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- Black Lung Disability Benefits Program Final Regulation Employment Standards Administration

Obtained and made public by the Natural Resources Defense Council, May 2002
THE COAL MINE VALLEY FILL ISSUE

PRINCIPLE: Support coal industry operations and employees in Appalachia by adopting proposed rules that clarify the scope of, and remove the ambiguities in, the Clean Water Act Section 404 program with respect to excess spoil. Delays in adopting these rules are restricting coal operations in Appalachian states at a time when coal is needed to provide fuel for affordable electricity.

DESCRIPTION: In October 1999, a federal district court in West Virginia stunned the Nation's coal industry with a decision barring the longstanding practice of building valley and hollow fills to dispose of the dirt and rock generated during coal mining. Bragg v. Robertson, 72 F. Supp. 2d 642 (S.D. W.Va. 1999), appeal pending, No. 99-2443 (4th Cir). Notwithstanding the fact that these engineered fill structures are both a necessary part of coal mining operations and expressly authorized by federal laws regulating coal mining, the court interpreted regulations issued under those laws as prohibiting their construction in hollows and valleys that inevitably contain stream courses. While the decision remains pending on appeal, the past Administration abandoned the working men and women of America’s coal industry and announced that it now agreed with the court's view. The past Administration's action in this regard is not only contrary to the laws it administers, it will have economic consequences. A Marshall University study concluded that the effects in West Virginia alone would be as great or greater than those of the Great Depression. Earlier in the same litigation, the federal agencies, the Environmental Protection Agency, Office of Surface Mining and the Corps of Engineers (EPA, OSM & COE), settled the claims related to the use of section 404 permits to authorize these fills under the Clean Water Act (CWA). The agencies agreed to conduct a programmatic Environmental Impact Statement that addresses environmental and economic consequences of different actions, as well as evaluates the better coordination of overlapping regulatory programs.

STATUS: The appeal in the 4th Circuit has been briefed and was argued on December 7, 2000. In the meantime, the EPA, OSM and COE are preparing a Draft EIS. EPA and COE also have pending a proposed rule published on April 20, 2000 clarifying that excess spoil is fill material subject to section 404 and not section 402 of the CWA. This rule would remove the ambiguity in the agencies' programs that the district court relied on to reach its erroneous conclusion that these fills as well as other activities that have the effect of displacing waters of the United States are not authorized by section 404.

DECISION: Should any part or form of a Draft EIS be publicly released before the completion of the underlying technical, economic and other studies.

RECOMMENDATION: Delay public release of the Draft EIS in any form until all the underlying studies are complete and have been subject to some form of peer review. This is completely defensible and will assure that the EIS process on this matter will not be subject to criticisms related to its credibility and integrity.

DECISION: Should EPA and COE adopt, as a final rule, the proposal clarifying the scope of the section 404 program with respect to excess spoil and other activities that have the effect of replacing waters of the United States.

RECOMMENDATIONS: 1) Proceed to adopt as final the proposed rule published on April 20, 2000. The rule is an important part of maintaining the integrity of the 404 program by clarifying a longstanding ambiguity that has caused grave uncertainty for the regulated community and the agencies. It not only addresses the excess spoil issue but other activities as well, e.g. landfills, OR 2) Await the decision of the 4th Circuit to determine whether it would require any modification of the proposal to address the central features of the rule. At some point, the EIS on mountaintop mining will have to analyze how excess spoil fills are to be addressed within the prevailing regulatory schemes under the CWA and SMCRA and whether any conflicts exist.

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THE FOREST SERVICE ROADLESS AREA CONSERVATION RULE
WILL ELIMINATE COAL RESERVES FROM DEVELOPMENT

PRINCIPLE: Implementation of the Forest Service Roadless rule will preclude development of the energy resources, including coal, that are located on these lands. The rule must be modified through administrative action or through existing litigation so that resource development is not precluded.

BACKGROUND: In January 2000, the Clinton Administration declared 58.5 million acres of Forest Service land off limits to mineral development by prohibiting road construction and reconstruction activities, including even temporary road construction on lands subject to this rule.

The Department of the Interior (DOI) is the largest owner of western minerals, while the U.S. Forest Service (USFS) in the Department of Agriculture is responsible for the management of the surface. Under the roadless rules, the actions of the surface owner will have a profoundly negative impact on the development of coal, oil and gas found under these lands. This is particularly important as 90 percent or more of the increase in coal production through 2020 is expected to come from federal lands including lands affected by this rule.

IMPACTS: As stated in the Final Roadless Environmental Impact Statement (EIS), several serious impacts have been identified, including: "...preclude future development of leasable minerals within inventoried roadless areas...[which would result in] decreases in jobs, income, and payments to states." The Department of Energy found that both expansion of existing mines, and tracts of coal of near term commercial interest will be affected.

Among all of the multiple users of the National Forest, coal mining has the distinct and unique requirement - pursuant to the terms of the Surface Mining Act - to restore all surface disturbances to at least as good a condition as the pre-mining condition. This requirement applies to all roads developed in conjunction with exploration or development activities. In short the Surface Mine Control and Reclamation Act already provides the protections the roadless rule purports to safeguard.

EXAMPLES: Two areas of federal coal production have been specifically identified as being impacted by this rule: the Manti-La Sal National Forest in Utah and the Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests in Colorado. The impact on the West Elk Mine, located in the GMUG National Forest is discussed as an example. This underground coal mine, which produces about seven million tons of high BTU, low sulfur federal coal per year, is located in western Colorado's North Fork Valley - the fastest growing coal producing region in Colorado. The mine employs about 360 people and has an annual payroll of $26 million. Just over 93% of West Elk's coal is shipped to eastern utilities which need its unique quality characteristics to meet Clean Air requirements. The West Elk mine will be significantly and adversely impacted by the Roadless Area designation in several ways:

- As existing coal leases are modified or renewed, they will become subject to the roadless area prohibitions;
- The roadless boundary includes adjacent areas of unleased federal coal reserves. That would be excluded from potential development since necessary exploration drilling and mine development would be prohibited;
- Approximately $3 billion of federal coal could be impacted by the Roadless Area rule in this one area alone.

RECOMMENDATIONS: The Energy Task Force must consider the effects of this rule on development of resources needed to meet future energy demand. Should the rule go into effect, the Administration should actively engage in the litigation to assure that final settlements do not preclude resource development.
THE POWDER RIVER BASIN RESOURCE DEVELOPMENT ACT OF 2000

PRINCIPLE: Enact legislation that provides for orderly development of all energy resources located on federal lands to ensure that development of one resource does not preclude economic development of a co-located resource.

BACKGROUND: In the 2nd Session of the 106th Congress, the entire Wyoming delegation sponsored legislation (The Powder River Basin Resource Development Act of 2000 - S. 1950 and H.R. 4297) to resolve conflicts between oil and gas and coal developers which arise as a result of simultaneous resource development on federal lands in the Powder River Basin (PRB) of Wyoming and Montana. The proposed legislation (as reported by the Senate Energy Committee) was the result of lengthy negotiations between the Administration, coal producers and oil and gas developers. Unfortunately, on December 15, 2000 the Clinton White House insisted that the bill be excluded from the Omnibus Appropriations package, thus preventing passage and leaving an uncertain future to coal, coaled methane (CBM) and oil and gas production in the PRB.

The PRB of Wyoming and Montana is one of the world’s most productive energy resource regions. It contains the largest reserves of low sulfur coal in the United States. Coal mined in Campbell County, Wyoming itself now represents approximately 1/3 of all U.S. coal production. The PRB is also rich in oil and gas, including CBM that lies within and adjacent to the coal seams. Virtually all of the coal and approximately 50% of the oil and gas in the PRB is owned by the federal government and managed by the BLM, under the Mineral Leasing Act of 1920.

ISSUE: The BLM has issued and continues to issue separate federal coal leases and federal oil and gas leases for the same locations in the PRB. In those areas leased both for coal and for oil and gas (common areas), disputes over timing of mineral development have arisen. The sequence of development in the common areas frequently becomes a critical issue. No clear statutory direction exists to resolve disputes over the sequence of mineral development.

LEGISLATIVE SOLUTION: Last session’s negotiated Senate legislation would provide the missing statutory direction to resolve these mineral development disputes and would establish a formal procedure to be used only in the conflict areas of the PRB. By its expressed terms, the bill would have no impact whatsoever outside the PRB.

The bill would require competing mineral developers to negotiate first, and urges the BLM to use its regulatory authority to achieve a possible resolution to each conflict. If both negotiations and regulatory efforts fail, either the coal developer or the oil and gas developer could invoke the formal resolution process established by the legislation by filing a petition in the local federal district court and with the Secretary of the Interior. The bill’s process then would require a public interest determination first by the Secretary, then by the court, as to which mineral will be developed first. There would follow a temporary suspension or termination of rights to develop the conflicting mineral. The court, with the aid of an expert panel, would determine the amount to be paid to the non-prevailing mineral developer.

RECOMMENDATION: The Bush/Cheney White House should encourage early passage and enactment of legislation similar to S. 1950 as approved by the Senate Energy Committee in the 106th Congress. Until such legislation is passed, conflicts involving simultaneous development of competing fossil fuel resources in the PRB will continue to threaten or delay orderly development of much needed environmentally favorable domestic energy resources.
COAL LEASING – THE NEED FOR AN ORDERLY, PREDICTABLE PROCESS

PRINCIPLE: Implement procedures to shorten the time required to process applications for leases for federal coal reserves and take steps to process lease applications now pending. The reserves included in these applications will be required in the future to fuel increasing demand for affordable electricity.

DESCRIPTION: Since the 1970’s, leasing of federal coal has been marked by controversy, lawsuits and long periods of leasing moratoriums. Since the decertification of the Powder River Basin ("PRB") coal producing region in the late 1980’s, the Bureau of Land Management ("BLM") has actively used the Lease-By-Application ("LBA") process, which allows an existing coal mining operation to nominate a tract for the express purpose of prolonging the life of the existing mine. The leases are offered to any qualified bidder at the time of sale on a competitive basis through a bid process (termed a bonus bid). This process has been effectively used in Utah, Colorado and Wyoming. This discussion is limited to the PRB of Wyoming.

To date, the LBA process has been highly successful. Since the LBA process was put in place, the BLM has sold ten (10) coal leases in the Wyoming PRB that contained over 2.7 billion tons of coal. These lease sales have generated over $612 million in bonus bids, even before the payment of 12½% production royalties commence. This process has been critical as the PRB of Wyoming now produces a third of the nation’s demand for low sulfur coal.

THE LBA PROCESS: The LBA process has allowed for the orderly and predictable leasing of federal coal reserves for the last decade. After a federal coal lease application is filed with the BLM, but before the actual competitive lease sale. The lease application goes through a series of economic, environmental, resource recovery and fair market value procedures and reviews by both state and federal officials. Currently, this process takes three to five years to complete.

After the lease is issued the state and federal regulatory agencies begin the permitting process. The federal agencies involved include the Office of Surface Mining (mining and reclamation plan approval) and the BLM (Resource Recover and Protection Plans). Historically, this process has taken about an additional three years – or six to eight years from lease application to permit issuance.

KEY ISSUES: Coal production in the PRB has jumped dramatically since the Clean Air Act Amendments of 1990. With this dramatic increase has come the need for continued and orderly access to federal coal reserves. Western coal producers clearly recognize this need and make their leasing plans accordingly. In the PRB of Wyoming there are currently eight coal lease applications on file with the BLM totaling over 23.2 billion tons of coal. While this appears to be a large quantity of coal, it only represents about seven years of production from the PRB.

The BLM is now processing and holding only one federal coal lease sale per year. As a result, the most recent coal lease application filed may not be offered for sale for eight years. Permitting requirements will then add another three years. There is an excessive backlog of federal coal lease applications on file, and that the time frame for processing and issuance is impeding orderly development of important domestic energy resources.

RECOMMENDATION: Consolidate the NEPA process and combine several LBAs into one EIS. Evaluate the workload of other BLM offices to determine if there are any personnel available to help work through this backlog. Seek coal industry and the State of Wyoming support for additional Federal funding for the processing of lease applications.

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ADVANCE ROYALTY PAYMENTS
IN LIEU OF CONTINUED OPERATIONS

PRINCIPLE: Legislation is needed to provide greater flexibility in the way that requirements for payments of advanced royalties are implemented.

BACKGROUND: On August 4, 1976, the Federal Coal Leasing Act Amendments (FCLAA) were enacted. Section 6 of the FCLAA inserted a new Section 7(b), providing, in part, that the Secretary, upon determining that the public interest will be served thereby, allow the coal operator to pay advanced royalties rather than require continued operation of a mine.¹

The current “advance royalty” provisions provide that:

- Advance royalties may be paid in lieu of the statutory obligation to maintain continued operations, but that they may not be paid for more than an aggregate of 10 years;
- Advance royalties paid during the initial 20-year term of the lease may not be carried over past the twentieth year of the lease; and,
- The Secretary may unilaterally cease to accept advance royalties and require that production continue.

ISSUE: Based upon experience since 1976, the current statutory provisions are counterproductive as these provisions do not give the coal operators the flexibility needed to be able to react to changing market conditions. If market conditions are such that coal is in “over supply”, the operator needs the flexibility to slow or stop production for a period of time. Conversely, when coal demand increases the operator needs the flexibility to expand production.

RECOMMENDATIONS: Federal legislation is needed to provide operational flexibility for Western coal operators. Such legislation will also promote the ultimate recovery and conservation of federal coal. While limited to scope, the following amendments to provide operational flexibility to the current lease holders:

- Extend the aggregate authority pay advance royalties in lieu of continued operations from 10 years to 20 years;
- Provide that advance royalty payments are based on the average sales price for coal sold in the spot market from the same region during the month in which the request to pay advance royalties is submitted to the BLM;
- Delete the current prohibition on the carry-over of advance royalty payments made during the initial 20-year period of the lease;
- Delete the current unilateral authorization for the Secretary to cease to accept advance royalties in lieu of continued operations; and
- Delete the last sentence of Section 39 of the MLLA of 1920 (Section 14 of FCLAA) prohibiting the waiver, suspension or reduction of advance royalties.

¹ This provision requires that leases produce one percent of a mining unit’s recoverable reserve each year.

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REVITALIZING THE ABANDONED MINED LANDS PROGRAM

PRINCIPLE: Work with industry to reform the Abandoned Mine Land program to ensure that funds are effectively used to complete reclamation work outstanding so that the program can come to a successful conclusion thus meeting SMACRA's original environmental goals.

DESCRIPTION: The 1977 Surface Mining Control and Reclamation Act (SMCRA) mandates that lands disturbed by coal mining be restored to their pre-mining condition. The Act addresses mining sites inactive before 1977 through the Abandoned Mine Land (AML) provisions. SMCRA requires coal operators to pay a fee to the Office of Surface Mining's AML Fund to clean up pre-law abandoned sites. The fee was set at 35¢ per ton for surface mined coal, 15¢ per ton for underground coal and 10¢ for lignite and has been extended twice, most recently in 1992. The fee is levied exclusively on coal production; no other mineral pays an AML fee. The fee is set to expire at the end of FY-2004.

In 1992, interest from the AML Fund was set aside to pay for the health benefits of certain retired coal miners and their widows under the Coal Industry Retiree Health Act.

STATUS: There is a mismatch between the amounts paid into the fund and the amount used for reclamation. To date, $5 billion in contributions have been paid by the coal industry into the AML Fund but only $1.3 billion in Priority 1 and 2 reclamation work has been completed.

Approximately $2.5 billion in Priority 1 and 2 coal reclamation work remains to be completed, yet the AML Fund has an unappropriated balance of $1.5 billion. This mismatch reflects annual appropriations have been significantly less than the fees paid by the industry and a distribution formula that does not reflect an effective use of the fees collected.

There are excessive federal and state administrative expenses of approximately $45 million annually.

RECOMMENDATION: The coal industry believes that 2001 provides a unique opportunity to reform the AML program. The coal industry is prepared to support an extension of the AML fee, if the additional funds are dedicated to the clean up of the remaining Priority 1 and 2 projects, and only if the current fee structure is reduced beginning in FY-2002. The fee structure would be the subject of negotiation. Suggested program reform should include a major reduction in administrative costs and a freeze on the inventory of eligible reclamation projects. Legislation to support these recommendations should be introduced in 2001 to give long-term financial stability to the various state AML programs. The proposed changes in the program would ensure that the SMACRA's original environmental goals are achieved and that reclamation is completed more quickly and effectively.

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MMS ADMINISTRATIVE APPEALS PROCESS

DESCRIPTION: In 1973, the Department of the Interior (DOI) promulgated administrative procedures for the appeal of final orders and decisions of officers of the Minerals Management Service (MMS), directing that appeals would be made to the Director of MMS. The MMS is the only DOI agency with an intermediate appeal to the Director of the agency. All other DOI agency appeals go directly to the Interior Board of Land Appeals (IBLA).

In 1995, the DOI established the Royalty Policy Committee (RPC) to provide advice to the Secretary on the management of Federal and Indian mineral leases, revenues, and other minerals-related policies. The RPC includes representatives from states, Indian tribes and allottee organizations, minerals industry associations, other Federal agencies, and the public. At its first meeting in September 1995, the RPC established eight subcommittees, including the Appeals and Alternative Dispute Resolution (ADR) Subcommittee (Subcommittee). In February 1997, the Subcommittee submitted a consensus report for consideration by the RPC.

ISSUE: The Subcommittee agreed that the principal purpose of the MMS administrative appeals process should be the expeditious and independent review of cases involving disputed facts, legal issues, or policy upon request of the adversely affected party. The Subcommittee recognized that the MMS appeals process has been under criticism and serious review since 1991 and that substantial reform is needed.

While the Subcommittee was working, the Federal Oil and Gas Royalty Simplification and Fairness Act was enacted, establishing among other provisions, a 33-month time limitation for the DOI to make final decisions on appeals involving royalties due on federal oil and gas leases. This provided a further impetus to the Subcommittee's efforts to reduce the overall time for making final DOI decisions on appeals. In addition, MMS proposed a draft regulation that would place a 16-month time limitation on the MMS appeals process, leaving the rest of the 33-month period for review at the IBLA. The Subcommittee strongly urged that the recommendations in its report be substituted for MMS's proposed regulation.

The Subcommittee developed a number of specific steps involving both the appeals and ADR processes, incorporating them into a one-stage IBLA administrative appeal process. In March 1997, the RPC approved the Subcommittee report and forwarded it to Secretary Babbitt for his consideration. By letter dated September 22, 1997, Secretary Babbitt informed the RPC that he largely agreed with the report's recommendations. However, by Memorandum dated June 1, 2000, to the MMS Director, Secretary Babbitt stated that contrary to the RPC’s recommendation, he had decided to retain the current two-tier appeals procedures.

RECOMMENDATIONS: The DOI should initiate administrative procedures which implement the Subcommittee's one-stage royalty appeals' recommendations. Otherwise, mineral developers that disagree with MMS decisions will continue to be subjected to a two-stage process which can extend administrative appeals from five to seven years, even before its controversy can enter the courts.
U.S. FOREST SERVICE MANAGEMENT PLAN REVISIONS

BACKGROUND: On a regular basis the U.S. Forest Service (USFS) reviews and, as necessary, revises its Forest Service Management Plans. Over the last year, the proposed revisions to various management plans have steadil y moved away from a multiple use concept in favor of a position that favors conservation and recreation and disfavors mining and development. Currently, the USFS is proposing to revise the Thunder Basin National Grasslands management plan. The Thunder Basin National Grasslands is home to the largest coal producing region in the United States – the Powder River Basin of Wyoming (PRB). This region now produces a third of the nation’s coal supply and in this time of high and unstable energy prices is a source of reliable, low cost, environmentally friendly coal. Pending lease sales of nearly 2.3 billion tons of mineral resources are in areas that would be affected by the revision. Availability of these reserves is necessary to continue long term operations at existing mines.

ISSUE: The proposed revision to the Thunder Basin National Grasslands management plan includes the establishment of a new wilderness area (pending Congressional approval) and other "special interest areas." These areas would likely trigger requirements that are more stringent than necessary to protect air quality and air quality related values (flora, fauna, etc.). The coal industry is one of the most heavily regulated in the country, and the PRB in particular more air quality monitors per square mile than any other region of the United States. There has never been a monitored violation of the PM_{10} (particulate matter less than 10 microns in size) National Ambient Air Quality Standard in this area. However, the demonstration for protection of air quality would not be based on data from actual air quality monitors, but rather would be based on hypothetical computer models that significantly over-predict emissions.

Unfortunately, these specially designated areas are located 5 to 35 miles downwind of existing coal mining operations in the PRB. As new federal coal leases are issued and as coal operators apply for air quality permits, these specially designated areas have the very real potential of impacting the ability to permit new areas or limiting production of existing operations.

A further Federal Land Managers’ proposal would authorize the creation of areas where threatened and endangered species could be re-introduced. In this case, these areas are located immediately east of the existing PRB coal mining operations and would be used to re-introduce black-footed ferrets. There is no discussion of the impact to the mining operations should these animals migrate onto the minesites.

RECOMMENDATION: Revisions to the Forest Service Management Plans should be undertaken in concert with all relevant federal agencies, including the Department of Interior, and should be structured to assure continued access to coal resources on federal lands.
REGULATION OF DIESEL PARTICULATE MATTER EXPOSURE IN UNDERGROUND METAL/NONMETAL MINES

DESCRIPTION: In 1998 the Mine Safety and Health Administration (MSHA) published two proposed rules intended to reduce the exposure of miners to the constituents of diesel fuel combustion in underground mines - one for underground coal and one for underground metal/nonmetal (m/nm). The proposals, while similar in intent, departed dramatically on the options available to mine operators to comply with the proposals. Moreover, the rules proposed for m/nm mines the use of unproven sampling technology and the application of yet unproven and not commercially available for mining applications, after-treatment control technology. It is important to note that concerns regarding both the sampling technology and the availability of after-treatment control technology were raised during the public comment period by the National Institute for Occupational Safety and Health (NIOSH), mining research branch, the principal federal government mine safety and health research authority.

STATUS: The coal and m/nm proposed rules were forwarded to the Office of Management Budget for final approval on December 11 and 14, 2000 respectively. OMB approved the final regulations on January 8, 2001 for publication. The final rules were published on January 19, 2001. They were to become effective on March 20, 2001; however, they were extended until May 20, 2001 under the President’s regulatory review directive.

ISSUE: Should The Department of Labor/MSHA, depending upon the effective date of the regulations, re-propose or stay the m/nm regulations in order to reevaluate the scientific, technologic and economic basis upon which the previous Administration proposed and finalized the regulations.

RECOMMENDATION: Immediately stay the rules and re-propose them in order to seek additional public comments and consideration by new Administration.
DESCRIPTION: On December 20, 2000 the Department of Labor (DOL) issued final regulations that make sweeping changes to the Federal Black Lung Disability Benefits Program. The regulations were to be effective January 19, 2001. Despite extensive medical, economic and other evidence that the proposed regulations were severely flawed, DOL published the final rule. Unprecedented criticisms of the proposed rules were filed by the American Bar Association, Members of Congress, independent medical societies, and many others. The regulations will have significant economic impact on the coal mining and insurance industries (between $3.3 billion and $7.2 billion according to reputable estimates). Moreover, DOL concedes in its economic analyses that small coal mines will be closed with subsequent loss of jobs. Nonetheless, DOL summarily ignored the substantive objections, informed criticisms, and negative economic implications of the proposed regulations.

STATUS: On December 22, 2000 NMA and other parties filed a legal challenge to substantive parts of the final rules. The complaint charges that the final regulations violate the rights of litigants, create illegal presumptions, are arbitrary, capricious, inconsistent with existing laws, and violate the US Constitution. A preliminary injunction was granted on February 8, oral arguments are set for May 21.

OPTIONS:
1) If filed, consent to plaintiff’s motion for summary judgment and remand of the final rules for reconsideration by the Secretary, or

2) Immediately propose to stay the effective date and re-propose the regulations in order to evaluate the previous Administration’s motives to promulgate such severely flawed and economically damaging regulations, or

3) Engage in settlement discussions with the plaintiffs and consent to substantive settlement offer proposed, by plaintiffs, or

4) Continue with the litigation allowing the possibility of all evidence being open for full disclosure in the court, possibly to the enforcement of the Department and harmful to some employees.

RECOMMENDATION: Permit the regulations to be vacated and remanded by consenting to plaintiff’s possible or propose to stay and re-propose the regulations.
CROSSCUTTING

- Federal Government Coal Research Programs
- Modifications in Corporate Income Tax Policies
- Reliable, Timely and Complete Energy Data
  A Requirement for Sound Public Policy
FEDERAL GOVERNMENT COAL RESEARCH PROGRAMS

PRINCIPLE: Support federal coal research programs that: accelerate demonstration of technologies; develop advanced technologies that are focused on greater efficiency and environmental improvement for coal generation; focus research on carbon sequestration technologies; improve mining efficiencies, safety and environmental performance; and, advance mining education.

DESCRIPTION: Federal government coal research programs related to coal utilization and mining (production) are centered within the Office of Fossil Energy, Department of Energy. The National Energy Technology Laboratory coordinates much of the research; some basic research is conducted through the other national laboratories. Most of the research programs are designed as industry-government partnerships with industry providing half or more of the cost of the research. The Fossil Energy program also supports academic research that increases our fundamental understanding and provides for undergraduate education and graduate research on coal utilization systems, but lacks a equivalent program for academic coal production (mining and mineral preparation) research.

Coal Utilization Research Program
The goal of the coal utilization research program systems research program is to develop advanced technologies that increase the efficiency and improve the environmental performance of coal use, principally for the production of electric power and liquid fuels. Among the key DOE programs are the following.
- The Clean Coal Technology Program (CCT) was begun in 1985. Thirty eight projects with a total value of $5.2 billion have been funded, and two-thirds of the funding - $3.5 billion - has been from industry. Many new and successful technologies were developed through the CCT program including the NOx reduction technologies that are now in commercial use on 75% of the coal fired power plants in operation today. Technologies demonstrated include advanced electric power generation systems, environmental control devices and pre-combustion technologies. This program is nearing completion.
- The Power Plant Improvement Initiative (PPII) program accelerates the demonstration of near-commercial technologies that can be installed on existing coal-fired power plants to improve their efficiency and environmental performance. In the FY 2001 appropriations, Congress directed DOE to use $95 million in unspent CCT money to begin the PPII. The initial PPII projects will be selected by the end of FY 2001. The program requires a minimum of 50% in industrial cost-sharing.
- The DOE Office of Fossil Energy, through its Coal and Power Systems program, conducts coal related R&D, including advanced coal gasification and combustion systems, materials development, environmental assessments of coal use, development of mercury control technology, management of solid byproducts from coal combustion, and production of ultraclean liquid fuels. Many of these program elements are combined in and support the Vision 21 concept, which seeks to integrate promising new technologies into highly efficient, low-emitting energy complexes, for the production of electricity, fuels and chemicals.
- A critical element of the Coal and Power Systems program is research on carbon sequestration. If reductions in carbon dioxide emissions from coal-based electricity generating systems become necessary, sequestration may become the only practical, long-term solution. In the near-term, it is essential to know the technical and economic feasibility of a variety of sequestration options to guide public policy. For that reason, it is essential that the DOE program be funded at a level sufficient to
move beyond current lab-scale research to practical field tests of the most promising options.

- The UltraClean Fuels program is developing new approaches to producing liquid transportation fuels from coal to meet increasingly stringent environmental standards, while reducing our dependence on imported petroleum and natural gas. An important aspect of the Clean Fuels program, is the integration of fuels production with advanced electric power generation systems (as in the Vision 21 concept) to allow the efficient coproduction of a variety of energy products from a single facility with coal as the ultimate fuel source.

**Mining - Production**

The Mining Industry of the Future program is a joint industry/DOE to develop technology that improves the production and processing of minerals, including coal. The goal is to develop new technologies that ensure the health and safety of employees, protect the environment, reduce energy consumption in mining, and produce high quality products at lower costs. Research is being conducted in three areas: exploration, mining and processing. To date 26 projects have been funded with the first results of this pre-commercial research expected in late 2001. The program has been funded at $3 million per year with matching funds from industry.

The DOE provides little support for research on mining at the academic institutions. This diminishes the national capability to develop fundamental science to improve mining practices, and impairs the abilities of the universities to train future generations of mining engineers. In addition to its programs in oil and gas production, the Fossil Energy office should institute a program to support academic research in mining.

**RECOMMENDATIONS:**

**Coal Utilization:** DOE's requests for the current coal utilization research and development programs should be fully funded, and the Power Plant Improvement Initiative should be continued at an annual funding level of $150 million. The DOE Vision 21 program should be established as a separate budget item so that its goals can be prioritized and accelerated. Coal and Power Systems research and development should be focused on supercritical and ultra-supercritical plants, advanced gasification and combustion hybrid systems. Funding for CO2 sequestration should be increased to allow field testing of promising options. Research should address the three criteria pollutants (SO2, NOx and mercury), solid waste and water management. DOE should organize research programs in accordance with the priorities identified by the coal and utility industries as defined in the Technology Roadmaps developed by the Coal Utilization Research Council, the Electric Power Research Institute and the Coal Based Generation Stakeholders Group.

**Coal Production:** The DOE request for Mining Industry of the Future funding should be increased to a minimum of $10 million annually. A program of university mining research should be established under the Office of Fossil Energy with an initial annual funding of $3 million to support academic research and graduate studies in mining.

**Coordination:** DOE should ensure that the mining related research currently being carried out in many locations within the department under different programs is coordinated and is not duplicative. This could be done by establishing a "coal center" at NETL but coordination should not require additional staffing.
MODIFICATIONS IN CORPORATE INCOME TAX POLICIES

PRINCIPLE: Modify federal tax policy to encourage investment in production of domestic energy and in electric generating facilities.

DESCRIPTION: Tax policy, including tax incentives, can be a major component of energy policy as they affect the development and production of energy including electricity. Several provisions of the Internal Revenue Code should be modified to address counterproductive policies previously put into place. These issues are also of significant importance to the oil and gas industry. At a minimum, any modifications to the areas of tax law outlined below which are accorded to one fuel should be similarly accorded other fuels in order to maintain a level playing field for attracting investment.

RECOMMENDATIONS:

- As identified in a separate paper, the most important changes in tax policy to address the nation's energy supply deficit—specifically electricity—are the investment tax credit and production tax credit components of the National Electric and Environmental Technology (NEET) legislation. These incentives will provide the impetus to increase the supply of electricity, improve the environment through reductions of pollutants regulated under the Clean Air Act, and reduce the amount of carbon dioxide emitted per unit of energy produced through significant increases in the efficiency of converting coal to electricity.

- The corporate alternative minimum tax (AMT) should be repealed or modified. Mining is a capital-intensive business and the AMT works a hardship on such businesses. As measured by generally accepted accounting principles, most mining companies are not profitable. In recent years, most companies have been consistently unprofitable. The fact that mining companies are required to pay the AMT, even if they have no profit, has added to the difficulty of attracting capital to maintain, expand or construct new mines. While elimination of the AMT may not be politically or economically achievable in the near term, at a minimum, legislation should be supported to allow historical corporate AMT taxpayers, such as mining, to utilize accumulated AMT tax credits to offset prospective AMT tax liability. Legislation to effect such a change was enacted by the previous Congress, but was vetoed as part of a larger tax package by President Clinton. Separately, eliminate the 90 percent limitation on use of net operating losses and foreign tax credits applicable to corporate AMT taxpayers.

- Mining companies should be provided the opportunity to fully expense exploration and development costs just as the oil and gas industry. The current limitations on expensing result in mining companies being forced to capitalize a percentage of their exploration and developments costs. This tax treatment serves as a financial disincentive for the development of new mines to meet our nation's needs. The playing field should be leveled and mining companies should be permitted to fully expense such costs.

- As currently structured, the 10 percent depletion allowance for coal was reduced by 15 percent as part of an omnibus tax bill in 1986. The reduction should be repealed. Separately, the current 50 percent net income limitation per property on use of the depletion allowance should be eliminated or reduced as it was earlier for the oil and gas industry, thus leveling the playing field for capital investments.
RELIABLE, TIMELY AND COMPLETE ENERGY DATA
A REQUIREMENT FOR SOUND PUBLIC POLICY

PRINCIPLE: Data on energy production and consumption, available on a timely basis and that is complete, accurate and reliable is necessary to support sound decisions by both the government and the private sector.

DESCRIPTION: Development and implementation of sound energy policy requires that accurate, complete and timely data on energy production and consumption be made available to government policy makers and to the public. The Department of Energy's independent Energy Information Administration (EIA) is responsible for the collection, reporting and dissemination of data on all energy sources: petroleum, natural gas, uranium, renewables, electric generators and coal. Data on production, use, prices, stockpiles, environmental performance in terms of quality and emissions, and international trade are among the valuable data series for which EIA is responsible.

The information is used by Congress, federal, state and local governments, business and industry, educational institutions and the general public in a number of areas. One of the most important is analysis of the effects of policy proposals on energy supply, demand and price. Another use is for forecasting and this data provide the basis for EIA's own energy supply demand forecasts upon which the Administration relies when making energy policy decisions. Yet another use for this important data is determining the current state of the energy picture throughout the nation — for example, will heating oil stocks be sufficient for the winter season, will gasoline stocks carry through the summer, will electric generating capacity be enough to meet immediate demands, do utilities have coal stocks to carry them through a peak generating period, and so on. What are the levels of emissions of SO2, NOx, or CO2? Timely, accurate and complete data can answer these questions and more importantly allow a more informed public policy debate.

STATUS: The Energy Information Administration collects and publishes various data series on a weekly, monthly and annual basis. The Federal Regulatory Commission (FERC) collects data on the electric utility sector that in turn is compiled and published by the EIA. The data on cost and quality of fuels delivered to utilities is collected on FERC "Form 423."

KEY ISSUES: Coal and electric utility data are no longer available on a timely basis nor are they accurate or complete. Data on coal production, employment, distribution and price (published on an annual basis) is more than ONE YEAR LATE. Data is not available at this point for even 1999. To compare — annual 1999 data on the petroleum industry was available in June 2000 and annual 1999 data on the natural gas industry was published in October 2000. Coal data has been treated as the "step-child" at the EIA and resources to collect and publish this data have been drastically reduced.

There is a different information issue affecting the electric generating sector. FERC does not have the authority to collect information from the non-utility generators (on Form 423) and as more of the industry becomes non-regulated, data on generation, fuel use and fuel purchases, inventories, etc. are increasingly incomplete. Additionally, OMB has been slow in acting on approval of the extension of authority to collect these data. As a result much of the data series required for sound energy policy decisions in the electric sector is simply not available. Not only is the federal government ignorant of coal inventories at power plants, for example, it does not have complete data on fuel prices and consumption.

RECOMMENDATION: Increase resources for collection and reporting coal data and take immediate steps to improve the timeliness of the information. Continue to authorize FERC collection of utility FORM 423 data and extend the information reporting requirements to the entire generating sector.
URANIUM

- Changes to NRC Fee Structure
- Uses of the National Strategic Uranium Reserve
- Limitations on Sales of Government Uranium Stockpiles
- Domestic Nuclear Fuel Cycle Short Term Mitigation
- Extend Dates of USEC Privatization Act
- Domestic Uranium Research and Development
- Uranium Product Tax Credit
CHANGES TO NRC FEE STRUCTURE

PRINCIPLE: Support for the domestic uranium recovery industry is essential for both energy and national security reasons. Legislation is necessary to eliminate fees for NRC uranium recovery.

BACKGROUND: NMA has consistently recommended changes to the Nuclear Regulatory Commission's (NRC) fee structure due to its impact on the domestic uranium recovery industry. There are serious inequities caused by the Omnibus Budget Reconciliation Act of 1990 (OBRA) mandate that NRC recover approximately 100 percent of its budget each year. In light of the current circumstances facing the uranium recovery industry, with the price of uranium hovering around $8/lb, the fees the uranium recovery licensees pay to NRC can be determinative of whether a company continues to produce uranium or instead proceeds to closure. These fees can also impact the amount companies can dedicate to reclamation.

DESCRIPTION: NRC's uranium recovery licensees pay an annual fee as well as an hourly fee for professional staff time. Unfortunately, with both types of fees, there is often no reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory oversight program and the benefit derived from such services. The annual fee includes costs for activities not attributable to any existing NRC licensee or class of licensee such as international activities, Agreement State oversight, and licensing and inspection activities associated with other Federal agencies. This problem of the lack of reasonable relationship between annual fees and services rendered by NRC is exacerbated as more states become Agreement States, leaving fewer NRC licensees to bear an even greater share of the burden. Recent increases in NRC fees have resulted not from increases in the amount to be recovered but rather due mostly to more states becoming Agreement States. As more states become Agreement States and more sites are decommissioned, fewer NRC licensees bear an even greater share of the burden. Under this scenario, the last licensee could end up having to pay for the entire program.

The fees paid for professional staff time also often bear no relationship to services provided by NRC. Recent regulatory changes have required licensees to pay the full cost for all time accrued by the project manager assigned to their sites. In reviewing the NRC directives on such cost recovery, it seems virtually no activities the project manager engages in are excluded from cost recovery. Thus, licensees would not only pay for actual time the project manager spends on a their site but would also pay for other activities that have nothing to do with the licensees' sites, including support to other offices, support to other agencies, and international activities.

At a time when the domestic uranium industry is facing hardship due to low uranium prices, continued imports from the former Soviet Union and increased regulatory burdens, increased NRC fees are dealing a crippling blow to the domestic industry.

RECOMMENDATION: The Administration should support legislation that eliminates fees for NRC uranium recovery licensees until such time when the spot price of uranium (U₃O₈) has exceeded $14/pound (escalated) for one year.
USES OF THE NATIONAL STRATEGIC URANIUM RESERVE

PRINCIPLE: Support for the domestic uranium recovery industry is essential for both energy and national security reasons. The Administration should support removal of federal uranium stockpiles from commercial markets.

BACKGROUND: Immediately prior to the privatization of United States Enrichment Corporation (USEC), USEC’s offering documents established the transfer of in excess of 70 million pounds of Department of Energy (DOE) uranium and uranium equivalents to USEC. These massive transfers had not been anticipated by the domestic mining and conversion sectors of the nuclear fuel industry.

DESCRIPTION: In order to mitigate against the material adverse impact DOE’s transfers had on these industries, DOE agreed not to sell or transfer additional uranium or uranium equivalents for a ten year period. The proposed amendment would codify the DOE action and extend the time of the stockpile requirements. Taking the remaining federal uranium stockpiles out of circulation would mitigate against the material adverse impacts previous sales and transfers have created, thereby reducing government fostered damage.

RECOMMENDATION: Amend 42 U.S.C. 22961 National Strategic Uranium Reserve to read:

There is hereby established the National Strategic Uranium Reserve under the direction and control of the Secretary. The Reserve shall consist of natural uranium and uranium equivalents contained in stockpiles or inventories currently held by the United States for defense purposes all natural uranium and uranium equivalents acquired or obtained by the United States in the future, and all natural uranium and uranium equivalents of Russian origin previously purchased or to be purchased in the future by the United States government pursuant to the Russian HEU Agreement. Effective on the date of enactment of this amendment and for a period of ten years thereafter, use of the Reserve shall be restricted to military purposes and government research. Use of the Department of Energy’s stockpile of enrichment tails existing on the date of enactment of this amendment, shall be restricted to military purposes or to being processed as an alternate feed material by the domestic uranium recovery industry for ten years thereafter.

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DOMESTIC NUCLEAR FUEL CYCLE SHORT TERM MITIGATION

PRINCIPLE: Support for the domestic uranium producers is essential for both energy and national security reasons. The Secretary of Energy should be authorized to purchase the USEC's uncommitted inventory of natural uranium.

BACKGROUND: The Department of Energy was required to transfer certain quantities of natural uranium and uranium equivalents to USEC as part of the privatization process. (See 42 U.S.C. 2297 h-10.) The sale of this material by USEC was restricted to no more than 4 million pounds per year to reduce the impact of this material on domestic producers and uranium equivalents produced pursuant to the Russian HEU Agreement. The Department made additional liabilities in lieu of cash payments to USEC owed due to liabilities remaining with the Department as a result of the Privatization Act. USEC sold this material into the commercial marketplace in addition to the amounts specifically authorized by congress in the Privatization Act.

DESCRIPTION: USEC's sales of restricted and non-restricted uranium derived from governmental stockpiles has damaged uranium producers resulting in a drop in the spot market price from $16.15 per pound at the time of privatization to an historic low of $7.10 in Dec. 2000.

RECOMMENDATION 1: Legislation on Domestic Nuclear Fuel Cycle Short Term Mitigation should be enacted to address the following. (Recommendation 2, an alternative to Recommendation 1 is discussed below.)

Section 1. In General.
Recent sales and transfers of government uranium inventories related to the Privatization of USEC and ramifications arising from the implementation of the Russian HEU Agreement have caused a material adverse impact on the mining, conversion and enrichment components of the domestic nuclear fuel industry.

Section 2. Purchase of USEC's Uncommitted Uranium Inventory.
The Secretary is authorized to purchase USEC's uncommitted inventory of natural uranium and uranium equivalents of up to ________ pounds.

(a) These purchases shall be at the current spot market price as established by the Secretary or the price obtained by the Secretary when the natural uranium or uranium equivalent was transferred to USEC during the privatization of the United States Enrichment Corporation, whichever is higher.

Section 3. Use of Purchased Uranium.
The natural uranium and uranium equivalents purchased under this section shall be placed in the National Strategic Uranium Reserve.

Section 4. Authorization and Funding.
(a) In General
There is authorized to be appropriated $_________ to carry out this part.
(b) Source
Funds described in subsection (a) of this section shall be provided from:

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RECOMMENDATION 2: As an alternative to recommendation 1, legislation could be passed that only requires the repurchase of certain contaminated materials from USEC by DOE as outlined below.

Amend 42 U.S.C. 2297-h - 10(C) USEC Privatization Act to read as follows:

New Subsection (3) Certain transfers from the Department made pursuant to this section and otherwise were contaminated by technetium existing in the material containers. The Secretary is authorized to purchase this material from USEC.

(A) The Secretary's purchases shall be at the current spot market price as established by the Secretary or the price determined by the Secretary when the natural uranium or uranium equivalent was transferred to USEC during the privatization of the United States Enrichment Corporation, whichever is lower.

(B) In the event the material purchased by the Secretary can be decontaminated or available for sale to commercial nuclear reactors, it shall be placed in the National Strategic Uranium Reserve.

(C) Authorization and Funding.

(i) In General – There is authorized to be appropriated _________ to carry out this part.

(ii) Source – Funds described in subsection (a) of this section shall be provided from ____________________
LIMITATIONS ON SALES OF GOVERNMENT URANIUM STOCKPILES

BACKGROUND: In order to mitigate against the material adverse impact DOE's transfers to USEC had on the domestic uranium recovery and conversion industries, DOE agreed not to sell or transfer additional uranium or uranium equivalents for a ten year period. Taking the remaining federal uranium stockpiles out of circulation would mitigate against the material adverse impacts previous sales and transfers have created, thereby reducing government fostered damage.

DESCRIPTION: Action is needed to limit the sales of government uranium stockpiles once such uranium is released from the ten year restriction on government sales. This limitation will prevent government stockpiled uranium from entering the commercial market in such quantities as to disrupt the market thereby enhancing the value of government owned uranium.

RECOMMENDATION: Limit the sales of government uranium stockpiles to four million pounds per year, once such uranium is released from the ten year restriction on government sales by amending 42 U.S.C. 2297h-10(d) Inventory Sales as follows.

(d) Inventory sales.

Subject to the restrictions required under Section 2296b-1 of this title, the Secretary may, from time to time, sell up to four million pounds per year of natural and low-enriched uranium (including low-enriched uranium derived from highly enriched uranium) from the Department of Energy's stockpile.

(2) No sale or transfer of natural or low-enriched uranium shall be made unless:

(A) the President determines that the material is not necessary for national security needs,
(B) the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, processing, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and
(C) the price paid to the Secretary will not be less than the fair market value of the material.
EXTEND DATES OF USEC PRIVATIZATION ACT

BACKGROUND: Section 3112(b)(2) of the USEC Privatization Act requires the Department of Energy to sell uranium hexafluoride into what is now an already oversupplied market due in major part to overly aggressive transfers of government stockpiles.

DESCRIPTION: A simple date extension will avoid exacerbating the governmentally fostered market damage. This extension will assist domestic producers to the front end of the nuclear fuel cycle.

RECOMMENDATION: Amend USEC Privatization Act, Section 3112(b)(2) to read:

"(2) Within 7 years of the date of enactment of this Act, the Secretary shall sell, and receive payment for, the uranium hexafluoride transferred to the Secretary pursuant to paragraph (1). Such uranium hexafluoride shall be sold—
(A) at any time for use in the United States;
(BA) at any time for end use outside the United States;
(CB) in 1995 and 1996 to the Russian Executive Agent at the purchase price for use in matched sales pursuant to the Suspension Agreement; or,
(BC) in calendar 2004-2008 for consumption by end users in the United States no prior to January 1, 2002, in volumes not to exceed 3,000,000 pounds U3O8 equivalent per year."
DOMESTIC URANIUM RESEARCH AND DEVELOPMENT

PRINCIPLE: Support for the domestic uranium industry is essential for both energy and national security reasons. A federal research program to support advanced exploration, mining and milling technologies is required to assure the long term viability of the domestic industry.

BACKGROUND: The domestic uranium mining and conversion service industries have been unintentionally adversely affected due to the privatization process in actions taken by the Department of Energy and the U.S. Enrichment Corporation in the management of government uranium inventories. Due to current excess inventories, including material available from the U.S.-Russia agreement on the conversion of weapons grade highly enriched uranium (HEU), worldwide production of uranium and conversion has declined to less than half of annual consumption, and domestic production of uranium is currently less than 10% of annual U.S. requirements. The utilization of existing inventories has greatly benefitted the U.S. government by avoiding the need for cash payments in the hundreds of millions of dollars from the Treasury to the USEC, and has benefitted consumers of nuclear power, due to the reduction in the market price of uranium feedstock material. The United States Enrichment Corporation Privatization Act stated the public interest in mitigating adverse impacts to the domestic mining.

DESCRIPTION: Funds should be allocated for cooperative agreements to mitigate the impact of government inventory sales and transfers that have devastated the domestic uranium industry. These cooperative agreements can be used to mitigate the cost of compliance with environmental safety and health laws and regulations for certain domestic uranium production facilities. The proposed cooperative agreements will ensure full environmental compliance where costs would normally be defrayed through production revenues. The cooperative agreements can also assure the preservation of domestic reserves by assisting in land and lease costs and promoting the exploration for new domestic reserves. Finally the cooperative agreements can be made with existing producers to enhance mining and milling technology and remediation activities to promote a strong competitive domestic uranium industry.

RECOMMENDATION: Legislation on Domestic Uranium Research and Development should be enacted addressing the following.

Section 1. The Secretary of the Department of Energy is authorized to enter into multi-year cooperative agreements with domestic uranium producers to:
(a) ensure compliance with all applicable federal, state and local requirements for the protection of environment, safety and health;
(b) assure the preservation of existing uranium reserves and leases;
(c) promote uranium mining and milling techniques and innovations;
(d) promote exploration techniques and activities to increase the domestic natural uranium reserve.
Section 2.

(a) there is authorized to be appropriated $________________ to carry out this part. The aggregate amount in the preceding sentence shall be increased annually, based upon an inflation index to be determined by the Secretary;

(b) Funds described in subsection (a) of this section shall be provided from the USEC Privatization Expense Fund established by Section 3104(e) of the Privatization Act;

Section 3. Domestic uranium producers shall mean individuals, companies, partnerships, joint ventures and other business entities that owned, controlled, operated and/or managed a uranium recovery facility (including conventional mills, in-situ leaching operations, heap leaching operations or any other type of uranium recovery facility) that possessed an operating Nuclear Regulatory Commission (NRC) or agreement state license on or after July 28, 1998 and are capable of future operation..
URANIUM PRODUCT TAX CREDIT

PRINCIPLE: Support modification of the federal tax laws to provide a credit for the purchase of domestic uranium products.

BACKGROUND: The United States uranium recovery industry has long been recognized as vital to United States energy independence and essential to United States national security, the domestic uranium industry has been found to be “not viable” by the Secretary of Energy under provisions of the Atomic Energy Act of 1954, as amended. Transfers and sale of government uranium inventories including those related to the United States/Russian HEU Agreement and the privatization of the United States Enrichment Corporation have had material adverse impacts on the United States uranium industry to the extent that the current spot market price of uranium is at an historical all time low. The unfettered introduction of government inventories has caused domestic uranium producers to either cease or curtail production;

DESCRIPTION: At such time as the price of natural uranium recovers to approach a reasonable cost of production, the United States uranium industry can be competitive with foreign producers due to advances in technology. Providing assistance to the domestic uranium industry is essential to mitigate the impacts on a private industry from government disarmament policies and government transfers of excess uranium reserves as well as to assure an adequate long-term supply of domestic uranium for the Nation’s nuclear power program to preclude an undue threat from foreign supply disruptions or price controls.

RECOMMENDATION: To amend the Internal Revenue Code of 1986 to allow a credit for the purchase of uranium products within the United States, and for other purposes.

SECTION 1. SHORT TITLE.
This Act may be cited as the “United States Uranium Employment and Production Incentive Tax Credit Act”.

SECTION 2. FINDINGS AND PURPOSE.
(a) FINDINGS.—The Congress finds that—
(1) although the United States uranium industry has long been recognized as vital to United States energy independence and essential to United States national security, the domestic uranium industry has been found to be “not viable” by the Secretary of Energy under provisions of the Atomic Energy Act of 1954, as amended;
(2) transfers and sale of government uranium inventories including those related to the United States/Russian HEU Agreement and the privatization of the United States Enrichment Corporation have had material adverse impacts on the United States uranium industry to the extent that the current spot market price of uranium is at an historical all time low;
(A) the unfettered introduction of government inventories has caused domestic uranium producers to either cease or curtail production;
(B) at such time as the price of natural uranium recovers to approach a reasonable cost of production, the United States uranium industry can be competitive with foreign producers due to advances in technology; and
(C) at the present time approximately 23 percent of United States electricity is produced from uranium fueled power plants and this number is expected to increase;

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(3) the United States has historically been the leading uranium producing nation and holds extensive proven reserves of natural uranium that offer the potential for secure sources of future supply; and

(4) providing assistance to the domestic uranium industry is essential to—
(A) mitigate the impacts on a private industry from government disarmament policies and government transfers of excess uranium reserves;
(B) preclude an undue threat from foreign supply disruptions that could hinder the Nation's common defense and security; and
(C) assure an adequate long-term supply of domestic uranium for the Nation's nuclear power program to preclude an undue threat from foreign supply disruptions or price controls.

(b) PURPOSE.—It is the purpose of this Act to—
(1) ensure an adequate long-term supply of domestic uranium for the Nation's nuclear electric power program and for the Nation's common defense and security; and
(2) provide assistance to the domestic uranium industry by creating a domestic utility purchase incentive to ensure the continued existence of the domestic uranium industry and this industry's infrastructure.

SECTION 3. CREDIT FOR PURCHASE OR URANIUM PRODUCED WITHIN THE UNITED STATES.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end thereof the following new section:

SECTION 30. CREDIT FOR PURCHASE OF URANIUM MINED OR PRODUCED AS A BY-PRODUCT WITHIN UNITED STATES.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the product of $7 multiplied by the number of pounds of qualified uranium purchased by and delivered to the taxpayer during such taxable year for use by a domestic utility.

"(b) LIMITATIONS AND ADJUSTMENTS.—
"(1) CREDIT ALLOWED ONLY ONCE.—If a credit was allowed under subsection (a) with respect to qualified uranium, no credit shall be allowed under subsection (a) with respect to any subsequent purchase of such uranium.

"(2) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—
"(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29, over
"(B) the tentative minimum tax for the taxable year.

"(3) INFLATION ADJUSTMENT.—The $7 amount in subsection (a) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the purchase occurs.

"(c) QUALIFIED URANIUM.—For purposes of this section, the term 'qualified uranium' means uranium ore the seller or producer of which certifies, in such manner as the Secretary may prescribe, as having been mined or produced as a by-product in the United States (within the meaning of section 638(1)) on or after January 1, 2000.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—
"(1) SALES BETWEEN RELATED PERSONS.—No credit shall be allowed under subsection (a) for any sale between related persons (as defined in section 29(d)(B)).

"(2) INFLATION ADJUSTMENT FACTOR.—The term 'inflation adjustment factor' has the meaning given such term by section 29(d)(2)(B), except that '2001' shall be substituted for '1979'.

"(e) APPLICATION OF SECTION.—This section shall apply to purchase after December 31, 2000, and before January 1, 2006, except that any purchase after December 31, 2000, pursuant to a contract entered into before January 1, 2001, shall be treated as a purchase on or before December 31, 2000."

(b) CONFORMING AMENDMENT.—The table sections for subpart B or part IV of subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following:

(c). EFFECTIVE DATE.—The amendments made by this section shall apply to purchases after December 31, 2000, in taxable years ending after such date.