 taxable year.

7 “(b) MAXIMUM AMOUNT OF DEDUCTION.—The de-
8 duction under subsection (a) with respect to any building
9 for the taxable year and all prior taxable years shall not
10 exceed an amount equal to the product of—

11 “(1) \$2.25, and

12 “(2) the square footage of the building.

13 “(c) DEFINITIONS.—For purposes of this section—

14 “(1) ENERGY EFFICIENT COMMERCIAL BUILD-
15 ING PROPERTY.—The term ‘energy efficient commer-
16 cial building property’ means property—

17 “(A) which is installed on or in any build-
18 ing located in the United States,

19 “(B) which is installed as part of—

20 “(i) the lighting systems,

21 “(ii) the heating, cooling, ventilation,
22 and hot water systems, or

23 “(iii) the building envelope, and

24 “(C) which is certified in accordance with
25 subsection (d)(4) as being installed as part of
26 a plan designed to reduce the total annual en-

1 ergy and power costs with respect to the light-
2 ing systems, heating, cooling, ventilation, and
3 hot water systems of the building by 50 percent
4 or more in comparison to a reference building
5 which meets the minimum requirements of
6 Standard 90.1–2001 using methods of calcula-
7 tion under subsection (d)(2).

8 A building described in subparagraph (A) may in-
9 clude any residential rental property, including any
10 low-rise multifamily structure or single family hous-
11 ing property which is not within the scope of Stand-
12 ard 90.1–2001.

13 “(2) STANDARD 90.1–2001.—The term ‘Stand-
14 ard 90.1–2001’ means Standard 90.1–2001 of the
15 American Society of Heating, Refrigerating, and Air
16 Conditioning Engineers and the Illuminating Engi-
17 neering Society of North America (as in effect on
18 April 2, 2003).

19 “(d) SPECIAL RULES.—

20 “(1) PARTIAL ALLOWANCE.—

21 “(A) IN GENERAL.—Except as provided in
22 subsection (f), if—

23 “(i) the requirement of subsection
24 (c)(1)(C) is not met, but

1 “(ii) there is a certification in accord-
2 ance with subsection (d)(4) that any sys-
3 tem referred to in subsection (c)(1)(B) sat-
4 isfies the energy-savings targets estab-
5 lished by the Secretary under subpara-
6 graph (B) with respect to such system,
7 then the requirement of subsection (c)(1)(C)
8 shall be treated as met with respect to such sys-
9 tem, and the deduction under subsection (a)
10 shall be allowed with respect to energy efficient
11 commercial building property installed as part
12 of such system and as part of a plan to meet
13 such targets, except that subsection (b) shall be
14 applied to such property by substituting ‘\$.75’
15 for ‘\$2.25’.

16 “(B) REGULATIONS.—The Secretary, after
17 consultation with the Secretary of Energy, shall
18 establish a target for each system described in
19 subsection (c)(1)(B) which, if such targets were
20 met for all such systems, the building would
21 meet the requirements of subsection (c)(1)(C).

22 “(2) METHODS OF CALCULATION.—The Sec-
23 retary, after consultation with the Secretary of En-
24 ergy, shall promulgate regulations which describe in
25 detail methods for calculating and verifying energy

1 and power consumption and cost, based on the pro-
2 visions of the 2005 California Nonresidential Alter-
3 native Calculation Method Approval Manual or, in
4 the case of residential property, the 2005 California
5 Residential Alternative Calculation Method Approval
6 Manual. These regulations shall meet the following
7 requirements:

8 “(A) In calculating tradeoffs and energy
9 performance, the regulations shall prescribe the
10 costs per unit of energy and power, such as kil-
11 owatt hour, kilowatt, gallon of fuel oil, and
12 cubic foot or Btu of natural gas, which may be
13 dependent on time of usage. If a State has de-
14 veloped annual energy usage and cost reduction
15 procedures based on time of usage costs for use
16 in the performance standards of the State’s
17 building energy code before the effective date of
18 this section, the State may use those annual en-
19 ergy usage and cost reduction procedures in
20 lieu of those adopted by the Secretary.

21 “(B) The calculation methods under this
22 paragraph need not comply fully with section
23 11 of Standard 90.1–2001.

24 “(C) The calculation methods shall be fuel
25 neutral, such that the same energy efficiency

1 features shall qualify a building for the deduc-
2 tion under this section regardless of whether
3 the heating source is a gas or oil furnace or an
4 electric heat pump. The reference building for
5 a proposed design which employs electric resist-
6 ance heating shall be modeled as using a heat
7 pump.

8 “(D) The calculation methods shall provide
9 appropriate calculated energy savings for design
10 methods and technologies not otherwise credited
11 in either Standard 90.1–2001 or in the 2005
12 California Nonresidential Alternative Calcula-
13 tion Method Approval Manual, including the
14 following:

15 “(i) Natural ventilation.

16 “(ii) Evaporative cooling.

17 “(iii) Automatic lighting controls such
18 as occupancy sensors, photocells, and time-
19 clocks.

20 “(iv) Daylighting.

21 “(v) Designs utilizing semi-condi-
22 tioned spaces which maintain adequate
23 comfort conditions without air conditioning
24 or without heating.

1 “(vi) Improved fan system efficiency,
2 including reductions in static pressure.

3 “(vii) Advanced unloading mecha-
4 nisms for mechanical cooling, such as mul-
5 tiple or variable speed compressors.

6 “(viii) The calculation methods may
7 take into account the extent of commis-
8 sioning in the building, and allow the tax-
9 payer to take into account measured per-
10 formance which exceeds typical perform-
11 ance.

12 “(ix) On-site generation of electricity,
13 including combined heat and power sys-
14 tems, fuel cells, and renewable energy gen-
15 eration such as solar energy.

16 “(x) Wiring with lower energy losses
17 than wiring satisfying Standard 90.1–2001
18 requirements for building power distribu-
19 tion systems.

20 “(3) COMPUTER SOFTWARE.—

21 “(A) IN GENERAL.—Any calculation under
22 paragraph (2) shall be prepared by qualified
23 computer software.

1 “(B) QUALIFIED COMPUTER SOFTWARE.—

2 For purposes of this paragraph, the term

3 ‘qualified computer software’ means software—

4 “(i) for which the software designer

5 has certified that the software meets all

6 procedures and detailed methods for calcu-

7 lating energy and power consumption and

8 costs as required by the Secretary,

9 “(ii) which provides such forms as re-

10 quired to be filed by the Secretary in con-

11 nection with energy efficiency of property

12 and the deduction allowed under this sec-

13 tion, and

14 “(iii) which provides a notice form

15 which documents the energy efficiency fea-

16 tures of the building and its projected an-

17 nual energy costs.

18 “(4) ALLOCATION OF DEDUCTION FOR PUBLIC

19 PROPERTY.—In the case of energy efficient commer-

20 cial building property installed on or in public prop-

21 erty, the Secretary shall promulgate a regulation to

22 allow the allocation of the deduction to the person

23 primarily responsible for designing the property in

24 lieu of the public entity which is the owner of such

1 property. Such person shall be treated as the tax-
2 payer for purposes of this section.

3 “(5) NOTICE TO OWNER.—Each certification
4 required under this section shall include an expla-
5 nation to the building owner regarding the energy
6 efficiency features of the building and its projected
7 annual energy costs as provided in the notice under
8 paragraph (3)(B)(iii).

9 “(6) CERTIFICATION.—

10 “(A) IN GENERAL.—The Secretary shall
11 prescribe the manner and method for the mak-
12 ing of certifications under this section.

13 “(B) PROCEDURES.—The Secretary shall
14 include as part of the certification process pro-
15 cedures for inspection and testing by qualified
16 individuals described in subparagraph (C) to
17 ensure compliance of buildings with energy-sav-
18 ings plans and targets. Such procedures shall
19 be comparable, given the difference between
20 commercial and residential buildings, to the re-
21 quirements in the Mortgage Industry National
22 Accreditation Procedures for Home Energy
23 Rating Systems.

24 “(C) QUALIFIED INDIVIDUALS.—Individ-
25 uals qualified to determine compliance shall be

1 only those individuals who are recognized by an
2 organization certified by the Secretary for such
3 purposes.

4 “(e) BASIS REDUCTION.—For purposes of this sub-
5 title, if a deduction is allowed under this section with re-
6 spect to any energy efficient commercial building property,
7 the basis of such property shall be reduced by the amount
8 of the deduction so allowed.

9 “(f) INTERIM RULES FOR LIGHTING SYSTEMS.—
10 Until such time as the Secretary issues final regulations
11 under subsection (d)(1)(B) with respect to property which
12 is part of a lighting system—

13 “(1) IN GENERAL.—The lighting system target
14 under subsection (d)(1)(A)(ii) shall be a reduction in
15 lighting power density of 25 percent (50 percent in
16 the case of a warehouse) of the minimum require-
17 ments in Table 9.3.1.1 or Table 9.3.1.2 (not includ-
18 ing additional interior lighting power allowances) of
19 Standard 90.1–2001.

20 “(2) REDUCTION IN DEDUCTION IF REDUCTION
21 LESS THAN 40 PERCENT.—

22 “(A) IN GENERAL.—If, with respect to the
23 lighting system of any building other than a
24 warehouse, the reduction in lighting power den-
25 sity of the lighting system is not at least 40

1 percent, only the applicable percentage of the
2 amount of deduction otherwise allowable under
3 this section with respect to such property shall
4 be allowed.

5 “(B) APPLICABLE PERCENTAGE.—For
6 purposes of subparagraph (A), the applicable
7 percentage is the number of percentage points
8 (not greater than 100) equal to the sum of—

9 “(i) 50, and

10 “(ii) the amount which bears the same
11 ratio to 50 as the excess of the reduction
12 of lighting power density of the lighting
13 system over 25 percentage points bears to
14 15.

15 “(C) EXCEPTIONS.—This subsection shall
16 not apply to any system—

17 “(i) the controls and circuiting of
18 which do not comply fully with the manda-
19 tory and prescriptive requirements of
20 Standard 90.1–2001 and which do not in-
21 clude provision for bilevel switching in all
22 occupancies except hotel and motel guest
23 rooms, store rooms, restrooms, and public
24 lobbies, or

1 “(ii) which does not meet the min-
2 imum requirements for calculated lighting
3 levels as set forth in the Illuminating Engi-
4 neering Society of North America Lighting
5 Handbook, Performance and Application,
6 Ninth Edition, 2000.

7 “(g) REGULATIONS.—The Secretary shall promul-
8 gate such regulations as necessary—

9 “(1) to take into account new technologies re-
10 garding energy efficiency and renewable energy for
11 purposes of determining energy efficiency and sav-
12 ings under this section, and

13 “(2) to provide for a recapture of the deduction
14 allowed under this section if the plan described in
15 subsection (c)(1)(C) or (d)(1)(A) is not fully imple-
16 mented.

17 “(h) TERMINATION.—This section shall not apply
18 with respect to property placed in service after December
19 31, 2009.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 1016(a) of the Internal Revenue
22 Code of 1986 is amended by striking “and” at the
23 end of paragraph (27), by striking the period at the
24 end of paragraph (28) and inserting “, and”, and by
25 adding at the end the following new paragraph:

1 “(29) to the extent provided in section
2 179B(e).”.

3 (2) Section 1245(a) of such Code is amended
4 by inserting “179B,” after “179A,” both places it
5 appears in paragraphs (2)(C) and (3)(C).

6 (3) Section 1250(b)(3) of such Code is amend-
7 ed by inserting before the period at the end of the
8 first sentence “or by section 179B”.

9 (4) Section 263(a)(1) of such Code is amended
10 by striking “or” at the end of subparagraph (G), by
11 striking the period at the end of subparagraph (H)
12 and inserting “, or”, and by inserting after subpara-
13 graph (H) the following new subparagraph:

14 “(I) expenditures for which a deduction is
15 allowed under section 179B.”.

16 (5) Section 312(k)(3)(B) of such Code is
17 amended by striking “or 179A” each place it ap-
18 pears in the heading and text and inserting “, 179A,
19 or 179B”.

20 (c) CLERICAL AMENDMENT.—The table of sections
21 for part VI of subchapter B of chapter 1 of the Internal
22 Revenue Code of 1986 is amended by inserting after sec-
23 tion 179A the following new item:

 “Sec. 179B. Energy efficient commercial buildings deduction.”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to property placed in service after

1 the date of the enactment of this Act in taxable years end-
2 ing after such date.

3 **SEC. 102. CREDIT FOR CONSTRUCTION OF NEW ENERGY EF-**
4 **FICIENT HOMES.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
6 chapter A of chapter 1 of the Internal Revenue Code of
7 1986 (relating to business related credits) is amended by
8 adding at the end the following new section:

9 **“SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.**

10 “(a) IN GENERAL.—For purposes of section 38, in
11 the case of an eligible contractor with respect to a quali-
12 fied new energy efficient home, the credit determined
13 under this section for the taxable year with respect to such
14 home is an amount equal to the aggregate adjusted bases
15 of all energy efficient property installed in such home dur-
16 ing construction of such home.

17 “(b) LIMITATIONS.—

18 “(1) MAXIMUM CREDIT.—

19 “(A) IN GENERAL.—The credit allowed by
20 this section with respect to a dwelling unit shall
21 not exceed—

22 “(i) in the case of a dwelling unit de-
23 scribed in clause (i) or (iii) of subsection
24 (c)(3)(C), \$1,000, and

1 “(ii) in the case of a dwelling unit de-
2 scribed in subsection (e)(3)(C)(ii), \$2,000.

3 “(B) PRIOR CREDIT AMOUNTS ON SAME
4 DWELLING UNIT TAKEN INTO ACCOUNT.—If a
5 credit was allowed under subsection (a) with re-
6 spect to a dwelling unit in 1 or more prior tax-
7 able years, the amount of the credit otherwise
8 allowable for the taxable year with respect to
9 such dwelling unit shall be reduced by the sum
10 of the credits allowed under subsection (a) with
11 respect to the dwelling unit for all prior taxable
12 years.

13 “(2) COORDINATION WITH CERTAIN CREDITS.—
14 For purposes of this section—

15 “(A) the basis of any property referred to
16 in subsection (a) shall be reduced by that por-
17 tion of the basis of any property which is attrib-
18 utable to qualified rehabilitation expenditures
19 (as defined in section 47(c)(2)) or to the energy
20 percentage of energy property (as determined
21 under section 48(a)), and

22 “(B) expenditures taken into account
23 under section 47 or 48(a) shall not be taken
24 into account under this section.

25 “(c) DEFINITIONS.—For purposes of this section—

1 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligible
2 ble contractor’ means—

3 “(A) the person who constructed the quali-
4 fied new energy efficient home, or

5 “(B) in the case of a qualified new energy
6 efficient home which is a manufactured home,
7 the manufactured home producer of such home.

8 If more than 1 person is described in subparagraph
9 (A) or (B) with respect to any qualified new energy
10 efficient home, such term means the person des-
11 ignated as such by the owner of such home.

12 “(2) ENERGY EFFICIENT PROPERTY.—The
13 term ‘energy efficient property’ means any energy
14 efficient building envelope component, and any en-
15 ergy efficient heating or cooling equipment or sys-
16 tem, which can, individually or in combination with
17 other components, result in a dwelling unit meeting
18 the requirements of this section.

19 “(3) QUALIFIED NEW ENERGY EFFICIENT
20 HOME.—The term ‘qualified new energy efficient
21 home’ means a dwelling unit—

22 “(A) located in the United States,

23 “(B) the construction of which is substan-
24 tially completed after December 31, 2003, and

25 “(C) which is—

1 “(i) certified to have a level of annual
2 heating and cooling energy consumption
3 which is at least 30 percent below the an-
4 nual level of heating and cooling energy
5 consumption of a comparable dwelling unit
6 constructed in accordance with the stand-
7 ards of chapter 4 of the 2003 International
8 Energy Conservation Code, as such Code
9 (including supplements) is in effect on the
10 date of the enactment of this section, and
11 for which the heating and cooling equip-
12 ment efficiencies correspond to the min-
13 imum allowed under the regulations estab-
14 lished by the Department of Energy pursu-
15 ant to the National Appliance Energy Con-
16 servation Act of 1987 and in effect at the
17 time of construction, and to have building
18 envelope component improvements account
19 for at least $\frac{1}{3}$ of such 30 percent,

20 “(ii) certified to have a level of annual
21 heating and cooling energy consumption
22 which is at least 50 percent below such an-
23 nual level and to have building envelope
24 component improvements account for at
25 least $\frac{1}{5}$ of such 50 percent, or

1 “(iii) a manufactured home which—
2 “(I) conforms to Federal Manu-
3 factured Home Construction and
4 Safety Standards (section 3280 of
5 title 24, Code of Federal Regulations),
6 and
7 “(II) meets the applicable stand-
8 ards required by the Administrator of
9 the Environmental Protection Agency
10 under the Energy Star Labeled
11 Homes program.

12 “(4) CONSTRUCTION.—The term ‘construction’
13 includes substantial reconstruction and rehabilita-
14 tion.

15 “(5) ACQUIRE.—The term ‘acquire’ includes
16 purchase and, in the case of reconstruction and re-
17 habilitation, such term includes a binding written
18 contract for such reconstruction or rehabilitation.

19 “(6) BUILDING ENVELOPE COMPONENT.—The
20 term ‘building envelope component’ means—

21 “(A) any insulation material or system
22 which is specifically and primarily designed to
23 reduce the heat loss or gain of a dwelling unit
24 when installed in or on such dwelling unit,

1 “(B) exterior windows (including sky-
2 lights),

3 “(C) exterior doors, and

4 “(D) any metal roof installed on a dwelling
5 unit, but only if such roof has appropriate pig-
6 mented coatings which—

7 “(i) are specifically and primarily de-
8 signed to reduce the heat gain of such
9 dwelling unit, and

10 “(ii) meet the Energy Star program
11 requirements.

12 “(d) CERTIFICATION.—

13 “(1) METHOD OF CERTIFICATION.—A certifi-
14 cation described in subsection (c)(3)(C) shall be de-
15 termined in accordance with guidance prescribed by
16 the Secretary, after consultation with the Secretary
17 of Energy. Such guidance shall specify procedures
18 and methods for calculating energy and cost savings.

19 “(2) FORM.—A certification described in sub-
20 section (c)(3)(C) shall be made in writing—

21 “(A) in a manner which specifies in readily
22 verifiable fashion the energy efficient building
23 envelope components and energy efficient heat-
24 ing or cooling equipment installed and their re-

1 spective rated energy efficiency performance,
2 and

3 “(B) in the case of a qualified new energy
4 efficient home which is a manufactured home,
5 accompanied by such documentation as required
6 by the Administrator of the Environmental Pro-
7 tection Agency under the Energy Star Labeled
8 Homes program.

9 “(e) BASIS ADJUSTMENT.—For purposes of this sub-
10 title, if a credit is determined under this section for any
11 expenditure with respect to any property, the increase in
12 the basis of such property which would (but for this sub-
13 section) result from such expenditure shall be reduced by
14 the amount of the credit so determined.

15 “(f) APPLICATION OF SECTION.—Subsection (a) shall
16 apply to qualified new energy efficient homes acquired
17 during the period beginning on January 1, 2004, and end-
18 ing on December 31, 2006.”.

19 (b) CREDIT MADE PART OF GENERAL BUSINESS
20 CREDIT.—Section 38(b) of the Internal Revenue Code of
21 1986 (relating to current year business credit) is amended
22 by striking “plus” at the end of paragraph (14), by strik-
23 ing the period at the end of paragraph (15) and inserting
24 “, plus”, and by adding at the end the following new para-
25 graph:

1 “(16) the new energy efficient home credit de-
2 termined under section 45G(a).”.

3 (c) BASIS ADJUSTMENT.—Subsection (a) of section
4 1016 of the Internal Revenue Code of 1986, as amended
5 by section 101, is amended by striking “and” at the end
6 of paragraph (28), by striking the period at the end of
7 paragraph (29) and inserting “, and”, and by adding at
8 the end the following new paragraph:

9 “(30) to the extent provided in section 45G(e),
10 in the case of amounts with respect to which a credit
11 has been allowed under section 45G.”.

12 (d) LIMITATION ON CARRYBACK.—Section 39(d) of
13 the Internal Revenue Code of 1986 (relating to transition
14 rules) is amended by adding at the end the following new
15 paragraph:

16 “(11) NO CARRYBACK OF NEW ENERGY EFFI-
17 CIENT HOME CREDIT BEFORE EFFECTIVE DATE.—
18 No portion of the unused business credit for any
19 taxable year which is attributable to the new energy
20 efficient home credit determined under section
21 45G(a) may be carried to a taxable year beginning
22 before January 1, 2004.”.

23 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
24 CREDITS.—Section 196(c) of the Internal Revenue Code
25 of 1986 (defining qualified business credits) is amended

1 by striking “and” at the end of paragraph (10), by strik-
 2 ing the period at the end of paragraph (11) and inserting
 3 “, and”, and by adding after paragraph (11) the following
 4 new paragraph:

5 “(12) the new energy efficient home credit de-
 6 termined under section 45G(a).”.

7 (f) CLERICAL AMENDMENT.—The table of sections
 8 for subpart D of part IV of subchapter A of chapter 1
 9 of the Internal Revenue Code of 1986 is amended by add-
 10 ing at the end the following new item:

 “Sec. 45G. New energy efficient home credit.”.

11 (g) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to taxable years ending after De-
 13 cember 31, 2003.

14 **SEC. 103. INCENTIVE FOR CERTAIN ENERGY EFFICIENT**
 15 **PROPERTY USED IN BUSINESS.**

16 (a) IN GENERAL.—Part VI of subchapter B of chap-
 17 ter 1 of the Internal Revenue Code of 1986 is amended
 18 by adding at the end the following new section:

19 **“SEC. 199. ENERGY PROPERTY DEDUCTION.**

20 “(a) IN GENERAL.—There shall be allowed as a de-
 21 duction for the taxable year an amount equal to the sum
 22 of—

23 “(1) the amount determined under subsection

24 (b) for each energy property of the taxpayer placed
 25 in service during such taxable year, and

1 “(2) the energy efficient residential rental
 2 building property deduction determined under sub-
 3 section (e).

4 “(b) AMOUNT FOR ENERGY PROPERTY.—

5 “(1) IN GENERAL.—The amount determined
 6 under this subsection for the taxable year for each
 7 item of energy property shall equal the amount spec-
 8 ified for such property in the following table:

Description of property:	Allowable amount is:
Elected solar hot water property	\$1.00 per each kwh/year of sav- ings.
Photovoltaic property	\$4.50 per peak watt.
Advanced main air circulating fan or a Tier 1 natural gas, propane, or oil water heater.	\$150.
Tier 2 energy-efficient building property	\$900.
Tier 1 energy-efficient building property (other than an advanced main air circulating fan or a natural gas, propane, or oil water heater).	\$450.

9 “(2) ELECTED SOLAR HOT WATER PROP-
 10 erty.—In the case of elected solar hot water prop-
 11 erty, the taxpayer may elect to substitute ‘\$21 per
 12 annual Therm of natural gas savings’ for ‘\$1.00 per
 13 each kwh/year of savings’ in the table contained in
 14 paragraph (1).

15 “(c) ENERGY PROPERTY DEFINED.—

16 “(1) IN GENERAL.—For purposes of this part,
 17 the term ‘energy property’ means any property—

18 “(A) which is—

19 “(i) solar energy property,

1 “(ii) Tier 2 energy-efficient building
2 property, or

3 “(iii) Tier 1 energy-efficient building
4 property,

5 “(B)(i) the construction, reconstruction, or
6 erection of which is completed by the taxpayer,
7 or

8 “(ii) which is acquired by the taxpayer if
9 the original use of such property commences
10 with the taxpayer,

11 “(C) with respect to which depreciation (or
12 amortization in lieu of depreciation) is allow-
13 able, and

14 “(D) which meets the performance and
15 quality standards, and the certification require-
16 ments (if any), which—

17 “(i) have been prescribed by the Sec-
18 retary by regulations (after consultation
19 with the Secretary of Energy or the Ad-
20 ministrators of the Environmental Protec-
21 tion Agency, as appropriate),

22 “(ii) in the case of the energy effi-
23 ciency ratio (EER) for central air condi-
24 tioners and electric heat pumps—

1 “(I) require measurements to be
2 based on published data which is test-
3 ed by manufacturers at 95 degrees
4 Fahrenheit, and

5 “(II) do not require ratings to be
6 based on certified data of the Air
7 Conditioning and Refrigeration Insti-
8 tute,

9 “(iii) in the case of geothermal heat
10 pumps—

11 “(I) shall be based on testing
12 under the conditions of ARI/ISO
13 Standard 13256–1 for Water Source
14 Heat Pumps or ARI 870 for Direct
15 Expansion GeoExchange Heat Pumps
16 (DX), as appropriate, and

17 “(II) shall include evidence that
18 water heating services have been pro-
19 vided through a desuperheater or inte-
20 grated water heating system con-
21 nected to the storage water heater
22 tank, and

23 “(iv) are in effect at the time of the
24 acquisition of the property.

1 “(2) SOLAR ENERGY PROPERTY.—In the case
2 of—

3 “(A) elected solar hot water property, the
4 regulations under paragraph (1)(D) shall be
5 based on the OG–300 Standard for the Annual
6 Performance of OG–300 Certified Systems of
7 the Solar Rating and Certification Corporation,
8 and

9 “(B) photovoltaics, such regulations shall
10 be based on the ASTM Standard E 1036 and
11 E 1036M–96 Standard Test Method for Elec-
12 tric Performance of Nonconcentrator Terres-
13 trial Photovoltaic Modules and Arrays Using
14 Reference Cells,

15 to the extent the Secretary determines such stand-
16 ards carry out the purposes of this section.

17 “(3) EXCEPTION.—Such term shall not include
18 any property which is public utility property (as de-
19 fined in section 46(f)(5) as in effect on the day be-
20 fore the date of the enactment of the Revenue Rec-
21 onciliation Act of 1990).

22 “(d) DEFINITIONS RELATING TO TYPES OF ENERGY
23 PROPERTY.—For purposes of this section—

24 “(1) SOLAR ENERGY PROPERTY.—

1 “(A) IN GENERAL.—The term ‘solar en-
2 ergy property’ means equipment which uses
3 solar energy—

4 “(i) to generate electricity, or

5 “(ii) to provide hot water for use in a
6 structure.

7 “(B) ELECTED SOLAR HOT WATER PROP-
8 ERTY.—

9 “(i) IN GENERAL.—The term ‘elected
10 solar hot water property’ means property
11 which is solar energy property by reason of
12 subparagraph (A)(ii) and for which an
13 election under this subparagraph is in ef-
14 fect.

15 “(ii) ELECTION.—For purposes of
16 clause (i), a taxpayer may elect to treat
17 property described in clause (i) as elected
18 solar hot water property.

19 “(C) PHOTOVOLTAIC PROPERTY.—The
20 term ‘photovoltaic property’ means solar energy
21 property which uses a solar photovoltaic process
22 to generate electricity.

23 “(D) SWIMMING POOLS, ETC., USED AS
24 STORAGE MEDIUM.—The term ‘solar energy
25 property’ shall not include a swimming pool,

1 hot tub, or any other energy storage medium
2 which has a function other than the function of
3 such storage.

4 “(E) SOLAR PANELS.—No solar panel or
5 other property installed as a roof (or portion
6 thereof) shall fail to be treated as solar energy
7 property solely because it constitutes a struc-
8 tural component of the structure on which it is
9 installed.

10 “(2) TIER 2 ENERGY-EFFICIENT BUILDING
11 PROPERTY.—The term ‘Tier 2 energy-efficient build-
12 ing property’ means—

13 “(A) an electric heat pump water heater
14 which yields an energy factor of at least 2.0 in
15 the standard Department of Energy test proce-
16 dure,

17 “(B) an electric heat pump which has a
18 heating seasonal performance factor (HSPF) of
19 at least 9, a seasonal energy efficiency ratio
20 (SEER) of at least 15, and an energy efficiency
21 ratio (EER) of at least 12.5,

22 “(C) a geothermal heat pump which—

23 “(i) in the case of a closed loop prod-
24 uct, has an energy efficiency ratio (EER)

1 of at least 14.1 and a heating coefficient
2 of performance (COP) of at least 3.3,

3 “(ii) in the case of an open loop prod-
4 uct, has an energy efficiency ratio (EER)
5 of at least 16.2 and a heating coefficient of
6 performance (COP) of at least 3.6, and

7 “(iii) in the case of a direct expansion
8 (DX) product, has an energy efficiency
9 ratio (EER) of at least 15 and a heating
10 coefficient of performance (COP) of at
11 least 3.5,

12 “(D) a central air conditioner which has a
13 seasonal energy efficiency ratio (SEER) of at
14 least 15 and an energy efficiency ratio (EER)
15 of at least 12.5, and

16 “(E) a natural gas, propane, or oil water
17 heater which has an energy factor of at least
18 0.80.

19 “(3) TIER 1 ENERGY-EFFICIENT BUILDING
20 PROPERTY.—The term ‘Tier 1 energy-efficient build-
21 ing property’ means—

22 “(A) an electric heat pump which has a
23 heating system performance factor (HSPF) of
24 at least 7.5, a cooling seasonal energy efficiency

1 ratio (SEER) of at least 13.5, and an energy
2 efficiency ratio (EER) of at least 11.5,

3 “(B) a central air conditioner which has a
4 cooling seasonal energy efficiency ratio (SEER)
5 of at least 13.5 and an energy efficiency ratio
6 (EER) of at least 11.5,

7 “(C) a natural gas, propane, or oil water
8 heater which has an energy factor of at least
9 0.65, and

10 “(D) an oil, natural gas, or propane fur-
11 nace or hot water boiler which achieves at least
12 95 percent annual fuel utilization efficiency
13 (AFUE).

14 “(4) ADVANCED MAIN AIR CIRCULATING FAN.—
15 The term ‘advanced main air circulating fan’ means
16 a fan used in a natural gas, propane, or oil furnace
17 originally placed in service by the taxpayer during
18 the taxable year, including a fan which uses a
19 brushless permanent magnet motor or another type
20 of motor which achieves similar or higher efficiency
21 at full and half speed, as determined by the Sec-
22 retary.

23 “(e) ENERGY EFFICIENT RESIDENTIAL RENTAL
24 BUILDING PROPERTY DEDUCTION.—

1 “(1) DEDUCTION ALLOWED.—For purposes of
2 subsection (a)—

3 “(A) IN GENERAL.—The energy efficient
4 residential rental building property deduction
5 determined under this subsection is an amount
6 equal to energy efficient residential rental build-
7 ing property expenditures made by a taxpayer
8 for the taxable year.

9 “(B) MAXIMUM AMOUNT OF DEDUC-
10 TION.—The amount of energy efficient residen-
11 tial rental building property expenditures taken
12 into account under subparagraph (A) with re-
13 spect to each dwelling unit shall not exceed—

14 “(i) \$6,000 in the case of a percent-
15 age reduction of 50 percent as determined
16 under paragraph (2)(B), and

17 “(ii) \$12,000 times the percentage re-
18 duction in the case of a percentage reduc-
19 tion of less than 50 percent as determined
20 under paragraph (2)(B).

21 “(C) YEAR DEDUCTION ALLOWED.—The
22 deduction under subparagraph (A) shall be al-
23 lowed in the taxable year in which the construc-
24 tion, reconstruction, erection, or rehabilitation
25 of the property is completed.

1 “(2) ENERGY EFFICIENT RESIDENTIAL RENTAL
2 BUILDING PROPERTY EXPENDITURES.—For pur-
3 poses of this subsection—

4 “(A) IN GENERAL.—The term ‘energy effi-
5 cient residential rental building property ex-
6 penditures’ means an amount paid or incurred
7 in connection with construction, reconstruction,
8 erection, or rehabilitation of energy efficient
9 residential rental building property—

10 “(i) for which depreciation is allow-
11 able under section 167,

12 “(ii) which is located in the United
13 States, and

14 “(iii) the construction, reconstruction,
15 erection, or rehabilitation of which is com-
16 pleted by the taxpayer.

17 Such term includes expenditures for labor costs
18 properly allocable to the onsite preparation, as-
19 sembly, or original installation of the property.

20 “(B) ENERGY EFFICIENT RESIDENTIAL
21 RENTAL BUILDING PROPERTY.—

22 “(i) IN GENERAL.—The term ‘energy
23 efficient residential rental building prop-
24 erty’ means any property which reduces
25 total annual energy and power costs with

1 respect to heating and cooling of the build-
2 ing by a percentage certified according to
3 clause (ii).

4 “(ii) PROCEDURES.—

5 “(I) IN GENERAL.—For purposes
6 of clause (i), energy usage and costs
7 shall be demonstrated by perform-
8 ance-based compliance.

9 “(II) PERFORMANCE-BASED COM-
10 PLIANCE.—Performance-based compli-
11 ance shall be demonstrated by calcu-
12 lating the percent energy cost savings
13 for heating and cooling, as applicable,
14 with respect to a dwelling unit when
15 compared to the original condition of
16 the dwelling unit.

17 “(III) COMPUTER SOFTWARE.—

18 Computer software shall be used in
19 support of performance-based compli-
20 ance under subclause (II) and such
21 software shall meet all of the proce-
22 dures and methods for calculating en-
23 ergy savings reductions which are pro-
24 mulgated by the Secretary of Energy.
25 Such regulations on the specifications

1 for software and verification protocols
2 shall be based on the 2005 California
3 Residential Alternative Calculation
4 Method Approval Manual.

5 “(IV) CALCULATION REQUIRE-
6 MENTS.—In calculating tradeoffs and
7 energy performance, the regulations
8 prescribed under this clause shall pre-
9 scribe for the taxable year the costs
10 per unit of energy and power, such as
11 kilowatt hour, kilowatt, gallon of fuel
12 oil, and cubic foot or Btu of natural
13 gas, which may be dependent on time
14 of usage. Where a State has developed
15 annual energy usage and cost reduc-
16 tion procedures based on time of
17 usage costs for use in the performance
18 standards of the State’s building en-
19 ergy code prior to the effective date of
20 this section, the State may use those
21 annual energy usage and cost reduc-
22 tion procedures in lieu of those adopt-
23 ed by the Secretary.

24 “(V) APPROVAL OF SOFTWARE
25 SUBMISSIONS.—The Secretary shall

1 approve software submissions which
2 comply with the requirements of sub-
3 clause (III).

4 “(VI) PROCEDURES FOR INSPEC-
5 TION AND TESTING OF HOMES.—The
6 Secretary shall ensure that procedures
7 for the inspection and testing for com-
8 pliance comply with the calculation re-
9 quirements under subclause (IV) of
10 this clause and clause (iv).

11 “(iii) DETERMINATIONS OF COMPLI-
12 ANCE.—A determination of compliance
13 with respect to energy efficient residential
14 rental building property made for the pur-
15 poses of this subparagraph shall be filed
16 with the Secretary not later than 1 year
17 after the date of such determination and
18 shall include the TIN of the certifier, the
19 address of the building in compliance, and
20 the identity of the person for whom such
21 determination was performed. Determina-
22 tions of compliance filed with the Secretary
23 shall be available for inspection by the Sec-
24 retary of Energy.

25 “(iv) COMPLIANCE.—

1 “(I) IN GENERAL.—The Sec-
2 retary, after consultation with the
3 Secretary of Energy, shall establish
4 requirements for certification and
5 compliance procedures after exam-
6 ining the requirements for energy con-
7 sultants and home energy ratings pro-
8 viders specified by the Mortgage In-
9 dustry National Home Energy Rating
10 Standards.

11 “(II) INDIVIDUALS QUALIFIED
12 TO DETERMINE COMPLIANCE.—The
13 determination of compliance may be
14 provided by a local building regulatory
15 authority, a utility, a manufactured
16 home production inspection primary
17 inspection agency (IPIA), or an ac-
18 credited home energy rating system
19 provider. All providers shall be accred-
20 ited, or otherwise authorized to use
21 approved energy performance meas-
22 urement methods, by the Residential
23 Energy Services Network (RESNET).

24 “(C) ALLOCATION OF DEDUCTION FOR
25 PUBLIC PROPERTY.—In the case of energy effi-

1 cient residential rental building property which
2 is public property, the Secretary shall promul-
3 gate a regulation to allow the allocation of the
4 deduction to the person primarily responsible
5 for designing the improvements to the property
6 in lieu of the public entity which is the owner
7 of such property. Such person shall be treated
8 as the taxpayer for purposes of this subsection.

9 “(f) SPECIAL RULES.—For purposes of this sec-
10 tion—

11 “(1) BASIS REDUCTION.—For purposes of this
12 subtitle, if a deduction is allowed under this section
13 with respect to any property, the basis of such prop-
14 erty shall be reduced by the amount of the deduction
15 so allowed.

16 “(2) DOUBLE BENEFIT.—Property which
17 would, but for this paragraph, be eligible for deduc-
18 tion under more than one provision of this section
19 shall be eligible only under one such provision, the
20 provision specified by the taxpayer.

21 “(g) REGULATIONS.—The Secretary shall promul-
22 gate such regulations as necessary to take into account
23 new technologies regarding energy efficiency and renew-
24 able energy for purposes of determining energy efficiency
25 and savings under this section.

1 “(h) TERMINATION.—This section shall not apply
2 with respect to—

3 “(1) any energy property placed in service after
4 December 31, 2008 (December 31, 2005, in the case
5 of Tier 1 energy-efficient building property), and

6 “(2) any energy efficient residential rental
7 building property expenditures in connection with
8 property—

9 “(A) placed in service after December 31,
10 2007, or

11 “(B) the construction, reconstruction, erec-
12 tion, or rehabilitation of which is not completed
13 on or before December 31, 2007.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 48(a)(3)(A) of the Internal Revenue
16 Code of 1986 is amended to read as follows:

17 “(A) which is equipment used to produce,
18 distribute, or use energy derived from a geo-
19 thermal deposit (within the meaning of section
20 613(e)(2)), but only, in the case of electricity
21 generated by geothermal power, up to (but not
22 including) the electrical transmission stage,”.

23 (2) Subparagraph (B) of section 168(e)(3) of
24 such Code is amended—

25 (A) in clause (vi)(I)—

1 (i) by striking “section 48(a)(3)” and
2 inserting “section 199(d)(1)”, and

3 (ii) by striking “clause (i)” and in-
4 serting “such subparagraph (A)”, and

5 (B) in the last sentence, by striking “sec-
6 tion 48(a)(3)” and inserting “section
7 199(c)(3)”.

8 (3) Section 1016(a) of such Code, as amended
9 by section 102, is amended by striking “and” at the
10 end of paragraph (29), by striking the period at the
11 end of paragraph (30) and inserting “, and”, and by
12 inserting the following new paragraph:

13 “(31) for amounts allowed as a deduction under
14 section 199(a).”.

15 (c) CLERICAL AMENDMENT.—The table of sections
16 for part VI of subchapter B of chapter 1 of the Internal
17 Revenue Code of 1986 is amended by adding at the end
18 the following new item:

“Sec. 199. Energy property deduction.”.

19 (d) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Department of
21 Energy out of amounts not already appropriated such
22 sums as necessary to carry out this section.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2003.

1 **SEC. 104. CREDIT FOR CERTAIN NONBUSINESS ENERGY**
2 **PROPERTY.**

3 (a) IN GENERAL.—Subpart A of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 (relating to nonrefundable personal credits) is
6 amended by inserting after section 25B the following new
7 section:

8 **“SEC. 25C. NONBUSINESS ENERGY PROPERTY.**

9 “(a) ALLOWANCE OF CREDIT.—

10 “(1) IN GENERAL.—In the case of an indi-
11 vidual, there shall be allowed as a credit against the
12 tax imposed by this chapter for the taxable year an
13 amount equal to the sum of—

14 “(A) the amount determined under sub-
15 section (b) for each qualified energy property of
16 the taxpayer placed in service during such tax-
17 able year, and

18 “(B) so much of the credit amount speci-
19 fied in paragraph (2) which does not exceed the
20 expenditures made by the taxpayer in connec-
21 tion with the construction, reconstruction, erec-
22 tion, or rehabilitation of a dwelling unit of the
23 taxpayer which results in the unit being a high-
24 ly energy-efficient principal residence.

25 For purposes of subparagraph (B), the expenditures
26 may include labor costs properly allocable to the on-

1 site preparation, assembly, or original installation of
2 such property.

3 “(2) CREDIT AMOUNT.—The credit amount
4 with respect to a highly energy-efficient principal
5 residence is—

6 “(A) \$2,000 in the case of a percentage re-
7 duction of 50 percent as determined under sub-
8 section (e)(6)(A)(iii), and

9 “(B) \$4,000 times the percentage reduc-
10 tion in the case of a percentage reduction of
11 less than 50 percent as determined under sub-
12 section (e)(6)(A)(iii).

13 “(b) AMOUNT FOR QUALIFIED ENERGY PROP-
14 erty.—

15 “(1) RESIDENTIAL ENERGY PROPERTY EX-
16 PENDITURES.—Except as provided in paragraph (2),
17 the amount determined under this subsection for the
18 taxable year for each item of qualified energy prop-
19 erty shall equal the amount of residential energy
20 property expenditures made by the taxpayer with re-
21 spect to such property during such taxable year.

22 “(2) SOLAR HOT WATER PROPERTY; PHOTO-
23 VOLTAIC PROPERTY.—

24 “(A) IN GENERAL.—In the case of solar
25 hot water property and photovoltaic property,

1 the amount determined under this subsection
 2 for the taxable year shall equal the amount
 3 specified for such property in the following
 4 table:

Description of property:	Allowable amount is:
Elected solar hot water property	35¢ per each kwh/year of sav- ings.
Photovoltaic property	\$1.50 per peak watt.

5 “(B) ELECTED SOLAR HOT WATER PROP-
 6 ERTY.—In the case of elected solar hot water
 7 property (as defined in section 199(d)(1)(B)),
 8 the taxpayer may elect to substitute ‘\$7 per an-
 9 nual Therm of natural gas savings’ for ‘35¢ per
 10 each kwh/year of savings’ in the table contained
 11 in subparagraph (A).

12 “(3) MAXIMUM AMOUNT.—In the case of prop-
 13 erty described in the following table, the amount of
 14 expenditures taken into account under paragraph
 15 (1) and the amount determined under paragraph (2)
 16 for the taxable year for each item of qualified energy
 17 property with respect to a dwelling unit shall not ex-
 18 ceed the amount specified for such property in such
 19 table:

“Description of property item:	Maximum allowable credit amount is:
Tier 2 energy-efficient building property	\$300.

“Description of property item:	Maximum allowable credit amount is:
Advanced main air circulating fan or a Tier 1 natural gas, propane, or oil water heater.	\$50.
Tier 1 energy-efficient building property (other than an advanced main air circulating fan or a natural gas, propane, or oil water heater).	\$150.
Solar hot water property	\$1,000.
Photovoltaic property	\$6,000.

1 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section—

3 “(1) RESIDENTIAL ENERGY PROPERTY EX-
4 PENDITURES.—The term ‘residential energy prop-
5 erty expenditures’ means expenditures made by the
6 taxpayer for qualified energy property installed on or
7 in connection with a dwelling unit which—

8 “(A) is located in the United States, and

9 “(B) is used as a principal residence.

10 Such term includes expenditures for labor costs
11 properly allocable to the onsite preparation, assem-
12 bly, or original installation of the property.

13 “(2) QUALIFIED ENERGY PROPERTY.—

14 “(A) IN GENERAL.—The term ‘qualified
15 energy property’ means—

16 “(i) energy-efficient building property,

17 “(ii) solar hot water property, and

18 “(iii) photovoltaic property.

19 “(B) SWIMMING POOL, ETC., USED AS
20 STORAGE MEDIUM; SOLAR PANELS.—For pur-

1 poses of this paragraph, the provisions of sub-
2 paragraphs (D) and (E) section 199(d)(1) shall
3 apply.

4 “(C) REQUIRED STANDARDS.—Property
5 described under subparagraph (A) shall meet
6 the performance and quality standards and cer-
7 tification standards of paragraphs (1)(D) and
8 (2) of section 199(e).

9 “(3) ENERGY-EFFICIENT BUILDING PROP-
10 PERTY.—The term ‘energy-efficient building property’
11 has the same meaning given the terms ‘Tier 2 en-
12 ergy-efficient property’, ‘Tier 1 energy-efficient
13 property’, and ‘advanced main air circulating fan’ in
14 paragraphs (2), (3), and (4) of section 199(d), re-
15 spectively.

16 “(4) SOLAR HOT WATER PROPERTY.—The term
17 ‘solar hot water property’ means property which,
18 when installed in connection with a structure, uses
19 solar energy for the purpose of providing hot water
20 for use within such structure and the performance
21 of which is determined in accordance with section
22 199(c)(2)(A).

23 “(5) PHOTOVOLTAIC PROPERTY.—The term
24 ‘photovoltaic property’ has the same meaning given
25 such term in section 199(d)(1)(C).

1 “(6) HIGHLY ENERGY-EFFICIENT PRINCIPAL
2 RESIDENCE.—

3 “(A) IN GENERAL.—Property is a highly
4 energy-efficient principal residence if—

5 “(i) such property is located in the
6 United States,

7 “(ii) the property is used as a prin-
8 cipal residence, and

9 “(iii) the projected heating and cool-
10 ing energy usage of such property, meas-
11 ured in terms of average annual energy
12 cost to taxpayer, is reduced by a percent-
13 age certified according to subparagraph
14 (C) in comparison to the energy cost of
15 such property if expenditures made by the
16 taxpayer with respect to energy efficient
17 improvements to such property were not
18 made.

19 “(B) PRINCIPAL RESIDENCE.—

20 “(i) IN GENERAL.—The term ‘prin-
21 cipal residence’ has the same meaning as
22 when used in section 121, except that—

23 “(I) no ownership requirement
24 shall be imposed, and

1 “(II) the period for which a
2 building is treated as used as a prin-
3 cipal residence shall also include the
4 60-day period ending on the 1st day
5 on which it would (but for this sub-
6 paragraph) first be treated as used as
7 a principal residence.

8 “(ii) MANUFACTURED HOUSING.—The
9 term ‘residence’ shall include a dwelling
10 unit which is a manufactured home con-
11 forming to Federal Manufactured Home
12 Construction and Safety Standards (24
13 C.F.R. 3280).

14 “(C) CERTIFICATION PROCEDURES.—

15 “(i) IN GENERAL.—For purposes of
16 subparagraph (A)(iii), energy \pm usage shall
17 be demonstrated by performance-based
18 compliance.

19 “(ii) PERFORMANCE-BASED COMPLI-
20 ANCE.—Performance-based compliance
21 shall be demonstrated if the percent energy
22 cost savings for heating and cooling is met
23 with respect to a dwelling unit when com-
24 pared to the original condition of the dwell-
25 ing unit.

1 “(iii) COMPUTER SOFTWARE.—Com-
2 puter software shall be used in support of
3 performance-based compliance under
4 clause (ii) and such software shall meet all
5 of the procedures and methods for calcu-
6 lating energy savings reductions which are
7 promulgated by the Secretary of Energy.
8 Such regulations on the specifications for
9 software and verification protocols shall be
10 based on the 2005 California Residential
11 Alternative Calculation Method Approval
12 Manual.

13 “(iv) CALCULATION REQUIRE-
14 MENTS.—In calculating tradeoffs and en-
15 ergy performance, the regulations shall
16 prescribe the costs per unit of energy and
17 power, such as kilowatt hour, kilowatt, gal-
18 lon of fuel oil, and cubic foot or Btu of
19 natural gas, which may be dependent on
20 time of usage. If a State has developed an-
21 nual energy usage and cost reduction pro-
22 cedures based on time of usage costs for
23 use in the performance standards of the
24 State’s building energy code before the ef-
25 fective date of this section, the State may

1 use those annual energy usage and cost re-
2 duction procedures in lieu of those adopted
3 by the Secretary.

4 “(v) APPROVAL OF SOFTWARE SUB-
5 MISSIONS.—The Secretary shall approve
6 software submissions which comply with
7 the calculation requirements of clause (iii).

8 “(vi) PROCEDURES FOR INSPECTION
9 AND TESTING OF DWELLING UNITS.—The
10 Secretary shall ensure that procedures for
11 the inspection and testing for compliance
12 comply with the calculation requirements
13 under clause (iii) and subsection (d)(2).

14 “(d) SPECIAL RULES.—For purposes of this sec-
15 tion—

16 “(1) DETERMINATIONS OF COMPLIANCE.—A
17 determination of compliance made for the purposes
18 of this section shall be filed with the Secretary with-
19 in 1 year of the date of such determination and shall
20 include the TIN of the certifier, the address of the
21 building in compliance, and the identity of the per-
22 son for whom such determination was performed.
23 Determinations of compliance filed with the Sec-
24 retary shall be available for inspection by the Sec-
25 retary of Energy.

1 “(2) COMPLIANCE.—

2 “(A) IN GENERAL.—The Secretary, after
3 consultation with the Secretary of Energy shall
4 establish requirements for certification and
5 compliance procedures after examining the re-
6 quirements for energy consultants and home en-
7 ergy ratings providers specified by the Mort-
8 gage Industry National Home Energy Rating
9 Standards.

10 “(B) INDIVIDUALS QUALIFIED TO DETER-
11 MINE COMPLIANCE.—The determination of
12 compliance may be provided by a local building
13 regulatory authority, a utility, a manufactured
14 home production inspection primary inspection
15 agency (IPIA), or an accredited home energy
16 rating system provider. All providers shall be
17 accredited, or otherwise authorized to use ap-
18 proved energy performance measurement meth-
19 ods, by the Residential Energy Services Net-
20 work (RESNET).

21 “(3) DOLLAR AMOUNTS IN CASE OF JOINT OC-
22 CUPANCY.—In the case of any dwelling unit which if
23 jointly occupied and used during any calendar year
24 as a principal residence by 2 or more individuals the
25 following rules shall apply:

1 “(A) The amount of the credit allowable
2 under subsection (a) by reason of expenditures
3 made during such calendar year by any of such
4 individuals with respect to such dwelling unit
5 shall be determined by treating all of such indi-
6 viduals as 1 taxpayer whose taxable year is
7 such calendar year.

8 “(B) There shall be allowable with respect
9 to such expenditures to each of such individ-
10 uals, a credit under subsection (a) for the tax-
11 able year in which such calendar year ends in
12 an amount which bears the same ratio to the
13 amount determined under subparagraph (A) as
14 the amount of such expenditures made by such
15 individual during such calendar year bears to
16 the aggregate of such expenditures made by all
17 of such individuals during such calendar year.

18 “(4) TENANT-STOCKHOLDER IN COOPERATIVE
19 HOUSING CORPORATION.—In the case of an indi-
20 vidual who is a tenant-stockholder (as defined in sec-
21 tion 216) in a cooperative housing corporation (as
22 defined in such section), such individual shall be
23 treated as having made his tenant-stockholder’s pro-
24 portionate share (as defined in section 216(b)(3)) of

1 any expenditures of such corporation and such credit
2 shall be allocated pro rata to such individual.

3 “(5) CONDOMINIUMS.—

4 “(A) IN GENERAL.—In the case of an indi-
5 vidual who is a member of a condominium man-
6 agement association with respect to a condo-
7 minium which he owns, such individual shall be
8 treated as having made his proportionate share
9 of any expenditures of such association and any
10 credit shall be allocated appropriately.

11 “(B) CONDOMINIUM MANAGEMENT ASSO-
12 CIATION.—For purposes of this paragraph, the
13 term ‘condominium management association’
14 means an organization which meets the require-
15 ments of paragraph (1) of section 528(c) (other
16 than subparagraph (E) thereof) with respect to
17 a condominium project substantially all of the
18 units of which are used as principal residences.

19 “(6) JOINT OWNERSHIP OF ENERGY ITEMS.—

20 “(A) IN GENERAL.—Any expenditure oth-
21 erwise qualifying as an expenditure under this
22 section shall not be treated as failing to so
23 qualify merely because such expenditure was
24 made with respect to 2 or more dwelling units.

1 “(B) LIMITS APPLIED SEPARATELY.—In
2 the case of any expenditure described in sub-
3 paragraph (A), the amount of the credit allow-
4 able under subsection (a) shall (subject to para-
5 graph (1)) be computed separately with respect
6 to the amount of the expenditure made for each
7 dwelling unit.

8 “(7) ALLOCATION IN CERTAIN CASES.—If less
9 than 80 percent of the use of an item is for nonbusi-
10 ness purposes, only that portion of the expenditures
11 for such item which is properly allocable to use for
12 nonbusiness purposes shall be taken into account.

13 “(8) COORDINATION WITH OTHER CREDITS.—
14 Property which would, but for this paragraph, be eli-
15 gible for credit under more than one provision of
16 this section shall be eligible only under one such pro-
17 vision, the provision specified by the taxpayer.

18 “(9) YEAR CREDIT ALLOWED.—The credit
19 under subsection (a)(2) shall be allowed in the tax-
20 able year in which the percentage reduction with re-
21 spect to the principal residence is certified.

22 “(10) WHEN EXPENDITURE MADE; AMOUNT OF
23 EXPENDITURE.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), an expenditure with respect

1 to an item shall be treated as made when the
2 original installation of the item is completed.

3 “(B) EXPENDITURES PART OF BUILDING
4 CONSTRUCTION.—In the case of an expenditure
5 in connection with the construction of a struc-
6 ture, such expenditure shall be treated as made
7 when the original use of the constructed struc-
8 ture by the taxpayer begins.

9 “(11) PROPERTY FINANCED BY SUBSIDIZED
10 ENERGY FINANCING.—

11 “(A) REDUCTION OF EXPENDITURES.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in subparagraph (C), for purposes of
14 determining the amount of expenditures
15 made by any individual with respect to any
16 dwelling unit, there shall not be taken into
17 account expenditures which are made from
18 subsidized energy financing.

19 “(ii) SUBSIDIZED ENERGY FINANC-
20 ING.—For purposes of clause (i), the term
21 ‘subsidized energy financing’ has the same
22 meaning given such term in section
23 48(a)(4)(C).

24 “(B) DOLLAR LIMITS REDUCED.—The dol-
25 lar amounts in the table contained in subsection

1 (b)(3) with respect to each property purchased
2 for such dwelling unit for any taxable year of
3 such taxpayer shall be reduced proportionately
4 by an amount equal to the sum of—

5 “(i) the amount of the expenditures
6 made by the taxpayer during such taxable
7 year with respect to such dwelling unit and
8 not taken into account by reason of sub-
9 paragraph (A), and

10 “(ii) the amount of any Federal,
11 State, or local grant received by the tax-
12 payer during such taxable year which is
13 used to make residential energy property
14 expenditures with respect to the dwelling
15 unit and is not included in the gross in-
16 come of such taxpayer.

17 “(C) EXCEPTION FOR STATE PROGRAMS.—

18 Subparagraphs (A) and (B) shall not apply to
19 expenditures made with respect to property for
20 which the taxpayer has received a loan, State
21 tax credit, or grant under any State energy pro-
22 gram.

23 “(e) BASIS ADJUSTMENTS.—For purposes of this
24 subtitle, if a credit is allowed under this section for any
25 expenditure with respect to any property, the increase in

1 the basis of such property which would (but for this sub-
2 section) result from such expenditure shall be reduced by
3 the amount of the credit so allowed.

4 “(f) REGULATIONS.—The Secretary shall promulgate
5 such regulations as necessary to take into account new
6 technologies regarding energy efficiency and renewable en-
7 ergy for purposes of determining energy efficiency and
8 savings under this section.

9 “(g) TERMINATION.—This section shall not apply
10 with respect to any energy property placed in service after
11 December 31, 2008 (December 31, 2005, in the case of
12 Tier 1 energy-efficient building property).”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Subsection (a) of section 1016 of the Inter-
15 nal Revenue Code of 1986 as amended by section
16 103, is amended by striking “and” at the end of
17 paragraph (30), by striking the period at the end of
18 paragraph (31) and inserting “, and”, and by add-
19 ing at the end the following new paragraph:

20 “(32) to the extent provided in section 25C(e),
21 in the case of amounts with respect to which a credit
22 has been allowed under section 25C.”.

23 (2) The table of sections for subpart A of part
24 IV of subchapter A of chapter 1 of such Code is

1 amended by inserting after the item relating to sec-
2 tion 25B the following new item:

“Sec. 25C. Nonbusiness energy property.”.

3 (c) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 shall apply to expenditures made after December 31,
7 2003.

8 (2) ENERGY EFFICIENT BUILDING PROPERTY
9 USED IN A PRINCIPAL RESIDENCE.—In the case of
10 energy efficient building property, as defined in sec-
11 tion 25B(e) of the Internal Revenue Code of 1986,
12 as added by subsection (a), the amendments made
13 by this section shall apply to expenditures made
14 after March 31, 2003.

15 **SEC. 105. ENERGY CREDIT FOR COMBINED HEAT AND**
16 **POWER SYSTEM PROPERTY.**

17 (a) IN GENERAL.—Section 48(a)(3)(A) of the Inter-
18 nal Revenue Code of 1986 (defining energy property) is
19 amended by striking “or” at the end of clause (i), by add-
20 ing “or” at the end of clause (ii), and by inserting after
21 clause (ii) the following new clause:

22 “(iii) combined heat and power system
23 property,”.

24 (b) COMBINED HEAT AND POWER SYSTEM PROP-
25 erty.—Section 48 of the Internal Revenue Code of 1986

1 (relating to energy credit; reforestation credit) is amended
2 by adding at the end the following new subsection:

3 “(c) COMBINED HEAT AND POWER SYSTEM PROP-
4 erty.—For purposes of subsection (a)(3)(A)(iii)—

5 “(1) COMBINED HEAT AND POWER SYSTEM
6 PROPERTY.—The term ‘combined heat and power
7 system property’ means property comprising a sys-
8 tem—

9 “(A) which uses the same energy source
10 for the simultaneous or sequential generation of
11 electrical power, mechanical shaft power, or
12 both, in combination with the generation of
13 steam or other forms of useful thermal energy
14 (including heating and cooling applications),

15 “(B) which has an electrical capacity of
16 not more than 15 megawatts or a mechanical
17 energy capacity of not more than 2,000 horse-
18 power or an equivalent combination of electrical
19 and mechanical energy capacities,

20 “(C) which produces—

21 “(i) at least 20 percent of its total
22 useful energy in the form of thermal en-
23 ergy which is not used to produce electrical
24 or mechanical power (or combination
25 thereof), and

1 “(ii) at least 20 percent of its total
2 useful energy in the form of electrical or
3 mechanical power (or combination thereof),

4 “(D) the energy efficiency percentage of
5 which exceeds 60 percent, and

6 “(E) which is placed in service before Jan-
7 uary 1, 2007.

8 “(2) SPECIAL RULES.—

9 “(A) ENERGY EFFICIENCY PERCENT-
10 AGE.—For purposes of this subsection, the en-
11 ergy efficiency percentage of a system is the
12 fraction—

13 “(i) the numerator of which is the
14 total useful electrical, thermal, and me-
15 chanical power produced by the system at
16 normal operating rates, and expected to be
17 consumed in its normal application, and

18 “(ii) the denominator of which is the
19 lower heating value of the fuel sources for
20 the system.

21 “(B) DETERMINATIONS MADE ON BTU
22 BASIS.—The energy efficiency percentage and
23 the percentages under paragraph (1)(C) shall
24 be determined on a Btu basis.

1 “(C) INPUT AND OUTPUT PROPERTY NOT
2 INCLUDED.—The term ‘combined heat and
3 power system property’ does not include prop-
4 erty used to transport the energy source to the
5 facility or to distribute energy produced by the
6 facility.

7 “(D) PUBLIC UTILITY PROPERTY.—

8 “(i) ACCOUNTING RULE FOR PUBLIC
9 UTILITY PROPERTY.—If the combined heat
10 and power system property is public utility
11 property (as defined in section 168(i)(10)),
12 the taxpayer may only claim the credit
13 under subsection (a) if, with respect to
14 such property, the taxpayer uses a normal-
15 ization method of accounting.

16 “(ii) CERTAIN EXCEPTION NOT TO
17 APPLY.—The matter in subsection (a)(3)
18 which follows subparagraph (D) thereof
19 shall not apply to combined heat and
20 power system property.

21 “(3) SYSTEMS USING BAGASSE.—If a system is
22 designed to use bagasse for at least 90 percent of
23 the energy source—

24 “(A) paragraph (1)(D) shall not apply, but

1 “(B) the amount of credit determined
2 under subsection (a) with respect to such sys-
3 tem shall not exceed the amount which bears
4 the same ratio to such amount of credit (deter-
5 mined without regard to this paragraph) as the
6 energy efficiency percentage of such system
7 bears to 60 percent.”.

8 (c) **EFFECTIVE DATE.**—The amendments made by
9 this subsection shall apply to periods after December 31,
10 2003, in taxable years ending after such date, under rules
11 similar to the rules of section 48(m) of the Internal Rev-
12 enue Code of 1986 (as in effect on the day before the date
13 of the enactment of the Revenue Reconciliation Act of
14 1990).

15 **SEC. 106. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

16 (a) **IN GENERAL.**—Subpart D of part IV of sub-
17 chapter A of chapter 1 of the Internal Revenue Code of
18 1986 (relating to business-related credits), as amended by
19 section 102, is amended by adding at the end the following
20 new section:

21 **“SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.**

22 “(a) **ALLOWANCE OF CREDIT.**—For purposes of sec-
23 tion 38, the energy efficient appliance credit determined
24 under this section for the taxable year is an amount equal
25 to the sum of—

1 “(1) the tier I appliance amount, and
2 “(2) the tier II appliance amount,
3 with respect to qualified energy efficient appliances pro-
4 duced by the taxpayer during the calendar year ending
5 with or within the taxable year.

6 “(b) APPLIANCE AMOUNTS.—For purposes of sub-
7 section (a)—

8 “(1) TIER I APPLIANCE AMOUNT.—The tier I
9 appliance amount is equal to—

10 “(A) \$100, multiplied by

11 “(B) an amount (rounded to the nearest
12 whole number) equal to the applicable percent-
13 age of the eligible production.

14 “(2) TIER II APPLIANCE AMOUNT.—The tier II
15 appliance amount is equal to \$150, multiplied by an
16 amount equal to the eligible production reduced by
17 the amount determined under paragraph (1)(B).

18 “(3) APPLICABLE PERCENTAGE.—The applica-
19 ble percentage is the percentage determined by di-
20 viding the tier I appliances produced by the taxpayer
21 during the calendar year by the sum of the tier I
22 and tier II appliances so produced.

23 “(4) ELIGIBLE PRODUCTION.—The eligible pro-
24 duction of qualified energy efficient appliances by
25 the taxpayer for any calendar year is the excess of—

1 “(A) the number of such appliances which
2 are produced by the taxpayer during such cal-
3 endar year, over

4 “(B) 110 percent of the average annual
5 number of such appliances which were produced
6 by the taxpayer (or any predecessor) during the
7 preceding 3-calendar year period.

8 “(c) QUALIFIED ENERGY EFFICIENT APPLIANCE.—
9 For purposes of this section—

10 “(1) IN GENERAL.—The term ‘qualified energy
11 efficient appliance’ means any tier I appliance or tier
12 II appliance which is produced in the United States.

13 “(2) TIER I APPLIANCE.—The term ‘tier I ap-
14 pliance’ means—

15 “(A) a clothes washer which is produced
16 with at least a 1.50 MEF, and

17 “(B) a refrigerator which consumes at
18 least 15 percent (20 percent in the case of a re-
19 frigerator produced after 2006) less kilowatt
20 hours per year than the energy conservation
21 standards for refrigerators promulgated by the
22 Department of Energy and effective on July 1,
23 2001.

24 “(3) TIER II APPLIANCE.—The term ‘tier II ap-
25 pliance’ means a refrigerator produced before 2007

1 which consumes at least 20 percent less kilowatt
2 hours per year than the energy conservation stand-
3 ards described in paragraph (2)(B).

4 “(4) CLOTHES WASHER.—The term ‘clothes
5 washer’ means a residential clothes washer, includ-
6 ing a residential style coin operated washer.

7 “(5) REFRIGERATOR.—The term ‘refrigerator’
8 means an automatic defrost refrigerator-freezer
9 which has an internal volume of at least 16.5 cubic
10 feet.

11 “(6) MEF.—The term ‘MEF’ means Modified
12 Energy Factor (as determined by the Secretary of
13 Energy).

14 “(7) PRODUCED.—The term ‘produced’ in-
15 cludes manufactured.

16 “(d) LIMITATION ON MAXIMUM CREDIT.—

17 “(1) IN GENERAL.—The amount of credit al-
18 lowed under subsection (a) with respect to a tax-
19 payer for any taxable year shall not exceed
20 \$60,000,000, reduced by the amount of the credit
21 allowed under subsection (a) to the taxpayer (or any
22 predecessor) for any prior taxable year.

23 “(2) LIMITATION BASED ON GROSS RE-
24 CEIPTS.—The credit allowed under subsection (a)
25 with respect to a taxpayer for the taxable year shall

1 not exceed an amount equal to 2 percent of the aver-
2 age annual gross receipts of the taxpayer for the 3
3 taxable years preceding the taxable year for which
4 the credit is determined.

5 “(3) GROSS RECEIPTS.—For purposes of this
6 subsection, the rules of paragraphs (2) and (3) of
7 section 448(c) shall apply.

8 “(e) SPECIAL RULES.—For purposes of this sec-
9 tion—

10 “(1) IN GENERAL.—Rules similar to the rules
11 of subsections (c), (d), and (e) of section 52 shall
12 apply.

13 “(2) CONTROLLED GROUPS.—

14 “(A) IN GENERAL.—All persons treated as
15 a single employer under subsection (a) or (b) of
16 section 52 or subsection (m) or (o) of section
17 414 shall be treated as a single manufacturer.

18 “(B) INCLUSION OF FOREIGN CORPORA-
19 TIONS.—For purposes of subparagraph (A), in
20 applying subsections (a) and (b) of section 52
21 to this section, section 1563 shall be applied
22 without regard to subsection (b)(2)(C) thereof.

23 “(f) VERIFICATION.—The taxpayer shall submit such
24 information or certification as the Secretary, after con-

1 sultation with the Secretary of Energy, determines nec-
2 essary to claim the credit amount under subsection (a).

3 “(g) TERMINATION.—This section shall not apply
4 with respect to appliances produced after December 31,
5 2007.”.

6 (b) CREDIT MADE PART OF GENERAL BUSINESS
7 CREDIT.—Section 38(b) of the Internal Revenue Code of
8 1986 (relating to current year business credit), as amend-
9 ed by section 102, is amended by striking “plus” at the
10 end of paragraph (15), by striking the period at the end
11 of paragraph (16) and inserting “, plus”, and by adding
12 at the end the following new paragraph:

13 “(17) the energy efficient appliance credit de-
14 termined under section 45H(a).”.

15 (c) LIMITATION ON CARRYBACK.—Section 39(d) of
16 the Internal Revenue Code of 1986 (relating to transition
17 rules), as amended by section 102, is amended by adding
18 at the end the following new paragraph:

19 “(12) NO CARRYBACK OF ENERGY EFFICIENT
20 APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No
21 portion of the unused business credit for any taxable
22 year which is attributable to the energy efficient ap-
23 pliance credit determined under section 45H(a) may
24 be carried to a taxable year ending before January
25 1, 2004.”.

1 (d) CLERICAL AMENDMENT.—The table of sections
 2 for subpart D of part IV of subchapter A of chapter 1
 3 of the Internal Revenue Code of 1986, as amended by sec-
 4 tion 102, is amended by adding at the end the following
 5 new item:

“Sec. 45H. Energy efficient appliance credit.”.

6 (e) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to appliances produced after De-
 8 cember 31, 2003, in taxable years ending after such date.

9 **TITLE II—ENERGY EFFICIENT** 10 **PRODUCTS**

11 **SEC. 201. ENERGY CONSERVATION STANDARDS FOR ADDI-** 12 **TIONAL PRODUCTS.**

13 (a) DEFINITIONS.—Section 321 of the Energy Policy
 14 and Conservation Act (42 U.S.C. 6291) is amended—

15 (1) in paragraph (30)(S), by striking the period
 16 and adding at the end the following: “but does not
 17 include any lamp specifically designed to be used for
 18 special purpose applications and that is unlikely to
 19 be used in general purpose applications such as
 20 those described in subparagraph (D), and also does
 21 not include any lamp not described in subparagraph
 22 (D) that is excluded by the Secretary, by rule, be-
 23 cause the lamp is designed for special applications
 24 and is unlikely to be used in general purpose appli-
 25 cations.”; and

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

2 “(32) The term ‘battery charger’ means a de-
3 vice that charges batteries for consumer products
4 and includes battery chargers embedded in other
5 consumer products.

6 “(33) The term ‘ceiling fan’ means a nonport-
7 able device that is suspended from a ceiling for cir-
8 culating air through the rotation of fan blades.

9 “(34) The term ‘ceiling fan light kit’ means
10 equipment designed to provide light from a ceiling
11 fan that can be—

12 “(A) integral, such that the equipment is
13 attached to the ceiling fan prior to the time of
14 retail sale; or

15 “(B) attachable, such that at the time of
16 retail sale the equipment is not physically at-
17 tached to the ceiling fan, but may be included
18 inside the ceiling fan package at the time of
19 sale or sold separately for subsequent attach-
20 ment to the fan.

21 “(35) The term ‘commercial refrigerators,
22 freezers, and refrigerator-freezers’ means refrig-
23 erators, freezers, or refrigerator-freezers that—

24 “(A) are not consumer products regulated
25 under this Act; and

1 “(B) incorporate most components involved
2 in the vapor-compression cycle and the refrigerated compartment in a single package.

3 “(36) The term ‘external power supply’ means
4 an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

5 “(37) The term ‘illuminated exit sign’ means a sign that—

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

7 “(B) consists of an electrically powered integral light source that illuminates the legend ‘EXIT’ and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

8 “(38)(A) Except as provided in subparagraph (B), the term ‘distribution transformer’ means a transformer that—

9 “(i) has an input voltage of 34.5 kilovolts or less;

10 “(ii) has an output voltage of 600 volts or less; and

1 “(iii) is rated for operation at a frequency
2 of 60 Hertz.

3 “(B) The term ‘distribution transformer’ does
4 not include—

5 “(i) transformers with multiple voltage
6 taps, with the highest voltage tap equaling at
7 least 20 percent more than the lowest voltage
8 tap;

9 “(ii) transformers, such as those commonly
10 known as drive transformers, rectifier trans-
11 formers, auto-transformers, Uninterruptible
12 Power System transformers, impedance trans-
13 formers, harmonic transformers, regulating
14 transformers, sealed and nonventilating trans-
15 formers, machine tool transformers, welding
16 transformers, grounding transformers, or test-
17 ing transformers, that are designed to be used
18 in a special purpose application and are unlikely
19 to be used in general purpose applications; or

20 “(iii) any transformer not listed in clause
21 (ii) that is excluded by the Secretary by rule be-
22 cause—

23 “(I) the transformer is designed for a
24 special application;

1 “(II) the transformer is unlikely to be
2 used in general purpose applications; and

3 “(III) the application of standards to
4 the transformer would not result in signifi-
5 cant energy savings.

6 “(39) The term ‘low-voltage dry-type distribu-
7 tion transformer’ means a distribution transformer
8 that—

9 “(A) has an input voltage of 600 volts or
10 less;

11 “(B) is air-cooled; and

12 “(C) does not use oil as a coolant.

13 “(40) The term ‘standby mode’ means the low-
14 est power consumption mode that—

15 “(A) cannot be switched off or influenced
16 by the user; and

17 “(B) may persist for an indefinite time
18 when an appliance is connected to the main
19 electricity supply and used in accordance with
20 the manufacturer’s instructions,

21 as defined on an individual product basis by the Sec-
22 retary.

23 “(41) The term ‘torchiere’ means a portable
24 electric lamp with a reflector bowl that directs light
25 upward so as to give indirect illumination.

1 “(42) The term ‘traffic signal module’ means a
2 standard 8-inch (200mm) or 12-inch (300mm) traf-
3 fic signal indication, consisting of a light source, a
4 lens, and all other parts necessary for operation,
5 that communicates movement messages to drivers
6 through red, amber, and green colors.

7 “(43) The term ‘transformer’ means a device
8 consisting of 2 or more coils of insulated wire that
9 transfers alternating current by electromagnetic in-
10 duction from 1 coil to another to change the original
11 voltage or current value.

12 “(44) The term ‘unit heater’ means a self-con-
13 tained fan-type heater designed to be installed with-
14 in the heated space, except that such term does not
15 include a warm air furnace.”.

16 (b) TEST PROCEDURES.—Section 323 of the Energy
17 Policy and Conservation Act (42 U.S.C. 6293) is amend-
18 ed—

19 (1) in subsection (b), by adding at the end the
20 following:

21 “(9) Test procedures for illuminated exit signs
22 shall be based on the test method used under
23 Version 2.0 of the Energy Star program of the Envi-
24 ronmental Protection Agency for illuminated exit
25 signs.

1 “(10) Test procedures for distribution trans-
2 formers and low voltage dry-type distribution trans-
3 formers shall be based on the ‘Standard Test Meth-
4 od for Measuring the Energy Consumption of Dis-
5 tribution Transformers’ prescribed by the National
6 Electrical Manufacturers Association (NEMA TP 2-
7 1998). The Secretary may review and revise this test
8 procedure. For purposes of section 346(a), this test
9 procedure shall be deemed to be testing require-
10 ments prescribed by the Secretary under section
11 346(a)(1) for distribution transformers for which the
12 Secretary makes a determination that energy con-
13 servation standards would be technologically feasible
14 and economically justified, and would result in sig-
15 nificant energy savings.

16 “(11) Test procedures for traffic signal modules
17 shall be based on the test method used under the
18 Energy Star program of the Environmental Protec-
19 tion Agency for traffic signal modules, as in effect
20 on the date of enactment of this paragraph.

21 “(12) Test procedures for medium base com-
22 pact fluorescent lamps shall be based on the test
23 methods used under the October 30, 2003, version
24 of the Energy Star program of the Environmental
25 Protection Agency and Department of Energy for

1 compact fluorescent lamps. Covered products shall
2 meet all test requirements for regulated parameters
3 in section 325(bb). However, covered products may
4 be marketed prior to completion of lamp life and
5 lumen maintenance at 40 percent of rated life test-
6 ing provided manufacturers document engineering
7 predictions and analysis that support expected at-
8 tainment of lumen maintenance at 40 percent rated
9 life and lamp life time.

10 “(13) Air movement test procedures for ceiling
11 fans shall be based on the test procedure contained
12 in the Energy Star Program Requirements for Resi-
13 dential Ceiling Fans (Version 2.0) developed by the
14 Environmental Protection Agency, unless pursuant
15 to this section, the Secretary promulgates regula-
16 tions establishing an alternative test procedure.”;
17 and

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

19 “(f) ADDITIONAL CONSUMER AND COMMERCIAL
20 PRODUCTS.—

21 “(1) IN GENERAL.—Not later than 2 years
22 after the date of enactment of this subsection, the
23 Secretary shall prescribe testing requirements for re-
24 frigerated bottled or canned beverage vending ma-

1 chines, and commercial refrigerators, freezers, and
2 refrigerator-freezers.

3 “(2) BASIS.—The testing requirements shall be
4 based on existing test procedures used in industry,
5 to the extent practicable.”.

6 (c) NEW STANDARDS.—Section 325 of the Energy
7 Policy and Conservation Act (42 U.S.C. 6295) is amended
8 by adding at the end the following:

9 “(u) BATTERY CHARGER AND EXTERNAL POWER
10 SUPPLY ELECTRIC ENERGY CONSUMPTION.—

11 “(1) INITIAL RULEMAKING.—(A) The Secretary
12 shall, within 18 months after the date of enactment
13 of this subsection, prescribe by notice and comment,
14 definitions and test procedures for the power use of
15 battery chargers and external power supplies. In es-
16 tablishing these test procedures, the Secretary shall
17 consider, among other factors, existing definitions
18 and test procedures used for measuring energy con-
19 sumption in standby mode and other modes and as-
20 sess the current and projected future market for
21 battery chargers and external power supplies. This
22 assessment shall include estimates of the significance
23 of potential energy savings from technical improve-
24 ments to these products and suggested product
25 classes for standards. Prior to the end of this time

1 period, the Secretary shall hold a scoping workshop
2 to discuss and receive comments on plans for devel-
3 oping energy conservation standards for energy use
4 for these products.

5 “(B) The Secretary shall, within 3 years after
6 the date of enactment of this subsection, issue a
7 final rule that determines whether energy conserva-
8 tion standards shall be issued for battery chargers
9 and external power supplies or classes thereof. For
10 each product class, any such standards shall be set
11 at the lowest level of energy use that—

12 “(i) meets the criteria and procedures of
13 subsections (o), (p), (q), (r), (s), and (t); and

14 “(ii) will result in significant overall an-
15 nual energy savings, considering both standby
16 mode and other operating modes.

17 “(2) REVIEW OF STANDBY ENERGY USE IN
18 COVERED PRODUCTS.—In determining pursuant to
19 section 323 whether test procedures and energy con-
20 servation standards pursuant to this section should
21 be revised, the Secretary shall consider, for covered
22 products that are major sources of standby mode en-
23 ergy consumption, whether to incorporate standby
24 mode into such test procedures and energy conserva-
25 tion standards, taking into account, among other

1 relevant factors, standby mode power consumption
2 compared to overall product energy consumption.

3 “(3) RULEMAKING.—The Secretary shall not
4 propose a standard under this section unless the
5 Secretary has issued applicable test procedures for
6 each product pursuant to section 323.

7 “(4) EFFECTIVE DATE.—Any standard issued
8 under this subsection shall be applicable to products
9 manufactured or imported 3 years after the date of
10 issuance.

11 “(5) VOLUNTARY PROGRAMS.—The Secretary
12 and the Administrator shall collaborate and develop
13 programs, including programs pursuant to section
14 324A (relating to Energy Star Programs) and other
15 voluntary industry agreements or codes of conduct,
16 that are designed to reduce standby mode energy
17 use.

18 “(v) VENDING MACHINES, AND COMMERCIAL RE-
19 FRIGERATORS, FREEZERS, AND REFRIGERATOR-FREEZ-
20 ERS.—

21 “(1) IN GENERAL.—Not later than 3 years
22 after the date on which testing requirements are
23 prescribed by the Secretary pursuant to section
24 323(f), the Secretary shall prescribe, by rule, energy
25 conservation standards for refrigerated bottled or

1 canned beverage vending machines, and commercial
2 refrigerators, freezers, and refrigerator-freezers.

3 “(2) CRITERIA AND PROCEDURES.—In estab-
4 lishing standards under this subsection, the Sec-
5 retary shall use the criteria and procedures con-
6 tained in subsections (o) and (p).

7 “(3) APPLICABILITY.—Any standard prescribed
8 under this subsection shall apply to products manu-
9 factured 3 years after the date of publication of a
10 final rule establishing the standard.

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

16 “(x) TORCHIERES.—Torchieres manufactured on or
17 after January 1, 2005—

18 “(1) shall consume not more than 190 watts of
19 power; and

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

22 “(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION
23 TRANSFORMERS.—The efficiency of low voltage dry-type
24 distribution transformers manufactured on or after Janu-
25 ary 1, 2005, shall be the Class I Efficiency Levels for dis-

1 tribution transformers specified in Table 4–2 of the ‘Guide
2 for Determining Energy Efficiency for Distribution Trans-
3 formers’ published by the National Electrical Manufactur-
4 ers Association (NEMA TP–1–2002).

5 “(z) TRAFFIC SIGNAL MODULES.—Traffic signal
6 modules manufactured on or after January 1, 2006, shall
7 meet the performance requirements used under the En-
8 ergy Star program of the Environmental Protection Agen-
9 cy for traffic signals, as in effect on the date of enactment
10 of this subsection, and shall be installed with compatible,
11 electrically connected signal control interface devices and
12 conflict monitoring systems.

13 “(aa) UNIT HEATERS.—Unit heaters manufactured
14 on or after the date that is 3 years after the date of enact-
15 ment of this subsection shall be equipped with an intermit-
16 tent ignition device and shall have either power venting
17 or an automatic flue damper.

18 “(bb) MEDIUM BASE COMPACT FLUORESCENT
19 LAMPS.—Bare lamp and covered lamp (no reflector) me-
20 dium base compact fluorescent lamps manufactured on or
21 after January 1, 2005, shall meet the following require-
22 ments prescribed by the August 9, 2001, version of the
23 Energy Star Program Requirements for Compact Fluores-
24 cent Lamps, Energy Star Eligibility Criteria, Energy-Effi-
25 ciency Specification issued by the Environmental Protec-

1 tion Agency and Department of Energy: minimum initial
2 efficacy; lumen maintenance at 1000 hours; lumen mainte-
3 nance at 40 percent of rated life; rapid cycle stress test;
4 and lamp life. The Secretary may, by rule, establish re-
5 quirements for color quality (CRI); power factor; oper-
6 ating frequency; and maximum allowable start time based
7 on the requirements prescribed by the October 30, 2003,
8 version of the Energy Star Program Requirements for
9 Compact Fluorescent Lamps. The Secretary may, by rule,
10 revise these requirements or establish other requirements
11 considering energy savings, cost effectiveness, and con-
12 sumer satisfaction.

13 “(cc) CEILING FANS AND CEILING FAN LIGHT
14 KITS.—

15 “(1) CEILING FANS.—All ceiling fans manufac-
16 tured on or after January 1, 2007, shall have—

17 “(A) lighting controls separate from fan
18 speed controls;

19 “(B) adjustable speed controls (either
20 more than 1 speed or variable speeds); and

21 “(C) the capability of reversible fan action,
22 except (as determined by the Secretary by regu-
23 lation)—

24 “(i) for fans sold for industrial appli-
25 cations;

1 “(ii) for fans sold for outdoor applica-
2 tions; and

3 “(iii) where safety standards would be
4 violated by the use of the reversible mode.

5 “(2) CEILING FAN LIGHT KITS.—Ceiling fan
6 light kits manufactured on or after January 1,
7 2007, shall—

8 “(A) meet the Energy Star Program Re-
9 quirements for Residential Light Fixtures
10 (Version 3.1) issued by the Environmental Pro-
11 tection Agency and be packaged with lamps to
12 fill all sockets;

13 “(B) be packaged with screw-based com-
14 pact fluorescent lamps to fill all sockets, with
15 such lamps meeting the Energy Star Program
16 Requirements for Compact Fluorescent Lamps
17 (Version 3.0) issued by the Department of En-
18 ergy; or

19 “(C) use and be packaged with light
20 sources, other than compact fluorescent lamps,
21 that meet the minimum efficacy requirements
22 (as measured in lumens per watt) of the Energy
23 Star Program Requirements for Compact Fluo-
24 rescent Lamps (Version 3.0) issued by the De-
25 partment of Energy.

1 “(3) ENERGY EFFICIENCY STANDARDS FOR
2 CEILING FANS.—

3 “(A) IN GENERAL.—Notwithstanding any
4 provision of this Act, the Secretary may con-
5 sider, and prescribe, if the requirements of sub-
6 sections (o) and (p) are met, energy efficiency
7 or energy use standards (based on cubic feet
8 per minute per watt or watts) for electricity
9 used by ceiling fans to circulate air in a room.

10 “(B) EXEMPTIONS OR DIFFERENT STAND-
11 ARDS.—In prescribing the standards, the Sec-
12 retary shall consider—

13 “(i) exempting or setting different
14 standards for certain product classes for
15 which the primary standards are not tech-
16 nically feasible or economically justified;
17 and

18 “(ii) establishing separate exempted
19 product classes for highly decorative fans
20 for which air movement performance is a
21 secondary design feature.

22 “(C) EFFECTIVE DATE.—Any air move-
23 ment standard prescribed under this subsection
24 shall apply to products manufactured on or

1 after the date that is 3 years after publication
2 of a final rule establishing the standard.

3 “(dd) EFFECTIVE DATE.—Section 327 shall apply—

4 “(1) to products for which standards are to be
5 established under subsections (u) and (v) on the
6 date on which a final rule is issued by the Depart-
7 ment of Energy, except that any State or local
8 standards prescribed or enacted for any such prod-
9 uct prior to the date on which such final rule is
10 issued shall not be preempted until the standard es-
11 tablished under subsection (u) or (v) for that prod-
12 uct takes effect; and

13 “(2) to products for which standards are estab-
14 lished under subsections (w) through (bb) on the
15 date of enactment of those subsections, except that
16 any State or local standards prescribed or enacted
17 prior to the date of enactment of those subsections
18 shall not be preempted until the standards estab-
19 lished under subsections (w) through (bb) take ef-
20 fect.”.

21 (d) RESIDENTIAL FURNACE FANS.—Section
22 325(f)(3) of the Energy Policy and Conservation Act (42
23 U.S.C. 6295(f)(3)) is amended by adding the following
24 new subparagraph at the end:

1 “(D) Notwithstanding any provision of this Act, the
2 Secretary may consider, and prescribe, if the requirements
3 of subsection (o) of this section are met, energy efficiency
4 or energy use standards for electricity used for purposes
5 of circulating air through duct work.”.

6 **SEC. 202. ENERGY LABELING.**

7 (a) RULEMAKING ON EFFECTIVENESS OF CONSUMER
8 PRODUCT LABELING.—Section 324(a)(2) of the Energy
9 Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is
10 amended by adding at the end the following:

11 “(F) During the period beginning not later than 90
12 days after the date of enactment of this subparagraph and
13 ending not later than 2 years after the date of enactment
14 of this subparagraph, the Commission shall initiate a rule-
15 making to consider—

16 “(i) the effectiveness of the current consumer
17 products labeling program in assisting consumers in
18 making purchasing decisions and improving energy
19 efficiency; and

20 “(ii) changes to the labeling rules that would
21 improve the effectiveness of consumer product la-
22 bels.”.

23 (b) RULEMAKING ON LABELING FOR ADDITIONAL
24 PRODUCTS.—Section 324(a) of the Energy Policy and

1 Conservation Act (42 U.S.C. 6294(a)) is amended by add-
2 ing at the end the following:

3 “(5)(A) The Secretary or the Commission, as appro-
4 priate, may, for covered products referred to in sub-
5 sections (u) through (aa) of section 325, prescribe, by rule,
6 pursuant to this section, labeling requirements for the
7 products, after a test procedure has been established pur-
8 suant to section 323.

9 “(B) In the case of products to which TP 1 standards
10 under section 325(y) apply, labeling requirements shall be
11 based on the ‘Standard for the Labeling of Distribution
12 Transformer Efficiency’ prescribed by the National Elec-
13 trical Manufacturers Association (NEMA TP 3) as in ef-
14 fect on the date of enactment of this paragraph.

15 “(6)(A) Not later than July 1, 2005, the Commission
16 shall prescribe by rule, pursuant to this section, labeling
17 requirements for the electricity used by ceiling fans to cir-
18 culate air in a room.

19 “(B) Except as provided in subparagraph (C), the re-
20 quirements shall be based on the test procedure and label-
21 ing requirements contained in the Energy Star Program
22 Requirements for Residential Ceiling Fans (Version 2.0)
23 issued by the Environmental Protection Agency.

24 “(C) The Commission shall not promulgate rules cov-
25 ering third party testing and other nonlabeling require-

1 ments unless the Commission determines the requirements
2 are necessary to achieve compliance.

3 “(D) The rule shall apply to products manufactured
4 after the latter of—

5 “(i) January 1, 2007; or

6 “(ii) the date that is 60 days after the date the
7 final rule is promulgated.”.

8 **TITLE III—ENERGY EFFICIENCY** 9 **FEDERAL PROGRAMS**

10 **SEC. 301. PROCUREMENT OF ENERGY EFFICIENT PROD-** 11 **UCTS.**

12 (a) REQUIREMENTS.—Part 3 of title V of the Na-
13 tional Energy Conservation Policy Act (42 U.S.C. 8251
14 et seq.) is amended by adding at the end the following:

15 **“SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFI-** 16 **CIENT PRODUCTS.**

17 “(a) DEFINITIONS.—In this section:

18 “(1) ENERGY STAR PRODUCT.—The term ‘En-
19 ergy Star product’ means a product that is rated for
20 energy efficiency under an Energy Star program.

21 “(2) ENERGY STAR PROGRAM.—The term ‘En-
22 ergy Star program’ means the program established
23 by section 324A of the Energy Policy and Conserva-
24 tion Act.

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

5 “(4) FEMP DESIGNATED PRODUCT.—The term
6 ‘FEMP designated product’ means a product that is
7 designated under the Federal Energy Management
8 Program of the Department of Energy as being
9 among the highest 25 percent of equivalent products
10 for energy efficiency.

11 “(b) PROCUREMENT OF ENERGY EFFICIENT PROD-
12 UCTS.—

13 “(1) REQUIREMENT.—To meet the require-
14 ments of an executive agency for an energy con-
15 suming product, the head of the executive agency
16 shall, except as provided in paragraph (2), procure—

17 “(A) an Energy Star product; or

18 “(B) a FEMP designated product.

19 “(2) EXCEPTIONS.—The head of an executive
20 agency is not required to procure an Energy Star
21 product or FEMP designated product under para-
22 graph (1) if the head of the executive agency finds
23 in writing that—

24 “(A) an Energy Star product or FEMP
25 designated product is not cost-effective over the

1 life of the product taking energy cost savings
2 into account; or

3 “(B) no Energy Star product or FEMP
4 designated product is reasonably available that
5 meets the functional requirements of the execu-
6 tive agency.

7 “(3) PROCUREMENT PLANNING.—The head of
8 an executive agency shall incorporate into the speci-
9 fications for all procurements involving energy con-
10 suming products and systems, including guide speci-
11 fications, project specifications, and construction,
12 renovation, and services contracts that include provi-
13 sion of energy consuming products and systems, and
14 into the factors for the evaluation of offers received
15 for the procurement, criteria for energy efficiency
16 that are consistent with the criteria used for rating
17 Energy Star products and for rating FEMP des-
18 ignated products.

19 “(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN
20 FEDERAL CATALOGS.—Energy Star products and FEMP
21 designated products shall be clearly identified and promi-
22 nently displayed in any inventory or listing of products
23 by the General Services Administration or the Defense Lo-
24 gistics Agency. The General Services Administration or
25 the Defense Logistics Agency shall supply only Energy

1 Star products or FEMP designated products for all prod-
2 uct categories covered by the Energy Star program or the
3 Federal Energy Management Program, except in cases
4 where the agency ordering a product specifies in writing
5 that no Energy Star product or FEMP designated product
6 is available to meet the buyer’s functional requirements,
7 or that no Energy Star product or FEMP designated
8 product is cost-effective for the intended application over
9 the life of the product, taking energy cost savings into ac-
10 count.

11 “(d) SPECIFIC PRODUCTS.—(1) In the case of elec-
12 tric motors of 1 to 500 horsepower, agencies shall select
13 only premium efficient motors that meet a standard des-
14 igned by the Secretary. The Secretary shall designate
15 such a standard not later than 120 days after the date
16 of the enactment of this section, after considering the rec-
17 ommendations of associated electric motor manufacturers
18 and energy efficiency groups.

19 “(2) All Federal agencies are encouraged to take ac-
20 tions to maximize the efficiency of air conditioning and
21 refrigeration equipment, including appropriate cleaning
22 and maintenance, including the use of any system treat-
23 ment or additive that will reduce the electricity consumed
24 by air conditioning and refrigeration equipment. Any such
25 treatment or additive must be—

1 “(A) determined by the Secretary to be effective
2 in increasing the efficiency of air conditioning and
3 refrigeration equipment without having an adverse
4 impact on air conditioning performance (including
5 cooling capacity) or equipment useful life;

6 “(B) determined by the Administrator of the
7 Environmental Protection Agency to be environ-
8 mentally safe; and

9 “(C) shown to increase seasonal energy effi-
10 ciency ratio (SEER) or energy efficiency ratio
11 (EER) when tested by the National Institute of
12 Standards and Technology according to Department
13 of Energy test procedures without causing any ad-
14 verse impact on the system, system components, the
15 refrigerant or lubricant, or other materials in the
16 system.

17 Results of testing described in subparagraph (C) shall be
18 published in the Federal Register for public review and
19 comment. For purposes of this section, a hardware device
20 or primary refrigerant shall not be considered an additive.

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

24 (b) CONFORMING AMENDMENT.—The table of con-
25 tents of the National Energy Conservation Policy Act is

1 amended by inserting after the item relating to section
2 551 the following new item:

“Sec. 552. Federal procurement of energy efficient products.”.

3 **SEC. 302. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

4 (a) PERMANENT EXTENSION.—Effective September
5 30, 2003, section 801(c) of the National Energy Conserva-
6 tion Policy Act (42 U.S.C. 8287(c)) is repealed.

7 (b) PAYMENT OF COSTS.—Section 802 of the Na-
8 tional Energy Conservation Policy Act (42 U.S.C. 8287a)
9 is amended by inserting “, water, or wastewater treat-
10 ment” after “payment of energy”.

11 (c) ENERGY SAVINGS.—Section 804(2) of the Na-
12 tional Energy Conservation Policy Act (42 U.S.C.
13 8287c(2)) is amended to read as follows:

14 “(2) The term ‘energy savings’ means a reduc-
15 tion in the cost of energy, water, or wastewater
16 treatment, from a base cost established through a
17 methodology set forth in the contract, used in an ex-
18 isting federally owned building or buildings or other
19 federally owned facilities as a result of—

20 “(A) the lease or purchase of operating
21 equipment, improvements, altered operation and
22 maintenance, or technical services;

23 “(B) the increased efficient use of existing
24 energy sources by cogeneration or heat recov-
25 ery, excluding any cogeneration process for

1 other than a federally owned building or build-
2 ings or other federally owned facilities; or

3 “(C) the increased efficient use of existing
4 water sources in either interior or exterior ap-
5 plications.”.

6 (d) ENERGY SAVINGS CONTRACT.—Section 804(3) of
7 the National Energy Conservation Policy Act (42 U.S.C.
8 8287c(3)) is amended to read as follows:

9 “(3) The terms ‘energy savings contract’ and
10 ‘energy savings performance contract’ mean a con-
11 tract that provides for the performance of services
12 for the design, acquisition, installation, testing, and,
13 where appropriate, operation, maintenance, and re-
14 pair, of an identified energy or water conservation
15 measure or series of measures at 1 or more loca-
16 tions. Such contracts shall, with respect to an agen-
17 cy facility that is a public building (as such term is
18 defined in section 3301 of title 40, United States
19 Code), be in compliance with the prospectus require-
20 ments and procedures of section 3307 of title 40,
21 United States Code.”.

22 (e) ENERGY OR WATER CONSERVATION MEASURE.—
23 Section 804(4) of the National Energy Conservation Pol-
24 icy Act (42 U.S.C. 8287c(4)) is amended to read as fol-
25 lows:

1 “(4) The term ‘energy or water conservation
2 measure’ means—

3 “(A) an energy conservation measure, as
4 defined in section 551; or

5 “(B) a water conservation measure that
6 improves the efficiency of water use, is life-cycle
7 cost-effective, and involves water conservation,
8 water recycling or reuse, more efficient treat-
9 ment of wastewater or stormwater, improve-
10 ments in operation or maintenance efficiencies,
11 retrofit activities, or other related activities, not
12 at a Federal hydroelectric facility.”.

13 (f) REVIEW.—Not later than 180 days after the date
14 of the enactment of this Act, the Secretary of Energy shall
15 complete a review of the Energy Savings Performance
16 Contract program to identify statutory, regulatory, and
17 administrative obstacles that prevent Federal agencies
18 from fully utilizing the program. In addition, this review
19 shall identify all areas for increasing program flexibility
20 and effectiveness, including audit and measurement
21 verification requirements, accounting for energy use in de-
22 termining savings, contracting requirements, including the
23 identification of additional qualified contractors, and en-
24 ergy efficiency services covered. The Secretary shall report
25 these findings to Congress and shall implement identified

1 administrative and regulatory changes to increase pro-
2 gram flexibility and effectiveness to the extent that such
3 changes are consistent with statutory authority.

4 (g) EXTENSION OF AUTHORITY.—Any energy sav-
5 ings performance contract entered into under section 801
6 of the National Energy Conservation Policy Act (42
7 U.S.C. 8287) after October 1, 2003, and before the date
8 of enactment of this Act, shall be deemed to have been
9 entered into pursuant to such section 801 as amended by
10 subsection (a) of this section.

11 **SEC. 303. FEDERAL BUILDING PERFORMANCE STANDARDS.**

12 Section 305(a) of the Energy Conservation and Pro-
13 duction Act (42 U.S.C. 6834(a)) is amended—

14 (1) in paragraph (2)(A), by striking “CABO
15 Model Energy Code, 1992” and inserting “the 2003
16 International Energy Conservation Code”; and

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

18 “(3) REVISED FEDERAL BUILDING ENERGY EFFI-
19 CIENCY PERFORMANCE STANDARDS.—

20 “(A) IN GENERAL.—Not later than 1 year after
21 the date of enactment of this paragraph, the Sec-
22 retary of Energy shall establish, by rule, revised
23 Federal building energy efficiency performance
24 standards that require that—

1 “(i) if life-cycle cost-effective, for new Fed-
2 eral buildings—

3 “(I) such buildings be designed so as
4 to achieve energy consumption levels at
5 least 30 percent below those of the version
6 current as of the date of enactment of this
7 paragraph of the ASHRAE Standard or
8 the International Energy Conservation
9 Code, as appropriate; and

10 “(II) sustainable design principles are
11 applied to the siting, design, and construc-
12 tion of all new and replacement buildings;
13 and

14 “(ii) where water is used to achieve energy
15 efficiency, water conservation technologies shall
16 be applied to the extent they are life-cycle cost
17 effective.

18 “(B) ADDITIONAL REVISIONS.—Not later than
19 1 year after the date of approval of each subsequent
20 revision of the ASHRAE Standard or the Inter-
21 national Energy Conservation Code, as appropriate,
22 the Secretary of Energy shall determine, based on
23 the cost-effectiveness of the requirements under the
24 amendments, whether the revised standards estab-

1 lished under this paragraph should be updated to re-
2 flect the amendments.

3 “(C) STATEMENT ON COMPLIANCE OF NEW
4 BUILDINGS.—In the budget request of the Federal
5 agency for each fiscal year and each report sub-
6 mitted by the Federal agency under section 548(a)
7 of the National Energy Conservation Policy Act (42
8 U.S.C. 8258(a)), the head of each Federal agency
9 shall include—

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

13 “(ii) a statement concerning whether the
14 Federal buildings meet or exceed the revised
15 standards established under this paragraph.”.

16 **TITLE IV—PUBLIC HOUSING**

17 **SEC. 401. PUBLIC HOUSING CAPITAL FUND.**

18 Section 9 of the United States Housing Act of 1937
19 (42 U.S.C. 1437g) is amended—

20 (1) in subsection (d)(1)—

21 (A) in subparagraph (I), by striking “and”
22 at the end;

23 (B) in subparagraph (J), by striking the
24 period at the end and inserting a semicolon;
25 and

1 (C) by adding at the end the following new
2 subparagraphs:

3 “(K) improvement of energy and water-use
4 efficiency by installing fixtures and fittings that
5 conform to the American Society of Mechanical
6 Engineers/American National Standards Insti-
7 tute standards A112.19.2–1998 and
8 A112.18.1–2000, or any revision thereto, appli-
9 cable at the time of installation, and by increas-
10 ing energy efficiency and water conservation by
11 such other means as the Secretary determines
12 are appropriate; and

13 “(L) integrated utility management and
14 capital planning to maximize energy conserva-
15 tion and efficiency measures.”; and

16 (2) in subsection (e)(2)(C)—

17 (A) by striking “The” and inserting the
18 following:

19 “(i) IN GENERAL.—The”; and

20 (B) by adding at the end the following:

21 “(ii) THIRD PARTY CONTRACTS.—

22 Contracts described in clause (i) may in-
23 clude contracts for equipment conversions
24 to less costly utility sources, projects with
25 resident-paid utilities, and adjustments to

1 frozen base year consumption, including
2 systems repaired to meet applicable build-
3 ing and safety codes and adjustments for
4 occupancy rates increased by rehabilita-
5 tion.

6 “(iii) TERM OF CONTRACT.—The total
7 term of a contract described in clause (i)
8 shall not exceed 20 years to allow longer
9 payback periods for retrofits, including
10 windows, heating system replacements,
11 wall insulation, site-based generation, ad-
12 vanced energy savings technologies, includ-
13 ing renewable energy generation, and other
14 such retrofits.”.

15 **SEC. 402. GRANTS FOR ENERGY-CONSERVING IMPROVE-**
16 **MENTS FOR ASSISTED HOUSING.**

17 Section 251(b)(1) of the National Energy Conserva-
18 tion Policy Act (42 U.S.C. 8231(1)) is amended—

19 (1) by striking “financed with loans” and in-
20 serting “assisted”;

21 (2) by inserting after “1959,” the following:
22 “which are eligible multifamily housing projects (as
23 such term is defined in section 512 of the Multi-
24 family Assisted Housing Reform and Affordability
25 Act of 1997 (42 U.S.C. 1437f note)) and are subject

1 to mortgage restructuring and rental assistance suf-
2 ficiency plans under such Act,”; and

3 (3) by inserting after the period at the end of
4 the first sentence the following new sentence: “Such
5 improvements may also include the installation of
6 energy and water conserving fixtures and fittings
7 that conform to the American Society of Mechanical
8 Engineers/American National Standards Institute
9 standards A112.19.2–1998 and A112.18.1–2000, or
10 any revision thereto, applicable at the time of instal-
11 lation.”.

12 **SEC. 403. ENERGY-EFFICIENT APPLIANCES.**

13 In purchasing appliances, a public housing agency
14 shall purchase energy-efficient appliances that are Energy
15 Star products or FEMP-designated products, as such
16 terms are defined in section 553 of the National Energy
17 Conservation Policy Act (as amended by this title), unless
18 the purchase of energy-efficient appliances is not cost-ef-
19 fective to the agency.

20 **SEC. 404. ENERGY EFFICIENCY STANDARDS.**

21 Section 109 of the Cranston-Gonzalez National Af-
22 fordable Housing Act (42 U.S.C. 12709) is amended—

23 (1) in subsection (a)—

24 (A) in paragraph (1)—

1 (i) by striking “1 year after the date
2 of the enactment of the Energy Policy Act
3 of 1992” and inserting “September 30,
4 2004”;

5 (ii) in subparagraph (A), by striking
6 “and” at the end;

7 (iii) in subparagraph (B), by striking
8 the period at the end and inserting “;
9 and”; and

10 (iv) by adding at the end the fol-
11 lowing:

12 “(C) rehabilitation and new construction of
13 public and assisted housing funded by HOPE
14 VI revitalization grants under section 24 of the
15 United States Housing Act of 1937 (42 U.S.C.
16 1437v), where such standards are determined
17 to be cost effective by the Secretary of Housing
18 and Urban Development.”; and

19 (B) in paragraph (2), by striking “Council
20 of American” and all that follows through
21 “90.1–1989’”)” and inserting “2003 Inter-
22 national Energy Conservation Code”;

23 (2) in subsection (b)—

24 (A) by striking “within 1 year after the
25 date of the enactment of the Energy Policy Act

1 of 1992” and inserting “by September 30,
2 2004”; and

3 (B) by striking “CABO” and all that fol-
4 lows through “1989” and inserting “the 2003
5 International Energy Conservation Code”; and
6 (3) in subsection (c)—

7 (A) in the heading, by striking “MODEL
8 ENERGY CODE” and inserting “THE INTER-
9 NATIONAL ENERGY CONSERVATION CODE”;
10 and

11 (B) by striking “CABO” and all that fol-
12 lows through “1989” and inserting “the 2003
13 International Energy Conservation Code”.

14 **TITLE V—RELIABILITY**
15 **STANDARDS**

16 **SEC. 501. ELECTRIC RELIABILITY STANDARDS.**

17 (a) IN GENERAL.—Part II of the Federal Power Act
18 (16 U.S.C 824 et seq.) is amended by adding at the end
19 the following:

20 **“SEC. 215. ELECTRIC RELIABILITY.**

21 “(a) DEFINITIONS.—For purposes of this section:

22 “(1) The term ‘bulk-power system’ means—

23 “(A) facilities and control systems nec-
24 essary for operating an interconnected electric

1 energy transmission network (or any portion
2 thereof); and

3 “(B) electric energy from generation facili-
4 ties needed to maintain transmission system re-
5 liability.

6 The term does not include facilities used in the local
7 distribution of electric energy.

8 “(2) The terms ‘Electric Reliability Organiza-
9 tion’ and ‘ERO’ mean the organization certified by
10 the Commission under subsection (c) the purpose of
11 which is to establish and enforce reliability stand-
12 ards for the bulk-power system, subject to Commis-
13 sion review.

14 “(3) The term ‘reliability standard’ means a re-
15 quirement, approved by the Commission under this
16 section, to provide for reliable operation of the bulk-
17 power system. The term includes requirements for
18 the operation of existing bulk-power system facilities
19 and the design of planned additions or modifications
20 to such facilities to the extent necessary to provide
21 for reliable operation of the bulk-power system, but
22 the term does not include any requirement to en-
23 large such facilities or to construct new transmission
24 capacity or generation capacity.

1 “(4) The term ‘reliable operation’ means oper-
2 ating the elements of the bulk-power system within
3 equipment and electric system thermal, voltage, and
4 stability limits so that instability, uncontrolled sepa-
5 ration, or cascading failures of such system will not
6 occur as a result of a sudden disturbance or unan-
7 ticipated failure of system elements.

8 “(5) The term ‘Interconnection’ means a geo-
9 graphic area in which the operation of bulk-power
10 system components is synchronized such that the
11 failure of 1 or more of such components may ad-
12 versely affect the ability of the operators of other
13 components within the system to maintain reliable
14 operation of the facilities within their control.

15 “(6) The term ‘transmission organization’
16 means a Regional Transmission Organization, Inde-
17 pendent System Operator, independent transmission
18 provider, or other transmission organization finally
19 approved by the Commission for the operation of
20 transmission facilities.

21 “(7) The term ‘regional entity’ means an entity
22 having enforcement authority pursuant to subsection
23 (e)(4).

24 “(b) JURISDICTION AND APPLICABILITY.—(1) The
25 Commission shall have jurisdiction, within the United

1 States, over the ERO certified by the Commission under
2 subsection (c), any regional entities, and all users, owners
3 and operators of the bulk-power system, including but not
4 limited to the entities described in section 201(f), for pur-
5 poses of approving reliability standards established under
6 this section and enforcing compliance with this section. All
7 users, owners and operators of the bulk-power system
8 shall comply with reliability standards that take effect
9 under this section.

10 “(2) The Commission shall issue a final rule to imple-
11 ment the requirements of this section not later than 180
12 days after the date of enactment of this section.

13 “(c) CERTIFICATION.—Following the issuance of a
14 Commission rule under subsection (b)(2), any person may
15 submit an application to the Commission for certification
16 as the Electric Reliability Organization. The Commission
17 may certify 1 such ERO if the Commission determines
18 that such ERO—

19 “(1) has the ability to develop and enforce, sub-
20 ject to subsection (e)(2), reliability standards that
21 provide for an adequate level of reliability of the
22 bulk-power system; and

23 “(2) has established rules that—

24 “(A) assure its independence of the users
25 and owners and operators of the bulk-power

1 system, while assuring fair stakeholder rep-
2 resentation in the selection of its directors and
3 balanced decisionmaking in any ERO com-
4 mittee or subordinate organizational structure;

5 “(B) allocate equitably reasonable dues,
6 fees, and other charges among end users for all
7 activities under this section;

8 “(C) provide fair and impartial procedures
9 for enforcement of reliability standards through
10 the imposition of penalties in accordance with
11 subsection (e) (including limitations on activi-
12 ties, functions, or operations, or other appro-
13 priate sanctions);

14 “(D) provide for reasonable notice and op-
15 portunity for public comment, due process,
16 openness, and balance of interests in developing
17 reliability standards and otherwise exercising its
18 duties; and

19 “(E) provide for taking, after certification,
20 appropriate steps to gain recognition in Canada
21 and Mexico.

22 “(d) RELIABILITY STANDARDS.—(1) The Electric
23 Reliability Organization shall file each reliability standard
24 or modification to a reliability standard that it proposes

1 to be made effective under this section with the Commis-
2 sion.

3 “(2) The Commission may approve, by rule or order,
4 a proposed reliability standard or modification to a reli-
5 ability standard if it determines that the standard is just,
6 reasonable, not unduly discriminatory or preferential, and
7 in the public interest. The Commission shall give due
8 weight to the technical expertise of the Electric Reliability
9 Organization with respect to the content of a proposed
10 standard or modification to a reliability standard and to
11 the technical expertise of a regional entity organized on
12 an Interconnection-wide basis with respect to a reliability
13 standard to be applicable within that Interconnection, but
14 shall not defer with respect to the effect of a standard
15 on competition. A proposed standard or modification shall
16 take effect upon approval by the Commission.

17 “(3) The Electric Reliability Organization shall
18 rebuttably presume that a proposal from a regional entity
19 organized on an Interconnection-wide basis for a reliability
20 standard or modification to a reliability standard to be ap-
21 plicable on an Interconnection-wide basis is just, reason-
22 able, and not unduly discriminatory or preferential, and
23 in the public interest.

24 “(4) The Commission shall remand to the Electric
25 Reliability Organization for further consideration a pro-

1 posed reliability standard or a modification to a reliability
2 standard that the Commission disapproves in whole or in
3 part.

4 “(5) The Commission, upon its own motion or upon
5 complaint, may order the Electric Reliability Organization
6 to submit to the Commission a proposed reliability stand-
7 ard or a modification to a reliability standard that ad-
8 dresses a specific matter if the Commission considers such
9 a new or modified reliability standard appropriate to carry
10 out this section.

11 “(6) The final rule adopted under subsection (b)(2)
12 shall include fair processes for the identification and time-
13 ly resolution of any conflict between a reliability standard
14 and any function, rule, order, tariff, rate schedule, or
15 agreement accepted, approved, or ordered by the Commis-
16 sion applicable to a transmission organization. Such trans-
17 mission organization shall continue to comply with such
18 function, rule, order, tariff, rate schedule or agreement ac-
19 cepted approved, or ordered by the Commission until—

20 “(A) the Commission finds a conflict exists be-
21 tween a reliability standard and any such provision;

22 “(B) the Commission orders a change to such
23 provision pursuant to section 206 of this part; and

24 “(C) the ordered change becomes effective
25 under this part.

1 If the Commission determines that a reliability standard
2 needs to be changed as a result of such a conflict, it shall
3 order the ERO to develop and file with the Commission
4 a modified reliability standard under paragraph (4) or (5)
5 of this subsection.

6 “(e) ENFORCEMENT.—(1) The ERO may impose,
7 subject to paragraph (2), a penalty on a user or owner
8 or operator of the bulk-power system for a violation of a
9 reliability standard approved by the Commission under
10 subsection (d) if the ERO, after notice and an opportunity
11 for a hearing—

12 “(A) finds that the user or owner or operator
13 has violated a reliability standard approved by the
14 Commission under subsection (d); and

15 “(B) files notice and the record of the pro-
16 ceeding with the Commission.

17 “(2) A penalty imposed under paragraph (1) may
18 take effect not earlier than the 31st day after the ERO
19 files with the Commission notice of the penalty and the
20 record of proceedings. Such penalty shall be subject to re-
21 view by the Commission, on its own motion or upon appli-
22 cation by the user, owner or operator that is the subject
23 of the penalty filed within 30 days after the date such
24 notice is filed with the Commission. Application to the
25 Commission for review, or the initiation of review by the

1 Commission on its own motion, shall not operate as a stay
2 of such penalty unless the Commission otherwise orders
3 upon its own motion or upon application by the user,
4 owner or operator that is the subject of such penalty. In
5 any proceeding to review a penalty imposed under para-
6 graph (1), the Commission, after notice and opportunity
7 for hearing (which hearing may consist solely of the record
8 before the ERO and opportunity for the presentation of
9 supporting reasons to affirm, modify, or set aside the pen-
10 alty), shall by order affirm, set aside, reinstate, or modify
11 the penalty, and, if appropriate, remand to the ERO for
12 further proceedings. The Commission shall implement ex-
13 pedited procedures for such hearings.

14 “(3) On its own motion or upon complaint, the Com-
15 mission may order compliance with a reliability standard
16 and may impose a penalty against a user or owner or oper-
17 ator of the bulk-power system if the Commission finds,
18 after notice and opportunity for a hearing, that the user
19 or owner or operator of the bulk-power system has en-
20 gaged or is about to engage in any acts or practices that
21 constitute or will constitute a violation of a reliability
22 standard.

23 “(4) The Commission shall issue regulations author-
24 izing the ERO to enter into an agreement to delegate au-
25 thority to a regional entity for the purpose of proposing

1 reliability standards to the ERO and enforcing reliability
2 standards under paragraph (1) if—

3 “(A) the regional entity is governed by—

4 “(i) an independent board;

5 “(ii) a balanced stakeholder board; or

6 “(iii) a combination independent and bal-
7 anced stakeholder board;

8 “(B) the regional entity otherwise satisfies the
9 provisions of subsection (c)(1) and (2); and

10 “(C) the agreement promotes effective and effi-
11 cient administration of bulk-power system reliability.

12 The Commission may modify such delegation. The ERO
13 and the Commission shall rebuttably presume that a pro-
14 posal for delegation to a regional entity organized on an
15 Interconnection-wide basis promotes effective and efficient
16 administration of bulk-power system reliability and should
17 be approved. Such regulation may provide that the Com-
18 mission may assign the ERO’s authority to enforce reli-
19 ability standards under paragraph (1) directly to a re-
20 gional entity consistent with the requirements of this para-
21 graph.

22 “(5) The Commission may take such action as is nec-
23 essary or appropriate against the ERO or a regional entity
24 to ensure compliance with a reliability standard or any
25 Commission order affecting the ERO or a regional entity.

1 “(6) Any penalty imposed under this section shall
2 bear a reasonable relation to the seriousness of the viola-
3 tion and shall take into consideration the efforts of such
4 user, owner, or operator to remedy the violation in a time-
5 ly manner.

6 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
7 TION RULES.—The Electric Reliability Organization shall
8 file with the Commission for approval any proposed rule
9 or proposed rule change, accompanied by an explanation
10 of its basis and purpose. The Commission, upon its own
11 motion or complaint, may propose a change to the rules
12 of the ERO. A proposed rule or proposed rule change shall
13 take effect upon a finding by the Commission, after notice
14 and opportunity for comment, that the change is just, rea-
15 sonable, not unduly discriminatory or preferential, is in
16 the public interest, and satisfies the requirements of sub-
17 section (c).

18 “(g) RELIABILITY REPORTS.—The ERO shall con-
19 duct periodic assessments of the reliability and adequacy
20 of the bulk-power system in North America.

21 “(h) COORDINATION WITH CANADA AND MEXICO.—
22 The President is urged to negotiate international agree-
23 ments with the governments of Canada and Mexico to pro-
24 vide for effective compliance with reliability standards and

1 the effectiveness of the ERO in the United States and
2 Canada or Mexico.

3 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
4 authority to develop and enforce compliance with reli-
5 ability standards for only the bulk-power system.

6 “(2) This section does not authorize the ERO or the
7 Commission to order the construction of additional gen-
8 eration or transmission capacity or to set and enforce com-
9 pliance with standards for adequacy or safety of electric
10 facilities or services.

11 “(3) Nothing in this section shall be construed to pre-
12 empt any authority of any State to take action to ensure
13 the safety, adequacy, and reliability of electric service
14 within that State, as long as such action is not incon-
15 sistent with any reliability standard.

16 “(4) Within 90 days of the application of the Electric
17 Reliability Organization or other affected party, and after
18 notice and opportunity for comment, the Commission shall
19 issue a final order determining whether a State action is
20 inconsistent with a reliability standard, taking into consid-
21 eration any recommendation of the ERO.

22 “(5) The Commission, after consultation with the
23 ERO and the State taking action, may stay the effective-
24 ness of any State action, pending the Commission’s
25 issuance of a final order.

1 “(j) REGIONAL ADVISORY BODIES.—The Commis-
2 sion shall establish a regional advisory body on the petition
3 of at least $\frac{2}{3}$ of the States within a region that have more
4 than $\frac{1}{2}$ of their electric load served within the region. A
5 regional advisory body shall be composed of 1 member
6 from each participating State in the region, appointed by
7 the Governor of each State, and may include representa-
8 tives of agencies, States, and provinces outside the United
9 States. A regional advisory body may provide advice to the
10 Electric Reliability Organization, a regional entity, or the
11 Commission regarding the governance of an existing or
12 proposed regional entity within the same region, whether
13 a standard proposed to apply within the region is just,
14 reasonable, not unduly discriminatory or preferential, and
15 in the public interest, whether fees proposed to be assessed
16 within the region are just, reasonable, not unduly discrimi-
17 natory or preferential, and in the public interest and any
18 other responsibilities requested by the Commission. The
19 Commission may give deference to the advice of any such
20 regional advisory body if that body is organized on an
21 Interconnection-wide basis.

22 “(k) ALASKA AND HAWAII.—The provisions of this
23 section do not apply to Alaska or Hawaii.”.

24 (b) STATUS OF ERO.—The Electric Reliability Orga-
25 nization certified by the Federal Energy Regulatory Com-

1 mission under section 215(c) of the Federal Power Act
2 and any regional entity delegated enforcement authority
3 pursuant to section 215(e)(4) of that Act are not depart-
4 ments, agencies, or instrumentalities of the United States
5 Government.

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