

104TH CONGRESS  
1ST SESSION

# H.R. 2586

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 1995

Received

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## AN ACT

To provide for a temporary increase in the public debt limit,  
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,*

1 **SECTION 1. TEMPORARY INCREASE IN PUBLIC DEBT LIMIT.**

2 Subsection (b) of section 3101 of title 31, United  
3 States Code, is amended by adding at the end the follow-  
4 ing new sentence: “During the period after the date of  
5 the enactment of this sentence, the preceding sentence  
6 shall be applied by substituting for the dollar amount con-  
7 tained therein—

8 “(1) ‘\$4,950,000,000,000’ for the portion of  
9 such period before December 13, 1995, and

10 “(2) ‘\$4,800,000,000,000’ after December 12,  
11 1995.”

12 **SEC. 2. APPLICABILITY OF PUBLIC DEBT LIMIT TO FED-**  
13 **ERAL TRUST FUNDS AND OTHER FEDERAL**  
14 **ACCOUNTS.**

15 (a) PROTECTION OF FEDERAL FUNDS.—Notwith-  
16 standing any other provision of law—

17 (1) no officer or employee of the United States  
18 may—

19 (A) delay the deposit of any amount into  
20 (or delay the credit of any amount to) any Fed-  
21 eral fund or otherwise vary from the normal  
22 terms, procedures, or timing for making such  
23 deposits or credits, or

24 (B) refrain from the investment in public  
25 debt obligations of amounts in any Federal  
26 fund,

1 if a purpose of such action or inaction is to not in-  
2 crease the amount of outstanding public debt obliga-  
3 tions, and

4 (2) no officer or employee of the United States  
5 may disinvest amounts in any Federal fund which  
6 are invested in public debt obligations if a purpose  
7 of the disinvestment is to reduce the amount of out-  
8 standing public debt obligations.

9 (b) PROTECTION OF BENEFITS AND EXPENDITURES  
10 FOR ADMINISTRATIVE EXPENSES.—

11 (1) IN GENERAL.—Notwithstanding subsection  
12 (a), during any period for which cash benefits or ad-  
13 ministrative expenses would not otherwise be payable  
14 from a covered benefits fund by reason of an inabil-  
15 ity to issue further public debt obligations because  
16 of the applicable public debt limit, public debt obli-  
17 gations held by such covered benefits fund shall be  
18 sold or redeemed only for the purpose of making  
19 payment of such benefits or administrative expenses  
20 and only to the extent cash assets of the covered  
21 benefits fund are not available from month to month  
22 for making payment of such benefits or administra-  
23 tive expenses.

24 (2) ISSUANCE OF CORRESPONDING DEBT.—For  
25 purposes of undertaking the sale or redemption of

1 public debt obligations held by a covered benefits  
2 fund pursuant to paragraph (1), the Secretary of the  
3 Treasury may issue corresponding public debt obli-  
4 gations to the public, in order to obtain the cash  
5 necessary for payment of benefits or administrative  
6 expenses from such covered benefits fund, notwith-  
7 standing the public debt limit.

8 (3) ADVANCE NOTICE OF SALE OR REDEMP-  
9 TION.—Not less than 3 days prior to the date on  
10 which, by reason of the public debt limit, the Sec-  
11 retary of the Treasury expects to undertake a sale  
12 or redemption authorized under paragraph (1), the  
13 Secretary of the Treasury shall report to each House  
14 of the Congress and to the Comptroller General of  
15 the United States regarding the expected sale or re-  
16 demption. Upon receipt of such report, the Comp-  
17 troller General shall review the extent of compliance  
18 with subsection (a) and paragraphs (1) and (2) of  
19 this subsection and shall issue such findings and rec-  
20 ommendations to each House of the Congress as the  
21 Comptroller General considers necessary and appro-  
22 priate.

23 (c) PUBLIC DEBT OBLIGATION.—For purposes of  
24 this section, the term “public debt obligation” means any

1 obligation subject to the public debt limit established  
2 under section 3101 of title 31, United States Code.

3 (d) FEDERAL FUND.—For purposes of this section,  
4 the term “Federal fund” means any Federal trust fund  
5 or Government account established pursuant to Federal  
6 law to which the Secretary of the Treasury has issued or  
7 is expressly authorized by law directly to issue obligations  
8 under chapter 31 of title 31, United States Code, in re-  
9 spect of public money, money otherwise required to be de-  
10 posited in the Treasury, or amounts appropriated.

11 (e) COVERED BENEFITS FUND.—For purposes of  
12 subsection (b), the term “covered benefits fund” means  
13 any Federal fund from which cash benefits are payable  
14 by law in the form of retirement benefits, separation pay-  
15 ments, life or disability insurance benefits, or dependent’s  
16 or survivor’s benefits, including (but not limited to) the  
17 following:

18 (1) the Federal Old-Age and Survivors Insur-  
19 ance Trust Fund;

20 (2) the Federal Disability Insurance Trust  
21 Fund;

22 (3) the Civil Service Retirement and Disability  
23 Fund;

24 (4) the Government Securities Investment  
25 Fund;

1           (5) the Department of Defense Military Retire-  
2           ment Fund;

3           (6) the Unemployment Trust Fund;

4           (7) each of the railroad retirement funds and  
5           accounts;

6           (8) the Department of Defense Education Ben-  
7           efits Fund and the Post-Vietnam Era Veterans Edu-  
8           cation Fund; and

9           (9) the Black Lung Disability Trust Fund.

10 **SEC. 3. CONFORMING AMENDMENTS.**

11           Subsections (j), (k), and (l) of section 8348 of title  
12 5, United States Code, and subsections (g) and (h) of sec-  
13 tion 8438 of such title are hereby repealed.

14 **SEC. 4. COMMITMENT TO A SEVEN-YEAR BALANCED BUDG-**  
15 **ET.**

16           (a) With the enactment of this Act the President  
17 and the Congress commit to enacting legislation in cal-  
18 endar year 1995 to achieve a balanced budget, as scored  
19 by the non-partisan Congressional Budget Office, not  
20 later than the fiscal year 2002.

21           (b) The Congress affirms that it will not enact legis-  
22 lation providing for a further increase in the permanent  
23 statutory limit on the public debt unless the President  
24 signs into law the balanced budget legislation referred to  
25 in subsection (a).

1 **SEC. 5. MEDICARE COVERAGE OF CERTAIN ANTI-CANCER**  
2 **DRUG TREATMENTS.**

3 (a) COVERAGE OF CERTAIN SELF-ADMINISTERED  
4 ANTICANCER DRUGS.—Section 1861(s)(2)(Q) of the So-  
5 cial Security Act (42 U.S.C. 1395x(s)(2)(Q)) is amend-  
6 ed—

7 (1) by striking “(Q)” and inserting “(Q)(i)”; and

8 (2) by striking the semicolon at the end and in-  
9 serting “, and”; and

10 (3) by adding at the end the following:

11 “(ii) an oral drug (which is approved by the Federal  
12 Food and Drug Administration) prescribed for use as an  
13 anticancer nonsteroidal antiestrogen for the treatment of  
14 breast cancer or nonsteroidal antiandrogen agent for the  
15 treatment of prostate cancer;”.

16 (b) UNIFORM COVERAGE OF ANTICANCER DRUGS IN  
17 ALL SETTINGS.—Section 1861(t)(2)(A) of such Act (42  
18 U.S.C. 1395x(t)(2)(A)) is amended by adding (including  
19 a nonsteroidal antiestrogen or nonsteroidal antiandrogen  
20 regimen)” after “regimen”.

21 (c) CONFORMING AMENDMENT.—Section  
22 1834(j)(5)(F)(iv) of such Act (42 U.S.C.  
23 1395m(j)(5)(F)(iv)) is amended by striking “prescribed  
24 for use” and all that follows through “1861(s)(2)(Q))”  
25 and inserting “described in section 1861(s)(2)(Q))”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to drugs furnished on or after the  
3 date of the enactment of this section.

## 4 **TITLE I—HABEAS CORPUS REFORM**

### 5 **SEC. 101. FILING DEADLINES.**

6 Section 2244 of title 28, United States Code, is  
7 amended by adding at the end the following new sub-  
8 section:

9 “(d)(1) A 1-year period of limitation shall apply to  
10 an application for a writ of habeas corpus by a person  
11 in custody pursuant to the judgment of a State court. The  
12 limitation period shall run from the latest of—

13 “(A) the date on which the judgment became  
14 final by the conclusion of direct review or the expira-  
15 tion of the time for seeking such review;

16 “(B) the date on which the impediment to filing  
17 an application created by State action in violation of  
18 the Constitution or laws of the United States is re-  
19 moved, if the applicant was prevented from filing by  
20 such State action;

21 “(C) the date on which the constitutional right  
22 asserted was initially recognized by the Supreme  
23 Court, if the right has been newly recognized by the  
24 Supreme Court and made retroactively applicable to  
25 cases on collateral review; or



1           “(D) the date on which the factual predicate of  
2           the claim or claims presented could have been dis-  
3           covered through the exercise of due diligence.

4           “(2) The time during which a properly filed applica-  
5           tion for State post-conviction or other collateral review  
6           with respect to the pertinent judgment or claim shall not  
7           be counted toward any period of limitation under this sub-  
8           section.”.

9           **SEC. 102. APPEAL.**

10          Section 2253 of title 28, United States Code, is  
11          amended to read as follows:

12          **“§ 2253. Appeal**

13           “(a) In a habeas corpus proceeding or a proceeding  
14           under section 2255 before a district judge, the final order  
15           shall be subject to review, on appeal, by the court of ap-  
16           peals for the circuit in which the proceeding is held.

17           “(b) There shall be no right of appeal from a final  
18           order in a proceeding to test the validity of a warrant to  
19           remove to another district or place for commitment or trial  
20           a person charged with a criminal offense against the Unit-  
21           ed States, or to test the validity of such person’s detention  
22           pending removal proceedings.

23           “(c)(1) Unless a circuit justice or judge issues a cer-  
24           tificate of appealability, an appeal may not be taken to  
25           the court of appeals from—

1           “(A) the final order in a habeas corpus proceed-  
2           ing in which the detention complained of arises out  
3           of process issued by a State court; or

4           “(B) the final order in a proceeding under sec-  
5           tion 2255.

6           “(2) A certificate of appealability may issue under  
7           paragraph (1) only if the applicant has made a substantial  
8           showing of the denial of a constitutional right.

9           “(3) The certificate of appealability under paragraph  
10          (1) shall indicate which specific issue or issues satisfy the  
11          showing required by paragraph (2).”.

12   **SEC. 103. AMENDMENT OF FEDERAL RULES OF APPELLATE**  
13                           **PROCEDURE.**

14          Rule 22 of the Federal Rules of Appellate Procedure  
15          is amended to read as follows:

16   **“Rule 22. Habeas corpus and section 2255 proceed-**  
17                           **ings**

18          “(a) APPLICATION FOR THE ORIGINAL WRIT.—An  
19          application for a writ of habeas corpus shall be made to  
20          the appropriate district court. If application is made to  
21          a circuit judge, the application shall be transferred to the  
22          appropriate district court. If an application is made to or  
23          transferred to the district court and denied, renewal of the  
24          application before a circuit judge shall not be permitted.  
25          The applicant may, pursuant to section 2253 of title 28,

1 United States Code, appeal to the appropriate court of ap-  
2 peals from the order of the district court denying the writ.

3 “(b) CERTIFICATE OF APPEALABILITY.—In a habeas  
4 corpus proceeding in which the detention complained of  
5 arises out of process issued by a State court, an appeal  
6 by the applicant for the writ may not proceed unless a  
7 district or a circuit judge issues a certificate of  
8 appealability pursuant to section 2253(c) of title 28, Unit-  
9 ed States Code. If an appeal is taken by the applicant,  
10 the district judge who rendered the judgment shall either  
11 issue a certificate of appealability or state the reasons why  
12 such a certificate should not issue. The certificate or the  
13 statement shall be forwarded to the court of appeals with  
14 the notice of appeal and the file of the proceedings in the  
15 district court. If the district judge has denied the certifi-  
16 cate, the applicant for the writ may then request issuance  
17 of the certificate by a circuit judge. If such a request is  
18 addressed to the court of appeals, it shall be deemed ad-  
19 dressed to the judges thereof and shall be considered by  
20 a circuit judge or judges as the court deems appropriate.  
21 If no express request for a certificate is filed, the notice  
22 of appeal shall be deemed to constitute a request ad-  
23 dressed to the judges of the court of appeals. If an appeal  
24 is taken by a State or its representative, a certificate of  
25 appealability is not required.”

1 **SEC. 104. SECTION 2254 AMENDMENTS.**

2 Section 2254 of title 28, United States Code, is  
3 amended—

4 (1) by amending subsection (b) to read as fol-  
5 lows:

6 “(b)(1) An application for a writ of habeas corpus  
7 on behalf of a person in custody pursuant to the judgment  
8 of a State court shall not be granted unless it appears  
9 that—

10 “(A) the applicant has exhausted the remedies  
11 available in the courts of the State; or

12 “(B)(i) there is an absence of available State  
13 corrective process; or

14 “(ii) circumstances exist that render such proc-  
15 ess ineffective to protect the rights of the applicant.

16 “(2) An application for a writ of habeas corpus may  
17 be denied on the merits, notwithstanding the failure of the  
18 applicant to exhaust the remedies available in the courts  
19 of the State.

20 “(3) A State shall not be deemed to have waived the  
21 exhaustion requirement or be estopped from reliance upon  
22 the requirement unless the State, through counsel, ex-  
23 pressly waives the requirement.”;

24 (2) by redesignating subsections (d), (e), and  
25 (f) as subsections (e), (f), and (g), respectively;

1           (3) by inserting after subsection (c) the follow-  
2           ing new subsection:

3           “(d) An application for a writ of habeas corpus on  
4           behalf of a person in custody pursuant to the judgment  
5           of a State court shall not be granted with respect to any  
6           claim that was adjudicated on the merits in State court  
7           proceedings unless the adjudication of the claim—

8           “(1) resulted in a decision that was contrary to,  
9           or involved an unreasonable application of, clearly  
10          established Federal law, as determined by the Su-  
11          preme Court of the United States; or

12          “(2) resulted in a decision that was based on an  
13          unreasonable determination of the facts in light of  
14          the evidence presented in the State court proceed-  
15          ing.”;

16          (4) by amending subsection (e), as redesignated  
17          by paragraph (2), to read as follows:

18          “(e)(1) In a proceeding instituted by an application  
19          for a writ of habeas corpus by a person in custody pursu-  
20          ant to the judgment of a State court, a determination of  
21          a factual issue made by a State court shall be presumed  
22          to be correct. The applicant shall have the burden of re-  
23          butting the presumption of correctness by clear and con-  
24          vincing evidence.

1       “(2) If the applicant has failed to develop the factual  
2 basis of a claim in State court proceedings, the court shall  
3 not hold an evidentiary hearing on the claim unless the  
4 applicant shows that—

5               “(A) the claim relies on—

6                       “(i) a new rule of constitutional law, made  
7 retroactive to cases on collateral review by the  
8 Supreme Court, that was previously unavail-  
9 able; or

10                      “(ii) a factual predicate that could not  
11 have been previously discovered through the ex-  
12 ercise of due diligence; and

13               “(B) the facts underlying the claim would be  
14 sufficient to establish by clear and convincing evi-  
15 dence that but for constitutional error, no reasonable  
16 factfinder would have found the applicant guilty of  
17 the underlying offense.”; and

18               (5) by adding at the end the following new sub-  
19 sections:

20               “(h) Except as provided in title 21, United States  
21 Code, section 848, in all proceedings brought under this  
22 section, and any subsequent proceedings on review, the  
23 court may appoint counsel for an applicant who is or be-  
24 comes financially unable to afford counsel, except as pro-  
25 vided by a rule promulgated by the Supreme Court pursu-

1 ant to statutory authority. Appointment of counsel under  
2 this section shall be governed by section 3006A of title  
3 18.

4 “(i) The ineffectiveness or incompetence of counsel  
5 during Federal or State collateral post-conviction proceed-  
6 ings shall not be a ground for relief in a proceeding arising  
7 under section 2254.”.

8 **SEC. 105. SECTION 2255 AMENDMENTS.**

9 Section 2255 of title 28, United States Code, is  
10 amended—

11 (1) by striking the second and fifth undesig-  
12 nated paragraphs; and

13 (2) by adding at the end the following new un-  
14 designated paragraphs:

15 “A 1-year period of limitation shall apply to a motion  
16 under this section. The limitation period shall run from  
17 the latest of—

18 “(1) the date on which the judgment of convic-  
19 tion becomes final;

20 “(2) the date on which the impediment to mak-  
21 ing a motion created by governmental action in vio-  
22 lation of the Constitution or laws of the United  
23 States is removed, if the movant was prevented from  
24 making a motion by such governmental action;

1           “(3) the date on which the right asserted was  
2           initially recognized by the Supreme Court, if that  
3           right has been newly recognized by the Supreme  
4           Court and made retroactively applicable to cases on  
5           collateral review; or

6           “(4) the date on which the facts supporting the  
7           claim or claims presented could have been discovered  
8           through the exercise of due diligence.

9           “Except as provided in title 21, United States Code,  
10          section 848, in all proceedings brought under this section,  
11          and any subsequent proceedings on review, the court may  
12          appoint counsel for a movant who is or becomes financially  
13          unable to afford counsel shall be in the discretion of the  
14          court, except as provided by a rule promulgated by the  
15          Supreme Court pursuant to statutory authority. Appoint-  
16          ment of counsel under this section shall be governed by  
17          section 3006A of title 18.

18          “A second or successive motion must be certified as  
19          provided in section 2244 by a panel of the appropriate  
20          court of appeals to contain—

21                 “(1) newly discovered evidence that, if proven  
22                 and viewed in light of the evidence as a whole, would  
23                 be sufficient to establish by clear and convincing evi-  
24                 dence that no reasonable factfinder would have  
25                 found the movant guilty of the offense; or



1           “(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme  
2           Court, that was previously unavailable.”.

4 **SEC. 106. LIMITS ON SECOND OR SUCCESSIVE APPLICA-**  
5 **TIONS.**

6           (a) CONFORMING AMENDMENT TO SECTION  
7 2244(a).—Section 2244(a) of title 28, United States  
8 Code, is amended by striking “and the petition” and all  
9 that follows through “by such inquiry.” and inserting “,  
10 except as provided in section 2255.”.

11           (b) LIMITS ON SECOND OR SUCCESSIVE APPLICA-  
12 TIONS.—Section 2244(b) of title 28, United States Code,  
13 is amended to read as follows:

14           “(b)(1) A claim presented in a second or successive  
15 habeas corpus application under section 2254 that was  
16 presented in a prior application shall be dismissed.

17           “(2) A claim presented in a second or successive ha-  
18 beas corpus application under section 2254 that was not  
19 presented in a prior application shall be dismissed un-  
20 less—

21           “(A) the applicant shows that the claim relies  
22           on a new rule of constitutional law, made retroactive  
23           to cases on collateral review by the Supreme Court,  
24           that was previously unavailable; or

1           “(B)(i) the factual predicate for the claim could  
2           not have been discovered previously through the ex-  
3           ercise of due diligence; and

4           “(ii) the facts underlying the claim, if proven  
5           and viewed in light of the evidence as a whole, would  
6           be sufficient to establish by clear and convincing evi-  
7           dence that, but for constitutional error, no reason-  
8           able factfinder would have found the applicant guilty  
9           of the underlying offense.

10          “(3)(A) Before a second or successive application per-  
11          mitted by this section is filed in the district court, the ap-  
12          plicant shall move in the appropriate court of appeals for  
13          an order authorizing the district court to consider the ap-  
14          plication.

15          “(B) A motion in the court of appeals for an order  
16          authorizing the district court to consider a second or suc-  
17          cessive application shall be determined by a three-judge  
18          panel of the court of appeals.

19          “(C) The court of appeals may authorize the filing  
20          of a second or successive application only if it determines  
21          that the application makes a prima facie showing that the  
22          application satisfies the requirements of this subsection.

23          “(D) The court of appeals shall grant or deny the  
24          authorization to file a second or successive application not  
25          later than 30 days after the filing of the motion.

1       “(E) The grant or denial of an authorization by a  
 2 court of appeals to file a second or successive application  
 3 shall not be appealable and shall not be the subject of a  
 4 petition for rehearing or for a writ of certiorari.

5       “(4) A district court shall dismiss any claim pre-  
 6 sented in a second or successive application that the court  
 7 of appeals has authorized to be filed unless the applicant  
 8 shows that the claim satisfies the requirements of this sec-  
 9 tion.”.

10 **SEC. 107. DEATH PENALTY LITIGATION PROCEDURES.**

11       (a) ADDITION OF CHAPTER TO TITLE 28, UNITED  
 12 STATES CODE.—Title 28, United States Code, is amended  
 13 by inserting after chapter 153 the following new chapter:

14 **“CHAPTER 154—SPECIAL HABEAS CORPUS**  
 15 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2261. Prisoners in State custody subject to capital sentence; appointment of  
 counsel; requirement of rule of court or statute; procedures for  
 appointment.

“2262. Mandatory stay of execution; duration; limits on stays of execution; suc-  
 cessive petitions.

“2263. Filing of habeas corpus application; time requirements; tolling rules.

“2264. Scope of Federal review; district court adjudications.

“2265. Application to State unitary review procedure.

“2266. Limitation periods for determining applications and motions.

1 **“§ 2261. Prisoners in State custody subject to capital**  
2 **sentence; appointment of counsel; re-**  
3 **quirement of rule of court or statute; pro-**  
4 **cedures for appointment**

5 “(a) This chapter shall apply to cases arising under  
6 section 2254 brought by prisoners in State custody who  
7 are subject to a capital sentence. It shall apply only if the  
8 provisions of subsections (b) and (c) are satisfied.

9 “(b) This chapter is applicable if a State establishes  
10 by statute, rule of its court of last resort, or by another  
11 agency authorized by State law, a mechanism for the ap-  
12 pointment, compensation, and payment of reasonable liti-  
13 gation expenses of competent counsel in State post-convic-  
14 tion proceedings brought by indigent prisoners whose cap-  
15 ital convictions and sentences have been upheld on direct  
16 appeal to the court of last resort in the State or have oth-  
17 erwise become final for State law purposes. The rule of  
18 court or statute must provide standards of competency for  
19 the appointment of such counsel.

20 “(c) Any mechanism for the appointment, compensa-  
21 tion, and reimbursement of counsel as provided in sub-  
22 section (b) must offer counsel to all State prisoners under  
23 capital sentence and must provide for the entry of an  
24 order by a court of record—

25 “(1) appointing one or more counsels to rep-  
26 resent the prisoner upon a finding that the prisoner

1 is indigent and accepted the offer or is unable com-  
2 petently to decide whether to accept or reject the  
3 offer;

4 “(2) finding, after a hearing if necessary, that  
5 the prisoner rejected the offer of counsel and made  
6 the decision with an understanding of its legal con-  
7 sequences; or

8 “(3) denying the appointment of counsel upon  
9 a finding that the prisoner is not indigent.

10 “(d) No counsel appointed pursuant to subsections  
11 (b) and (c) to represent a State prisoner under capital  
12 sentence shall have previously represented the prisoner at  
13 trial or on direct appeal in the case for which the appoint-  
14 ment is made unless the prisoner and counsel expressly  
15 request continued representation.

16 “(e) The ineffectiveness or incompetence of counsel  
17 during State or Federal post-conviction proceedings in a  
18 capital case shall not be a ground for relief in a proceeding  
19 arising under section 2254. This limitation shall not pre-  
20 clude the appointment of different counsel, on the court’s  
21 own motion or at the request of the prisoner, at any phase  
22 of State or Federal post-conviction proceedings on the  
23 basis of the ineffectiveness or incompetence of counsel in  
24 such proceedings.

1 **“§ 2262. Mandatory stay of execution; duration; limits**  
2 **on stays of execution; successive peti-**  
3 **tions**

4 “(a) Upon the entry in the appropriate State court  
5 of record of an order under section 2261(c), a warrant  
6 or order setting an execution date for a State prisoner  
7 shall be stayed upon application to any court that would  
8 have jurisdiction over any proceedings filed under section  
9 2254. The application shall recite that the State has in-  
10 voked the post-conviction review procedures of this chapter  
11 and that the scheduled execution is subject to stay.

12 “(b) A stay of execution granted pursuant to sub-  
13 section (a) shall expire if—

14 “(1) a State prisoner fails to file a habeas cor-  
15 pus application under section 2254 within the time  
16 required in section 2263;

17 “(2) before a court of competent jurisdiction, in  
18 the presence of counsel, unless the prisoner has com-  
19 petently and knowingly waived such counsel, and  
20 after having been advised of the consequences, a  
21 State prisoner under capital sentence waives the  
22 right to pursue habeas corpus review under section  
23 2254; or

24 “(3) a State prisoner files a habeas corpus peti-  
25 tion under section 2254 within the time required by  
26 section 2263 and fails to make a substantial showing

1 of the denial of a Federal right or is denied relief  
2 in the district court or at any subsequent stage of  
3 review.

4 “(c) If one of the conditions in subsection (b) has  
5 occurred, no Federal court thereafter shall have the au-  
6 thority to enter a stay of execution in the case, unless the  
7 court of appeals approves the filing of a second or succes-  
8 sive application under section 2244(b).

9 **“§ 2263. Filing of habeas corpus application; time re-  
10 requirements; tolling rules**

11 “(a) Any application under this chapter for habeas  
12 corpus relief under section 2254 must be filed in the ap-  
13 propriate district court not later than 180 days after final  
14 State court affirmance of the conviction and sentence on  
15 direct review or the expiration of the time for seeking such  
16 review.

17 “(b) The time requirements established by subsection  
18 (a) shall be tolled—

19 “(1) from the date that a petition for certiorari  
20 is filed in the Supreme Court until the date of final  
21 disposition of the petition if a State prisoner files  
22 the petition to secure review by the Supreme Court  
23 of the affirmance of a capital sentence on direct re-  
24 view by the court of last resort of the State or other  
25 final State court decision on direct review;

1           “(2) from the date on which the first petition  
2           for post-conviction review or other collateral relief is  
3           filed until the final State court disposition of such  
4           petition; and

5           “(3) during an additional period not to exceed  
6           30 days, if—

7                   “(A) a motion for an extension of time is  
8                   filed in the Federal district court that would  
9                   have jurisdiction over the case upon the filing  
10                  of a habeas corpus application under section  
11                  2254; and

12                   “(B) a showing of good cause is made for  
13                  the failure to file the habeas corpus application  
14                  within the time period established by this sec-  
15                  tion.

16 **“§ 2264. Scope of Federal review; district court adju-**  
17 **dications**

18           “(a) Whenever a State prisoner under capital sen-  
19           tence files a petition for habeas corpus relief to which this  
20           chapter applies, the district court shall only consider a  
21           claim or claims that have been raised and decided on the  
22           merits in the State courts, unless the failure to raise the  
23           claim properly is—

24                   “(1) the result of State action in violation of  
25                  the Constitution or laws of the United States;



1           “(2) the result of the Supreme Court recogni-  
2           tion of a new Federal right that is made retro-  
3           actively applicable; or

4           “(3) based on a factual predicate that could not  
5           have been discovered through the exercise of due  
6           diligence in time to present the claim for State or  
7           Federal post-conviction review.

8           “(b) Following review subject to subsections (a), (d),  
9           and (e) of section 2254, the court shall rule on the claims  
10          properly before it.

11          **“§ 2265. Application to State unitary review proce-  
12                                  dure**

13          “(a) For purposes of this section, a ‘unitary review’  
14          procedure means a State procedure that authorizes a per-  
15          son under sentence of death to raise, in the course of di-  
16          rect review of the judgment, such claims as could be raised  
17          on collateral attack. This chapter shall apply, as provided  
18          in this section, in relation to a State unitary review proce-  
19          dure if the State establishes by rule of its court of last  
20          resort or by statute a mechanism for the appointment,  
21          compensation, and payment of reasonable litigation ex-  
22          penses of competent counsel in the unitary review proceed-  
23          ings, including expenses relating to the litigation of collat-  
24          eral claims in the proceedings. The rule of court or statute

1 must provide standards of competency for the appoint-  
2 ment of such counsel.

3       “(b) To qualify under this section, a unitary review  
4 procedure must include an offer of counsel following trial  
5 for the purpose of representation on unitary review, and  
6 entry of an order, as provided in section 2261(c), concern-  
7 ing appointment of counsel or waiver or denial of appoint-  
8 ment of counsel for that purpose. No counsel appointed  
9 to represent the prisoner in the unitary review proceedings  
10 shall have previously represented the prisoner at trial in  
11 the case for which the appointment is made unless the  
12 prisoner and counsel expressly request continued represen-  
13 tation.

14       “(c) Sections 2262, 2263, 2264, and 2266 shall apply  
15 in relation to cases involving a sentence of death from any  
16 State having a unitary review procedure that qualifies  
17 under this section. References to State ‘post-conviction re-  
18 view’ and ‘direct review’ in such sections shall be under-  
19 stood as referring to unitary review under the State proce-  
20 dure. The reference in section 2262(a) to ‘an order under  
21 section 2261(c)’ shall be understood as referring to the  
22 post-trial order under subsection (b) concerning represen-  
23 tation in the unitary review proceedings, but if a tran-  
24 script of the trial proceedings is unavailable at the time  
25 of the filing of such an order in the appropriate State

1 court, then the start of the 180-day limitation period  
2 under section 2263 shall be deferred until a transcript is  
3 made available to the prisoner or counsel of the prisoner.

4 **“§ 2266. Limitation periods for determining applica-**  
5 **tions and motions**

6 “(a) The adjudication of any application under sec-  
7 tion 2254 that is subject to this chapter, and the adjudica-  
8 tion of any motion under section 2255 by a person under  
9 sentence of death, shall be given priority by the district  
10 court and by the court of appeals over all noncapital mat-  
11 ters.

12 “(b)(1)(A) A district court shall render a final deter-  
13 mination and enter a final judgment on any application  
14 for a writ of habeas corpus brought under this chapter  
15 in a capital case not later than 180 days after the date  
16 on which the application is filed.

17 “(B) A district court shall afford the parties at least  
18 120 days in which to complete all actions, including the  
19 preparation of all pleadings and briefs, and if necessary,  
20 a hearing, prior to the submission of the case for decision.

21 “(C)(i) A district court may delay for not more than  
22 one additional 30-day period beyond the period specified  
23 in subparagraph (A), the rendering of a determination of  
24 an application for a writ of habeas corpus if the court is-  
25 sues a written order making a finding, and stating the

1 reasons for the finding, that the ends of justice that would  
2 be served by allowing the delay outweigh the best interests  
3 of the public and the applicant in a speedy disposition of  
4 the application.

5 “(ii) The factors, among others, that a court shall  
6 consider in determining whether a delay in the disposition  
7 of an application is warranted are as follows:

8 “(I) Whether the failure to allow the delay  
9 would be likely to result in a miscarriage of justice.

10 “(II) Whether the case is so unusual or so com-  
11 plex, due to the number of defendants, the nature of  
12 the prosecution, or the existence of novel questions  
13 of fact or law, that it is unreasonable to expect ade-  
14 quate briefing within the time limitations established  
15 by subparagraph (A).

16 “(III) Whether the failure to allow a delay in  
17 a case, that, taken as a whole, is not so unusual or  
18 so complex as described in subclause (II), but would  
19 otherwise deny the applicant reasonable time to ob-  
20 tain counsel, would unreasonably deny the applicant  
21 or the government continuity of counsel, or would  
22 deny counsel for the applicant or the government the  
23 reasonable time necessary for effective preparation,  
24 taking into account the exercise of due diligence.

1       “(iii) No delay in disposition shall be permissible be-  
2 cause of general congestion of the court’s calendar.

3       “(iv) The court shall transmit a copy of any order  
4 issued under clause (i) to the Director of the Administra-  
5 tive Office of the United States Courts for inclusion in  
6 the report under paragraph (5).

7       “(2) The time limitations under paragraph (1) shall  
8 apply to—

9               “(A) an initial application for a writ of habeas  
10 corpus;

11              “(B) any second or successive application for a  
12 writ of habeas corpus; and

13              “(C) any redetermination of an application for  
14 a writ of habeas corpus following a remand by the  
15 court of appeals or the Supreme Court for further  
16 proceedings, in which case the limitation period shall  
17 run from the date the remand is ordered.

18       “(3)(A) The time limitations under this section shall  
19 not be construed to entitle an applicant to a stay of execu-  
20 tion, to which the applicant would otherwise not be enti-  
21 tled, for the purpose of litigating any application or ap-  
22 peal.

23       “(B) No amendment to an application for a writ of  
24 habeas corpus under this chapter shall be permitted after

1 the filing of the answer to the application, except on the  
2 grounds specified in section 2244(b).

3 “(4)(A) The failure of a court to meet or comply with  
4 a time limitation under this section shall not be a ground  
5 for granting relief from a judgment of conviction or sen-  
6 tence.

7 “(B) The State may enforce a time limitation under  
8 this section by petitioning for a writ of mandamus to the  
9 court of appeals. The court of appeals shall act on the  
10 petition for a writ or mandamus not later than 30 days  
11 after the filing of the petition.

12 “(5)(A) The Administrative Office of United States  
13 Courts shall submit to Congress an annual report on the  
14 compliance by the district courts with the time limitations  
15 under this section.

16 “(B) The report described in subparagraph (A) shall  
17 include copies of the orders submitted by the district  
18 courts under paragraph (1)(B)(iv).

19 “(c)(1)(A) A court of appeals shall hear and render  
20 a final determination of any appeal of an order granting  
21 or denying, in whole or in part, an application brought  
22 under this chapter in a capital case not later than 120  
23 days after the date on which the reply brief is filed, or  
24 if no reply brief is filed, not later than 120 days after  
25 the date on which the answering brief is filed.

1       “(B)(i) A court of appeals shall decide whether to  
2 grant a petition for rehearing or other request for rehear-  
3 ing en banc not later than 30 days after the date on which  
4 the petition for rehearing is filed unless a responsive  
5 pleading is required, in which case the court shall decide  
6 whether to grant the petition not later than 30 days after  
7 the date on which the responsive pleading is filed.

8       “(ii) If a petition for rehearing or rehearing en banc  
9 is granted, the court of appeals shall hear and render a  
10 final determination of the appeal not later than 120 days  
11 after the date on which the order granting rehearing or  
12 rehearing en banc is entered.

13       “(2) The time limitations under paragraph (1) shall  
14 apply to—

15               “(A) an initial application for a writ of habeas  
16 corpus;

17               “(B) any second or successive application for a  
18 writ of habeas corpus; and

19               “(C) any redetermination of an application for  
20 a writ of habeas corpus or related appeal following  
21 a remand by the court of appeals en banc or the Su-  
22 preme Court for further proceedings, in which case  
23 the limitation period shall run from the date the re-  
24 mand is ordered.

1       “(3) The time limitations under this section shall not  
 2 be construed to entitle an applicant to a stay of execution,  
 3 to which the applicant would otherwise not be entitled, for  
 4 the purpose of litigating any application or appeal.

5       “(4)(A) The failure of a court to meet or comply with  
 6 a time limitation under this section shall not be a ground  
 7 for granting relief from a judgment of conviction or sen-  
 8 tence.

9       “(B) The State may enforce a time limitation under  
 10 this section by applying for a writ of mandamus to the  
 11 Supreme Court.

12       “(5) The Administrative Office of United States  
 13 Courts shall submit to Congress an annual report on the  
 14 compliance by the courts of appeals with the time limita-  
 15 tions under this section.”.

16       (b) TECHNICAL AMENDMENT.—The part analysis for  
 17 part IV of title 28, United States Code, is amended by  
 18 adding after the item relating to chapter 153 the following  
 19 new item:

**“154. Special habeas corpus procedures in capital  
           cases ..... 2261.”.**

20       (c) EFFECTIVE DATE.—Chapter 154 of title 28,  
 21 United States Code (as added by subsection (a)) shall  
 22 apply to cases pending on or after the date of enactment  
 23 of this Act.



1 **SEC. 108. TECHNICAL AMENDMENT.**

2 Section 408(q) of the Controlled Substances Act (21  
3 U.S.C. 848(q)) is amended by amending paragraph (9)  
4 to read as follows:

5 “(9) Upon a finding that investigative, expert, or  
6 other services are reasonably necessary for the representa-  
7 tion of the defendant, whether in connection with issues  
8 relating to guilt or the sentence, the court may authorize  
9 the defendant’s attorneys to obtain such services on behalf  
10 of the defendant and, if so authorized, shall order the pay-  
11 ment of fees and expenses therefor under paragraph (10).  
12 No ex parte proceeding, communication, or request may  
13 be considered pursuant to this section unless a proper  
14 showing is made concerning the need for confidentiality.  
15 Any such proceeding, communication, or request shall be  
16 transcribed and made a part of the record available for  
17 appellate review.”.

18 **SEC. 109. SEVERABILITY.**

19 If any provision of this title, an amendment made  
20 by this title, or the application of such provision or  
21 amendment to any person or circumstance is held to be  
22 unconstitutional, the remainder of this title, the amend-  
23 ments made by this title, and the application of the provi-  
24 sions of such to any person or circumstances shall not be  
25 affected thereby.

1       **TITLE II—ABOLISHMENT OF**  
 2       **DEPARTMENT OF COMMERCE**

3       **SEC. 2001. SHORT TITLE.**

4           This title may be cited as the “Department of Com-  
 5       merce Dismantling Act”.

6       **SEC. 2002. TABLE OF CONTENTS.**

7           The table of contents for this title is as follows:

TITLE II—ABOLISHMENT OF DEPARTMENT OF COMMERCE

Sec. 2001. Short title.

Sec. 2002. Table of contents.

Subtitle A—Abolishment of Department of Commerce

Sec. 2101. Abolishment of Department of Commerce.

Sec. 2102. Resolution and termination of Department functions.

Sec. 2103. Responsibilities of the Director of the Office of Management and  
 Budget.

Sec. 2104. Personnel.

Sec. 2105. Plans and reports.

Sec. 2106. GAO audit and access to records.

Sec. 2107. Conforming amendments.

Sec. 2108. Privatization framework.

Sec. 2109. Priority placement programs for Federal employees affected by a re-  
 duction in force attributable to this title.

Sec. 2110. Funding reductions for transferred functions.

Sec. 2111. Definitions.

Subtitle B—Disposition of Various Programs, Functions, and Agencies of  
 Department of Commerce

Sec. 2201. Abolishment of Economic Development Administration and transfer  
 of functions.

Sec. 2202. Technology Administration.

Sec. 2203. Reorganization of the Bureau of the Census and the Bureau of Eco-  
 nomic Analysis.

Sec. 2204. Terminated functions of NTLA.

Sec. 2205. National Oceanic and Atmospheric Administration.

Sec. 2206. National Scientific, Oceanic, and Atmospheric Administration.

Sec. 2207. Miscellaneous terminations; moratorium on program activities.

Sec. 2208. Effective date.

Subtitle C—Office of United States Trade Representative

CHAPTER 1—GENERAL PROVISIONS

Sec. 2301. Definitions.

## CHAPTER 2—OFFICE OF UNITED STATES TRADE REPRESENTATIVE

## SUBCHAPTER A—ESTABLISHMENT

- Sec. 2311. Establishment of the Office.
- Sec. 2312. Functions of the USTR.

## SUBCHAPTER B—OFFICERS

- Sec. 2321. Deputy Administrator of the Office.
- Sec. 2322. Deputy United States Trade Representatives.
- Sec. 2323. Assistant administrators.
- Sec. 2324. Director General for Export Promotion.
- Sec. 2325. General Counsel.
- Sec. 2326. Inspector General.
- Sec. 2327. Chief Financial Officer.

## SUBCHAPTER C—TRANSFERS TO THE OFFICE

- Sec. 2331. Office of the United States Trade Representative.
- Sec. 2332. Transfers from the Department of Commerce.
- Sec. 2333. Trade and Development Agency.
- Sec. 2334. Export-Import Bank.
- Sec. 2335. Overseas Private Investment Corporation.
- Sec. 2336. Consolidation of export promotion and financing activities.
- Sec. 2337. Additional trade functions.

## SUBCHAPTER D—ADMINISTRATIVE PROVISIONS

- Sec. 2341. Personnel provisions.
- Sec. 2342. Delegation and assignment.
- Sec. 2343. Succession.
- Sec. 2344. Reorganization.
- Sec. 2345. Rules.
- Sec. 2346. Funds transfer.
- Sec. 2347. Contracts, grants, and cooperative agreements.
- Sec. 2348. Use of facilities.
- Sec. 2349. Gifts and bequests.
- Sec. 2350. Working capital fund.
- Sec. 2351. Service charges.
- Sec. 2352. Seal of office.

## SUBCHAPTER E—RELATED AGENCIES

- Sec. 2361. Interagency Trade Organization.
- Sec. 2362. National Security Council.
- Sec. 2363. International Monetary Fund.

## SUBCHAPTER F—CONFORMING AMENDMENTS

- Sec. 2371. Amendments to general provisions.
- Sec. 2372. Repeals.
- Sec. 2373. Conforming amendments relating to Executive Schedule positions.

## SUBCHAPTER G—MISCELLANEOUS

- Sec. 2381. Effective date.
- Sec. 2382. Interim appointments.
- Sec. 2383. Funding reductions resulting from reorganization.

Subtitle D—Patent and Trademark Office Corporation

Sec. 2401. Short title.

CHAPTER 1—PATENT AND TRADEMARK OFFICE

Sec. 2411. Establishment of Patent and Trademark Office as a Corporation.

Sec. 2412. Powers and duties.

Sec. 2413. Organization and management.

Sec. 2414. Management Advisory Board.

Sec. 2415. Independence from Department of Commerce.

Sec. 2416. Trademark Trial and Appeal Board.

Sec. 2417. Board of Patent Appeals and Interferences.

Sec. 2418. Suits by and against the Corporation.

Sec. 2419. Annual report of Commissioner.

Sec. 2420. Suspension or exclusion from practice.

Sec. 2421. Funding.

Sec. 2422. Audits.

Sec. 2423. Transfers.

CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

Sec. 2431. Effective date.

Sec. 2432. Technical and conforming amendments.

Subtitle E—Miscellaneous Provisions

Sec. 2501. References.

Sec. 2502. Exercise of authorities.

Sec. 2503. Savings provisions.

Sec. 2504. Transfer of assets.

Sec. 2505. Delegation and assignment.

Sec. 2506. Authority of Director of the Office of Management and Budget with respect to functions transferred.

Sec. 2507. Certain vesting of functions considered transfers.

Sec. 2508. Availability of existing funds.

Sec. 2509. Definitions.

Subtitle F—Citizens Commission on 21st Century Government

Sec. 2601. Short title and purpose.

Sec. 2602. Citizens Commission on 21st Century Government.

Sec. 2603. Department and agency cooperation.

Sec. 2604. Hearings.

Sec. 2605. Commission procedures.

Sec. 2606. Framework for the Federal Government in the 21st century.

Sec. 2607. Proposal for reorganizing the executive branch.

Sec. 2608. Procedures for making recommendations.

Sec. 2609. Congressional consideration of reform proposals.

Sec. 2610. Distribution of assets.

Sec. 2611. Agency defined.

1           **Subtitle A—Abolishment of**  
2           **Department of Commerce**

3   **SEC. 2101. ABOLISHMENT OF DEPARTMENT OF COMMERCE.**

4           (a) ABOLISHMENT OF DEPARTMENT.—The Depart-  
5   ment of Commerce is abolished effective on the abolish-  
6   ment date specified in subsection (c).

7           (b) TRANSFER OF DEPARTMENT FUNCTIONS TO  
8   OMB.—Except as otherwise provided in this title, all func-  
9   tions that immediately before the abolishment date speci-  
10  fied in subsection (c) are authorized to be performed by  
11  the Secretary of Commerce, any other officer or employee  
12  of the Department acting in that capacity, or any agency  
13  or office of the Department, are transferred to the Direc-  
14  tor of the Office of Management and Budget effective on  
15  that abolishment date.

16          (c) ABOLISHMENT DATE.—The abolishment date re-  
17  ferred to in subsections (a) and (b) is the earlier of—

18               (1) the last day of the 6-month period begin-  
19               ning on the date of the enactment of this Act; or

20               (2) September 30, 1996.

21   **SEC. 2102. RESOLUTION AND TERMINATION OF DEPART-**  
22                               **MENT FUNCTIONS.**

23           (a) RESOLUTION OF FUNCTIONS.—During the period  
24  beginning on the date of enactment of this Act and ending

1 on the functions termination date specified in subsection  
2 (c)—

3 (1) the disposition and resolution of functions  
4 of the Department of Commerce shall be completed  
5 in accordance with this title; and

6 (2) the Director shall resolve all functions that  
7 are transferred to the Director under section  
8 2101(b) and are not otherwise continued under this  
9 title.

10 (b) **TERMINATION OF FUNCTIONS.**—All functions  
11 that are transferred to the Director under section 2101(b)  
12 that are not otherwise continued by this title shall termi-  
13 nate on the functions termination date specified in sub-  
14 section (c).

15 (c) **FUNCTIONS TERMINATION DATE.**—The functions  
16 termination date referred to in subsections (a) and (b) is  
17 the last day of the 3-year period beginning on the date  
18 of the enactment of this Act.

19 **SEC. 2103. RESPONSIBILITIES OF THE DIRECTOR OF THE**  
20 **OFFICE OF MANAGEMENT AND BUDGET.**

21 (a) **IN GENERAL.**—The Director of the Office of  
22 Management and Budget shall be responsible for the im-  
23 plementation of this subtitle, including—

1           (1) the administration and wind-up, during the  
2 wind-up period, of all functions transferred to the  
3 Director under section 2101(b);

4           (2) the administration and wind-up, during the  
5 wind-up period, of any outstanding obligations of the  
6 Federal Government under any programs terminated  
7 by this title; and

8           (3) taking such other actions as may be nec-  
9 essary to wind-up any outstanding affairs of the De-  
10 partment of Commerce before the end of the wind-  
11 up period.

12       (b) DELEGATION OF FUNCTIONS.—The Director may  
13 delegate to any officer of the Office of Management and  
14 Budget or to any other Federal department or agency  
15 head the performance of the Director’s functions under  
16 this subtitle, except the Director’s planning and reporting  
17 responsibilities under section 2105, to the extent that the  
18 Director determines that such delegation would further  
19 the purposes of this subtitle.

20       (c) TRANSFER OF ASSETS AND PERSONNEL.—In  
21 connection with any delegation of functions under sub-  
22 section (b), the Director may transfer within the Office  
23 or to the department or agency concerned such assets,  
24 funds, personnel, records, and other property relating to

1 the delegated function as the Director determines to be  
2 appropriate.

3 (d) **AUTHORITIES OF THE DIRECTOR.**—For purposes  
4 of performing the functions of the Director under this sub-  
5 title and subject to the availability of appropriations, the  
6 Director may—

7 (1) enter into contracts;

8 (2) employ experts and consultants in accord-  
9 ance with section 3109 of title 5, United States  
10 Code, at rates for individuals not to exceed the per  
11 diem rate equivalent to the rate for level IV of the  
12 Executive Schedule; and

13 (3) utilize, on a reimbursable basis, the services,  
14 facilities, and personnel of other Federal agencies.

15 **SEC. 2104. PERSONNEL.**

16 Effective on the abolishment date specified in section  
17 2101(c), there are transferred to the Office all individuals  
18 who—

19 (1) immediately before the abolishment date,  
20 were officers or employees of the Department of  
21 Commerce; and

22 (2) in their capacity as such an officer or em-  
23 ployee, performed functions that are transferred to  
24 the Director under section 2101(b).



1 **SEC. 2105. PLANS AND REPORTS.**

2 (a) INITIAL IMPLEMENTATION PLAN.—

3 (1) IN GENERAL.—Not later than 90 days after  
4 the date of enactment of this Act, the Director shall  
5 submit a report, through the President, to the Con-  
6 gress specifying those actions taken and necessary to  
7 be taken—

8 (A) to resolve those programs and func-  
9 tions terminated on the date of enactment of  
10 this Act; and

11 (B) to implement the additional transfers  
12 and other program dispositions provided for in  
13 this title.

14 (2) CONTENTS.—The report shall include—

15 (A) recommendations for additional legisla-  
16 tion, if any, needed to reflect or otherwise to  
17 implement the abolishments, transfers, termi-  
18 nations, and other dispositions of programs and  
19 functions under this title; and

20 (B) a description of actions planned and  
21 taken to comply with limitations imposed by  
22 this Act on future spending for continued func-  
23 tions.

24 (b) ANNUAL STATUS REPORTS.—At the end of each  
25 of the first, second, and third years following the date of

1 enactment of this Act, the Director shall submit a report,  
2 through the President, to the Congress which—

3 (1) specifies the status and progress of actions  
4 taken to implement this title and to wind-up the af-  
5 fairs of the Department of Commerce by the func-  
6 tions termination date specified in section 2102(c);

7 (2) includes any recommendations the Director  
8 may have for additional legislation; and

9 (3) describes actions taken to comply with limi-  
10 tations imposed by this Act on future spending for  
11 continued functions.

12 (c) GAO REPORTS.—Not later than 60 days after is-  
13 suance of each report under subsections (a) and (b), the  
14 Comptroller General of the United States shall submit to  
15 the Congress a report which—

16 (1) evaluates the report under that subsection;  
17 and

18 (2) includes any recommendations the Comp-  
19 troller General considers appropriate.

20 **SEC. 2106. GAO AUDIT AND ACCESS TO RECORDS.**

21 (a) AUDIT OF PERSONS PERFORMING FUNCTIONS  
22 PURSUANT TO THIS ACT.—All agencies, corporations, or-  
23 ganizations, and other persons of any description which  
24 under the authority of the United States perform any  
25 function or activity pursuant to this title shall be subject

1 to audit by the Comptroller General of the United States  
2 with respect to such function or activity.

3 (b) AUDIT OF PERSONS PROVIDING CERTAIN GOODS  
4 OR SERVICES.—All persons and organizations which, by  
5 contract, grant, or otherwise, provide goods or services to,  
6 or receive financial assistance from, any agency or other  
7 person performing functions or activities under or referred  
8 to by this title shall be subject to audit by the Comptroller  
9 General of the United States with respect to such provi-  
10 sion of goods or services or receipt of financial assistance.

11 (c) PROVISIONS APPLICABLE TO AUDITS UNDER  
12 THIS SECTION.—

13 (1) NATURE AND SCOPE OF AUDIT.—The  
14 Comptroller General of the United States shall de-  
15 termine the nature, scope, terms, and conditions of  
16 audits conducted under this section.

17 (2) COORDINATION WITH OTHER PROVISIONS  
18 OF LAW.—The authority of the Comptroller General  
19 of the United States under this section shall be in  
20 addition to any audit authority available to the  
21 Comptroller General under other provisions of this  
22 title or any other law.

23 (3) RIGHTS OF ACCESS, EXAMINATION, AND  
24 COPYING.—The Comptroller General of the United  
25 States, and any duly authorized representative of the

1 Comptroller General, shall have access to, and the  
2 right to examine and copy, all records and other re-  
3 corded information in any form, and to examine any  
4 property within the possession or control of any  
5 agency or person which is subject to audit under this  
6 section, which the Comptroller General considers rel-  
7 evant to an audit conducted under this section.

8 (4) ENFORCEMENT OF RIGHT OF ACCESS.—The  
9 right of access of the Comptroller General of the  
10 United States to information under this section shall  
11 be enforceable under section 716 of title 31, United  
12 States Code.

13 (5) MAINTENANCE OF CONFIDENTIAL  
14 RECORDS.—Section 716(e) of title 31, United States  
15 Code, shall apply to information obtained by the  
16 Comptroller General under this section.

17 **SEC. 2107. CONFORMING AMENDMENTS.**

18 (a) PRESIDENTIAL SUCCESSION.—Section 19(d)(1)  
19 of title 3, United States Code, is amended by striking  
20 “Secretary of Commerce,”.

21 (b) EXECUTIVE DEPARTMENTS.—Section 101 of title  
22 5, United States Code, is amended by striking the follow-  
23 ing item: “The Department of Commerce.”.

1 (c) SECRETARY'S COMPENSATION.—Section 5312 of  
2 title 5, United States Code, is amended by striking the  
3 following item: “Secretary of Commerce.”.

4 (d) COMPENSATION FOR POSITIONS AT LEVEL III.—  
5 Section 5314 of title 5, United States Code, is amended—

6 (1) by striking the following item:

7 “Under Secretary of Commerce, Under Secretary of  
8 Commerce for Economic Affairs, Under Secretary of Com-  
9 merce for Export Administration and Under Secretary of  
10 Commerce for Travel and Tourism.”;

11 (2) by striking the following item:

12 “Under Secretary of Commerce for Oceans and At-  
13 mosphere, the incumbent of which also serves as Adminis-  
14 trator of the National Oceanic and Atmospheric Adminis-  
15 tration.”; and

16 (3) by striking the following item:

17 “Under Secretary of Commerce for Technology.”.

18 (e) COMPENSATION FOR POSITIONS AT LEVEL IV.—  
19 Section 5315 of title 5, United States Code, is amended—

20 (1) by striking the following item:

21 “Assistant Secretaries of Commerce (11).”;

22 (2) by striking the following item:

23 “General Counsel of the Department of Commerce.”;

24 (3) by striking the following item:

1 “Assistant Secretary of Commerce for Oceans and  
2 Atmosphere, the incumbent of which also serves as Deputy  
3 Administrator of the National Oceanic and Atmospheric  
4 Administration.”;

5 (4) by striking the following item:

6 “Director, National Institute of Standards and Tech-  
7 nology, Department of Commerce.”;

8 (5) by striking the following item:

9 “Inspector General, Department of Commerce.”;

10 (6) by striking the following item:

11 “Chief Financial Officer, Department of Com-  
12 merce.”; and

13 (7) in the item relating to the Bureau of the  
14 Census, by striking “, Department of Commerce”.

15 (f) COMPENSATION FOR POSITIONS AT LEVEL V.—  
16 Section 5316 of title 5, United States Code, is amended—

17 (1) by striking the following item:

18 “Director, United States Travel Service, Department  
19 of Commerce.”; and

20 (2) by striking the following item:

21 “National Export Expansion Coordinator, Depart-  
22 ment of Commerce.”.

23 (g) INSPECTOR GENERAL ACT OF 1978.—The In-  
24 spector General Act of 1978 (5 U.S.C. App.) is amend-  
25 ed—

1           (1) in section 9(a)(1), by striking subparagraph  
2           (B);

3           (2) in section 11(1), by striking “Commerce,”;  
4           and

5           (3) in section 11(2), by striking “Commerce,”.

6           (h) EFFECTIVE DATE.—The amendments made by  
7 this section shall be effective on the abolishment date spec-  
8 ified in section 2101(c).

9   **SEC. 2108. PRIVATIZATION FRAMEWORK.**

10          (a) IN GENERAL.—The Office of Management and  
11 Budget shall privatize each function designated for privat-  
12 ization under subtitle B within 18 months of the date of  
13 the transfer of such function to the Office. The Office  
14 shall pursue such forms of privatization arrangements as  
15 the Office considers appropriate to best serve the interests  
16 of the United States. If the Office is unable to privatize  
17 a function within 18 months, the Office shall report its  
18 inability to the Congress with its recommendations as to  
19 the appropriate disposition of the function and its assets.

20          (b) ROLE OF THE FEDERAL GOVERNMENT.—No pri-  
21 vatization arrangement made under subsection (a) shall  
22 include any future role for, or accountability to, the Fed-  
23 eral Government unless it is necessary to assure the con-  
24 tinued accomplishment of a specific Federal objective. The

1 Federal role should be the minimum necessary to accom-  
2 plish Federal objectives.

3 (c) ASSETS.—In privatizing a function, the Office of  
4 Management and Budget shall take any action necessary  
5 to preserve the value of the assets of a function during  
6 the period the Office holds such assets and to continue  
7 the performance of the function to the extent necessary  
8 to preserve the value of the assets or to accomplish core  
9 Federal objectives.

10 **SEC. 2109. PRIORITY PLACEMENT PROGRAMS FOR FED-**  
11 **ERAL EMPLOYEES AFFECTED BY A REDUC-**  
12 **TION IN FORCE ATTRIBUTABLE TO THIS**  
13 **TITLE.**

14 (a) IN GENERAL.—Subchapter I of chapter 33 of title  
15 5, United States Code, is amended by adding at the end  
16 the following:

17 **“§ 3329b. Priority placement programs for employees**  
18 **affected by a reduction in force attrib-**  
19 **utable to the Department of Commerce**  
20 **Dismantling Act**

21 “(a)(1) For the purpose of this section, the term ‘af-  
22 fected agency’—

23 “(A) except as provided in subparagraph (B),  
24 means an Executive agency to which personnel are  
25 transferred in connection with a transfer of function



1 under the Department of Commerce Dismantling  
2 Act, and

3 “(B) with respect to employees of the Depart-  
4 ment of Commerce in general administration, the In-  
5 spector General’s office, or the General Counsel’s of-  
6 fice, or who provided overhead support to other com-  
7 ponents of the Department on a reimbursable basis,  
8 means all agencies to which functions of those em-  
9 ployees are transferred under the Department of  
10 Commerce Dismantling Act.

11 “(2) This section applies with respect to any reduc-  
12 tion in force that—

13 “(A) occurs within 12 months after the date of  
14 the enactment of this section; and

15 “(B) is due to—

16 “(i) the termination of any function of the  
17 Department of Commerce; or

18 “(ii) the agency’s having excess personnel  
19 as a result of a transfer of function described  
20 in paragraph (1), as determined by—

21 “(I) the Director of the Office of  
22 Management and Budget, in the case of a  
23 function transferred to the Office of Man-  
24 agement and Budget; or

1                   “(II) the head of the agency, in the  
2                   case of any other function.

3           “(b) As soon as practicable after the date of the en-  
4 actment of this section, each affected agency shall estab-  
5 lish an agencywide priority placement program to facili-  
6 tate employment placement for employees who—

7                   “(1) are scheduled to be separated from service  
8 due to a reduction in force described in subsection  
9 (a)(2); or

10                   “(2) are separated from service due to such a  
11 reduction in force.

12           “(c)(1) Each agencywide priority placement program  
13 shall include provisions under which a vacant position  
14 shall not be filled by the appointment or transfer of any  
15 individual from outside of that agency if—

16                   “(A) there is then available any individual de-  
17 scribed in paragraph (2) who is qualified for the po-  
18 sition; and

19                   “(B) the position—

20                           “(i) is at the same grade (or pay level) or  
21 not more than 1 grade (or pay level) below that  
22 of the position last held by such individual be-  
23 fore placement in the new position; and

1           “(ii) is within the same commuting area as  
2           the individual’s last-held position (as referred to  
3           in clause (i)) or residence.

4           “(2) For purposes of an agencywide priority place-  
5           ment program, an individual shall be considered to be de-  
6           scribed in this paragraph if such individual’s most recent  
7           performance evaluation was at least fully successful (or  
8           the equivalent), and such individual is either—

9           “(A) an employee of such agency who is sched-  
10          uled to be separated, as described in subsection  
11          (b)(1); or

12          “(B) an individual who became a former em-  
13          ployee of such agency as a result of a separation, as  
14          described in subsection (b)(2).

15          “(d)(1) Nothing in this section shall affect any prior-  
16          ity placement program of the Department of Defense  
17          which is in operation as of the date of the enactment of  
18          this section.

19          “(2) Nothing in this section shall impair placement  
20          programs within agencies subject to reductions in force re-  
21          sulting from causes other than the Department of Com-  
22          merce Dismantling Act.

23          “(e) An individual shall cease to be eligible to partici-  
24          pate in a program under this section on the earlier of—

1           “(1) the conclusion of the 12-month period be-  
 2           ginning on the date on which that individual first  
 3           became eligible to participate under subsection  
 4           (c)(2); or

5           “(2) the date on which the individual declines  
 6           a bona fide offer (or if the individual does not act  
 7           on the offer, the last day for accepting such offer)  
 8           from the affected agency of a position described in  
 9           subsection (c)(1)(B).”.

10          (b) **TECHNICAL AND CONFORMING AMENDMENTS.**—

11         (1) Title 5, United States Code, is amended by redesignat-  
 12         ing the second section which is designated as section 3329  
 13         as section 3329a.

14         (2) The table of sections for chapter 33 of title 5,  
 15         United States Code, is amended by striking the item relat-  
 16         ing to the second section which is designated as section  
 17         3329 and inserting the following:

“3329a.       Government-wide list of vacant positions.

“3329b.       Priority placement programs for employees affected by a reduction  
                   in force attributable to the Department of Commerce Disman-  
                   tling Act.”.

18         **SEC. 2110. FUNDING REDUCTIONS FOR TRANSFERRED**  
 19   **FUNCTIONS.**

20         (a) **FUNDING REDUCTIONS.**—Except as provided in  
 21         subsection (b), the total amount obligated or expended by  
 22         the United States in performing functions transferred  
 23         under this title to the Director or to the Office from the

1 Department of Commerce, or any of its officers or compo-  
2 nents, shall not exceed—

3           (1) for the first fiscal year that begins after the  
4           abolishment date specified in section 2101(c), 75  
5           percent of the total amount appropriated to the De-  
6           partment of Commerce for the performance of such  
7           functions in fiscal year 1995; and

8           (2) for the second fiscal year that begins after  
9           the abolishment date specified in section 2101(c)  
10          and for each fiscal year thereafter, 65 percent of the  
11          total amount appropriated to the Department of  
12          Commerce for the performance of such functions in  
13          fiscal year 1995.

14          (b) EXCEPTION.—Subsection (a) shall not apply to  
15          obligations or expenditures incurred as a direct con-  
16          sequence of the termination, transfer, or other disposition  
17          of functions described in subsection (a) pursuant to this  
18          title.

19          (c) RULE OF CONSTRUCTION.—This section shall  
20          take precedence over any other provision of law unless  
21          such provision explicitly refers to this section and makes  
22          an exception to it.

23          (d) RESPONSIBILITIES OF THE DIRECTOR.—The Di-  
24          rector shall—

1           (1) ensure compliance with the requirements of  
2 this section; and

3           (2) include in each report under sections  
4 2105(a) and (b) a description of actions taken to  
5 comply with such requirements.

6 **SEC. 2111. DEFINITIONS.**

7           For purposes of this subtitle, the following definitions  
8 apply:

9           (1) DIRECTOR.—The term “Director” means  
10 the Director of the Office of Management and Budg-  
11 et.

12           (2) OFFICE.—The term “Office” means the Of-  
13 fice of Management and Budget.

14           (3) WIND-UP PERIOD.—The term “wind-up pe-  
15 riod” means the period beginning on the date of the  
16 enactment of this Act and ending on the functions  
17 termination date specified in section 2102(c).

1 **Subtitle B—Disposition of Various**  
2 **Programs, Functions, and Agen-**  
3 **cies of Department of Com-**  
4 **merce**

5 **SEC. 2201. ABOLISHMENT OF ECONOMIC DEVELOPMENT**  
6 **ADMINISTRATION AND TRANSFER OF FUNC-**  
7 **TIONS.**

8 (a) IN GENERAL.—The Public Works and Economic  
9 Development Act of 1965 (40 U.S.C. 3131 et seq.) is  
10 amended by striking all after the first section and insert-  
11 ing the following:

12 **“SEC. 2. ADMINISTRATOR DEFINED.**

13 “In this Act, the term ‘Administrator’ means the Ad-  
14 ministrator of the Small Business Administration.

15 **“TITLE I—STATEMENT OF**  
16 **PURPOSE**

17 **“SEC. 101. FINDINGS AND DECLARATION.**

18 “(a) FINDINGS.—Congress finds that—

19 “(1) the maintenance of the national economy  
20 at a high level is vital to the best interests of the  
21 United States, but that some of our regions, coun-  
22 ties, and communities are suffering substantial and  
23 persistent unemployment and underemployment that  
24 cause hardship to many individuals and their fami-  
25 lies, and waste invaluable human resources;

1           “(2) to overcome this problem the Federal Gov-  
2           ernment, in cooperation with the States, should help  
3           areas and regions of substantial and persistent un-  
4           employment and underemployment to take effective  
5           steps in planning and financing their public works  
6           and economic development;

7           “(3) Federal financial assistance, including  
8           grants for public works and development facilities to  
9           communities, industries, enterprises, and individuals  
10          in areas needing development should enable such  
11          areas to help themselves achieve lasting improve-  
12          ment and enhance the domestic prosperity by the es-  
13          tablishment of stable and diversified local economies  
14          and improved local conditions, if such assistance is  
15          preceded by and consistent with sound, long-range  
16          economic planning; and

17          “(4) under the provisions of this Act, new em-  
18          ployment opportunities should be created by develop-  
19          ing and expanding new and existing public works  
20          and other facilities and resources rather than by  
21          merely transferring jobs from one area of the United  
22          States to another.

23          “(b) DECLARATION.—Congress declares that, in fur-  
24          therance of maintaining the national economy at a high  
25          level—



1           “(1) the assistance authorized by this Act  
2           should be made available to both rural and urban  
3           areas;

4           “(2) such assistance should be made available  
5           for planning for economic development prior to the  
6           actual occurrences of economic distress in order to  
7           avoid such condition; and

8           “(3) such assistance should be used for long-  
9           term economic rehabilitation in areas where long-  
10          term economic deterioration has occurred or is tak-  
11          ing place.

12       **“TITLE II—GRANTS FOR PUBLIC**  
13       **WORKS AND DEVELOPMENT**  
14       **FACILITIES**

15       **“SEC. 201. DIRECT AND SUPPLEMENTARY GRANTS.**

16       “(a) IN GENERAL.—Upon the application of any eli-  
17       gible recipient, the Administrator may—

18           “(1) make direct grants for the acquisition or  
19           development of land and improvements for public  
20           works, public service, or development facility usage,  
21           and the acquisition, design and engineering, con-  
22           struction, rehabilitation, alteration, expansion, or im-  
23           provement of such facilities, including related ma-  
24           chinery and equipment, within an area described in  
25           section 502(a), if the Administrator finds that—

1           “(A) the project for which financial assist-  
2           ance is sought will directly or indirectly—

3                   “(i) tend to improve the opportunities,  
4                   in the area where such project is or will be  
5                   located, for the successful establishment or  
6                   expansion of industrial or commercial  
7                   plants or facilities;

8                   “(ii) otherwise assist in the creation  
9                   of additional long-term employment oppor-  
10                  tunities for such area; or

11                  “(iii) primarily benefit the long-term  
12                  unemployed and members of low-income  
13                  families;

14           “(B) the project for which a grant is re-  
15           quested will fulfill a pressing need of the area,  
16           or part thereof, in which it is, or will be, lo-  
17           cated; and

18           “(C) the area for which a project is to be  
19           undertaken has an approved investment strat-  
20           egy as provided by section 503 and such project  
21           is consistent with such strategy;

22           “(2) make supplementary grants in order to en-  
23           able the States and other entities within areas de-  
24           scribed in section 502(a) to take maximum advan-  
25           tage of designated Federal grant-in-aid programs (as

1 defined in subsection (c)(4)), direct grants-in-aid au-  
2 thorized under this section, and Federal grant-in-aid  
3 programs authorized by the Watershed Protection  
4 and Flood Prevention Act (68 Stat. 666), and the  
5 11 watersheds authorized by the Flood Control Act  
6 of December 22, 1944 (58 Stat. 887), for which  
7 they are eligible but for which, because of their eco-  
8 nomic situation, they cannot supply the required  
9 matching share.

10 “(b) COST SHARING.—Subject to subsection (c), the  
11 amount of any direct grant under this subsection for any  
12 project shall not exceed 50 percent of the cost of such  
13 project.

14 “(c) REQUIREMENTS APPLICABLE TO SUPPLE-  
15 MENTARY GRANTS.—

16 “(1) AMOUNT OF SUPPLEMENTARY GRANTS.—

17 “(A) IN GENERAL.—Except as provided by  
18 subparagraph (B), the amount of any supple-  
19 mentary grant under this section for any  
20 project shall not exceed the applicable percent-  
21 age established by regulations promulgated by  
22 the Administrator, but in no event shall the  
23 non-Federal share of the aggregate cost of any  
24 such project (including assumptions of debt) be  
25 less than 20 percent of such cost.

1           “(B) EXCEPTION.—Notwithstanding sub-  
2           paragraph (A), in the case of an Indian tribe,  
3           a State (or a political subdivision of the State),  
4           or a community development corporation which  
5           the Administrator determines has exhausted its  
6           effective taxing and borrowing capacity, the Ad-  
7           ministrator shall reduce the non-Federal share  
8           below the percentage specified in subparagraph  
9           (A) or shall waive the non-Federal share in the  
10          case of such a grant for a project in an area  
11          described in section 502(a)(4).

12          “(2) FORM OF SUPPLEMENTARY GRANTS.—  
13          Supplementary grants shall be made by the Admin-  
14          istrator, in accordance with such regulations as the  
15          Administrator may prescribe, by increasing the  
16          amounts of direct grants authorized under this sec-  
17          tion or by the payment of funds appropriated under  
18          this Act to the heads of the departments, agencies,  
19          and instrumentalities of the Federal Government re-  
20          sponsible for the administration of the applicable  
21          Federal programs.

22          “(3) FEDERAL SHARE LIMITATIONS SPECIFIED  
23          IN OTHER LAWS.—Notwithstanding any requirement  
24          as to the amount or sources of non-Federal funds  
25          that may otherwise be applicable to the Federal pro-

1       gram involved, funds provided under this subsection  
2       shall be used for the sole purpose of increasing the  
3       Federal contribution to specific projects in areas de-  
4       scribed in section 502(a) under such programs above  
5       the fixed maximum portion of the cost of such  
6       project otherwise authorized by the applicable law.

7               “(4) DESIGNATED FEDERAL GRANT-IN-AID  
8       PROGRAMS DEFINED.—In this subsection, the term  
9       ‘designated Federal grant-in-aid programs’ means  
10      such existing or future Federal grant-in-aid pro-  
11      grams assisting in the construction or equipping of  
12      facilities as the Administrator may, in furtherance of  
13      the purposes of this Act, designate as eligible for al-  
14      location of funds under this section.

15              “(5) CONSIDERATION OF RELATIVE NEED IN  
16      DETERMINING AMOUNT.—In determining the  
17      amount of any supplementary grant available to any  
18      project under this section, the Administrator shall  
19      take into consideration the relative needs of the area  
20      and the nature of the projects to be assisted.

21              “(d) REGULATIONS.—The Administrator shall pre-  
22      scribe rules, regulations, and procedures to carry out this  
23      section which will assure that adequate consideration is  
24      given to the relative needs of eligible areas. In prescribing

1 such rules, regulations, and procedures the Administrator  
2 shall consider among other relevant factors—

3           “(1) the severity of the rates of unemployment  
4           in the eligible areas and the duration of such unem-  
5           ployment; and

6           “(2) the income levels of families and the extent  
7           of underemployment in eligible areas.

8           “(e) REVIEW AND COMMENT UPON PROJECTS BY  
9 LOCAL GOVERNMENTAL AUTHORITIES.—The Adminis-  
10 trator shall prescribe regulations which will assure that  
11 appropriate local governmental authorities have been given  
12 a reasonable opportunity to review and comment upon  
13 proposed projects under this section.

14 **“SEC. 202. CONSTRUCTION COST INCREASES.**

15           “In any case where a grant (including a supplemental  
16 grant) has been made by the Administrator under this  
17 title for a project and after such grant has been made  
18 but before completion of the project, the cost of such  
19 project based upon the designs and specifications which  
20 were the basis of the grant has been increased because  
21 of increases in costs, the amount of such grant may be  
22 increased by an amount equal to the percentage increase,  
23 as determined by the Administrator, in such costs, but in  
24 no event shall the percentage of the Federal share of such  
25 project exceed that originally provided for in such grant.

1 **“SEC. 203. USE OF FUNDS IN PROJECTS CONSTRUCTED**  
2 **UNDER PROJECTED COST.**

3 “In any case where a grant (including a supplemental  
4 grant) has been made by the Administrator under this  
5 title for a project, and after such grant has been made  
6 but before completion of the project, the cost of such  
7 project based upon the designs and specifications which  
8 were the basis of the grant has decreased because of de-  
9 creases in costs, such underrun funds may be used to im-  
10 prove the project either directly or indirectly as deter-  
11 mined by the Administrator.

12 **“SEC. 204. CHANGED PROJECT CIRCUMSTANCES.**

13 “In any case where a grant (including a supplemental  
14 grant) has been made by the Administrator under this  
15 title for a project, and after such grant has been made  
16 but before completion of the project, the purpose or scope  
17 of such project based upon the designs and specifications  
18 which were the basis of the grant has changed, the Admin-  
19 istrator may approve the use of grant funds on such  
20 changed project if the Administrator determines that such  
21 changed project meets the requirements of this title and  
22 that such changes are necessary to enhance economic de-  
23 velopment in the area.

1 **“TITLE III—SPECIAL ECONOMIC**  
2 **DEVELOPMENT AND ADJUST-**  
3 **MENT ASSISTANCE**

4 **“SEC. 301. STATEMENT OF PURPOSE.**

5 “The purpose of this title to provide special economic  
6 development and adjustment assistance programs to help  
7 State and local areas meet special needs arising from ac-  
8 tual or threatened severe unemployment arising from eco-  
9 nomic dislocation (including unemployment arising from  
10 actions of the Federal Government, from defense base clo-  
11 sures and realignments, and from compliance with envi-  
12 ronmental requirements which remove economic activities  
13 from a locality) and economic adjustment problems result-  
14 ing from severe changes in economic conditions (including  
15 long-term economic deterioration), and to encourage coop-  
16 erative intergovernmental action to prevent or solve eco-  
17 nomic adjustment problems. Nothing in this title is in-  
18 tended to replace the efforts of the economic adjustment  
19 program of the Department of Defense.

20 **“SEC. 302. SPECIAL ECONOMIC DEVELOPMENT AND AD-**  
21 **JUSTMENT ASSISTANCE.**

22 “(a) IN GENERAL.—The Administrator is authorized  
23 to make grants directly to any eligible recipient in an area  
24 which the Administrator determines, in accordance with



1 criteria to be established by the Administrator by regula-  
2 tion—

3           “(1) has experienced, or may reasonably be  
4 foreseen to be about to experience, a special need to  
5 meet an expected rise in unemployment, or other  
6 economic adjustment problems (including those  
7 caused by any action or decision of the Federal Gov-  
8 ernment); or

9           “(2) has demonstrated long-term economic de-  
10 terioration.

11       “(b) PURPOSES.—Amounts from grants under sub-  
12 section (a) shall be used by an eligible recipient to carry  
13 out or develop an investment strategy which—

14           “(1) meets the requirements of section 503; and

15           “(2) is approved by the Administrator.

16       “(c) TYPES OF ASSISTANCE.—In carrying out an in-  
17 vestment strategy using amounts from grants under sub-  
18 section (a), an eligible recipient may provide assistance for  
19 any of the following:

20           “(1) Public facilities.

21           “(2) Public services.

22           “(3) Business development.

23           “(4) Planning.

24           “(5) Research and technical assistance.

25           “(6) Administrative expenses.

1           “(7) Training.

2           “(8) Relocation of individuals and businesses.

3           “(9) Other assistance which demonstrably fur-  
4           thers the economic adjustment objectives of this  
5           title.

6           “(d) DIRECT EXPENDITURE OR REDISTRIBUTION BY  
7           RECIPIENT.—Amounts from grants under subsection (a)  
8           may be used in direct expenditures by the eligible recipient  
9           or through redistribution by the eligible recipient to public  
10          and private entities in grants, loans, loan guarantees, pay-  
11          ments to reduce interest on loan guarantees, or other ap-  
12          propriate assistance, but no grant shall be made by an  
13          eligible recipient to a private profit-making entity.

14          “(e) COORDINATION.—The Administrator to the ex-  
15          tent practicable shall coordinate the activities relating to  
16          the requirements for investment strategies and making  
17          grants and loans under this title with other Federal pro-  
18          grams, States, economic development districts, and other  
19          appropriate planning and development organizations.

20          “(f) BASE CLOSINGS AND REALIGNMENTS.—

21                 “(1) LOCATION OF PROJECTS.—In any case in  
22                 which the Administrator determines a need for as-  
23                 sistance under subsection (a) due to the closure or  
24                 realignment of a military installation, the Adminis-  
25                 trator may make such assistance available for

1 projects to be carried out on the military installation  
2 and for projects to be carried out in communities ad-  
3 versely affected by the closure or realignment.

4 “(2) INTEREST IN PROPERTY.—Notwithstand-  
5 ing any other provision of law, the Administrator  
6 may provide to an eligible recipient any assistance  
7 available under this Act for a project to be carried  
8 out on a military installation that is closed or sched-  
9 uled for closure or realignment without requiring  
10 that the eligible recipient have title to the property  
11 or a leasehold interest in the property for any speci-  
12 fied term.

13 **“SEC. 303. ANNUAL REPORTS BY RECIPIENT.**

14 “Each eligible recipient which receives assistance  
15 under this title from the Administrator shall annually dur-  
16 ing the period such assistance continue to make a full and  
17 complete report to the Administrator, in such manner as  
18 the Administrator shall prescribe, and such report shall  
19 contain an evaluation of the effectiveness of the economic  
20 assistance provided under this title in meeting the need  
21 it was designed to alleviate and the purposes of this title.

22 **“SEC. 304. SALE OF FINANCIAL INSTRUMENTS IN REVOLV-  
23 ING LOAN FUNDS.**

24 “Any loan, loan guarantee, equity, or other financial  
25 instrument in the portfolio of a revolving loan fund, in-

1 cluding any financial instrument made available using  
2 amounts from a grant made before the effective date speci-  
3 fied in section 802, may be sold, encumbered, or pledged  
4 at the discretion of the grantee of the Fund, to a third  
5 party provided that the net proceeds of the transaction—

6           “(1) shall be deposited into the Fund and may  
7           only be used for activities which are consistent with  
8           the purposes of this title; and

9           “(2) shall be subject to the financial manage-  
10          ment, accounting, reporting, and auditing standards  
11          which were originally applicable to the grant.

12 **“SEC. 305. TREATMENT OF REVOLVING LOAN FUNDS.**

13          “(a) IN GENERAL.—Amounts from grants made  
14 under this title which are used by an eligible recipient to  
15 establish a revolving loan fund shall not be treated, except  
16 as provided by subsection (b), as amounts derived from  
17 Federal funds for the purposes of any Federal law after  
18 such amounts are loaned from the fund to a borrower and  
19 repaid to the fund.

20          “(b) EXCEPTIONS.—Amounts described in subsection  
21 (a) which are loaned from a revolving loan fund to a bor-  
22 rower and repaid to the fund—

23               “(1) may only be used for activities which are  
24               consistent with the purposes of this title; and

1           “(2) shall be subject to the financial manage-  
2           ment, accounting, reporting, and auditing standards  
3           which were originally applicable to the grant.

4           “(c) REGULATIONS.—Not later than 30 days after  
5           the effective date specified in section 802, the Adminis-  
6           trator shall issue regulations to carry out subsection (a).

7           “(d) PUBLIC REVIEW AND COMMENT.—Before issu-  
8           ing any final guidelines or administrative manuals govern-  
9           ing the operation of revolving loan funds established using  
10          amounts from grants under this title, the Administrator  
11          shall provide reasonable opportunity for public review of  
12          and comment on such guidelines and administrative  
13          manuals.

14          “(e) APPLICABILITY TO PAST GRANTS.—The re-  
15          quirements of this section applicable to amounts from  
16          grants made under this title shall also apply to amounts  
17          from grants made, before the effective date specified in  
18          section 802, under title I of this Act, as in effect on the  
19          day before such effective date.

20       **“TITLE IV—TECHNICAL ASSIST-**  
21       **ANCE, RESEARCH, AND IN-**  
22       **FORMATION**

23       **“SEC. 401. TECHNICAL ASSISTANCE.**

24          “(a) IN GENERAL.—In carrying out its duties under  
25          this Act, the Administrator may provide technical assist-

1   ance which would be useful in alleviating or preventing  
2   conditions     of     excessive     unemployment     or  
3   underemployment to areas which the Administrator finds  
4   have substantial need for such assistance. Such assistance  
5   shall include project planning and feasibility studies, man-  
6   agement and operational assistance, establishment of busi-  
7   ness outreach centers, and studies evaluating the needs  
8   of, and development potentialities for, economic growth of  
9   such areas.

10       “(b) PROCEDURES AND TERMS.—

11           “(1) MANNER OF PROVIDING ASSISTANCE.—As-  
12       sistance may be provided by the Administrator  
13       through—

14           “(A) members of the Administrator’s staff;

15           “(B) the payment of funds authorized for  
16       this section to departments or agencies of the  
17       Federal Government;

18           “(C) the employment of private individ-  
19       uals, partnerships, firms, corporations, or suit-  
20       able institutions under contracts entered into  
21       for such purposes; or

22           “(D) grants-in-aid to appropriate public or  
23       private nonprofit State, area, district, or local  
24       organizations.

1           “(2) REPAYMENT TERMS.—The Administrator,  
2           in the Administrator’s discretion, may require the  
3           repayment of assistance provided under this sub-  
4           section and prescribe the terms and conditions of  
5           such repayment.

6           “(c) GRANTS COVERING ADMINISTRATIVE EX-  
7 PENSES.—

8           “(1) IN GENERAL.—The Administrator may  
9           make grants to defray not to exceed 50 percent of  
10          the administrative expenses of organizations which  
11          the Administrator determines to be qualified to re-  
12          ceive grants-in-aid under subsections (a) and (b); ex-  
13          cept that in the case of a grant under this sub-  
14          section to an Indian tribe, the Administrator is au-  
15          thorized to defray up to 100 percent of such ex-  
16          penses.

17          “(2) DETERMINATION OF NON-FEDERAL  
18          SHARE.—In determining the amount of the non-Fed-  
19          eral share of such costs or expenses, the Adminis-  
20          trator shall give due consideration to all contribu-  
21          tions both in cash and in kind, fairly evaluated, in-  
22          cluding contributions of space, equipment, and serv-  
23          ices.

24          “(3) USE OF GRANTS WITH PLANNING  
25          GRANTS.—Where practicable, grants-in-aid author-

1        ized under this subsection shall be used in conjunc-  
2        tion with other available planning grants to assure  
3        adequate and effective planning and economical use  
4        of funds.

5        “(d) AVAILABILITY OF TECHNICAL INFORMATION;  
6 FEDERAL PROCUREMENT.—The Administrator shall aid  
7 areas described in section 502(a) and other areas by fur-  
8 nishing to interested individuals, communities, industries,  
9 and enterprises within such areas any assistance, technical  
10 information, market research, or other forms of assist-  
11 ance, information, or advice which would be useful in alle-  
12 viating or preventing conditions of excessive unemploy-  
13 ment or underemployment within such areas. The Admin-  
14 istrator may furnish the procurement divisions of the var-  
15 ious departments, agencies, and other instrumentalities of  
16 the Federal Government with a list containing the names  
17 and addresses of business firms which are located in areas  
18 described in section 502(a) and which are desirous of ob-  
19 taining Government contracts for the furnishing of sup-  
20 plies or services, and designating the supplies and services  
21 such firms are engaged in providing.

22 **“SEC. 402. ECONOMIC DEVELOPMENT PLANNING.**

23        “(a) DIRECT GRANTS.—

24                “(1) IN GENERAL.—The Administrator may  
25        make, upon application of any State, or city, or



1 other political subdivision of a State, or sub-State  
2 planning and development organization (including an  
3 area described in section 502(a) or an economic de-  
4 velopment district), direct grants to such State, city,  
5 or other political subdivision, or organization to pay  
6 up to 50 percent of the cost for economic develop-  
7 ment planning.

8 “(2) PLANNING PROJECTS SPECIFICALLY IN-  
9 CLUDED.—The planning for cities, other political  
10 subdivisions, and sub-State planning and develop-  
11 ment organizations (including areas described in sec-  
12 tion 502(a) and economic development districts) as-  
13 sisted under this section shall include systematic ef-  
14 forts to reduce unemployment and increase incomes.

15 “(3) PLANNING PROCESS.—The planning shall  
16 be a continuous process involving public officials and  
17 private citizens in analyzing local economies, defin-  
18 ing development goals, determining project opportu-  
19 nities, and formulating and implementing a develop-  
20 ment program.

21 “(4) COORDINATION OF ASSISTANCE UNDER  
22 SECTION 401(c).—The assistance available under  
23 this section may be provided in addition to assist-  
24 ance available under section 401(c) but shall not  
25 supplant such assistance.

1       “(b) COMPLIANCE WITH REVIEW PROCEDURE.—The  
2 planning assistance authorized under this title shall be  
3 used in conjunction with any other available Federal plan-  
4 ning assistance to assure adequate and effective planning  
5 and economical use of funds.

6           **“TITLE V—ELIGIBILITY AND**  
7           **INVESTMENT STRATEGIES**

8                   **“PART A—ELIGIBILITY**

9           **“SEC. 501. ELIGIBLE RECIPIENT DEFINED.**

10        “In this Act, the term ‘eligible recipient’ means an  
11 area described in section 502(a), an economic development  
12 district designated under section 510, an Indian tribe, a  
13 State, a city or other political subdivision of a State, or  
14 a consortium of such political subdivisions, or a public or  
15 private nonprofit organization or association acting in co-  
16 operation with officials of such political subdivisions.

17           **“SEC. 502. AREA ELIGIBILITY.**

18        “(a) CERTIFICATION.—In order to be eligible for as-  
19 sistance under title II, an applicant seeking assistance to  
20 undertake a project in an area shall certify, as part of  
21 an application for such assistance, that the area on the  
22 date of submission of such application meets 1 or more  
23 of the following criteria:

24                   “(1) The area has a per capita income of 80  
25                   percent or less of the national average.

1           “(2) The area has an unemployment rate 1 per-  
2           cent above the national average percentage for the  
3           most recent 24-month period for which statistics are  
4           available.

5           “(3) The area has experienced or is about to  
6           experience a sudden economic dislocation resulting  
7           in job loss that is significant both in terms of the  
8           number of jobs eliminated and the effect upon the  
9           employment rate of the area.

10           “(4) The area is a community or neighborhood  
11           (defined without regard to political or other subdivi-  
12           sions or boundaries) which the Administrator deter-  
13           mines has one or more of the following conditions:

14                   “(A) A large concentration of low-income  
15                   persons.

16                   “(B) Rural areas having substantial out-  
17                   migration.

18                   “(C) Substantial unemployment.

19           “(b) DOCUMENTATION.—A certification made under  
20           subsection (a) shall be supported by Federal data, when  
21           available, and in other cases by data available through the  
22           State government. Such documentation shall be accepted  
23           by the Administrator unless it is determined to be inac-  
24           curate. The most recent statistics available shall be used.

1       “(c) PRIOR DESIGNATIONS.—Any designation of a  
2 redevelopment area made before the effective date speci-  
3 fied in section 802 shall not be effective after such effec-  
4 tive date.

5       **“SEC. 503. INVESTMENT STRATEGY.**

6       “The Administrator may provide assistance under ti-  
7 tles II and III to an applicant for a project only if the  
8 applicant submits to the Administrator, as part of an ap-  
9 plication for such assistance, and the Administrator ap-  
10 proves an investment strategy which—

11               “(1) identifies the economic development prob-  
12 lems to be addressed using such assistance;

13               “(2) identifies past, present, and projected fu-  
14 ture economic development investments in the area  
15 receiving such assistance and public and private par-  
16 ticipants and sources of funding for such invest-  
17 ments;

18               “(3) sets forth a strategy for addressing the  
19 economic problems identified pursuant to paragraph  
20 (1) and describes how the strategy will solve such  
21 problems;

22               “(4) provides a description of the project nec-  
23 essary to implement the strategy, estimates of costs,  
24 and timetables; and

1           “(5) provides a summary of public and private  
2           resources expected to be available for the project.

3   **“SEC. 504. APPROVAL OF PROJECTS.**

4           “Only applications for grants or other assistance  
5           under this Act for specific projects shall be approved which  
6           are certified by the State representing such applicant and  
7           determined by the Administrator—

8           “(1) to be included in a State investment strat-  
9           egy;

10          “(2) to have adequate assurance that the  
11          project will be properly administered, operated, and  
12          maintained; and

13          “(3) to otherwise meet the requirements for as-  
14          sistance under this Act.

15   **“PART B—ECONOMIC DEVELOPMENT DISTRICTS**

16   **“SEC. 510. DESIGNATION OF ECONOMIC DEVELOPMENT**  
17                   **DISTRICTS AND ECONOMIC DEVELOPMENT**  
18                   **CENTERS.**

19          “(a) IN GENERAL.—In order that economic develop-  
20          ment projects of broader geographic significance may be  
21          planned and carried out, the Administrator may—

22          “(1) designate appropriate ‘economic develop-  
23          ment districts’ within the United States with the  
24          concurrence of the States in which such districts will  
25          be wholly or partially located, if—

1           “(A) the proposed district is of sufficient  
2 size or population, and contains sufficient re-  
3 sources, to foster economic development on a  
4 scale involving more than a single area de-  
5 scribed in section 502(a);

6           “(B) the proposed district contains at least  
7 1 area described in section 502(a);

8           “(C) the proposed district contains 1 or  
9 more areas described in section 502(a) or eco-  
10 nomic development centers identified in an ap-  
11 proved district investment strategy as having  
12 sufficient size and potential to foster the eco-  
13 nomic growth activities necessary to alleviate  
14 the distress of the areas described in section  
15 502(a) within the district; and

16           “(D) the proposed district has a district  
17 investment strategy which includes adequate  
18 land use and transportation planning and con-  
19 tains a specific program for district cooperation,  
20 self-help, and public investment and is approved  
21 by the State or States affected and by the Ad-  
22 ministrator;

23           “(2) designate as ‘economic development cen-  
24 ters’, in accordance with such regulations as the Ad-

1 administrator shall prescribe, such areas as the Admin-  
2 istrator may deem appropriate, if—

3 “(A) the proposed center has been identi-  
4 fied and included in an approved district invest-  
5 ment strategy and recommended by the State  
6 or States affected for such special designation;

7 “(B) the proposed center is geographically  
8 and economically so related to the district that  
9 its economic growth may reasonably be expected  
10 to contribute significantly to the alleviation of  
11 distress in the areas described in section 502(a)  
12 of the district; and

13 “(C) the proposed center does not have a  
14 population in excess of 250,000 according to  
15 the most recent Federal census.

16 “(3) provide financial assistance in accordance  
17 with the criteria of this Act, except as may be herein  
18 otherwise provided, for projects in economic develop-  
19 ment centers designated under subsection (a)(2),  
20 if—

21 “(A) the project will further the objectives  
22 of the investment strategy of the district in  
23 which it is to be located;

24 “(B) the project will enhance the economic  
25 growth potential of the district or result in ad-

1           ditional long-term employment opportunities  
2           commensurate with the amount of Federal fi-  
3           nancial assistance requested; and

4                   “(C) the amount of Federal financial as-  
5           sistance requested is reasonably related to the  
6           size, population, and economic needs of the dis-  
7           trict;

8                   “(4) subject to the 50 percent non-Federal  
9           share required for any project by section 201(c), in-  
10          crease the amount of grant assistance authorized by  
11          section 201 for projects within areas described in  
12          section 502(a), by an amount not to exceed 10 per-  
13          cent of the aggregate cost of any such project, in ac-  
14          cordance with such regulations as the Administrator  
15          shall prescribe if—

16                   “(A) the area described in section 502(a)  
17          is situated within a designated economic devel-  
18          opment district and is actively participating in  
19          the economic development activities of the dis-  
20          trict; and

21                   “(B) the project is consistent with an ap-  
22          proved investment strategy.

23          “(b) AUTHORITIES.—In designating economic devel-  
24          opment districts and approving district investment strate-



1 gies under subsection (a), the Administrator may, under  
2 regulations prescribed by the Administrator—

3 “(1) invite the several States to draw up pro-  
4 posed district boundaries and to identify potential  
5 economic development centers;

6 “(2) cooperate with the several States—

7 “(A) in sponsoring and assisting district  
8 economic planning and development groups;  
9 and

10 “(B) in assisting such district groups to  
11 formulate district investment strategies; and

12 “(3) encourage participation by appropriate  
13 local governmental authorities in such economic de-  
14 velopment districts.

15 “(c) TERMINATION OR MODIFICATION OF DESIGNA-  
16 TIONS.—The Administrator shall by regulation prescribe  
17 standards for the termination or modification of economic  
18 development districts and economic development centers  
19 designated under the authority of this section.

20 “(d) DEFINITIONS.—In this Act, the following defini-  
21 tions apply:

22 “(1) ECONOMIC DEVELOPMENT DISTRICT.—The  
23 term ‘economic development district’ refers to any  
24 area within the United States composed of cooperat-  
25 ing areas described in section 502(a) and, where ap-

1 appropriate, designated economic development centers  
2 and neighboring counties or communities, which has  
3 been designated by the Administrator as an eco-  
4 nomic development district. Such term includes any  
5 economic development district designated under sec-  
6 tion 403 of this Act, as in effect on the day before  
7 the effective date specified in section 802.

8 “(2) ECONOMIC DEVELOPMENT CENTER.—The  
9 term ‘economic development center’ refers to any  
10 area within the United States which has been identi-  
11 fied as an economic development center in an ap-  
12 proved investment strategy and which has been des-  
13 ignated by the Administrator as eligible for financial  
14 assistance under this Act in accordance with the  
15 provisions of this section.

16 “(3) LOCAL GOVERNMENT.—The term ‘local  
17 government’ means any city, county, town, parish,  
18 village, or other general-purpose political subdivision  
19 of a State.

20 “(e) PARTS OF ECONOMIC DEVELOPMENT DISTRICTS  
21 NOT WITHIN AREAS DESCRIBED IN SECTION 502(a).—  
22 The Administrator is authorized to provide the financial  
23 assistance which is available to an area described in sec-  
24 tion 502(a) under this Act to those parts of an economic  
25 development district which are not within an area de-

1 scribed in section 502(a), when such assistance will be of  
2 a substantial direct benefit to an area described in section  
3 502(a) within such district. Such financial assistance shall  
4 be provided in the same manner and to the same extent  
5 as is provided in this Act for an area described in section  
6 502(a); except that nothing in this subsection shall be con-  
7 strued to permit such parts to receive the increase in the  
8 amount of grant assistance authorized in subsection  
9 (a)(4).

## 10 **“TITLE VI—ADMINISTRATION**

### 11 **“SEC. 601. APPOINTMENT OF ASSOCIATE ADMINISTRATOR;**

#### 12 **FULL TIME EQUIVALENT EMPLOYEES.**

13 “(a) APPOINTMENT.—The Administrator shall carry  
14 out the duties vested in the Administrator by this Act act-  
15 ing through an Associate Administrator of the Small Busi-  
16 ness Administration, who shall be appointed by the Presi-  
17 dent by and with the advice and consent of the Senate.

18 “(b) PAY.—The Associate Administrator shall be  
19 compensated by the Federal Government at the rate pre-  
20 scribed for level V of the Executive Schedule under section  
21 5316 of title 5, United States Code.

22 “(c) FULL TIME EQUIVALENT EMPLOYEES.—The  
23 Administrator shall assign not to exceed 25 full time  
24 equivalent employees of the Small Business Administra-  
25 tion (excluding the Associate Administrator) to assist the

1 Administrator in the carrying out the duties vested in the  
2 Administrator by this Act.

3 **“SEC. 602. REGIONAL COOPERATIVE AGREEMENTS.**

4       “(a) IN GENERAL.—The Administrator shall make  
5 grants and carry out such other functions under this Act  
6 as the Administrator considers appropriate by entering  
7 into cooperative agreements with 1 or more States on a  
8 regional basis. Each State entering into such an agree-  
9 ment shall be represented by the chief executive officer  
10 of the State.

11       “(b) TERMS AND CONDITIONS.—A cooperative agree-  
12 ment entered into under subsection (a) shall include such  
13 terms and conditions as the Administrator determines are  
14 necessary to carry out the provisions of this Act. Such  
15 terms and conditions at a minimum shall provide that no  
16 decision concerning regional policies or approval of project  
17 or grant applications may be made without the consent  
18 of the Administrator and a majority of the States partici-  
19 pating in the cooperative agreement.

20       “(c) PARTICIPATION NOT REQUIRED.—No State  
21 shall be required to enter into a cooperative agreement  
22 under this section or to participate in any program estab-  
23 lished by this Act.

1 **“SEC. 603. ADMINISTRATIVE EXPENSES.**

2 “(a) PAYMENT BY STATES.—Fifty percent of the ad-  
3 ministrative expenses incurred by States in participating  
4 in a cooperative agreement entered into under section 602  
5 shall be paid by such States and the remaining 50 percent  
6 of such expenses shall be paid by the Federal Government.

7 “(b) DETERMINATION OF STATE SHARE.—The share  
8 of the administrative expenses to be paid by each State  
9 participating in a cooperative agreement shall be deter-  
10 mined by a majority vote of such States. The Adminis-  
11 trator may not participate or vote in such determination.

12 “(c) DELINQUENT PAYMENTS.—No assistance au-  
13 thorized by this Act shall be furnished to any State or  
14 to any political subdivision or resident of a State, nor shall  
15 the State participate or vote in any decision described in  
16 section 602(b), while such State is delinquent in the pay-  
17 ment of such State’s share of the administrative expenses  
18 described in subsection (a).

19 **“SEC. 604. FEDERAL SHARE.**

20 “Except as otherwise expressly provided by this Act,  
21 the Federal share of the cost of any project funded with  
22 amounts made available under this Act shall not exceed  
23 50 percent of such cost.

24 **“SEC. 605. COOPERATION OF FEDERAL AGENCIES.**

25 “Each Federal department and agency, in accordance  
26 with applicable laws and within the limits of available

1 funds, shall cooperate with the Administrator in order to  
2 assist the Administrator in carrying out the functions of  
3 the Administrator.

4 **“SEC. 606. CONSULTATION WITH OTHER PERSONS AND**  
5 **AGENCIES.**

6 “(a) CONSULTATION ON PROBLEMS RELATING TO  
7 EMPLOYMENT.—The Administrator is authorized from  
8 time to time to call together and confer with any persons,  
9 including representatives of labor, management, agri-  
10 culture, and government, who can assist in meeting the  
11 problems of area and regional unemployment or  
12 underemployment.

13 “(b) CONSULTATION ON ADMINISTRATION OF ACT.—  
14 The Administrator may make provisions for such consulta-  
15 tion with interested departments and agencies as the Ad-  
16 ministrator may deem appropriate in the performance of  
17 the functions vested in the Administrator by this Act.

18 **“SEC. 607. ADMINISTRATION, OPERATION, AND MAINTEN-**  
19 **NANCE.**

20 “No Federal assistance shall be approved under this  
21 Act unless the Administrator is satisfied that the project  
22 for which Federal assistance is granted will be properly  
23 and efficiently administered, operated, and maintained.

1       **“TITLE VII—MISCELLANEOUS**

2       **“SEC. 701. POWERS OF ADMINISTRATOR.**

3           “(a) IN GENERAL.—In performing the Administra-  
4 tor’s duties under this Act, the Administrator is author-  
5 ized to—

6                   “(1) adopt, alter, and use a seal, which shall be  
7 judicially noticed;

8                   “(2) subject to the civil-service and classifica-  
9 tion laws, select, employ, appoint, and fix the com-  
10 pensation of such personnel as may be necessary to  
11 carry out the provisions of this Act;

12                   “(3) hold such hearings, sit and act at such  
13 times and places, and take such testimony, as the  
14 Administrator may deem advisable;

15                   “(4) request directly from any executive depart-  
16 ment, bureau, agency, board, commission, office,  
17 independent establishment, or instrumentality infor-  
18 mation, suggestions, estimates, and statistics needed  
19 to carry out the purposes of this Act; and each de-  
20 partment, bureau, agency, board, commission, office,  
21 establishment, or instrumentality is authorized to  
22 furnish such information, suggestions, estimates,  
23 and statistics directly to the Administrator;

24                   “(5) under regulations prescribed by the Ad-  
25 ministrator, assign or sell at public or private sale,

1 or otherwise dispose of for cash or credit, in the Ad-  
2 ministrator's discretion and upon such terms and  
3 conditions and for such consideration as the Admin-  
4 istrator determines to be reasonable, any evidence of  
5 debt, contract, claim, personal property, or security  
6 assigned to or held by the Administrator in connec-  
7 tion with assistance extended under this Act, and  
8 collect or compromise all obligations assigned to or  
9 held by the Administrator in connection with such  
10 assistance until such time as such obligations may  
11 be referred to the Attorney General for suit or col-  
12 lection;

13       “(6) deal with, complete, renovate, improve,  
14 modernize, insure, rent, or sell for cash or credit,  
15 upon such terms and conditions and for such consid-  
16 eration as the Administrator determines to be rea-  
17 sonable, any real or personal property conveyed to,  
18 or otherwise acquired by the Administrator in con-  
19 nection with assistance extended under this Act;

20       “(7) pursue to final collection, by way of com-  
21 promise or other administrative action, prior to ref-  
22 erence to the Attorney General, all claims against  
23 third parties assigned to the Administrator in con-  
24 nection with assistance extended this Act;



1           “(8) acquire, in any lawful manner and in ac-  
2 cordance with the requirements of the Federal Prop-  
3 erty and Administrative Services Act of 1949, any  
4 property (real, personal, or mixed, tangible or intan-  
5 gible), whenever necessary or appropriate to the con-  
6 duct of the activities authorized under this Act;

7           “(9) in addition to any powers, functions, privi-  
8 leges, and immunities otherwise vested in the Ad-  
9 ministrator, take any action, including the procure-  
10 ment of the services of attorneys by contract, deter-  
11 mined by the Administrator to be necessary or desir-  
12 able in making, purchasing, servicing, compromising,  
13 modifying, liquidating, or otherwise administratively  
14 dealing with assets held in connection with financial  
15 assistance extended under this Act;

16           “(10) employ experts and consultants or organi-  
17 zations as authorized by section 3109 of title 5,  
18 United States Code, compensate individuals so em-  
19 ployed at rates not in excess of \$100 per diem, in-  
20 cluding travel time, and allow them, while away from  
21 their homes or regular places of business, travel ex-  
22 penses (including per diem in lieu of subsistence) as  
23 authorized by section 5703 of title 5, United States  
24 Code, for persons in the Government service em-  
25 ployed intermittently, while so employed, except that

1 contracts for such employment may be renewed an-  
2 nually;

3 “(11) sue and be sued in any court of record  
4 of a State having general jurisdiction or in any Unit-  
5 ed States district court, and jurisdiction is conferred  
6 upon such district court to determine such con-  
7 troversies without regard to the amount in con-  
8 troversy; but no attachment, injunction, garnish-  
9 ment, or other similar process, mesne or final, shall  
10 be issued against the Administrator or the Adminis-  
11 trator’s property;

12 “(12) make discretionary grants, pursuant to  
13 authorities otherwise available to the Administrator  
14 under this Act and without regard to the require-  
15 ments of section 504, to implement significant re-  
16 gional initiatives, to take advantage of special devel-  
17 opment opportunities, or to respond to emergency  
18 economic distress in a region from the funds with-  
19 held from distribution by the Administrator; except  
20 that the aggregate amount of such discretionary  
21 grants in any fiscal year may not exceed 10 percent  
22 of the amounts appropriated under title VIII for  
23 such fiscal year;

24 “(13) allow a State to use not to exceed 5 per-  
25 cent of the total of amounts received by the State

1 in a fiscal year in grants under this Act for reason-  
2 able expenses incurred by the State in administering  
3 such amounts; and

4 “(14) establish such rules, regulations, and pro-  
5 cedures as the Administrator considers appropriate  
6 in carrying out the provisions of this Act.

7 “(b) DEFICIENCY JUDGMENTS.—The authority  
8 under subsection (a)(7) to pursue claims shall include the  
9 authority to obtain deficiency judgments or otherwise in  
10 the case of mortgages assigned to the Administrator.

11 “(c) INAPPLICABILITY OF CERTAIN OTHER RE-  
12 QUIREMENTS.—Section 3709 of the Revised Statutes of  
13 the United States shall not apply to any contract of haz-  
14 ard insurance or to any purchase or contract for services  
15 or supplies on account of property obtained by the Admin-  
16 istrator as a result of assistance extended under this Act  
17 if the premium for the insurance or the amount of the  
18 insurance does not exceed \$1,000.

19 “(d) POWERS OF CONVEYANCE AND EXECUTION.—  
20 The power to convey and to execute, in the name of the  
21 Administrator, deeds of conveyance, deeds of release, as-  
22 signments and satisfactions of mortgages, and any other  
23 written instrument relating to real or personal property  
24 or any interest therein acquired by the Administrator pur-  
25 suant to the provisions of this Act may be exercised by

1 the Administrator, or by any officer or agent appointed  
2 by the Administrator for such purpose, without the execu-  
3 tion of any express delegation of power or power of attor-  
4 ney.

5 **“SEC. 702. ESTABLISHMENT OF CLEARINGHOUSE.**

6 “In carrying out the Administrator’s duties under  
7 this Act, the Administrator shall ensure that the Small  
8 Business Administration—

9 “(1) serves as a central information clearing-  
10 house on matters relating to economic development,  
11 economic adjustment, disaster recovery, and defense  
12 conversion programs and activities of the Federal  
13 and State governments, including political subdivi-  
14 sions of the States; and

15 “(2) helps potential and actual applicants for  
16 economic development, economic adjustment, disas-  
17 ter recovery, and defense conversion assistance  
18 under Federal, State, and local laws in locating and  
19 applying for such assistance, including financial and  
20 technical assistance.

21 **“SEC. 703. PERFORMANCE MEASURES.**

22 “The Administrator shall establish performance  
23 measures for grants and other assistance provided under  
24 this Act. Such performance measures shall be used to

1 evaluate project proposals and conduct evaluations of  
2 projects receiving such assistance.

3 **“SEC. 704. MAINTENANCE OF STANDARDS.**

4 “The Administrator shall continue to implement and  
5 enforce the provisions of section 712 of this Act, as in  
6 effect on the day before the effective date specified in sec-  
7 tion 802.

8 **“SEC. 705. TRANSFER OF FUNCTIONS.**

9 “The functions, powers, duties, and authorities and  
10 the assets, funds, contracts, loans, liabilities, commit-  
11 ments, authorizations, allocations, and records which are  
12 vested in or authorized to be transferred to the Secretary  
13 of the Treasury under section 29(b) of the Area Redevel-  
14 opment Act, and all functions, powers, duties, and authori-  
15 ties under section 29(c) of such Act are hereby vested in  
16 the Administrator.

17 **“SEC. 706. DEFINITION OF STATE.**

18 “In this Act, the terms ‘State’, ‘States’, and ‘United  
19 States’ include the several States, the District of Colum-  
20 bia, Puerto Rico, the Virgin Islands, American Samoa,  
21 Guam, the Marshall Islands, Micronesia, and the North-  
22 ern Mariana Islands.

23 **“SEC. 707. ANNUAL REPORT TO CONGRESS.**

24 “The Administrator shall transmit to Congress a  
25 comprehensive and detailed annual report of the Adminis-

1 trator’s operations under this Act for each fiscal year be-  
2 ginning with the fiscal year ending September 30, 1996.  
3 Such report shall be printed and shall be transmitted to  
4 Congress not later than April 1 of the year following the  
5 fiscal year with respect to which such report is made.

6 **“SEC. 708. USE OF OTHER FACILITIES.**

7       “(a) DELEGATION OF FUNCTIONS TO OTHER FED-  
8 ERAL DEPARTMENTS AND AGENCIES.—The Adminis-  
9 trator may delegate to the heads of other departments and  
10 agencies of the Federal Government any of the Adminis-  
11 trator’s functions, powers, and duties under this Act as  
12 the Administrator may deem appropriate, and to authorize  
13 the redelegation of such functions, powers, and duties by  
14 the heads of such departments and agencies.

15       “(b) DEPARTMENT AND AGENCY EXECUTION OF  
16 DELEGATED AUTHORITY.—Departments and agencies of  
17 the Federal Government shall exercise their powers, du-  
18 ties, and functions in such manner as will assist in carry-  
19 ing out the objectives of this Act.

20       “(c) TRANSFER BETWEEN DEPARTMENTS.—Funds  
21 authorized to be appropriated under this Act may be  
22 transferred between departments and agencies of the Gov-  
23 ernment, if such funds are used for the purposes for which  
24 they are specifically authorized and appropriated.

1       “(d) FUNDS TRANSFERRED FROM OTHER DEPART-  
2 MENTS AND AGENCIES.—In order to carry out the objec-  
3 tives of this Act, the Administrator may accept transfers  
4 of funds from other departments and agencies of the Fed-  
5 eral Government if the funds are used for the purposes  
6 for which (and in accordance with the terms under which)  
7 the funds are specifically authorized and appropriated.  
8 Such transferred funds shall remain available until ex-  
9 pended, and may be transferred to and merged with the  
10 appropriations under the heading ‘salaries and expenses’  
11 by the Administrator to the extent necessary to administer  
12 the program.

13 **“SEC. 709. EMPLOYMENT OF EXPEDITERS AND ADMINIS-**  
14 **TRATIVE EMPLOYEES.**

15       “No financial assistance shall be extended by the Ad-  
16 ministrator under this Act to any business enterprise un-  
17 less the owners, partners, or officers of such business en-  
18 terprise—

19               “(1) certify to the Administrator the names of  
20 any attorneys, agents, and other persons engaged by  
21 or on behalf of such business enterprise for the pur-  
22 pose of expediting applications made to the Adminis-  
23 trator for assistance of any sort, under this Act, and  
24 the fees paid or to be paid to any such person; and

1           “(2) execute an agreement binding such busi-  
2           ness enterprise, for a period of 2 years after such  
3           assistance is rendered by the Administrator to such  
4           business enterprise, to refrain from employing, ten-  
5           dering any office or employment to, or retaining for  
6           professional services, any person who, on the date  
7           such assistance or any part thereof was rendered, or  
8           within the 1-year period ending on such date, shall  
9           have served as an officer, attorney, agent, or em-  
10          ployee, occupying a position or engaging in activities  
11          which the Administrator determines involves discre-  
12          tion with respect to the granting of assistance under  
13          this Act.

14 **“SEC. 710. MAINTENANCE OF RECORDS OF APPROVED AP-**  
15   **PPLICATIONS FOR FINANCIAL ASSISTANCE;**  
16   **PUBLIC INSPECTION.**

17          “(a) MAINTENANCE OF RECORD REQUIRED.—The  
18          Administrator shall maintain as a permanent part of the  
19          records of the Small Business Administration a list of ap-  
20          plications approved for financial assistance under this Act,  
21          which shall be kept available for public inspection during  
22          the regular business hours of the Small Business Adminis-  
23          tration.



1       “(b) POSTING TO LIST.—The following information  
2 shall be posted in such list as soon as each application  
3 is approved:

4               “(1) The name of the applicant and, in the case  
5 of corporate applications, the names of the officers  
6 and directors thereof.

7               “(2) The amount and duration of the financial  
8 assistance for which application is made.

9               “(3) The purposes for which the proceeds of the  
10 financial assistance are to be used.

11 **“SEC. 711. RECORDS AND AUDIT.**

12       “(a) RECORDKEEPING AND DISCLOSURE REQUIRE-  
13 MENTS.—Each recipient of assistance under this Act shall  
14 keep such records as the Administrator shall prescribe, in-  
15 cluding records which fully disclose the amount and the  
16 disposition by such recipient of the proceeds of such assist-  
17 ance, the total cost of the project or undertaking in con-  
18 nection with which such assistance is given or used, and  
19 the amount and nature of that portion of the cost of the  
20 project or undertaking supplied by other sources, and such  
21 other records as will facilitate an effective audit.

22       “(b) ACCESS TO BOOKS FOR EXAMINATION AND  
23 AUDIT.—The Administrator and the Comptroller General  
24 of the United States, or any of their duly authorized rep-  
25 resentatives, shall have access for the purpose of audit and

1 examination to any books, documents, papers, and records  
2 of the recipient that are pertinent to assistance received  
3 under this Act.

4 **“SEC. 712. PROHIBITION AGAINST A STATUTORY CON-**  
5 **STRUCTION WHICH MIGHT CAUSE DIMINU-**  
6 **TION IN OTHER FEDERAL ASSISTANCE.**

7 “All financial and technical assistance authorized  
8 under this Act shall be in addition to any Federal assist-  
9 ance previously authorized, and no provision of this Act  
10 shall be construed as authorizing or permitting any reduc-  
11 tion or diminution in the proportional amount of Federal  
12 assistance to which any State or other entity eligible under  
13 this Act would otherwise be entitled under the provisions  
14 of any other Act.

15 **“SEC. 713. ACCEPTANCE OF APPLICANTS’ CERTIFICATIONS.**

16 “The Administrator may accept, when deemed appro-  
17 priate, the applicants’ certifications to meet the require-  
18 ments of this Act.

19 **“TITLE VIII—FUNDING;**  
20 **EFFECTIVE DATE**

21 **“SEC. 801. AUTHORIZATION OF APPROPRIATIONS**

22 “There is authorized to be appropriated to carry out  
23 this Act \$340,000,000 per fiscal year for each of fiscal  
24 years 1996, 1997, 1998, 1999, and 2000. Such sums shall  
25 remain available until expended.

1 **“SEC. 802. EFFECTIVE DATE.**

2 “The effective date specified in this section is the  
3 abolishment date specified in section 2101(c) of the De-  
4 partment of Commerce Dismantling Act.”.

5 (b) CONFORMING AMENDMENTS TO TITLE 5.—Sec-  
6 tion 5316 of title 5, United States Code, is amended—

7 (1) by striking “Associate Administrators of the  
8 Small Business Administration (4)” and inserting  
9 “Associate Administrators of the Small Business  
10 Administration (5)”; and

11 (2) by striking “Administrator for Economic  
12 Development.”.

13 (c) GAO STUDY.—On or before December 30, 1996,  
14 the Comptroller General shall submit to Congress a plan  
15 or plans for consolidating economic development programs  
16 throughout the Federal Government. The plan or plans  
17 shall focus on, but not be limited to, consolidating pro-  
18 grams included in the Catalogue of Federal Domestic As-  
19 sistance with similar purposes and target populations. The  
20 plan or plans shall detail how consolidation can lead to  
21 improved grant or program management, improvements in  
22 achieving program goals, and reduced costs.

23 **SEC. 2202. TECHNOLOGY ADMINISTRATION.**

24 (a) TECHNOLOGY ADMINISTRATION.—

1           (1) GENERAL RULE.—Except as otherwise pro-  
2           vided in this section, the Technology Administration  
3           is terminated.

4           (2) OFFICE OF TECHNOLOGY POLICY.—The Of-  
5           fice of Technology Policy is terminated.

6           (b) NATIONAL INSTITUTE OF STANDARDS AND  
7           TECHNOLOGY.—

8           (1) REDESIGNATION.—The National Institute  
9           of Standards and Technology is hereby redesignated  
10          as the National Bureau of Standards, and all ref-  
11          erences to the National Institute of Standards and  
12          Technology in Federal law or regulations are deemed  
13          to be references to the National Bureau of Stand-  
14          ards.

15          (2) GENERAL RULE.—The National Bureau of  
16          Standards (in this subsection referred to as the  
17          “Bureau”) is transferred to the National Scientific,  
18          Oceanic, and Atmospheric Administration, estab-  
19          lished under section 2206.

20          (3) FUNCTIONS OF DIRECTOR.—Except as oth-  
21          erwise provided in this section or section 2207, upon  
22          the transfer under paragraph (2), the Director of  
23          the Bureau shall perform all functions relating to  
24          the Bureau that, immediately before the effective  
25          date specified in section 2208(a), were functions of

1 the Secretary of Commerce or the Under Secretary  
2 of Commerce for Technology.

3 (c) NATIONAL TECHNICAL INFORMATION SERV-  
4 ICE.—

5 (1) PRIVATIZATION.—All functions of the Na-  
6 tional Technical Information Service are transferred  
7 to the Director of Office of Management and Budget  
8 for privatization in accordance with section 2108 be-  
9 fore the end of the 18-month period beginning on  
10 the date of the enactment of this Act.

11 (2) TRANSFER TO NATIONAL SCIENTIFIC, OCE-  
12 ANIC, AND ATMOSPHERIC ADMINISTRATION.—If an  
13 appropriate arrangement for the privatization of  
14 functions of the National Technical Information  
15 Service under paragraph (1) has not been made be-  
16 fore the end of the period described in that para-  
17 graph, the National Technical Information Service  
18 shall be transferred as of the end of such period to  
19 the National Scientific, Oceanic, and Atmospheric  
20 Administration established by section 2206.

21 (3) GOVERNMENT CORPORATION.—If an appro-  
22 priate arrangement for the privatization of functions  
23 of the National Technical Information Service under  
24 paragraph (1) has not been made before the end of  
25 the period described in that paragraph, the Director

1 of the Office of Management and Budget shall, with-  
2 in 6 months after the end of such period, submit to  
3 Congress a proposal for legislation to establish the  
4 National Technical Information Service as a wholly  
5 owned Government corporation. The proposal should  
6 provide for the corporation to perform substantially  
7 the same functions that, as of the date of enactment  
8 of this Act, are performed by the National Technical  
9 Information Service.

10 (4) FUNDING.—No funds are authorized to be  
11 appropriated for the National Technical Information  
12 Service or any successor corporation established pur-  
13 suant to a proposal under paragraph (3).

14 (d) AMENDMENTS.—

15 (1) NATIONAL INSTITUTE OF STANDARDS AND  
16 TECHNOLOGY ACT.—The National Institute of  
17 Standards and Technology Act (15 U.S.C. 271 et  
18 seq.) is amended—

19 (A) in section 2(b), by striking paragraph  
20 (1) and redesignating paragraphs (2) through  
21 (11) as paragraphs (1) through (10), respec-  
22 tively;

23 (B) in section 2(d), by striking “, including  
24 the programs established under sections 25, 26,  
25 and 28 of this Act”;

1 (C) in section 10, by striking “Advanced”  
2 in both the section heading and subsection (a),  
3 and inserting in lieu thereof “Standards and”;  
4 and

5 (D) by striking sections 24, 25, 26, and  
6 28.

7 (2) STEVENSON-WYDLER TECHNOLOGY INNOVA-  
8 TION ACT OF 1980.—The Stevenson-Wydler Tech-  
9 nology Innovation Act of 1980 (15 U.S.C. 3701 et  
10 seq.) is amended—

11 (A) in section 3, by striking paragraph (2)  
12 and redesignating paragraphs (3) through (5)  
13 as paragraphs (2) through (4), respectively;

14 (B) in section 4, by striking paragraphs  
15 (1), (4), and (13) and redesignating paragraphs  
16 (2), (3), (5), (6), (7), (8), (9), (10), (11), and  
17 (12) as paragraphs (1) through (10), respec-  
18 tively;

19 (C) by striking sections 5, 6, 7, 8, 9, and  
20 10;

21 (D) in section 11—

22 (i) by striking “, the Federal Labora-  
23 tory Consortium for Technology Transfer,”  
24 in subsection (c)(3);

1 (ii) by striking “and the Federal Lab-  
2 oratory Consortium for Technology Trans-  
3 fer” in subsection (d)(2);

4 (iii) by striking “, and refer such re-  
5 quests” and all that follows through “avail-  
6 able to the Service” in subsection (d)(3);  
7 and

8 (iv) by striking subsection (e); and  
9 (E) in section 17—

10 (i) by striking “Subject to paragraph  
11 (2), separate” in subsection (c)(1) and in-  
12 serting in lieu thereof “Separate”;

13 (ii) by striking paragraph (2) of sub-  
14 section (c) and redesignating paragraph  
15 (3) as paragraph (2);

16 (iii) by striking “funds to carry out”  
17 in subsection (f), and inserting in lieu  
18 thereof “funds only to pay the salary of  
19 the Director of the Office of Quality Pro-  
20 grams, who shall be responsible for carry-  
21 ing out”; and

22 (iv) by adding at the end the following  
23 new subsection:

24 “(h) VOLUNTARY AND UNCOMPENSATED SERV-  
25 ICES.—The Director of the Office of Quality Programs



1 may accept voluntary and uncompensated services not-  
2 withstanding the provisions of section 1342 of title 31,  
3 United States Code.”.

4 (3) MISCELLANEOUS AMENDMENTS.—Section 3  
5 of Public Law 94–168 (15 U.S.C. 205b) is amend-  
6 ed—

7 (A) by striking paragraph (2);

8 (B) by redesignating paragraphs (3) and  
9 (4) as paragraphs (2) and (3), respectively; and

10 (C) in paragraph (3), as so redesignated  
11 by subparagraph (B) of this paragraph, by  
12 striking “in nonbusiness activities”.

13 **SEC. 2203. REORGANIZATION OF THE BUREAU OF THE CEN-**  
14 **SUS AND THE BUREAU OF ECONOMIC ANALY-**  
15 **SIS.**

16 (a) TRANSFER OF FUNCTIONS.—All functions of the  
17 Secretary of Commerce relating to the Bureau of the Cen-  
18 sus and the Bureau of Economic Analysis of the Depart-  
19 ment of Commerce are transferred to the Secretary of  
20 Labor.

21 (b) TRANSFER OF BUREAUS.—The Bureau of the  
22 Census and Bureau of Economic Analysis of the Depart-  
23 ment of Commerce are transferred to the Department of  
24 Labor.

1           (c) CONSOLIDATION WITH THE BUREAU OF LABOR  
2 STATISTICS.—The Secretary of Labor shall consolidate  
3 the Bureaus transferred under subsection (b) with the Bu-  
4 reau of Labor Statistics within the Department of Labor.

5           (d) REFERENCES TO SECRETARY.—Section 1(2) of  
6 the title 13, United States Code, is amended by striking  
7 out “Secretary of Commerce” and inserting in lieu thereof  
8 “Secretary of Labor”.

9           (e) REFERENCES TO DEPARTMENT.—Section 2 of  
10 title 13, United States Code, is amended by striking out  
11 “Department of Commerce” and inserting in lieu thereof  
12 “Department of Labor”.

13           (f) GENERAL REFERENCES TO SECRETARY AND DE-  
14 PARTMENT.—The provisions of title 13, United States  
15 Code, are further amended—

16               (1) by striking out “Secretary of Commerce”  
17               each place such term appears and insert in lieu  
18               thereof “Secretary of Labor”; and

19               (2) by striking out “Department of Commerce”  
20               each place such term appears and inserting in lieu  
21               thereof “Department of Labor”.

22           (g) SUBMISSION OF PLAN.—Within 180 days after  
23 the date of enactment of this Act, the President shall  
24 transmit to the Congress—

1           (1) a determination of the feasibility and poten-  
2           tial savings resulting from the further consolidation  
3           of statistical functions throughout the Government  
4           into a single agency; and

5           (2) draft legislation under which the provisions  
6           of title 13, United States Code, relating to confiden-  
7           tiality (including offenses and penalties) shall be ap-  
8           plied after the consolidation under subsection (c) has  
9           been effected.

10          (h) SENSE OF THE CONGRESS.—It is the sense of  
11          the Congress that the Bureau of the Census or the agency  
12          established as a result of the consolidation under sub-  
13          section (c) should—

14               (1) make appropriate use of any authority af-  
15               forded to it by the Census Address List Improve-  
16               ment Act of 1994 (Public Law 103–430; 108 Stat.  
17               4393), and take measures to ensure the timely im-  
18               plementation of such Act; and

19               (2) streamline census questionnaires to promote  
20               savings in the collection and tabulation of data.

21          **SEC. 2204. TERMINATED FUNCTIONS OF NTIA.**

22          (a) REPEALS.—The following provisions of law are  
23          repealed:

24               (1) Subpart A of part IV of title III of the  
25          Communications Act of 1934 (47 U.S.C. 390 et

1 seq.), relating to assistance for public telecommuni-  
2 cations facilities.

3 (2) Subpart B of part IV of title III of the  
4 Communications Act of 1934 (47 U.S.C. 394 et  
5 seq.), relating to the Endowment for Children's  
6 Educational Television.

7 (3) Subpart C of part IV of title III of the  
8 Communications Act of 1934 (47 U.S.C. 395 et  
9 seq.), relating to Telecommunications Demonstration  
10 grants.

11 (b) DISPOSAL OF NTIA LABORATORIES.—

12 (1) PRIVATIZATION.—All laboratories of the  
13 National Telecommunications and Information Ad-  
14 ministration are transferred to the Director of the  
15 Office of Management and Budget for privatization  
16 in accordance with section 2108 before the end of  
17 the 18-month period beginning on the date of the  
18 enactment of this Act.

19 (2) TRANSFER TO NATIONAL SCIENTIFIC, OCE-  
20 ANIC, AND ATMOSPHERIC ADMINISTRATION.—If an  
21 appropriate arrangement for the privatization of  
22 functions of the laboratories of the National Tele-  
23 communications and Information Administration  
24 under paragraph (1) has not been made before the  
25 end of the period described in that paragraph, the

1 laboratories of the National Telecommunications and  
2 Information Administration shall be transferred as  
3 of the end of such period to the National Scientific,  
4 Oceanic, and Atmospheric Administration estab-  
5 lished by section 2206.

6 (3) TRANSFER OF FUNCTIONS.—The functions  
7 of the National Telecommunications and Informa-  
8 tion Administration concerning research and analy-  
9 sis of the electromagnetic spectrum described in sec-  
10 tion 5112(b) of the Omnibus Trade and Competi-  
11 tiveness Act of 1988 (15 U.S.C. 1532) are trans-  
12 ferred to the Director of the National Bureau of  
13 Standards.

14 (c) TRANSFER OF NATIONAL TELECOMMUNICATIONS  
15 AND INFORMATION ADMINISTRATION FUNCTIONS.—

16 (1) TRANSFER TO USTR.—Except as provided  
17 in subsection (b)(2), the functions of the National  
18 Telecommunications and Information Administra-  
19 tion, and of the Secretary of Commerce and the As-  
20 sistant Secretary for Communications and Informa-  
21 tion of the Department of Commerce with respect to  
22 the National Telecommunications and Information  
23 Administration, are transferred to the United States  
24 Trade Representative. The functions transferred by  
25 this paragraph shall be placed in an organizational

1 component that is independent from all USTR func-  
2 tions directly related to the negotiation of trade  
3 agreements. Such functions shall be supervised by  
4 an individual whose principal professional expertise  
5 is in the area of telecommunications. The position to  
6 which such individual is appointed shall be graded at  
7 a level sufficiently high to attract a highly qualified  
8 individual, while ensuring autonomy in the conduct  
9 of such functions from all activities and influences  
10 associated with trade negotiations.

11 (2) REFERENCES.—References in any provision  
12 of law (including the National Telecommunications  
13 and Information Administration Organization Act)  
14 to the Secretary of Commerce or the Assistant Sec-  
15 retary for Communications and Information of the  
16 Department of Commerce—

17 (A) with respect to a function vested pur-  
18 suant to this section in the United States Trade  
19 Representative shall be deemed to refer to the  
20 United States Trade Representative; and

21 (B) with respect to a function vested pur-  
22 suant to this section in the Director of the Na-  
23 tional Bureau of Standards shall be deemed to  
24 refer to the Director of the National Bureau of  
25 Standards.

1           (3) TERMINATION OF NTIA.—Effective on the  
2           abolishment date specified in section 2101(c), the  
3           National Telecommunications and Information Ad-  
4           ministration is abolished.

5   **SEC. 2205. NATIONAL OCEANIC AND ATMOSPHERIC ADMIN-**  
6                           **ISTRATION.**

7           (a) TERMINATION OF MISCELLANEOUS RESEARCH  
8           PROGRAMS AND ACCOUNTS.—

9                   (1) IN GENERAL.—No funds may be appro-  
10            priated in any fiscal year for the following programs  
11            and accounts of the National Scientific, Oceanic,  
12            and Atmospheric Administration:

13                           (A) The National Undersea Research Pro-  
14            gram.

15                           (B) The Fleet Modernization Program.

16                           (C) The Charleston, South Carolina, Spe-  
17            cial Management Plan.

18                           (D) Chesapeake Bay Observation Buoys  
19            (as of September 30, 1996).

20                           (E) Federal/State Weather Modification  
21            Grants.

22                           (F) The Southeast Storm Research Ac-  
23            count.

1           (G) The Southeast United States Carib-  
2           bean Fisheries Oceanographic Coordinated In-  
3           vestigations Program.

4           (H) National Institute for Environmental  
5           Renewal.

6           (I) The Lake Champlain Study.

7           (J) The Maine Marine Research Center.

8           (K) The South Carolina Cooperative Geo-  
9           detic Survey Account.

10          (L) Pacific Island Technical Assistance.

11          (M) Sea Grant Oyster Disease Account.

12          (N) Sea Grant Zebra Mussel Account.

13          (O) VENTS program.

14          (P) National Weather Service non-Federal,  
15          non-wildfire Weather Service.

16          (Q) National Weather Service Regional  
17          Climate Centers.

18          (R) National Weather Service Samoa  
19          Weather Forecast Office Repair and Upgrade  
20          Account.

21          (S) Dissemination of Weather Charts (Ma-  
22          rine Facsimile Service).

23          (T) The Climate and Global Change Ac-  
24          count.



1 (U) The Global Learning and Observations  
2 to Benefit the Environment Program.

3 (V) Great Lakes nearshore research.

4 (W) Mussel watch.

5 (2) REPEALS.—The following provisions of law  
6 are repealed:

7 (A) The Ocean Thermal Conversion Act of  
8 1980 (42 U.S.C. 9101 et seq.).

9 (B) Title IV of the Marine Protection, Re-  
10 search, and Sanctuaries Act of 1972 (16 U.S.C.  
11 1447 et seq.).

12 (C) Title V of the Marine Protection, Re-  
13 search, and Sanctuaries Act of 1972 (33 U.S.C.  
14 2801 et seq.).

15 (D) The Great Lakes Shoreline Mapping  
16 Act of 1987 (33 U.S.C. 883a note).

17 (E) The Great Lakes Fish and Wildlife  
18 Tissue Bank Act (16 U.S.C. 943 et seq.).

19 (F) The Nonindigenous Aquatic Nuisance  
20 Prevention and Control Act of 1990 (16 U.S.C.  
21 4701 et seq.), except for those provisions affect-  
22 ing the Assistant Secretary of the Army (civil  
23 works) and the Secretary of the department in  
24 which the Coast Guard is operating.

1 (G) Section 3 of the Sea Grant Program  
2 Improvement Act of 1976 (33 U.S.C. 1124a).

3 (H) Section 208(c) of the National Sea  
4 Grant College Program Act (33 U.S.C.  
5 1127(c)).

6 (I) Section 305 of the Coastal Zone Man-  
7 agement Act of 1972 (16 U.S.C. 1454) is re-  
8 pealed effective October 1, 1998.

9 (J) The NOAA Fleet Modernization Act  
10 (33 U.S.C. 891 et seq.).

11 (K) Public Law 85–342 (72 Stat. 35; 16  
12 U.S.C. 778 et seq.), relating to fish research  
13 and experimentation.

14 (L) The first section of the Act of August  
15 8, 1956 (70 Stat. 1126; 16 U.S.C. 760d), relat-  
16 ing to grants for commercial fishing education.

17 (M) Public Law 86–359 (16 U.S.C. 760e  
18 et seq.), relating to the study of migratory ma-  
19 rine gamefish.

20 (N) The Act of August 15, 1914 (Chapter  
21 253; 38 Stat. 692; 16 U.S.C. 781 et seq.), pro-  
22 hibiting the taking of sponges in the Gulf of  
23 Mexico and the Straits of Florida.

24 (b) AERONAUTICAL MAPPING AND CHARTING.—

1           (1) IN GENERAL.—The aeronautical mapping  
2 and charting functions of the National Oceanic and  
3 Atmospheric Administration are transferred to the  
4 Defense Mapping Agency.

5           (2) TERMINATION OF CERTAIN FUNCTIONS.—  
6 The Defense Mapping Agency shall terminate any  
7 functions transferred under paragraph (1) that are  
8 performed by the private sector.

9           (3) FUNCTIONS REQUESTED BY FEDERAL AVIA-  
10 TION ADMINISTRATION.—(A) Notwithstanding para-  
11 graph (2), the Director of the Defense Mapping  
12 Agency shall carry out such aeronautical charting  
13 functions as may be requested by the Administrator  
14 of the Federal Aviation Administration.

15           (B) In carrying out aeronautical mapping func-  
16 tions requested by the Administrator under subpara-  
17 graph (A), the Director shall—

18                   (i) publish and distribute to the public and  
19 to the Administrator any aeronautical charts re-  
20 quested by the Administrator; and

21                   (ii) provide to the Administrator such  
22 other air traffic control products and services as  
23 may be requested by the Administrator,

24 in such manner and including such information as  
25 the Administrator determines is necessary for, or

1 will promote, the safe and efficient movement of air-  
2 craft in air commerce.

3 (4) CONTINUING APPLICABILITY.—The require-  
4 ments of section 1307 of title 44, United States  
5 Code, shall continue to apply with respect to all  
6 aeronautical products created or published by the  
7 Director of the Defense Mapping Agency in carrying  
8 out the functions transferred to the Director under  
9 this paragraph; except that the prices for such prod-  
10 ucts shall be established jointly by the Director and  
11 the Secretary of Transportation on an annual basis.

12 (c) TRANSFER OF MAPPING, CHARTING, AND GEOD-  
13 ESY FUNCTIONS TO THE UNITED STATES GEOLOGICAL  
14 SURVEY.—

15 (1) IN GENERAL.—Except as provided in sub-  
16 section (b), there are hereby transferred to the Di-  
17 rector of the United States Geological Survey the  
18 functions relating to mapping, charting, and geodesy  
19 authorized under the Act of August 7, 1947 (61  
20 Stat. 787; 33 U.S.C. 883a).

21 (2) TERMINATION OF CERTAIN FUNCTIONS.—  
22 The Director of the United States Geological Survey  
23 shall terminate any functions transferred under  
24 paragraph (1) that are performed by the private sec-  
25 tor.

1 (d) NESDIS.—There are transferred to the National  
2 Scientific, Oceanic, and Atmospheric Administration all  
3 functions and assets of the National Oceanic and Atmos-  
4 pheric Administration that on the date immediately before  
5 the effective date of this section were authorized to be per-  
6 formed by the National Environmental Satellite, Data,  
7 and Information System.

8 (e) OAR.—There are transferred to the National Sci-  
9 entific, Oceanic, and Atmospheric Administration all func-  
10 tions and assets of the National Oceanic and Atmospheric  
11 Administration (including global programs) that on the  
12 date immediately before the effective date of this section  
13 were authorized to be performed by the Office of Oceanic  
14 and Atmospheric Research.

15 (f) NWS.—

16 (1) IN GENERAL.—There are transferred to the  
17 National Scientific, Oceanic, and Atmospheric Ad-  
18 ministration all functions and assets of the National  
19 Oceanic and Atmospheric Administration that on the  
20 date immediately before the effective date of this  
21 section were authorized to be performed by the Na-  
22 tional Weather Service.

23 (2) DUTIES.—To protect life and property and  
24 enhance the national economy, the Administrator of  
25 Science, Oceans, and the Atmosphere, through the

1 National Weather Service, except as outlined in  
2 paragraph (3), shall be responsible for the following:

3 (A) Forecasts. The Administrator of  
4 Science, Oceans, and the Atmosphere, through  
5 the National Weather Service, shall serve as the  
6 sole official source of severe weather warnings.

7 (B) Issuance of storm warnings.

8 (C) The collection, exchange, and distribu-  
9 tion of meteorological, hydrological, climatic,  
10 and oceanographic data and information.

11 (D) The preparation of hydro-meteorologi-  
12 cal guidance and core forecast information.

13 (3) LIMITATIONS ON COMPETITION.—The Na-  
14 tional Weather Service may not compete, or assist  
15 other entities to compete, with the private sector to  
16 provide a service when that service is currently pro-  
17 vided or can be provided by a commercial enterprise  
18 unless—

19 (A) the Administrator of Science, Oceans,  
20 and the Atmosphere finds that the private sec-  
21 tor is unwilling or unable to provide the service;  
22 or

23 (B) the Administrator of Science, Oceans,  
24 and the Atmosphere finds that the service pro-  
25 vides vital weather warnings and forecasts for

1 the protection of lives and property of the gen-  
2 eral public.

3 (4) ORGANIC ACT AMENDMENTS.—

4 (A) AMENDMENTS.—The Act of 1890 is  
5 amended—

6 (i) by striking section 3 (15 U.S.C.  
7 313); and

8 (ii) in section 9 (15 U.S.C. 317), by  
9 striking “Department of” and all that fol-  
10 lows thereafter and inserting “National  
11 Scientific, Oceanic, and Atmospheric Ad-  
12 ministration.”.

13 (B) DEFINITION.—For purposes of this  
14 paragraph, the term “Act of 1890” means the  
15 Act entitled “An Act to increase the efficiency  
16 and reduce the expenses of the Signal Corps of  
17 the Army, and to transfer the Weather Bureau  
18 to the Department of Agriculture”, approved  
19 October 1, 1890 (26 Stat. 653).

20 (5) REPEAL.—Sections 706 and 707 of the  
21 Weather Service Modernization Act (15 U.S.C. 313  
22 note) are repealed.

23 (6) CONFORMING AMENDMENTS.—The Weather  
24 Service Modernization Act (15 U.S.C. 313 note) is  
25 amended—

1 (A) in section 702, by striking paragraph  
2 (3) and redesignating paragraphs (4) through  
3 (10) as paragraphs (3) through (9), respec-  
4 tively; and

5 (B) in section 703—

6 (i) by striking “(a) NATIONAL IMPLE-  
7 MENTATION PLAN.—”;

8 (ii) by striking paragraph (3) and re-  
9 designating paragraphs (4), (5), and (6) as  
10 paragraphs (3), (4), and (5), respectively;  
11 and

12 (iii) by striking subsections (b) and  
13 (c).

14 (g) TERMINATION OF THE NATIONAL OCEANIC AND  
15 ATMOSPHERIC ADMINISTRATION CORPS OF COMMIS-  
16 SIONED OFFICERS.—

17 (1) NUMBER OF OFFICERS.—Notwithstanding  
18 section 8 of the Act of June 3, 1948 (33 U.S.C.  
19 853g), the total number of commissioned officers on  
20 the active list of the National Scientific, Oceanic,  
21 and Atmospheric Administration shall not exceed—

22 (A) 358 as of September 30, 1996;

23 (B) 180 as of September 30, 1997; and

24 (C) 0 for any fiscal year beginning after  
25 September 30, 1998.



1           (2) SEPARATION PAY.—(A) Commissioned offi-  
2           cers may be separated from the active list of the Na-  
3           tional Scientific, Oceanic, and Atmospheric Adminis-  
4           tration. Any officer so separated because of para-  
5           graph (1) shall, subject to subparagraph (B) and the  
6           availability of appropriations, be eligible for separa-  
7           tion pay under section 9 of the Act of June 3, 1948  
8           (33 U.S.C. 853h) to the same extent as if such offi-  
9           cer had been separated under section 8 of such Act  
10          (33 U.S.C. 853g).

11          (B) Any officer who, under paragraph (4),  
12          transfers to another of the uniformed services or be-  
13          comes employed in a civil service position shall not  
14          be eligible for separation pay under this paragraph.

15          (C)(i) Any officer who receives separation pay  
16          under this paragraph shall be required to repay the  
17          amount received if, within 1 year after the date of  
18          the separation on which the payment is based, such  
19          officer is reemployed in a civil service position in the  
20          National Scientific, Oceanic, and Atmospheric Ad-  
21          ministration, the duties of which position would for-  
22          merly have been performed by a commissioned offi-  
23          cer, as determined by the Administrator of Science,  
24          Oceans, and the Atmosphere.

1           (ii) A repayment under this subparagraph shall  
2 be made in a lump sum or in such installments as  
3 the Administrator may specify.

4           (D) In the case of any officer who makes a re-  
5 payment under subparagraph (C)—

6                 (i) the National Scientific, Oceanic, and  
7 Atmospheric Administration shall pay into the  
8 Civil Service Retirement and Disability Fund,  
9 on such officer's behalf, any deposit required  
10 under section 8422(e)(1) of title 5, United  
11 States Code, with respect to any prior service  
12 performed by that individual as such an officer;  
13 and

14                 (ii) if the amount paid under clause (i) is  
15 less than the amount of the repayment under  
16 subparagraph (C), the National Scientific, Oce-  
17 anic, and Atmospheric Administration shall pay  
18 into the Government Securities Investment  
19 Fund (established under section 8438(b)(1)(A)  
20 of title 5, United States Code), on such individ-  
21 ual's behalf, an amount equal to the difference.

22           The provisions of paragraph (5)(C)(iv) shall apply  
23 with respect to any contribution to the Thrift Sav-  
24 ings Plan made under clause (ii).

1           (3) PRIORITY PLACEMENT PROGRAM.—A prior-  
2           ity placement program similar to the programs de-  
3           scribed in section 3329b of title 5, United States  
4           Code, as amended by section 2109, shall be estab-  
5           lished by the National Scientific, Oceanic, and At-  
6           mospheric Administration to assist commissioned of-  
7           ficers who are separated from the active list of the  
8           National Scientific, Oceanic, and Atmospheric Ad-  
9           ministration because of paragraph (1).

10           (4) TRANSFER.—(A) Subject to the approval of  
11           the Secretary of Defense and under terms and con-  
12           ditions specified by the Secretary, commissioned offi-  
13           cers subject to paragraph (1) may transfer to the  
14           Armed Forces under section 716 of title 10, United  
15           States Code.

16           (B) Subject to the approval of the Secretary of  
17           Transportation and under terms and conditions  
18           specified by the Secretary, commissioned officers  
19           subject to paragraph (1) may transfer to the United  
20           States Coast Guard under section 716 of title 10,  
21           United States Code.

22           (C) Subject to the approval of the Adminis-  
23           trator of Science, Oceans, and the Atmosphere and  
24           under terms and conditions specified by that Admin-  
25           istrator, commissioned officers subject to paragraph

1 (1) may be employed by the National Scientific, Oce-  
2 anic, and Atmospheric Administration as members  
3 of the civil service.

4 (5) RETIREMENT PROVISIONS.—(A) For com-  
5 missioned officers who transfer under paragraph  
6 (4)(A) to the Armed Forces, the National Scientific,  
7 Oceanic, and Atmospheric Administration shall pay  
8 into the Department of Defense Military Retirement  
9 Fund an amount, to be calculated by the Secretary  
10 of Defense in consultation with the Secretary of the  
11 Treasury, equal to the actuarial present value of any  
12 retired or retainer pay they will draw upon retire-  
13 ment, including full credit for service in the NOAA  
14 Corps. Any payment under this subparagraph shall,  
15 for purposes of paragraph (2) of section 2206(g), be  
16 considered to be an expenditure described in such  
17 paragraph.

18 (B) For commissioned officers who transfer  
19 under paragraph (4)(B) to the United States Coast  
20 Guard, full credit for service in the NOAA Corps  
21 shall be given for purposes of any annuity or other  
22 similar benefit under the retirement system for  
23 members of the United States Coast Guard, entitle-  
24 ment to which is based on the separation of such of-  
25 ficer.

1           (C)(i) For a commissioned officer who becomes  
2 employed in a civil service position pursuant to para-  
3 graph (4)(C) and thereupon becomes subject to the  
4 Federal Employees' Retirement System, the Na-  
5 tional Scientific, Oceanic, and Atmospheric Adminis-  
6 tration shall pay, on such officer's behalf—

7           (I) into the Civil Service Retirement and  
8 Disability Fund, the amounts required under  
9 clause (ii); and

10           (II) into the Government Securities Invest-  
11 ment Fund, the amount required under clause  
12 (iii).

13           (ii)(I) The amount required under this  
14 subclause is the amount of any deposit required  
15 under section 8422(e)(1) of such title 5 with respect  
16 to any prior service performed by the individual as  
17 a commissioned officer of the National Oceanic and  
18 Atmospheric Administration.

19           (II) To determine the amount required under  
20 this subclause, first determine, for each year of serv-  
21 ice with respect to which the deposit under subclause  
22 (I) relates, the product of the normal-cost percent-  
23 age for such year (as determined under the last sen-  
24 tence of this subclause) multiplied by basic pay re-  
25 ceived by the individual for any such service per-

1 formed in such year. Second, take the sum of the  
2 amounts determined for the respective years under  
3 the first sentence. Finally, subtract from such sum  
4 the amount of the deposit under subclause (I). For  
5 purposes of the first sentence, the normal-cost per-  
6 centage for any year shall be as determined for such  
7 year under the provisions of section 8423(a)(1) of  
8 title 5, United States Code, except that, in the case  
9 of any year before the first year for which any nor-  
10 mal-cost percentage was determined under such pro-  
11 visions, the normal-cost percentage for such first  
12 year shall be used.

13 (iii) The amount required under this clause is  
14 the amount by which the separation pay to which  
15 the officer would have been entitled under the sec-  
16 ond sentence of paragraph (2)(A) (assuming the  
17 conditions for receiving such separation pay have  
18 been met) exceeds the amount of the deposit under  
19 clause (ii)(I), if at all.

20 (iv)(I) Any contribution made under this sub-  
21 paragraph to the Thrift Savings Plan shall not be  
22 subject to any otherwise applicable limitation on con-  
23 tributions contained in the Internal Revenue Code of  
24 1986, and shall not be taken into account in apply-  
25 ing any such limitation to other contributions or

1 benefits under the Thrift Savings Plan, with respect  
2 to the year in which the contribution is made.

3 (II) Such plan shall not be treated as failing to  
4 meet any nondiscrimination requirement by reason  
5 of the making of such contribution.

6 (6) REPEALS.—(A) The following provisions of  
7 law are repealed:

8 (i) The Coast and Geodetic Survey Com-  
9 missioned Officers' Act of 1948 (33 U.S.C.  
10 853a–853o, 853p–853u).

11 (ii) The Act of February 16, 1929 (Chap-  
12 ter 221, section 5; 45 Stat. 1187; 33 U.S.C.  
13 852a).

14 (iii) The Act of January 19, 1942 (Chap-  
15 ter 6; 56 Stat. 6).

16 (iv) Section 9 of Public Law 87–649 (76  
17 Stat. 495).

18 (v) The Act of May 22, 1917 (Chapter 20,  
19 section 16; 40 Stat. 87; 33 U.S.C. 854 et seq.).

20 (vi) The Act of December 3, 1942 (Chap-  
21 ter 670; 56 Stat. 1038).

22 (vii) Sections 1 through 5 of Public Law  
23 91–621 (84 Stat. 1863; 33 U.S.C. 857–1 et  
24 seq.).

1 (viii) The Act of August 10, 1956 (Chapter  
2 1041, section 3; 70A Stat. 619; 33 U.S.C.  
3 857a).

4 (ix) The Act of May 18, 1920 (Chapter  
5 190, section 11; 41 Stat. 603; 33 U.S.C. 864).

6 (x) The Act of July 22, 1947 (Chapter  
7 286; 61 Stat. 400; 33 U.S.C. 873, 874).

8 (xi) The Act of August 3, 1956 (Chapter  
9 932; 70 Stat. 988; 33 U.S.C. 875, 876).

10 (xii) All other Acts inconsistent with this  
11 subsection.

12 No repeal under this subparagraph shall affect any  
13 annuity or other similar benefit payable, under any  
14 provision of law so repealed, based on the separation  
15 of any individual from the NOAA Corps or its suc-  
16 cessor on or before September 30, 1998. Any au-  
17 thority exercised by the Secretary of Commerce or  
18 his designee with respect to any such benefits shall  
19 be exercised by the Administrator of Science,  
20 Oceans, and the Atmosphere, and any authorization  
21 of appropriations relating to those benefits, which is  
22 in effect as of September 30, 1998, shall be consid-  
23 ered to have remained in effect.

24 (B) The effective date of the repeals under sub-  
25 paragraph (A) shall be October 1, 1998.



1           (C)(i) All laws relating to the retirement of  
2 commissioned officers of the Navy shall apply to  
3 commissioned officers of the former Commissioned  
4 Officers Corps of the National Oceanic and Atmos-  
5 pheric Administration and its predecessors.

6           (ii) Active service of officers of the former Com-  
7 missioned Officers Corps of the National Oceanic  
8 and Atmospheric Administration and its prede-  
9 cessors who have retired from the Commissioned Of-  
10 ficers Corps shall be deemed to be active military  
11 service in the United States Navy for purposes of all  
12 rights, privileges, immunities, and benefits provided  
13 to retired commissioned officers of the Navy by the  
14 laws and regulations of the United States and any  
15 agency thereof. In the Administration of those laws  
16 and regulations with respect to retired officers of the  
17 former Commissioned Officers Corps of the National  
18 Oceanic and Atmospheric Administration and its  
19 predecessors, the authority of the Secretary of the  
20 Navy shall be exercised by the Administrator of  
21 Science, Oceans, and the Atmosphere.

22           (iii) For purposes of this subparagraph, the  
23 term “its predecessors” means the former Commis-  
24 sioned Officers Corps of the Environmental Science  
25 Services Administration and the former Commis-

1 sioned Officers Corps of the Coast and Geodetic  
2 Survey.

3 (7) CREDITABILITY OF NOAA SERVICE FOR  
4 PURPOSES RELATING TO REDUCTIONS IN FORCE.—

5 A commissioned officer who is separated from the  
6 active list of the National Oceanic and Atmospheric  
7 Administration or its successor because of paragraph  
8 (1) shall, for purposes of any subsequent reduction  
9 in force, receive credit for any period of service per-  
10 formed as such an officer before separation from  
11 such list to the same extent and in the same manner  
12 as if it had been a period of active service in the  
13 Armed Forces.

14 (8) ABOLITION.—The Office of the National  
15 Oceanic and Atmospheric Administration Corps of  
16 Operations or its successor and the Commissioned  
17 Personnel Center are abolished effective September  
18 30, 1998.

19 (h) NOAA FLEET.—

20 (1) SERVICE CONTRACTS.—Notwithstanding  
21 any other provision of law and subject to the avail-  
22 ability of appropriations, the Administrator of  
23 Science, Oceans, and the Atmosphere shall enter  
24 into contracts, including multiyear contracts, subject  
25 to paragraph (3), for the use of vessels to conduct

1 oceanographic research and fisheries research, mon-  
2 itoring, enforcement, and management, and to ac-  
3 quire other data necessary to carry out the missions  
4 of the National Scientific, Oceanic, and Atmospheric  
5 Administration. The Administrator of Science,  
6 Oceans, and the Atmosphere shall enter into these  
7 contracts unless—

8 (A) the cost of the contract is more than  
9 the cost (including the cost of vessel operation,  
10 maintenance, and all personnel) to the National  
11 Scientific, Oceanic, and Atmospheric Adminis-  
12 tration of obtaining those services on vessels of  
13 the National Scientific, Oceanic, and Atmos-  
14 pheric Administration;

15 (B) the contract is for more than 7 years;

16 or

17 (C) the data is acquired through a vessel  
18 agreement pursuant to paragraph (4).

19 (2) VESSELS.—The Administrator of Science,  
20 Oceans, and the Atmosphere may not enter into any  
21 contract for the construction, lease-purchase, up-  
22 grade, or service life extension of any vessel.

23 (3) MULTIYEAR CONTRACTS.—

24 (A) IN GENERAL.—Subject to subpara-  
25 graphs (B) and (C), and notwithstanding sec-

1           tion 1341 of title 31, United States Code, and  
2           section 11 of title 41, United States Code, the  
3           Administrator of Science, Oceans, and the At-  
4           mosphere may acquire data under multiyear  
5           contracts.

6           (B) REQUIRED FINDINGS.—The Adminis-  
7           trator of Science, Oceans, and the Atmosphere  
8           may not enter into a contract pursuant to this  
9           paragraph unless such Administrator finds with  
10          respect to that contract that there is a reason-  
11          able expectation that throughout the con-  
12          templated contract period the Administrator  
13          will request from Congress funding for the con-  
14          tract at the level required to avoid contract ter-  
15          mination.

16          (C) REQUIRED PROVISIONS.—The Adminis-  
17          trator of Science, Oceans, and the Atmosphere  
18          may not enter into a contract pursuant to this  
19          paragraph unless the contract includes—

20                  (i) a provision under which the obliga-  
21                  tion of the United States to make pay-  
22                  ments under the contract for any fiscal  
23                  year is subject to the availability of appro-  
24                  priations provided in advance for those  
25                  payments;

1 (ii) a provision that specifies the term  
2 of effectiveness of the contract; and

3 (iii) appropriate provisions under  
4 which, in case of any termination of the  
5 contract before the end of the term speci-  
6 fied pursuant to clause (ii), the United  
7 States shall only be liable for the lesser  
8 of—

9 (I) an amount specified in the  
10 contract for such a termination; or

11 (II) amounts that were appro-  
12 priated before the date of the termi-  
13 nation for the performance of the con-  
14 tract or for procurement of the type  
15 of acquisition covered by the contract  
16 and are unobligated on the date of the  
17 termination.

18 (4) VESSEL AGREEMENTS.—The Administrator  
19 of Science, Oceans, and the Atmosphere shall use ex-  
20 cess capacity of University National Oceanographic  
21 Laboratory System vessels where appropriate and  
22 may enter into memoranda of agreement with the  
23 operators of these vessels to carry out this require-  
24 ment.

1           (5) TRANSFER OF EXCESS VESSELS.—The Ad-  
2           ministrators of Science, Oceans, and the Atmosphere  
3           shall transfer any vessels over 1,500 gross tons that  
4           are excess to the needs of the National Scientific,  
5           Oceanic, and Atmospheric Administration to the Na-  
6           tional Defense Reserve Fleet. Notwithstanding any  
7           other provision of law, these vessels may be scrapped  
8           in accordance with section 510(i) of the Merchant  
9           Marine Act, 1936 (46 App. U.S.C. 1160(i)).

10          (i) NATIONAL MARINE FISHERIES SERVICE.—(1)  
11          There are transferred to the National Scientific, Oceanic,  
12          and Atmospheric Administration all functions that on the  
13          day before the effective date of this section were author-  
14          ized by law to be performed by the National Marine Fish-  
15          eries Service.

16          (2) Notwithstanding any other provision of law, the  
17          National Marine Fisheries Service may not affect on-land  
18          activities under the Endangered Species Act of 1973 for  
19          salmon recovery in the State of Idaho (16 U.S.C. 1531  
20          et seq.).

21          (j) NATIONAL OCEAN SERVICE.—Except as otherwise  
22          provided in this title, there are transferred to the National  
23          Scientific, Oceanic, and Atmospheric Administration all  
24          functions and assets of the National Oceanic and Atmos-  
25          pheric Administration that on the date immediately before

1 the effective date of this section were authorized to be per-  
2 formed by the National Ocean Service (including the  
3 Coastal Ocean Program).

4 (k) TRANSFER OF COASTAL NONPOINT POLLUTION  
5 CONTROL FUNCTIONS.—There are transferred to the Ad-  
6 ministrator of the Environmental Protection Agency the  
7 functions under section 6217 of the Omnibus Budget Rec-  
8 onciliation Act of 1990 (16 U.S.C. 1455b) that on the day  
9 before the effective date of this section were vested in the  
10 Secretary of Commerce.

11 **SEC. 2206. NATIONAL SCIENTIFIC, OCEANIC, AND ATMOS-**  
12 **PHERIC ADMINISTRATION.**

13 (a) ESTABLISHMENT.—There is established as an  
14 independent agency in the Executive Branch the National  
15 Scientific, Oceanic, and Atmospheric Administration (in  
16 this section referred to as the “NSOAA”). The NSOAA,  
17 and all functions and offices transferred to it under this  
18 title, shall be administered under the supervision and di-  
19 rection of an Administrator of Science, Oceans, and the  
20 Atmosphere. The Administrator of Science, Oceans, and  
21 the Atmosphere shall be appointed by the President, by  
22 and with the advice and consent of the Senate, and shall  
23 receive basic pay at the rate payable for level II of the  
24 Executive Schedule under section 5313 of title 5, United  
25 States Code. The Administrator of Science, Oceans, and

1 the Atmosphere shall additionally perform the functions  
2 previously performed by the Administrator of the National  
3 Oceanic and Atmospheric Administration.

4 (b) PRINCIPAL OFFICER.—There shall be in the  
5 NSOAA, on the transfer of functions and offices under  
6 this title, a Director of the National Bureau of Standards,  
7 who shall be appointed by the President, by and with the  
8 advice and consent of the Senate, and who shall receive  
9 basic pay at the rate payable for level IV of the Executive  
10 Schedule under section 5315 of title 5, United States  
11 Code.

12 (c) ADDITIONAL OFFICERS.—There shall be in the  
13 NSOAA—

14 (1) a Chief Financial Officer of the NSOAA, to  
15 be appointed by the President, by and with the ad-  
16 vice and consent of the Senate;

17 (2) a Chief of External Affairs, to be appointed  
18 by the President, by and with the advice and consent  
19 of the Senate;

20 (3) a General Counsel, to be appointed by the  
21 President, by and with the advice and consent of the  
22 Senate; and

23 (4) an Inspector General, to be appointed in ac-  
24 cordance with the Inspector General Act of 1978.



1 Each Officer appointed under this subsection shall receive  
2 basic pay at the rate payable for level IV of the Executive  
3 Schedule under section 5315 of title 5, United States  
4 Code.

5 (d) TRANSFER OF FUNCTIONS AND OFFICES.—Ex-  
6 cept as otherwise provided in this title, there are trans-  
7 ferred to the NSOAA—

8 (1) the functions and offices of the National  
9 Oceanic and Atmospheric Administration, as pro-  
10 vided in section 2205;

11 (2) the National Bureau of Standards, along  
12 with its functions and offices, as provided in section  
13 2202; and

14 (3) the Office of Space Commerce, along with  
15 its functions and offices.

16 (e) ELIMINATION OF POSITIONS.—The Adminis-  
17 trator of Science, Oceans, and the Atmosphere may elimi-  
18 nate positions that are no longer necessary because of the  
19 termination of functions under this section, section 2202,  
20 and section 2205.

21 (f) AGENCY TERMINATIONS.—

22 (1) TERMINATIONS.—On the date specified in  
23 section 2208(a), the following shall terminate:

1 (A) The Office of the Deputy Adminis-  
2 trator and Assistant Secretary of the National  
3 Oceanic and Atmospheric Administration.

4 (B) The Office of the Deputy Under Sec-  
5 retary of the National Oceanic and Atmospheric  
6 Administration.

7 (C) The Office of the Chief Scientist of the  
8 National Oceanic and Atmospheric Administra-  
9 tion.

10 (D) The position of Deputy Assistant Sec-  
11 retary for Oceans and Atmosphere.

12 (E) The position of Deputy Assistant Sec-  
13 retary for International Affairs.

14 (F) Any office of the National Oceanic and  
15 Atmospheric Administration or the National  
16 Bureau of Standards whose primary purpose is  
17 to perform high performance computing com-  
18 munications, legislative, personnel, public rela-  
19 tions, budget, constituent, intergovernmental,  
20 international, policy and strategic planning,  
21 sustainable development, administrative, finan-  
22 cial, educational, legal and coordination func-  
23 tions. These functions shall, as necessary, be  
24 performed only by officers described in sub-  
25 section (c).

1 (G) The position of Associate Director of  
2 the National Institute of Standards and Tech-  
3 nology.

4 (2) TERMINATION OF EXECUTIVE SCHEDULE  
5 POSITIONS.—Each position which was expressly au-  
6 thorized by law, or the incumbent of which was au-  
7 thorized to receive compensation at the rate pre-  
8 scribed for levels I through V of the Executive  
9 Schedule under sections 5312 through 5315 of title  
10 5, United States Code, in an office terminated pur-  
11 suant to this section, section 2202, and section 2205  
12 shall also terminate.

13 (g) FUNDING REDUCTIONS RESULTING FROM REOR-  
14 GANIZATION.—

15 (1) FUNDING REDUCTIONS.—Notwithstanding  
16 the transfer of functions under this subtitle, the  
17 total amount obligated or expended by the United  
18 States in performing all functions vested in the Na-  
19 tional Scientific, Oceanic, and Atmospheric Adminis-  
20 tration pursuant to this subtitle shall not exceed—

21 (A) for the first fiscal year that begins  
22 after the abolishment date specified in section  
23 2101(c), 75 percent of the total amount appro-  
24 priated for fiscal year 1995 for the performance  
25 of all functions vested in the National Oceanic

1 and Atmospheric Administration, the National  
2 Institute of Standards and Technology, and the  
3 Office of Space Commerce, except for those  
4 functions transferred under section 2205 to  
5 agencies or departments other than the Na-  
6 tional Scientific, Oceanic, and Atmospheric Ad-  
7 ministration; and

8 (B) for the second fiscal year that begins  
9 after the abolishment date specified in section  
10 2101(c) and for each fiscal year thereafter, 65  
11 percent of the total amount appropriated for  
12 fiscal year 1995 for the performance of all func-  
13 tions vested in the National Oceanic and At-  
14 mospheric Administration, the National Insti-  
15 tute of Standards and Technology, and the Of-  
16 fice of Space Commerce, except for those func-  
17 tions transferred under section 22045 to agen-  
18 cies or departments other than the National  
19 Scientific, Oceanic, and Atmospheric Adminis-  
20 tration.

21 (2) EXCEPTION.—Paragraph (1) shall not  
22 apply to obligations or expenditures incurred as a di-  
23 rect consequence of the termination, transfer, or  
24 other disposition of functions described in paragraph  
25 (1) pursuant to this subtitle.

1           (3) RULE OF CONSTRUCTION.—This subsection  
2 shall take precedence over any other provision of law  
3 unless such provision explicitly refers to this section  
4 and makes an exception to it.

5           (4) RESPONSIBILITY OF NATIONAL SCIENTIFIC,  
6 OCEANIC, AND ATMOSPHERIC ADMINISTRATION.—  
7 The National Scientific, Oceanic, and Atmospheric  
8 Administration, in consultation with the Director of  
9 the Office of Management and Budget, shall make  
10 such modifications in programs as are necessary to  
11 carry out the reductions in appropriations set forth  
12 in subparagraphs (A) and (B) of paragraph (1).

13           (5) RESPONSIBILITIES OF THE DIRECTOR OF  
14 THE OFFICE OF MANAGEMENT AND BUDGET.—The  
15 Director of the Office of Management and Budget  
16 shall include in each report under sections 2105(a)  
17 and (b) a description of actions taken to comply with  
18 the requirements of this subsection.

19 **SEC. 2207. MISCELLANEOUS TERMINATIONS; MORATORIUM**  
20 **ON PROGRAM ACTIVITIES.**

21           (a) TERMINATIONS.—The following agencies and pro-  
22 grams of the Department of Commerce are terminated:

23           (1) The Minority Business Development Admin-  
24 istration.

1           (2) The United States Travel and Tourism Ad-  
2           ministration.

3           (3) The programs and activities of the National  
4           Telecommunications and Information Administration  
5           referred to in section 2204(a).

6           (4) The Advanced Technology Program under  
7           section 28 of the National Institute of Standards  
8           and Technology Act (15 U.S.C. 278n).

9           (5) The Manufacturing Extension Programs  
10          under sections 25 and 26 of the National Institute  
11          of Standards and Technology Act (15 U.S.C. 278k  
12          and 278l).

13          (6) The National Institute of Standards and  
14          Technology METRIC Program.

15          (b) MORATORIUM ON PROGRAM ACTIVITIES.—The  
16          authority to make grants, enter into contracts, provide as-  
17          sistance, incur obligations, or provide commitments (in-  
18          cluding any enlargement of existing obligations or commit-  
19          ments, except if required by law) with respect to the agen-  
20          cies and programs described in subsection (a) is termi-  
21          nated effective on the date of the enactment of this title.

22          **SEC. 2208. EFFECTIVE DATE.**

23          (a) IN GENERAL.—Except as provided in subsection  
24          (b), this subtitle shall take effect on the abolishment date  
25          specified in section 2101(c).

1 (b) PROVISIONS EFFECTIVE ON DATE OF ENACT-  
2 MENT.—The following provisions of this subtitle shall take  
3 effect on the date of the enactment of this Act:

4 (1) Section 2201.

5 (2) Section 2205(g), except as otherwise pro-  
6 vided in that section.

7 (3) Section 2207(b).

8 (4) This section.

9 **Subtitle C—Office of United States**  
10 **Trade Representative**

11 **CHAPTER 1—GENERAL PROVISIONS**

12 **SEC. 2301. DEFINITIONS.**

13 For purposes of this subtitle—

14 (1) the term “Office” means the Office of the  
15 United States Trade Representative;

16 (2) the term “Federal agency” has the meaning  
17 given to the term “agency” by section 551(1) of title  
18 5, United States Code; and

19 (3) the term “USTR” means the United States  
20 Trade Representative as provided for under section  
21 2311.

1    **CHAPTER 2—OFFICE OF UNITED STATES**  
2                   **TRADE REPRESENTATIVE**  
3                   **Subchapter A—Establishment**

4    **SEC. 2311. ESTABLISHMENT OF THE OFFICE.**

5           (a) **IN GENERAL.**—The Office of the United States  
6 Trade Representative is established as an independent es-  
7 tablishment in the executive branch of Government as de-  
8 fined under section 104 of title 5, United States Code.  
9 The United States Trade Representative shall be the head  
10 of the Office and shall be appointed by the President, by  
11 and with the advice and consent of the Senate.

12          (b) **AMBASSADOR STATUS.**—The USTR shall have  
13 the rank and status of Ambassador and shall represent  
14 the United States in all trade negotiations conducted by  
15 the Office.

16          (c) **CONTINUED SERVICE OF CURRENT USTR.**—The  
17 individual serving as United States Trade Representative  
18 on the date immediately preceding the effective date of  
19 this subtitle may continue to serve as USTR under sub-  
20 section (a).

21          (d) **SUCCESSOR TO THE DEPARTMENT OF COM-**  
22 **MERCE.**—The Office shall be the successor to the Depart-  
23 ment of Commerce for purposes of protocol.



1 **SEC. 2312. FUNCTIONS OF THE USTR.**

2 (a) IN GENERAL.—In addition to the functions trans-  
3 ferred to the USTR by this subtitle, such other functions  
4 as the President may assign or delegate to the USTR, and  
5 such other functions as the USTR may, after the effective  
6 date of this subtitle, be required to carry out by law, the  
7 USTR shall—

8 (1) serve as the principal advisor to the Presi-  
9 dent on international trade policy and advise the  
10 President on the impact of other policies of the  
11 United States Government on international trade;

12 (2) exercise primary responsibility, with the ad-  
13 vice of the interagency organization established  
14 under section 242 of the Trade Expansion Act of  
15 1962, for developing and implementing international  
16 trade policy, including commodity matters and, to  
17 the extent related to international trade policy, di-  
18 rect investment matters and, in exercising such re-  
19 sponsibility, advance and implement, as the primary  
20 mandate of the Office, the goals of the United  
21 States to—

22 (A) maintain United States leadership in  
23 international trade liberalization and expansion  
24 efforts;

25 (B) reinvigorate the ability of the United  
26 States economy to compete in international

1 markets and to respond flexibly to changes in  
2 international competition; and

3 (C) expand United States participation in  
4 international trade through aggressive pro-  
5 motion and marketing of goods and services  
6 that are products of the United States;

7 (3) exercise lead responsibility for the conduct  
8 of international trade negotiations, including nego-  
9 tiations relating to commodity matters and, to the  
10 extent that such negotiations are related to inter-  
11 national trade, direct investment negotiations;

12 (4) exercise lead responsibility for the establish-  
13 ment of a national export strategy, including policies  
14 designed to implement such strategy;

15 (5) with the advice of the interagency organiza-  
16 tion established under section 242 of the Trade Ex-  
17 pansion Act of 1962, issue policy guidance to other  
18 Federal agencies on international trade, commodity,  
19 and direct investment functions to the extent nec-  
20 essary to assure the coordination of international  
21 trade policy;

22 (6) seek and promote new opportunities for  
23 United States products and services to compete in  
24 the world marketplace;

1           (7) assist small businesses in developing export  
2 markets;

3           (8) enforce the laws of the United States relat-  
4 ing to trade;

5           (9) analyze economic trends and developments;

6           (10) report directly to the Congress—

7                 (A) on the administration of, and matters  
8 pertaining to, the trade agreements program  
9 under the Omnibus Trade and Competitiveness  
10 Act of 1988, the Trade Act of 1974, the Trade  
11 Expansion Act of 1962, section 350 of the Tar-  
12 iff Act of 1930, and any other provision of law  
13 enacted after this Act; and

14                 (B) with respect to other important issues  
15 pertaining to international trade;

16           (11) keep each official adviser to the United  
17 States delegations to international conferences,  
18 meetings, and negotiation sessions relating to trade  
19 agreements who is appointed from the Committee on  
20 Finance of the Senate or the Committee on Ways  
21 and Means of the House of Representatives under  
22 section 161 of the Trade Act of 1974 currently in-  
23 formed on United States negotiating objectives with  
24 respect to trade agreements, the status of negotia-  
25 tions in progress with respect to such agreements,

1 and the nature of any changes in domestic law or  
2 the administration thereof which the USTR may  
3 recommend to the Congress to carry out any trade  
4 agreement;

5 (12) consult and cooperate with State and local  
6 governments and other interested parties on inter-  
7 national trade matters of interest to such govern-  
8 ments and parties, and to the extent related to inter-  
9 national trade matters, on investment matters, and,  
10 when appropriate, hold informal public hearings;

11 (13) serve as the principal advisor to the Presi-  
12 dent on Government policies designed to contribute  
13 to enhancing the ability of United States industry  
14 and services to compete in international markets;

15 (14) develop recommendations for national  
16 strategies and specific policies intended to enhance  
17 the productivity and international competitiveness of  
18 United States industries;

19 (15) serve as the principal advisor to the Presi-  
20 dent in identifying and assessing the consequences  
21 of any Government policies that adversely affect, or  
22 have the potential to adversely affect, the inter-  
23 national competitiveness of United States industries  
24 and services;

1           (16) promote cooperation between business,  
2           labor, and Government to improve industrial per-  
3           formance and the ability of United States industries  
4           to compete in international markets and to facilitate  
5           consultation and communication between the Gov-  
6           ernment and the private sector about domestic in-  
7           dustrial performance and prospects and the perform-  
8           ance and prospects of foreign competitors; and

9           (17) monitor and enforce foreign government  
10          compliance with international trade agreements to  
11          protect United States interests.

12          (b) INTERAGENCY ORGANIZATION.—The USTR shall  
13          be the chairperson of the interagency organization estab-  
14          lished under section 242 of the Trade Expansion Act of  
15          1962.

16          (c) NATIONAL SECURITY COUNCIL.—The USTR  
17          shall be a member of the National Security Council.

18          (d) ADVISORY COUNCIL.—The USTR shall be Dep-  
19          uty Chairman of the National Advisory Council on Inter-  
20          national Monetary and Financial Policies established  
21          under Executive Order 11269, issued February 14, 1966.

22          (e) AGRICULTURE.—(1) The USTR shall consult  
23          with the Secretary of Agriculture or the designee of the  
24          Secretary of Agriculture on all matters that potentially in-  
25          volve international trade in agricultural products.

1           (2) If an international meeting for negotiation or con-  
2 sultation includes discussion of international trade in agri-  
3 cultural products, the USTR or the designee of the USTR  
4 shall be Chairman of the United States delegation to such  
5 meeting and the Secretary of Agriculture or the designee  
6 of such Secretary shall be Vice Chairman. The provisions  
7 of this paragraph shall not limit the authority of the  
8 USTR under subsection (h) to assign to the Secretary of  
9 Agriculture responsibility for the conduct of, or participa-  
10 tion in, any trade negotiation or meeting.

11           (f) TRADE PROMOTION.—The USTR shall be the  
12 chairperson of the Trade Promotion Coordinating Com-  
13 mittee.

14           (g) NATIONAL ECONOMIC COUNCIL.—The USTR  
15 shall be a member of the National Economic Council es-  
16 tablished under Executive Order No. 12835, issued Janu-  
17 ary 25, 1993.

18           (h) INTERNATIONAL TRADE NEGOTIATIONS.—Ex-  
19 cept where expressly prohibited by law, the USTR, at the  
20 request or with the concurrence of the head of any other  
21 Federal agency, may assign the responsibility for conduct-  
22 ing or participating in any specific international trade ne-  
23 gotiation or meeting to the head of such agency whenever  
24 the USTR determines that the subject matter of such

1 international trade negotiation is related to the functions  
2 carried out by such agency.

3 **Subchapter B—Officers**

4 **SEC. 2321. DEPUTY ADMINISTRATOR OF THE OFFICE.**

5 (a) ESTABLISHMENT.—There shall be in the Office  
6 the Deputy Administrator of the Office of the United  
7 States Trade Representative, who shall be appointed by  
8 the President, by and with the advice and consent of the  
9 Senate.

10 (b) ABSENCE, DISABILITY, OR VACANCY OF  
11 USTR.—The Deputy Administrator of the Office of the  
12 United States Trade Representative shall act for and exer-  
13 cise the functions of the USTR during the absence or dis-  
14 ability of the USTR or in the event the office of the USTR  
15 becomes vacant. The Deputy Administrator shall act for  
16 and exercise the functions of the USTR until the absence  
17 or disability of the USTR no longer exists or a successor  
18 to the USTR has been appointed by the President and  
19 confirmed by the Senate.

20 (c) FUNCTIONS OF DEPUTY ADMINISTRATOR.—The  
21 Deputy Administrator of the Office of the United States  
22 Trade Representative shall exercise all functions, under  
23 the direction of the USTR, transferred to or established  
24 in the Office, except those functions exercised by the Dep-  
25 uty United States Trade Representatives, the Director

1 General for Export Promotion, the Inspector General, and  
2 the General Counsel of the Office, as provided by this sub-  
3 title.

4 **SEC. 2322. DEPUTY UNITED STATES TRADE REPRESENTA-**  
5 **TIVES.**

6 (a) ESTABLISHMENT.—There shall be in the Office  
7 2 Deputy United States Trade Representatives, who shall  
8 be appointed by the President, by and with the advice and  
9 consent of the Senate. The Deputy United States Trade  
10 Representatives shall exercise all functions under the di-  
11 rection of the USTR, and shall include—

12 (1) the Deputy United States Trade Represent-  
13 ative for Negotiations; and

14 (2) the Deputy United States Trade Represent-  
15 ative to the World Trade Organization.

16 (b) FUNCTIONS OF DEPUTY UNITED STATES TRADE  
17 REPRESENTATIVES.—(1) The Deputy United States  
18 Trade Representative for Negotiations shall exercise all  
19 functions transferred under section 2331 and shall have  
20 the rank and status of Ambassador.

21 (2) The Deputy United States Trade Representative  
22 to the World Trade Organization shall exercise all func-  
23 tions relating to representation to the World Trade Orga-  
24 nization and shall have the rank and status of Amba-  
25 sador.



1 **SEC. 2323. ASSISTANT ADMINISTRATORS.**

2 (a) ESTABLISHMENT.—There shall be in the Office  
3 3 Assistant Administrators, who shall be appointed by the  
4 President, by and with the advice and consent of the Sen-  
5 ate. The Assistant Administrators shall exercise all func-  
6 tions under the direction of the Deputy Administrator of  
7 the Office of the United States Trade Representative and  
8 include—

9 (1) the Assistant Administrator for Export Ad-  
10 ministration;

11 (2) the Assistant Administrator for Import Ad-  
12 ministration; and

13 (3) the Assistant Administrator for Trade and  
14 Policy Analysis.

15 (b) FUNCTIONS OF ASSISTANT ADMINISTRATORS.—

16 (1) The Assistant Administrator for Export Administra-  
17 tion shall exercise all functions transferred under section  
18 2332(1)(C).

19 (2) The Assistant Administrator for Import Adminis-  
20 tration shall exercise all functions transferred under sec-  
21 tion 2332(1)(D).

22 (3) The Assistant Administrator for Trade and Policy  
23 Analysis shall exercise all functions transferred under sec-  
24 tion 2332(1)(B) and all functions transferred under sec-  
25 tion 2332(2).

1 **SEC. 2324. DIRECTOR GENERAL FOR EXPORT PROMOTION.**

2 (a) ESTABLISHMENT.—There shall be a Director  
3 General for Export Promotion, who shall be appointed by  
4 the President, by and with the advice and consent of the  
5 Senate.

6 (b) FUNCTIONS.—The Director General for Export  
7 Promotion shall exercise, under the direction of the  
8 USTR, all functions transferred under sections  
9 2332(1)(A) (relating to functions of the United States and  
10 Foreign Commercial Service) and 2333 and shall have the  
11 rank and status of Ambassador.

12 **SEC. 2325. GENERAL COUNSEL.**

13 There shall be in the Office a General Counsel, who  
14 shall be appointed by the President, by and with the advice  
15 and consent of the Senate. The General Counsel shall pro-  
16 vide legal assistance to the USTR concerning the activi-  
17 ties, programs, and policies of the Office.

18 **SEC. 2326. INSPECTOR GENERAL.**

19 There shall be in the Office an Inspector General who  
20 shall be appointed in accordance with the Inspector Gen-  
21 eral Act of 1978, as amended by section 2371(b) of this  
22 Act.

23 **SEC. 2327. CHIEF FINANCIAL OFFICER.**

24 There shall be in the Office a Chief Financial Officer  
25 who shall be appointed in accordance with section 901 of  
26 title 31, United States Code, as amended by section

1 2371(e) of this Act. The Chief Financial Officer shall per-  
2 form all functions prescribed by the Deputy Administrator  
3 of the Office of the United States Trade Representative,  
4 under the direction of the Deputy Administrator.

5 **Subchapter C—Transfers to the Office**

6 **SEC. 2331. OFFICE OF THE UNITED STATES TRADE REP-**  
7 **RESENTATIVE.**

8 There are transferred to the USTR all functions of  
9 the United States Trade Representative and the Office of  
10 the United States Trade Representative in the Executive  
11 Office of the President and all functions of any officer or  
12 employee of such Office.

13 **SEC. 2332. TRANSFERS FROM THE DEPARTMENT OF COM-**  
14 **MERCE.**

15 There are transferred to the USTR the following  
16 functions:

17 (1) All functions of, and all functions performed  
18 under the direction of, the following officers and em-  
19 ployees of the Department of Commerce:

20 (A) The Under Secretary of Commerce for  
21 International Trade, and the Director General  
22 of the United States and Foreign Commercial  
23 Service, relating to all functions exercised by  
24 the Service.

1           (B) The Assistant Secretary of Commerce  
2           for International Economic Policy and the As-  
3           sistant Secretary of Commerce for Trade Devel-  
4           opment.

5           (C) The Under Secretary of Commerce for  
6           Export Administration.

7           (D) The Assistant Secretary of Commerce  
8           for Import Administration.

9           (2) All functions of the Secretary of Commerce  
10          relating to the National Trade Data Bank.

11          (3) All functions of the Secretary of Commerce  
12          under the Tariff Act of 1930, the Uruguay Round  
13          Agreements Act, the Trade Act of 1974, and other  
14          trade-related Acts for which responsibility is not oth-  
15          erwise assigned under this subtitle.

16 **SEC. 2333. TRADE AND DEVELOPMENT AGENCY.**

17          There are transferred to the Director General for Ex-  
18          port Promotion all functions of the Director of the Trade  
19          and Development Agency. There are transferred to the Of-  
20          fice of the Director General for Export Promotion all func-  
21          tions of the Trade and Development Agency.

22 **SEC. 2334. EXPORT-IMPORT BANK.**

23          (a) IN GENERAL.—(1) There are transferred to the  
24          USTR all functions of the Secretary of Commerce relating  
25          to the Export-Import Bank of the United States.

1           (2) Section 3(c)(1) of the Export-Import Bank Act  
2 of 1945 (12 U.S.C. 635a(c)(1)) is amended to read as fol-  
3 lows:

4           “(c)(1) There shall be a Board of Directors of the  
5 Bank consisting of the United States Trade Representa-  
6 tive (who shall serve as Chairman), the President of the  
7 Export-Import Bank of the United States (who shall serve  
8 as Vice Chairman), the first Vice President, and 2 addi-  
9 tional persons appointed by the President of the United  
10 States, by and with the advice and consent of the Sen-  
11 ate.”.

12           (b) EX OFFICIO MEMBER OF EXPORT-IMPORT BANK  
13 BOARD OF DIRECTORS.—The Director General for Export  
14 Promotion shall serve as an ex officio nonvoting member  
15 of the Board of Directors of the Export-Import Bank.

16           (c) AMENDMENTS TO RELATED BANKING AND  
17 TRADE ACTS.—Section 2301(h) of the Omnibus Trade  
18 and Competitiveness Act of 1988 (15 U.S.C. 4721(h)) is  
19 amended to read as follows:

20           “(h) ASSISTANCE TO EXPORT-IMPORT BANK.—The  
21 Commercial Service shall provide such services as the Di-  
22 rector General for Export Promotion of the Office of the  
23 United States Trade Representative determines necessary  
24 to assist the Export-Import Bank of the United States to

1 carry out the lending, loan guarantee, insurance, and  
2 other activities of the Bank.”.

3 **SEC. 2335. OVERSEAS PRIVATE INVESTMENT CORPORA-**  
4 **TION.**

5 (a) BOARD OF DIRECTORS.—The second and third  
6 sentences of section 233(b) of the Foreign Assistance Act  
7 of 1961 (22 U.S.C. 2193(b)) are amended to read as fol-  
8 lows: “The United States Trade Representative shall be  
9 the Chairman of the Board. The Administrator of the  
10 Agency for International Development (who shall serve as  
11 Vice Chairman) shall serve on the Board.”.

12 (b) EX OFFICIO MEMBER OF OVERSEAS PRIVATE IN-  
13 VESTMENT CORPORATION BOARD OF DIRECTORS.—The  
14 Director General for Export Promotion shall serve as an  
15 ex officio nonvoting member of the Board of Directors of  
16 the Overseas Private Investment Corporation.

17 **SEC. 2336. CONSOLIDATION OF EXPORT PROMOTION AND**  
18 **FINANCING ACTIVITIES.**

19 (a) SUBMISSION OF PLAN.—Within 180 days after  
20 the date of the enactment of this Act, the President shall  
21 transmit to the Congress a comprehensive plan to consoli-  
22 date Federal nonagricultural export promotion activities  
23 and export financing activities and to transfer those func-  
24 tions to the Office. The plan shall provide for—

1           (1) the elimination of the overlap and duplica-  
2           tion among all Federal nonagricultural export pro-  
3           motion activities and export financing activities;

4           (2) a unified budget for Federal nonagricultural  
5           export promotion activities which eliminates funding  
6           for the areas of overlap and duplication identified  
7           under paragraph (1); and

8           (3) a long-term agenda for developing better co-  
9           operation between local, State and Federal programs  
10          and activities designed to stimulate or assist United  
11          States businesses in exporting nonagricultural goods  
12          or services that are products of the United States,  
13          including sharing of facilities, costs, and export mar-  
14          ket research data.

15          (b) PLAN ELEMENTS.—The plan under subsection  
16 (a) shall—

17           (1) place all Federal nonagricultural export pro-  
18           motion activities and export financing activities with-  
19           in the Office;

20           (2) provide clear authority for the USTR to use  
21           the expertise and assistance of other United States  
22           Government agencies;

23           (3) achieve an overall 25 percent reduction in  
24           the amount of funding for all Federal non-

1 agricultural export promotion activities within 2  
2 years after the enactment of this Act;

3 (4) include any functions of the Department of  
4 Commerce not transferred by this subtitle, or of  
5 other Federal departments the transfer of which to  
6 the Office would be necessary to the competitiveness  
7 of the United States in international trade; and

8 (5) assess the feasibility and potential savings  
9 resulting from—

10 (A) the consolidation of the Export-Import  
11 Bank of the United States and the Overseas  
12 Private Investment Corporation;

13 (B) the consolidation of the Boards of Di-  
14 rectors of the Export-Import Bank and the  
15 Overseas Private Investment Corporation; and

16 (C) the consolidation of the Trade and De-  
17 velopment Agency with the consolidations under  
18 subparagraphs (A) and (B).

19 (c) DEFINITION.—As used in this section, the term  
20 “Federal nonagricultural export promotion activities”  
21 means all programs or activities of any department or  
22 agency of the Federal Government (including, but not lim-  
23 ited to, departments and agencies with representatives on  
24 the Trade Promotion Coordinating Committee established  
25 under section 2312 of the Export Enhancement Act of



1 1988 (15 U.S.C. 4727)) that are designed to stimulate  
2 or assist United States businesses in exporting non-  
3 agricultural goods or services that are products of the  
4 United States, including trade missions.

5 **SEC. 2337. ADDITIONAL TRADE FUNCTIONS.**

6 (a) TERMINATION OF AUTHORIZATIONS OF APPRO-  
7 PRIATIONS.—

8 (1) NAFTA SECRETARIAT.—Section 105(b) of  
9 the North American Free Trade Agreement Imple-  
10 mentation Act (19 U.S.C. 3315(b)) is amended by  
11 striking “each fiscal year after fiscal year 1993” and  
12 inserting “each of fiscal years 1994 and 1995”.

13 (2) BORDER ENVIRONMENT COOPERATION COM-  
14 MISSION.—Section 533(a)(2) of the North American  
15 Free Trade Agreement Implementation Act (19  
16 U.S.C. 3473(a)(2)) is amended by striking “and  
17 each fiscal year thereafter” and inserting “fiscal  
18 year 1995”.

19 (b) FUNCTIONS RELATED TO TEXTILE AGREE-  
20 MENTS.—

21 (1) FUNCTIONS OF CITA.—(A) Subject to sub-  
22 paragraph (B), those functions delegated to the  
23 Committee for the Implementation of Textile Agree-  
24 ments established under Executive Order 11651 (7

1 U.S.C. 1854 note) (hereafter in this subsection re-  
2 ferred to as “CITA”) are transferred to the USTR.

3 (B) Those functions delegated to CITA that re-  
4 late to the assessment of the impact of textile im-  
5 ports on domestic industry are transferred to the  
6 International Trade Commission. The International  
7 Trade Commission shall make a determination pur-  
8 suant to the preceding sentence within 60 days after  
9 receiving a complaint or request for an investigation.

10 (2) ABOLITION OF CITA.—CITA is abolished.

## 11 **Subchapter D—Administrative Provisions**

### 12 **SEC. 2341. PERSONNEL PROVISIONS.**

13 (a) APPOINTMENTS.—The USTR may appoint and  
14 fix the compensation of such officers and employees, in-  
15 cluding investigators, attorneys, and administrative law  
16 judges, as may be necessary to carry out the functions  
17 of the USTR and the Office. Except as otherwise provided  
18 by law, such officers and employees shall be appointed in  
19 accordance with the civil service laws and their compensa-  
20 tion fixed in accordance with title 5, United States Code.

21 (b) POSITIONS ABOVE GS–15.—(1) At the request  
22 of the USTR, the Director of the Office of Personnel Man-  
23 agement shall, under section 5108 of title 5, United States  
24 Code, provide for the establishment in a grade level above  
25 GS–15 of the General Service, and in the Senior Executive

1 Service, of a number of positions in the Office equal to  
2 the number of positions in that grade level which were  
3 used primarily for the performance of functions and of-  
4 fices transferred by this subtitle and which were assigned  
5 and filled on the day before the effective date of this sub-  
6 title.

7       (2) Appointments to positions provided for under this  
8 subsection may be made without regard to the provisions  
9 of section 3324 of title 5, United States Code, if the indi-  
10 vidual appointed in such position is an individual who is  
11 transferred in connection with the transfer of functions  
12 and offices under this subtitle and, on the day before the  
13 effective date of this subtitle, holds a position and has du-  
14 ties comparable to those of the position to which appointed  
15 under this subsection.

16       (3) The authority under this subsection with respect  
17 to any position established at a grade level above GS-15  
18 shall terminate when the person first appointed to fill such  
19 position ceases to hold such position.

20       (4) For purposes of section 414(a)(3)(A) of the Civil  
21 Service Reform Act of 1978, an individual appointed  
22 under this subsection shall be deemed to occupy the same  
23 position as the individual occupied on the day before the  
24 effective date of this subtitle.

1           (c) EXPERTS AND CONSULTANTS.—The USTR may  
2 obtain the services of experts and consultants in accord-  
3 ance with section 3109 of title 5, United States Code, and  
4 compensate such experts and consultants for each day (in-  
5 cluding traveltime) at rates not in excess of the maximum  
6 rate of pay for a position above GS–15 of the General  
7 Schedule under section 5332 of such title. The USTR may  
8 pay experts and consultants who are serving away from  
9 their homes or regular place of business travel expenses  
10 and per diem in lieu of subsistence at rates authorized  
11 by sections 5702 and 5703 of such title for persons in  
12 Government service employed intermittently.

13           (d) VOLUNTARY SERVICES.—(1)(A) The USTR is  
14 authorized to accept voluntary and uncompensated serv-  
15 ices without regard to the provisions of section 1342 of  
16 title 31, United States Code, if such services will not be  
17 used to displace Federal employees employed on a full-  
18 time, part-time, or seasonal basis.

19           (B) The USTR is authorized to accept volunteer serv-  
20 ice in accordance with the provisions of section 3111 of  
21 title 5, United States Code.

22           (2) The USTR is authorized to provide for incidental  
23 expenses, including but not limited to transportation, lodg-  
24 ing, and subsistence for individuals who provide voluntary  
25 services under subparagraph (A) or (B) of paragraph (1).

1       (3) An individual who provides voluntary services  
2 under paragraph (1)(A) shall not be considered a Federal  
3 employee for any purpose other than for purposes of chap-  
4 ter 81 of title 5, United States Code, relating to com-  
5 pensation for work injuries, and chapter 171 of title 28,  
6 United States Code, relating to tort claims.

7       (e) FOREIGN SERVICE POSITIONS.—In order to as-  
8 sure United States representation in trade matters at a  
9 level commensurate with the level of representation main-  
10 tained by industrial nations which are major trade com-  
11 petitors of the United States, the Secretary of State shall  
12 classify certain positions at Foreign Service posts as com-  
13 mercial minister positions and shall assign members of the  
14 Foreign Service performing functions of the Office, with  
15 the concurrence of the USTR, to such positions in nations  
16 which are major trade competitors of the United States.  
17 The Secretary of State shall obtain and use the rec-  
18 ommendations of the USTR with respect to the number  
19 of positions to be so classified under this subsection.

20 **SEC. 2342. DELEGATION AND ASSIGNMENT.**

21       Except where otherwise expressly prohibited by law  
22 or otherwise provided by this subtitle, the USTR may dele-  
23 gate any of the functions transferred to the USTR by this  
24 subtitle and any function transferred or granted to the  
25 USTR after the effective date of this subtitle to such offi-

1 cers and employees of the Office as the USTR may des-  
2 ignate, and may authorize successive redelegations of such  
3 functions as may be necessary or appropriate. No delega-  
4 tion of functions by the USTR under this section or under  
5 any other provision of this subtitle shall relieve the USTR  
6 of responsibility for the administration of such functions.

7 **SEC. 2343. SUCCESSION.**

8 (a) ORDER OF SUCCESSION.—Subject to the author-  
9 ity of the President, and except as provided in section  
10 2321(b), the USTR shall prescribe the order by which offi-  
11 cers of the Office who are appointed by the President, by  
12 and with the advice and consent of the Senate, shall act  
13 for, and perform the functions of, the USTR or any other  
14 officer of the Office appointed by the President, by and  
15 with the advice and consent of the Senate, during the ab-  
16 sence or disability of the USTR or such other officer, or  
17 in the event of a vacancy in the office of the USTR or  
18 such other officer.

19 (b) CONTINUATION.—Notwithstanding any other pro-  
20 vision of law, and unless the President directs otherwise,  
21 an individual acting for the USTR or another officer of  
22 the Office pursuant to subsection (a) shall continue to  
23 serve in that capacity until the absence or disability of  
24 the USTR or such other officer no longer exists or a suc-

1 cessor to the USTR or such other officer has been ap-  
2 pointed by the President and confirmed by the Senate.

3 **SEC. 2344. REORGANIZATION.**

4 (a) IN GENERAL.—Subject to subsection (b), the  
5 USTR is authorized to allocate or reallocate functions  
6 among the officers of the Office, and to establish, consoli-  
7 date, alter, or discontinue such organizational entities in  
8 the Office as may be necessary or appropriate.

9 (b) EXCEPTION.—The USTR may not exercise the  
10 authority under subsection (a) to establish, consolidate,  
11 alter, or discontinue any organizational entity in the Office  
12 or allocate or reallocate any function of an officer or em-  
13 ployee of the Office that is inconsistent with any specific  
14 provision of this subtitle.

15 **SEC. 2345. RULES.**

16 The USTR is authorized to prescribe, in accordance  
17 with the provisions of chapters 5 and 6 of title 5, United  
18 States Code, such rules and regulations as the USTR de-  
19 termines necessary or appropriate to administer and man-  
20 age the functions of the USTR or the Office.

21 **SEC. 2346. FUNDS TRANSFER.**

22 The USTR may, when authorized in an appropriation  
23 Act in any fiscal year, transfer funds from one appropria-  
24 tion to another within the Office, except that no appropria-  
25 tion for any fiscal year shall be either increased or

1 decreased by more than 10 percent and no such transfer  
2 shall result in increasing any such appropriation above the  
3 amount authorized to be appropriated therefor.

4 **SEC. 2347. CONTRACTS, GRANTS, AND COOPERATIVE**  
5 **AGREEMENTS.**

6 (a) IN GENERAL.—Subject to the provisions of the  
7 Federal Property and Administrative Services Act of  
8 1949, the USTR may make, enter into, and perform such  
9 contracts, leases, cooperative agreements, grants, or other  
10 similar transactions with public agencies, private organiza-  
11 tions, and persons, and make payments (in lump sum or  
12 installments, and by way of advance or reimbursement,  
13 and, in the case of any grant, with necessary adjustments  
14 on account of overpayments and underpayments) as the  
15 USTR considers necessary or appropriate to carry out the  
16 functions of the USTR or the Office.

17 (b) EXCEPTION.—Notwithstanding any other provi-  
18 sion of this subtitle, the authority to enter into contracts  
19 or to make payments under this subchapter shall be effec-  
20 tive only to such extent or in such amounts as are provided  
21 in advance in appropriation Acts. This subsection does not  
22 apply with respect to the authority granted under section  
23 2349.



1 **SEC. 2348. USE OF FACILITIES.**

2 (a) USE BY USTR.—With their consent, the USTR,  
3 with or without reimbursement, may use the research,  
4 services, equipment, and facilities of—

5 (1) an individual,

6 (2) any public or private nonprofit agency or  
7 organization, including any agency or instrumental-  
8 ity of the United States or of any State, the District  
9 of Columbia, the Commonwealth of Puerto Rico, or  
10 any territory or possession of the United States,

11 (3) any political subdivision of any State, the  
12 District of Columbia, the Commonwealth of Puerto  
13 Rico, or any territory or possession of the United  
14 States, or

15 (4) any foreign government,

16 in carrying out any function of the USTR or the Office.

17 (b) USE OF USTR FACILITIES.—The USTR, under  
18 terms, at rates, and for periods that the USTR considers  
19 to be in the public interest, may permit the use by public  
20 and private agencies, corporations, associations or other  
21 organizations, or individuals, of any real property, or any  
22 facility, structure or other improvement thereon, under the  
23 custody of the USTR. The USTR may require permittees  
24 under this section to maintain or recondition, at their own  
25 expense, the real property, facilities, structures, and im-  
26 provements used by such permittees.

1 **SEC. 2349. GIFTS AND BEQUESTS.**

2 (a) IN GENERAL.—The USTR is authorized to ac-  
3 cept, hold, administer, and utilize gifts and bequests of  
4 property, both real and personal, for the purpose of aiding  
5 or facilitating the work of the Office. Gifts and bequests  
6 of money and the proceeds from sales of other property  
7 received as gifts or bequests shall be deposited in the Unit-  
8 ed States Treasury in a separate fund and shall be dis-  
9 bursed on order of the USTR. Property accepted pursuant  
10 to this subsection, and the proceeds thereof, shall be used  
11 as nearly as possible in accordance with the terms of the  
12 gift or bequest.

13 (b) TAX TREATMENT.—For the purpose of Federal  
14 income, estate, and gift taxes, and State taxes, property  
15 accepted under subsection (a) shall be considered a gift  
16 or bequest to or for the use of the United States.

17 (c) INVESTMENT.—Upon the request of the USTR,  
18 the Secretary of the Treasury may invest and reinvest in  
19 securities of the United States or in securities guaranteed  
20 as to principal and interest by the United States any mon-  
21 eys contained in the fund provided for in subsection (a).  
22 Income accruing from such securities, and from any other  
23 property held by the USTR pursuant to subsection (a),  
24 shall be deposited to the credit of the fund, and shall be  
25 disbursed upon order of the USTR.

1 **SEC. 2350. WORKING CAPITAL FUND.**

2 (a) ESTABLISHMENT.—The USTR is authorized to  
3 establish for the Office a working capital fund, to be avail-  
4 able without fiscal year limitation, for expenses necessary  
5 for the maintenance and operation of such common ad-  
6 ministrative services as the USTR shall find to be desir-  
7 able in the interest of economy and efficiency, including—

8 (1) a central supply service for stationery and  
9 other supplies and equipment for which adequate  
10 stocks may be maintained to meet in whole or in  
11 part the requirements of the Office and its compo-  
12 nents;

13 (2) central messenger, mail, and telephone serv-  
14 ice and other communications services;

15 (3) office space and central services for docu-  
16 ment reproduction and for graphics and visual aids;

17 (4) a central library service; and

18 (5) such other services as may be approved by  
19 the Director of the Office of Management and Budg-  
20 et.

21 (b) OPERATION OF FUND.—The capital of the fund  
22 shall consist of any appropriations made for the purpose  
23 of providing working capital and the fair and reasonable  
24 value of such stocks of supplies, equipment, and other as-  
25 sets and inventories on order as the USTR may transfer  
26 to the fund, less the related liabilities and unpaid obliga-

1 tions. The fund shall be reimbursed in advance from avail-  
2 able funds of agencies and offices in the Office, or from  
3 other sources, for supplies and services at rates which will  
4 approximate the expense of operation, including the ac-  
5 crual of annual leave and the depreciation of equipment.  
6 The fund shall also be credited with receipts from sale or  
7 exchange of property and receipts in payment for loss or  
8 damage to property owned by the fund. There shall be cov-  
9 ered into the United States Treasury as miscellaneous re-  
10 ceipts any surplus of the fund (all assets, liabilities, and  
11 prior losses considered) above the amounts transferred or  
12 appropriated to establish and maintain the fund. There  
13 shall be transferred to the fund the stocks of supplies,  
14 equipment, other assets, liabilities, and unpaid obligations  
15 relating to those services which the USTR determines will  
16 be performed.

17 **SEC. 2351. SERVICE CHARGES.**

18 (a) **AUTHORITY.**—Notwithstanding any other provi-  
19 sion of law, the USTR may establish reasonable fees and  
20 commissions with respect to applications, documents,  
21 awards, loans, grants, research data, services, and assist-  
22 ance administered by the Office, and the USTR may  
23 change and abolish such fees and commissions. Before es-  
24 tablishing, changing, or abolishing any schedule of fees or

1 commissions under this section, the USTR may submit  
2 such schedule to the Congress.

3 (b) DEPOSITS.—The USTR is authorized to require  
4 a deposit before the USTR provides any item, information,  
5 service, or assistance for which a fee or commission is re-  
6 quired under this section.

7 (c) DEPOSIT OF MONEYS.—Moneys received under  
8 this section shall be deposited in the Treasury in a special  
9 account for use by the USTR and are authorized to be  
10 appropriated and made available until expended.

11 (d) FACTORS IN ESTABLISHING FEES AND COMMIS-  
12 SIONS.—In establishing reasonable fees or commissions  
13 under this section, the USTR may take into account—

14 (1) the actual costs which will be incurred in  
15 providing the items, information, services, or assist-  
16 ance concerned;

17 (2) the efficiency of the Government in provid-  
18 ing such items, information, services, or assistance;

19 (3) the portion of the cost that will be incurred  
20 in providing such items, information, services, or as-  
21 sistance which may be attributed to benefits for the  
22 general public rather than exclusively for the person  
23 to whom the items, information, services, or assist-  
24 ance is provided;

1           (4) any public service which occurs through the  
2           provision of such items, information, services, or as-  
3           sistance; and

4           (5) such other factors as the USTR considers  
5           appropriate.

6           (e) REFUNDS OF EXCESS PAYMENTS.—In any case  
7           in which the USTR determines that any person has made  
8           a payment which is not required under this section or has  
9           made a payment which is in excess of the amount required  
10          under this section, the USTR, upon application or other-  
11          wise, may cause a refund to be made from applicable  
12          funds.

13       **SEC. 2352. SEAL OF OFFICE.**

14          The USTR shall cause a seal of office to be made  
15          for the Office of such design as the USTR shall approve.  
16          Judicial notice shall be taken of such seal.

17                       **Subchapter E—Related Agencies**

18       **SEC. 2361. INTERAGENCY TRADE ORGANIZATION.**

19          Section 242(a)(3) of the Trade Expansion Act of  
20          1962 (19 U.S.C. 1872(a)(3)) is amended to read as fol-  
21          lows:

22                       “(3)(A) The interagency organization estab-  
23                       lished under subsection (a) shall be composed of—

24                               “(i) the United States Trade Representa-  
25                               tive, who shall be the chairperson,

1           “(ii) the Secretary of Agriculture,  
2           “(iii) the Secretary of the Treasury,  
3           “(iv) the Secretary of Labor,  
4           “(v) the Secretary of State, and  
5           “(vi) the representatives of such other de-  
6           partments and agencies as the United States  
7           Trade Representative shall designate.

8           “(B) The United States Trade Representative  
9           may invite representatives from other agencies, as  
10          appropriate, to attend particular meetings if subject  
11          matters of specific functional interest to such agen-  
12          cies are under consideration. It shall meet at such  
13          times and with respect to such matters as the Presi-  
14          dent or the chairperson shall direct.”.

15 **SEC. 2362. NATIONAL SECURITY COUNCIL.**

16          The fourth paragraph of section 101(a) of the Na-  
17          tional Security Act of 1947 (50 U.S.C. 402(a)) is amend-  
18          ed—

19               (1) by redesignating clauses (5), (6), and (7) as  
20          clauses (6), (7), and (8), respectively; and

21               (2) by inserting after clause (4) the following  
22          new clause:

23               “(5) the United States Trade Representative;”.

1 **SEC. 2363. INTERNATIONAL MONETARY FUND.**

2 Section 3 of the Bretton Woods Agreement Act is  
3 amended by adding at the end the following new sub-  
4 section:

5 “(e) The United States executive director of the Fund  
6 shall consult with the United States Trade Representative  
7 with respect to matters under consideration by the Fund  
8 which relate to trade.”.

9 **Subchapter F—Conforming Amendments**

10 **SEC. 2371. AMENDMENTS TO GENERAL PROVISIONS.**

11 (a) INSPECTOR GENERAL.—The Inspector General  
12 Act of 1978 is amended—

13 (1) in subsection 9(a)(1) by inserting after sub-  
14 paragraph (W) the following:

15 “(X) of the United States Trade Rep-  
16 resentative, all functions of the Inspector Gen-  
17 eral of the Department of Commerce and the  
18 Office of the Inspector General of the Depart-  
19 ment of Commerce relating to the functions  
20 transferred to the United States Trade Rep-  
21 resentative by section 2332 of the Department  
22 of Commerce Dismantling Act; and”;

23 (2) in section 11—

24 (A) in paragraph (1) by inserting “the  
25 United States Trade Representative;” after  
26 “the Attorney General;”; and



1 (B) in paragraph (2) by inserting “the Of-  
2 fice of the United States Trade Representa-  
3 tive,” after “Treasury;”.

4 (b) AMENDMENT TO THE TRADE ACT OF 1974.—(1)  
5 Chapter 4 of title I of the Trade Act of 1974 is amended  
6 to read as follows:

7 **“CHAPTER 4—REPRESENTATION IN**  
8 **TRADE NEGOTIATIONS**

9 **“SEC. 141. FUNCTIONS OF THE UNITED STATES TRADE REP-**  
10 **RESENTATIVE.**

11 “The United States Trade Representative established  
12 under section 2311 of the Department of Commerce Dis-  
13 mantling Act shall—

14 “(1) be the chief representative of the United  
15 States for each trade negotiation under this title or  
16 chapter 1 of title III of this Act, or subtitle A of  
17 title I of the Omnibus Trade and Competitiveness  
18 Act of 1988, or any other provision of law enacted  
19 after the Department of Commerce Dismantling Act;

20 “(2) report directly to the President and the  
21 Congress, and be responsible to the President and  
22 the Congress for the administration of trade agree-  
23 ments programs under this Act, the Omnibus Trade  
24 and Competitiveness Act of 1988, the Trade Expan-  
25 sion Act of 1962, section 350 of the Tariff Act of

1 1930, and any other provision of law enacted after  
2 the Department of Commerce Dismantling Act;

3 “(3) advise the President and the Congress  
4 with respect to nontariff barriers to international  
5 trade, international commodity agreements, and  
6 other matters which are related to the trade agree-  
7 ments programs; and

8 “(4) be responsible for making reports to Con-  
9 gress with respect to the matters set forth in para-  
10 graphs (1) and (2).”.

11 (2) The table of contents in the first section of the  
12 Trade Act of 1974 is amended by striking the items relat-  
13 ing to chapter 4 and section 141 and inserting the follow-  
14 ing:

“CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

“Sec. 141. Functions of the United States Trade Representative.”.

15 (d) FOREIGN SERVICE PERSONNEL.—The Foreign  
16 Service Act of 1980 is amended by striking paragraph (3)  
17 of section 202(a) (22 U.S.C. 3922(a)) and inserting the  
18 following:

19 “(3) The United States Trade Representative  
20 may utilize the Foreign Service personnel system in  
21 accordance with this Act—

22 “(A) with respect to the personnel per-  
23 forming functions—

1           “(i) which were transferred to the De-  
2           partment of Commerce from the Depart-  
3           ment of State by Reorganization Plan No.  
4           3 of 1979; and

5           “(ii) which were subsequently trans-  
6           ferred to the United States Trade Rep-  
7           resentative by section 2332 of the Depart-  
8           ment of Commerce Dismantling Act; and

9           “(B) with respect to other personnel of the  
10          Office of United States Trade Representative to  
11          the extent the President determines to be nec-  
12          essary in order to enable the Office of the Unit-  
13          ed States Trade Representative to carry out  
14          functions which require service abroad.”.

15          (e) CHIEF FINANCIAL OFFICERS.—Section 901(b)(1)  
16 of title 31, United States Code, is amended by adding at  
17 the end the following:

18                   “(Q) The Office of the United States  
19                   Trade Representative.”.

20 **SEC. 2372. REPEALS.**

21          Sections 1 and 2 of the Act of June 5, 1939 (15  
22 U.S.C. 1502 and 1503; 53 Stat. 808), relating to the  
23 Under Secretary of Commerce, are repealed.

1 **SEC. 2373. CONFORMING AMENDMENTS RELATING TO EX-**  
2 **ECUTIVE SCHEDULE POSITIONS.**

3 (a) POSITIONS AT LEVEL I.—Section 5312 of title  
4 5, United States Code, is amended by amending the item  
5 relating to the United States Trade Representative to read  
6 as follows:

7 “United States Trade Representative, Office of  
8 the United States Trade Representative.”.

9 (b) POSITIONS AT LEVEL II.—Section 5313 of title  
10 5, United States Code, is amended by adding at the end  
11 the following:

12 “Deputy Administrator of the Office of the  
13 United States Trade Representative.

14 “Deputy United States Trade Representatives,  
15 Office of the United States Trade Representative  
16 (2).”.

17 (c) POSITIONS AT LEVEL III.—Section 5314 of title  
18 5, United States Code, is amended by adding at the end  
19 the following:

20 “Assistant Administrators, Office of the United  
21 States Trade Representative (3).

22 “Director General for Export Promotion, Office  
23 of the United States Trade Representative.”.

24 (d) POSITIONS AT LEVEL IV.—Section 5315 of title  
25 5, United States Code, is amended—

1 (1) by striking the item relating to the Assist-  
2 ant Secretary of Commerce and Director General of  
3 the United States and Foreign Commercial Service;  
4 and

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

6 “General Counsel, Office of the United States  
7 Trade Representative.

8 “Inspector General, Office of the United States  
9 Trade Representative.

10 “Chief Financial Officer, Office of the United  
11 States Trade Representative.”.

## 12 **Subchapter G—Miscellaneous**

### 13 **SEC. 2381. EFFECTIVE DATE.**

14 (a) IN GENERAL.—This subtitle shall take effect on  
15 the effective date specified in section 2208(a), except  
16 that—

17 (1) section 2336 shall take effect on the date of  
18 the enactment of this Act; and

19 (2) at any time after the date of the enactment  
20 of this Act the officers provided for in subchapter B  
21 may be nominated and appointed, as provided in  
22 such subchapter.

23 (b) INTERIM COMPENSATION AND EXPENSES.—  
24 Funds available to the Department of Commerce or the  
25 Office of the United States Trade Representative (or any

1 official or component thereof), with respect to the func-  
2 tions transferred by this subtitle, may be used, with ap-  
3 proval of the Director of the Office of Management and  
4 Budget, to pay the compensation and expenses of an offi-  
5 cer appointed under subsection (a) who will carry out such  
6 functions until funds for that purpose are otherwise avail-  
7 able.

8 **SEC. 2382. INTERIM APPOINTMENTS.**

9 (a) IN GENERAL.—If one or more officers required  
10 by this subtitle to be appointed by and with the advice  
11 and consent of the Senate have not entered upon office  
12 on the effective date of this subtitle and notwithstanding  
13 any other provision of law, the President may designate  
14 any officer who was appointed by and with the advice and  
15 consent of the Senate, and who was such an officer on  
16 the day before the effective date of this subtitle, to act  
17 in the office until it is filled as provided by this subtitle.

18 (b) COMPENSATION.—Any officer acting in an office  
19 pursuant to subsection (a) shall receive compensation at  
20 the rate prescribed by this subtitle for such office.

21 **SEC. 2383. FUNDING REDUCTIONS RESULTING FROM REOR-**  
22 **GANIZATION.**

23 (a) FUNDING REDUCTIONS.—Notwithstanding the  
24 transfer of functions under this subtitle, and except as  
25 provided in subsection (b), the total amount appropriated

1 by the United States in performing all functions vested  
2 in the USTR and the Office pursuant to this subtitle shall  
3 not exceed—

4           (1) for the first fiscal year that begins after the  
5           abolishment date specified in section 2101(c), 75  
6           percent of the total amount appropriated in fiscal  
7           year 1995 for the performance of all such functions;  
8           and

9           (2) for the second fiscal year that begins after  
10          the abolishment date specified in section 2101(c)  
11          and for each fiscal year thereafter, 65 percent of the  
12          total amount appropriated in fiscal year 1995 for  
13          the performance of all such functions.

14          (b) EXCEPTION.—Subsection (a) shall not apply to  
15 obligations or expenditures incurred as a direct con-  
16 sequence of the termination, transfer, or other disposition  
17 of functions described in subsection (a) pursuant to this  
18 title.

19          (c) RULE OF CONSTRUCTION.—This section shall  
20 take precedence over any other provision of law unless  
21 such provision explicitly refers to this section and makes  
22 an exception to it.

23          (d) RESPONSIBILITY OF USTR.—The USTR, in con-  
24 sultation with the Director of the Office of Management  
25 and Budget, shall make such modifications in programs

1 as are necessary to carry out the reductions in appropria-  
2 tions set forth in paragraph (1) and (2) of subsection (a).

3 (e) RESPONSIBILITIES OF THE DIRECTOR OF THE  
4 OFFICE OF MANAGEMENT AND BUDGET.—The Director  
5 of the Office of Management and Budget shall include in  
6 each report under sections 2105(a) and (b) a description  
7 of actions taken to comply with the requirements of this  
8 section.

9 **Subtitle D—Patent and Trademark**  
10 **Office Corporation**

11 **SEC. 2401. SHORT TITLE.**

12 This subtitle may be cited as the “Patent and Trade-  
13 mark Office Corporation Act of 1995”.

14 **CHAPTER 1—PATENT AND TRADEMARK**  
15 **OFFICE**

16 **SEC. 2411. ESTABLISHMENT OF PATENT AND TRADEMARK**  
17 **OFFICE AS A CORPORATION.**

18 Section 1 of title 35, United States Code, is amended  
19 to read as follows:

20 **“§ 1. Establishment**

21 “(a) ESTABLISHMENT.—The Patent and Trademark  
22 Office is established as a wholly owned Government cor-  
23 poration subject to chapter 91 of title 31, except as other-  
24 wise provided in this title.



1       “(b) OFFICES.—The Patent and Trademark Office  
2 shall maintain an office in the District of Columbia, or  
3 the metropolitan area thereof, for the service of process  
4 and papers and shall be deemed, for purposes of venue  
5 in civil actions, to be a resident of the district in which  
6 its principal office is located. The Patent and Trademark  
7 Office may establish offices in such other places as it con-  
8 siderers necessary or appropriate in the conduct of its busi-  
9 ness.

10       “(c) REFERENCE.—For purposes of this title, the  
11 Patent and Trademark Office shall also be referred to as  
12 the ‘Office’.”

13 **SEC. 2412. POWERS AND DUTIES.**

14       Section 2 of title 35, United States Code, is amended  
15 to read as follows:

16 **“§2. Powers and Duties**

17       “(a) IN GENERAL.—The Patent and Trademark Of-  
18 fice shall be responsible for—

19               “(1) the granting and issuing of patents and  
20 the registration of trademarks;

21               “(2) conducting studies, programs, or ex-  
22 changes of items or services regarding domestic and  
23 international patent and trademark law or the ad-  
24 ministration of the Office, including programs to  
25 recognize, identify, assess, and forecast the tech-

1 nology of patented inventions and their utility to in-  
2 dustry;

3 “(3) authorizing or conducting studies and pro-  
4 grams cooperatively with foreign patent and trade-  
5 mark offices and international organizations, in con-  
6 nection with the granting and issuing of patents and  
7 the registration of trademarks; and

8 “(4) disseminating to the public information  
9 with respect to patents and trademarks.

10 “(b) SPECIFIC POWERS.—The Office—

11 “(1) shall have perpetual succession;

12 “(2) shall adopt and use a corporate seal, which  
13 shall be judicially noticed and with which letters pat-  
14 ent, certificates of trademark registrations, and pa-  
15 pers issued by the Office shall be authenticated;

16 “(3) may sue and be sued in its corporate name  
17 and be represented by its own attorneys in all judi-  
18 cial and administrative proceedings, subject to the  
19 provisions of section 8 of this title;

20 “(4) may indemnify the Commissioner of Pat-  
21 ents and Trademarks, and other officers, attorneys,  
22 agents, and employees (including members of the  
23 Management Advisory Board established in section  
24 5) of the Office for liabilities and expenses incurred  
25 within the scope of their employment;

1           “(5) may adopt, amend, and repeal bylaws,  
2 rules, and regulations, governing the manner in  
3 which its business will be conducted and the powers  
4 granted to it by law will be exercised;

5           “(6) may acquire, construct, purchase, lease,  
6 hold, manage, operate, improve, alter, and renovate  
7 any real, personal, or mixed property, or any interest  
8 therein, as it considers necessary to carry out its  
9 functions;

10           “(7)(A) may make such purchases, contracts  
11 for the construction, maintenance, or management  
12 and operation of facilities, and contracts for supplies  
13 or services, without regard to section 111 of the  
14 Federal Property and Administrative Services Act of  
15 1949 (40 U.S.C. 759); and

16           “(B) may enter into and perform such pur-  
17 chases and contracts for printing services, including  
18 the process of composition, platemaking, presswork,  
19 silk screen processes, binding, microform, and the  
20 products of such processes, as it considers necessary  
21 to carry out the functions of the Office, without re-  
22 gard to sections 501 through 517 and 1101 through  
23 1123 of title 44;

24           “(8) may use, with their consent, services,  
25 equipment, personnel, and facilities of other depart-

1       ments, agencies, and instrumentalities of the Fed-  
2       eral Government, on a reimbursable basis, and co-  
3       operate with such other departments, agencies, and  
4       instrumentalities in the establishment and use of  
5       services, equipment, and facilities of the Office;

6               “(9) may obtain from the Administrator of  
7       General Services such services as the Administrator  
8       is authorized to provide to other agencies of the  
9       United States, on the same basis as those services  
10      are provided to other agencies of the United States;

11              “(10) may use, with the consent of the United  
12      States and the agency, government, or international  
13      organization concerned, the services, records, facili-  
14      ties, or personnel of any State or local government  
15      agency or instrumentality or foreign government or  
16      international organization to perform functions on  
17      its behalf;

18              “(11) may determine the character of and the  
19      necessity for its obligations and expenditures and  
20      the manner in which they shall be incurred, allowed,  
21      and paid, subject to the provisions of this title and  
22      the Act of July 5, 1946 (commonly referred to as  
23      the ‘Trademark Act of 1946’);

24              “(12) may retain and use all of its revenues  
25      and receipts, including revenues from the sale, lease,

1 or disposal of any real, personal, or mixed property,  
2 or any interest therein, of the Office, in carrying out  
3 the functions of the Office, including for research  
4 and development and capital investment, subject to  
5 the provisions of section 10101 of the Omnibus  
6 Budget Reconciliation Act of 1990 (35 U.S.C. 41  
7 note);

8 “(13) shall have the priority of the United  
9 States with respect to the payment of debts from  
10 bankrupt, insolvent, and decedents’ estates;

11 “(14) may accept monetary gifts or donations  
12 of services, or of real, personal, or mixed property,  
13 in order to carry out the functions of the Office;

14 “(15) may execute, in accordance with its by-  
15 laws, rules, and regulations, all instruments nec-  
16 essary and appropriate in the exercise of any of its  
17 powers;

18 “(16) may provide for liability insurance and  
19 insurance against any loss in connection with its  
20 property, other assets, or operations either by con-  
21 tract or by self-insurance; and

22 “(17) shall pay any settlement or judgment en-  
23 tered against it from the funds of the Office and not  
24 from amounts available under section 1304 of title  
25 31.”.

1 **SEC. 2413. ORGANIZATION AND MANAGEMENT.**

2 Section 3 of title 35, United States Code, is amended  
3 to read as follows:

4 **“§ 3. Officers and employees**

5 “(a) COMMISSIONER.—

6 “(1) IN GENERAL.—The management of the  
7 Patent and Trademark Office shall be vested in a  
8 Commissioner of Patents and Trademarks (hereafter  
9 in this title referred to as the ‘Commissioner’), who  
10 shall be a citizen of the United States and who shall  
11 be appointed by the President, by and with the ad-  
12 vice and consent of the Senate. The Commissioner  
13 shall be a person who, by reason of professional  
14 background and experience in patent and trademark  
15 law, is especially qualified to manage the Office.

16 “(2) DUTIES.—

17 “(A) IN GENERAL.—The Commissioner  
18 shall be responsible for the management and di-  
19 rection of the Office, including the issuance of  
20 patents and the registration of trademarks.

21 “(B) ADVISING THE PRESIDENT.—The  
22 Commissioner shall advise the President of all  
23 activities of the Patent and Trademark Office  
24 undertaken in response to obligations of the  
25 United States under treaties and executive  
26 agreements, or which relate to cooperative pro-

1           grams with those authorities of foreign govern-  
2           ments that are responsible for granting patents  
3           or registering trademarks. The Commissioner  
4           shall also recommend to the President changes  
5           in law or policy which may improve the ability  
6           of United States citizens to secure and enforce  
7           patent rights or trademark rights in the United  
8           States or in foreign countries.

9           “(C) CONSULTING WITH THE MANAGE-  
10          MENT ADVISORY BOARD.—The Commissioner  
11          shall consult with the Management Advisory  
12          Board established in section 5 on a regular  
13          basis on matters relating to the operation of the  
14          Patent and Trademark Office, and shall consult  
15          with the Board before submitting budgetary  
16          proposals to the Office of Management and  
17          Budget or changing or proposing to change pat-  
18          ent or trademark user fees or patent or trade-  
19          mark regulations.

20          “(D) SECURITY CLEARANCES.—The Com-  
21          missioner, in consultation with the Director of  
22          the Office of Personnel Management, shall  
23          maintain a program for identifying national se-  
24          curity positions and providing for appropriate  
25          security clearances.

1           “(3) TERM.—The Commissioner shall serve a  
2 term of 5 years, and may continue to serve after the  
3 expiration of the Commissioner’s term until a suc-  
4 cessor is appointed and assumes office. The Com-  
5 missioner may be reappointed to subsequent terms.

6           “(4) OATH.—The Commissioner shall, before  
7 taking office, take an oath to discharge faithfully the  
8 duties of the Office.

9           “(5) COMPENSATION.—The Commissioner shall  
10 receive compensation at the rate of pay in effect for  
11 Level III of the Executive Schedule under section  
12 5314 of title 5.

13           “(6) REMOVAL.—The Commissioner may be re-  
14 moved from office by the President only for cause.

15           “(7) DESIGNEE OF COMMISSIONER.—The Com-  
16 missioner shall designate an officer of the Office who  
17 shall be vested with the authority to act in the ca-  
18 pacity of the Commissioner in the event of the ab-  
19 sence or incapacity of the Commissioner.

20           “(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

21           “(1) DEPUTY COMMISSIONERS.—The Commis-  
22 sioner shall appoint a Deputy Commissioner for Pat-  
23 ents and a Deputy Commissioner for Trademarks  
24 for terms that shall expire on the date on which the  
25 Commissioner’s term expires. The Deputy Commis-



1 sioner for Patents shall be a person with dem-  
2 onstrated experience in patent law and the Deputy  
3 Commissioner for Trademarks shall be a person with  
4 demonstrated experience in trademark law. The  
5 Deputy Commissioner for Patents and the Deputy  
6 Commissioner for Trademarks shall be the principal  
7 policy advisors to the Commissioner on all aspects of  
8 the activities of the Office that affect the adminis-  
9 tration of patent and trademark operations, respec-  
10 tively.

11 “(2) OTHER OFFICERS AND EMPLOYEES.—The  
12 Commissioner shall—

13 “(A) appoint an Inspector General and  
14 such other officers, employees (including attor-  
15 neys), and agents of the Office as the Commis-  
16 sioner considers necessary to carry out its func-  
17 tions;

18 “(B) fix the compensation of such officers  
19 and employees; and

20 “(C) define the authority and duties of  
21 such officers and employees and delegate to  
22 them such of the powers vested in the Office as  
23 the Commissioner may determine.

24 The Office shall not be subject to any administra-  
25 tively or statutorily imposed limitation on positions

1 or personnel, and no positions or personnel of the  
2 Office shall be taken into account for purposes of  
3 applying any such limitation, except to the extent  
4 otherwise specifically provided by statute with re-  
5 spect to the Office.

6 “(c) LIMITS ON COMPENSATION.—Except as other-  
7 wise provided in this title or any other provision of law,  
8 the basic pay of an officer or employee of the Office for  
9 any calendar year may not exceed the annual rate of basic  
10 pay in effect for level IV of the Executive Schedule under  
11 section 5315 of title 5. The Commissioner shall by regula-  
12 tion establish a limitation on the total compensation pay-  
13 able to officers or employees of the Office, which may not  
14 exceed the annual rate of basic pay in effect for level I  
15 of the Executive Schedule under section 5312 of title 5.

16 “(d) INAPPLICABILITY OF TITLE 5 GENERALLY.—  
17 Except as otherwise provided in this section, officers and  
18 employees of the Office shall not be subject to the provi-  
19 sions of title 5 relating to Federal employees.

20 “(e) CONTINUED APPLICABILITY OF CERTAIN PRO-  
21 VISION OF TITLE 5.—The following provisions of title 5  
22 shall apply to the Office and its officers and employees:

23 “(1) Section 3110 (relating to employment of  
24 relatives; restrictions).

1           “(2) Subchapter II of chapter 55 (relating to  
2 withholding pay).

3           “(3) Subchapter II of chapter 73 (relating to  
4 employment limitations).

5           “(f) PROVISIONS OF TITLE 5 RELATING TO CERTAIN  
6 BENEFITS.—

7           “(1) RETIREMENT.—(A)(i) Any individual who  
8 becomes an officer or employee of the Office pursu-  
9 ant to subsection (h) shall, if such individual has at  
10 least 3 years of creditable service (within the mean-  
11 ing of section 8332 or 8411 of title 5) as of the ef-  
12 fective date of the Patent and Trademark Office  
13 Corporation Act of 1995, remain subject to sub-  
14 chapter III of chapter 83 or chapter 84 of such title,  
15 as the case may be, so long as such individual con-  
16 tinues to hold an office or position in or under the  
17 Office without a break in service.

18           “(ii)(I) Except as provided in subclause (II),  
19 with respect to an individual described in clause (i),  
20 the Office shall make the appropriate withholding  
21 from pay and shall pay the contributions required of  
22 an employing agency into the Civil Service Retirement  
23 and Disability Fund and, if applicable, the  
24 Thrift Savings Fund in accordance with applicable

1 provisions of subchapter III of chapter 83 or chapter  
2 84 of title 5, as the case may be.

3 “(II) In the case of an officer or employee who  
4 remains subject to subchapter III of chapter 83 of  
5 such title by virtue of this subparagraph, the Office  
6 shall, instead of the amount which would otherwise  
7 be required under the second sentence of section  
8 8334(a)(1) of title 5, contribute an amount equal to  
9 the normal-cost percentage (determined with respect  
10 to officers and employees of the Office using dy-  
11 namic assumptions, as defined by section 8401(9) of  
12 such title) of the individual’s basic pay, minus the  
13 amount required to be withheld from such pay under  
14 such section 8334(a)(1).

15 “(B)(i) Notwithstanding subsection (d), the  
16 provisions of subchapter III of chapter 83 or chapter  
17 84 of title 5 (as applicable) which relate to disability  
18 shall be considered to remain in effect, with respect  
19 to an individual who becomes an officer or employee  
20 of the Office pursuant to subsection (h), until the  
21 end of the 2-year period beginning on the effective  
22 date of the Patent and Trademark Office Corpora-  
23 tion Act of 1995 or, if earlier, until such individual  
24 satisfies the prerequisites for coverage under any  
25 program offered by the Office to replace the disabil-

1       ity retirement program under chapter 83 or 84 of  
2       title 5.

3               “(ii) This clause applies with respect to any of-  
4       ficer or employee of the Office who is receiving dis-  
5       ability coverage under this subparagraph and has  
6       completed the service requirement specified in the  
7       first sentence of section 8337(a) or 8451(a)(1)(A) of  
8       title 5 (as applicable), but who is not described in  
9       subparagraph (A)(i). In the case of any individual to  
10      whom this clause applies, the Office shall pay into  
11      the Civil Service Retirement and Disability Fund an  
12      amount equal to that portion of the normal-cost per-  
13      centage (determined in the same manner as under  
14      subparagraph (A)(ii)(II)) of the basic pay of such  
15      individual (for service performed during the period  
16      during which such individual is receiving such cov-  
17      erage) allocable to such coverage. Any amounts pay-  
18      able under this clause shall be paid at such time and  
19      in such manner as mutually agreed to by the Office  
20      and the Office of Personnel Management, and shall  
21      be in lieu of any individual or agency contributions  
22      otherwise required.

23              “(2) HEALTH BENEFITS.—(A) Officers and em-  
24      ployees of the Office shall not become ineligible to  
25      participate in the health benefits program under

1 chapter 89 of title 5 by reason of subsection (d)  
2 until the effective date of elections made during the  
3 first election period (under section 8905(f) of title 5)  
4 beginning after the end of the 2-year period begin-  
5 ning on the effective date of the Patent and Trade-  
6 mark Office Corporation Act of 1995.

7 “(B)(i) With respect to any individual who be-  
8 comes an officer or employee of the Office pursuant  
9 to subsection (h), the eligibility of such individual to  
10 participate in such program as an annuitant (or of  
11 any other person to participate in such program as  
12 an annuitant based on the death of such individual)  
13 shall be determined disregarding the requirements of  
14 section 8905(b) of title 5. The preceding sentence  
15 shall not apply if the individual ceases to be an offi-  
16 cer or employee of the Office for any period of time  
17 after becoming an officer or employee of the Office  
18 pursuant to subsection (h) and before separation.

19 “(ii) The Government contributions authorized  
20 by section 8906 for health benefits for anyone par-  
21 ticipating in the health benefits program pursuant to  
22 this subparagraph shall be made by the Office in the  
23 same manner as provided under section 8906(g)(2)  
24 of title 5 with respect to the United States Postal  
25 Service for individuals associated therewith.

1           “(iii) For purposes of this subparagraph, the  
2 term ‘annuitant’ has the meaning given such term  
3 by section 8901(3) of title 5.

4           “(3) LIFE INSURANCE.—(A) Officers and em-  
5 ployees of the Office shall not become ineligible to  
6 participate in the life insurance program under  
7 chapter 87 of title 5 by reason of subsection (d)  
8 until the first day after the end of the 2-year period  
9 beginning on the effective date of the Patent and  
10 Trademark Office Corporation Act of 1995.

11           “(B)(i) Eligibility for life insurance coverage  
12 after retirement or while in receipt of compensation  
13 under subchapter I of chapter 81 of title 5 shall be  
14 determined, in the case of any individual who be-  
15 comes an officer or employee of the Office pursuant  
16 to subsection (h), without regard to the require-  
17 ments of section 8706(b) (1) or (2), but subject to  
18 the condition specified in the last sentence of para-  
19 graph (2)(B)(i) of this subsection.

20           “(ii) Government contributions under section  
21 8708(d) on behalf of any such individual shall be  
22 made by the Office in the same manner as provided  
23 under paragraph (3) thereof with respect to the  
24 United States Postal Service for individuals associ-  
25 ated therewith.

1           “(4) EMPLOYEES’ COMPENSATION FUND.—The  
2           Office shall remain responsible for reimbursing the  
3           Employees’ Compensation Fund, pursuant to section  
4           8147 of title 5, for compensation paid or payable  
5           after the effective date of the Patent and Trademark  
6           Office Corporation Act of 1995 in accordance with  
7           chapter 81 of title 5 with regard to any injury, dis-  
8           ability, or death due to events arising before such  
9           date, whether or not a claim has been filed or is  
10          final on such date.

11          “(5) REQUIREMENT THAT THE OFFICE OFFER  
12          CERTAIN MINIMUM NUMBER OF LIFE AND HEALTH  
13          INSURANCE POLICIES.—The Office shall offer at  
14          least 1 life insurance policy and at least 3 health in-  
15          surance policies to its officers and employees, com-  
16          parable to existing Federal benefits, beginning on  
17          the first day after the end of the 2-year period be-  
18          ginning on the effective date of the Patent and  
19          Trademark Office Corporation Act of 1995.

20          “(g) LABOR-MANAGEMENT RELATIONS.—

21          “(1) LABOR RELATIONS AND EMPLOYEE RELA-  
22          TIONS PROGRAMS.—The Office shall develop labor  
23          relations and employee relations programs with the  
24          objective of improving productivity and efficiency, in-  
25          corporating the following principles:



1           “(A) Such programs shall be consistent  
2 with the merit principles in section 2301(b) of  
3 title 5.

4           “(B) Such programs shall provide veterans  
5 preference protections equivalent to those estab-  
6 lished by sections 2801, 3308–3318, and 3320  
7 of title 5.

8           “(C)(i) In order to maximize individual  
9 freedom of choice in the pursuit of employment  
10 and to encourage an economic climate condu-  
11 cive to economic growth, the right to work shall  
12 not be subject to undue restraint or coercion.  
13 The right to work shall not be infringed or re-  
14 stricted in any way based on membership in, af-  
15 filiation with, or financial support of a labor or-  
16 ganization.

17           “(ii) No person shall be required, as a con-  
18 dition of employment or continuation of employ-  
19 ment:

20                   “(I) To resign or refrain from vol-  
21 untary membership in, voluntary affiliation  
22 with, or voluntary financial support of a  
23 labor organization.

24                   “(II) To become or remain a member  
25 of a labor organization.

1           “(III) To pay any dues, fees, assess-  
2           ments, or other charges of any kind or  
3           amount to a labor organization.

4           “(IV) To pay to any charity or other  
5           third party, in lieu of such payments, any  
6           amount equivalent to or a pro-rata portion  
7           of dues, fees, assessments, or other charges  
8           regularly required of members of a labor  
9           organization.

10           “(V) To be recommended, approved,  
11           referred, or cleared by or through a labor  
12           organization.

13           “(iii) This subparagraph shall not apply to  
14           a person described in section 7103(a)(2)(v) of  
15           title 5 or a ‘supervisor’, ‘management official’,  
16           or ‘confidential employee’ as those terms are  
17           defined in 7103(a)(10), (11), and (13) of such  
18           title.

19           “(iv) Any labor organization recognized by  
20           the Office as the exclusive representative of a  
21           unit of employees of the Office shall represent  
22           the interests of all employees in that unit with-  
23           out discrimination and without regard to labor  
24           organization membership.

1           “(2) ADOPTION OF EXISTING LABOR AGREE-  
2           MENTS.—The Office shall adopt all labor agreements  
3           which are in effect, as of the day before the effective  
4           date of the Patent and Trademark Office Corpora-  
5           tion Act of 1995, with respect to such Office (as  
6           then in effect). Each such agreement shall remain in  
7           effect for the 2-year period commencing on such  
8           date, unless the agreement provides for a shorter du-  
9           ration or the parties agree otherwise before such pe-  
10          riod ends.

11          “(h) CARRYOVER OF PERSONNEL.—

12           “(1) FROM PTO.—Effective as of the effective  
13           date of the Patent and Trademark Office Corpora-  
14           tion Act of 1995, all officers and employees of the  
15           Patent and Trademark Office on the day before  
16           such effective date shall become officers and employ-  
17           ees of the Office, without a break in service.

18           “(2) OTHER PERSONNEL.—Any individual who,  
19           on the day before the effective date of the Patent  
20           and Trademark Office Corporation Act of 1995, is  
21           an officer or employee of the Department of Com-  
22           merce (other than an officer or employee under  
23           paragraph (1)) shall be transferred to the Office if—

24                   “(A) such individual serves in a position  
25                   for which a major function is the performance

1 of work reimbursed by the Patent and Trade-  
2 mark Office, as determined by the Secretary of  
3 Commerce;

4 “(B) such individual serves in a position  
5 that performed work in support of the Patent  
6 and Trademark Office during at least half of  
7 the incumbent’s work time, as determined by  
8 the Secretary of Commerce; or

9 “(C) such transfer would be in the interest  
10 of the Office, as determined by the Secretary of  
11 Commerce in consultation with the Commis-  
12 sioner of Patents and Trademarks.

13 Any transfer under this paragraph shall be effective  
14 as of the same effective date as referred to in para-  
15 graph (1), and shall be made without a break in  
16 service.

17 “(3) ACCUMULATED LEAVE.—The amount of  
18 sick and annual leave and compensatory time accu-  
19 mulated under title 5 before the effective date de-  
20 scribed in paragraph (1), by officers or employees of  
21 the Patent and Trademark Office who so become of-  
22 ficers or employees of the Office, are obligations of  
23 the Office.

24 “(4) TERMINATION RIGHTS.—Any employee re-  
25 ferred to in paragraph (1) or (2) of this subsection

1 whose employment with the Office is terminated  
2 during the 2-year period beginning on the effective  
3 date of the Patent and Trademark Office Corpora-  
4 tion Act of 1995 shall be entitled to rights and bene-  
5 fits, to be afforded by the Office, similar to those  
6 such employee would have had under Federal law if  
7 termination had occurred immediately before such  
8 date. An employee who would have been entitled to  
9 appeal any such termination to the Merit Systems  
10 Protection Board, if such termination had occurred  
11 immediately before such effective date, may appeal  
12 any such termination occurring within this 2-year  
13 period to the Board under such procedures as it may  
14 prescribe.

15 “(5) CONTINUATION IN OFFICE OF CERTAIN  
16 OFFICERS.—(A) The individual serving as the Com-  
17 missioner of Patents and Trademarks on the day be-  
18 fore the effective date of the Patent and Trademark  
19 Office Corporation Act of 1995 may serve as the  
20 Commissioner until the earlier of 1 year after the ef-  
21 fective date of that Act or the date on which a Com-  
22 missioner is appointed under subsection (a).

23 “(B) The individual serving as the Assistant  
24 Commissioner for Patents on the day before the ef-  
25 fective date of the Patent and Trademark Office

1 Corporation Act of 1995 may serve as the Deputy  
2 Commissioner for Patents until the earlier of 1 year  
3 after the effective date of that Act or the date on  
4 which a Deputy Commissioner for Patents is ap-  
5 pointed under subsection (b).

6 “(C) The individual serving as the Assistant  
7 Commissioner for Trademarks on the day before the  
8 effective date of the Patent and Trademark Office  
9 Corporation Act of 1995 may serve as the Deputy  
10 Commissioner for Trademarks until the earlier of 1  
11 year after the effective date of that Act or the date  
12 on which a Deputy Commissioner for Trademarks is  
13 appointed under subsection (b).

14 “(i) COMPETITIVE STATUS.—For purposes of ap-  
15 pointment to a position in the competitive service for  
16 which an officer or employee of the Office is qualified,  
17 such officer or employee shall not forfeit any competitive  
18 status, acquired by such officer or employee before the ef-  
19 fective date of the Patent and Trademark Office Corpora-  
20 tion Act of 1995, by reason of becoming an officer or em-  
21 ployee of the Office pursuant to subsection (h).

22 “(j) SAVINGS PROVISIONS.—All orders, determina-  
23 tions, rules, and regulations regarding compensation and  
24 benefits and other terms and conditions of employment,  
25 in effect for the Office and its officers and employees im-

1 mediate before the effective date of the Patent and  
2 Trademark Office Corporation Act of 1995, shall continue  
3 in effect with respect to the Office and its officers and  
4 employees until modified, superseded, or set aside by the  
5 Office or a court of appropriate jurisdiction or by oper-  
6 ation of law.”.

7 **SEC. 2414. MANAGEMENT ADVISORY BOARD.**

8 Chapter 1 of part I of title 35, United States Code,  
9 is amended by inserting after section 4 the following:

10 **“§ 5. Patent and Trademark Office Management Advi-  
11 sory Board**

12 “(a) ESTABLISHMENT OF MANAGEMENT ADVISORY  
13 BOARD.—

14 “(1) APPOINTMENT.—The Patent and Trade-  
15 mark Office shall have a Management Advisory  
16 Board (hereafter in this title referred to as the  
17 ‘Board’) of 12 members, 4 of whom shall be ap-  
18 pointed by the President, 4 of whom shall be ap-  
19 pointed by the Speaker of the House of Representa-  
20 tives, and 4 of whom shall be appointed by the  
21 President pro tempore of the Senate. Not more than  
22 3 of the 4 members appointed by each appointing  
23 authority shall be members of the same political  
24 party.

1           “(2) TERMS.—Members of the Board shall be  
2 appointed for a term of 4 years each, except that of  
3 the members first appointed by each appointing au-  
4 thority, 1 shall be for a term of 1 year, 1 shall be  
5 for a term of 2 years, and 1 shall be for a term of  
6 3 years. No member may serve more than 1 term.

7           “(3) CHAIR.—The President shall designate the  
8 chair of the Board, whose term as chair shall be for  
9 3 years.

10           “(4) TIMING OF APPOINTMENTS.—Initial ap-  
11 pointments to the Board shall be made within 3  
12 months after the effective date of the Patent and  
13 Trademark Office Corporation Act of 1995, and va-  
14 cancies shall be filled within 3 months after they  
15 occur.

16           “(5) VACANCIES.—Vacancies shall be filled in  
17 the manner in which the original appointment was  
18 made under this subsection. Members appointed to  
19 fill a vacancy occurring before the expiration of the  
20 term for which the member’s predecessor was ap-  
21 pointed shall be appointed only for the remainder of  
22 that term. A member may serve after the expiration  
23 of that member’s term until a successor is ap-  
24 pointed.



1       “(b) BASIS FOR APPOINTMENTS.—Members of the  
2 Board shall be citizens of the United States who shall be  
3 chosen so as to represent the interests of diverse users  
4 of the Patent and Trademark Office, and shall include in-  
5 dividuals with substantial background and achievement in  
6 corporate finance and management.

7       “(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—  
8 Members of the Board shall be special Government em-  
9 ployees within the meaning of section 202 of title 18.

10       “(d) MEETINGS.—The Board shall meet at the call  
11 of the chair to consider an agenda set by the chair.

12       “(e) DUTIES.—The Board shall—

13               “(1) review the policies, goals, performance,  
14 budget, and user fees of the Patent and Trademark  
15 Office, and advise the Commissioner on these mat-  
16 ters; and

17               “(2) within 60 days after the end of each fiscal  
18 year, prepare an annual report on the matters re-  
19 ferred to in paragraph (1), transmit the report to  
20 the President and the Committees on the Judiciary  
21 of the Senate and the House of Representatives, and  
22 publish the report in the Patent and Trademark Of-  
23 fice Official Gazette.

24       “(f) STAFF.—The Board shall employ a staff of not  
25 more than 10 members and shall procure support services

1 for the staff adequate to enable the Board to carry out  
2 its functions, using funds available to the Commissioner  
3 under section 42 of this title. The Board shall ensure that  
4 members of the staff, other than clerical staff, are espe-  
5 cially qualified in the areas of patents, trademarks, or  
6 management of public agencies. Persons employed by the  
7 Board shall receive compensation as determined by the  
8 Board, which may not exceed the limitations set forth in  
9 section 3(c) of this title, shall serve in accordance with  
10 terms and conditions of employment established by the  
11 Board, and shall be subject solely to the direction of the  
12 Board, notwithstanding any other provision of law.

13       “(g) COMPENSATION.—Members of the Board shall  
14 be compensated for each day (including travel time) dur-  
15 ing which they are attending meetings or conferences of  
16 the Board or otherwise engaged in the business of the  
17 Board, at the rate which is the daily equivalent of the an-  
18 nual rate of basic pay in effect for level III of the Execu-  
19 tive Schedule under section 5314 of title 5, and while away  
20 from their homes or regular places of business they may  
21 be allowed travel expenses, including per diem in lieu of  
22 subsistence, as authorized by section 5703 of title 5.

23       “(h) ACCESS TO INFORMATION.—Members of the  
24 Board shall be provided access to records and information  
25 in the Patent and Trademark Office, except for personnel

1 or other privileged information and information concern-  
2 ing patent applications required to be kept in confidence  
3 by section 122 of this title.”.

4 **SEC. 2415. INDEPENDENCE FROM DEPARTMENT OF COM-**  
5 **MERCE.**

6 (a) DUTIES OF COMMISSIONER.—Section 6 of title  
7 35, United States Code, is amended—

8 (1) by striking “, under the direction of the  
9 Secretary of Commerce,” each place it appears; and

10 (2) by striking “, subject to the approval of the  
11 Secretary of Commerce,”.

12 (b) REGULATIONS FOR AGENTS AND ATTORNEYS.—  
13 Section 31 of title 35, United States Code, is amended  
14 by striking “, subject to the approval of the Secretary of  
15 Commerce,”.

16 **SEC. 2416. TRADEMARK TRIAL AND APPEAL BOARD.**

17 Section 17 of the Act of July 5, 1946 (commonly re-  
18 ferred to as the “Trademark Act of 1946”) (15 U.S.C.  
19 1067) is amended to read as follows:

20 “SEC. 17. (a) In every case of interference, opposition  
21 to registration, application to register as a lawful concur-  
22 rent user, or application to cancel the registration of a  
23 mark, the Commissioner shall give notice to all parties and  
24 shall direct a Trademark Trial and Appeal Board to deter-  
25 mine and decide the respective rights of registration.

1       “(b) The Trademark Trial and Appeal Board shall  
2 include the Commissioner, the Deputy Commissioner for  
3 Patents, the Deputy Commissioner for Trademarks, and  
4 members competent in trademark law who are appointed  
5 by the Commissioner.”.

6 **SEC. 2417. BOARD OF PATENT APPEALS AND INTER-**  
7 **FERENCES.**

8       Section 7 of title 35, United States Code, is amended  
9 to read as follows:

10 **“§ 7. Board of Patent Appeals and Interferences**

11       “(a) ESTABLISHMENT AND COMPOSITION.—There  
12 shall be in the Patent and Trademark Office a Board of  
13 Patent Appeals and Interferences. The Commissioner, the  
14 Deputy Commissioner for Patents, the Deputy Commis-  
15 sioner for Trademarks, and the examiners-in-chief shall  
16 constitute the Board. The examiners-in-chief shall be per-  
17 sons of competent legal knowledge and scientific ability.

18       “(b) DUTIES.—The Board of Patent Appeals and  
19 Interferences shall, on written appeal of an applicant, re-  
20 view adverse decisions of examiners upon applications for  
21 patents and shall determine priority and patentability of  
22 invention in interferences declared under section 135(a)  
23 of this title. Each appeal and interference shall be heard  
24 by at least 3 members of the Board, who shall be des-

1 ignated by the Commissioner. Only the Board of Patent  
2 Appeals and Interferences may grant rehearings.”.

3 **SEC. 2418. SUITS BY AND AGAINST THE CORPORATION.**

4 Chapter 1 of part I of title 35, United States Code,  
5 is amended—

6 (1) by redesignating sections 8 through 14 as  
7 sections 9 through 15; and

8 (2) by inserting after section 7 the following  
9 new section:

10 **“§ 8. Suits by and against the Corporation**

11 “(a) IN GENERAL.—

12 “(1) ACTIONS UNDER UNITED STATES LAW.—

13 Any civil action or proceeding to which the Patent  
14 and Trademark Office is a party is deemed to arise  
15 under the laws of the United States. The Federal  
16 courts shall have exclusive jurisdiction over all civil  
17 actions by or against the Office.

18 “(2) CONTRACT CLAIMS.—Any action or pro-  
19 ceeding against the Office in which any claim is cog-  
20 nizable under the Contract Disputes Act of 1978 (41  
21 U.S.C. 601 and following) shall be subject to that  
22 Act. For purposes of that Act, the Commissioner  
23 shall be deemed to be the agency head with respect  
24 to contract claims arising with respect to the Office.  
25 Any other action or proceeding against the Office

1 founded upon contract may be brought in an appro-  
2 priate district court, notwithstanding any provision  
3 of title 28.

4 “(3) TORT CLAIMS.—(A) Any action or pro-  
5 ceeding against the Office in which any claim is cog-  
6 nizable under the provisions of section 1346(b) and  
7 chapter 171 of title 28, shall be governed by those  
8 provisions.

9 “(B) Any other action or proceeding against the  
10 Office founded upon tort may be brought in an ap-  
11 propriate district court without regard to the provi-  
12 sions of section 1346(b) and chapter 171 of title 28.

13 “(4) PROHIBITION ON ATTACHMENT, LIENS,  
14 ETC.—No attachment, garnishment, lien, or similar  
15 process, intermediate or final, in law or equity, may  
16 be issued against property of the Office.

17 “(5) SUBSTITUTION OF OFFICE AS PARTY.—  
18 The Office shall be substituted as defendant in any  
19 civil action or proceeding against an officer or em-  
20 ployee of the Office, if the Office determines that the  
21 officer or employee was acting within the scope of  
22 his or her employment with the Office. If the Office  
23 refuses to certify scope of employment, the officer or  
24 employee may at any time before trial petition the  
25 court to find and certify that the officer or employee

1 was acting within the scope of his or her employ-  
2 ment. Upon certification by the court, the Office  
3 shall be substituted as the party defendant. A copy  
4 of the petition shall be served upon the Office. In  
5 any such civil action or proceeding to which para-  
6 graph (3)(A) applies, the provisions of section  
7 1346(b) and chapter 171 of title 28 shall apply in  
8 lieu of this paragraph.

9 “(b) RELATIONSHIP WITH JUSTICE DEPARTMENT.—

10 “(1) EXERCISE BY OFFICE OF ATTORNEY GEN-  
11 ERAL’S AUTHORITIES.—Except as provided in this  
12 section, with respect to any action or proceeding in  
13 which the Office is a party or an officer or employee  
14 thereof is a party in his or her official capacity, the  
15 Office, officer, or employee may exercise, without  
16 prior authorization from the Attorney General, the  
17 authorities and duties that otherwise would be exer-  
18 cised by the Attorney General on behalf of the Of-  
19 fice, officer, or employee under title 28 and other  
20 laws.

21 “(2) APPEARANCES BY ATTORNEY GENERAL.—

22 Notwithstanding paragraph (1), at any time the At-  
23 torney General may, in any action or proceeding de-  
24 scribed in paragraph (1), file an appearance on be-  
25 half of the Office or the officer or employee involved,

1 without the consent of the Office or the officer or  
2 employee. Upon such filing, the Attorney General  
3 shall represent the Office or such officer or employee  
4 with exclusive authority in the conduct, settlement,  
5 or compromise of that action or proceeding.

6 “(3) CONSULTATIONS WITH AND ASSISTANCE  
7 BY ATTORNEY GENERAL.—The Office may consult  
8 with the Attorney General concerning any legal mat-  
9 ter, and the Attorney General shall provide advice  
10 and assistance to the Office, including representing  
11 the Office in litigation, if requested by the Office.

12 “(4) REPRESENTATION BEFORE SUPREME  
13 COURT.—The Attorney General shall represent the  
14 Office in all cases before the United States Supreme  
15 Court.

16 “(5) QUALIFICATIONS OF ATTORNEYS.—An at-  
17 torney admitted to practice to the bar of the highest  
18 court of at least one State in the United States or  
19 the District of Columbia and employed by the Office  
20 may represent the Office in any legal proceeding in  
21 which the Office or an officer or employee of the Of-  
22 fice is a party or interested, regardless of whether  
23 the attorney is a resident of the jurisdiction in which  
24 the proceeding is held and notwithstanding any  
25 other prerequisites of qualification or appearance re-



1       quired by the court or administrative body before  
2       which the proceeding is conducted.”.

3       **SEC. 2419. ANNUAL REPORT OF COMMISSIONER.**

4       Section 15 of title 35, United States Code, as redesi-  
5       gnated by section 2418 of this Act, is amended to read as  
6       follows:

7       **“§ 15. Annual report to Congress**

8       “‘The Commissioner shall report to the Congress, not  
9       later than 180 days after the end of each fiscal year, the  
10      moneys received and expended by the Office, the purposes  
11      for which the moneys were spent, the quality and quantity  
12      of the work of the Office, and other information relating  
13      to the Office. The report under this section shall also meet  
14      the requirements of section 9106 of title 31, to the extent  
15      that such requirements are not inconsistent with the pre-  
16      ceding sentence. The report required under this section  
17      shall be deemed to be the report of the Patent and Trade-  
18      mark Office under section 9106 of title 31, and the Com-  
19      missioner shall not file a separate report under such sec-  
20      tion.”.

21      **SEC. 2420. SUSPENSION OR EXCLUSION FROM PRACTICE.**

22      Section 32 of title 35, United States Code, is amend-  
23      ed by inserting before the last sentence the following: “The  
24      Commissioner shall have the discretion to designate any  
25      attorney who is an officer or employee of the Patent and

1 Trademark Office to conduct the hearing required by this  
2 section.”.

3 **SEC. 2421. FUNDING.**

4 Section 42 of title 35, United States Code, is amend-  
5 ed to read as follows:

6 **“§ 42. Patent and Trademark Office funding**

7 “(a) FEES PAYABLE TO THE OFFICE.—All fees for  
8 services performed by or materials furnished by the Patent  
9 and Trademark Office shall be payable to the Office.

10 “(b) USE OF MONEYS.—Moneys of the Patent and  
11 Trademark Office not otherwise used to carry out the  
12 functions of the Office shall be kept in cash on hand or  
13 on deposit, or invested in obligations of the United States  
14 or guaranteed by the United States, or in obligations or  
15 other instruments which are lawful investments for fidu-  
16 ciary, trust, or public funds. Fees available to the Commis-  
17 sioner under this title shall be used exclusively for the  
18 processing of patent applications and for other services  
19 and materials relating to patents. Fees available to the  
20 Commissioner under section 31 of the Act of July 5, 1946  
21 (commonly referred to as the ‘Trademark Act of 1946’;  
22 15 U.S.C. 1113), shall be used exclusively for the process-  
23 ing of trademark registrations and for other services and  
24 materials relating to trademarks.

1       “(c) BORROWING AUTHORITY.—The Patent and  
2 Trademark Office is authorized to issue from time to time  
3 for purchase by the Secretary of the Treasury its debentures,  
4 bonds, notes, and other evidences of indebtedness  
5 (hereafter in this subsection referred to as ‘obligations’)  
6 to assist in financing its activities. Borrowing under this  
7 subsection shall be subject to prior approval in appropriation  
8 Acts. Such borrowing shall not exceed amounts approved in  
9 appropriation Acts. Any such borrowing shall  
10 be repaid only from fees paid to the Office and surcharges  
11 appropriated by the Congress. Such obligations shall be  
12 redeemable at the option of the Office before maturity in  
13 the manner stipulated in such obligations and shall have  
14 such maturity as is determined by the Office with the approval  
15 of the Secretary of the Treasury. Each such obligation  
16 issued to the Treasury shall bear interest at a rate  
17 not less than the current yield on outstanding marketable  
18 obligations of the United States of comparable maturity  
19 during the month preceding the issuance of the obligation  
20 as determined by the Secretary of the Treasury. The Secretary  
21 of the Treasury shall purchase any obligations of the Office  
22 issued under this subsection and for such purpose the Secretary  
23 of the Treasury is authorized to use as a public-debt transaction  
24 the proceeds of any securities issued under chapter 31 of title 31,  
25 and the purposes for

1 which securities may be issued under that chapter are ex-  
2 tended to include such purpose. Payment under this sub-  
3 section of the purchase price of such obligations of the  
4 Patent and Trademark Office shall be treated as public  
5 debt transactions of the United States.”.

6 **SEC. 2422. AUDITS.**

7 Chapter 4 of part I of title 35, United States Code,  
8 is amended by adding at the end the following new section:

9 **“§ 43. Audits**

10 “(a) IN GENERAL.—Financial statements of the Pat-  
11 ent and Trademark Office shall be prepared on an annual  
12 basis in accordance with generally accepted accounting  
13 principles. Such statements shall be audited by an inde-  
14 pendent certified public accountant chosen by the Com-  
15 missioner. The audit shall be conducted in accordance with  
16 standards that are consistent with generally accepted Gov-  
17 ernment auditing standards and other standards estab-  
18 lished by the Comptroller General, and with the generally  
19 accepted auditing standards of the private sector, to the  
20 extent feasible. The Commissioner shall transmit to the  
21 Committees on the Judiciary of the House of Representa-  
22 tives and the Senate the results of each audit under this  
23 subsection.

24 “(b) REVIEW BY COMPTROLLER GENERAL.—The  
25 Comptroller General may review any audit of the financial

1 statement of the Patent and Trademark Office that is con-  
2 ducted under subsection (a). The Comptroller General  
3 shall report to the Congress and the Office the results of  
4 any such review and shall include in such report appro-  
5 priate recommendations.

6 “(c) AUDIT BY COMPTROLLER GENERAL.—The  
7 Comptroller General may audit the financial statements  
8 of the Office and such audit shall be in lieu of the audit  
9 required by subsection (a). The Office shall reimburse the  
10 Comptroller General for the cost of any audit conducted  
11 under this subsection.

12 “(d) ACCESS TO OFFICE RECORDS.—All books, fi-  
13 nancial records, report files, memoranda, and other prop-  
14 erty that the Comptroller General deems necessary for the  
15 performance of any audit shall be made available to the  
16 Comptroller General.

17 “(e) APPLICABILITY IN LIEU OF TITLE 31 PROVI-  
18 SIONS.—This section applies to the Office in lieu of the  
19 provisions of section 9105 of title 31.”

20 **SEC. 2423. TRANSFERS.**

21 (a) TRANSFER OF FUNCTIONS.—Except as otherwise  
22 provided in this Act, there are transferred to, and vested  
23 in, the Patent and Trademark Office all functions, powers,  
24 and duties vested by law in the Secretary of Commerce  
25 or the Department of Commerce or in the officers or com-

1 ponents in the Department of Commerce with respect to  
2 the authority to grant patents and register trademarks,  
3 and in the Patent and Trademark Office, as in effect on  
4 the day before the effective date of this subtitle, and in  
5 the officers and components of such Office.

6 (b) TRANSFER OF FUNDS AND PROPERTY.—The  
7 Secretary of Commerce shall transfer to the Patent and  
8 Trademark Office, on the effective date of this subtitle,  
9 so much of the assets, liabilities, contracts, property,  
10 records, and unexpended and unobligated balances of ap-  
11 propriations, authorizations, allocations, and other funds  
12 employed, held, used, arising from, available to, or to be  
13 made available to the Department of Commerce, including  
14 funds set aside for accounts receivable which are related  
15 to functions, powers, and duties which are vested in the  
16 Patent and Trademark Office by this subtitle.

17 **CHAPTER 2—EFFECTIVE DATE;**

18 **TECHNICAL AMENDMENTS**

19 **SEC. 2431. EFFECTIVE DATE.**

20 This subtitle shall take effect 6 months after the date  
21 of the enactment of this Act.

22 **SEC. 2432. TECHNICAL AND CONFORMING AMENDMENTS.**

23 (a) AMENDMENTS TO TITLE 35.—

1           (1) The table of contents for part I of title 35,  
2           United States Code, is amended by amending the  
3           item relating to chapter 1 to read as follows:

“1. Establishment, Officers and Employees, Functions ..... 1.”

4           (2) The table of sections for chapter 1 of title  
5           35, United States Code, is amended to read as fol-  
6           lows:

7           **“CHAPTER 1—ESTABLISHMENT, OFFICERS**  
8           **AND EMPLOYEES, FUNCTIONS**

“Sec.

- “1. Establishment.
- “2. Powers and duties.
- “3. Officers and employees.
- “4. Restrictions on officers and employees as to interest in patents.
- “5. Patent and Trademark Office Management Advisory Board.
- “6. Duties of Commissioner.
- “7. Board of Patent Appeals and Interferences.
- “8. Suits by and against the Corporation.
- “9. Library.
- “10. Classification of patents.
- “11. Certified copies of records.
- “12. Publications.
- “13. Exchange of copies of patents with foreign countries.
- “14. Copies of patents for public libraries.
- “15. Annual report to Congress.”.

9           (3) The table of contents for chapter 4 of part  
10          I of title 35, United States Code, is amended by  
11          adding at the end the following new item:

“43. Audits.”.

12          (b) OTHER PROVISIONS OF LAW.—

13           (1) Section 9101(3) of title 31, United States  
14          Code, is amended by adding at the end the follow-  
15          ing:

1           “(O) the Patent and Trademark Office.”.

2           (2) Section 500(e) of title 5, United States  
3 Code, is amended by striking “Patent Office” and  
4 inserting “Patent and Trademark Office”.

5           (3) Section 5102(c)(23) of title 5, United  
6 States Code, is amended by striking “, Department  
7 of Commerce”.

8           (4) Section 5316 of title 5, United States Code,  
9 is amended by striking “Commissioner of Patents,  
10 Department of Commerce.”, “Deputy Commissioner  
11 of Patents and Trademarks.”, “Assistant Commis-  
12 sioner for Patents.”, and “Assistant Commissioner  
13 for Trademarks.”.

14           (5) Section 12 of the Act of February 14, 1903  
15 (15 U.S.C. 1511) is amended by striking “(d) Pat-  
16 ent and Trademark Office;” and redesignating sub-  
17 sections (a) through (g) as paragraphs (1) through  
18 (6), respectively.

19           (6) The Act of April 12, 1892 (27 Stat. 395;  
20 20 U.S.C. 91) is amended by striking “Patent Of-  
21 fice” and inserting “Patent and Trademark Office”.

22           (7) Sections 505(m) and 512(o) of the Federal  
23 Food, Drug, and Cosmetic Act (21 U.S.C. 355(m)  
24 and 360b(o)) are each amended by striking “of the  
25 Department of Commerce”.



1           (8) Section 105(e) of the Federal Alcohol Ad-  
2           ministration Act (27 U.S.C. 205(e)) is amended by  
3           striking “Patent Office” and inserting “Patent and  
4           Trademark Office”.

5           (9) Section 1744 of title 28, United States  
6           Code is amended—

7                   (A) by striking “Patent Office” each place  
8                   it appears and inserting “Patent and Trade-  
9                   mark Office”; and

10                   (B) by striking “Commissioner of Patents”  
11                   and inserting “Commissioner of Patents and  
12                   Trademarks”.

13           (10) Section 1745 of title 28, United States  
14           Code, is amended by striking “United States Patent  
15           Office” and inserting “Patent and Trademark Of-  
16           fice”.

17           (11) Section 1928 of title 28, United States  
18           Code, is amended by striking “Patent Office” and  
19           inserting “Patent and Trademark Office”.

20           (12) Section 160 of the Atomic Energy Act of  
21           1954 (42 U.S.C. 2190) is amended—

22                   (A) by striking “United States Patent Of-  
23                   fice” and inserting “Patent and Trademark Of-  
24                   fice”; and

1 (B) by striking “Commissioner of Patents”  
2 and inserting “Commissioner of Patents and  
3 Trademarks”.

4 (13) Section 305(c) of the National Aeronautics  
5 and Space Act of 1958 (42 U.S.C. 2457(c)) is  
6 amended by striking “Commissioner of Patents” and  
7 inserting “Commissioner of Patents and Trade-  
8 marks”.

9 (14) Section 12(a) of the Solar Heating and  
10 Cooling Demonstration Act of 1974 (42 U.S.C.  
11 5510(a)) is amended by striking “Commissioner of  
12 the Patent Office” and inserting “Commissioner of  
13 Patents and Trademarks”.

14 (15) Section 1111 of title 44, United States  
15 Code, is amended by striking “the Commissioner of  
16 Patents,”.

17 (16) Section 1114 of title 44, United States  
18 Code, is amended by striking “the Commissioner of  
19 Patents,”.

20 (17) Section 1123 of title 44, United States  
21 Code, is amended by striking “the Patent Office,”.

22 (18) Sections 1337 and 1338 of title 44, United  
23 States Code, and the items relating to those sections  
24 in the table of contents for chapter 13 of such title,  
25 are repealed.

1           (19) Section 10(i) of the Trading With the  
2           Enemy Act (50 U.S.C. App. 10(i)) is amended by  
3           striking “Commissioner of Patents” and inserting  
4           “Commissioner of Patents and Trademarks”.

5           (20) Section 8G(a)(2) of the Inspector General  
6           Act of 1978 (5 U.S.C. App.) is amended by inserting  
7           “the Patent and Trademark Office,” after “the  
8           Panama Canal Commission,”.

9                           **Subtitle E—Miscellaneous**  
10                           **Provisions**

11       **SEC. 2501. REFERENCES.**

12           Any reference in any other Federal law, Executive  
13           order, rule, regulation, or delegation of authority, or any  
14           document of or pertaining to a department or office from  
15           which a function is transferred by this title—

16                   (1) to the head of such department or office is  
17                   deemed to refer to the head of the department or of-  
18                   fice to which such function is transferred; or

19                   (2) to such department or office is deemed to  
20                   refer to the department or office to which such func-  
21                   tion is transferred.

22       **SEC. 2502. EXERCISE OF AUTHORITIES.**

23           Except as otherwise provided by law, a Federal offi-  
24           cial to whom a function is transferred by this title may,  
25           for purposes of performing the function, exercise all au-

1 thorties under any other provision of law that were avail-  
2 able with respect to the performance of that function to  
3 the official responsible for the performance of the function  
4 immediately before the effective date of the transfer of the  
5 function under this title.

6 **SEC. 2503. SAVINGS PROVISIONS.**

7 (a) LEGAL DOCUMENTS.—All orders, determinations,  
8 rules, regulations, permits, grants, loans, contracts, agree-  
9 ments, certificates, licenses, and privileges—

10 (1) that have been issued, made, granted, or al-  
11 lowed to become effective by the President, the Sec-  
12 retary of Commerce, the United States Trade Rep-  
13 resentative, any officer or employee of any office  
14 transferred by this title, or any other Government  
15 official, or by a court of competent jurisdiction, in  
16 the performance of any function that is transferred  
17 by this title, and

18 (2) that are in effect on the effective date of  
19 such transfer (or become effective after such date  
20 pursuant to their terms as in effect on such effective  
21 date),

22 shall continue in effect according to their terms until  
23 modified, terminated, superseded, set aside, or revoked in  
24 accordance with law by the President, any other author-

1 ized official, a court of competent jurisdiction, or operation  
2 of law.

3 (b) PROCEEDINGS.—This title shall not affect any  
4 proceedings or any application for any benefits, service,  
5 license, permit, certificate, or financial assistance pending  
6 on the date of the enactment of this Act before an office  
7 transferred by this title, but such proceedings and applica-  
8 tions shall be continued. Orders shall be issued in such  
9 proceedings, appeals shall be taken therefrom, and pay-  
10 ments shall be made pursuant to such orders, as if this  
11 Act had not been enacted, and orders issued in any such  
12 proceeding shall continue in effect until modified, termi-  
13 nated, superseded, or revoked by a duly authorized official,  
14 by a court of competent jurisdiction, or by operation of  
15 law. Nothing in this subsection shall be considered to pro-  
16 hibit the discontinuance or modification of any such pro-  
17 ceeding under the same terms and conditions and to the  
18 same extent that such proceeding could have been discon-  
19 tinued or modified if this title had not been enacted.

20 (c) SUITS.—This title shall not affect suits com-  
21 menced before the date of the enactment of this Act, and  
22 in all such suits, proceeding shall be had, appeals taken,  
23 and judgments rendered in the same manner and with the  
24 same effect as if this title had not been enacted.

1 (d) NONABATEMENT OF ACTIONS.—No suit, action,  
2 or other proceeding commenced by or against the Depart-  
3 ment of Commerce or the Secretary of Commerce, or by  
4 or against any individual in the official capacity of such  
5 individual as an officer or employee of an office trans-  
6 ferred by this title, shall abate by reason of the enactment  
7 of this title.

8 (e) CONTINUANCE OF SUITS.—If any Government of-  
9 ficer in the official capacity of such officer is party to a  
10 suit with respect to a function of the officer, and under  
11 this title such function is transferred to any other officer  
12 or office, then such suit shall be continued with the other  
13 officer or the head of such other office, as applicable, sub-  
14 stituted or added as a party.

15 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-  
16 VIEW.—Except as otherwise provided by this title, any  
17 statutory requirements relating to notice, hearings, action  
18 upon the record, or administrative or judicial review that  
19 apply to any function transferred by this title shall apply  
20 to the exercise of such function by the head of the Federal  
21 agency, and other officers of the agency, to which such  
22 function is transferred by this title.

23 **SEC. 2504. TRANSFER OF ASSETS.**

24 Except as otherwise provided in this title, so much  
25 of the personnel, property, records, and unexpended bal-

1 ances of appropriations, allocations, and other funds em-  
2 ployed, used, held, available, or to be made available in  
3 connection with a function transferred to an official or  
4 agency by this title shall be available to the official or the  
5 head of that agency, respectively, at such time or times  
6 as the Director of the Office of Management and Budget  
7 directs for use in connection with the functions trans-  
8 ferred.

9 **SEC. 2505. DELEGATION AND ASSIGNMENT.**

10       Except as otherwise expressly prohibited by law or  
11 otherwise provided in this title, an official to whom func-  
12 tions are transferred under this title (including the head  
13 of any office to which functions are transferred under this  
14 title) may delegate any of the functions so transferred to  
15 such officers and employees of the office of the official as  
16 the official may designate, and may authorize successive  
17 redelegations of such functions as may be necessary or ap-  
18 propriate. No delegation of functions under this section  
19 or under any other provision of this title shall relieve the  
20 official to whom a function is transferred under this title  
21 of responsibility for the administration of the function.

1 **SEC. 2506. AUTHORITY OF DIRECTOR OF THE OFFICE OF**  
2 **MANAGEMENT AND BUDGET WITH RESPECT**  
3 **TO FUNCTIONS TRANSFERRED.**

4 (a) DETERMINATIONS.—If necessary, the Director  
5 shall make any determination of the functions that are  
6 transferred under this title.

7 (b) INCIDENTAL TRANSFERS.—The Director, at such  
8 time or times as the Director shall provide, may make  
9 such determinations as may be necessary with regard to  
10 the functions transferred by this title, and to make such  
11 additional incidental dispositions of personnel, assets, li-  
12 abilities, grants, contracts, property, records, and unex-  
13 pended balances of appropriations, authorizations, alloca-  
14 tions, and other funds held, used, arising from, available  
15 to, or to be made available in connection with such func-  
16 tions, as may be necessary to carry out the provisions of  
17 this title. The Director shall provide for the termination  
18 of the affairs of all entities terminated by this title and  
19 for such further measures and dispositions as may be nec-  
20 essary to effectuate the purposes of this title.

21 **SEC. 2507. CERTAIN VESTING OF FUNCTIONS CONSIDERED**  
22 **TRANSFERS.**

23 For purposes of this title, the vesting of a function  
24 in a department or office pursuant to reestablishment of  
25 an office shall be considered to be the transfer of the  
26 function.



1 **SEC. 2508. AVAILABILITY OF EXISTING FUNDS.**

2 Existing appropriations and funds available for the  
3 performance of functions, programs, and activities termi-  
4 nated pursuant to this title shall remain available, for the  
5 duration of their period of availability, for necessary ex-  
6 penses in connection with the termination and resolution  
7 of such functions, programs, and activities.

8 **SEC. 2509. DEFINITIONS.**

9 For purposes of this title—

10 (1) the term “function” includes any duty, obli-  
11 gation, power, authority, responsibility, right, privi-  
12 lege, activity, or program; and

13 (2) the term ‘office’ includes any office, admin-  
14 istration, agency, bureau, institute, council, unit, or-  
15 ganizational entity, or component thereof.

16 **Subtitle F—Citizens Commission**  
17 **on 21st Century Government**

18 **SEC. 2601. SHORT TITLE AND PURPOSE.**

19 (a) SHORT TITLE.—This subtitle may be cited as the  
20 “21st Century Government Act”.

21 (b) PURPOSE.—The purpose of this subtitle is to es-  
22 tablish a bipartisan commission to—

23 (1) identify and analyze the current functions  
24 and missions of the Federal Government; and

1           (2) based on that analysis, develop rec-  
2           ommendations to restructure the executive branch of  
3           the Federal Government, in order to—

4                   (A) focus Federal efforts on those core  
5                   functions and missions that the Federal Gov-  
6                   ernment must perform in the 21st Century;

7                   (B) ensure that the Federal Government  
8                   performs those functions as effectively and effi-  
9                   ciently as possible;

10                  (C) consolidate executive organizations  
11                  around clear, specific missions reflecting cur-  
12                  rent national priorities;

13                  (D) eliminate functions that do not ad-  
14                  vance current national priorities;

15                  (E) eliminate duplication of functions and  
16                  activities within and among departments and  
17                  agencies;

18                  (F) streamline organizational hierarchy so  
19                  as to reduce costs and increase accountability  
20                  for performance; and

21                  (G) provide a basis for—

22                          (i) the subsequent implementation of  
23                          operational reforms for Federal agencies,  
24                          including administrative consolidation and

1 the provision of 1-stop services for citizens;  
2 and  
3 (ii) more detailed structural improve-  
4 ments within each agency.

5 **SEC. 2602. CITIZENS COMMISSION ON 21ST CENTURY GOV-**  
6 **ERNMENT.**

7 (a) ESTABLISHMENT.—There is established in the  
8 legislative branch an independent commission to be known  
9 as the Citizens Commission on 21st Century Government  
10 (in this subtitle referred to as the “Commission”).

11 (b) APPOINTMENT OF COMMISSIONERS.—

12 (1) COMPOSITION.—The Commission shall be a  
13 bipartisan body composed of 11 members, who shall  
14 be appointed as follows:

15 (A) Three members shall be appointed by  
16 the Speaker of the House of Representatives.

17 (B) Three members shall be appointed by  
18 the majority leader of the Senate.

19 (C) Two members shall be appointed by  
20 the minority leader of the House of Representa-  
21 tives.

22 (D) Two members shall be appointed by  
23 the minority leader of the Senate.

24 (E) One member appointed jointly by the  
25 Speaker of the House of Representatives and

1           the majority leader of the Senate, in consulta-  
2           tion with the minority leaders of the House of  
3           Representatives and the Senate, who shall be  
4           the Chairman of the Commission.

5           (2) MEMBERSHIP QUALIFICATIONS.—Any citi-  
6           zen of the United States is eligible to be appointed  
7           as a member of the Commission, except an individ-  
8           ual serving as a Member of Congress or an elected  
9           or appointed official of the executive branch of the  
10          Federal Government.

11          (3) CONFLICT OF INTERESTS.—For purposes of  
12          chapter 11 of title 18, United States Code, a mem-  
13          ber of the Commission shall be a special Government  
14          employee.

15          (4) DATE OF APPOINTMENTS.—All members of  
16          the Commission shall be appointed no later than 30  
17          days after the date of the enactment of this Act.

18          (c) TERMS.—Each member of the Commission shall  
19          serve until the termination of the Commission.

20          (d) VACANCIES.—A vacancy on the Commission shall  
21          be filled in the same manner as was the original appoint-  
22          ment.

23          (e) MEETINGS.—The Commission shall meet as nec-  
24          essary to carry out its responsibilities.

1           (f) TRAVEL EXPENSES.—Members of the Commis-  
2 sion shall receive travel expenses, including per diem in  
3 lieu of subsistence, in accordance with sections 5702 and  
4 5703 of title 5, United States Code.

5           (g) DIRECTOR.—

6           (1) APPOINTMENT.—The Chairman, in con-  
7 sultation with the other members of the Commission,  
8 shall appoint a Director of the Commission.

9           (2) PAY.—The Director shall be paid at the  
10 rate of basic pay payable for level IV of the Execu-  
11 tive Schedule under section 5315 of title 5, United  
12 States Code.

13          (h) STAFF.—

14          (1) APPOINTMENT.—The Director may, with  
15 the approval of the Chairman, appoint and fix the  
16 pay of employees of the Commission without regard  
17 to the provisions of title 5, United States Code, gov-  
18 erning appointment in the competitive service, and  
19 any Commission employee may be paid without re-  
20 gard to the provisions of chapter 51 and subchapter  
21 III of chapter 53 of that title relating to classifica-  
22 tion and General Schedule pay rates, except that a  
23 Commission employee may not receive pay in excess  
24 of the annual rate of basic pay payable for level V

1 of the Executive Schedule under section 5316 of title  
2 5, United States Code.

3 (2) **DETAIL.**—(A) Upon request of the Direc-  
4 tor, the head of any Federal department or agency  
5 may detail any of the personnel of the department  
6 or agency to the Commission to assist the Commis-  
7 sion in carrying out its duties under this subtitle.  
8 Such details may be made with or without reim-  
9 bursement, and shall be without interruption or loss  
10 of civil service status or privilege.

11 (B) Upon request of the Director, a Member of  
12 Congress or an officer who is the head of an office  
13 or committee of the Senate or House of Representa-  
14 tives or of an agency within the legislative branch  
15 may detail an employee of the office or committee of  
16 which such Member or officer is the head to the  
17 Commission to assist the Commission in carrying  
18 out its duties under this subtitle.

19 (i) **SUPPORT SERVICES.**—The Comptroller General of  
20 the United States shall provide support services to the  
21 Commission in accordance with an agreement entered into  
22 with the Commission.

23 (j) **OTHER AUTHORITIES.**—The Commission may  
24 procure by contract, to the extent funds are available, the  
25 temporary or intermittent services of experts or consult-

1 ants pursuant to section 3109 of title 5, United States  
2 Code. The Commission shall give public notice of any such  
3 contract before entering into such contract.

4 (k) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be appropriated to the Commission  
6 \$1,250,000 for fiscal year 1996 to carry out its respon-  
7 sibilities under this subtitle, to remain available until De-  
8 cember 31, 1996.

9 (l) TERMINATION.—The Commission shall terminate  
10 December 31, 1996.

11 **SEC. 2603. DEPARTMENT AND AGENCY COOPERATION.**

12 All Federal agencies and employees of all Federal  
13 agencies shall cooperate fully with all requests for infor-  
14 mation from the Commission and shall respond to any  
15 such request for information within 30 days or such other  
16 time as is agreed upon by the requesting and requested  
17 persons.

18 **SEC. 2604. HEARINGS.**

19 The Commission shall hold such hearings as it con-  
20 siders appropriate. The Chairman of the Commission shall  
21 designate a member of the Commission to preside at any  
22 hearing in the absence of the Chairman.

1 **SEC. 2605. COMMISSION PROCEDURES.**

2 (a) **STARTUP.**—The Commission may conduct busi-  
3 ness at any time after at least 6 of its members have been  
4 appointed in accordance with section 2602.

5 (b) **VOTING.**—A majority of those members of the  
6 Commission who have been appointed in accordance with  
7 section 2602 shall constitute a quorum for purposes of  
8 conducting Commission business. Any recommendation of  
9 the Commission shall require an affirmative vote of a ma-  
10 jority of Commission members who have been appointed  
11 in accordance with section 2602. Members of the Commis-  
12 sion may not vote by proxy.

13 **SEC. 2606. FRAMEWORK FOR THE FEDERAL GOVERNMENT**  
14 **IN THE 21ST CENTURY.**

15 (a) **ANALYSIS OF CURRENT FEDERAL FUNCTIONS.**—  
16 The Commission shall conduct a comprehensive review of  
17 the functions currently performed by the Federal Govern-  
18 ment, and shall analyze each such function under the fol-  
19 lowing criteria:

20 (1) Does the function have clearly defined mis-  
21 sions and objectives.

22 (2) Do those missions and objectives serve a  
23 currently valid and important Federal role, including  
24 analysis of whether—

25 (A) there is a need for governmental ac-  
26 tion;



1 (B) the Federal Government has exclusive  
2 constitutional authority to perform the function;

3 (C) the Federal Government is otherwise  
4 uniquely positioned to perform the function;  
5 and

6 (D) there is a clear need for or advantage  
7 to performing the function at the Federal level  
8 versus at the State or local level.

9 (3) Does the current Federal role constitute the  
10 most effective and efficient means of achieving the  
11 objectives of the function.

12 (4) Does the current Federal role constitute the  
13 least intrusive means of achieving the objectives with  
14 respect to individual liberty and principles of Fed-  
15 eralism.

16 (5) Is there a need to enhance Federal perform-  
17 ance of the function, including analysis of whether—

18 (A) the Federal Government requires  
19 greater resources or authority to perform that  
20 function;

21 (B) there are other ways of consolidating  
22 Federal resources and activities directed to the  
23 function; and

1           (C) there are opportunities for participa-  
2           tion by the private sector or other levels of gov-  
3           ernment.

4           (b) COMMISSION REPORTS AND RECOMMENDA-  
5 TIONS.—

6           (1) IN GENERAL.—The Commission shall pre-  
7           pare and submit to the Congress a report or reports  
8           on the results of its analysis. Each report shall be  
9           made public and shall include—

10           (A) the Commission's findings and conclu-  
11           sions;

12           (B) the Commission's recommendations for  
13           the restructuring or termination of current  
14           functions;

15           (C) the reasons for such findings, conclu-  
16           sions, and recommendations; and

17           (D) a complete description of the Commis-  
18           sion's deliberations, including a discussion of  
19           any major points on which the members had  
20           significant disagreements.

21           (2) REPORT ON MATTERS OF HIGHEST PRIOR-  
22           ITY.—Not later than July 31, 1996, the Commission  
23           shall submit a report containing those findings, con-  
24           clusions, and recommendations that the Commission  
25           considers to be of highest priority.

1           (3) ADDITIONAL REPORTS.—The Commission  
2           may submit such additional reports under this sec-  
3           tion as it considers appropriate, and at such times  
4           on or before December 31, 1996, as it considers ap-  
5           propriate.

6 **SEC. 2607. PROPOSAL FOR REORGANIZING THE EXECUTIVE**  
7                                   **BRANCH.**

8           (a) IN GENERAL.—The Commission shall—

9                       (1) examine all significant issues related to the  
10                     organization of the executive branch of the Federal  
11                     Government; and

12                    (2) develop organizational recommendations to  
13                     eliminate duplication, reduce costs, streamline oper-  
14                     ations, and improve performance and accountability  
15                     in Federal departments and agencies.

16           (b) LEGISLATIVE PROPOSAL.—The recommendations  
17           of the Commission under this section shall be encompassed  
18           in a single legislative proposal under section 2608 which  
19           implements a comprehensive reorganization and restruc-  
20           turing plan for the executive branch and which addresses,  
21           among other issues, the following:

22                    (1) Whether the Federal Government should in-  
23                     clude fewer departments, each with clear, specific  
24                     missions and goals, and if so, what those depart-  
25                     ments should be.

1           (2) Whether and how to ensure that similar  
2 functions of Government, such as statistical, science,  
3 or trade functions, are consolidated within a single  
4 department or agency.

5           (3) Whether and how significant common ad-  
6 ministrative functions should be consolidated within  
7 one executive organization.

8           (4) Whether a single department-level office  
9 should be designated with responsibility for rep-  
10 resentation and oversight within the White House of  
11 all independent agencies of the executive branch.

12           (5) Whether and how a streamlined hierarchical  
13 structure can be provided within each department  
14 and agency.

15       (c) OTHER RECOMMENDATIONS.—The Commission  
16 may also make additional recommendations which it deter-  
17 mines will enhance the operational effectiveness of the or-  
18 ganizational recommendations. Such recommendations  
19 shall not be included in any draft implementation bill to  
20 be considered under section 2609, but may be submitted  
21 separately to the Congress.

22 **SEC. 2608. PROCEDURES FOR MAKING RECOMMENDA-**  
23 **TIONS.**

24       (a) COMMISSION REPORT.—No later than December  
25 31, 1996, the Commission shall prepare and submit to the

1 Congress a single report, which shall be made public, and  
2 which shall include—

3 (1) a description of the Commission’s findings  
4 and recommendations pursuant to section 2607;

5 (2) the reasons for such recommendations; and

6 (3) a single proposal consisting of draft legisla-  
7 tion to implement those recommendations for which  
8 legislation is appropriate.

9 (b) REVIEW AND COMMENT BY THE PRESIDENT.—

10 No later than March 31, 1997, the President shall submit  
11 to the Congress an evaluation of the Commission’s report  
12 under this section, together with any recommendations  
13 that the President considers appropriate.

14 **SEC. 2609. CONGRESSIONAL CONSIDERATION OF REFORM**  
15 **PROPOSALS.**

16 (a) DEFINITIONS.—For purposes of this section—

17 (1) the term “implementation bill” means only  
18 a bill which is introduced as provided under sub-  
19 section (b), and consists of the draft legislation con-  
20 tained in the report submitted to Congress under  
21 section 2608; and

22 (2) the term “calendar day of session” means  
23 a calendar day other than one on which either  
24 House is not in session because of an adjournment  
25 of more than 3 days to a date certain.

1 (b) INTRODUCTION, REFERRAL, AND REPORT OR  
2 DISCHARGE.—

3 (1) INTRODUCTION.—On the first calendar day  
4 of session on which both Houses are in session im-  
5 mediately following April 15, 1997, a bill consisting  
6 of the draft legislation contained in the report sub-  
7 mitted to Congress under section 2608 shall be in-  
8 troduced (by request)—

9 (A) in the Senate by the majority leader or  
10 by any Member designated by the majority  
11 leader; and

12 (B) in the House of Representatives by the  
13 majority leader or by any Member designated  
14 by the majority.

15 If such a bill is not introduced in either House as  
16 provided in the preceding session within 3 calendar  
17 days of session after such first calendar day of ses-  
18 sion, then any Member of that House may introduce  
19 such a bill.

20 (2) REFERRAL.—The implementation bill intro-  
21 duced in the Senate under paragraph (1) shall be re-  
22 ferred concurrently to the Committee on Govern-  
23 mental Affairs of the Senate and other committees  
24 with jurisdiction.

1           (3) REPORT OR DISCHARGE.—If any committee  
2           to which an implementation bill is referred has not  
3           reported such bill by the end of the 15th calendar  
4           day of session after the date of introduction of such  
5           bill, such committee shall be immediately discharged  
6           from further consideration of such bill, and upon  
7           being reported or discharged from all committees,  
8           such bill shall be placed on the appropriate calendar  
9           of the House involved.

10          (c) PROCEDURES FOR CONSIDERATION BY THE SEN-  
11          ATE.—

12           (1) IN GENERAL.—On or after the second cal-  
13           endar day of session after the date on which an im-  
14           plementation bill is placed on the Senate calendar,  
15           it is in order (even though a previous motion to the  
16           same effect has been disagreed to) for any Senator  
17           to move to proceed to the consideration of the imple-  
18           mentation bill (but only on the day after the cal-  
19           endar day of session on which such Senator an-  
20           nounces on the floor of the Senate the Senator's in-  
21           tention to do so). All points of order against the im-  
22           plementation bill (and against consideration of the  
23           implementation bill) are waived. The motion is privi-  
24           leged and is not debatable. The motion is not subject  
25           to amendment, or to a motion to postpone, or to a

1 motion to proceed to the consideration of other busi-  
2 ness. A motion to reconsider the vote by which the  
3 motion is agreed to or disagreed to shall not be in  
4 order. If a motion to proceed to the consideration of  
5 the implementation bill is agreed to, the Senate shall  
6 immediately proceed to consideration of the imple-  
7 mentation bill without intervening motion, order, or  
8 other business, and the implementation bill shall re-  
9 main the unfinished business of the Senate until dis-  
10 posed of.

11 (2) DEBATE.—Debate on the implementation  
12 bill, and on all debatable motions and appeals in  
13 connection therewith, shall be limited to not more  
14 than 10 hours, which shall be divided equally be-  
15 tween the majority leader and the minority leader or  
16 their designees. An amendment to the implementa-  
17 tion bill is not in order. A motion further to limit  
18 debate is in order and not debatable. A motion to  
19 postpone, or a motion to proceed to the consider-  
20 ation of other business, or a motion to recommit the  
21 implementation bill is not in order. A motion to re-  
22 consider the vote by which the implementation bill is  
23 agreed to or disagreed to is not in order.

24 (3) MOTION TO SUSPEND OR WAIVE APPLICA-  
25 TION.—No motion to suspend or waive the applica-



1       tion of this subsection shall be in order, except by  
2       unanimous consent.

3           (4) APPEALS FROM CHAIR.—Appeals from the  
4       decisions of the Chair relating to the application of  
5       the rules of the Senate to the procedure relating to  
6       an implementation bill shall be decided without de-  
7       bate.

8           (5) FINAL PASSAGE.—Immediately following  
9       the conclusion of the debate on an implementation  
10      bill and a single quorum call at the conclusion of the  
11      debate if requested in accordance with the rules of  
12      the Senate, the vote on final passage of the imple-  
13      mentation bill shall occur.

14      (d) CONSIDERATION BY OTHER HOUSE.—

15           (1) IN GENERAL.—If, before the passage by the  
16      Senate of an implementation bill, the Senate receives  
17      from the House of Representatives an implementa-  
18      tion bill, then the following procedures shall apply:

19           (A) The implementation bill of the House  
20      of Representatives shall not be referred to a  
21      committee and may not be considered in the  
22      Senate except in the case of final passage as  
23      provided in subparagraph (B)(ii).

24           (B) With respect to an implementation bill  
25      of the Senate—

1 (i) the procedure in the Senate shall  
2 be the same as if no implementation bill  
3 had been received from the House of Rep-  
4 resentatives; but

5 (ii) the vote on final passage shall be  
6 on the implementation bill of the House of  
7 Representatives.

8 (2) FINAL DISPOSITION.—Upon disposition of  
9 the implementation bill received from the House of  
10 Representatives, it shall no longer be in order to  
11 consider the implementation bill that originated in  
12 the Senate.

13 (f) RULES OF THE SENATE AND HOUSE.—This sec-  
14 tion is enacted by Congress—

15 (1) as an exercise of the rulemaking power of  
16 the Senate and House of Representatives, respec-  
17 tively, and as such it is deemed a part of the rules  
18 of each House, respectively, but applicable only with  
19 respect to the procedure to be followed in that  
20 House in the case of an implementation bill, and it  
21 supersedes other rules only to the extent that it is  
22 inconsistent with such rules; and

23 (2) with full recognition of the constitutional  
24 right of either House to change its rules (so far as  
25 relating to the procedure of that House) at any time,

1 in the same manner, and to the same extent as in  
2 the case of any other rule of that House.

3 **SEC. 2610. DISTRIBUTION OF ASSETS.**

4 Any proceeds from the sale of assets of any depart-  
5 ment or agency resulting from the enactment of an imple-  
6 mentation bill under section 2609 shall be—

7 (1) applied to reduce the Federal deficit; and

8 (2) deposited in the Treasury and treated as  
9 general receipts.

10 **SEC. 2611. AGENCY DEFINED.**

11 For purposes of this subtitle, the term “agency”  
12 means each authority of the Federal Government, includ-  
13 ing all departments, independent agencies, government-  
14 sponsored enterprises, and Government corporations, ex-  
15 cept the legislative branch, judicial branch, the govern-  
16 ments of the territories or possessions of the United  
17 States, or the District of Columbia.

1                   **TITLE III—REGULATORY**  
2                   **REFORM**

3   **SEC. 3001. SHORT TITLE.**

4           This title may be cited as the “Comprehensive Regu-  
5 latory Reform Act of 1995”.

6   **SEC. 3002. ANALYSIS OF AGENCY RULES.**

7           (a) IN GENERAL.—(1) Section 551 of title 5, United  
8 States Code, is amended by striking “and” at the end of  
9 paragraph (13), by striking the period at the end of para-  
10 graph (14) and inserting a semicolon, and by adding at  
11 the end the following:

12                   “(15) ‘major rule’ means any rule subject to  
13 section 553(e) that is likely to result in—

14                           “(A) an annual effect on the economy of  
15 \$100,000,000 or more;

16                           “(B) a major increase in costs or prices for  
17 consumers, individual industries, Federal,  
18 State, or local government agencies, or geo-  
19 graphic regions, or

20                           “(C) significant adverse effects on competi-  
21 tion, employment, investment, productivity, in-

1 novation, or on the ability of United States-based  
2 enterprises to compete with foreign-based enterprises  
3 in domestic and export markets;

4 “(16) ‘Director’ means the Director of the Of-  
5 fice of Management and Budget;

6 “(17) ‘cost’ means the reasonably identifiable  
7 significant adverse effects, quantifiable and  
8 nonquantifiable, including social, environmental,  
9 health, and economic effects that are expected to re-  
10 sult directly or indirectly from implementation of a  
11 rule or other agency action;

12 “(18) ‘cost-benefit analysis’ means an evalua-  
13 tion of the costs and benefits of a rule, quantified  
14 to the extent feasible and appropriate and otherwise  
15 qualitatively described, that is prepared in accord-  
16 ance with the requirements of this subchapter at the  
17 level of detail appropriate and practicable for rea-  
18 soned decision making on the matter involved, tak-  
19 ing into consideration the significance and complex-  
20 ity of the decision and any need for expedition; and

21 “(19) ‘reasonable alternatives’ means the range  
22 of reasonable regulatory options that the agency has  
23 authority to consider under the statute granting  
24 rulemaking authority, including flexible regulatory

1 options, unless precluded by the statute granting the  
2 rulemaking authority.”.

3 (2) Section 553 of title 5, United States Code, is  
4 amended by adding at the end the following:

5 “(f)(1) Each agency shall for a proposed major rule  
6 publish in the Federal Register, at least 90 days before  
7 the date of publication of the general notice required  
8 under subsection (b), a notice of intent to engage in rule-  
9 making.

10 “(2) A notice under paragraph (1) for a proposed  
11 major rule shall include, to the extent possible, the infor-  
12 mation required to be included in a regulatory impact  
13 analysis for the rule under subsection (i)(4)(B) and (D).

14 “(3) For a major rule proposed by an agency, the  
15 head of the agency shall include in a general notice under  
16 subsection (b), a preliminary regulatory impact analysis  
17 for the rule prepared in accordance with subsection (i).

18 “(4) For a final major rule, the agency shall include  
19 with the statement of basis and purpose—

20 “(A) a summary of a final regulatory impact  
21 analysis of the rule in accordance with subsection  
22 (i); and

23 “(B) a clear delineation of all changes in the in-  
24 formation included in the final regulatory impact  
25 analysis under subsection (i) from any such informa-

1       tion that was included in the notice for the rule  
2       under subsection (b).

3       The agency shall provide the complete text of a final regu-  
4       latory impact analysis upon request.

5       “(5) The issuance of a notice of intent to engage in  
6       rulemaking under paragraph (1) and the issuance of a  
7       preliminary regulatory impact analysis under paragraph  
8       (3) shall not be considered final agency action for pur-  
9       poses of section 704.

10       “(6) In a rulemaking involving a major rule, the  
11       agency conducting the rulemaking shall make a written  
12       record describing the subject of all contacts the agency  
13       made with persons outside the agency relating to such  
14       rulemaking. If the contact was made with a non-govern-  
15       mental person, the written record of such contact shall be  
16       made available, upon request to the public.”.

17       (3)(A) HEARING REQUIREMENT.—Section 553 of  
18       title 5, United States Code, is further amended by adding  
19       after subsection (f) the following:

20       “(g) If more than 100 interested persons acting indi-  
21       vidually submit requests for a hearing to an agency re-  
22       garding any major rule proposed by the agency, the agen-  
23       cy shall hold such a hearing on the proposed rule.”.

1 (B) EXTENSION OF COMMENT PERIOD.—Section  
2 553 of title 5, United States Code is further amended by  
3 adding after subsection (g) the following:

4 “(h) If during the 90-day period beginning on the  
5 date of publication of a notice under subsection (f) for a  
6 proposed major rule, or if during the period beginning on  
7 the date of publication or service of notice required by sub-  
8 section (b) for a proposed major rule, more than 100 per-  
9 sons individually contact the agency to request an exten-  
10 sion of the period for making submissions under sub-  
11 section (c) pursuant to the notice, the agency—

12 “(1) shall provide an additional 30-day period  
13 for making those submissions; and

14 “(2) may not adopt the rule until after the ad-  
15 ditional period.”.

16 (C) RESPONSE TO COMMENTS.—Section 553(c) of  
17 title 5, United States Code, is amended—

18 (i) by inserting “(1)” after “(c)”; and

19 (ii) by adding at the end the following:

20 “(2) Each agency shall publish in the Federal Reg-  
21 ister, with each rule published under section 552(a)(1)(D),  
22 responses to the substance of the comments received by  
23 the agency regarding the rule.”.

24 (4) Section 553 of title 5, United States Code, is fur-  
25 ther amended by adding after subsection (h) the following:



1       “(i)(1) Each agency shall, in connection with every  
2 major rule, prepare, and, to the extent permitted by law,  
3 consider, a regulatory impact analysis. Such analysis may  
4 be combined with any regulatory flexibility analysis per-  
5 formed under sections 603 and 604.

6       “(2) Each agency shall initially determine whether a  
7 rule it intends to propose or issue is a major rule. The  
8 Director shall have authority to order a rule to be treated  
9 as a major rule and to require any set of related rules  
10 to be considered together as a major rule.

11       “(3) Except as provided in subsection (j), agencies  
12 shall prepare—

13               “(A) a preliminary regulatory impact analysis,  
14 which shall be transmitted, along with a notice of  
15 proposed rulemaking, to the Director at least 60  
16 days prior to the publication of notice of proposed  
17 rulemaking, and

18               “(B) a final regulatory impact analysis, which  
19 shall be transmitted along with the final rule at least  
20 30 days prior to the publication of a major rule.

21       “(4) Each preliminary and final regulatory impact  
22 analysis shall contain the following information:

23               “(A) A description of the potential benefits of  
24 the rule, including any beneficial effects that cannot

1 be quantified in monetary terms and the identifica-  
2 tion of those likely to receive the benefits.

3 “(B) An explanation of the necessity, legal au-  
4 thority, and reasonableness of the rule and a de-  
5 scription of the condition that the rule is to address.

6 “(C) A description of the potential costs of the  
7 rule, including any adverse effects that cannot be  
8 quantified in monetary terms, and the identification  
9 of those likely to bear the costs.

10 “(D) An analysis of alternative approaches, in-  
11 cluding market based mechanisms or other flexible  
12 regulatory options that could substantially achieve  
13 the same regulatory goal at a lower cost and an ex-  
14 planation of the reasons why such alternative ap-  
15 proaches were not adopted, together with a dem-  
16 onstration that the rule provides for the least costly  
17 approach.

18 “(E) A statement that the rule does not conflict  
19 with, or duplicate, any other rule or a statement of  
20 the reasons why such a conflict or duplication exists.

21 “(F) A statement of whether the rule will re-  
22 quire on-site inspections or whether persons will be  
23 required by the rule to maintain any records which  
24 will be subject to inspection, and a statement of  
25 whether the rule will require persons to obtain li-

1 censes, permits, or other certifications, including  
2 specification of any associated fees or fines.

3 “(G) An estimate of the costs to the agency for  
4 implementation and enforcement of the rule and of  
5 whether the agency can be reasonably expected to  
6 implement the rule with the current level of appro-  
7 priations.

8 “(5)(A) the Director is authorized to review and pre-  
9 pare comments on any preliminary or final regulatory im-  
10 pact analysis, notice of proposed rulemaking, or final rule  
11 based on the requirements of this subsection.

12 “(B) Upon the request of the Director, an agency  
13 shall consult with the Director concerning the review of  
14 a preliminary impact analysis or notice of proposed rule-  
15 making and shall refrain from publishing its preliminary  
16 regulatory impact analysis or notice of proposed rule-  
17 making until such review is concluded. The Director’s re-  
18 view may not take longer than 90 days after the date of  
19 the request of the Director.

20 “(6)(A) An agency may not adopt a major rule unless  
21 the final regulatory impact analysis for the rule is ap-  
22 proved or commented upon in writing by the Director or  
23 by an individual designated by the Director for that pur-  
24 pose.

1       “(B) Upon receiving notice that the Director intends  
2 to comment in writing with respect to any final regulatory  
3 impact analysis or final rule, the agency shall refrain from  
4 publishing its final regulatory impact analysis or final rule  
5 until the agency has responded to the Director’s comments  
6 and incorporated those comments in the agency’s response  
7 in the rulemaking file.

8       “(7)(A) Except as provided in subparagraph (B), no  
9 final major rule subject to this section shall be promul-  
10 gated unless the agency head publishes in the Federal  
11 Register a finding that—

12               ”(i) the benefits of the rule justify the costs of  
13 the rule; and

14               “(ii) the rule employs to the extent practicable  
15 flexible alternatives as set forth in paragraph (4)(D)  
16 and adopts the reasonable alternative which has the  
17 greater net benefits and achieves the objectives of  
18 the statute.

19       “(B) If, applying the statutory requirements upon  
20 which the rule is based, a rule cannot satisfy the criteria  
21 of subparagraph (A), the agency head may promulgate the  
22 rule if the agency head finds that—

23               “(i) the rule employs to the extent practicable  
24 flexible reasonable alternatives of the type described  
25 in paragraph (4)(D); and

1           “(ii) the rule adopts the alternative with the  
2           least net cost of the reasonable alternatives that  
3           achieve the objectives of the statute.

4           “(8) Notwithstanding section 551(16), for purposes  
5           of this subsection with regard to any rule proposed or is-  
6           sued by an appropriate Federal banking agency (as that  
7           term is defined in section 3(q) of the Federal Deposit In-  
8           surance Act (12 U.S.C. 1813(q)), the National Credit  
9           Union Administration, or the Office of Federal Housing  
10          Enterprise Oversight, the term ‘Director’ means the head  
11          of such agency, Administration, or Office.”.

12          (5) Section 553 of title 5, United States Code, is fur-  
13          ther amended by adding after subsection (i) the following:

14          “(j) To the extent practicable, the head of an agency  
15          shall seek to ensure that any proposed major rule or regu-  
16          latory impact analysis of such a rule is written in a reason-  
17          ably simple and understandable manner and provides ade-  
18          quate notice of the content of the rule to affected per-  
19          sons.”.

20          (6) Section 553 of title 5, United States Code, is fur-  
21          ther amended by adding after subsection (j) the following:

22          “(k)(1) The provisions of this section regarding  
23          major rules shall not apply if—

24                  “(A) the agency for good cause finds that con-  
25          ducting cost-benefit analysis is impracticable due to

1 an emergency, or health or safety threat, or a food  
2 safety threat that is likely to result in significant  
3 harm to the public or natural resources; and

4 “(B) the agency publishes in the Federal Reg-  
5 ister, together with such finding, a succinct state-  
6 ment of the basis for the finding.

7 “(2) Not later than one year after the promulgation  
8 of a final major rule to which paragraph (1) applies, the  
9 agency shall comply with the provisions of this subchapter  
10 and, as thereafter necessary, revise the rule.

11 (7) Section 553 of title 5, United States Code, is fur-  
12 ther amended by adding after subsection (k) the following:

13 “(1) The provisions of this section regarding major  
14 rules shall not apply to—

15 “(1) any regulation proposed or issued in con-  
16 nection with the implementation of monetary policy  
17 or to ensure the safety and soundness of federally  
18 insured depository institutions, any affiliate of such  
19 institution, credit unions, or government sponsored  
20 housing enterprises regulated by the Office of Fed-  
21 eral Housing Enterprise Oversight;

22 “(2) any agency action that the head of the  
23 agency certifies is limited to interpreting, implement-  
24 ing, or administering the internal revenue laws of  
25 the United States, including any regulation proposed

1 or issued in connection with ensuring the collection  
2 of taxes from a subsidiary of a foreign company  
3 doing business in the United States; and

4 “(3) any regulation proposed or issued pursu-  
5 ant to section 553 of title 5, United States Code, in  
6 connection with imposing trade sanctions against  
7 any country that engages in illegal trade activities  
8 against the United States that are injurious to  
9 American technology, jobs, pensions, or general eco-  
10 nomic well-being.”.

11 (8) The Director of the Office of Management and  
12 Budget shall submit a report to the Congress no later than  
13 24 months after the date of the enactment of this Act con-  
14 taining an analysis of rulemaking procedures of Federal  
15 agencies and an analysis of the impact of those rule-  
16 making procedures on the regulated public and regulatory  
17 process.

18 (9) The amendments made by this subsection shall  
19 apply only to final agency rules issued after rulemaking  
20 begun after the date of enactment of this Act.

21 **SEC. 3003. RISK ASSESSMENT.**

22 (a) IN GENERAL.—Chapter 6 of title 5, United  
23 States Code, is amended by adding at the end the follow-  
24 ing:

## 1 “SUBCHAPTER III—RISK ASSESSMENTS

2 **“§ 631. Short title**

3 “This subchapter may be cited as the ‘Risk Assess-  
4 ment and Communication Act of 1995’.

5 **“§ 632. Purposes**

6 “The purposes of this subchapter are—

7 “(1) to present the public and executive branch  
8 with the most scientifically objective and unbiased  
9 information concerning the nature and magnitude of  
10 health, safety, and environmental risks in order to  
11 provide for sound regulatory decisions and public  
12 education;

13 “(2) to provide for full consideration and dis-  
14 cussion of relevant data and potential methodologies;

15 “(3) to require explanation of significant  
16 choices in the risk assessment process which will  
17 allow for better peer review and public understand-  
18 ing; and

19 “(4) to improve consistency within the executive  
20 branch in preparing risk assessments and risk char-  
21 acterizations.

22 **“§ 633. Effective date; applicability; savings provi-  
23 sions**

24 “(a) EFFECTIVE DATE.—Except as otherwise specifi-  
25 cally provided in this subchapter, the provisions of this



1 subchapter shall take effect 18 months after the date of  
2 enactment of this subchapter.

3 “(b) APPLICABILITY.—

4 “(1) IN GENERAL.—Except as provided in para-  
5 graph (3), this subchapter applies to all significant  
6 risk assessment documents and significant risk char-  
7 acterization documents, as defined in paragraph (2).

8 “(2) SIGNIFICANT RISK ASSESSMENT DOCU-  
9 MENT OR SIGNIFICANT RISK CHARACTERIZATION  
10 DOCUMENT.—(A) As used in this subchapter, the  
11 terms ‘significant risk assessment document’ and  
12 ‘significant risk characterization document’ include,  
13 at a minimum, risk assessment documents or risk  
14 characterization documents prepared by or on behalf  
15 of a covered Federal agency in the implementation  
16 of a regulatory program designed to protect human  
17 health, safety, or the environment, used as a basis  
18 for one of the items referred to in subparagraph (B),  
19 and—

20 “(i) included by the agency in that item; or

21 “(ii) inserted by the agency in the adminis-  
22 trative record for that item.

23 “(B) The items referred to in subparagraph (A)  
24 are the following:

1           “(i) Any proposed or final major rule, in-  
2           cluding any analysis or certification under sub-  
3           chapter II, promulgated as part of any Federal  
4           regulatory program designed to protect human  
5           health, safety, or the environment.

6           “(ii) Any proposed or final environmental  
7           clean-up plan for a facility or Federal guidelines  
8           for the issuance of any such plan. As used in  
9           this clause, the term ‘environmental clean-up’  
10          means a corrective action under the Solid  
11          Waste Disposal Act, a removal or remedial ac-  
12          tion under the Comprehensive Environmental  
13          Response, Compensation, and Liability Act of  
14          1980, and any other environmental restoration  
15          and waste management carried out by or on be-  
16          half of a covered Federal agency with respect to  
17          any substance other than municipal waste.

18          “(iii) Any proposed or final permit condi-  
19          tion placing a restriction on facility siting or  
20          operation under Federal laws administered by  
21          the Environmental Protection Agency or the  
22          Department of the Interior. Nothing in this sec-  
23          tion (iii) shall apply to the requirements of sec-  
24          tion 404 of the Clean Water Act.

25          “(iv) Any report to Congress.

1           “(v) Any regulatory action to place a sub-  
2           stance on any official list of carcinogens or  
3           toxic or hazardous substances or to place a new  
4           health effects value on such list, including the  
5           Integrated Risk Information System Database  
6           maintained by the Environmental Protection  
7           Agency.

8           “(vi) Any guidance, including protocols of  
9           general applicability, establishing policy regard-  
10          ing risk assessment or risk characterization.

11          “(C) The terms ‘significant risk assessment  
12          document’ and ‘significant risk characterization doc-  
13          ument’ shall also include the following:

14               “(i) Any such risk assessment and risk  
15               characterization documents provided by a cov-  
16               ered Federal agency to the public and which are  
17               likely to result in an annual effect on the econ-  
18               omy of \$75,000,000 or more.

19               “(ii) Environmental restoration and waste  
20               management carried out by or on behalf of the  
21               Department of Defense with respect to any sub-  
22               stance other than municipal waste.

23          “(D) Within 15 months after the date of the  
24          enactment of this subchapter, each covered Federal  
25          agency administering a regulatory program designed

1 to protect human health, safety, or the environment  
2 shall promulgate a rule establishing those additional  
3 categories, if any, of risk assessment and risk char-  
4 acterization documents prepared by or on behalf of  
5 the covered Federal agency that the agency will con-  
6 sider significant risk assessment documents or sig-  
7 nificant risk characterization documents for pur-  
8 poses of this subchapter. In establishing such cat-  
9 egories, the head of the agency shall consider each  
10 of the following:

11 “(i) The benefits of consistent compliance  
12 by documents of the covered Federal agency in  
13 the categories.

14 “(ii) The administrative burdens of includ-  
15 ing documents in the categories.

16 “(iii) The need to make expeditious admin-  
17 istrative decisions regarding documents in the  
18 categories.

19 “(iv) The possible use of a risk assessment  
20 or risk characterization in any compilation of  
21 risk hazards or health or environmental effects  
22 prepared by an agency and commonly made  
23 available to, or used by, any Federal, State, or  
24 local government agency.

1           “(v) Such other factors as may be appro-  
2           priate.

3           “(E)(i) Not later than 18 months after the date  
4           of the enactment of this subchapter, the President,  
5           acting through the Director of the Office of Manage-  
6           ment and Budget, shall determine whether any other  
7           Federal agencies should be considered covered Fed-  
8           eral agencies for purposes of this subchapter. Such  
9           determination, with respect to a particular Federal  
10          agency, shall be based on the impact of risk assess-  
11          ment documents and risk characterization docu-  
12          ments on—

13                 “(I) regulatory programs administered by  
14                 that agency; and

15                 “(II) the communication of risk informa-  
16                 tion by that agency to the public.

17          The effective date of such a determination shall be  
18          no later than 6 months after the date of the deter-  
19          mination.

20                 “(ii) Not later than 15 months after the Presi-  
21                 dent, acting through the Director of the Office of  
22                 Management and Budget, determines pursuant to  
23                 clause (i) that a Federal agency should be consid-  
24                 ered a covered Federal agency for purposes of this  
25                 subchapter, the head of that agency shall promul-

1       gate a rule pursuant to subparagraph (D) to estab-  
2       lish additional categories of risk assessment and risk  
3       characterization documents described in that sub-  
4       paragraph.

5           “(3) EXCEPTIONS.—(A) This subchapter does  
6       not apply to risk assessment or risk characterization  
7       documents containing risk assessments or risk char-  
8       acterizations performed with respect to the follow-  
9       ing:

10           “(i) A screening analysis, where appro-  
11       priately labeled as such, including a screening  
12       analysis for purposes of product regulation or  
13       premanufacturing notices.

14           “(ii) Any health, safety, or environmental  
15       inspections.

16           “(iii) The sale or lease of Federal re-  
17       sources or regulatory activities that directly re-  
18       sult in the collection of Federal receipts.

19           “(B) No analysis shall be treated as a screening  
20       analysis for purposes of subparagraph (A) if the re-  
21       sults of such analysis are used as the basis for im-  
22       posing restrictions on substances or activities.

23           “(C) The risk assessment principle set forth in  
24       this 634(b)(1) need not apply to any risk assessment  
25       or risk characterization document described in

1 clause (iii) of paragraph (2)(B). The risk character-  
2 ization and communication principle set forth in sec-  
3 tion 635(4) need not apply to any risk assessment  
4 or risk characterization document described in  
5 clause (v) or (vi) of paragraph (2)(B).

6 “(c) SAVINGS PROVISIONS.—The provisions of this  
7 subchapter shall be supplemental to any other provisions  
8 of law relating to risk assessments and risk characteriza-  
9 tions, except that nothing in this subchapter shall be con-  
10 strued to modify any statutory standard or statutory re-  
11 quirement designed to protect health, safety, or the envi-  
12 ronment. Nothing in this subchapter shall be interpreted  
13 to preclude the consideration of any data or the calculation  
14 of any estimate to more fully describe risk or provide ex-  
15 amples of scientific uncertainty or variability. Nothing in  
16 this subchapter shall be construed to require the disclosure  
17 of any trade secret or other confidential information.

18 **“§ 634. Principles for risk assessment**

19 “(a) IN GENERAL.—The head of each covered Fed-  
20 eral agency shall apply the principles set forth in sub-  
21 section (b) in order to assure that significant risk assess-  
22 ment documents and all of their components distinguish  
23 scientific findings from other considerations and are, to  
24 the extent feasible, scientifically objective, unbiased, and  
25 inclusive of all relevant data and rely, to the extent avail-

1 able and practicable, on scientific findings. Discussions or  
2 explanations required under this section need not be re-  
3 peated in each risk assessment document as long as there  
4 is a reference to the relevant discussion or explanation in  
5 another agency document which is available to the public.

6 “(b) PRINCIPLES.—The principles to be applied are  
7 as follows:

8 “(1) When discussing human health risks, a  
9 significant risk assessment document shall contain a  
10 discussion of both relevant laboratory and relevant  
11 epidemiological data of sufficient quality which finds,  
12 or fails to find, a correlation between health risks  
13 and a potential toxin or activity. Where conflicts  
14 among such data appear to exist, or where animal  
15 data is used as a basis to assess human health, the  
16 significant risk assessment document shall, to the  
17 extent feasible and appropriate, include discussion of  
18 possible reconciliation of conflicting information, and  
19 as relevant, differences in study designs, compara-  
20 tive physiology, routes of exposure, bioavailability,  
21 pharmacokinetics, and any other relevant factor, in-  
22 cluding the sufficiency of basic data for review. The  
23 discussion of possible reconciliation should indicate  
24 whether there is a biological basis to assume a re-



1 sulting harm in humans. Animal data shall be re-  
2 viewed with regard to its relevancy to humans.

3 “(2) Where a significant risk assessment docu-  
4 ment involves selection of any significant assump-  
5 tion, inference, or model, the document shall, to the  
6 extent feasible—

7 “(A) present a representative list and ex-  
8 planation of plausible and alternative assump-  
9 tions, inferences, or models;

10 “(B) explain the basis for any choices;

11 “(C) identify any policy or value judg-  
12 ments;

13 “(D) fully describe any model used in the  
14 risk assessment and make explicit the assump-  
15 tions incorporated in the model; and

16 “(E) indicate the extent to which any sig-  
17 nificant model has been validated by, or con-  
18 flicts with, empirical data.

19 **“§ 635. Principles for risk characterization and com-  
20 munication**

21 “Each significant risk characterization document  
22 shall meet each of the following requirements:

23 “(1) ESTIMATES OF RISK.—The risk character-  
24 ization shall describe the populations or natural re-  
25 sources which are the subject of the risk character-

1        ization. If a numerical estimate of risk is provided,  
2        the agency shall, to the extent feasible, provide—

3                “(A) the best estimate or estimates for the  
4                specific populations or natural resources which  
5                are the subject of the characterization (based  
6                on the information available to the Federal  
7                agency); and

8                “(B) a statement of the reasonable range  
9                of scientific uncertainties.

10        In addition to such best estimate or estimates, the  
11        risk characterization document may present plau-  
12        sible upper-bound or conservative estimates in con-  
13        junction with plausible lower bound estimates.  
14        Where appropriate, the risk characterization docu-  
15        ment may present, in lieu of a single best estimate,  
16        multiple best estimates based on assumptions, infer-  
17        ences, or models which are equally plausible, given  
18        current scientific understanding. To the extent prac-  
19        tical and appropriate, the document shall provide de-  
20        scriptions of the distribution and probability of risk  
21        estimates to reflect differences in exposure varia-  
22        bility or sensitivity in populations and attendant un-  
23        certainties. Sensitive subpopulations or highly ex-  
24        posed subpopulations include, where relevant and

1 appropriate, children, the elderly, pregnant women,  
2 and disabled persons.

3 “(2) EXPOSURE SCENARIOS.—The risk charac-  
4 terization document shall explain the exposure sce-  
5 narios used in any risk assessment, and, to the ex-  
6 tent feasible, provide a statement of the size of the  
7 corresponding population at risk and the likelihood  
8 of such exposure scenarios.

9 “(3) COMPARISONS.—The document shall con-  
10 tain a statement that places the nature and mag-  
11 nitude of risks to human health, safety, or the envi-  
12 ronment in context. Such statement shall, to the ex-  
13 tent feasible, provide comparisons with estimates of  
14 greater, lesser, and substantially equivalent risks  
15 that are familiar to and routinely encountered by the  
16 general public as well as other risks, and, where ap-  
17 propriate and meaningful, comparisons of those risks  
18 with other similar risks regulated by the Federal  
19 agency resulting from comparable activities and ex-  
20 posure pathways. Such comparisons should consider  
21 relevant distinctions among risks, such as the vol-  
22 untary or involuntary nature of risks and the pre-  
23 ventability or nonpreventability of risks.

24 “(4) SUBSTITUTION RISKS.—Each significant  
25 risk assessment or risk characterization document

1 shall include a statement of any significant substi-  
2 tution risks to human health, where information on  
3 such risks has been provided to the agency.

4 “(5) SUMMARIES OF OTHER RISK ESTI-  
5 MATES.—If—

6 “(A) a commenter provides a covered Fed-  
7 eral agency with a relevant risk assessment doc-  
8 ument or a risk characterization document, and  
9 a summary thereof, during a public comment  
10 provided by the agency for a significant risk as-  
11 sessment document or a significant risk charac-  
12 terization document, or, where no comment pe-  
13 riod is provided but a commenter provides the  
14 covered Federal agency with the relevant risk  
15 assessment document or risk characterization  
16 document, and a summary thereof, in a timely  
17 fashion, and

18 “(B) the risk assessment document or risk  
19 characterization document is consistent with the  
20 principles and the guidance provided under this  
21 subchapter,

22 the agency shall, to the extent feasible, present such  
23 summary in connection with the presentation of the  
24 agency’s significant risk assessment document or  
25 significant risk characterization document. Nothing

1 in this paragraph shall be construed to limit the in-  
2 clusion of any comments or material supplied by any  
3 person to the administrative record of any proceed-  
4 ing.

5 A document may satisfy the requirements of paragraph  
6 (3), (4) or (5) by reference to information or material oth-  
7 erwise available to the public if the document provides a  
8 brief summary of such information or material.

9 **“§ 636. Recommendations or classifications by a non-**  
10 **United States-based entity**

11 “No covered Federal agency shall automatically in-  
12 corporate or adopt any recommendation or classification  
13 made by a non-United States-based entity concerning the  
14 health effects value of a substance without an opportunity  
15 for notice and comment, and any risk assessment docu-  
16 ment or risk characterization document adopted by a cov-  
17 ered Federal agency on the basis of such a recommenda-  
18 tion or classification shall comply with the provisions of  
19 this subchapter. For the purposes of this section, the term  
20 ‘non-United States-based entity’ means—

21 “(1) any foreign government and its agencies;

22 “(2) the United Nations or any of its subsidiary  
23 organizations;

24 “(3) any other international governmental body  
25 or international standards-making organization; or

1           “(4) any other organization or private entity  
2           without a place of business located in the United  
3           States or its territories.

4   **“§ 637. Guidelines and report**

5           “(a) GUIDELINES.—Within 15 months after the date  
6           of enactment of this subchapter, the President shall issue  
7           guidelines for Federal agencies consistent with the risk as-  
8           sessment and characterization principles set forth in sec-  
9           tions 634 and 635 and shall provide a format for summa-  
10          rizing risk assessment results. In addition, such guidelines  
11          shall include guidance on at least the following subjects:  
12          criteria for scaling animal studies to assess risks to human  
13          health; use of different types of dose-response models;  
14          thresholds; definitions, use, and interpretations of the  
15          maximum tolerated dose; weighting of evidence with re-  
16          spect to extrapolating human health risks from sensitive  
17          species; evaluation of benign tumors, and evaluation of dif-  
18          ferent human health endpoints.

19          “(b) REPORT.—Within 3 years after the date of the  
20          enactment of this subchapter, each covered Federal agency  
21          shall provide a report to the Congress evaluating the cat-  
22          egories of policy and value judgments identified under sub-  
23          paragraph (C) of section 634(b)(2).

24          “(c) PUBLIC COMMENT AND CONSULTATION.—The  
25          guidelines and report under this section, shall be developed

1 after notice and opportunity for public comment, and after  
2 consultation with representatives of appropriate State,  
3 local, and tribal governments, and such other departments  
4 and agencies, offices, organizations, or persons as may be  
5 advisable.

6 “(d) REVIEW.—The President shall review and,  
7 where appropriate, revise the guidelines published under  
8 this section at least every 4 years.

9 **“§ 638. Research and training in risk assessment**

10 “(a) EVALUATION.—The head of each covered agency  
11 shall regularly and systematically evaluate risk assessment  
12 research and training needs of the agency, including,  
13 where relevant and appropriate, the following:

14 “(1) Research to reduce generic data gaps, to  
15 address modelling needs (including improved model  
16 sensitivity), and to validate default options, particu-  
17 larly those common to multiple risk assessments.

18 “(2) Research leading to improvement of meth-  
19 ods to quantify and communicate uncertainty and  
20 variability among individuals, species, populations,  
21 and, in the case of ecological risk assessment, eco-  
22 logical communities.

23 “(3) Emerging and future areas of research, in-  
24 cluding research on comparative risk analysis, expo-  
25 sure to multiple chemicals and other stressors,

1 noncancer endpoints, biological markers of exposure  
2 and effect, mechanisms of action in both mammalian  
3 and nonmammalian species, dynamics and prob-  
4 abilities of physiological and ecosystem exposures,  
5 and prediction of ecosystem-level responses.

6 “(4) Long-term needs to adequately train indi-  
7 viduals in risk assessment and risk assessment appli-  
8 cation. Evaluations under this paragraph shall in-  
9 clude an estimate of the resources needed to provide  
10 necessary training.

11 “(b) STRATEGY AND ACTIONS TO MEET IDENTIFIED  
12 NEEDS.—The head of each covered agency shall develop  
13 a strategy and schedule for carrying out research and  
14 training to meet the needs identified in subsection (a).

15 “(c) REPORT.—Not later than 6 months after the  
16 date of the enactment of this subchapter, the head of each  
17 covered agency shall submit to the Congress a report on  
18 the evaluations conducted under subsection “(a) and the  
19 strategy and schedule developed under subsection “(b).  
20 The head of each covered agency shall report to the Con-  
21 gress periodically on the evaluations, strategy, and sched-  
22 ule.

23 **“§ 639. Study of comparative risk analysis**

24 “(a) IN GENERAL.—(1) The Director of the Office  
25 of Management and Budget, in consultation with the Of-



1 fice of Science and Technology Policy, shall conduct, or  
2 provide for the conduct of, a study using comparative risk  
3 analysis to rank health, safety, and environmental risks  
4 and to provide a common basis for evaluating strategies  
5 for reducing or preventing those risks. The goal of the  
6 study shall be to improve methods of comparative risk  
7 analysis.

8       “(2) Not later than 90 days after the date of the en-  
9 actment of this subchapter, the Director, in collaboration  
10 with the heads of appropriate Federal agencies, shall enter  
11 into a contract with the National Research Council to pro-  
12 vide technical guidance on approaches to using compara-  
13 tive risk analysis and other considerations in setting  
14 health, safety, and environmental risk reduction priorities.

15       “(b) SCOPE OF STUDY.—The study shall have suffi-  
16 cient scope and breadth to evaluate comparative risk anal-  
17 ysis and to test approaches for improving comparative risk  
18 analysis and its use in setting priorities for health, safety,  
19 and environmental risk reduction. The study shall com-  
20 pare and evaluate a range of diverse health, safety, and  
21 environmental risks.

22       “(c) STUDY PARTICIPANTS.—In conducting the  
23 study, the Director shall provide for the participation of  
24 a range of individuals with varying backgrounds and ex-

1 pertise, both technical and nontechnical, comprising broad  
2 representation of the public and private sectors.

3 “(d) DURATION.—The study shall begin within 180  
4 days after the date of the enactment of this subchapter  
5 and terminate within 2 years after the date on which it  
6 began.

7 “(e) RECOMMENDATIONS FOR IMPROVING COMPARA-  
8 TIVE RISK ANALYSIS AND ITS USE.—Not later than 90  
9 days after the termination of the study, the Director shall  
10 submit to the Congress the report of the National Re-  
11 search Council with recommendations regarding the use  
12 of comparative risk analysis and ways to improve the use  
13 of comparative risk analysis for decision-making in appro-  
14 priate Federal agencies.

15 **“§ 639a. Definitions**

16 “For purposes of this subchapter:

17 “(1) RISK ASSESSMENT DOCUMENT.—The term  
18 ‘risk assessment document’ means a document con-  
19 taining the explanation of how hazards associated  
20 with a substance, activity, or condition have been  
21 identified, quantified, and assessed. The term also  
22 includes a written statement accepting the findings  
23 of any such document.

24 “(2) RISK CHARACTERIZATION DOCUMENT.—  
25 The term ‘risk characterization document’ means a

1 document quantifying or describing the degree of  
2 toxicity, exposure, or other risk posed by hazards as-  
3 sociated with a substance, activity, or condition to  
4 which individuals, populations, or resources are ex-  
5 posed. The term also includes a written statement  
6 accepting the findings of any such document.

7 “(3) BEST ESTIMATE.—The term ‘best esti-  
8 mate’ means a scientifically appropriate estimate  
9 which is based, to the extent feasible, on one of the  
10 following:

11 “(A) Central estimates of risk using the  
12 most plausible assumptions.

13 “(B) An approach which combines multiple  
14 estimates based on different scenarios and  
15 weighs the probability of each scenario.

16 “(C) Any other methodology designed to  
17 provide the most unbiased representation of the  
18 most plausible level of risk, given the current  
19 scientific information available to the Federal  
20 agency concerned.

21 “(4) SUBSTITUTION RISK.—The term ‘substi-  
22 tution risk’ means a potential risk to human health,  
23 safety, or the environment from a regulatory alter-  
24 native designed to decrease other risks.

1           “(5) COVERED FEDERAL AGENCY.—The term  
2           ‘covered Federal agency’ means each of the follow-  
3           ing:

4                   “(A) The Environmental Protection Agen-  
5           cy.

6                   “(B) The Occupational Safety and Health  
7           Administration.

8                   “(C) The Department of Transportation  
9           (including the National Highway Transpor-  
10          tation Safety Administration).

11                   “(D) The Food and Drug Administration.

12                   “(E) The Department of Energy.

13                   “(F) The Department of the Interior.

14                   “(G) The Department of Agriculture.

15                   “(H) The Consumer Product Safety Com-  
16          mission.

17                   “(I) The National Oceanic and Atmos-  
18          pheric Administration.

19                   “(J) The United States Army Corps of  
20          Engineers.

21                   “(K) The Mine Safety and Health Admin-  
22          istration.

23                   “(L) The Nuclear Regulatory Commission.

1           “(M) Any other Federal agency considered  
2           a covered Federal agency pursuant to section  
3           413(b)(2)(E).

4           “(6) FEDERAL AGENCY.—The term ‘Federal  
5           agency’ means an executive department, military de-  
6           partment, or independent establishment as defined  
7           in part I of title 5 of the United States Code, except  
8           that such term also includes the Office of Tech-  
9           nology Assessment.

10           “(7) DOCUMENT.—The term ‘document’ in-  
11           cludes material stored in electronic or digital form.

12   **“§ 639b. Peer review program**

13           “(a) ESTABLISHMENT.—For regulatory programs de-  
14           signed to protect human health, safety, or the environ-  
15           ment, the head of each Federal agency shall develop a sys-  
16           tematic program for independent and external peer review  
17           required by subsection (b). Such program shall be applica-  
18           ble across the agency and—

19           “(1) shall provide for the creation of peer re-  
20           view panels consisting of experts and shall be broad-  
21           ly representative and balanced and to the extent rel-  
22           evant and appropriate, may include representatives  
23           of State, local, and tribal governments, small busi-  
24           nesses, other representatives of industry, univer-  
25           sities, agriculture, labor, consumers, conservation or-

1 organizations, or other public interest groups and or-  
2 ganizations;

3 “(2) may provide for differing levels of peer re-  
4 view and differing numbers of experts on peer review  
5 panels, depending on the significance or the com-  
6 plexity of the problems or the need for expeditious-  
7 ness;

8 “(3) shall not exclude peer reviewers with sub-  
9 stantial and relevant expertise merely because they  
10 represent entities that may have a potential interest  
11 in the outcome, provided that interest is fully dis-  
12 closed to the agency and in the case of a regulatory  
13 decision affecting a single entity, no peer reviewer  
14 representing such entity may be included on the  
15 panel;

16 “(4) may provide specific and reasonable dead-  
17 lines for peer review panels to submit reports under  
18 subsection (c); and

19 “(5) shall provide adequate protections for con-  
20 fidential business information and trade secrets, in-  
21 cluding requiring peer reviewers to enter into con-  
22 fidentiality agreements.

23 “(b) REQUIREMENT FOR PEER REVIEW.—In connec-  
24 tion with any rule that is likely to result in an annual  
25 increase in costs of \$100,000,000 or more (other than any

1 rule or other action taken by an agency to authorize or  
2 approve any individual substance or product), each Fed-  
3 eral agency shall provide for peer review in accordance  
4 with this section of any risk assessment or cost analysis  
5 which forms the basis for such rule or of any analysis  
6 under section 431(a). In addition, the Director of the Of-  
7 fice of Management and Budget may order that peer re-  
8 view be provided for any major risk assessment or cost  
9 assessment that is likely to have a significant impact on  
10 public policy decisions.

11       “(c) CONTENTS.—Each peer review under this sec-  
12 tion shall include a report to the Federal agency concerned  
13 with respect to the scientific and economic merit of data  
14 and methods used for the assessments and analyses.

15       “(d) RESPONSE TO PEER REVIEW.—The head of the  
16 Federal agency shall provide a written response to all sig-  
17 nificant peer review comments.

18       “(e) AVAILABILITY TO PUBLIC.—All peer review  
19 comments or conclusions and the agency’s responses shall  
20 be made available to the public and shall be made part  
21 of the administrative record.

22       “(f) PREVIOUSLY REVIEWED DATA AND ANALY-  
23 SIS.—No peer review shall be required under this section  
24 for any data or method which has been previously sub-

1 jected to peer review or for any component of any analysis  
2 or assessment previously subjected to peer review.

3 “(g) NATIONAL PANELS.—The President shall ap-  
4 point National Peer Review Panels to annually review the  
5 risk assessment and cost assessment practices of each  
6 Federal agency for programs designed to protect human  
7 health, safety, or the environment. The Panel shall submit  
8 a report to the Congress no less frequently than annually  
9 containing the results of such review.

10 **“§ 639c. Petition for review of a major free-standing**  
11 **risk assessment**

12 “(a) Any interested person may petition an agency  
13 to conduct a scientific review of a risk assessment con-  
14 ducted or adopted by the agency, except for a risk assess-  
15 ment used as the basis for a major rule or a site-specific  
16 risk assessment.

17 “(b) The agency shall utilize external peer review, as  
18 appropriate, to evaluate the claims and analyses in the pe-  
19 tition, and shall consider such review in making its deter-  
20 mination of whether to grant the petition.

21 “(c) The agency shall grant the petition if the peti-  
22 tion establishes that there is a reasonable likelihood that—

23 “(1)(A) the risk assessment that is the subject  
24 of the petition was carried out in a manner substan-



1 tially inconsistent with the principles in section 633;  
2 or

3 “(B) the risk assessment that is the subject of  
4 the petition does not take into account material sig-  
5 nificant new scientific data and scientific under-  
6 standing;

7 “(2) the risk assessment that is the subject of  
8 the petition contains significantly different results  
9 than if it had been properly conducted pursuant to  
10 subchapter III; and

11 “(3) a revised risk assessment will provide the  
12 basis for reevaluating an agency determination of  
13 risk, and such determination currently has an effect  
14 on the United States economy equivalent to that of  
15 major rule.

16 “(d) A decision to grant, or final action to deny, a  
17 petition under this subsection shall be made not later than  
18 180 days after the petition is submitted.

19 “(e) If the agency grants the petition, it shall com-  
20 plete its review of the risk assessment not later than 1  
21 year after its decision to grant the petition. If the agency  
22 revises the risk assessment, in response to its review, it  
23 shall do so in accordance with section 633.

1 **“§ 639d. Risk-based priorities**

2 “(a) PURPOSES.—The purposes of this section are  
3 to—

4 “(1) encourage Federal agencies engaged in  
5 regulating risks to human health, safety, and the en-  
6 vironment to achieve the greatest risk reduction at  
7 the least cost practical;

8 “(2) promote the coordination of policies and  
9 programs to reduce risks to human health, safety,  
10 and the environment; and

11 “(3) promote open communication among Fed-  
12 eral agencies, the public, the President, and Con-  
13 gress regarding environmental, health, and safety  
14 risks, and the prevention and management of those  
15 risks.

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

17 “(1) COMPARATIVE RISK ANALYSIS.—The term  
18 ‘comparative risk analysis’ means a process to sys-  
19 tematically estimate, compare, and rank the size and  
20 severity of risks to provide a common basis for eval-  
21 uating strategies for reducing or preventing those  
22 risks.

23 “(2) COVERED AGENCY.—The term ‘covered  
24 agency’ means each of the following:

25 “(A) The Environmental Protection Agen-  
26 cy.

1 “(B) The Department of Labor.

2 “(C) The Department of Transportation.

3 “(D) The Food and Drug Administration.

4 “(E) The Department of Energy.

5 “(F) The Department of the Interior.

6 “(G) The Department of Agriculture.

7 “(H) The Consumer Product Safety Com-  
8 mission.

9 “(I) The National Oceanic and Atmos-  
10 pheric Administration.

11 “(J) The United States Army Corps of  
12 Engineers.

13 “(K) The Nuclear Regulatory Commission.

14 “(3) EFFECT.—The term ‘effect’ means a dele-  
15 terious change in the condition of—

16 “(A) a human or other living thing (includ-  
17 ing death, cancer, or other chronic illness, de-  
18 creased reproductive capacity, or disfigure-  
19 ment); or

20 “(B) an inanimate thing important to  
21 human welfare (including destruction, degenera-  
22 tion, the loss of intended function, and in-  
23 creased costs for maintenance).

24 “(4) IRREVERSIBILITY.—The term  
25 ‘irreversibility’ means the extent to which a return

1 to conditions before the occurrence of an effect are  
2 either very slow or will never occur.

3 “(5) LIKELIHOOD.—The term ‘likelihood’  
4 means the estimated probability that an effect will  
5 occur.

6 “(6) MAGNITUDE.—The term ‘magnitude’  
7 means the number of individuals or the quantity of  
8 ecological resources or other resources that contrib-  
9 ute to human welfare that are affected by exposure  
10 to a stressor.

11 “(7) SERIOUSNESS.—The term ‘seriousness’  
12 means the intensity of effect, the likelihood, the  
13 irreversibility, and the magnitude.

14 “(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

15 “(1) SETTING PRIORITIES.—In exercising au-  
16 thority under applicable laws protecting human  
17 health, safety, or the environment, the head of each  
18 covered agency shall set priorities for the use of re-  
19 sources available under those laws to address those  
20 risks to human health, safety, and the environment  
21 that—

22 “(A) the covered agency determines to be  
23 most serious; and

24 “(B) can be addressed in a cost-effective  
25 manner, with the goal of achieving the greatest

1 overall net reduction in risks with the public  
2 and private sector resources expended.

3 “(2) DETERMINING THE MOST SERIOUS  
4 RISKS.—In identifying the greatest risks under para-  
5 graph (1) of this subsection, each covered agency  
6 shall consider, at a minimum—

7 “(A) the likelihood, irreversibility, and se-  
8 verity of the effect; and

9 “(B) the number and classes of individuals  
10 potentially affected,

11 and shall explicitly take into account the results of  
12 the comparative risk analysis conducted under sub-  
13 section (d) of this section.

14 “(3) OMB REVIEW.—The covered agency’s de-  
15 terminations of the most serious risks for purposes  
16 of setting priorities shall be reviewed and approved  
17 by the Director of the Office of Management and  
18 Budget before submission of the covered agency’s  
19 annual budget requests to Congress.

20 “(4) INCORPORATING RISK-BASED PRIORITIES  
21 INTO BUDGET AND PLANNING.—The head of each  
22 covered agency shall incorporate the priorities identi-  
23 fied under paragraph (1) into the agency budget,  
24 strategic planning, regulatory agenda, enforcement,  
25 and research activities. When submitting its budget

1 request to Congress and when announcing its regu-  
2 latory agenda in the Federal Register, each covered  
3 agency shall identify the risks that the covered agen-  
4 cy head has determined are the most serious and  
5 can be addressed in a cost-effective manner under  
6 paragraph (1), the basis for that determination, and  
7 explicitly identify how the covered agency's requested  
8 budget and regulatory agenda reflect those prior-  
9 ities.

10 “(5) EFFECTIVE DATE.—This subsection shall  
11 take effect 12 months after the date of enactment  
12 of this Act.

13 “(d) COMPARATIVE RISK ANALYSIS.—

14 “(1) REQUIREMENT.—

15 “(A)(i) No later than 6 months after the  
16 effective date of this Act, the Director of the  
17 Office of Management and Budget shall enter  
18 into appropriate arrangements with a nationally  
19 recognized scientific institution or scholarly or-  
20 ganization—

21 “(I) to conduct a study of the meth-  
22 odologies for using comparative risk to  
23 rank dissimilar human health, safety, and  
24 environmental risks; and

1                   “(II) to conduct a comparative risk  
2                   analysis.

3                   “(ii) The comparative risk analysis shall  
4                   compare and rank, to the extent feasible,  
5                   human health, safety, and environmental risks  
6                   potentially regulated across the spectrum of  
7                   programs administered by all covered agencies.

8                   “(B) The Director shall consult with the  
9                   Office of Science and Technology Policy regard-  
10                  ing the scope of the study and the conduct of  
11                  the comparative risk analysis.

12                  “(C) Nothing in this subsection should be  
13                  construed to prevent the Director from entering  
14                  into a sole-source arrangement with a nationally  
15                  recognized scientific institution or scholarly or-  
16                  ganization.

17                  “(2) CRITERIA.—The Director shall ensure that  
18                  the arrangement under paragraph (1) provides  
19                  that—

20                  “(A) the scope and specificity of the analy-  
21                  sis are sufficient to provide the President and  
22                  agency heads guidance in allocating resources  
23                  across agencies and among programs in agen-  
24                  cies to achieve the greatest degree of risk pre-

1           vention and reduction for the public and private  
2           resources expended;

3           “(B) the analysis is conducted through an  
4           open process, including opportunities for the  
5           public to submit views, data, and analyses and  
6           to provide public comment on the results before  
7           making them final;

8           “(C) the analysis is conducted by a bal-  
9           anced group of individuals with relevant exper-  
10          tise, including toxicologists, biologists, engi-  
11          neers, and experts in medicine, industrial hy-  
12          giene, and environmental effects, and the selec-  
13          tion of members for such study shall be at the  
14          sole discretion of the scientific institution or  
15          scholarly organization;

16          “(D) the analysis is conducted, to the ex-  
17          tent feasible and relevant, consistent with the  
18          risk assessment and risk characterization prin-  
19          ciples in section 633 of this subchapter;

20          “(E) the methodologies and principal sci-  
21          entific determinations made in the analysis are  
22          subjected to independent peer review consistent  
23          with section 633(g), and the conclusions of the  
24          peer review are made publicly available as part



1 of the final report required under subsection  
2 (e); and

3 “(F) the results are presented in a manner  
4 that distinguishes between the scientific conclu-  
5 sions and any policy or value judgments em-  
6 bodied in the comparisons.

7 “(3) COMPLETION AND REVIEW.—No later than  
8 3 years after the effective date of this Act, the com-  
9 parative risk analysis required under paragraph (1)  
10 shall be completed. The comparative risk analysis  
11 shall be reviewed and revised at least every 5 years  
12 thereafter for a minimum of 15 years following the  
13 release of the first analysis. The Director shall ar-  
14 range for such review and revision by an accredited  
15 scientific body in the same manner as provided  
16 under paragraphs (1) and (2).

17 “(4) STUDY.—The study of methodologies pro-  
18 vided under paragraph (1) shall be conducted as  
19 part of the first comparative risk analysis and shall  
20 be completed no later than 180 days after the com-  
21 pletion of that analysis. The goal of the study shall  
22 be to develop and rigorously test methods of com-  
23 parative risk analysis. The study shall have suffi-  
24 cient scope and breadth to test approaches for im-  
25 proving comparative risk analysis and its use in set-

1       ting priorities for human health, safety, and environ-  
2       mental risk prevention and reduction.

3               “(5) TECHNICAL GUIDANCE.—No later than  
4       180 days after the effective date of this Act, the Di-  
5       rector, in collaboration with other heads of covered  
6       agencies shall enter into a contract with the Na-  
7       tional Research Council to provide technical guid-  
8       ance to agencies on approaches to using comparative  
9       risk analysis in setting human health, safety, and  
10      environmental priorities to assist agencies in comply-  
11      ing with subsection (c) of this section.

12      “(e) REPORTS AND RECOMMENDATIONS TO CON-  
13      GRESS AND THE PRESIDENT.—No later than 24 months  
14      after the effective date of this Act, each covered agency  
15      shall submit a report to Congress and the President—

16              “(1) detailing how the agency has complied  
17      with subsection (c) and describing the reason for  
18      any departure from the requirement to establish pri-  
19      orities to achieve the greatest overall net reduction  
20      in risk;

21              “(2) recommending—

22                  “(A) modification, repeal, or enactment of  
23      laws to reform, eliminate, or enhance programs  
24      or mandates relating to human health, safety,  
25      or the environment; and

1           “(B) modification or elimination of statu-  
2           tory or judicially mandated deadlines, that would  
3           assist the covered agency to set priorities in ac-  
4           tivities to address the risks to human health,  
5           safety, or the environment in a manner consist-  
6           ent with the requirements of subsection (c)(1);

7           “(3) evaluating the categories of policy and  
8           value judgment used in risk assessment, risk charac-  
9           terization, or cost-benefit analysis; and

10           “(4) discussing risk assessment research and  
11           training needs, and the agency’s strategy and sched-  
12           ule for meeting those needs.

13           “(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

14           “(1) IN GENERAL.—Nothing in this section  
15           shall be construed to modify any statutory standard  
16           or requirement designed to protect human health,  
17           safety, or the environment.

18           “(2) JUDICIAL REVIEW.—Compliance or non-  
19           compliance by an agency with the provisions of this  
20           section shall not be subject to judicial review.

21           “(3) AGENCY ANALYSIS.—Any analysis pre-  
22           pared under this section shall not be subject to judi-  
23           cial consideration separate or apart from the re-  
24           quirement, rule, program, or law to which it relates.

25           When an action for judicial review of a covered

1 agency action is instituted, any analysis for, or relat-  
 2 ing to, the action shall constitute part of the whole  
 3 record of agency action for the purpose of judicial  
 4 review of the action and shall, to the extent relevant,  
 5 be considered by a court in determining the legality  
 6 of the covered agency action.”.

7 (b) CLERICAL AMENDMENT.—The table of sections  
 8 appearing at the beginning of chapter 6 of title 5, United  
 9 States Code, is amended—

10 (1) by inserting immediately below the chapter  
 11 heading the following:

“SUBCHAPTER I—REGULATORY ANALYSIS”; and

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

“SUBCHAPTER III—RISK ASSESSMENTS

“631. Short title.

“632. Purposes.

“633. Effective date; applicability; savings provisions.

“634. Principles for risk assessment.

“635. Principles for risk characterization and communication.

“636. Recommendations or classifications by a non-United States-based entity.

“637. Guidelines and report.

“638. Research and training in risk assessment.

“639. Study of comparative risk analysis.

“639a. Definitions.

“639b. Peer review program.

“639c. Petition for review of a major free-standing risk assessment.

“639d. Risk-based priorities.”.

13 **SEC. 3004. REGULATORY FLEXIBILITY ANALYSIS.**

14 (a) IN GENERAL.—

15 (1) JUDICIAL REVIEW.—

1 (A) AMENDMENT.—Section 611 of title 5,  
2 United States Code, is amended to read as fol-  
3 lows:

4 **“§ 611. Judicial review**

5 “(a)(1) Not later than one year, notwithstanding any  
6 other provision of law, after the effective date of a final  
7 rule with respect to which an agency—

8 “(A) certified, pursuant to section 605(b), that  
9 such rule would not have a significant economic im-  
10 pact on a substantial number of small entities; or

11 “(B) prepared a final regulatory flexibility anal-  
12 ysis pursuant to section 604,

13 an affected small entity may petition for the judicial re-  
14 view of such certification or analysis in accordance with  
15 the terms of this subsection. A court having jurisdiction  
16 to review such rule for compliance with the provisions of  
17 section 553 or under any other provision of law shall have  
18 jurisdiction to review such certification or analysis. In the  
19 case where an agency delays the issuance of a final regu-  
20 latory flexibility analysis pursuant to section 608(b), a pe-  
21 tition for judicial review under this subsection shall be  
22 filed not later than one year, notwithstanding any other  
23 provision of law, after the date the analysis is made avail-  
24 able to the public.

1           “(2) For purposes of this subsection, the term ‘af-  
2 fected small entity’ means a small entity that is or will  
3 be adversely affected by the final rule.

4           “(3) Nothing in this subsection shall be construed to  
5 affect the authority of any court to stay the effective date  
6 of any rule or provision thereof under any other provision  
7 of law.

8           “(4)(A) In the case where the agency certified that  
9 such rule would not have a significant economic impact  
10 on a substantial number of small entities, the court may  
11 order the agency to prepare a final regulatory flexibility  
12 analysis pursuant to section 604 if the court determines,  
13 on the basis of the rulemaking record, that the certifi-  
14 cation was arbitrary, capricious, an abuse of discretion,  
15 or otherwise not in accordance with law.

16           “(B) In the case where the agency prepared a final  
17 regulatory flexibility analysis, the court may order the  
18 agency to take corrective action consistent with the re-  
19 quirements of section 604 if the court determines, on the  
20 basis of the rulemaking record, that the final regulatory  
21 flexibility analysis was prepared by the agency without ob-  
22 servance of procedure required by section 604.

23           “(5) If, by the end of the 90-day period beginning  
24 on the date of the order of the court pursuant to para-

1 graph (4) (or such longer period as the court may pro-  
2 vide), the agency fails, as appropriate—

3 “(A) to prepare the analysis required by section  
4 604; or

5 “(B) to take corrective action consistent with  
6 the requirements of section 604,

7 the court may stay the rule or grant such other relief as  
8 it deems appropriate.

9 “(6) In making any determination or granting any  
10 relief authorized by this subsection, the court shall take  
11 due account of the rule of prejudicial error.

12 “(b) In an action for the judicial review of a rule,  
13 any regulatory flexibility analysis for such rule (including  
14 an analysis prepared or corrected pursuant to subsection  
15 (a)(4)) shall constitute part of the whole record of agency  
16 action in connection with such review.

17 “(c) Nothing in this section bars judicial review of  
18 any other impact statement or similar analysis required  
19 by any other law if judicial review of such statement or  
20 analysis is otherwise provided by law.”.

21 (B) EFFECTIVE DATE.—The amendment  
22 made by subsection (a) shall apply only to final  
23 agency rules issued after the date of enactment  
24 of this Act.

1           (2) RULES COMMENTED ON BY SBA CHIEF  
2 COUNSEL FOR ADVOCACY.—

3           (A) IN GENERAL.—Section 612 of title 5,  
4 United States Code, is amended by adding at  
5 the end the following new subsection:

6           “(d) ACTION BY THE SBA CHIEF COUNSEL FOR AD-  
7 VOCACY.—

8           “(1) TRANSMITTAL OF PROPOSED RULES AND  
9 INITIAL REGULATORY FLEXIBILITY ANALYSIS TO  
10 SBA CHIEF COUNSEL FOR ADVOCACY.—On or before  
11 the 30th day preceding the date of publication by an  
12 agency of general notice of proposed rulemaking for  
13 a rule, the agency shall transmit to the Chief Coun-  
14 sel for Advocacy of the Small Business Administra-  
15 tion—

16           “(A) a copy of the proposed rule; and

17           “(B)(i) a copy of the initial regulatory  
18 flexibility analysis for the rule if required under  
19 section 603; or

20           “(ii) a determination by the agency that an  
21 initial regulatory flexibility analysis is not re-  
22 quired for the proposed rule under section 603  
23 and an explanation for the determination.

24           “(2) STATEMENT OF EFFECT.—On or before  
25 the 15th day following receipt of a proposed rule and



1 initial regulatory flexibility analysis from an agency  
2 under paragraph (1), the Chief Counsel for Advo-  
3 cacy may transmit to the agency a written statement  
4 of the effect of the proposed rule on small entities.

5 “(3) RESPONSE.—If the Chief Counsel for Ad-  
6 vocacy transmits to an agency a statement of effect  
7 on a proposed rule in accordance with paragraph  
8 (2), the agency shall publish the statement, together  
9 with the response of the agency to the statement, in  
10 the Federal Register at the time of publication of  
11 general notice of proposed rulemaking for the rule.

12 “(4) SPECIAL RULE.—Any proposed rules is-  
13 sued by an appropriate Federal banking agency (as  
14 that term is defined in section 3(q) of the Federal  
15 Deposit Insurance Act (12 U.S.C. 1813(q)), the Na-  
16 tional Credit Union Administration, or the Office of  
17 Federal Housing Enterprise Oversight, in connection  
18 with the implementation of monetary policy or to en-  
19 sure the safety and soundness of federally insured  
20 depository institutions, any affiliate of such an insti-  
21 tution, credit unions, or government sponsored hous-  
22 ing enterprises or to protect the Federal deposit in-  
23 surance funds shall not be subject to the require-  
24 ments of this subsection.”.

1 (B) CONFORMING AMENDMENT.—Section  
2 603(a) of title 5, United States Code, is amend-  
3 ed by inserting “in accordance with section  
4 612(d)” before the period at the end of the last  
5 sentence.

6 (3) SENSE OF CONGRESS REGARDING SBA  
7 CHIEF COUNSEL FOR ADVOCACY.—It is the sense of  
8 Congress that the Chief Counsel for Advocacy of the  
9 Small Business Administration should be permitted  
10 to appear as amicus curiae in any action or case  
11 brought in a court of the United States for the pur-  
12 pose of reviewing a rule.

13 (b) SUBCHAPTER HEADING.—Chapter 6 of title 5,  
14 United States Code, is amended by inserting immediately  
15 before section 601, the following subchapter heading:

16 “SUBCHAPTER I—REGULATORY ANALYSIS”.

17 **SEC. 3005. GUIDANCE FOR JUDICIAL INTERPRETATION.**

18 (a) IN GENERAL.—Chapter 7 of title 5, United  
19 States Code, is amended—

20 (1) by striking section 706; and

21 (2) by adding at the end the following new sec-  
22 tions:

23 **“§ 706. Scope of review**

24 “(a) To the extent necessary to reach a decision and  
25 when presented, the reviewing court shall decide all rel-

1 evant questions of law, interpret constitutional and statu-  
2 tory provisions, and determine the meaning or applicabil-  
3 ity of the terms of an agency action. The reviewing court  
4 shall—

5           “(1) compel agency action unlawfully withheld  
6           or unreasonably delayed; and

7           “(2) hold unlawful and set aside agency action,  
8           findings and conclusions found to be—

9                   “(A) arbitrary, capricious, an abuse of dis-  
10                   cretion, or otherwise not in accordance with  
11                   law;

12                   “(B) contrary to constitutional right,  
13                   power, privilege, or immunity;

14                   “(C) in excess of statutory jurisdiction, au-  
15                   thority, or limitations, or short of statutory  
16                   right;

17                   “(D) without observance of procedure re-  
18                   quired by law;

19                   “(E) unsupported by substantial evidence  
20                   in a proceeding subject to sections 556 and 557  
21                   or otherwise reviewed on the record of an agen-  
22                   cy hearing provided by statute; or

23                   “(F) unwarranted by the facts to the ex-  
24                   tent that the facts are subject to trial de novo  
25                   by the reviewing court.

1       “(b) In making the determinations set forth in sub-  
2 section (a), the court shall review the whole record or  
3 those parts of it cited by a party, and due account shall  
4 be taken of the rule of prejudicial error.

5       **“§ 707. Consent decrees**

6       “In interpreting any consent decree in effect on or  
7 after the date of enactment of this section that imposes  
8 on an agency an obligation to initiate, continue, or com-  
9 plete rulemaking proceedings, the court shall not enforce  
10 the decree in a way that divests the agency of discretion  
11 clearly granted to the agency by statute to respond to  
12 changing circumstances, make policy or managerial  
13 choices, or protect the rights of third parties.

14       **“§ 708. Affirmative defense**

15       “Notwithstanding any other provision of law, it shall  
16 be an affirmative defense in any enforcement action  
17 brought by an agency that the regulated person or entity  
18 reasonably relied on and is complying with a rule, regula-  
19 tion, adjudication, directive, or order of such agency or  
20 any other agency that is incompatible, contradictory, or  
21 otherwise cannot be reconciled with the agency rule, regu-  
22 lation, adjudication, directive, or order being enforced.

1 **“§ 709. Agency interpretations in civil and criminal**  
2 **actions**

3 “(a) No civil or criminal penalty shall be imposed by  
4 a court, and no civil administrative penalty shall be im-  
5 posed by an agency, for the violation of a rule—

6 “(1) if the court or agency, as appropriate,  
7 finds that the rule failed to give the defendant fair  
8 warning of the conduct that the rule prohibits or re-  
9 quires; or

10 “(2) if the court or agency, as appropriate,  
11 finds that the defendant acted reasonably in good  
12 faith based upon the language of the rule as pub-  
13 lished in the Federal Register.

14 “(b) Nothing in this section shall be construed to pre-  
15 clude an agency:

16 “(1) from revising a rule or changing its inter-  
17 pretation of a rule in accordance with sections 552  
18 and 553 of this title, and subject to the provisions  
19 of this section, prospectively enforcing the require-  
20 ments of such rule as revised or reinterpreted and  
21 imposing or seeking a civil or criminal penalty for  
22 any subsequent violation of such rule as revised or  
23 reinterpreted;

24 “(2) from making a new determination of fact,  
25 and based upon such determination, prospectively  
26 applying a particular legal requirement.

1 “(c) This section shall apply to any action filed after  
2 the date of the enactment of the Comprehensive Regu-  
3 latory Reform Act of 1995.”.

4 (b) **TECHNICAL AMENDMENT.**—The analysis for  
5 chapter 7 of title 5, United States Code, is amended by  
6 striking the item relating to section 706 and inserting the  
7 following new items:

“706. Scope of review.

“707. Consent decrees.

“708. Affirmative defense.

“709. Agency interpretations in civil and criminal actions.”.

8 **SEC. 3006. CONGRESSIONAL REVIEW.**

9 (a) **FINDING.**—The Congress finds that effective  
10 steps for improving the efficiency and proper management  
11 of Government operations will be promoted if a morato-  
12 rium on the implementation of certain major final and  
13 proposed rules is imposed in order to provide Congress  
14 an opportunity for review.

15 (b) **IN GENERAL.**—Title 5, United States Code, is  
16 amended by inserting immediately after chapter 7 the fol-  
17 lowing new chapter:“

18 **CHAPTER 8—CONGRESSIONAL REVIEW OF**  
19 **AGENCY RULEMAKING**

“Sec.

“801. Congressional review.

“802. Congressional disapproval procedure.

“803. Special rule on statutory, regulatory, and judicial deadlines.

“804. Definitions.

“805. Judicial review.

“806. Applicability; severability.

“807. Exemption for monetary policy.

1 **“§ 801. Congressional review**

2 “(a)(1)(A) Before a rule can take effect as a final  
3 rule, the Federal agency promulgating such rule shall sub-  
4 mit to each House of the Congress and to the Comptroller  
5 General a report containing—

6 “(i) a copy of the rule;

7 “(ii) a concise general statement relating to the  
8 rule; and

9 “(iii) the proposed effective date of the rule.

10 “(B) The Federal agency promulgating the rule shall  
11 make available to each House of Congress and the Comp-  
12 troller General, upon request—

13 “(i) a complete copy of the cost-benefit analysis  
14 of the rule, if any;

15 “(ii) the agency’s actions relevant to sections  
16 603, 604, 605, 607, and 609;

17 “(iii) the agency’s actions relevant to sections  
18 202, 203, 204, and 205 of the Unfunded Mandates  
19 Reform Act of 1995; and

20 “(iv) any other relevant information or require-  
21 ments under any other Act and any relevant Execu-  
22 tive orders, such as Executive Order No. 12866.

23 “(C) Upon receipt, each House shall provide copies  
24 to the Chairman and Ranking Member of each committee  
25 with jurisdiction.

1       “(2)(A) The Comptroller General shall provide a re-  
2 port on each major rule to the committees of jurisdiction  
3 to each House of the Congress by the end of 12 calendar  
4 days after the submission or publication date as provided  
5 in section 802(b)(2). The report of the Comptroller Gen-  
6 eral shall include an assessment of the agency’s compli-  
7 ance with procedural steps required by paragraph (1)(B).

8       “(B) Federal agencies shall cooperate with the Comp-  
9 troller General by providing information relevant to the  
10 Comptroller General’s report under subparagraph (A).

11       “(3) A major rule relating to a report submitted  
12 under paragraph (1) shall take effect as a final rule, the  
13 latest of—

14               “(A) the later of the date occurring 60 days  
15 (excluding days either House of Congress is ad-  
16 journed for more than 3 days during a session of  
17 Congress) after the date on which—

18                       “(i) the Congress receives the report sub-  
19 mitted under paragraph (1); or

20                       “(ii) the rule is published in the Federal  
21 Register;

22       “(B) if the Congress passes a joint resolution of  
23 disapproval described under section 802 relating to  
24 the rule, and the President signs a veto of such reso-  
25 lution, the earlier date—



1           “(i) on which either House of Congress  
2 votes and fails to override the veto of the Presi-  
3 dent; or

4           “(ii) occurring 30 session days after the  
5 date on which the Congress received the veto  
6 and objections of the President; or

7           “(C) the date the rule would have otherwise  
8 taken effect, if not for this section (unless a joint  
9 resolution of disapproval under section 802 is en-  
10 acted).

11          “(4) Except for a major rule, a rule shall take effect  
12 as otherwise provided by law after submission to Congress  
13 under paragraph (1).

14          “(5) Notwithstanding paragraph (3), the effective  
15 date of a rule shall not be delayed by operation of this  
16 chapter beyond the date on which either House of Con-  
17 gress votes to reject a joint resolution of disapproval under  
18 section 802.

19          “(b)(1) A rule or proposed rule shall not take effect  
20 (or continue) as a final rule, if the Congress passes a joint  
21 resolution of disapproval described under section 802.

22          “(2) A rule or proposed rule that does not take effect  
23 (or does not continue) under paragraph (1) may not be  
24 reissued in substantially the same form, and a new rule  
25 that is substantially the same as such a rule or proposed

1 rule may not be issued, unless the reissued or new rule  
2 is specifically authorized by a law enacted after the date  
3 of the joint resolution disapproving the original rule.

4 “(c)(1) Notwithstanding any other provision of this  
5 section (except subject to paragraph (3)), a rule that  
6 would not take effect by reason of this chapter may take  
7 effect, if the President makes a determination under para-  
8 graph (2) and submits written notice of such determina-  
9 tion to the Congress.

10 “(2) Paragraph (1) applies to a determination made  
11 by the President by Executive order that the rule should  
12 take effect because such rule is—

13 “(A) necessary because of an imminent threat  
14 to health or safety or other emergency;

15 “(B) necessary for the enforcement of criminal  
16 laws;

17 “(C) necessary for national security; or

18 “(D) issued pursuant to a statute implementing  
19 an international trade agreement.

20 “(3) An exercise by the President of the authority  
21 under this subsection shall have no effect on the proce-  
22 dures under section 802 or the effect of a joint resolution  
23 of disapproval under this section.

24 “(d)(1) In addition to the opportunity for review oth-  
25 erwise provided under this chapter, in the case of any rule

1 that is published in the Federal Register (as a rule that  
2 shall take effect as a final rule) during the period begin-  
3 ning on the date occurring 60 days before the date the  
4 Congress adjourns a session of Congress through the date  
5 on which the same or succeeding Congress first convenes  
6 its next session, section 802 shall apply to such rule in  
7 the succeeding session of Congress.

8 “(2)(A) In applying section 802 for purposes of such  
9 additional review, a rule described under paragraph (1)  
10 shall be treated as though—

11 “(i) such rule were published in the Federal  
12 Register (as a rule that shall take effect as a final  
13 rule) on the 15th session day after the succeeding  
14 Congress first convenes; and

15 “(ii) a report on such rule were submitted to  
16 Congress under subsection (a)(1) on such date.

17 “(B) Nothing in this paragraph shall be construed  
18 to affect the requirement under subsection (a)(1) that a  
19 report shall be submitted to Congress before a final rule  
20 can take effect.

21 “(3) A rule described under paragraph (1) shall take  
22 effect as a final rule as otherwise provided by law (includ-  
23 ing other subsections of this section).

24 “(e)(1) Section 802 shall apply in accordance with  
25 its terms to any major rule that was published in the Fed-

1 eral Register (as a rule that shall take effect as a final  
2 rule) in the period beginning on November 20, 1994,  
3 through the date of enactment of the Comprehensive Reg-  
4 ulatory Reform Act of 1995.

5 “(2) In applying section 802 for purposes of Congres-  
6 sional review, a rule described under paragraph (1) shall  
7 be treated as though—

8 “(A) such rule were published in the Federal  
9 Register (as a rule that shall take effect as a final  
10 rule) on the date of enactment of the Comprehensive  
11 Regulatory Reform Act of 1995; and

12 “(B) a report on such rule were submitted to  
13 Congress under subsection (a)(1) on such date.

14 “(3) The effectiveness of a rule described under para-  
15 graph (1) shall be as otherwise provided by law, unless  
16 the rule is made of no force or effect under section 802.

17 “(f) Any rule that takes effect and later is made of  
18 no force or effect by enactment of a joint resolution under  
19 section 802 shall be treated as though such rule had never  
20 taken effect.

21 “(g) If the Congress does not enact a joint resolution  
22 of disapproval under section 802, no court or agency may  
23 infer any intent of the Congress from any action or inac-  
24 tion of the Congress with regard to such rule, related stat-  
25 ute, or joint resolution of disapproval.

1 **“§ 802. Congressional disapproval procedure**

2 “(a) JOINT RESOLUTION DEFINED.—For purposes  
3 of this section, the term ‘joint resolution’ means only—

4 “(1) a joint resolution introduced in the period  
5 beginning on the date on which the report referred  
6 to in section 801(a) is received by Congress and end-  
7 ing 60 days thereafter (excluding days either House  
8 of Congress is adjourned for more than 3 days dur-  
9 ing a session of Congress), the matter after the re-  
10 solving clause of which is as follows: ‘That Congress  
11 disapproves the rule submitted by the \_\_\_\_ relating  
12 to \_\_\_\_, and such rule shall have no force or effect.’  
13 (The blank spaces being appropriately filled in); or

14 “(2) a joint resolution the matter after the re-  
15 solving clause of which is as follows: ‘That the Con-  
16 gress disapproves the proposed rule published by the  
17 \_\_\_\_\_ relating to \_\_\_\_\_, and such proposed  
18 rule shall not be issued or take effect as a final  
19 rule.’ (the blank spaces being appropriately filled in)

20 “(b)(1) A joint resolution described in subsection (a)  
21 shall be referred to the committees in each House of Con-  
22 gress with jurisdiction.

23 “(2) For purposes of this section, the term ‘submis-  
24 sion or publication date’ means—

25 “(A) in the case of a joint resolution described  
26 in subsection (a)(1) the later of the date on which—

1                   “(i) the Congress receives the report sub-  
2                   mitted under section 801(a)(1); or

3                   “(ii) the rule is published in the Federal  
4                   Register; or

5                   “(B) in the case of a joint resolution described  
6                   in subsection (a)(2), the date of introduction of the  
7                   joint resolution.

8                   “(c) In the Senate, if the committee to which is re-  
9                   ferred a joint resolution described in subsection (a) has  
10                  not reported such joint resolution (or an identical joint  
11                  resolution) at the end of 20 calendar days after the sub-  
12                  mission or publication date defined under subsection  
13                  (b)(2), such committee may be discharged from further  
14                  consideration of such joint resolution upon a petition sup-  
15                  ported in writing by 30 Members of the Senate, and such  
16                  joint resolution shall be placed on the appropriate cal-  
17                  endar.

18                  “(d)(1) In the Senate, when the committee to which  
19                  a joint resolution is referred has reported, or when a com-  
20                  mittee is discharged (under subsection (c)) from further  
21                  consideration of, a joint resolution described in subsection  
22                  (a), it is at any time thereafter in order (even though a  
23                  previous motion to the same effect has been disagreed to)  
24                  for a motion to proceed to the consideration of the joint  
25                  resolution, and all points of order against the joint resolu-

1 tion (and against consideration of the joint resolution) are  
2 waived. The motion is not subject to amendment, or to  
3 a motion to postpone, or to a motion to proceed to the  
4 consideration of other business. A motion to reconsider the  
5 vote by which the motion is agreed to or disagreed to shall  
6 not be in order. If a motion to proceed to the consideration  
7 of the joint resolution is agreed to, the joint resolution  
8 shall remain the unfinished business of the Senate until  
9 disposed of.

10       “(2) In the Senate, debate on the joint resolution,  
11 and on all debatable motions and appeals in connection  
12 therewith, shall be limited to not more than 10 hours,  
13 which shall be divided equally between those favoring and  
14 those opposing the joint resolution. A motion further to  
15 limit debate is in order and not debatable. An amendment  
16 to, or a motion to postpone, or a motion to proceed to  
17 the consideration of other business, or a motion to recom-  
18 mit the joint resolution is not in order.

19       “(3) In the Senate, immediately following the conclu-  
20 sion of the debate on a joint resolution described in sub-  
21 section (a), and a single quorum call at the conclusion of  
22 the debate if requested in accordance with the rules of the  
23 Senate, the vote on final passage of the joint resolution  
24 shall occur.

1       “(4) Appeals from the decisions of the Chair relating  
2 to the application of the rules of the Senate to the proce-  
3 dure relating to a joint resolution described in subsection  
4 (a) shall be decided without debate.

5       “(e) If, before the passage by one House of a joint  
6 resolution of that House described in subsection (a), that  
7 House receives from the other House a joint resolution  
8 described in subsection (a), then the following procedures  
9 shall apply:

10           “(1) The joint resolution of the other House  
11 shall not be referred to a committee.

12           “(2) With respect to a joint resolution described  
13 in subsection (a) of the House receiving the joint  
14 resolution—

15                   “(A) the procedure in that House shall be  
16 the same as if no joint resolution had been re-  
17 ceived from the other House; but

18                   “(B) the vote on final passage shall be on  
19 the joint resolution of the other House.

20       “(f) This section is enacted by Congress—

21           “(1) as an exercise of the rulemaking power of  
22 the Senate and House of Representatives, respec-  
23 tively, and as such it is deemed a part of the rules  
24 of each House, respectively, but applicable only with  
25 respect to the procedure to be followed in that



1 House in the case of a joint resolution described in  
2 subsection (a), and it supersedes other rules only to  
3 the extent that it is inconsistent with such rules; and

4 “(2) with full recognition of the constitutional  
5 right of either House to change the rules (so far as  
6 relating to the procedure of that House) at any time,  
7 in the same manner, and to the same extent as in  
8 the case of any other rule of that House.

9 **“§ 803. Special rule on statutory, regulatory, and judi-**  
10 **cial deadlines**

11 “(a) In the case of any deadline for, relating to, or  
12 involving any rule which does not take effect (or the effec-  
13 tiveness of which is terminated) because of enactment of  
14 a joint resolution under section 802, that deadline is ex-  
15 tended until the date 1 year after the date of the joint  
16 resolution. Nothing in this subsection shall be construed  
17 to affect a deadline merely by reason of the postponement  
18 of a rule’s effective date under section 801(a).

19 “(b) The term ‘deadline’ means any date certain for  
20 fulfilling any obligation or exercising any authority estab-  
21 lished by or under any Federal statute or regulation, or  
22 by or under any court order implementing any Federal  
23 statute or regulation.

24 **“§ 804. Definitions**

25 “(a) For purposes of this chapter—

1           “(1) the term ‘Federal agency’ means any agen-  
2           cy as that term is defined in section 551(1) (relating  
3           to administrative procedure);

4           “(2) the term ‘major rule’ has the same mean-  
5           ing given such term in section 621(5); and

6           “(3) the term ‘final rule’ means any final rule  
7           or interim final rule.

8           “(b) As used in subsection (a)(3), the term ‘rule’ has  
9           the meaning given such term in section 551, except that  
10          such term does not include any rule of particular applica-  
11          bility including a rule that approves or prescribes for the  
12          future rates, wages, prices, services, or allowances there-  
13          for, corporate or financial structures, reorganizations,  
14          mergers, or acquisitions thereof, or accounting practices  
15          or disclosures bearing on any of the foregoing or any rule  
16          of agency organization, personnel, procedure, practice or  
17          any routine matter.

18       **“§ 805. Judicial review**

19          “No determination, finding, action, or omission under  
20          this chapter shall be subject to judicial review.

21       **“§ 806. Applicability; severability**

22          “(a) This chapter shall apply notwithstanding any  
23          other provision of law.

24          “(b) If any provision of this chapter or the applica-  
25          tion of any provision of this chapter to any person or cir-

1 cumstance, is held invalid, the application of such provi-  
 2 sion to other persons or circumstances, and the remainder  
 3 of this chapter, shall not be affected thereby.

4 **“§ 807. Exemption for monetary policy**

5 “Nothing in this chapter shall apply to rules that con-  
 6 cern monetary policy proposed or implemented by the  
 7 Board of Governors of the Federal Reserve System or the  
 8 Federal Open Market Committee.”.

9 (c) Effective Date.—The amendment made by sub-  
 10 section (b) shall take effect on the date of enactment of  
 11 this Act.

12 (d) TECHNICAL AMENDMENT.—The table of chapters  
 13 for part I of title 5, United States Code, is amended by  
 14 inserting immediately after the item relating to chapter  
 15 7 the following:

**“8. Congressional Review of Agency Rulemaking ..... 801”.**

16 **SEC. 3007. REGULATORY ACCOUNTING STATEMENT.**

17 (a) DEFINITIONS.—For purposes of this section, the  
 18 following definitions apply:

19 (1) MAJOR RULE.—The term “major rule” has  
 20 the same meaning as defined in section 621(5)(A)(i)  
 21 of title 5, United States Code. The term shall not  
 22 include—

23 (A) administrative actions governed by sec-  
 24 tions 556 and 557 of title 5, United States  
 25 Code;

1 (B) regulations issued with respect to a  
2 military or foreign affairs function of the Unit-  
3 ed States or a statute implementing an inter-  
4 national trade agreement; or

5 (C) regulations related to agency organiza-  
6 tion, management, or personnel.

7 (2) AGENCY.—The term “agency” means any  
8 executive department, military department, Govern-  
9 ment corporation, Government controlled corpora-  
10 tion, or other establishment in the executive branch  
11 of the Government (including the Executive Office of  
12 the President), or any independent regulatory agen-  
13 cy, but shall not include—

14 (A) the General Accounting Office;

15 (B) the Federal Election Commission;

16 (C) the governments of the District of Co-  
17 lumbia and of the territories and possessions of  
18 the United States, and their various subdivi-  
19 sions; or

20 (D) Government-owned contractor-oper-  
21 ated facilities, including laboratories engaged in  
22 national defense research and production activi-  
23 ties.

24 (b) ACCOUNTING STATEMENT.—

25 (1) IN GENERAL.—

1           (A) The President shall be responsible for  
2           implementing and administering the require-  
3           ments of this section.

4           (B) Not later than June 1, 1997, and each  
5           June 1 thereafter, the President shall prepare  
6           and submit to Congress an accounting state-  
7           ment that estimates the annual costs of major  
8           rules and corresponding benefits in accordance  
9           with this subsection.

10          (2) YEARS COVERED BY ACCOUNTING STATE-  
11          MENT.—Each accounting statement shall cover, at a  
12          minimum, the 5 fiscal years beginning on October 1  
13          of the year in which the report is submitted and may  
14          cover any fiscal year preceding such fiscal years for  
15          purpose of revising previous estimates.

16          (3) TIMING AND PROCEDURES.—

17                (A) The President shall provide notice and  
18                opportunity for comment for each accounting  
19                statement. The President may delegate to an  
20                agency the requirement to provide notice and  
21                opportunity to comment for the portion of the  
22                accounting statement relating to that agency.

23                (B) The President shall propose the first  
24                accounting statement under this subsection not  
25                later than 2 years after the date of enactment

1 of this Act and shall issue the first accounting  
2 statement in final form not later than 3 years  
3 after such effective date. Such statement shall  
4 cover, at a minimum, each of the fiscal years  
5 beginning after the date of enactment of this  
6 Act.

7 (4) CONTENT OF ACCOUNTING STATEMENT.—

8 (A) Each accounting statement shall con-  
9 tain estimates of costs and benefits with respect  
10 to each fiscal year covered by the statement in  
11 accordance with this paragraph. For each such  
12 fiscal year for which estimates were made in a  
13 previous accounting statement, the statement  
14 shall revise those estimates and state the rea-  
15 sons for the revisions.

16 (B)(i) An accounting statement shall esti-  
17 mate the costs of major rules by setting forth,  
18 for each year covered by the statement—

19 (I) the annual expenditure of national  
20 economic resources for major rules,  
21 grouped by regulatory program; and

22 (II) such other quantitative and quali-  
23 tative measures of costs as the President  
24 considers appropriate.

1           (ii) For purposes of the estimate of costs  
2           in the accounting statement, national economic  
3           resources shall include, and shall be listed  
4           under, at least the following categories:

5                     (I) Private sector costs.

6                     (II) Federal sector costs.

7                     (III) State and local government ad-  
8                     ministrative costs.

9           (C) An accounting statement shall estimate the  
10          benefits of major rules by setting forth, for each  
11          year covered by the statement, such quantitative and  
12          qualitative measures of benefits as the President  
13          considers appropriate. Any estimates of benefits con-  
14          cerning reduction in health, safety, or environmental  
15          risks shall present the most plausible level of risk  
16          practical, along with a statement of the reasonable  
17          degree of scientific certainty.

18          (c) ASSOCIATED REPORT TO CONGRESS.—

19                 (1) IN GENERAL.—At the same time as the  
20          President submits an accounting statement under  
21          subsection (b), the President, acting through the Di-  
22          rector of the Office of Management and Budget,  
23          shall submit to Congress a report associated with  
24          the accounting statement (hereinafter referred to as

1 an “associated report”). The associated report shall  
2 contain, in accordance with this subsection—

3 (A) analyses of impacts; and

4 (B) recommendations for reform.

5 (2) ANALYSES OF IMPACTS.—The President  
6 shall include in the associated report the following:

7 (A) Analyses prepared by the President of  
8 the cumulative impact of major rules in Federal  
9 regulatory programs covered in the accounting  
10 statement on the following:

11 (i) The ability of State and local gov-  
12 ernments to provide essential services, in-  
13 cluding police, fire protection, and edu-  
14 cation.

15 (ii) Small business.

16 (iii) Productivity.

17 (iv) Wages.

18 (v) Economic growth.

19 (vi) Technological innovation.

20 (vii) Consumer prices for goods and  
21 services.

22 (viii) Such other factors considered  
23 appropriate by the President.

24 (B) A summary of any independent analy-  
25 ses of impacts prepared by persons commenting



1           during the comment period on the accounting  
2           statement.

3           (3) RECOMMENDATIONS FOR REFORM.—The  
4           President shall include in the associated report the  
5           following:

6                   (A) A summary of recommendations of the  
7           President for reform or elimination of any Fed-  
8           eral regulatory program or program element  
9           that does not represent sound use of national  
10          economic resources or otherwise is inefficient.

11                   (B) A summary of any recommendations  
12          for such reform or elimination of Federal regu-  
13          latory programs or program elements prepared  
14          by persons commenting during the comment pe-  
15          riod on the accounting statement.

16          (d) GUIDANCE FROM OFFICE OF MANAGEMENT AND  
17          BUDGET.—The Director of the Office of Management and  
18          Budget shall, in consultation with the Council of Economic  
19          Advisers, provide guidance to agencies—

20                   (1) to standardize measures of costs and bene-  
21          fits in accounting statements prepared pursuant to  
22          sections 3 and 7 of this Act, including—

23                           (A) detailed guidance on estimating the  
24                           costs and benefits of major rules; and

1 (B) general guidance on estimating the  
2 costs and benefits of all other rules that do not  
3 meet the thresholds for major rules; and

4 (2) to standardize the format of the accounting  
5 statements.

6 (e) RECOMMENDATIONS FROM CONGRESSIONAL  
7 BUDGET OFFICE.—After each accounting statement and  
8 associated report submitted to Congress, the Director of  
9 the Congressional Budget Office shall make recommenda-  
10 tions to the President—

11 (1) for improving accounting statements pre-  
12 pared pursuant to this section, including rec-  
13 ommendations on level of detail and accuracy; and

14 (2) for improving associated reports prepared  
15 pursuant to this section, including recommendations  
16 on the quality of analysis.

17 (f) JUDICIAL REVIEW.—No requirements under this  
18 section shall be subject to judicial review in any manner.

19 **SEC. 3008. STUDIES AND REPORTS.**

20 (a) RISK ASSESSMENTS.—The Administrative Con-  
21 ference of the United States shall—

22 (1) develop and carry out an ongoing study of  
23 the operation of the risk assessment requirements of  
24 subchapter III of chapter 6 of title 5, United States  
25 Code (as added by section 4 of this Act); and

1           (2) submit an annual report to the Congress on  
2           the findings of the study.

3           (b) ADMINISTRATIVE PROCEDURE ACT.—Not later  
4 than December 31, 1996, the Administrative Conference  
5 of the United States shall—

6           (1) carry out a study of the operation of the  
7           Administrative Procedure Act (as amended by sec-  
8           tion 3 of this Act); and

9           (2) submit a report to the Congress on the find-  
10          ings of the study, including proposals for revision, if  
11          any.

12 **SEC. 3009. MISCELLANEOUS PROVISIONS.**

13          (a) EFFECTIVE DATE.—Except as otherwise pro-  
14 vided, this Act and the amendments made by this Act shall  
15 take effect on the date of enactment.

16          (b) SEVERABILITY.—If any provision of this Act, an  
17 amendment made by this Act, or the application of such  
18 provision or amendment to any person or circumstance is  
19 held to be unconstitutional, the remainder of this Act, the  
20 amendments made by this Act, and the application of the  
21 provisions of such to any person or circumstance shall not  
22 be affected thereby.

          Passed the House of Representatives November 9,  
1995.

Attest:

ROBIN H. CARLE,

*Clerk.*

HR 2586 RDS—	2
HR 2586 RDS—	3
HR 2586 RDS—	4
HR 2586 RDS—	5
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