

Union Calendar No. 148

104TH CONGRESS
1ST SESSION

H. R. 2491

[Report No. 104-280]

To provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996.

OCTOBER 17, 1995

Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

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To provide for reconciliation pursuant to section 105 of the concurrent
resolution on the budget for fiscal year 1996.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 17, 1995

Mr. KASICH from the Committee on the Budget, reported the following bill;
which was committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

A BILL

To provide for reconciliation pursuant to section 105 of
the concurrent resolution on the budget for fiscal year 1996.

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

3 **TITLE I—PROVISIONS OF**
4 **GENERAL APPLICABILITY**

5 **SECTION 1001. SHORT TITLE.**

6 This Act may be cited as the “Seven-Year Balanced
7 Budget Reconciliation Act of 1995”.

8 **SEC. 1002. TABLE OF TITLES.**

9 This Act is organized into titles as follows:

TITLE I—PROVISIONS OF GENERAL APPLICABILITY

TITLE II—COMMITTEE ON BANKING AND FINANCIAL SERVICES

TITLE III—COMMITTEE ON COMMERCE

TITLE IV—COMMITTEE ON ECONOMIC AND EDUCATIONAL
OPPORTUNITIES

TITLE V—COMMITTEE ON GOVERNMENT REFORM AND
OVERSIGHT

TITLE VI—COMMITTEE ON INTERNATIONAL RELATIONS

TITLE VII—COMMITTEE ON THE JUDICIARY

TITLE VIII—COMMITTEE ON NATIONAL SECURITY

TITLE IX—COMMITTEE ON RESOURCES

TITLE X—COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE

TITLE XI—COMMITTEE ON VETERANS' AFFAIRS

TITLE XII—COMMITTEE ON WAYS AND MEANS-TRADE

TITLE XIII—COMMITTEE ON WAYS AND MEANS-REVENUES

TITLE XIV—COMMITTEE ON WAYS AND MEANS-TAX
SIMPLIFICATION

TITLE XV—MEDICARE

TITLE XVI—TRANSFORMATION OF THE MEDICAID PROGRAM

TITLE XVII—DEPARTMENT OF COMMERCE ABOLITION

TITLE XVIII—WELFARE REFORM

TITLE XIX—CONTRACT TAX PROVISIONS

TITLE XX—BUDGET PROCESS

1 **TITLE II—COMMITTEE ON BANK-**
2 **ING AND FINANCIAL SERV-**
3 **ICES**

4 **SEC. 2001. TABLE OF CONTENTS.**

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

Subtitle A—Housing Provisions

- Sec. 2101. Termination of RTC and FDIC affordable housing programs.
- Sec. 2102. Elimination of FHA assignment program and foreclosure relief.
- Sec. 2103. Reform of HUD-owned multifamily property disposition program.
- Sec. 2104. Recapture of rural housing loan subsidies by Rural Housing and
Community Development Service.
- Sec. 2105. Reduction of section 8 annual adjustment factors for units without
tenant turnover.

Subtitle B—Thrift Charter Conversion

Sec. 2200. Short title.

CHAPTER 1—BANK INSURANCE FUND AND SAVINGS ASSOCIATION
INSURANCE FUND

Sec. 2201. Special assessment.

Sec. 2202. Assessments on insured depository institutions.

Sec. 2203. Merger of Bank Insurance Fund and Savings Association Insurance Fund after recapitalization of SAIF.

Sec. 2204. Refund of amounts in deposit insurance fund in excess of designated reserve amount.

Sec. 2205. Assessments authorized only if needed to maintain the reserve ratio of a deposit insurance fund.

CHAPTER 2—STATUS OF BANKS AND SAVINGS ASSOCIATIONS

Sec. 2221. Termination of Federal savings associations; treatment of State savings associations as banks for purposes of Federal banking law.

Sec. 2222. Treatment of certain activities and affiliations of bank holding companies resulting from this Act.

Sec. 2223. Transition provisions for activities of savings associations which convert into or become treated as banks.

Sec. 2224. Registration of bank holding companies resulting from conversions of savings associations to banks or treatment of savings associations as banks.

Sec. 2225. Additional transition provisions and special rules.

Sec. 2226. Technical and conforming amendments.

Sec. 2227. References to savings associations and State banks in Federal law.

Sec. 2228. Repeal of Home Owners' Loan Act.

Sec. 2229. Effective date; definitions.

CHAPTER 3—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

Sec. 2241. Office of Thrift Supervision abolished.

Sec. 2242. Determination of transferred functions and employees.

Sec. 2243. Savings provisions.

Sec. 2244. References in Federal law to Director of the Office of Thrift Supervision.

Sec. 2245. Reconfiguration of board of directors of FDIC as a result of removal of Director of the Office of Thrift Supervision.

CHAPTER 4—LOAN LOSS RESERVE TREATMENT

Sec. 2261. Sense of the Congress.

Subtitle C—Community Reinvestment Act Amendments

Sec. 2301. Expression of congressional intent.

Sec. 2302. Community Reinvestment Act exemption.

Sec. 2303. Self-certification of CRA compliance.

Sec. 2304. Community input and conclusive rating.

Sec. 2305. Special purpose financial institutions.

Sec. 2306. Increased incentives for lending to low- and moderate-income communities.

Sec. 2307. Prohibition on additional reporting under CRA.

Sec. 2308. Technical amendment.

Sec. 2309. Duplicative reporting.
 Sec. 2310. CRA congressional oversight.
 Sec. 2311. Consultation among examiners.
 Sec. 2312. Limitation on regulations.

1 **Subtitle A—Housing Provisions**

2 **SEC. 2101. TERMINATION OF RTC AND FDIC AFFORDABLE** 3 **HOUSING PROGRAMS.**

4 (a) REPEAL OF UNIFIED PROGRAM AND TRANSFER
 5 OF RTC WINDUP AUTHORITY TO HUD.—Section 21A(c)
 6 of the Federal Home Loan Bank Act (12 U.S.C.
 7 1441a(c)) is amended by striking paragraph (17) and in-
 8 serting the following new paragraph:

9 “(17) TRANSFER OF AUTHORITY.—The Sec-
 10 retary shall assume, not later than December 31,
 11 1995, and thereafter shall carry out, any remaining
 12 authority and responsibilities of the Corporation to
 13 recapture excess proceeds from resale of properties
 14 and to monitor and enforce low-income occupancy
 15 requirements or rent limitations under this sub-
 16 section and shall assume any direct or contingent li-
 17 ability of the Corporation to carry out such author-
 18 ity and responsibilities.”.

19 (b) TERMINATION OF RTC AFFORDABLE HOUSING
 20 PROGRAM.—Section 21A(c) of the Federal Home Loan
 21 Bank Act (12 U.S.C. 1441a(c)) is amended by adding at
 22 the end the following new paragraph:

23 “(18) TERMINATION.—

1 “(A) IN GENERAL.—On and after the date
2 of the enactment of the Seven-Year Balanced
3 Budget Reconciliation Act of 1995, the provi-
4 sions of this subsection (other than paragraph
5 (17)) shall not apply with respect to any eligible
6 residential property or eligible condominium
7 property.

8 “(B) SAVINGS PROVISION.—Notwithstand-
9 ing subparagraph (A), the provisions of this
10 subsection shall continue to apply on and after
11 such date of enactment to any eligible residen-
12 tial property or eligible condominium property
13 that—

14 “(i) has been sold or otherwise dis-
15 posed of by the Corporation before such
16 date of enactment; or

17 “(ii) is subject to a contract of sale or
18 other disposition entered into before such
19 date of enactment.”.

20 (c) TERMINATION OF AFFORDABLE HOUSING ADVI-
21 SORY BOARD.—Section 14(b)(9) of the Resolution Trust
22 Corporation Completion Act (12 U.S.C. 1831q note) is
23 amended by striking “September 30, 1998” and inserting
24 “September 30, 1995”.

1 (d) REPEAL OF FDIC PROGRAM AND TRANSFER OF
2 WINDUP AUTHORITY TO HUD.—

3 (1) REPEAL.—Section 40 of the Federal De-
4 posit Insurance Act (12 U.S.C. 1831q) is hereby re-
5 pealed.

6 (2) TRANSFER OF WINDUP AUTHORITY.—Not-
7 withstanding paragraph (1)—

8 (A) effective December 31, 1995, the Sec-
9 retary shall carry out any remaining authority
10 and responsibilities of the Federal Deposit In-
11 surance Corporation under section 40 of the
12 Federal Deposit Insurance Act to recapture ex-
13 cess proceeds from resale of properties and to
14 monitor and enforce low-income occupancy re-
15 quirements or rent limitations under such sec-
16 tion and shall assume any direct or contingent
17 liability of the Corporation to carry out such
18 authority and responsibilities; and

19 (B) the Federal Deposit Insurance Cor-
20 poration shall consummate any sales of prop-
21 erty under section 40 of such Act that were
22 pending under contracts of sale on September
23 30, 1995.

24 (e) FDIC DISPOSITION OF ASSETS AS CONSERVATOR
25 OR RECEIVER.—Section 11(d)(13)(E) of the Federal

1 Deposit Insurance Act (12 U.S.C. 1821(d)(13)(E)) is
2 amended—

3 (1) in clause (iii), by inserting “and” after the
4 semicolon;

5 (2) in clause (iv), by striking “; and” and in-
6 serting a period; and

7 (3) by striking clause (v).

8 (f) DISPOSITION OF FDIC ASSETS.—Section
9 13(d)(3)(D) of the Federal Deposit Insurance Act (12
10 U.S.C. 1823(d)(3)(D)) is amended—

11 (1) in clause (iii), by inserting “and” after the
12 semicolon;

13 (2) in clause (iv), by striking “; and” and in-
14 serting a period; and

15 (3) by striking clause (v).

16 **SEC. 2102. ELIMINATION OF FHA ASSIGNMENT PROGRAM**
17 **AND FORECLOSURE RELIEF.**

18 (a) ELIMINATION OF TMAP AND ASSIGNMENT PRO-
19 GRAM.—Section 230 of the National Housing Act (12
20 U.S.C. 1715u) is hereby repealed.

21 (b) PROHIBITION OF FORECLOSURE AVOIDANCE RE-
22 LIEF.—Section 204 of the National Housing Act (12
23 U.S.C. 1710) is amended by adding at the end the follow-
24 ing new subsection:

1 “(m) PROHIBITION OF FORECLOSURE AVOIDANCE
 2 RELIEF.—Notwithstanding any provision of this section,
 3 any other provision of this Act, section 2 of the Housing
 4 Act of 1949, section 2 of the Housing and Urban Develop-
 5 ment Act of 1968, or any other provision of law, after
 6 September 30, 1995, the Secretary of Housing and Urban
 7 Development may not provide foreclosure avoidance relief
 8 to any mortgagor who has defaulted in making payments
 9 under a mortgage covering a 1-, 2-, 3-, or 4-family resi-
 10 dence insured under this Act.”.

11 **SEC. 2103. REFORM OF HUD-OWNED MULTIFAMILY PROP-**
 12 **ERTY DISPOSITION PROGRAM.**

13 (a) IN GENERAL.—Effective October 1, 1995, section
 14 203 of the Housing and Community Development Amend-
 15 ments of 1978 (12 U.S.C. 1701z–11) is amended to read
 16 as follows:

17 **“SEC. 203. MANAGEMENT AND DISPOSITION OF HUD-**
 18 **OWNED MULTIFAMILY HOUSING PROJECTS.**

19 “(a) IN GENERAL.—The Secretary of Housing and
 20 Urban Development may manage and dispose of (1) multi-
 21 family housing projects that are owned by the Secretary
 22 or that are subject to mortgages held by the Secretary,
 23 and (2) mortgages on multifamily housing projects that
 24 are held by the Secretary, without regard to any other pro-
 25 vision of law.

1 “(b) AUTHORITY TO DELEGATE.—The Secretary of
2 Housing and Urban Development may delegate to one or
3 more entities the authority to carry out some or all of the
4 functions and responsibilities of the Secretary in connec-
5 tion with the foreclosure of mortgages on multifamily
6 housing projects held by the Secretary.

7 “(c) DEFINITION.—For purposes of this section, the
8 term ‘multifamily housing project’ means any multifamily
9 rental housing project which is, or prior to acquisition by
10 the Secretary was, assisted or insured under the National
11 Housing Act, or was subject to a loan under section 202
12 of the Housing Act of 1959.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) NONDISCRIMINATION AGAINST CERTIFICATE
15 AND VOUCHER HOLDERS.—Section 183(c) of the
16 Housing and Community Development Act of 1987
17 (42 U.S.C. 1437f note) is amended by striking “sec-
18 tion 203(i)(2) of the Housing and Community De-
19 velopment Amendments of 1978, as amended by sec-
20 tion 181(h) of this Act” and inserting “section
21 203(b) of the Housing and Community Development
22 Amendments of 1978 (as in effect before October 1,
23 1995)”.

24 (2) LIHPRH ACT OF 1990.—Section 212(c) of
25 the Low-Income Housing Preservation and Resident

1 Homeownership Act of 1990 (12 U.S.C. 4102(c)) is
2 amended by striking the last sentence.

3 (3) HOPE HOMEOWNERSHIP PROGRAM.—Sec-
4 tion 427 of the Cranston-Gonzalez National Afford-
5 able Housing Act (42 U.S.C. 12877) is amended by
6 striking “subject to—” and all that follows and in-
7 serting “subject to the Low-Income Housing Preser-
8 vation and Resident Homeownership Act of 1990.”.

9 (4) FHA MULTIFAMILY HOUSING MORTGAGE
10 INSURANCE.—Section 207(k) of the National Hous-
11 ing Act (12 U.S.C. 1713(k)) is amended by striking
12 the third sentence.

13 (5) MULTIFAMILY MORTGAGE FORECLOSURE
14 ACT OF 1981.—Section 367(b)(2) of the Multifamily
15 Mortgage Foreclosure Act of 1981 (12
16 U.S.C.3706(b)(2)) is amended—

17 (A) by striking subparagraph (B); and

18 (B) by striking “(A)”.

19 (6) PREVENTING MORTGAGE DEFAULTS ON IN-
20 SURED MULTIFAMILY PROJECTS.—Section
21 103(h)(2)(B) of the Multifamily Housing Property
22 Disposition Reform Act of 1994 (12 U.S.C. 1715z–
23 1a note) is amended by inserting “(as in effect be-
24 fore October 1, 1995)” after “1978”.

1 **SEC. 2104. RECAPTURE OF RURAL HOUSING LOAN SUB-**
 2 **SIDIES BY RURAL HOUSING AND COMMUNITY**
 3 **DEVELOPMENT SERVICE.**

4 The first sentence of section 521(a)(1)(D)(i) of the
 5 Housing Act of 1949 (42 U.S.C. 1490a(a)(1)(D)(i)) is
 6 amended by inserting “upon the repayment of any loan
 7 made under this title or” after “assistance rendered”.

8 **SEC. 2105. REDUCTION OF SECTION 8 ANNUAL ADJUST-**
 9 **MENT FACTORS FOR UNITS WITHOUT TEN-**
 10 **ANT TURNOVER.**

11 Paragraph (2)(A) of section 8(c) of the United States
 12 Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) is
 13 amended by striking the last sentence.

14 **Subtitle B—Thrift Charter**
 15 **Conversion**

16 **SEC. 2200. SHORT TITLE.**

17 This subtitle may be cited as the “Thrift Charter
 18 Conversion Act of 1995”.

19 **CHAPTER 1—BANK INSURANCE FUND AND**
 20 **SAVINGS ASSOCIATION INSURANCE FUND**

21 **SEC. 2201. SPECIAL ASSESSMENT.**

22 Section 7(b)(6) of the Federal Deposit Insurance Act
 23 (12 U.S.C. 1817(b)(6)) is amended—

24 (1) by redesignating clauses (i), (ii), and (iii) of
 25 subparagraph (A) as subclauses (I), (II), and (III),
 26 respectively;

1 (2) by redesignating subparagraphs (A) and
2 (B) as clauses (i) and (ii), respectively;

3 (3) by moving the left margin of such clauses
4 and subclauses (as so redesignated) 2 ems to the
5 right;

6 (4) by striking “SPECIAL ASSESSMENTS.—In
7 addition to” and inserting “SPECIAL ASSESS-
8 MENTS.—

9 “(A) IN GENERAL.—In addition to”; and

10 (5) by adding at the end the following new sub-
11 paragraphs:

12 “(B) SINGLE ADDITIONAL SPECIAL AS-
13 SESSMENT WITH RESPECT TO CERTAIN AC-
14 COUNTS.—

15 “(i) IN GENERAL.—The Corporation
16 shall impose, on the basis of such factors
17 as the Board of Directors considers to be
18 appropriate, a single special assessment on
19 the institutions described in the following
20 subclauses (other than institutions exempt
21 under subparagraph (C)):

22 “(I) Each Savings Association
23 Insurance Fund member (including
24 any Savings Association Insurance

1 Fund member referred to in section
2 5(d)(2)(G)).

3 “(II) Each Bank Insurance Fund
4 member which has deposits which are
5 treated, under section 5(d)(3), as de-
6 posits which are insured by the Sav-
7 ings Association Insurance Fund.

8 “(ii) AMOUNT OF ASSESSMENT.—The
9 assessment imposed under clause (i) shall
10 be in an amount equal to such percentage
11 of the Savings Association Insurance Fund
12 assessment base (of the institutions subject
13 to such assessment) as of March 31, 1995,
14 as the Board of Directors determines, in
15 the Board of Directors’ discretion, to be
16 necessary in order for the reserve ratio of
17 the Savings Association Insurance Fund to
18 meet the designated reserve ratio on the
19 1st business day of January, 1996.

20 “(iii) DEPOSIT OF ASSESSMENT.—
21 Notwithstanding any other provision of
22 law, the proceeds of any assessment im-
23 posed under clause (i) shall be deposited in
24 the Savings Association Insurance Fund.

1 “(iv) DATE PAYMENT DUE.—The spe-
2 cial assessment imposed under this sub-
3 paragraph shall be—

4 “(I) due on the 1st business day
5 of January, 1996; and

6 “(II) paid to the Corporation on
7 the later of the due date or such other
8 date as the Corporation may prescribe
9 which may not be later than the end
10 of the 60-day period beginning on the
11 date of the Thrift Charter Conversion
12 Act of 1995.

13 “(v) SAVINGS ASSOCIATION INSUR-
14 ANCE FUND ASSESSMENT BASE DE-
15 FINED.—For purposes of this subpara-
16 graph, the term Savings Association Insur-
17 ance Fund assessment base means—

18 “(I) the assessment base of Sav-
19 ings Association Insurance Fund
20 members on which assessments are
21 imposed under the risk-based assess-
22 ment system established pursuant to
23 paragraph (1); and

24 “(II) in the case of an institution
25 described in clause (i)(II), the ad-

1 justed attributable deposit amount de-
2 termined under subparagraph (C) of
3 section 5(d)(3) for purposes of sub-
4 paragraph (B)(i) of such section.

5 “(C) SPECIAL RULES FOR CERTAIN EX-
6 EMPT INSTITUTIONS.—

7 “(i) IN GENERAL.—The Board of Di-
8 rectors may exempt any weak insured de-
9 pository institution from the payment of
10 the assessment imposed under subpara-
11 graph (B)(i) if the exemption would reduce
12 risk to the Savings Association Insurance
13 Fund.

14 “(ii) CONTINUATION OF ASSESSMENT
15 RATES APPLICABLE AS OF JUNE 30, 1995.—
16 Notwithstanding any other provision of
17 this subsection or any determination by the
18 Corporation pursuant to paragraph (2),
19 the semiannual assessment rate applicable
20 under paragraph (2) during the period be-
21 ginning on January 1, 1996, and ending
22 on December 31, 1999, with respect to any
23 insured depository institution which re-
24 ceives an exemption under clause (i) shall
25 be the semiannual assessment rate which

1 would be applicable to such institution
2 under paragraph (2) if such assessment
3 rate were calculated in the manner in
4 which semiannual assessment rates for
5 Savings Association Insurance Fund mem-
6 bers were determined by the Corporation
7 under such paragraph as of June 30,
8 1995.

9 “(iii) SPECIAL RULE FOR OAKAR
10 BANKS.—If an insured depository institu-
11 tion to which clause (ii) applies is an insti-
12 tution described in subparagraph
13 (B)(i)(II), section 5(d)(3) (as in effect on
14 September 13, 1995) shall continue to
15 apply with respect to such institution for
16 purposes of clause (ii) without regard to
17 the repeal of such section by section
18 2202(c) of the Thrift Charter Conversion
19 Act of 1995.

20 “(iv) DEPOSIT OF ASSESSMENT.—As-
21 sessments imposed under paragraph (2) in
22 accordance with clause (i) on depository in-
23 stitutions to which such clause applies
24 shall be deposited—

1 “(I) in the Savings Association
2 Insurance Fund until such fund is
3 merged into the deposit insurance
4 fund pursuant to section 2203(a)(2)
5 of the Thrift Charter Conversion Act
6 of 1995; and

7 “(II) after such merger, in the
8 deposit insurance fund.

9 “(v) GUIDELINES.—

10 “(I) GUIDELINES REQUIRED.—
11 Not later than 30 days after the date
12 of the enactment of the Thrift Char-
13 ter Conversion Act of 1995, the Board
14 of Directors shall prescribe guidelines
15 containing the criteria to be used by
16 the Board of Directors in making any
17 determination under clause (i).

18 “(II) PUBLICATION.—The guide-
19 lines prescribed under subclause (I)
20 shall be published in the Federal Reg-
21 ister.

22 “(D) PRO RATA PAYMENT OF SPECIAL AS-
23 SESSMENT BY EXEMPT INSTITUTIONS AUTHOR-
24 IZED.—In the case of any depository institution
25 which receives an exemption under subpara-

1 graph (C)(i) from the special assessment im-
2 posed under subparagraph (B) and any succes-
3 sor to such institution, subparagraph (C)(ii)
4 shall cease to apply with respect to such institu-
5 tion as of the date on which the institution
6 makes a payment to the Corporation, on such
7 terms as the Board of Directors may prescribe,
8 in an amount equal to the product of—

9 “(i) 12.5 percent of the product of—

10 “(I) the Savings Association In-
11 surance Fund assessment base of the
12 institution which would have been
13 used in the calculation of the amount
14 of such special assessment if the insti-
15 tution had not received the exemption
16 from such assessment; and

17 “(II) the percentage rate cal-
18 culated by the Board of Directors
19 under subparagraph (B)(ii) for use in
20 determining the amount of the special
21 assessment for depository institutions
22 which did not receive an exemption
23 under subparagraph (C); and

24 “(ii) the whole number of full semi-
25 annual periods which begin after the date

1 of such payment and end before January
2 1, 2000.

3 “(E) ASSESSMENT FOR CERTAIN DEPOS-
4 ITS.—

5 “(i) IN GENERAL.—Notwithstanding
6 any other provision of law, in carrying out
7 the special assessment under subparagraph
8 (B), the Corporation may set assessment
9 rates on the basis of the factors described
10 in clause (iii) for deposits treated under
11 section 5(d)(3) as deposits insured by the
12 Savings Association Insurance Fund.

13 “(ii) MINIMUM RATE.—Notwithstand-
14 ing clause (i), any rate assessed under
15 such clause may not be less than 2/3 of the
16 assessment rate imposed under subpara-
17 graph (B).

18 “(iii) FACTORS.—In setting any as-
19 sessment rate under clause (i), the Cor-
20 poration shall consider the following fac-
21 tors:

22 “(I) The extent to which deposits
23 treated under section 5(d)(3) as de-
24 posits insured by the Savings Associa-
25 tion Insurance Fund do not reflect the

1 actual amount of deposits insured by
2 such fund because of the growth attri-
3 bution rule contained in clause (iii) of
4 such section.

5 “(II) The ability of an insured
6 depository institution to demonstrate
7 with deposit data the amount of ac-
8 tual deposits which should be treated
9 as deposits insured by the Savings As-
10 sociation Insurance Fund notwith-
11 standing the growth attribution rule
12 referred to in subclause (I).

13 “(iv) NO NET BUDGET EFFECT.—Not-
14 withstanding any other provision of this
15 subparagraph, the Corporation shall not
16 set any assessment rate under clause (i)
17 that would result in an increased budget
18 outlay or a decrease in offsetting receipts
19 under this paragraph.”.

20 **SEC. 2202. ASSESSMENTS ON INSURED DEPOSITORY INSTI-**
21 **TUTIONS.**

22 (a) FINANCING CORPORATION ASSESSMENTS ON ALL
23 FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section
24 21(f) of the Federal Home Loan Bank Act (12 U.S.C.
25 1441(f)) is amended—

1 (1) in the portion of paragraph (2) which pre-
2 cedes subparagraph (A)—

3 (A) by striking “each Savings Association
4 Insurance Fund member” and inserting “each
5 insured depository institution (as defined in sec-
6 tion 3(c)(2) of the Federal Deposit Insurance
7 Act)”; and

8 (B) by striking “such members” and in-
9 serting “such institutions”; and

10 (2) by striking “, except that—” and all that
11 follows through the end of the paragraph and insert-
12 ing “, except that the Financing Corporation shall
13 have first priority to make the assessment.”.

14 (b) ASSESSMENT RATES FOR SAIF MEMBERS MAY
15 NOT BE LESS THAN ASSESSMENT RATES FOR BIF MEM-
16 BERS.—Section 7(b)(2)(F) of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1817(b)(2)(F)) is amended—

18 (1) by striking “and” at the end of clause (i);

19 (2) by striking the period at the end of clause
20 (ii) and inserting “; and”; and

21 (3) by adding at the end the following new
22 clause:

23 “(iii) notwithstanding any other provi-
24 sion of this subsection, assessment rates
25 for Savings Association Insurance Fund

1 members may not be less than assessment
2 rates for Bank Insurance Fund mem-
3 bers.”.

4 (c) REPEAL OF EXIT MORATORIUM AND OAKAR
5 BANK PROVISIONS.—Effective January 1, 1998, section
6 5(d) of the Federal Deposit Insurance Act (12 U.S.C.
7 1815(d)) is amended by striking paragraphs (2) and (3).

8 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) Section 7(b)(2)(D) of the Federal Deposit
10 Insurance Act (12 U.S.C. 1817(b)(2)(D)) is amend-
11 ed by striking “Savings Association Insurance Fund
12 members” and inserting “members of a deposit in-
13 surance fund”.

14 (2) Section 21(k) of the Federal Home Loan
15 Bank Act (12 U.S.C. 1441(k)) is amended—

16 (A) by striking paragraph (1); and

17 (B) by redesignating paragraphs (2) and

18 (3) as paragraphs (1) and (2), respectively.

19 (e) EFFECTIVE DATE.—The amendments made by
20 subsections (a), (b), and (d) shall take effect on January
21 1, 1996.

1 **SEC. 2203. MERGER OF BANK INSURANCE FUND AND SAV-**
2 **INGS ASSOCIATION INSURANCE FUND AFTER**
3 **RECAPITALIZATION OF SAIF.**

4 (a) ESTABLISHMENT OF DEPOSIT INSURANCE
5 FUND.—

6 (1) IN GENERAL.—Effective January 1, 1998,
7 section 11(a)(5) of the Federal Deposit Insurance
8 Act (12 U.S.C. 1821(a)(5)) is amended to read as
9 follows:

10 “(5) DEPOSIT INSURANCE FUND.—

11 “(A) ESTABLISHMENT.—There is estab-
12 lished a fund to be known as the deposit insur-
13 ance fund which shall—

14 “(i) be maintained and administered
15 by the Corporation; and

16 “(ii) initially consist of the assets and
17 liabilities of the Bank Insurance Fund and
18 Savings Association Insurance Fund which
19 have been merged by the Corporation into
20 the deposit insurance fund pursuant to
21 section 2203(a)(2) of the Thrift Charter
22 Conversion Act of 1995, other than any as-
23 sets of the Savings Association Insurance
24 Fund which have been deposited in the
25 special reserve of the deposit insurance

1 fund pursuant to section 2203(b)(2) of
2 such Act.

3 “(B) USES.—The deposit insurance fund
4 shall be available to the Corporation for use in
5 carrying out the insurance purposes of the Cor-
6 poration in accordance with this Act with re-
7 spect to insured depository institutions.

8 “(C) DEPOSITS.—All amounts assessed
9 against insured depository institutions by the
10 Corporation shall be deposited into the deposit
11 insurance fund.”.

12 (2) MERGER BY CORPORATION.—Except with
13 respect to any assets of the Savings Association In-
14 surance Fund which are required to be deposited in
15 the special reserve of the deposit insurance fund
16 pursuant to subsection (b)(2), the Corporation shall
17 merge the Bank Insurance Fund and the Savings
18 Association Insurance Fund on January 1, 1998,
19 into the deposit insurance fund established by the
20 amendment made by paragraph (1).

21 (b) ESTABLISHMENT OF SPECIAL RESERVE OF THE
22 DEPOSIT INSURANCE FUND.—

23 (1) IN GENERAL.—Effective January 1, 1998,
24 section 11(a)(6) of the Federal Deposit Insurance

1 Act (12 U.S.C. 1821(a)(6)) is amended to read as
2 follows:

3 “(6) SPECIAL RESERVE OF THE DEPOSIT IN-
4 SURANCE FUND.—

5 “(A) IN GENERAL.—There is established a
6 fund to be known as the special reserve of the
7 deposit insurance fund which shall—

8 “(i) be maintained and administered
9 by the Corporation; and

10 “(ii) initially consist of amounts de-
11 posited in the special reserve pursuant to
12 section 2203(b)(2) of the Thrift Charter
13 Conversion Act of 1995.

14 “(B) EMERGENCY USE OF SPECIAL RE-
15 SERVE.—

16 “(i) USE AUTHORIZED.—Subject to
17 clause (ii) and notwithstanding subpara-
18 graph (C), the Corporation may, in the
19 sole discretion of the Board of Directors,
20 transfer amounts from the special reserve
21 for deposit in the deposit insurance fund
22 for use in accordance with paragraph
23 (5)(B).

1 “(ii) CONDITIONS ON TRANSFER.—

2 The Board of Directors may authorize a
3 transfer under clause (i) only if—

4 “(I) the Board of Directors de-
5 termines that the reserve ratio of the
6 deposit insurance fund is less than 50
7 percent of the designated reserve
8 ratio; and

9 “(II) the Board of Directors
10 finds that the reserve ratio of the de-
11 posit insurance will likely be less than
12 the designated reserve ratio of the
13 fund for each of the 4 calendar quar-
14 ters beginning after the date of such
15 determination.

16 “(C) NO REFUNDS OR OTHER USES AU-
17 THORIZED.—Except as provided in subpara-
18 graph (B), the Corporation may not make any
19 payment from the special reserve, make any re-
20 fund or provide any credit to any insured de-
21 pository institution with respect to any amount
22 in the special reserve, or use any amount in the
23 special reserve for any other purpose (including
24 the use of any such amount as security for the

1 repayment of any obligation of the Corpora-
2 tion).

3 “(D) EXCLUSION OF SPECIAL RESERVE IN
4 CALCULATING THE RESERVE RATIO.—No
5 amount in the special reserve may be taken into
6 account in calculating the reserve ratio of the
7 deposit insurance fund under section 7.”.

8 (2) TRANSFER AND DEPOSIT BY CORPORA-
9 TION.—If, at the time of the merger of the Bank In-
10 surance Fund and the Savings Association Insur-
11 ance Fund pursuant to subsection (a)(2), the reserve
12 ratio of the Savings Association Insurance Fund ex-
13 ceeds the designated reserve ratio, the Corporation
14 shall transfer from such fund to the special reserve
15 of the deposit insurance fund established by the
16 amendment made by paragraph (1) an amount equal
17 to the amount which causes the reserve ratio of the
18 Savings Association Insurance Fund to exceed the
19 designated reserve ratio.

20 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) Section 3(y) of the Federal Deposit Insur-
22 ance Act (12 U.S.C. 1813(y)) is amended by strik-
23 ing “the Bank Insurance Fund or the Savings Asso-
24 ciation Insurance Fund, as appropriate” and insert-

1 ing “the deposit insurance fund established under
2 section 11(a)(5)”.

3 (2) Section 11(a) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1821(a)) is amended by strik-
5 ing paragraphs (4)(A) and (7).

6 (3) Section 5(d)(1) of the Federal Deposit In-
7 surance Act (12 U.S.C. 1815(d)(1)) is amended—

8 (A) in subparagraph (A), by striking “re-
9 serve ratios” and all that follows through the
10 period and inserting “the reserve ratio of the
11 deposit insurance fund.”;

12 (B) by striking subparagraph (B); and

13 (C) by redesignating subparagraph (C) as
14 subparagraph (B).

15 (4) Section 7 of the Federal Deposit Insurance
16 Act (12 U.S.C. 1817) is amended by striking sub-
17 section (l).

18 (5) Section 7(b)(2) of the Federal Deposit In-
19 surance Act (12 U.S.C. 1817(b)(2)) is amended—

20 (A) by striking subparagraphs (B), (F),
21 and (G);

22 (B) in clauses (i) and (iv) of subparagraph
23 (A), by striking “each deposit insurance fund”
24 and inserting “the deposit insurance fund”;

1 (C) in subparagraph (A)(iii), by striking
2 “a deposit insurance fund” and inserting “the
3 deposit insurance fund”; and

4 (D) by inserting after subparagraph (E)
5 the following new subparagraph:

6 “(F) RESERVE RATIO DEFINED.—For pur-
7 poses of this subsection, the term ‘reserve ratio’
8 means the ratio of the net worth of the deposit
9 insurance fund to the aggregate estimated in-
10 sured deposits held in all insured depository in-
11 stitutions.”.

12 (6) Section 7(b)(3) of the Federal Deposit In-
13 surance Act (12 U.S.C. 1817(b)(3)) is amended—

14 (A) in subparagraph (A) by striking “any
15 deposit insurance fund” and inserting “the de-
16 posit insurance fund”; and

17 (B) by striking subparagraphs (C) and
18 (D).

19 (7) Subparagraph (A) of section 7(b)(6) of the
20 Federal Deposit Insurance Act (12 U.S.C.
21 1817(b)(6)) (as so redesignated by section 2201 of
22 this subtitle) is amended—

23 (A) in clause (i)—

24 (i) by inserting “or” after the semi-
25 colon at the end of subclause (I);

- 1 (ii) by striking subclause (II); and
2 (iii) by striking “; and” at the end of
3 subclause (III) and inserting a period; and
4 (B) by striking clause (ii).

5 (8) Section 11(a)(4)(B) of the Federal Deposit
6 Insurance Act (12 U.S.C. 1821(a)(4)(B)) is amend-
7 ed by striking “Bank Insurance Fund and the Sav-
8 ings Association Insurance Fund” and inserting “de-
9 posit insurance fund”.

10 (9) Paragraph (1) of section 11(f) of the Fed-
11 eral Deposit Insurance Act (12 U.S.C. 1821(f)) is
12 amended by striking “depositor, except that—” and
13 all that follows through the period at the end of the
14 paragraph and inserting “depositor.”.

15 (10) Section 11(i)(3) of the Federal Deposit In-
16 surance Act (12 U.S.C. 1821(i)(3)) is amended—

- 17 (A) by striking subparagraph (B); and
18 (B) in subparagraph (C), by striking “sub-
19 paragraphs (A) and (B)” and inserting “sub-
20 paragraph (A)”.

21 (11) Section 11A(a)(3) of the Federal Deposit
22 Insurance Act (12 U.S.C. 1821a(a)(3)) is amended
23 by striking “Bank Insurance Fund, the Savings As-
24 sociation Insurance Fund,” and inserting “deposit
25 insurance fund”.

1 (12) Section 11A(f) of the Federal Deposit In-
2 surance Act (12 U.S.C. 1821a(f)) is amended by
3 striking “Savings Association Insurance Fund” and
4 inserting “deposit insurance fund”.

5 (13) Section 13(a)(1) of the Federal Deposit
6 Insurance Act (12 U.S.C. 1823(a)(1)) is amended
7 by striking “Bank Insurance Fund, the Savings As-
8 sociation Insurance Fund,” and inserting “deposit
9 insurance fund, the special reserve of the deposit in-
10 surance fund,”.

11 (14) Section 13(c)(4)(G)(ii) of the Federal De-
12 posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(ii)) is
13 amended—

14 (A) by striking “appropriate insurance
15 fund” and inserting “deposit insurance fund”;

16 (B) by striking “the members of the insur-
17 ance fund (of which such institution is a mem-
18 ber)” and inserting “insured depository institu-
19 tions”;

20 (C) by striking “each member’s” and in-
21 serting “each insured depository institution’s”;
22 and

23 (D) by striking “the member’s” each place
24 such term appears and inserting “the institu-
25 tion’s”.

1 (15) Section 13(c) of the Federal Deposit In-
2 surance Act (12 U.S.C. 1823(c)) is amended by
3 striking paragraph (11).

4 (16) Section 13(h) of the Federal Deposit In-
5 surance Act (12 U.S.C. 1823(h)) is amended by
6 striking “Bank Insurance Fund” and inserting “de-
7 posit insurance fund”.

8 (17) Section 14(a) of the Federal Deposit In-
9 surance Act (12 U.S.C. 1824(a)) is amended—

10 (A) by striking “Bank Insurance Fund or
11 the Savings Association Insurance Fund” and
12 inserting “deposit insurance fund”; and

13 (B) by striking “each such fund” and in-
14 serting “the fund”.

15 (18) Section 14(b) of the Federal Deposit In-
16 surance Act (12 U.S.C. 1824(b)) is amended by
17 striking “Bank Insurance Fund or Savings Associa-
18 tion Insurance Fund” and inserting “deposit insur-
19 ance fund”.

20 (19) Section 14(c) of the Federal Deposit In-
21 surance Act (12 U.S.C. 1824(c)) is amended by
22 striking paragraph (3).

23 (20) Section 14 of the Federal Deposit Insur-
24 ance Act (12 U.S.C. 1824) is amended by striking
25 subsection (d).

1 (21) Section 15(c)(5) of the Federal Deposit
2 Insurance Act (12 U.S.C. 1825(c)(5)) is amended—

3 (A) by striking “Bank Insurance Fund or
4 Savings Association Insurance Fund, respec-
5 tively,” and inserting “deposit insurance fund”;

6 (B) by striking “Bank Insurance Fund or
7 Savings Association Insurance Fund, respec-
8 tively;” and inserting “deposit insurance fund;”;
9 and

10 (C) by striking “Bank Insurance Fund or
11 the Savings Association Insurance Fund, re-
12 spectively,” and inserting “deposit insurance
13 fund,”.

14 (22) Section 17(a)(1) of the Federal Deposit
15 Insurance Act (12 U.S.C. 1827(a)(1)) is amended
16 by striking “Bank Insurance Fund, the Savings As-
17 sociation Insurance Fund,” each place such term ap-
18 pears and inserting “deposit insurance fund”.

19 (23) Section 17(d) of the Federal Deposit In-
20 surance Act (12 U.S.C. 1827(d)) is amended by
21 striking “Bank Insurance Fund, the Savings Asso-
22 ciation Insurance Fund,” each place such term ap-
23 pears and inserting “deposit insurance fund”.

24 (24) The heading for section 17(a) of the Fed-
25 eral Deposit Insurance Act (12 U.S.C. 1827(a)) is

1 amended by striking “BIF, SAIF,” and inserting
2 “THE DEPOSIT INSURANCE FUND”.

3 (25) Subsections (a)(1) and (d)(1)(A) of section
4 24 of the Federal Deposit Insurance Act (12 U.S.C.
5 1831a) are each amended by striking “appropriate”.

6 (26) Section 24(e)(2) of the Federal Deposit
7 Insurance Act (12 U.S.C. 1831a(e)(2)) is amend-
8 ed—

9 (A) in subparagraph (A), by striking “of
10 which such banks are members”; and

11 (B) in subparagraph (B)(ii), by striking
12 “of which such bank is a member”.

13 (27) Section 24(f)(6)(B) of the Federal Deposit
14 Insurance Act (12 U.S.C. 1831a(f)(6)(B)) is amend-
15 ed by striking “of which such bank is a member”.

16 (28) Section 31 of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1831h) is hereby repealed.

18 (29) Section 36(i)(3) of the Federal Deposit In-
19 surance Act (12 U.S.C. 1831m(i)(3)) is amended by
20 striking “affected”.

21 (30) Section 38 of the Federal Deposit Insur-
22 ance Act (12 U.S.C. 1831o) is amended by striking
23 subsection (o).

1 (31) Section 21B(f)(2)(C)(ii) of the Federal
2 Home Loan Bank Act (12 U.S.C.
3 1441b(f)(2)(C)(ii)) is amended to read as follows:

4 “(C) PAYMENTS BY FEDERAL HOME
5 LOAN BANKS.—To the extent the amounts
6 available pursuant to subparagraphs (A)
7 and (B) are insufficient to cover the
8 amount of interest payments, each Federal
9 home loan bank shall pay to the Funding
10 Corporation each calendar year an amount
11 equal to 22.63 percent of the bank’s net
12 earnings for the year for which such
13 amount is required to be paid.”.

14 (d) EFFECTIVE DATE OF AMENDMENTS.—The
15 amendments made by subsection (c) shall take effect on
16 January 1, 1998.

17 **SEC. 2204. REFUND OF AMOUNTS IN DEPOSIT INSURANCE**
18 **FUND IN EXCESS OF DESIGNATED RESERVE**
19 **AMOUNT.**

20 Subsection (e) of section 7 of the Federal Deposit In-
21 surance Act (12 U.S.C. 1817(e)) is amended to read as
22 follows:

23 “(e) REFUNDS.—

24 “(1) OVERPAYMENTS.—In the case of any pay-
25 ment of an assessment by an insured depository in-

1 stitution in excess of the amount due to the Cor-
2 poration, the Corporation may—

3 “(A) refund the amount of the excess pay-
4 ment to the insured depository institution; or

5 “(B) credit such excess amount toward the
6 payment of subsequent semiannual assessments
7 until such credit is exhausted.

8 “(2) BALANCE IN INSURANCE FUND IN EXCESS
9 OF DESIGNATED RESERVE.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), if as of the end of any semiannual
12 period the amount of the actual reserves in—

13 “(i) the Bank Insurance Fund (until
14 the merger of such fund into the deposit
15 insurance fund pursuant to section
16 2203(a)(2) of the Thrift Charter Conver-
17 sion Act of 1995); or

18 “(ii) the deposit insurance fund (after
19 the establishment of such fund under sec-
20 tion 2203(a)(1) of such Act),

21 exceeds the balance required to meet the des-
22 ignated reserve ratio applicable with respect to
23 such fund, such excess amount shall be re-
24 funded to members of the fund by the Corpora-
25 tion on such basis as the Board of Directors de-

1 termines to be appropriate, taking into account
 2 the factors considered under the risk-based as-
 3 sessment system.

4 “(B) REFUND NOT TO EXCEED PREVIOUS
 5 SEMIANNUAL ASSESSMENT.—The amount of
 6 any refund under this paragraph to any mem-
 7 ber of a deposit insurance fund for any semi-
 8 annual period may not exceed the total amount
 9 of assessments paid by such member to the in-
 10 surance fund with respect to such period.”.

11 **SEC. 2205. ASSESSMENTS AUTHORIZED ONLY IF NEEDED**
 12 **TO MAINTAIN THE RESERVE RATIO OF A DE-**
 13 **POSIT INSURANCE FUND.**

14 (a) IN GENERAL.—Section 7(b)(2)(A)(i) of the Fed-
 15 eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)(i))
 16 is amended in the portion of such section preceding
 17 subclause (I) by inserting “when necessary, and only to
 18 the extent necessary” after “insured depository institu-
 19 tions”.

20 (b) LIMITATION ON ASSESSMENT.—Section
 21 7(b)(2)(A)(iii) of the Federal Deposit Insurance Act (12
 22 U.S.C. 1817(b)(2)(A)(iii)) is amended to read as follows:

23 “(iii) LIMITATION ON ASSESSMENT.—
 24 The Board of Directors shall not set semi-
 25 annual assessments with respect to a de-

1 posit insurance fund in excess of the
2 amount needed—

3 “(I) to maintain the reserve ratio
4 of the fund at the designated reserve
5 ratio; or

6 “(II) if the reserve ratio is less
7 than the designated reserve ratio, to
8 increase the reserve ratio to the des-
9 ignated reserve ratio.”.

10 **CHAPTER 2—STATUS OF BANKS AND**
11 **SAVINGS ASSOCIATIONS**

12 **SEC. 2221. TERMINATION OF FEDERAL SAVINGS ASSOCIA-**
13 **TIONS; TREATMENT OF STATE SAVINGS ASSO-**
14 **CIATIONS AS BANKS FOR PURPOSES OF FED-**
15 **ERAL BANKING LAW.**

16 (a) TERMINATION OF FEDERAL SAVINGS ASSOCIA-
17 TION CHARTERS.—

18 (1) IN GENERAL.—Each Federal savings asso-
19 ciation shall—

20 (A) convert to a national bank charter;

21 (B) convert to a State depository institu-
22 tion charter; or

23 (C) surrender the charter of such savings
24 association and liquidate the institution.

1 (2) CONVERSION TO NATIONAL BANK BY OPER-
2 ATION OF LAW.—If any Federal savings association
3 has not taken any action required under paragraph
4 (1) as of January 1, 1998, the savings association
5 shall—

6 (A) become a national bank on such date
7 by operation of law;

8 (B) immediately file articles of association
9 and an organizational certificate with the
10 Comptroller of the Currency in accordance with
11 sections 5133, 5134, and 5135 of the Revised
12 Statutes of the United States; and

13 (C) cease to exist as a Federal savings as-
14 sociation as of such date.

15 (3) PROHIBITION ON NEW CHARTERS OF FED-
16 ERAL SAVINGS ASSOCIATIONS.—The Director of the
17 Office of Thrift Supervision may not grant any char-
18 ter for a Federal savings association for which an
19 application was received after the date of the enact-
20 ment of this Act.

21 (b) TREATMENT OF STATE SAVINGS ASSOCIATIONS
22 AS BANKS FOR PURPOSES OF FEDERAL BANKING
23 LAW.—

1 (1) AMENDMENTS TO FEDERAL DEPOSIT IN-
2 SURANCE ACT.—Section 3 of the Federal Deposit
3 Insurance Act (12 U.S.C. 1813) is amended—

4 (A) by striking paragraph (2) of subsection
5 (a) and inserting the following new paragraph:
6 “(2) STATE BANK.—

7 “(A) IN GENERAL.—The term ‘State bank’
8 means any bank, banking association, trust
9 company, savings bank, industrial bank (or
10 similar depository institution which the Board
11 of Directors finds to be operating substantially
12 in the same manner as an industrial bank),
13 building and loan association, savings and loan
14 association, homestead association, cooperative
15 bank, or other banking institution—

16 “(i) which is engaged in the business
17 of receiving deposits, other than trust
18 funds (as defined in this section); and

19 “(ii) which—

20 “(I) is incorporated under the
21 laws of any State;

22 “(II) is organized and operating
23 according to the laws of the State in
24 which such institution is chartered or
25 organized; or

1 “(III) is operating under the
2 Code of Law for the District of Co-
3 lumbia (except a national bank).

4 “(B) CERTAIN INSURED BANKS IN-
5 CLUDED.—The term ‘State bank’ includes any
6 cooperative bank or other unincorporated bank
7 the deposits of which were insured by the Cor-
8 poration on the day before the date of the en-
9 actment of the Financial Institutions Reform,
10 Recovery, and Enforcement Act of 1989.

11 “(C) CERTAIN UNINSURED BANKS EX-
12 CLUDED.—The term ‘State bank’ does not in-
13 clude any cooperative bank or other unincor-
14 porated bank the deposits of which were not in-
15 sured by the Corporation on the day before the
16 date of the enactment of the Financial Institu-
17 tions Reform, Recovery, and Enforcement Act
18 of 1989.’; and

19 (B) in subsection (q)—

20 (i) by inserting “and” after the semi-
21 colon at the end of paragraph (2);

22 (ii) by striking “; and” at the end of
23 paragraph (3) and inserting a period; and

24 (iii) by striking paragraph (4).

1 (2) AMENDMENTS TO THE BANK HOLDING
2 COMPANY ACT OF 1956.—Section 2 of the Bank
3 Holding Company Act of 1956 (12 U.S.C. 1841) is
4 amended—

5 (A) by striking subparagraph (E) of sub-
6 section (a)(5); and

7 (B) by striking subparagraphs (B) and (J)
8 of subsection (c)(2).

9 (3) AMENDMENTS TO THE FEDERAL RESERVE
10 ACT.—The 2d and 3d paragraphs of the 1st section
11 of the Federal Reserve Act (12 U.S.C. 221) are each
12 amended by inserting “(as defined in section 3(a)(2)
13 of the Federal Deposit Insurance Act)” after “State
14 bank”.

15 **SEC. 2222. TREATMENT OF CERTAIN ACTIVITIES AND AF-**
16 **FILIATIONS OF BANK HOLDING COMPANIES**
17 **RESULTING FROM THIS ACT.**

18 Section 4 of the Bank Holding Company Act of 1956
19 (12 U.S.C. 1843) is amended by adding at the end the
20 following new subsection:

21 “(k) TREATMENT OF COMPANIES RESULTING FROM
22 SAVINGS AND LOAN HOLDING COMPANIES.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of this section (other than paragraph (5))
25 or any other provision of Federal law including sec-

1 tions 20 and 32 of the Banking Act of 1933, a
2 qualified bank holding company may, after such
3 company becomes a bank holding company—

4 “(A) maintain or enter into any non-
5 banking affiliation which such company was au-
6 thorized to maintain or enter into as of Septem-
7 ber 22, 1995, or was authorized to maintain
8 following a merger of insured depository institu-
9 tion subsidiaries pursuant to an application
10 filed no later than such date; and

11 “(B) engage, directly or through any affili-
12 ate described in subparagraph (A) which is not
13 a bank, in any activity in which such company
14 or any affiliate described in subparagraph (A)
15 was authorized to engage as of September 22,
16 1995, or in which such company was authorized
17 to engage following a merger of insured deposi-
18 tory institution subsidiaries pursuant to an ap-
19 plication filed no later than such date,

20 if the requirements of paragraph (4) are met.

21 “(2) QUALIFIED BANK HOLDING COMPANY DE-
22 FINED.—For purposes of this subsection, the term
23 ‘qualified bank holding company’ means—

24 “(A) any company which—

1 “(i) as of September 13, 1995, is a
2 savings and loan holding company and is
3 not a bank holding company; and

4 “(ii) becomes a bank holding company
5 after such date; and

6 “(B) any bank holding company which as
7 of September 13, 1995—

8 “(i) is a savings and loan holding
9 company; and

10 “(ii) is exempt from this section pur-
11 suant to an order issued by the Board
12 under subsection (d).

13 “(3) NO LOSS OF SUBSECTION (d) EXEMP-
14 TION.—No qualified bank holding company de-
15 scribed in paragraph (2)(B) shall lose the grounds
16 for the exemption under subsection (d) because a
17 savings association which such company controlled,
18 directly or indirectly, as of September 13, 1995, be-
19 comes a bank after such date so long as such bank
20 continues to meet the requirements of subpara-
21 graphs (A) and (B) of paragraph (4).

22 “(4) PREREQUISITES FOR CONTINUATION OF
23 GRANDFATHERED ACTIVITIES AND AFFILIATIONS.—
24 This subsection shall cease to apply with respect to
25 a qualified bank holding company if, at any time

1 after such company first meets the definition of a
2 qualified bank holding company—

3 “(A) any insured depository institution
4 controlled by such company which, as of the
5 day before the company first meets the defini-
6 tion of a qualified bank holding company, was
7 subject to the requirements contained in section
8 10(m) of the Home Owners’ Loan Act, as in ef-
9 fect on such date, (and regulations in effect on
10 such date under such section) for treatment as
11 a qualified thrift lender under such section fails
12 to meet such requirements;

13 “(B) any insured depository institution
14 controlled by such company fails to comply with
15 any limitation or restriction on the type or
16 amounts of loans or investments of the institu-
17 tion to which such institution was subject as of
18 the date of the enactment of the Thrift Charter
19 Conversion Act of 1995; or

20 “(C) the company or any subsidiary of the
21 company acquires more than 5 percent of the
22 shares or assets of any bank or insured institu-
23 tion after September 13, 1995.

24 “(5) NONTRANSFERABLE.—This subsection
25 shall not apply with respect to any qualified bank

1 holding company if, after September 13, 1995, any
2 person acquires, directly or indirectly, control of the
3 company or the company is the subject of any merg-
4 er, consolidation, or other similar transaction.

5 “(6) PROHIBITION ON CERTAIN INSURED DE-
6 POSITORY INSTITUTIONS IDENTIFYING THEMSELVES
7 AS NATIONAL BANKS.—

8 “(A) IN GENERAL.—Notwithstanding the
9 requirement of section 5134 of the Revised
10 Statutes of the United States—

11 “(i) the name of an insured depository
12 institution subsidiary of a qualified bank
13 holding company which—

14 “(I) as of the date of the enact-
15 ment of the Thrift Charter Conversion
16 Act of 1995, is a savings and loan
17 holding company described in section
18 10(c)(3) of the Home Owners’ Loan
19 Act (as in effect on such date); and

20 “(II) is subject to the restrictions
21 contained in paragraph (3),
22 may not include the term ‘national’; and

23 “(ii) such insured depository institu-
24 tion may not be identified as a national
25 bank on any sign displayed by the institu-

1 tion or in any advertisement or other pub-
2 lication of the institution.

3 “(B) DEPOSITORY INSTITUTION NOT LIA-
4 BLE FOR FRAUDULENT MISREPRESENTATION
5 FOR NOT REPRESENTING ITSELF AS A NA-
6 TIONAL BANK.—An insured depository institu-
7 tion which is subject to subparagraph (A) shall
8 not be liable for any civil or criminal penalty
9 under any Federal or State consumer protection
10 law, or in any criminal or civil action, for fraud-
11 ulently misrepresenting the nature of the char-
12 ter of the institution, for falsely advertising the
13 status of the institution, for making a false
14 statement with respect to the status of the in-
15 stitution, or for any similar offense by reason of
16 the institution’s compliance with such subpara-
17 graph.

18 “(7) ENFORCEMENT.—In addition to any other
19 power of the Board, the Board may enforce compli-
20 ance with the provisions of this subsection with re-
21 spect to any qualified bank holding company and
22 any bank controlled by such company under section
23 8 of the Federal Deposit Insurance Act.”.

1 **SEC. 2223. TRANSITION PROVISIONS FOR ACTIVITIES OF**
2 **SAVINGS ASSOCIATIONS WHICH CONVERT**
3 **INTO OR BECOME TREATED AS BANKS.**

4 Notwithstanding any other provision of Federal law,
5 any insured depository institution which, as of September
6 13, 1995, is a savings association (as defined in section
7 3(b) of the Federal Deposit Insurance Act (as in effect
8 on such date)) and after such date converts to a national
9 or State bank charter or becomes treated as a State bank
10 pursuant to the amendment made by section 2221(b) may
11 continue to engage, directly or indirectly, in any activity
12 in which such institution was lawfully engaged as of such
13 date during the 5-year period beginning on the effective
14 date of such conversion or the effective date of such
15 amendments, as the case may be.

16 **SEC. 2224. REGISTRATION OF BANK HOLDING COMPANIES**
17 **RESULTING FROM CONVERSIONS OF SAV-**
18 **INGS ASSOCIATIONS TO BANKS OR TREAT-**
19 **MENT OF SAVINGS ASSOCIATIONS AS BANKS.**

20 Section 3 of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1842) is amended by adding at the end the
22 following new subsections:

23 “(h) REGISTRATION OF CERTAIN BANK HOLDING
24 COMPANIES.—A company which, as of September 13,
25 1995, is a savings and loan holding company (as defined
26 in section 10(a)(1)(D) of Home Owners’ Loan Act (as in

1 effect on such date)) and is not a bank holding company
2 shall not be required to obtain the approval of the Board
3 under subsection (a) to become a bank holding company
4 after September 13, 1995, as a result of the conversion
5 of any insured depository institution subsidiary of such
6 company into a bank or by virtue of the treatment of any
7 insured depository institution subsidiary of such company
8 as a bank pursuant to the amendments made by the Thrift
9 Charter Conversion Act of 1995, if such company—

10 “(1) registers as a bank holding company with
11 the Board in accordance with section 5(a); and

12 “(2) does not acquire, directly or indirectly,
13 ownership or control of any additional insured de-
14 pository institution or other company in connection
15 with such conversion or treatment.

16 “(i) REGULATION OF QUALIFIED BANK HOLDING
17 COMPANIES.—The Board shall regulate qualified bank
18 holding companies (as defined in section 4(k)(2)) in a
19 manner consistent with—

20 “(1) the regulation of such companies by the
21 Director of the Office of Thrift Supervision before
22 the date of the enactment of the Thrift Charter Con-
23 version Act of 1995; and

24 “(2) the safety and soundness of insured depos-
25 itory institution subsidiaries of such companies.”.

1 **SEC. 2225. ADDITIONAL TRANSITION PROVISIONS AND SPE-**
2 **CIAL RULES.**

3 (a) MUTUAL NATIONAL BANKS AUTHORIZED; CON-
4 VERSION OF MUTUAL SAVINGS ASSOCIATIONS INTO NA-
5 TIONAL BANKS.—

6 (1) IN GENERAL.—Chapter one of title LXII of
7 the Revised Statutes of the United States (12
8 U.S.C. 21 et seq.) is amended by inserting after sec-
9 tion 5133 the following new section:

10 **“SEC. 5133A. MUTUAL NATIONAL BANKS.**

11 “(a) IN GENERAL.—Notwithstanding the paragraph
12 designated the “Third” of section 5134, the Comptroller
13 of the Currency may charter national banks organized in
14 the mutual form either de novo or through a conversion
15 of any stock national or State bank (as defined in section
16 3 of the Federal Deposit Insurance Act) or any State mu-
17 tual bank or credit union, subject to regulations prescribed
18 by the Comptroller of the Currency in accordance with this
19 section.

20 “(b) REGULATIONS.—

21 “(1) TRANSITION RULES.—National banks or-
22 ganized in the mutual form shall be subject to the
23 regulations of the Director of the Office of Thrift
24 Supervision governing corporate organization, gov-
25 ernance, and conversion of mutual institutions, as in
26 effect on September 13, 1995, including parts 543,

1 544, 546, 563b, and 563c of chapter V of title 12
2 of the Code of Federal Regulations (as in effect on
3 such date), during the 3-year period beginning on
4 the date of the enactment of the Thrift Charter Con-
5 version Act of 1995.

6 “(2) REGULATIONS OF THE COMPTROLLER.—
7 The Comptroller of the Currency shall prescribe ap-
8 propriate regulations for national banks organized in
9 the mutual form, effective as of the end of the 3-
10 year period referred to in paragraph (1).

11 “(3) APPLICABILITY OF CAPITAL STOCK RE-
12 QUIREMENTS.—The Comptroller of the Currency
13 shall prescribe regulations regarding the manner in
14 which requirements of title LXII of the Revised
15 Statutes of the United States with respect to capital
16 stock, and limitations imposed on national banks
17 under such title based on capital stock, shall apply
18 to national banks organized in mutual form pursu-
19 ant to subsection (a).

20 “(c) CONVERSIONS.—

21 “(1) CONVERSION TO STOCK NATIONAL
22 BANK.—Subject to subsection (b)(1) and, after the
23 end of the 3-year period referred to in such sub-
24 section, such regulations as the Comptroller of the
25 Currency may prescribe for the protection of deposi-

1 tors' rights and for any other purpose the Comptrol-
2 ler of the Currency may consider appropriate, any
3 national bank which is organized in mutual form
4 pursuant to paragraph (1) may reorganize as a
5 stock national bank.

6 “(2) CONVERSIONS TO STATE BANKS.—Any na-
7 tional mutual bank may convert to a State bank
8 charter in accordance with regulations prescribed by
9 the Comptroller of the Currency and applicable
10 State law.”.

11 (2) MUTUAL BANK HOLDING COMPANIES.—
12 Subsection (g) of section 3 of the Bank Holding
13 Company Act of 1956 (12 U.S.C. 1842(g)) is
14 amended to read as follows:

15 “(g) MUTUAL BANK HOLDING COMPANIES.—

16 “(1) IN GENERAL.—A national mutual bank
17 may reorganize so as to become a holding company
18 by—

19 “(A) chartering an interim national bank,
20 the stock of which is to be wholly owned, except
21 as otherwise provided in this section, by the na-
22 tional mutual bank; and

23 “(B) transferring the substantial part of
24 the national mutual bank's assets and liabil-

1 ities, including all of the bank’s insured liabil-
2 ities, to the interim national bank.

3 “(2) DIRECTORS AND CERTAIN ACCOUNT HOLD-
4 ERS’ APPROVAL OF PLAN REQUIRED.—A reorganiza-
5 tion is not authorized under this subsection unless—

6 “(A) a plan providing for such reorganiza-
7 tion has been approved by a majority of the
8 board of directors of the national mutual bank;
9 and

10 “(B) in the case of a national mutual bank
11 in which holders of accounts and obligors exer-
12 cise voting rights, such plan has been submitted
13 to and approved by a majority of such individ-
14 uals at a meeting held at the call of the direc-
15 tors in accordance with the procedures pre-
16 scribed by the bank’s charter and bylaws.

17 “(3) NOTICE TO THE BOARD; DISAPPROVAL PE-
18 RIOD.—

19 “(A) NOTICE REQUIRED.—

20 “(i) IN GENERAL.—At least 60 days
21 before taking any action described in para-
22 graph (1), a national mutual bank seeking
23 to establish a mutual holding company
24 shall provide written notice to the Board.

1 “(ii) CONTENTS OF NOTICE.—The no-
2 tice shall contain such relevant information
3 as the Board shall require by regulation or
4 by specific request in connection with any
5 particular notice.

6 “(B) TRANSACTION ALLOWED IF NOT DIS-
7 APPROVED.—Unless the Board within such 60-
8 day notice period disapproves the proposed
9 holding company formation, or extends for an-
10 other 30 days the period during which such dis-
11 approval may be issued, the national mutual
12 bank providing such notice may proceed with
13 the transaction, if the requirements of para-
14 graph (2) have been met.

15 “(C) GROUNDS FOR DISAPPROVAL.—The
16 Board may disapprove any proposed holding
17 company formation only if—

18 “(i) such disapproval is necessary to
19 prevent unsafe or unsound practices;

20 “(ii) the financial or management re-
21 sources of the national mutual bank in-
22 volved warrant disapproval;

23 “(iii) the national mutual bank fails
24 to furnish the information required under
25 subparagraph (A); or

1 “(iv) the national mutual bank fails to
2 comply with the requirement of paragraph
3 (2).

4 “(D) RETENTION OF CAPITAL ASSETS.—In
5 connection with the transaction described in
6 paragraph (1), a national mutual bank may,
7 subject to the approval of the Board, retain
8 capital assets at the holding company level to
9 the extent that the capital retained at the hold-
10 ing company is in excess of the amount of cap-
11 ital required in order for the interim national
12 bank to meet all relevant capital standards es-
13 tablished by the Comptroller of the Currency
14 for national banks.

15 “(4) OWNERSHIP.—

16 “(A) IN GENERAL.—Persons having own-
17 ership rights in the national mutual bank under
18 section 5133A of the Revised Statutes of the
19 United States (including paragraph 575.5 of
20 chapter V of title 12 of the Code of Federal
21 Regulations, as in effect on September 13,
22 1995, and applicable to national mutual banks
23 pursuant to such section) or State law shall
24 have the same ownership rights with respect to
25 the mutual holding company.

1 “(B) HOLDERS OF CERTAIN ACCOUNTS.—
2 Holders of savings, demand, or other accounts
3 of—

4 “(i) a national bank chartered as part
5 of a transaction described in paragraph
6 (1); or

7 “(ii) a mutual bank acquired pursuant
8 to paragraph (5)(B),
9 shall have the same ownership rights with re-
10 spect to the mutual holding company as persons
11 described in subparagraph (A) of this para-
12 graph.

13 “(5) PERMITTED ACTIVITIES.—A mutual hold-
14 ing company may engage only in the following activi-
15 ties:

16 “(A) Investing in the stock of a national or
17 State bank.

18 “(B) Acquiring a mutual bank through the
19 merger of such bank into a national bank sub-
20 sidiary of such holding company or an interim
21 national bank subsidiary of such holding com-
22 pany.

23 “(C) Subject to paragraph (6), merging
24 with or acquiring another holding company, one
25 of whose subsidiaries is a national mutual bank.

1 “(D) Investing in a corporation the capital
2 stock of which is available for purchase by a na-
3 tional mutual bank under Federal law or under
4 the law of any State where the home office of
5 any subsidiary bank is located.

6 “(E) Engaging in the activities permitted
7 under section 4(c).

8 “(6) LIMITATIONS ON CERTAIN ACTIVITIES OF
9 ACQUIRED HOLDING COMPANIES.—

10 “(A) NEW ACTIVITIES.—If a mutual hold-
11 ing company acquires or merges with another
12 holding company under paragraph (5)(C), the
13 holding company acquired or the holding com-
14 pany resulting from such merger or acquisition
15 may only invest in assets and engage in activi-
16 ties which are authorized under paragraph (5).

17 “(B) GRACE PERIOD FOR DIVESTING PRO-
18 HIBITED ASSETS OR DISCONTINUING PROHIB-
19 ITED ACTIVITIES.—Not later than 2 years fol-
20 lowing a merger or acquisition described in
21 paragraph (5)(C), the acquired holding com-
22 pany or the holding company resulting from
23 such merger or acquisition shall—

1 “(i) dispose of any asset which is an
2 asset in which a mutual holding company
3 may not invest under paragraph (5); and

4 “(ii) cease any activity which is an ac-
5 tivity in which a mutual holding company
6 may not engage under paragraph (5).

7 “(7) CHARTERING AND OTHER REQUIRE-
8 MENTS.—

9 “(A) IN GENERAL.—A mutual holding
10 company shall be chartered by the Board and
11 shall be subject to such regulations as the
12 Board may prescribe.

13 “(B) OTHER REQUIREMENTS.—Unless the
14 context otherwise requires, a mutual holding
15 company shall be subject to the other require-
16 ments of this Act regarding regulation of hold-
17 ing companies.

18 “(8) CAPITAL IMPROVEMENT.—

19 “(A) PLEDGE OF STOCK OF SAVINGS ASSO-
20 CIATION SUBSIDIARY.—This section shall not
21 prohibit a mutual holding company from pledg-
22 ing all or a portion of the stock of a national
23 bank chartered as part of a transaction de-
24 scribed in paragraph (1) to raise capital for
25 such bank.

1 “(B) ISSUANCE OF NONVOTING SHARES.—

2 No provision of this Act shall be construed as
3 prohibiting a national bank chartered as part of
4 a transaction described in paragraph (1) from
5 issuing any nonvoting shares or less than 50
6 percent of the voting shares of such bank to
7 any person other than the mutual holding com-
8 pany.

9 “(9) INSOLVENCY AND LIQUIDATION.—

10 “(A) IN GENERAL.—Notwithstanding any
11 provision of law, upon—

12 “(i) the default of any national
13 bank—

14 “(I) the stock of which is owned
15 by any mutual holding company; and

16 “(II) which was chartered in a
17 transaction described in paragraph
18 (1);

19 “(ii) the default of a mutual holding
20 company; or

21 “(iii) a foreclosure on a pledge by a
22 mutual holding company described in para-
23 graph (8)(A),

24 a trustee shall be appointed receiver of such
25 mutual holding company and such trustee shall

1 have the authority to liquidate the assets of,
2 and satisfy the liabilities of, such mutual hold-
3 ing company pursuant to title 11, United States
4 Code.

5 “(B) DISTRIBUTION OF NET PROCEEDS.—
6 Except as provided in subparagraph (C), the
7 net proceeds of any liquidation of any mutual
8 holding company pursuant to subparagraph (A)
9 shall be transferred to persons who hold owner-
10 ship interests in such mutual holding company.

11 “(C) RECOVERY BY CORPORATION.—If the
12 Corporation incurs a loss as a result of the de-
13 fault of any savings association subsidiary of a
14 mutual holding company which is liquidated
15 pursuant to subparagraph (A), the Corporation
16 shall succeed to the ownership interests of the
17 depositors of such savings association in the
18 mutual holding company, to the extent of the
19 Corporation’s loss.

20 “(10) STATE MUTUAL BANK HOLDING COM-
21 PANY.—

22 “(A) IN GENERAL.—Notwithstanding any
23 provision of Federal law, a State bank operat-
24 ing in mutual form may reorganize so as to
25 form a holding company under State law.

1 “(B) REGULATION OF STATE MUTUAL
2 HOLDING COMPANY.—A corporation organized
3 as a holding company in accordance with sub-
4 paragraph (A) shall be regulated on the same
5 terms and be subject to the same limitations as
6 any other holding company which controls a
7 bank.

8 “(11) REGULATIONS.—

9 “(A) TRANSITION RULES.—Mutual bank
10 holding companies organized under this sub-
11 section shall be subject to the regulations of the
12 Director of the Office of Thrift Supervision gov-
13 erning corporate organization, governance, and
14 conversion of mutual institutions, as in effect
15 on September 13, 1995, including part 575 of
16 chapter V of title 12 of the Code of Federal
17 Regulations (as in effect on such date), during
18 the 3-year period beginning on the date of the
19 enactment of the Thrift Charter Conversion Act
20 of 1995.

21 “(B) REGULATIONS OF THE BOARD.—The
22 Board shall prescribe appropriate regulations
23 for mutual holding companies, effective at the
24 end of the 3-year period referred to in subpara-
25 graph (A).

1 “(12) DEFINITIONS.—For purposes of this sub-
2 section—

3 “(A) MUTUAL HOLDING COMPANY.—The
4 term ‘mutual holding company’ means a cor-
5 poration organized as a holding company under
6 this subsection.

7 “(B) DEFAULT.—The term ‘default’
8 means an adjudication or other official deter-
9 mination of a court of competent jurisdiction or
10 other public authority pursuant to which a con-
11 servator, receiver, or other legal custodian is
12 appointed.

13 “(C) NATIONAL MUTUAL BANK.—The term
14 ‘national mutual bank’ means a national bank
15 organized in mutual form under section 5133A
16 of the Revised Statutes of the United States.”.

17 (3) LIMITATION ON FEDERAL REGULATION OF
18 STATE BANKS.—Except as otherwise provided in
19 Federal law, the Comptroller of the Currency, Board
20 of Governors of the Federal Reserve System, and
21 Federal Deposit Insurance Corporation may not
22 adopt or enforce any regulation which contravenes
23 the corporate governance rules prescribed by State
24 law or regulation for State banks unless the Comp-
25 troller, Board, or Corporation finds that such Fed-

1 eral regulation is necessary to assure the safety and
2 soundness of such State banks.

3 (4) CONVERSIONS OF MUTUAL SAVINGS ASSO-
4 CIATIONS TO MUTUAL NATIONAL BANKS BY OPER-
5 ATION OF LAW.—Notwithstanding any other provi-
6 sion of Federal or State law, any savings association
7 (as defined in section 3 of the Federal Deposit In-
8 surance Act (as in effect on September 13, 1995))
9 which is organized in mutual form as of the date of
10 the enactment of this Act may become a national
11 mutual bank by operation of law if the association—

12 (A) files the articles of association and or-
13 ganization certificate with the Comptroller of
14 the Currency before January 1, 1998, in ac-
15 cordance with chapter one of title LXII of the
16 Revised Statutes of the United States; and

17 (B) provides such other document or infor-
18 mation as the Comptroller of the Currency may
19 prescribe in regulations consistent with this sec-
20 tion and section 5133A of the Revised Statutes
21 of the United States (as added by paragraph
22 (1) of this subsection).

23 (5) CLERICAL AMENDMENT.—The table of sec-
24 tions for chapter one of title LXII of the Revised
25 Statutes of the United States (12 U.S.C. 21 et seq.)

1 is amended by inserting after the item relating to
2 section 5133 the following new item:

“5133A. Mutual national banks.”.

3 (b) MEMBERSHIP IN FEDERAL HOME LOAN
4 BANKS.—Any insured depository institution which—

5 (1) as of the date of the enactment of this Act,
6 is a Federal savings association which, pursuant to
7 section 6(e) of the Federal Home Loan Bank Act,
8 may not voluntarily withdraw from membership in a
9 Federal home loan bank; and

10 (2) after such date converts from a Federal
11 savings association to a national bank,
12 shall continue to be subject to the prohibition under such
13 section on voluntary withdrawal from such membership as
14 though such bank were still a Federal savings association
15 until the bank ceases to be a national bank.

16 (c) BRANCHES.—

17 (1) IN GENERAL.—Notwithstanding any provi-
18 sion of the Federal Deposit Insurance Act, the Bank
19 Holding Company Act of 1956, or any other Federal
20 or State law, any depository institution which—

21 (A) as of the date of the enactment of this
22 Act, is a savings association; and

23 (B) becomes a bank before January 1,
24 1998, or, pursuant to the amendments made by

1 this subsection, is treated as a bank as of such
2 date under the Federal Deposit Insurance Act,
3 and any depository institution or bank holding com-
4 pany which acquires such depository institution, may
5 continue, after the depository institution becomes or
6 commences to be treated as a bank, to operate any
7 branch which the savings association operated as a
8 branch on September 13, 1995.

9 (2) NO ADDITIONAL BRANCHES.—Paragraph
10 (1) shall not be construed as authorizing the estab-
11 lishment, acquisition, or operation of any additional
12 branch of a depository institution in any State by
13 virtue of the operation by such institution of a
14 branch in such State pursuant to such paragraph
15 except to the extent such establishment, acquisition,
16 or operation is permitted under the Federal Deposit
17 Insurance Act, Bank Holding Company Act of 1956,
18 and any other applicable Federal or State law with-
19 out regard to such branch.

20 (d) TRANSITION PROVISION RELATING TO LIMITA-
21 TIONS ON LOANS TO 1 BORROWER.—Section 5200 of the
22 Revised Statutes of the United States (12 U.S.C. 84) is
23 amended by adding at the end the following new sub-
24 section:

1 “(e) TRANSITION PROVISION FOR SAVINGS ASSOCIA-
2 TIONS CONVERTING TO NATIONAL BANKS.—In the case
3 of any depository institution which, as of September 13,
4 1995, is a savings association (as defined in section 3(b)
5 of the Federal Deposit Insurance Act (as in effect on such
6 date)) and becomes a national bank on or before January
7 1, 1998, any loan, or legally binding commitment to make
8 a loan, made or entered into by such institution which is
9 outstanding on the date the institution becomes a national
10 bank may continue to be held without regard to any limi-
11 tation contained in this section during the 3-year period
12 beginning on such date.”.

13 **SEC. 2226. TECHNICAL AND CONFORMING AMENDMENTS.**

14 (a) AMENDMENTS TO THE FEDERAL DEPOSIT IN-
15 SURANCE ACT.—

16 (1) Section 3(z) of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1813(z)) is amended by strik-
18 ing “the Director of the Office of Thrift Super-
19 vision,”.

20 (2) Section 8(b) of the Federal Deposit Insur-
21 ance Act (12 U.S.C. 1818(b)) is amended by strik-
22 ing paragraph (9).

23 (3) Section 13 of the Federal Deposit Insurance
24 Act (12 U.S.C. 1823) is amended by striking sub-
25 section (k).

1 (4) Subsections (c)(2) and (i)(2) of section 18
2 of the Federal Deposit Insurance Act (12 U.S.C.
3 1828) are each amended—

4 (A) in subparagraph (B), by inserting
5 “and” after the semicolon;

6 (B) in subparagraph (C), by striking “;
7 and” and inserting a period; and

8 (C) by striking subparagraph (D).

9 (5) Section 18 of the Federal Deposit Insurance
10 Act (12 U.S.C. 1828) is amended by striking sub-
11 section (m).

12 (6) The Federal Deposit Insurance Act (12
13 U.S.C. 1811 et seq.) is amended by striking section
14 28.

15 (b) AMENDMENTS TO THE BANK HOLDING COMPANY
16 ACT OF 1956.—

17 (1) Section 2 of the Bank Holding Company
18 Act of 1956 (12 U.S.C. 1841) is amended by strik-
19 ing subsections (i) and (j).

20 (2) Section 4(c)(8) of the Bank Holding Com-
21 pany Act of 1956 (12 U.S.C. 1843(c)(8)) is amend-
22 ed by striking the sentence preceding the penul-
23 timate sentence.

24 (3) Section 4(f) of the Bank Holding Company
25 Act of 1956 (12 U.S.C. 1843(f)) is amended—

1 (A) in paragraph (2)(A)(i), by striking “or
2 an insured institution” and all that follows
3 through “of this subsection”;

4 (B) in paragraph (2)(A)(ii)—

5 (i) by striking “or a savings associa-
6 tion” where such term appears in the por-
7 tion of such paragraph which precedes
8 subclause (I);

9 (ii) by inserting “and” at the end of
10 subclause (VI);

11 (iii) by striking subclauses (VIII),
12 (IX), and (X); and

13 (iv) by striking “(V), and (VIII)”,
14 where such term appears in the portion of
15 such paragraph which appears after the
16 end of subclause (VII), and inserting “and
17 (V)”;

18 (C) by striking paragraphs (10), (11),
19 (12), and (13).

20 (4) Section 4(i) of the Bank Holding Company
21 Act of 1956 (12 U.S.C. 1843(i)) is amended—

22 (A) by striking paragraphs (1) and (2);
23 and

24 (B) in paragraph (3)(A), by striking “any
25 Federal savings association” and all that fol-

1 lows through the period at the end of such
2 paragraph and inserting “such association was
3 authorized to engage under this section as of
4 September 15, 1995.”.

5 (c) OTHER TECHNICAL AND CONFORMING AMEND-
6 MENTS.—

7 (1) Section 804(a) of the Alternative Mortgage
8 Transaction Parity Act of 1982 (12 U.S.C. 3803) is
9 amended—

10 (A) in the portion of such subsection which
11 precedes paragraph (1)—

12 (i) by striking “, and other
13 nonfederally chartered housing creditors,”;
14 and

15 (ii) by inserting “and in order to per-
16 mit other nonfederally chartered housing
17 creditors to make, purchase, and enforce
18 alternative mortgage transactions,” after
19 “enforcing alternative mortgage trans-
20 actions, ”; and

21 (B) in paragraph (1), by inserting “(as
22 such term is defined in section 3(a) of the Fed-
23 eral Deposit Insurance Act)” after “with re-
24 spect to banks”.

1 (2) Section 205 of the Depository Institution
2 Management Interlocks Act (12 U.S.C. 3204) is
3 amended—

4 (A) in the portion of paragraph (8)(A)
5 which precedes clause (i), by striking “A diver-
6 sified savings” and all that follows through
7 “with respect to” and inserting “A depository
8 institution holding company which, as of Sep-
9 tember 13, 1995, and at all times thereafter, is
10 a diversified savings and loan holding company
11 (as defined in section 10(1)(F) of Home Own-
12 ers’ Loan Act, as such section is in effect on
13 such date) with respect to”; and

14 (B) by striking paragraph (9).

15 (3) Section 19(b)(1)(A) of the Federal Reserve
16 Act (12 U.S.C. 461(b)(1)(A)) is amended—

17 (A) by inserting “and” after the semicolon
18 at the end of clause (v); and

19 (B) by striking clause (vi).

20 (4) Subparagraphs (A), (B), (C) of section
21 10(e)(5) of the Federal Home Loan Bank Act (12
22 U.S.C. 1430(e)(5)) are each amended by inserting
23 before the period at the end “(as such section is in
24 effect on September 13, 1995)”.

1 **SEC. 2227. REFERENCES TO SAVINGS ASSOCIATIONS AND**
2 **STATE BANKS IN FEDERAL LAW.**

3 Effective January 1, 1998, any reference in any Fed-
4 eral banking law to—

5 (1) the term “savings association” shall be
6 deemed to be a reference to a bank as defined in
7 section 3(a) of the Federal Deposit Insurance Act;
8 and

9 (2) the term “State bank” shall be deemed to
10 include any depository institution included in the
11 definition of such term in section 3(a)(2) of such
12 Act.

13 **SEC. 2228. REPEAL OF HOME OWNERS’ LOAN ACT.**

14 Effective January 1, 1998, the Home Owners’ Loan
15 Act (12 U.S.C. 1461 et seq.) is hereby repealed.

16 **SEC. 2229. EFFECTIVE DATE; DEFINITIONS.**

17 (a) **EFFECTIVE DATE OF AMENDMENTS.**—The
18 amendments made by this chapter shall take effect on
19 January 1, 1998.

20 (b) **DEFINITIONS.**—For purposes of this chapter, the
21 terms “appropriate Federal banking agency”, “bank hold-
22 ing company”, “depository institution”, “Federal savings
23 association”, “insured depository institution”, “savings
24 association”, and “State bank” have the same meanings
25 as in section 3 of the Federal Deposit Insurance Act (as
26 in effect on the date of the enactment of this Act).

1 **CHAPTER 3—TRANSFER OF FUNCTIONS,**
2 **PERSONNEL, AND PROPERTY**

3 **SEC. 2241. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

4 Effective January 1, 1998, the Office of Thrift Su-
5 pervision and the position of Director of the Office of
6 Thrift Supervision are hereby abolished.

7 **SEC. 2242. DETERMINATION OF TRANSFERRED FUNCTIONS**
8 **AND EMPLOYEES.**

9 (a) ALL OFFICE OF THRIFT SUPERVISION EMPLOY-
10 EES SHALL BE TRANSFERRED.—All employees of the Of-
11 fice of Thrift Supervision shall be identified for transfer
12 under subsection (b) to the Office of the Comptroller of
13 the Currency, the Federal Deposit Insurance Corporation,
14 or the Board of Governors of the Federal Reserve System.

15 (b) FUNCTIONS AND EMPLOYEES TRANSFERRED.—

16 (1) IN GENERAL.—The Director of the Office of
17 Thrift Supervision, the Comptroller of the Currency,
18 the Chairperson of the Federal Deposit Insurance
19 Corporation, and the Chairman of the Board of Gov-
20 ernors of the Federal Reserve System shall jointly
21 determine the functions or activities of the Office of
22 Thrift Supervision, and the number of employees of
23 such Office necessary to perform or support such
24 functions or activities, which are transferred from
25 the Office to the Office of the Comptroller of the

1 Currency, the Federal Deposit Insurance Corpora-
2 tion, or the Board of Governors of the Federal Re-
3 serve System, as the case may be.

4 (2) ALLOCATION OF EMPLOYEES.—The Comp-
5 troller of the Currency, the Chairperson of the Fed-
6 eral Deposit Insurance Corporation, and the Chair-
7 man of the Board of Governors of the Federal Re-
8 serve System shall allocate the employees of the Of-
9 fice of Thrift Supervision consistent with the num-
10 ber determined pursuant to paragraph (1) in a man-
11 ner which such Comptroller, Chairperson, and Chair-
12 man, in their sole discretion, deem equitable, except
13 that, within work units, the agency preferences of
14 individual employees shall be accommodated as far
15 as possible.

16 (c) DISPOSITION OF AFFAIRS.—

17 (1) IN GENERAL.—In winding up the affairs of
18 the Office of Thrift Supervision, the Director of the
19 Office of Thrift Supervision shall consult and co-
20 operate with the Comptroller of the Currency, the
21 Federal Deposit Insurance Corporation, and the
22 Board of Governors of the Federal Reserve System,
23 as the case may be, to facilitate the orderly transfer
24 of the functions to such Comptroller, Corporation, or
25 Board.

1 (2) CONTINUING AUTHORITY OF DIRECTOR OF
2 THE OFFICE OF THRIFT SUPERVISION.—Except as
3 provided in paragraph (1), no provision of this sub-
4 title shall be construed as affecting the authority
5 vested in the Director of the Office of Thrift Super-
6 vision before the date of enactment of this Act which
7 is necessary to carry out the duties of the position
8 until the date upon which the position of Director of
9 the Office of Thrift Supervision is abolished.

10 (3) CONTINUATION OF AGENCY SERVICES.—
11 Any agency, department, or other instrumentality of
12 the United States, or any successor to any such
13 agency, department, or instrumentality, which was
14 providing support services to the Director of the Of-
15 fice of Thrift Supervision on the day before the date
16 such position is abolished shall—

17 (A) continue to provide such services on a
18 reimbursable basis, in accordance with the
19 terms of the arrangement pursuant to which
20 such services were provided until the arrange-
21 ment is modified or terminated in accordance
22 with such terms, except that effective January
23 1, 1998, the Comptroller of the Currency, the
24 Federal Deposit Insurance Corporation, or the
25 Board of Governors of the Federal Reserve Sys-

1 tem, as the case may be, shall be substituted
2 for the Director of the Office of Thrift Super-
3 vision as a party to the arrangement; and

4 (B) consult with the Comptroller, the Cor-
5 poration, or the Board to coordinate and facili-
6 tate a prompt and reasonable transition.

7 (d) TRANSFER OF PROPERTY.—Effective January 1,
8 1998, all property of the Office of Thrift Supervision shall
9 be transferred to the Comptroller of the Currency, the
10 Federal Deposit Insurance Corporation, or the Board of
11 Governors of the Federal Reserve System, as determined
12 in accordance with subsections (a) and (b).

13 **SEC. 2243. SAVINGS PROVISIONS.**

14 (a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS
15 NOT AFFECTED.—No provision of this title shall be con-
16 strued as affecting the validity of any right, duty, or obli-
17 gation of the United States, the Director of the Office of
18 Thrift Supervision, or any person, which existed on the
19 day before the date upon which the position of Director
20 of the Office of Thrift Supervision and the Office of Thrift
21 Supervision are abolished.

22 (b) CONTINUATION OF SUITS.—No action or other
23 proceeding commenced by or against the Director of the
24 Office of Thrift Supervision shall abate by reason of enact-
25 ment of this Act, except that, effective January 1, 1998,

1 the Comptroller of the Currency, the Federal Deposit In-
2 surance Corporation, or the Board of Governors of the
3 Federal Reserve System, as the case may be, shall be sub-
4 stituted as a party to any such action or proceeding.

5 (c) CONTINUATION OF ADMINISTRATIVE RULES.—

6 All orders, resolutions, determinations, regulations, inter-
7 pretative rules, other interpretations, guidelines, proce-
8 dures, supervisory and enforcement actions, and other ad-
9 visory material (other than any regulation implementing
10 or prescribed pursuant to section 3(f) of the Home Own-
11 ers' Loan Act (as in effect on September 13, 1995))
12 which—

13 (1) have been issued, made, prescribed, or per-
14 mitted to become effective by the Office of Thrift
15 Supervision, and

16 (2) are in effect on December 31, 1996, (or be-
17 come effective after such date pursuant to the terms
18 of the order, resolution, determination, rule, other
19 interpretation, guideline, procedure, supervisory or
20 enforcement action, and other advisory material, as
21 in effect on such date), shall—

22 (A) continue in effect according to the
23 terms of such orders, resolutions, determina-
24 tions, regulations, interpretative rules, other in-
25 terpretations, guidelines, procedures, super-

1 visory or enforcement actions, or other advisory
2 material;

3 (B) be administered by the Comptroller of
4 the Currency, the Federal Deposit Insurance
5 Corporation, or the Board of Governors of the
6 Federal Reserve System; and

7 (C) be enforceable by or against the Comp-
8 troller of the Currency, the Federal Deposit In-
9 surance Corporation, or the Board of Governors
10 of the Federal Reserve System until modified,
11 terminated, set aside, or superseded in accord-
12 ance with applicable law by the Comptroller,
13 Corporation, or Board, by any court of com-
14 petent jurisdiction, or by operation of law.

15 (d) TREATMENT OF REFERENCES IN ADJUSTABLE
16 RATE MORTGAGES ISSUED BEFORE FIRREA.—For pur-
17 poses of section 402(e) of Financial Institutions Reform,
18 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1437
19 note), any reference in such section to—

20 (A) the Director of the Office of Thrift Su-
21 pervision shall be deemed to be a reference to
22 the Secretary of the Treasury; and

23 (B) a Savings Association Insurance Fund
24 member shall be deemed to be a reference to an

1 insured depository institution (as defined in sec-
2 tion 3 of the Federal Deposit Insurance Act).

3 (e) TREATMENT OF REFERENCES IN ADJUSTABLE
4 RATE MORTGAGE INSTRUMENTS ISSUED AFTER
5 FIRREA.—

6 (1) IN GENERAL.—For purposes of adjustable
7 rate mortgage instruments that are in effect as of
8 the date of enactment of this Act, any reference in
9 the instrument to the Director of the Office of
10 Thrift Supervision or Savings Association Insurance
11 Fund members shall be treated as a reference to the
12 Secretary of the Treasury or insured depository in-
13 stitutions (as defined in section 3 of the Federal De-
14 posit Insurance Act), as appropriate.

15 (2) SUBSTITUTION FOR INDEXES.—If any index
16 used to calculate the applicable interest rate on any
17 adjustable rate mortgage instrument is no longer
18 calculated and made available as a direct or indirect
19 result of the enactment of this Act, any index—

20 (A) made available by the Secretary of the
21 Treasury; or

22 (B) determined by the Secretary of the
23 Treasury, pursuant to paragraph (4), to be sub-
24 stantially similar to the index which is no
25 longer calculated or made available,

1 may be substituted by the holder of any such adjust-
2 able rate mortgage instrument upon notice to the
3 borrower.

4 (3) AGENCY ACTION REQUIRED TO PROVIDE
5 CONTINUED AVAILABILITY OF INDEXES.—Promptly
6 after the enactment of this subsection, the Secretary
7 of the Treasury, the Chairperson of the Federal De-
8 posit Insurance Corporation, and the Comptroller of
9 the Currency shall take such action as may be nec-
10 essary to assure that the indexes prepared by the
11 Director of the Office of Thrift Supervision imme-
12 diately prior to the enactment of this subsection and
13 used to calculate the interest rate on adjustable rate
14 mortgage instruments continue to be available.

15 (4) REQUIREMENTS RELATING TO SUBSTITUTE
16 INDEXES.—If any agency can no longer make avail-
17 able an index pursuant to paragraph (3), an index
18 that is substantially similar to such index may be
19 substituted for such index for purposes of paragraph
20 (2) if the Secretary of the Treasury determines,
21 after notice and opportunity for comment, that—

22 (A) the new index is based upon data sub-
23 stantially similar to that of the original index;
24 and

1 (B) the substitution of the new index will
2 result in an interest rate substantially similar to
3 the rate in effect at the time the original index
4 became unavailable.

5 **SEC. 2244. REFERENCES IN FEDERAL LAW TO DIRECTOR OF**
6 **THE OFFICE OF THRIFT SUPERVISION.**

7 Any reference in any Federal law to the Director of
8 the Office of Thrift Supervision or the Office of Thrift
9 Supervision shall be deemed to be a reference to the appro-
10 priate Federal banking agency (as defined in section 3(q)
11 of the Federal Deposit Insurance Act).

12 **SEC. 2245. RECONFIGURATION OF BOARD OF DIRECTORS**
13 **OF FDIC AS A RESULT OF REMOVAL OF DI-**
14 **RECTOR OF THE OFFICE OF THRIFT SUPER-**
15 **VISION.**

16 (a) IN GENERAL.—Section 2(a)(1) of the Federal
17 Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended
18 to read as follows:

19 “(1) IN GENERAL.—The management of the
20 Corporation shall be vested in a Board of Directors
21 consisting of 3 members—

22 “(A) 1 of whom shall be the Comptroller of
23 the Currency; and

24 “(B) 2 of whom shall be appointed by the
25 President, by and with the advice and consent

1 of the Senate, from among individuals who are
2 citizens of the United States.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) Section 2(a)(2) of the Federal Deposit In-
5 surance Act (12 U.S.C. 1812(a)(2)) is amended—

6 (A) by striking “February 28, 1993” and
7 inserting “January 1, 1998”; and

8 (B) by striking “3” and inserting “2”.

9 (2) Section 2(d)(2) of the Federal Deposit In-
10 surance Act (12 U.S.C. 1812(d)(2)) is amended—

11 (A) by striking “or the office of Director
12 of the Office of Thrift Supervision”;

13 (B) by striking “or such Director”;

14 (C) by striking “or the Acting Director of
15 the Office of Thrift Supervision, as the case
16 may be”; and

17 (D) by striking “or Director”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 subsections (a) and (b) shall take effect on January 1,
20 1998.

21 (d) DESIGNATION OF ABOLISHED POSITION.—Unless
22 there is a vacancy in the position of an appointed member
23 of the Board of Directors as of January 1, 1998, the
24 President, consistent with the requirements of section
25 2(a)(2) of the Federal Deposit Insurance Act, shall des-

1 ignate which of the 3 positions of appointed member of
2 such Board of Directors shall be abolished pursuant to
3 the amendment made by subsection (a).

4 **CHAPTER 4—LOAN LOSS RESERVE**
5 **TREATMENT**

6 **SEC. 2261. SENSE OF THE CONGRESS.**

7 It is the sense of the Congress that—

8 (1) one of the major obstacles to the conversion
9 of thrift institutions into banks is the tax treatment
10 of bad debt reserve deductions of thrift institutions;

11 (2) as part of a comprehensive solution to the
12 merger of the Federal deposit insurance funds and
13 thrift and bank charters, section 593 of the Internal
14 Revenue Code of 1986 should be repealed; and

15 (3) the repeal of section 593 of the Internal
16 Revenue Code of 1986 should be accomplished in
17 such a fashion as would neither threaten the eco-
18 nomic viability of thrift institutions which convert to
19 bank charters nor cause the Federal Treasury to
20 lose revenue.

1 **Subtitle C—Community**
2 **Reinvestment Act Amendments**

3 **SEC. 2301. EXPRESSION OF CONGRESSIONAL INTENT.**

4 Subsection (b) of section 802 of the Community Rein-
5 vestment Act of 1977 (12 U.S.C. 2901) is amended to
6 read as follows:

7 “(b) It is the purpose of this title to require each ap-
8 propriate Federal financial supervisory agency to use its
9 authority, when examining financial institutions, to en-
10 courage such institutions to help meet the credit needs of
11 the local communities in which they are chartered consist-
12 ent with the safe and sound operation of such institutions.
13 When examining financial institutions, a supervisory agen-
14 cy shall not impose additional burden, recordkeeping, or
15 reporting upon such institutions.”.

16 **SEC. 2302. COMMUNITY REINVESTMENT ACT EXEMPTION.**

17 The Community Reinvestment Act of 1977 (12
18 U.S.C. 2901 et seq.) is amended by adding at the end
19 the following new section:

20 **“SEC. 809. TREATMENT OF SMALL FINANCIAL INSTITU-**
21 **TIONS.**

22 “(a) IN GENERAL.—In lieu of being evaluated under
23 section 806A and receiving a written evaluation under sec-
24 tion 807, an eligible regulated financial institution shall

1 make a notice, signed by the president, available to the
2 public that—

3 “(1) lists the type of credit and services that
4 the institution provides to help meet the credit needs
5 of the local community; and

6 “(2) states that the institution helps meet the
7 credit needs of the local communities in which the
8 institution operates, including low- and moderate-in-
9 come neighborhoods.

10 “(b) ELIGIBLE REGULATED FINANCIAL INSTITU-
11 TIONS.—

12 “(1) IN GENERAL.—A regulated financial insti-
13 tution shall be eligible for purposes of subsection (a)
14 if the institution and any bank holding company
15 which controls such institution have aggregate assets
16 of not more than \$100,000,000.

17 “(2) ANNUAL ADJUSTMENT.—The dollar
18 amount in paragraph (1) shall be adjusted annually
19 after December 31, 1994, by the annual percentage
20 increase in the Consumer Price Index for Urban
21 Wage Earners and Clerical Workers published by
22 the Bureau of Labor Statistics.

23 “(c) EXEMPTION FROM OTHER REQUIREMENTS.—A
24 regulated financial institution which has complied with the
25 notice requirements of subsection (a) shall not be subject

1 to section 804 and any regulations prescribed under sec-
2 tion 806.”.

3 **SEC. 2303. SELF-CERTIFICATION OF CRA COMPLIANCE.**

4 Section 804 of the Community Reinvestment Act of
5 1977 (12 U.S.C. 2903) is amended by adding at the end
6 the following new subsection (c):

7 “(c) SELF-CERTIFICATION OF CRA COMPLIANCE.—

8 “(1) CERTIFICATION.—In lieu of being evalu-
9 ated under section 806A and receiving a written
10 evaluation under section 807, a qualifying financial
11 institution may elect to self-certify to the appro-
12 priate Federal financial supervisory agency that such
13 institution is in compliance with the goals of this
14 title.

15 “(2) QUALIFYING INSTITUTION.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (1), the term ‘qualifying institution’
18 means a financial institution which—

19 “(i) has not more than \$250 million
20 in assets;

21 “(ii) has not been found to have en-
22 gaged in a pattern or practice of illegal
23 discrimination under the Fair Housing Act
24 or the Equal Credit Opportunity Act for
25 the preceding 5-year calendar period; and

1 “(iii) received rating under section
2 807(b)(2) of ‘satisfactory’ or ‘outstanding’
3 in the most recent evaluation of such insti-
4 tution under this title.

5 “(B) ANNUAL ADJUSTMENT.—The dollar
6 amount in subparagraph (A) shall be adjusted
7 annually after December 31, 1994, by the an-
8 nual percentage increase in the Consumer Price
9 Index for Urban Wage Earners and Clerical
10 Workers published by the Bureau of Labor Sta-
11 tistics.

12 “(3) PUBLIC NOTICE.—

13 “(A) IN GENERAL.—A qualifying institu-
14 tion shall maintain in every branch a public no-
15 tice stating that—

16 “(i) the institution has self-certified
17 that the institution is satisfactorily helping
18 to meet the credit needs of its community;

19 “(ii) the institution maintains—

20 “(I) at the main office of such in-
21 stitution, a public file which contains
22 a copy of the self-certification to the
23 appropriate Federal financial super-
24 visory agency; and

1 “(II) a map delineating the com-
2 munity served by the institution;

3 “(iii) a list of the types of credit and
4 services that the institution provides to the
5 community served by the institution;

6 “(iv) such other information that the
7 institution believes demonstrates the insti-
8 tution’s record of helping to meet the cred-
9 it needs of its community; and

10 “(v) every public comment or letter to
11 the institution (and any response by the
12 institution) received within the previous 2-
13 year period about the record of the institu-
14 tion of helping to meet the credit needs of
15 its community.

16 “(B) PUBLIC FILE.—A qualifying institu-
17 tion shall maintain a public file containing the
18 contents described in this paragraph at the in-
19 stitution’s main office.

20 “(4) RATING.—

21 “(A) IN GENERAL.—A qualifying institu-
22 tion shall be deemed to have a rating of a ‘sat-
23 isfactory record of meeting community credit
24 needs’ for the purposes of this section and sec-
25 tion 806A(c).

1 “(B) PUBLICATION.—Each Federal finan-
2 cial supervisory agency shall publish in the Fed-
3 eral Register once each month a list of institu-
4 tions that have self-certified during the previous
5 month.

6 “(C) PUBLICATION CONSTITUTES DISCLO-
7 SURE.—Publication of the name of the institu-
8 tion in the Federal Register as having self-cer-
9 tified shall constitute disclosure of the rating of
10 the institution to the public for purposes of sec-
11 tions 806A and 807.

12 “(5) REGULATORY REVIEW.—

13 “(A) ASSESSMENT.—During each exam-
14 ination for safety and soundness, a qualifying
15 institution’s supervisory agency shall, as part of
16 the agency’s review of the institution’s loans,
17 assess whether the institution’s basis for its
18 self-certification is reasonable based on the pub-
19 lic notice and the information contained in the
20 public file pursuant to paragraph (3).

21 “(B) EXAMINATION IF SELF-CERTIFI-
22 CATION IS NOT REASONABLE.—If the agency
23 determines that the institution’s basis for the
24 institution’s self-certification is not reasonable,
25 the agency shall schedule an examination of the

1 institution for the purpose of assessing the in-
2 stitution's record of helping to meet the credit
3 needs of its community.

4 “(C) REVOCATION OF SELF-CERTIFI-
5 CATION.—If an assessment pursuant to sub-
6 paragraph (B) results in a less than ‘satisfac-
7 tory’ rating, the agency shall revoke the institu-
8 tion’s self-certification and substitute a written
9 evaluation as provided under section 807.

10 “(D) PERIOD OF INELIGIBILITY FOR SELF-
11 CERTIFICATION.—An institution whose self-cer-
12 tification has been revoked may not self-certify
13 pursuant to this subsection during the 5 years
14 succeeding the year in which the self-certifi-
15 cation is revoked.

16 “(E) SUBSEQUENT ELIGIBILITY.—After
17 the end of the period of ineligibility described in
18 subparagraph (D), an institution which meets
19 the requirements for self-certification may elect
20 to self-certify.

21 “(6) PROHIBITION ON ADDITIONAL REQUIRE-
22 MENTS.—No appropriate Federal financial super-
23 visory agency may impose any additional require-
24 ments, whether by regulation or otherwise, relating

1 to the self-certification procedure under this sub-
2 section.”.

3 **SEC. 2304. COMMUNITY INPUT AND CONCLUSIVE RATING.**

4 (a) CONFORMING AMENDMENT.—Section 804(a) of
5 the Community Reinvestment Act of 1977 (12 U.S.C.
6 2903) is amended by inserting “conducted in accordance
7 with section 806A,” after “financial institution,”.

8 (b) COMMUNITY INPUT AND CONCLUSIVE RATING.—
9 The Community Reinvestment Act of 1977 (12 U.S.C.
10 2901 et seq.) is amended by inserting after section 806
11 the following new section:

12 **“SEC. 806A. COMMUNITY INPUT AND CONCLUSIVE RATING.**

13 **“(a) PUBLICATION OF EXAM SCHEDULE AND OPPOR-**
14 **TUNITY FOR COMMENT.—**

15 **“(1) PUBLICATION OF NOTICE.—**Each appro-
16 **priate Federal financial supervisory agency shall—**

17 **“(A) publish in the Federal Register, 30**
18 **days before the beginning of a calendar quarter,**
19 **a listing of institutions scheduled for evaluation**
20 **for compliance with this title during such cal-**
21 **endar quarter; and**

22 **“(B) provide opportunity for written com-**
23 **ments from the community on the performance,**
24 **under this title, of each institution scheduled**
25 **for evaluation.**

1 “(2) COMMENT PERIOD.—Written comments
2 may not be submitted to an appropriate Federal fi-
3 nancial supervisory agency pursuant to paragraph
4 (1) after the end of the 30-day period beginning on
5 the first day of the calendar quarter.

6 “(3) COPY OF COMMENTS.—The agency shall
7 provide a copy of such comments to the institution.

8 “(b) EVALUATION.—The appropriate Federal finan-
9 cial supervisory agency shall—

10 “(1) evaluate the institution in accordance with
11 the standards contained in section 804; and

12 “(2) prepare and publish a written evaluation of
13 the institution as required under section 807.

14 “(c) RECONSIDERATION OF RATING.—

15 “(1) REQUEST FOR RECONSIDERATION.—A re-
16 consideration of an institution’s rating referred to in
17 section 807(b)(1)(C), may be requested within 30
18 days of the rating’s disclosure to the public.

19 “(2) PROCEDURES FOR REQUEST.—Any such
20 request shall be made in writing and filed with the
21 appropriate Federal financial supervisory agency,
22 and may be filed by the institution or a member of
23 the community.

24 “(3) BASIS FOR REQUEST.—Any request for re-
25 consideration under this subsection shall be based on

1 significant issues of a substantive nature which are
2 relevant to the delineated community of the institu-
3 tion and, in the case of a request by a member of
4 the community, shall be limited to issues previously
5 raised in comments submitted pursuant to sub-
6 section (a).

7 “(4) COMPLETION OF REVIEW.—The appro-
8 priate Federal financial supervisory agency shall
9 complete any requested reconsideration within 30
10 days of the filing of the request.

11 “(d) CONCLUSIVE RATING.—

12 “(1) IN GENERAL.—An institution’s rating shall
13 become conclusive on the later of—

14 “(A) 30 days after the rating is disclosed
15 to the public; or

16 “(B) the completion of any requested re-
17 consideration by the Federal financial super-
18 visory agency.

19 “(2) RATING CONCLUSIVE OF MEETING COMMU-
20 NITY CREDIT NEEDS.—An institution’s rating shall
21 be the conclusive assessment of the institution’s
22 record of meeting the credit needs of its community
23 for purposes of section 804 until the institution’s
24 next rating, developed pursuant to an examination,
25 becomes conclusive.

1 “(3) SAFE HARBOR.—Institutions which have
2 received a ‘satisfactory’ or ‘outstanding’ rating shall
3 be deemed to have met the purposes of section 804.

4 “(4) RULE OF CONSTRUCTION.—Notwithstand-
5 ing any other provision of law, no provision of this
6 section shall be construed as granting a cause of ac-
7 tion to any person.”.

8 (c) OVERALL EVALUATION OF INSTITUTION.—Para-
9 graph (2) of section 804(a) of the Community Reinvest-
10 ment Act of 1977 (12 U.S.C. 2903(a)) is amended to read
11 as follows:

12 “(2) take such record into account in the over-
13 all evaluation of the condition of the institution by
14 the appropriate Federal financial supervisory agen-
15 cy.”.

16 **SEC. 2305. SPECIAL PURPOSE FINANCIAL INSTITUTIONS.**

17 (a) IN GENERAL.—Section 804 of the Community
18 Reinvestment Act of 1977 (12 U.S.C. 2903) is amended
19 by inserting after subsection (c) (as added by section 2303
20 of this subtitle) the following new subsection:

21 “(d) SPECIAL PURPOSE INSTITUTIONS.—

22 “(1) IN GENERAL.—In conducting assessments
23 pursuant to this section at any special purpose insti-
24 tution, the appropriate Federal financial supervisory
25 agency shall—

1 “(A) consider the nature of business such
2 institution is involved in; and

3 “(B) assess and take into account the
4 record of the institution commensurate with the
5 amount of deposits (as defined in section 3(1)
6 of the Federal Deposit Insurance Act) received
7 by such institution.

8 “(2) STANDARDS.—Each appropriate Federal
9 financial supervisory agency shall develop standards
10 under which special purpose institutions may be
11 deemed to have complied with the requirements of
12 this title which are consistent with the specific na-
13 ture of such businesses.”.

14 (b) SPECIAL PURPOSE INSTITUTION DEFINED.—
15 Section 803 of the Community Reinvestment Act of 1977
16 (12 U.S.C. 2902) is amended by adding at the end the
17 following new paragraph:

18 “(5) SPECIAL PURPOSE INSTITUTIONS.—The
19 term ‘special purpose institution’ means a financial
20 institution that does not generally accept deposits
21 from the public in amounts of less than \$100,000,
22 such as wholesale, credit card, and trust institu-
23 tions.”.

1 **SEC. 2306. INCREASED INCENTIVES FOR LENDING TO LOW-**
2 **AND MODERATE-INCOME COMMUNITIES.**

3 (a) IN GENERAL.—Section 804(b) of the Community
4 Reinvestment Act of 1977 (12 U.S.C. 2903(b)) is amend-
5 ed to read as follows:

6 “(b) POSITIVE CONSIDERATION OF CERTAIN LOANS
7 AND INVESTMENTS.—In assessing and taking into ac-
8 count the records of a regulated financial institution under
9 subsection (a), the appropriate Federal financial super-
10 visory agency shall—

11 “(1) consider as a positive factor, consistent
12 with the safe and sound operation of the institution,
13 the institution’s investment in or loan to—

14 “(A) any minority depository institution or
15 women’s depository institution (as such terms
16 are defined in section 808(b)) or any low-in-
17 come credit union;

18 “(B) any joint venture or other entity or
19 project which promotes the public welfare in
20 any distressed community (as defined by such
21 agency) whether or not the distressed commu-
22 nity is located in the local community in which
23 the regulated financial institution is chartered
24 to do business; and

1 “(C) targeted low- and moderate-income
2 communities, including real property loans to
3 such communities; and

4 “(2) consider equally with other factors capital
5 investment, loan participation, and other ventures
6 undertaken by the institution in cooperation with—

7 “(A) minority- and women-owned financial
8 institutions and low-income credit unions to the
9 extent that these activities help meet the credit
10 needs of the local communities in which such
11 institutions are chartered; and

12 “(B) community development corporations
13 in extending credit and other financial services
14 principally to low- and moderate-income persons
15 and small businesses to the extent that such
16 community development corporations help meet
17 the credit needs of the local communities served
18 by the majority-owned institution.”.

19 (b) AMENDMENT TO DEFINITIONS.—Section 803 of
20 the Community Reinvestment Act of 1977 (12 U.S.C.
21 2902) is amended by inserting after paragraph (5) (as
22 added by section 2305(b) of this subtitle) the following
23 new paragraph:

1 “(6) STATE BANK SUPERVISOR.—The term
2 ‘State bank supervisor’ has the same meaning as in
3 section 3(r) of the Federal Deposit Insurance Act.”.

4 (c) TECHNICAL CORRECTION.—The 1st of the 2
5 paragraphs designated as paragraph (2) of section 803 of
6 the Community Reinvestment Act of 1977 (12 U.S.C.
7 2902) is amended to read as follows:

8 “(D) the Director of the Office of Thrift
9 Supervision with respect to any savings associa-
10 tion (the deposits of which are insured by the
11 Federal Deposit Insurance Corporation) and
12 any savings and loan holding company (other
13 than a company which is a bank holding com-
14 pany);”.

15 **SEC. 2307. PROHIBITION ON ADDITIONAL REPORTING**
16 **UNDER CRA.**

17 Section 806 of the Community Reinvestment Act of
18 1977 (12 U.S.C. 2905) is amended to read as follows:

19 **“SEC. 806. REGULATIONS.**

20 “(a) IN GENERAL.—

21 “(1) PUBLICATION REQUIREMENT.—Regula-
22 tions to carry out the purposes of this title shall be
23 published by each appropriate Federal financial su-
24 pervisory agency.

1 “(2) PROHIBITION ON ADDITIONAL RECORD-
2 KEEPING.—Regulations prescribed and policy state-
3 ments, commentary, examiner guidance, or other su-
4 pervisory material issued under this title shall not
5 impose any additional recordkeeping on a financial
6 institution.

7 “(3) PROHIBITION ON LOAN DATA COLLEC-
8 TION.—No loan data may be required to be collected
9 and reported by a financial institution and no such
10 data may be made public by any Federal financial
11 supervisory agency under this title.”.

12 **SEC. 2308. TECHNICAL AMENDMENT.**

13 Section 807(b)(1)(B) of the Community Reinvest-
14 ment Act (12 U.S.C. 2906) is amended by striking “The
15 information” and inserting “In the case of a regulated fi-
16 nancial institution that maintains domestic branches in 2
17 or more States, the information”.

18 **SEC. 2309. DUPLICATIVE REPORTING.**

19 Section 10(g) of the Federal Home Loan Bank Act
20 (12 U.S.C. 1430(g)) is amended by adding at the end the
21 following new paragraph (3):

22 “(3) SPECIAL RULE.—This subsection shall not
23 apply to members receiving a grade of ‘outstanding’
24 or ‘satisfactory’ under section 807 of the Community
25 Reinvestment Act of 1977.”.

1 **SEC. 2310. CRA CONGRESSIONAL OVERSIGHT.**

2 (a) SENSE OF CONGRESS RELATING TO AGGRESSIVE
3 OVERSIGHT.—It is the sense of the Congress that the ap-
4 propriate committees of the House of Representatives and
5 the Senate should exercise aggressive oversight of the
6 adoption and implementation of any regulation by any ap-
7 propriate Federal financial supervisory agency under the
8 Community Reinvestment Act of 1977 after the date of
9 the enactment of this Act.

10 (b) AGENCY REPORTS REQUIRED.—

11 (1) IN GENERAL.—Each appropriate Federal fi-
12 nancial supervisory agency shall submit a report to
13 the Congress by December 31, 1996, and by Decem-
14 ber 31, 1997, on the implementation of all regula-
15 tions prescribed by such agency under the Commu-
16 nity Reinvestment Act of 1977 after the date of the
17 enactment of this Act.

18 (2) REQUIREMENTS RELATING TO PREPARA-
19 TION OF REPORTS.—In preparing each report re-
20 quired under paragraph (1), each appropriate Fed-
21 eral financial supervisory agency shall—

22 (A) solicit and include comments from reg-
23 ulated financial institutions with respect to the
24 regulations which are the subject of the report;
25 and

1 (B) include quantifiable measures of the
2 cost savings achieved under the regulations
3 which are the subject of the report and the ef-
4 fectiveness of such regulations in achieving the
5 purposes of the Community Reinvestment Act
6 of 1977.

7 (3) DEFINITIONS.—For purposes of this sec-
8 tion, the terms “appropriate Federal financial super-
9 visory agency” and “regulated financial institution”
10 have the same meanings as in section 803 of the
11 Community Reinvestment Act of 1977.

12 **SEC. 2311. CONSULTATION AMONG EXAMINERS.**

13 Section 10 of the Federal Deposit Insurance Act (12
14 U.S.C. 1820) is amended by adding at the end the follow-
15 ing new subsection:

16 “(j) CONSULTATION AMONG EXAMINERS.—

17 “(1) IN GENERAL.—Each appropriate Federal
18 banking agency shall take such action as may be
19 necessary to ensure that examiners employed by the
20 agency—

21 “(A) consult on examination activities with
22 respect to any depository institution; and

23 “(B) achieve an agreement and resolve any
24 inconsistencies on the recommendations to be

1 given to such institution as a consequence of
2 any examinations.

3 “(2) EXAMINER-IN-CHARGE.—Each agency
4 shall consider appointing an examiner-in-charge with
5 respect to a depository institution to ensure con-
6 sultation on examination activities among all of the
7 agency’s examiners involved in examinations of such
8 institution.”.

9 **SEC. 2312. LIMITATION ON REGULATIONS.**

10 Section 806 of the Community Reinvestment Act of
11 1977 (12 U.S.C. 2905) (as amended by section 2307) is
12 amended by adding at the end the following new sub-
13 sections:

14 “(b) LIMITATION ON REGULATIONS.—No regulation
15 may be prescribed under this title by any Federal agency
16 which would—

17 “(1) require any regulated financial institution
18 to—

19 “(A) make any loan or enter into any
20 other agreement on the basis of any discrimina-
21 tory criteria prohibited under any law of the
22 United States; or

23 “(B) make any loan to, or enter into any
24 other agreement with, any uncreditworthy per-

1 son that would jeopardize the safety and sound-
 2 ness of such institution; or

3 “(2) prevent or hinder in any way a financial
 4 institution’s full responsibility to provide credit to all
 5 segments of the community.

6 “(c) ENCOURAGE LOANS TO CREDITWORTHY BOR-
 7 ROWERS.—Regulations prescribed under this title shall en-
 8 courage regulated financial institutions to make loans and
 9 extend credit to all creditworthy persons, consistent with
 10 safety and soundness.”.

11 **TITLE III—COMMITTEE ON** 12 **COMMERCE**

13 **Subtitle A—Communications**

14 **CHAPTER 1—SPECTRUM AUCTIONS**

15 **SEC. 3001. SPECTRUM AUCTIONS.**

16 (a) EXTENSION AND EXPANSION OF AUCTION AU-
 17 THORITY.—

18 (1) AMENDMENTS.—Section 309(j) of the Com-
 19 munications Act of 1934 (47 U.S.C. 309(j)) is
 20 amended—

21 (A) by striking paragraphs (1) and (2) and
 22 inserting in lieu thereof the following:

23 “(1) GENERAL AUTHORITY.—If, consistent with
 24 the obligations described in paragraph (6)(E), mutu-
 25 ally exclusive applications are accepted for any ini-

1 tial license or construction permit which will involve
2 an exclusive use of the electromagnetic spectrum,
3 then the Commission shall grant such license or per-
4 mit to a qualified applicant through a system of
5 competitive bidding that meets the requirements of
6 this subsection.

7 “(2) EXEMPTIONS.—The competitive bidding
8 authority granted by this subsection shall not apply
9 to licenses or construction permits issued by the
10 Commission—

11 “(A) that, as the result of the Commission
12 carrying out the obligations described in para-
13 graph (6)(E), are not mutually exclusive;

14 “(B) for public safety radio services, in-
15 cluding non-Government uses that protect the
16 safety of life, health, and property and that are
17 not made commercially available to the public;
18 or

19 “(C) for initial licenses or construction
20 permits for new terrestrial digital television
21 services assigned by the Commission to existing
22 terrestrial broadcast licensees to replace their
23 current television licenses.”; and

24 (B) by striking “1998” in paragraph (11)
25 and inserting “2002”.

1 (2) CONFORMING AMENDMENT.—Subsection (i)
2 of section 309 of such Act is repealed.

3 (3) EFFECTIVE DATE.—The amendment made
4 by paragraph (1)(A) shall not apply with respect to
5 any license or permit for which the Federal Commu-
6 nications Commission has accepted mutually exclu-
7 sive applications on or before the date of enactment
8 of this Act.

9 (b) COMMISSION OBLIGATION TO MAKE ADDITIONAL
10 SPECTRUM AVAILABLE BY AUCTION.—

11 (1) IN GENERAL.—The Federal Communica-
12 tions Commission shall complete all actions nec-
13 essary to permit the assignment, by September 30,
14 2002, by competitive bidding pursuant to section
15 309(j) of the Communications Act of 1934 (47
16 U.S.C. 309(j)) of licenses for the use of bands of
17 frequencies that—

18 (A) individually span not less than 25
19 megahertz, unless a combination of smaller
20 bands can, notwithstanding the provisions of
21 paragraph (7) of such section, reasonably be ex-
22 pected to produce greater receipts;

23 (B) in the aggregate span not less than
24 100 megahertz;

25 (C) are located below 3 gigahertz; and

1 (D) have not, as of the date of enactment
2 of this Act—

3 (i) been designated by Commission
4 regulation for assignment pursuant to such
5 section; or

6 (ii) been identified by the Secretary of
7 Commerce pursuant to section 113 of the
8 National Telecommunications and Infor-
9 mation Administration Organization Act.

10 The Commission shall conduct the competitive
11 bidding for not less than one-half of such aggre-
12 gate spectrum by September 30, 2000.

13 (2) CRITERIA FOR REASSIGNMENT.—In making
14 available bands of frequencies for competitive bid-
15 ding pursuant to paragraph (1), the Commission
16 shall—

17 (A) seek to promote the most efficient use
18 of the spectrum;

19 (B) take into account the cost to incum-
20 bent licensees of relocating existing uses to
21 other bands of frequencies or other means of
22 communication;

23 (C) take into account the needs of public
24 safety radio services; and

1 (D) comply with the requirements of inter-
2 national agreements concerning spectrum allo-
3 cations.

4 (3) NOTIFICATION TO NTIA.—The Commission
5 shall notify the Secretary of Commerce if—

6 (A) the Commission is not able to provide
7 for the effective relocation of incumbent licens-
8 ees to bands of frequencies that are available to
9 the Commission for assignment; and

10 (B) the Commission has identified bands
11 of frequencies that are—

12 (i) suitable for the relocation of such
13 licensees; and

14 (ii) allocated for Federal Government
15 use, but that could be reallocated pursuant
16 to part B of the National Telecommuni-
17 cations and Information Administration
18 Organization Act (as amended by this
19 Act).

20 (c) IDENTIFICATION AND REALLOCATION OF FRE-
21 QUENCIES.—The National Telecommunications and Infor-
22 mation Administration Organization Act (47 U.S.C. 901
23 et seq.) is amended—

24 (1) in section 113, by adding at the end the fol-
25 lowing new subsection:

1 “(f) ADDITIONAL REALLOCATION REPORT.—If the
2 Secretary receives a notice from the Commission pursuant
3 to section 3001(b)(3) of the Seven-Year Balanced Budget
4 Reconciliation Act of 1995, the Secretary shall prepare
5 and submit to the President and the Congress a report
6 recommending for reallocation for use other than by Fed-
7 eral Government stations under section 305 of the 1934
8 Act (47 U.S.C. 305), bands of frequencies that are suit-
9 able for the uses identified in the Commission’s notice.”;

10 (2) in section 114(a)(1), by striking “(a) or
11 (d)(1)” and inserting “(a), (d)(1), or (f)”.

12 (d) COMPLETION OF C-BLOCK PCS AUCTION.—The
13 Federal Communications Commission shall commence the
14 Broadband Personal Communications Services C-Block
15 auction described in the Commission’s Sixth Report and
16 Order in DP Docket 93–253 (FCC 93–510, released July
17 18, 1995) not later than December 4, 1995. The Commis-
18 sion’s competitive bidding rules governing such auction,
19 as set forth in such Sixth Report and Order, are hereby
20 ratified and adopted as a matter of Federal law.

21 (e) MODIFICATION OF AUCTION POLICY TO PRE-
22 SERVE AUCTION VALUE OF SPECTRUM.—The voluntary
23 negotiation period for relocating fixed microwave licensees
24 to frequency bands other than those allocated for licensed
25 emerging technology services (including licensed personal

1 communications services), established by the Commis-
2 sion's Third Report and Order in ET Docket No. 92–9,
3 shall expire one year after the date of acceptance by the
4 Commission of applications for such licensed emerging
5 technology services. The mandatory negotiation period for
6 relocating fixed microwave licensees to frequency bands
7 other than those allocated for licensed emerging tech-
8 nology services (including licensed personal communica-
9 tions services), established in such Third Report and
10 Order, shall expire two years after the date of acceptance
11 by the Commission of applications for such licensed
12 emerging technology services.

13 (f) IDENTIFICATION AND REALLOCATION OF
14 AUCTIONABLE FREQUENCIES.—The National Tele-
15 communications and Information Administration Organi-
16 zation Act (47 U.S.C. 901 et seq.) is amended—

17 (1) in section 113(b)—

18 (A) by striking the heading of paragraph
19 (1) and inserting “INITIAL REALLOCATION RE-
20 PORT”;

21 (B) by inserting “in the first report re-
22 quired by subsection (a)” after “recommend for
23 reallocation” in paragraph (1);

1 (C) by inserting “or (3)” after “paragraph
2 (1)” each place it appears in paragraph (2);
3 and

4 (D) by inserting after paragraph (2) the
5 following new paragraph:

6 “(3) SECOND REALLOCATION REPORT.—In ac-
7 cordance with the provisions of this section, the Sec-
8 retary shall recommend for reallocation in the sec-
9 ond report required by subsection (a), for use other
10 than by Federal Government stations under section
11 305 of the 1934 Act (47 U.S.C. 305), a single fre-
12 quency band that spans not less than an additional
13 20 megahertz, that is located below 3 gigahertz, and
14 that meets the criteria specified in paragraphs (1)
15 through (5) of subsection (a).”; and

16 (2) in section 115—

17 (A) in subsection (b), by striking “the re-
18 port required by section 113(a)” and inserting
19 “the initial reallocation report required by sec-
20 tion 113(a)”; and

21 (B) by adding at the end the following new
22 subsection:

23 “(C) ALLOCATION AND ASSIGNMENT OF FRE-
24 QUENCIES IDENTIFIED IN THE SECOND REALLOCATION
25 REPORT.—With respect to the frequencies made available

1 for reallocation pursuant to section 113(b)(3), the Com-
2 mission shall, not later than 1 year after receipt of the
3 second reallocation report required by such section, pre-
4 pare, submit to the President and the Congress, and im-
5 plement, a plan for the allocation and assignment under
6 the 1934 Act of such frequencies. Such plan shall propose
7 the immediate allocation and assignment of all such fre-
8 quencies in accordance with section 309(j).”.

9 **CHAPTER 2—FEDERAL COMMUNICATIONS**
10 **COMMISSION AUTHORIZATION**

11 **SEC. 3011. SHORT TITLE.**

12 This chapter may be cited as the “Federal Commu-
13 nications Commission Authorization Act of 1995”.

14 **SEC. 3012. EXTENSION OF AUTHORITY.**

15 (a) **AUTHORIZATION OF APPROPRIATIONS.**—Section
16 6 of the Communications Act of 1934 (47 U.S.C. 156)
17 is amended to read as follows:

18 **“SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

19 “There are authorized to be appropriated for the ad-
20 ministration of this Act by the Commission \$186,000,000
21 for fiscal year 1996, together with such sums as may be
22 necessary for increases resulting from adjustments in sal-
23 ary, pay, retirement, other employee benefits required by
24 law, and other nondiscretionary costs, for fiscal year 1996.
25 Of the sum appropriated in each fiscal year under this

1 section, a portion, in an amount determined under sections
2 8(b) and 9(b), shall be derived from fees authorized by
3 sections 8 and 9.”.

4 (b) TRAVEL AND REIMBURSEMENT PROGRAM.—Sec-
5 tion 4(g)(2) of the Communications Act of 1934 (47
6 U.S.C. 154(g)(2)) is amended to read as follows:

7 “(2) The Commission shall submit to the appropriate
8 committees of Congress, and publish in the Federal Reg-
9 ister, semiannual reports specifying the reimbursements
10 which the Commission has accepted under section 1353
11 of title 31, United States Code.”.

12 (c) COMMUNICATIONS SUPPORT FROM OLDER AMER-
13 ICANS.—Section 6(a) of the Federal Communications
14 Commission Authorization Act of 1988 (47 U.S.C. 154
15 note) is amended by striking “fiscal years 1992 and 1993”
16 and inserting “fiscal year 1996”.

17 **SEC. 3013. APPLICATION FEES.**

18 (a) ADJUSTMENT OF APPLICATION FEE SCHED-
19 ULE.—Section 8(b) of the Communications Act of 1934
20 (47 U.S.C. 158(b)) is amended to read as follows:

21 “(b)(1) For fiscal year 1996 and each fiscal year
22 thereafter, the Commission shall, by regulation, modify
23 the application fees by proportionate increases or de-
24 creases so as to result in estimated total collections for
25 the fiscal year equal to—

1 “(A) \$40,000,000; plus

2 “(B) an additional amount, specified in an ap-
3 propriation Act for the Commission for that fiscal
4 year to be collected and credited to such appropria-
5 tion, not to exceed the amount by which the nec-
6 essary expenses for the costs described in paragraph
7 (5) exceeds \$40,000,000.

8 “(2) In making adjustments pursuant to this para-
9 graph the Commission may round such fees to the nearest
10 \$5.00 in the case of fees under \$100, or to the nearest
11 \$20 in the case of fees of \$100 or more. The Commission
12 shall transmit to the Congress notification of any adjust-
13 ment made pursuant to this paragraph immediately upon
14 the adoption of such adjustment.

15 “(3) The Commission is authorized to continue to col-
16 lect fees at the prior year’s rate until the effective date
17 of fee adjustments or amendments made pursuant to para-
18 graphs (1) and (4).

19 “(4) The Commission shall, by regulation, add, de-
20 lete, or reclassify services, categories, applications, or
21 other filings subject to application fees to reflect additions,
22 deletions, or changes in the nature of its services or au-
23 thorization of service processes as a consequence of Com-
24 mission rulemaking proceedings or changes in law.

1 “(5) Any modified fees established under paragraph
2 (4) shall be derived by determining the full-time equivalent
3 number of employees performing application activities, ad-
4 justed to take into account other expenses that are reason-
5 ably related to the cost of processing the application or
6 filing, including all executive and legal costs incurred by
7 the Commission in the discharge of these functions, and
8 other factors that the Commission determines are nec-
9 essary in the public interest. The Commission shall—

10 “(A) transmit to the Congress notification of
11 any proposed modification made pursuant to this
12 paragraph immediately upon adoption of such pro-
13 posal; and

14 “(B) transmit to the Congress notification of
15 any modification made pursuant to this paragraph
16 immediately upon adoption of such modification.

17 “(6) Increases or decreases in application fees made
18 pursuant to this subsection shall not be subject to judicial
19 review.”.

20 (b) TREATMENT OF ADDITIONAL COLLECTIONS.—
21 Section 8(e) of such Act is amended to read as follows:

22 “(e) Of the moneys received from fees authorized
23 under this section—

24 “(1) \$40,000,000 shall be deposited in the gen-
25 eral fund of the Treasury to reimburse the United

1 States for amounts appropriated for use by the
 2 Commission in carrying out its functions under this
 3 Act; and

4 “(2) the remainder shall be deposited as an off-
 5 setting collection in, and credited to, the account
 6 providing appropriations to carry out the functions
 7 of the Commission.”.

8 (c) SCHEDULE OF APPLICATION FEES FOR PCS.—

9 The schedule of application fees in section 8(g) of such
 10 Act is amended by adding, at the end of the portion under
 11 the heading “COMMON CARRIER SERVICES”, the following
 12 new item:

“23. Personal communications services	
“a. Initial or new application	230.00
“b. Amendment to pending application	35.00
“c. Application for assignment or transfer of control	230.00
“d. Application for renewal of license	35.00
“e. Request for special temporary authority	200.00
“f. Notification of completion of construction	35.00
“g. Request to combine service areas	50.00”.

13 (d) VANITY CALL SIGNS.—

14 (1) LIFETIME LICENSE FEES.—

15 (A) AMENDMENT.—The schedule of appli-
 16 cation fees in section 8(g) of such Act is further
 17 amended by adding, at the end of the portion
 18 under the heading “PRIVATE RADIO SERVICES”,
 19 the following new item:

“11. Amateur vanity call signs 150.00”.

20 (B) TREATMENT OF RECEIPTS.—Moneys
 21 received from fees established under the amend-

1 ment made by this subsection shall be deposited
 2 as an offsetting collection in, and credited to,
 3 the account providing appropriations to carry
 4 out the functions of the Commission.

5 (2) TERMINATION OF ANNUAL REGULATORY
 6 FEES.—The schedule of regulatory fees in section
 7 9(g) of such Act (47 U.S.C. 159(g)) is amended by
 8 striking the following item from the fees applicable
 9 to the Private Radio Bureau:

“Amateur vanity call-signs 7”.

10 **SEC. 3014. REGULATORY FEES.**

11 (a) EXECUTIVE AND LEGAL COSTS.—Section 9(a)(1)
 12 of the Communications Act of 1934 (47 U.S.C. 159(a)(1))
 13 is amended by inserting before the period at the end the
 14 following: “, and all executive and legal costs incurred by
 15 the Commission in the discharge of these functions”.

16 (b) ESTABLISHMENT AND ADJUSTMENT.—Section
 17 9(b) of such Act is amended—

18 (1) in paragraph (4)(B), by striking “90 days”
 19 and inserting “45 days”; and

20 (2) by adding at the end the following new
 21 paragraph:

22 “(5) EFFECTIVE DATE OF ADJUSTMENTS.—The
 23 Commission is authorized to continue to collect fees
 24 at the prior year’s rate until the effective date of fee

1 adjustments or amendments made pursuant to para-
 2 graph (2) or (3).”.

3 (c) REGULATORY FEES FOR SATELLITE TV OPER-
 4 ATIONS.—The schedule of regulatory fees in section 9(g)
 5 of such Act is amended, in the fees applicable to the Mass
 6 Media Bureau, by inserting after each of the items per-
 7 taining to construction permits in the fees applicable to
 8 VHF commercial and UHF commercial TV the following
 9 new item:

“Terrestrial television satellite operations 500”.

10 (d) GOVERNMENTAL ENTITIES USE FOR COMMON
 11 CARRIER PURPOSES.—Section 9(h) of such Act is amend-
 12 ed by adding at the end the following new sentence: “The
 13 exceptions provided by this subsection for governmental
 14 entities shall not be applicable to any services that are pro-
 15 vided on a commercial basis in competition with another
 16 carrier.”.

17 (e) INFORMATION REQUIRED IN CONNECTION WITH
 18 ADJUSTMENT OF REGULATORY FEES.—Title I of such
 19 Act is amended—

20 (1) in section 9, by striking subsection (i); and
 21 (2) by inserting after section 9 the following
 22 new section:

1 **“SEC. 10. ACCOUNTING SYSTEM AND ADJUSTMENT INFOR-**
2 **MATION.**

3 “(a) ACCOUNTING SYSTEM REQUIRED.—The Com-
4 mission shall develop accounting systems for the purposes
5 of making the adjustments authorized by sections 8 and
6 9. The Commission shall annually prepare and submit to
7 the Congress an analysis of such systems and shall annu-
8 ally afford interested persons the opportunity to submit
9 comments concerning the allocation of the costs of per-
10 forming the functions described in section 8(a)(5) and
11 9(a)(1) in making such adjustments in the schedules re-
12 quired by sections 8 and 9.

13 “(b) INFORMATION REQUIRED IN CONNECTION WITH
14 ADJUSTMENT OF APPLICATION AND REGULATORY
15 FEES.—

16 “(1) SCHEDULE OF REQUESTED AMOUNTS.—
17 No later than May 1 of each calendar year, the
18 Commission shall prepare and transmit to the Com-
19 mittees of Congress responsible for the Commis-
20 sion’s authorization and appropriations a detailed
21 schedule of the amounts requested by the Presi-
22 dent’s budget to be appropriated for the ensuing fis-
23 cal year for the activities described in sections
24 8(a)(5) and 9(a)(1), allocated by bureaus, divisions,
25 and offices of the Commission.

1 “(2) EXPLANATORY STATEMENT.—If the Com-
2 mission anticipates increases in the application fees
3 or regulatory fees applicable to any applicant, li-
4 censee, or unit subject to payment of fees, the Com-
5 mission shall submit to the Congress by May 1 of
6 such calendar year a statement explaining the rela-
7 tionship between any such increases and either (A)
8 increases in the amounts requested to be appro-
9 priated for Commission activities in connection with
10 such applicants, licensees, or units subject to pay-
11 ment of fees, or (B) additional activities to be per-
12 formed with respect to such applicants, licensees, or
13 units.

14 “(3) DEFINITION.—For purposes of this sub-
15 section, the term ‘amount requested by the Presi-
16 dent’s budget’ shall include any adjustments to such
17 requests that are made by May 1 of such calendar
18 year. If any such adjustment is made after May 1,
19 the Commission shall provide such Committees with
20 updated schedules and statements containing the in-
21 formation required by this subsection within 10 days
22 after the date of any such adjustment.”.

23 **SEC. 3015. INSPECTION OF SHIP RADIO STATIONS.**

24 (a) AUTHORITY TO DESIGNATE ENTITIES TO IN-
25 SPECT.—Section 4(f)(3) of the Communications Act of

1 1934 (47 U.S.C. 154(f)(3)) is amended by inserting before
2 the period at the end the following: “: *And provided fur-*
3 *ther*, That, in the alternative, an entity designated by the
4 Commission may make the inspections referred to in this
5 paragraph”.

6 (b) CONDUCT OF INSPECTIONS.—Section 362(b) of
7 such Act (47 U.S.C. 362(b)) is amended to read as
8 follows:

9 “(b) Every ship of the United States that is subject
10 to this part shall have the equipment and apparatus pre-
11 scribed therein inspected at least once each year by the
12 Commission or an entity designated by the Commission.
13 If, after such inspection, the Commission is satisfied that
14 all relevant provisions of this Act and the station license
15 have been complied with, the fact shall be certified to on
16 the station license by the Commission. The Commission
17 shall make such additional inspections at frequent inter-
18 vals as the Commission determines may be necessary to
19 ensure compliance with the requirements of this Act. The
20 Commission may, upon a finding that the public interest
21 could be served thereby—

22 “(1) waive the annual inspection required under
23 this section for a period of up to 90 days for the sole
24 purpose of enabling a vessel to complete its voyage

1 and proceed to a port in the United States where an
2 inspection can be held; or

3 “(2) waive the annual inspection required under
4 this section for a vessel that is in compliance with
5 the radio provisions of the Safety Convention and
6 that is operating solely in waters beyond the juris-
7 diction of the United States, provided that such in-
8 spection shall be performed within 30 days of such
9 vessel’s return to the United States.”.

10 (c) INSPECTION BY OTHER ENTITIES.—Section 385
11 of such Act (47 U.S.C. 385) is amended by inserting “or
12 an entity designated by the Commission” after “The Com-
13 mission”.

14 **SEC. 3016. EXPEDITED ITFS PROCESSING.**

15 Section 5(c)(1) of the Communications Act of 1934
16 (47 U.S.C. 155(c)(1)) is amended by striking the last sen-
17 tence and inserting the following: “Except for cases involv-
18 ing the authorization of service in the Instructional Tele-
19 vision Fixed Service, or as otherwise provided in this Act,
20 nothing in this paragraph shall authorize the Commission
21 to provide for the conduct, by any person or persons other
22 than persons referred to in paragraph (2) or (3) of section
23 556(b) of title 5, United States Code, of any hearing to
24 which such section applies.”.

1 **SEC. 3017. TARIFF REJECTION AUTHORITY.**

2 Section 203(d) of the Communications Act of 1934
3 (47 U.S.C. 203(d)) is amended by inserting after the first
4 sentence the following new sentences: “The Commission
5 may, after affording interested parties an opportunity to
6 comment, reject a proposed tariff filing in whole or in
7 part, if the filing or any part thereof is patently unlawful.
8 In evaluating whether a proposed tariff filing is patently
9 unlawful, the Commission may consider additional infor-
10 mation filed by the carrier or any interested party and
11 shall presume the facts alleged by the carrier to be true.”.

12 **SEC. 3018. REFUND AUTHORITY.**

13 Title II of the Communications Act of 1934 (47
14 U.S.C. 201 et seq.) is amended by adding at the end there-
15 of the following new section:

16 **“SEC. 230. REFUND AUTHORITY.**

17 “In addition to any other provision of this Act under
18 which the Commission may order refunds, the Commission
19 may require by order the refund of such portion of any
20 charge by any carrier or carriers as results from a viola-
21 tion of section 220 (a), (b), or (d) or 221 (c) or (d) or
22 of any of the rules promulgated pursuant to such sections
23 or pursuant to section 215, 218, or 219. Such refunds
24 shall be ordered only to the extent that the Commission
25 or a court finds that such violation resulted in unlawful
26 charges and shall be made to such persons or classes of

1 persons as the Commission determines reasonably rep-
2 resent the persons from whom amounts were improperly
3 received by reason of such violation. No refunds shall be
4 required under this section unless—

5 “(1) the Commission issues an order advising
6 the carrier of its potential refund liability and pro-
7 vides the carrier with an opportunity to file written
8 comments as to why refunds should not be required;
9 and

10 “(2) such order is issued not later than 5 years
11 after the date the charge was paid.

12 In the case of a continuing violation, a violation shall be
13 considered to occur on each date that the violation is re-
14 peated.”.

15 **SEC. 3019. LICENSING OF AVIATION AND MARITIME SERV-**
16 **ICES BY RULE.**

17 Section 307(e) of the Communications Act of 1934
18 (47 U.S.C. 307(e)) is amended to read as follows:

19 “(e)(1) Notwithstanding any license requirement es-
20 tablished in this Act, if the Commission determines that
21 such authorization serves the public interest, convenience,
22 and necessity, the Commission may by rule authorize the
23 operation of radio stations without individual licenses in
24 the following radio services: (A) the aviation radio service
25 for aircraft stations operated on domestic flights when

1 such aircraft are not otherwise required to carry a radio
2 station; and (B) the maritime radio service for ship sta-
3 tions navigated on domestic voyages when such ships are
4 not otherwise required to carry a radio station.

5 “(2) Any radio station operator who is authorized by
6 the Commission to operate without an individual license
7 shall comply with all other provisions of this Act and with
8 rules prescribed by the Commission under this Act.

9 “(3) For purposes of this subsection, the terms ‘air-
10 craft station’ and ‘ship station’ shall have the meanings
11 given them by the Commission by rule.”.

12 **SEC. 3020. AUCTION TECHNICAL AMENDMENTS.**

13 (a) **FUNDING AVAILABILITY.**—Section 309(j)(8)(B)
14 of the Communications Act of 1934 (47 U.S.C.
15 309(j)(8)(B)) is amended by adding at the end the follow-
16 ing new sentence: “Such offsetting collections are author-
17 ized to remain available until expended.”.

18 (b) **ESCROW OF DEPOSITS.**—Section 309(j)(8) of
19 such Act is further amended by adding at the end the fol-
20 lowing new subparagraph:

21 “(C) **ESCROW OF DEPOSIT.**—The Commis-
22 sion is authorized, based on the competitive bid-
23 ding methodology selected, to provide for the
24 deposit of moneys for bids in an interest-bear-
25 ing account until such time as the Commission

1 accepts a deposit from the high bidder. All in-
2 terest earned on bid moneys received from the
3 winning bidder shall be deposited into the gen-
4 eral fund of the Treasury. All interest earned
5 on bid moneys deposited from unsuccessful bid-
6 ders, less any applicable fees and penalties,
7 shall be paid to those bidders.”.

8 **SEC. 3021. FORFEITURES FOR VIOLATIONS IMPERILING**
9 **SAFETY OF LIFE.**

10 (a) ADMINISTRATIVE SANCTIONS.—Section 312(a) of
11 the Communications Act of 1934 (47 U.S.C. 312(a)) is
12 amended—

13 (1) by striking “or” at the end of paragraph
14 (6);

15 (2) by striking the period at the end of para-
16 graph (7) and inserting “; or”; and

17 (3) by adding at the end the following new
18 paragraph:

19 “(8) for failure to comply with any requirement
20 of this Act or the Commission’s rules that imperils
21 the safety of life.”.

22 (b) FORFEITURES.—Section 503(b)(1) of such Act
23 (47 U.S.C. 503(b)(1)) is amended—

24 (1) by striking “or” at the end of subparagraph
25 (C);

1 (2) by striking the semicolon at the end of sub-
2 paragraph (D) and inserting “; or”; and

3 (3) by adding after subparagraph (D) the fol-
4 lowing new subparagraph:

5 “(E) failed to comply with any requirement of
6 this Act or the Commission’s rules that imperils the
7 safety of life;”.

8 **SEC. 3022. USE OF EXPERTS AND CONSULTANTS.**

9 Section 4(f)(1) of the Communications Act of 1934
10 (47 U.S.C. 154) is amended by adding at the end thereof
11 the following: “The Commission may also procure the
12 services of experts and consultants in accordance with sec-
13 tion 3109 of title 5, United States Code, relating to ap-
14 pointments in the Federal Service, at rates of compensa-
15 tion for individuals not to exceed the daily rate equivalent
16 to the maximum rate payable for senior-level positions
17 under section 5276 of title 5, United States Code.”.

18 **SEC. 3023. STATUTE OF LIMITATIONS FOR FORFEITURE**
19 **PROCEEDINGS AGAINST COMMON CARRIERS.**

20 Section 503(b)(6) of the Communications Act of
21 1934 (47 U.S.C. 503(b)(6)) is amended—

22 (1) by striking “or” at the end of subparagraph
23 (A);

24 (2) by inserting “and is not a common carrier”
25 after “title III of this Act” in subparagraph (B);

1 (3) by redesignating subparagraph (B) as sub-
2 paragraph (C); and

3 (4) by inserting after subparagraph (A) the fol-
4 lowing new subparagraph:

5 “(B) such person is a common carrier and the
6 required notice of apparent liability is issued more
7 than 5 years after the date the violation charged oc-
8 curred; or”.

9 **SEC. 3024. UTILIZATION OF FM BAND FOR ASSISTIVE DE-**
10 **VICES FOR HEARING IMPAIRED INDIVID-**
11 **UALS.**

12 Within 6 months after the date of enactment of this
13 Act, the Federal Communications Commission shall report
14 to the Congress on the existing and future use of the FM
15 band to facilitate the use of auditory assistive devices for
16 individuals with hearing impairments. In preparing such
17 report, the Commission shall consider—

18 (1) the potential for utilizing FM band auditory
19 assistive devices to comply with the American with
20 Disabilities Act;

21 (2) the impact on such compliance of the vul-
22 nerability of such devices to harmful interference
23 from radio licensees; and

24 (3) alternative frequency allocations that could
25 facilitate such compliance.

1 **SEC. 3025. TECHNICAL AMENDMENT.**

2 Section 302(d)(1) of the Communications Act of
3 1934 (47 U.S.C. 309(d)(1)) is amended—

4 (1) in subparagraph (A), by striking “allocated
5 to the domestic cellular radio telecommunications
6 service” and inserting “utilized to provide commer-
7 cial mobile service (as defined in section 332(d))”;
8 and

9 (2) in subparagraph (C), by striking “cellular”
10 and inserting “commercial mobile service”.

11 **Subtitle B—Nuclear Regulatory**
12 **Commission Annual Charge**

13 **SEC. 3031. NUCLEAR REGULATORY COMMISSION ANNUAL**
14 **CHARGES.**

15 Section 6101(a)(3) of the Omnibus Budget Reconcili-
16 ation Act of 1990 (42 U.S.C. 2214(a)(3)) is amended by
17 striking “September 30, 1998” and inserting “September
18 30, 2002”.

19 **Subtitle C—United States**
20 **Enrichment Corporation**

21 **SEC. 3035. SHORT TITLE AND REFERENCE.**

22 (a) **SHORT TITLE.**—This subtitle may be cited as the
23 “USEC Privatization Act”.

24 (b) **REFERENCE.**—Except as otherwise expressly pro-
25 vided, whenever in this subtitle an amendment or repeal
26 is expressed in terms of an amendment to, or repeal of,

1 a section or other provision, the reference shall be consid-
2 ered to be made to a section or other provision of the
3 Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

4 **SEC. 3036. PRODUCTION FACILITY.**

5 Paragraph v. of section 11 (42 U.S.C. 2014 v.) is
6 amended by striking “or the construction and operation
7 of a uranium enrichment production facility using Atomic
8 Vapor Laser Isotope Separation technology”.

9 **SEC. 3037. DEFINITIONS.**

10 Section 1201 (42 U.S.C. 2297) is amended—

11 (1) in paragraph (4), by inserting before the pe-
12 riod the following: “and any successor corporation
13 established through privatization of the Corpora-
14 tion”;

15 (2) by redesignating paragraphs (10) through
16 (13) as paragraphs (14) through (17), respectively,
17 and by inserting after paragraph (9) the following
18 new paragraphs:

19 “(10) The term ‘low-level radioactive waste’ has
20 the meaning given such term in section 102(9) of
21 the Low-Level Radioactive Waste Policy Amend-
22 ments Act of 1985 (42 U.S.C. 2021b(9)).

23 “(11) The term ‘mixed waste’ has the meaning
24 given such term in section 1004(41) of the Solid
25 Waste Disposal Act (42 U.S.C. 6903(41)).

1 “(12) The term ‘privatization’ means the trans-
2 fer of ownership of the Corporation to private inves-
3 tors pursuant to chapter 25.

4 “(13) The term ‘privatization date’ means the
5 date on which 100 percent of ownership of the Cor-
6 poration has been transferred to private investors.”;

7 (3) by inserting after paragraph (17) (as redes-
8 ignated) the following new paragraph:

9 “(18) The term ‘transition date’ means July 1,
10 1993.”;

11 (4) by redesignating the unredesignated para-
12 graph (14) as paragraph (19); and

13 (5) by adding the following new paragraphs
14 after paragraph (19):

15 “(20) The term ‘gaseous diffusion plants’
16 means the Paducah Gaseous Diffusion Plant at Pa-
17 ducah, Kentucky and the Portsmouth Gaseous Dif-
18 fusion Plant at Piketon, Ohio.

19 “(21) The term ‘private corporation’ means the
20 corporation established under section 1503.

21 “(22) The term ‘Russian HEU agreement’
22 means the Agreement Between the Government of
23 the United States of America and the Government
24 of the Russian Federation Concerning the Disposi-

1 tion of Highly Enriched Uranium Extracted from
2 Nuclear Weapons, dated February 18, 1993.

3 “(23) The term ‘Suspension Agreement’ means
4 the Agreement to Suspend the Antidumping Inves-
5 tigation on Uranium from the Russian Federation,
6 as amended.”.

7 **SEC. 3038. EMPLOYEES OF THE CORPORATION.**

8 (a) PARAGRAPHS (1) AND (2).—Section 1305(e) (42
9 U.S.C. 2297b–4(e)) is amended by striking paragraphs
10 (1) and (2) and inserting in thereof the following:

11 “(1) IN GENERAL.—

12 “(A) Privatization shall not diminish the
13 accrued, vested pension benefits of employees of
14 the Corporation’s operating contractor at the
15 two gaseous diffusion plants.

16 “(B) In the event that the private corpora-
17 tion terminates or changes the contractor at ei-
18 ther or both of the gaseous diffusion plants, the
19 plan sponsor or other appropriate fiduciary of
20 the pension plan covering employees of the
21 prior operating contractor shall arrange for the
22 transfer of all plan assets and liabilities relating
23 to accrued pension benefits of such plan’s par-
24 ticipants and beneficiaries from such plan to a

1 pension plan sponsored by the new contractor
2 or the private corporation, as the case may be.

3 “(C) Any employer (including the private
4 corporation or any contractor of the private cor-
5 poration) at a gaseous diffusion plant shall
6 abide by the terms of any unexpired collective
7 bargaining agreement covering employees in
8 bargaining units at the plant and in effect on
9 the privatization date until the expiration of the
10 agreement.

11 “(D) In the event of a plant closing or
12 mass layoff (as such terms are defined in sec-
13 tion 2101(a)(2) and (3) of title 29, United
14 States Code) at either of the gaseous diffusion
15 plants, the Secretary of Energy shall treat such
16 plant as a Department of Energy defense nu-
17 clear facility and any person employed by an
18 operating contractor on the privatization date
19 at either plant as a Department of Energy em-
20 ployee for purposes of sections 3161 through
21 3163 of the National Defense Authorization Act
22 for Fiscal Year 1993 (42 U.S.C. 7274h–7274j).

23 “(E) The Department of Energy and the
24 private corporation shall continue to fund post-
25 retirement health benefits for persons employed

1 by an operating contractor at either of the gas-
2 eous diffusion plants at substantially the same
3 level of coverage as eligible retirees are entitled
4 to receive on the privatization date, consistent
5 with clauses (i) through (iii), except that the
6 Department of Energy, the private corporations
7 and the operating contractor shall have the
8 right to implement cost-saving measures, in-
9 cluding (but not limited to) preferred provider
10 organizations, managed care programs, manda-
11 tory second opinions before surgery or other
12 medical procedures, and mandatory use of ge-
13 neric drugs, that do not materially diminish the
14 overall quality of the medical care provided—

15 “(i) persons eligible for this coverage
16 shall be limited to persons who retired
17 from active employment at one of the gas-
18 eous diffusion plants as of the privatization
19 date, as vested participants in a pension
20 plan maintained either by the Corpora-
21 tion’s operating contractor or by a contrac-
22 tor employed prior to July 1, 1993, by the
23 Department of Energy to operate either of
24 the gaseous diffusion plants and persons
25 who, as of the privatization date, are em-

1 employed by the Corporation's operating con-
2 tractor and are vested participants in a
3 pension plan maintained either by the Cor-
4 poration's operating contractor or by a
5 contractor employed prior to July 1, 1993,
6 by the Department of Energy to operate
7 either of the gaseous diffusion plants;

8 “(ii) for persons who retired from em-
9 ployment with an operating contractor
10 prior to July 1, 1993, the Department of
11 Energy shall fund the entire cost of post-
12 retirement health benefits; and

13 “(iii) for persons who retire from em-
14 ployment with an operating contractor
15 after July 1, 1993, the Department of En-
16 ergy and the private corporation shall fund
17 the cost of postretirement health benefits
18 in proportion to the retired persons' years
19 and months of service at a gaseous diffu-
20 sion plant under their respective manage-
21 ment.”.

22 (b) PARAGRAPH (4).—Paragraph (4) of section
23 1305(e) (42 U.S.C. 2297b–4(e)(4)) is amended—

24 (1) by striking “AND DETAILEES” in the head-
25 ing;

1 (2) by striking the first sentence;

2 (3) in the second sentence, by inserting “from
3 other Federal employment” after “transfer to the
4 Corporation”; and

5 (4) by striking the last sentence.

6 **SEC. 3039. MARKETING AND CONTRACTING AUTHORITY.**

7 (a) **MARKETING AUTHORITY.**—Section 1401(a) (42
8 U.S.C. 2297c(a)) is amended effective on the privatization
9 date (as defined in section 1201(13) of the Atomic Energy
10 Act of 1954)—

11 (1) by amending the subsection heading to read
12 “**MARKETING AUTHORITY.**—”; and

13 (2) by striking the first sentence.

14 (b) **TRANSFER OF CONTRACTS.**—Section 1401(b) (42
15 U.S.C. 2297c(b)) is amended—

16 (1) in paragraph (2)(B), by adding at the end
17 the following: “The privatization of the Corporation
18 shall not affect the terms of, or the rights or obliga-
19 tions of the parties to, any such power purchase con-
20 tract.”; and

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

22 “(3) **EFFECT OF TRANSFER.**—

23 “(A) As a result of the transfer pursuant
24 to paragraph (1), all rights, privileges, and ben-
25 efits under such contracts, agreements, and

1 leases, including the right to amend, modify, ex-
2 tend, revise, or terminate any of such contracts,
3 agreements, or leases were irrevocably assigned
4 to the Corporation for its exclusive benefit.

5 “(B) Notwithstanding the transfer pursu-
6 ant to paragraph (1), the United States shall
7 remain obligated to the parties to the contracts,
8 agreements, and leases transferred pursuant to
9 paragraph (1) for the performance of the obli-
10 gations of the United States thereunder during
11 the term thereof. The Corporation shall reim-
12 burse the United States for any amount paid by
13 the United States in respect of such obligations
14 arising after the privatization date to the extent
15 such amount is a legal and valid obligation of
16 the Corporation then due.

17 “(C) After the privatization date, upon any
18 material amendment, modification, extension,
19 revision, replacement, or termination of any
20 contract, agreement, or lease transferred under
21 paragraph (1), the United States shall be re-
22 leased from further obligation under such con-
23 tract, agreement, or lease, except that such ac-
24 tion shall not release the United States from

1 obligations arising under such contract, agree-
2 ment, or lease prior to such time.”.

3 (c) PRICING.—Section 1402 (42 U.S.C. 2297c–1) is
4 amended to read as follows:

5 “SEC. 1402. PRICING.

6 “The Corporation shall establish prices for its prod-
7 ucts, materials, and services provided to customers on a
8 basis that will allow it to attain the normal business objec-
9 tives of a profitmaking corporation.”.

10 (d) LEASING OF GASEOUS DIFFUSION FACILITIES OF
11 DEPARTMENT.—Effective on the privatization date (as de-
12 fined in section 1201(13) of the Atomic Energy Act of
13 1954), section 1403 (42 U.S.C. 2297c–2) is amended by
14 adding at the end the following:

15 “(h) LOW-LEVEL RADIOACTIVE WASTE AND MIXED
16 WASTE.—

17 “(1) RESPONSIBILITY OF THE DEPARTMENT;
18 COSTS.—

19 “(A) With respect to low-level radioactive
20 waste and mixed waste generated by the Cor-
21 poration as a result of the operation of the fa-
22 cilities and related property leased by the Cor-
23 poration pursuant to subsection (a) or as a re-
24 sult of treatment of such wastes at a location
25 other than the facilities and related property

1 leased by the Corporation pursuant to sub-
2 section (a) the Department, at the request of
3 the Corporation, shall—

4 “(i) accept for treatment or disposal
5 of all such wastes for which treatment or
6 disposal technologies and capacities exist,
7 whether within the Department or else-
8 where; and

9 “(ii) accept for storage (or ultimately
10 treatment or disposal) all such wastes for
11 which treatment and disposal technologies
12 or capacities do not exist, pending develop-
13 ment of such technologies or availability of
14 such capacities for such wastes.

15 “(B) All low-level wastes and mixed wastes
16 that the Department accepts for treatment,
17 storage, or disposal pursuant to subparagraph
18 (A) shall, for the purpose of any permits, li-
19 censes, authorizations, agreements, or orders
20 involving the Department and other Federal
21 agencies or State or local governments, be
22 deemed to be generated by the Department and
23 the Department shall handle such wastes in ac-
24 cordance with any such permits, licenses, au-
25 thorizations, agreements, or orders. The De-

1 partment shall obtain any additional permits, li-
2 censes, or authorizations necessary to handle
3 such wastes, shall amend any such agreements
4 or orders as necessary to handle such wastes,
5 and shall handle such wastes in accordance
6 therewith.

7 “(C) The Corporation shall reimburse the
8 Department for the treatment, storage, or dis-
9 posal of low-level radioactive waste or mixed
10 waste pursuant to subparagraph (A) in an
11 amount equal to the Department’s costs but in
12 no event greater than an amount equal to that
13 which would be charged by commercial, State,
14 regional, or interstate compact entities for
15 treatment, storage, or disposal of such waste.

16 “(2) AGREEMENTS WITH OTHER PERSONS.—
17 The Corporation may also enter into agreements for
18 the treatment, storage, or disposal of low-level radio-
19 active waste and mixed waste generated by the Cor-
20 poration as a result of the operation of the facilities
21 and related property leased by the Corporation pur-
22 suant to subsection (a) with any person other than
23 the Department that is authorized by applicable laws
24 and regulations to treat, store, or dispose of such
25 wastes.”.

1 (e) LIABILITIES.—

2 (1) Subsection (a) of section 1406 (42 U.S.C.
3 2297c–5(a)) is amended—

4 (A) by inserting “AND PRIVATIZATION”
5 after “TRANSITION” in the heading; and

6 (B) by adding at the end the following:
7 “As of the privatization date, all liabilities at-
8 tributable to the operation of the Corporation
9 from the transition date to the privatization
10 date shall be direct liabilities of the United
11 States.”.

12 (2) Subsection (b) of section 1406 (42 U.S.C.
13 2297c–5(b)) is amended—

14 (A) by inserting “AND PRIVATIZATION”
15 after “TRANSITION” in the heading; and

16 (B) by adding at the end the following:
17 “As of the privatization date, any judgment en-
18 tered against the Corporation imposing liability
19 arising out of the operation of the Corporation
20 from the transition date to the privatization
21 date shall be considered a judgment against the
22 United States.”.

23 (3) Subsection (d) of section 1406 (42 U.S.C.
24 2297c–5(d)) is amended—

1 (A) by inserting “AND PRIVATIZATION”
2 after “TRANSITION” in the heading; and

3 (B) by striking “the transition date” and
4 inserting “the privatization date (or, in the
5 event the privatization date does not occur, the
6 transition date)”.

7 (f) TRANSFER OF URANIUM.—

8 (1) AMENDMENT.—Title II (42 U.S.C. 2297 et
9 seq.) is amended by redesignating section 1408 as
10 section 1409 and by inserting after section 1407 the
11 following:

12 **“SEC. 1408. URANIUM TRANSFERS AND SALES.**

13 **“(a) TRANSFERS AND SALES BY THE SECRETARY.—**
14 The Secretary shall not provide enrichment services or
15 transfer or sell any uranium (including natural or enriched
16 uranium in any form) to any person except as provided
17 in this section.

18 **“(b) RUSSIAN HEU.—**

19 (1) TRANSFERS.—Prior to December 31, 1996,
20 the United States Executive Agent under the Rus-
21 sian HEU Agreement shall transfer to the Secretary
22 without charge an amount of uranium hexafluoride
23 equivalent to the natural uranium component of low-
24 enriched uranium derived from at least 18 metric
25 tons of highly enriched uranium purchased from the

1 Russian Executive Agent under the Russian HEU
2 Agreement. The quantity of such uranium
3 hexafluoride delivered to the Secretary shall be
4 based on a tails assay of 0.30 U235. Title to ura-
5 nium hexafluoride delivered to the Secretary pursu-
6 ant to this paragraph shall transfer to the Secretary
7 upon delivery of such material to the Secretary. Ura-
8 nium hexafluoride delivered to the Secretary pursu-
9 ant to this paragraph shall be deemed to be of Rus-
10 sian origin.

11 “(2) CONTRACTS.—Within 7 years of the date
12 of enactment of the USEC Privatization Act, the
13 Secretary shall enter into contracts to sell the ura-
14 nium hexafluoride transferred to the Secretary pur-
15 suant to paragraph (1). Such uranium hexafluoride
16 shall be sold—

17 “(A) at any time for use in the United
18 States for the purpose of overfeeding;

19 “(B) at any time for use outside the Unit-
20 ed States; and

21 “(C) for consumption by end users in the
22 United States not prior to January 1, 2002, in
23 volumes not to exceed 3 million pounds U3O8
24 equivalent per year.

1 “(3) URANIUM HEXAFLUORIDE.—With respect
2 to all low-enriched uranium that is delivered to the
3 United States Executive Agent under the Russian
4 HEU Agreement after January 1, 1997, the United
5 States Executive Agent shall, upon request of the
6 Russian Executive Agent, deliver to the Russian Ex-
7 ecutive Agent an amount of uranium hexafluoride
8 equivalent to the natural uranium component of
9 such low-enriched uranium simultaneously with the
10 delivery of such low-enriched uranium. The quantity
11 of such uranium hexafluoride delivered to the Rus-
12 sian Executive Agent shall be based on a tails assay
13 of 0.30 U235. Title to uranium hexafluoride deliv-
14 ered to the Russian Executive Agent pursuant to
15 this paragraph shall transfer to the Russian Execu-
16 tive Agent upon delivery of such material to the
17 Russian Executive Agent at a North American facil-
18 ity designated by the Russian Executive Agent. Ura-
19 nium hexafluoride delivered to the Russian Execu-
20 tive Agent pursuant to this paragraph shall be
21 deemed to be of Russian origin. Such uranium
22 hexafluoride may be sold to any person or entity
23 consistent with the limitations on delivery to end
24 users set forth in this subsection. Nothing in this

1 subsection shall restrict the sale of the conversion
2 component of such uranium hexafluoride.

3 “(4) INDEPENDENT PARTY.—In the event that
4 the Russian Executive Agent does not request deliv-
5 ery of the natural uranium component of any low-
6 enriched uranium, as contemplated in paragraph (3),
7 within 90 days of the date such low-enriched ura-
8 nium is delivered to the United States Executive
9 Agent, then the United States Executive Agent shall
10 engage an independent party through a competitive
11 selection process to auction an amount of uranium
12 hexafluoride equivalent to the natural uranium com-
13 ponent of such low-enriched uranium. Such inde-
14 pendent party shall sell such uranium hexafluoride
15 to any person or entity consistent with the limita-
16 tions set forth in this subsection. The independent
17 entity shall pay to the Russian Executive Agent the
18 proceeds of any such auction less all transaction and
19 other administrative costs. The quantity of such ura-
20 nium hexafluoride auctioned shall be based on a tails
21 assay of 0.30 U235. Title to uranium hexafluoride
22 auctioned pursuant to this paragraph shall transfer
23 to the buyer of such material upon delivery of such
24 material to the buyer. Uranium hexafluoride auc-

tioned pursuant to this paragraph shall be deemed to be of Russian origin.

“(5) CONSUMPTION.—Except as provided in paragraphs (6) and (7), uranium hexafluoride delivered to the Secretary under paragraph (1) or the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4), may not be delivered for consumption by end users in the United States prior to January 1, 1998 and thereafter only in accordance with the following schedule:

“Year	Annual Maximum Deliveries to End Users (millions lbs. U ₃ O ₈ equivalent)
1998	2 million lbs. U ₃ O ₈ equivalent
1999	4 million lbs. U ₃ O ₈ equivalent
2000	6 million lbs. U ₃ O ₈ equivalent
2001	8 million lbs. U ₃ O ₈ equivalent
2002	10 million lbs. U ₃ O ₈ equivalent
2003	12 million lbs. U ₃ O ₈ equivalent
2004	14 million lbs. U ₃ O ₈ equivalent
2005 and each year thereafter	16 million lbs. U ₃ O ₈ equivalent

“(6) MATCHED SALES.—Uranium hexafluoride delivered to the Secretary under paragraph (1) or the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time as Russian-origin natural uranium in a sale with an equal portion of U.S.-origin natural uranium pursuant to the Suspension Agreement and in such case shall not be counted against the annual maximum deliveries set forth in paragraph (5).

1 “(7) OVERFEEDING.—Uranium hexafluoride de-
2 livered to the Secretary under paragraph (1) or the
3 Russian Executive Agent under paragraph (3) or
4 auctioned pursuant to paragraph (4) may be sold at
5 any time for use in the United States for the pur-
6 pose of overfeeding in the operations of enrichment
7 facilities.

8 “(C) TRANSFERS TO THE CORPORATION.—(1) Before
9 the privatization date, the Secretary may transfer to the
10 Corporation without charge the low enriched uranium
11 from up to 50 metric tons of highly enriched uranium and
12 up to 7,000 metric tons of natural uranium, subject to
13 the restrictions in subsection (b)(2).

14 “(2) The Corporation (or its successor) may not de-
15 liver for commercial end use—

16 “(A) any of the natural uranium transferred
17 under this subsection before January 1, 1998;

18 “(B) more than 10 percent of the natural ura-
19 nium (by uranium hexafluoride equivalent content)
20 transferred under this subsection or more than 4
21 million pounds, whichever is less, in any calendar
22 year after 1997; or

23 “(C) more than 800,000 separative work units
24 of low-enriched uranium transferred under this sub-
25 section in any calendar year.

1 “(d) INVENTORY SALES.—(1) In addition to the
2 transfers authorized under subsection (b), the Secretary
3 may, from time to time, sell natural and low-enriched ura-
4 nium (including low-enriched uranium derived from highly
5 enriched uranium) from the Department of Energy s
6 stockpile.

7 “(2) Except as provided in subsections (b) and (d),
8 no sale or transfer of natural or low-enriched uranium
9 shall be made unless—

10 “(A) the President determines that the material
11 is not necessary to national security needs,

12 “(B) the Secretary determines that the sale of
13 the material will not have an adverse impact on the
14 domestic uranium mining and enrichment industries,
15 taking into account the sales of uranium under the
16 Russian HEU Agreement and the Suspension Agree-
17 ment, and

18 “(C) the price paid to the Secretary will not be
19 less than the fair market value of the material.

20 “(e) GOVERNMENT TRANSFERS.—Notwithstanding
21 subsection (c), the Secretary may transfer or sell low-en-
22 riched uranium—

23 “(1) to a federal agency if the material is trans-
24 ferred for the use of the receiving agency without

1 any resale or transfer to another entity and the ma-
 2 terial does not meet commercial specifications;

3 “(2) to any person for national security pur-
 4 poses, as determined by the Secretary; or

5 “(3) to any state or local agency or nonprofit,
 6 charitable, or educational institution for use other
 7 than the generation of electricity for commercial
 8 use.”.

9 (2) CONFORMING AMENDMENT.—The table of
 10 contents for chapter 24 is amended by redesignating
 11 the item relating to section 1408 as the item relat-
 12 ing to section 1409 and by inserting after the item
 13 for section 1407 the following:

“Sec. 1408. Uranium transfers and sales.”.

14 **SEC. 3040. PRIVATIZATION OF THE CORPORATION.**

15 (a) ESTABLISHMENT OF PRIVATE CORPORATION.—
 16 Chapter 25 (42 U.S.C. 2297d et seq.) is amended by add-
 17 ing at the end the following new section:

18 **“SEC. 1503. ESTABLISHMENT OF PRIVATE CORPORATION.**

19 “(a) ESTABLISHMENT.—

20 “(1) IN GENERAL.—In order to facilitate pri-
 21 vatization, the Corporation may provide for the es-
 22 tablishment of a private corporation organized under
 23 the laws of any of the several States. Such corpora-
 24 tion shall have among its purposes the following:

1 “(A) To help maintain a reliable and eco-
2 nomical domestic source of uranium enrichment
3 services.

4 “(B) To undertake any and all activities as
5 provided in its corporate charter.

6 “(2) AUTHORITIES.—The corporation estab-
7 lished pursuant to paragraph (1) shall be authorized
8 to—

9 “(A) enrich uranium, provide for uranium
10 to be enriched by others, or acquire enriched
11 uranium (including low-enriched uranium de-
12 rived from highly enriched uranium);

13 “(B) conduct, or provide for conducting,
14 those research and development activities relat-
15 ed to uranium enrichment and related processes
16 and activities the corporation considers nec-
17 essary or advisable to maintain itself as a com-
18 mercial enterprise operating on a profitable and
19 efficient basis;

20 “(C) enter into transactions regarding ura-
21 nium, enriched uranium, or depleted uranium
22 with—

23 “(i) persons licensed under section 53,
24 63, 103, or 104 in accordance with the li-
25 censes held by those persons;

1 “(ii) persons in accordance with, and
2 within the period of, an agreement for co-
3 operation arranged under section 123; or

4 “(iii) persons otherwise authorized by
5 law to enter into such transactions;

6 “(D) enter into contracts with persons li-
7 censed under section 53, 63, 103, or 104, for
8 as long as the corporation considers necessary
9 or desirable, to provide uranium or uranium en-
10 richment and related services;

11 “(E) enter into contracts to provide ura-
12 nium or uranium enrichment and related serv-
13 ices in accordance with, and within the period
14 of, an agreement for cooperation arranged
15 under section 123 or as otherwise authorized by
16 law; and

17 “(F) take any and all such other actions as
18 are permitted by the law of the jurisdiction of
19 incorporation of the corporation.

20 “(3) TRANSFER OF ASSETS.—For purposes of
21 implementing the privatization, the Corporation may
22 transfer some or all of its assets and obligations to
23 the corporation established pursuant to this section,
24 including—

1 “(A) all of the Corporation’s assets and
2 obligations, including all of the Corporation’s
3 rights, duties, and obligations accruing subse-
4 quent to the privatization date under contracts,
5 agreements, and leases entered into by the Cor-
6 poration before the privatization date, including
7 all uranium enrichment contracts and power
8 purchase contracts;

9 “(B) all funds in accounts of the Corpora-
10 tion held by the Treasury or on deposit with
11 any bank or other financial institution;

12 “(C) all of the Corporation’s rights, duties,
13 and obligations, accruing subsequent to the pri-
14 vatization date, under the power purchase con-
15 tracts covered by section 1401(b)(2)(B);

16 “(D) all of the Corporation’s rights, duties,
17 and obligations, accruing subsequent to the pri-
18 vatization date, under the lease agreement be-
19 tween the Department and the Corporation exe-
20 cuted by the Department and the Corporation
21 pursuant to section 1403; and

22 “(E) all of the Corporation’s records, in-
23 cluding all of the papers and other documentary
24 materials, regardless of physical form or char-

1 acteristics, made or received by the Corpora-
2 tion.

3 “(4) MERGER OR CONSOLIDATION.—For pur-
4 poses of implementing the privatization, the Cor-
5 poration may merge or consolidate with the corpora-
6 tion established pursuant to subsection (a)(1) if such
7 action is contemplated by the plan for privatization
8 approved by the President under section 1502(b).
9 The Board shall have exclusive authority to approve
10 such merger or consolidation and to take all further
11 actions necessary to consummate such merger or
12 consolidation, and no action by or in respect of
13 shareholders shall be required. The merger or con-
14 solidation shall be effected in accordance with, and
15 have the effects of a merger or consolidation under,
16 the laws of the jurisdiction of incorporation of the
17 surviving corporation, and all rights and benefits
18 provided under this title to the Corporation shall
19 apply to the surviving corporation as if it were the
20 Corporation.

21 “(b) OSHA REQUIREMENTS.—For purposes of the
22 regulation of radiological and nonradiological hazards
23 under the Occupational Safety and Health Act of 1970,
24 the corporation established pursuant to subsection (a)(1)
25 shall be treated in the same manner as other employers

1 licensed by the Nuclear Regulatory Commission. Any
2 interagency agreement entered into between the Nuclear
3 Regulatory Commission and the Occupational Safety and
4 Health Administration governing the scope of their respec-
5 tive regulatory authorities shall apply to the corporation
6 as if the corporation were a Nuclear Regulatory Commis-
7 sion licensee.

8 “(C) LEGAL STATUS OF PRIVATE CORPORATION.—

9 “(1) NOT FEDERAL AGENCY.—The corporation
10 established pursuant to subsection (a)(1) shall not
11 be an agency, instrumentality, or establishment of
12 the United States Government and shall not be a
13 Government corporation or Government-controlled
14 corporation.

15 “(2) NO RECOURSE AGAINST UNITED
16 STATES.—Obligations of the Corporation established
17 pursuant to subsection (a)(1) shall not be obliga-
18 tions of, or guaranteed as to principal or interest by,
19 the Corporation or the United States, and the obli-
20 gations shall so plainly state.

21 “(3) NO CLAIMS COURT JURISDICTION.—No ac-
22 tion under section 1491 of title 28, United States
23 Code, shall be allowable against the United States
24 based on the actions of the Corporation established
25 pursuant to subsection (a)(1).

1 “(d) BOARD OF DIRECTOR’S ELECTION AFTER PUB-
2 LIC OFFERING.—In the event that the privatization is im-
3 plemented by means of a public offering, an election of
4 the members of the board of directors of the Corporation
5 by the shareholders shall be conducted before the end of
6 the 1-year period beginning the date shares are first of-
7 fered to the public pursuant to such public offering.

8 “(e) ADEQUATE PROCEEDS.—The Secretary of En-
9 ergy shall not allow the privatization of the Corporation
10 unless before the sale date the Secretary determines that
11 the estimated sum of the gross proceeds from the sale of
12 the Corporation will be an adequate amount.”.

13 (b) OWNERSHIP LIMITATIONS.—Chapter 25 (as
14 amended by subsection (a)) is amended by adding at the
15 end the following new section:

16 **“SEC. 1504. OWNERSHIP LIMITATIONS.**

17 “(a) SECURITIES LIMITATION.—In the event that the
18 privatization is implemented by means of a public offering,
19 during a period of 3 years beginning on the privatization
20 date, no person, directly or indirectly, may acquire or hold
21 securities representing more than 10 percent of the total
22 votes of all outstanding voting securities of the Corpora-
23 tion.

24 “(b) APPLICATION.—Subsection (a) shall not apply—

1 “(1) to any employee stock ownership plan of
2 the Corporation,

3 “(2) to underwriting syndicates holding shares
4 for resale, or

5 “(3) in the case of shares beneficially held for
6 others, to commercial banks, broker-dealers, clearing
7 corporations, or other nominees.

8 “(c) ACQUISITIONS.—No director, officer, or em-
9 ployee of the Corporation may acquire any securities, or
10 any right to acquire securities, of the Corporation—

11 “(1) in the public offering of securities of the
12 Corporation in the implementation of the privatiza-
13 tion,

14 “(2) pursuant to any agreement, arrangement,
15 or understanding entered into before the privatiza-
16 tion date, or

17 “(3) before the election of directors of the Cor-
18 poration under section 1503(d) on any terms more
19 favorable than those offered to the general public.”.

20 (c) EXEMPTION FROM LIABILITY.—Chapter 25 (as
21 amended by subsection (b)) is amended by adding at the
22 end the following new section:

23 **“SEC. 1505. EXEMPTION FROM LIABILITY.**

24 “(a) IN GENERAL.—No director, officer, employee, or
25 agent of the Corporation shall be liable, for money dam-

1 ages or otherwise, to any party if, with respect to the sub-
2 ject matter of the action, suit, or proceeding, such person
3 was fulfilling a duty, in connection with any action taken
4 in connection with the privatization, which such person in
5 good faith reasonably believed to be required by law or
6 vested in such person.

7 “(b) EXCEPTION.—The privatization shall be subject
8 to the Securities Act of 1933 and the Securities Exchange
9 Act of 1934. The exemption set forth in subsection (a)
10 shall not apply to claims arising under such Acts or under
11 the Constitution or laws of any State, territory, or posses-
12 sion of the United States relating to transactions in secu-
13 rities, which claims are in connection with a public offer-
14 ing implementing the privatization.

15 “(c) SECURITIES LAWS APPLICABLE.—Any offering
16 or sale of securities by the Corporation established pursu-
17 ant to section 1503(a)(1) shall be subject to the Securities
18 Act of 1933, the Securities Exchange Act of 1934 and
19 the provisions of the Constitution and laws of any State,
20 territory, or possession of the United States relating to
21 transactions in securities.”.

22 (d) RESOLUTION OF CERTAIN ISSUES.—Chapter 25
23 (as amended by subsection (c)) is amended by adding at
24 the end the following new section:

1 **“SEC. 1506. RESOLUTION OF CERTAIN ISSUES.**

2 “(a) CORPORATION ACTIONS.—Notwithstanding any
3 provision of any agreement to which the Corporation is
4 a party, the Corporation shall not be considered to be in
5 breach, default, or violation of any such agreement be-
6 cause of any provision of this chapter or any action the
7 Corporation is required to take under this chapter.

8 “(b) RIGHT TO SUE WITHDRAWN.—The United
9 States hereby withdraws any stated or implied consent for
10 the United States, or any agent or officer of the United
11 States, to be sued by any person for any legal, equitable,
12 or other relief with respect to any claim arising out of,
13 or resulting from, acts or omissions under this chapter.”.

14 (e) ADDITIONAL PROVISIONS.—Chapter 25 (as
15 amended by subsection (d)) is amended by adding at the
16 end the following:

17 **“SEC. 1507. APPLICATION OF PRIVATIZATION PROCEEDS.**

18 “The proceeds from the privatization shall be in-
19 cluded in the budget baseline required by the Balanced
20 Budget and Emergency Deficit Control Act of 1985 and
21 shall be counted as an offset to direct spending for pur-
22 poses of section 252 of such Act, notwithstanding section
23 257(e) of such Act.”.

24 (f) CONFORMING AMENDMENT.—The table of con-
25 tents for chapter 25 is amended by inserting after the item
26 for section 1502 the following:

“Sec. 1503. Establishment of private corporation.

“Sec. 1504. Ownership limitations.

“Sec. 1505. Exemption from liability.

“Sec. 1506. Resolution of certain issues.

“Sec. 1507. Application of privatization proceeds.”.

1 (g) Section 193 (42 U.S.C. 2243) is amended by add-
2 ing at the end the following:

3 “(f) LIMITATION.—If the privatization of the United
4 States Enrichment Corporation results in the Corporation
5 being—

6 “(1) owned, controlled, or dominated by a for-
7 eign corporation or a foreign government, or

8 “(2) otherwise inimical to the common defense
9 or security of the United States,

10 any license held by the Corporation under sections 53 and
11 63 shall be terminated.”.

12 (h) PERIOD FOR CONGRESSIONAL REVIEW.—Section
13 1502(d) (42 U.S.C. 2297d–1(d)) is amended by striking
14 “less than 60 days after notification of the Congress” and
15 inserting “less than 60 days after the date of the report
16 to Congress by the Comptroller General under subsection
17 (c)”.

18 **SEC. 3041. PERIODIC CERTIFICATION OF COMPLIANCE.**

19 Section 1701(c)(2) (42 U.S.C. 2297f(c)(2)) is
20 amended by striking “ANNUAL APPLICATION FOR CER-
21 TIFICATE OF COMPLIANCE.—The Corporation shall apply
22 at least annually to the Nuclear Regulatory Commission
23 for a certificate of compliance under paragraph (1).” and

1 inserting “PERIODIC APPLICATION FOR CERTIFICATE OF
 2 COMPLIANCE.—The Corporation shall apply to the Nu-
 3 clear Regulatory Commission for a certificate of compli-
 4 ance under paragraph (1) periodically, as determined by
 5 the Nuclear Regulatory Commission, but not less than
 6 every 5 years.”.

7 **SEC. 3042. LICENSING OF OTHER TECHNOLOGIES.**

8 Subsection (a) of section 1702 (42 U.S.C. 2297f–
 9 1(a)) is amended by striking “other than” and inserting
 10 “including”.

11 **SEC. 3043. CONFORMING AMENDMENTS.**

12 (a) REPEALS IN ATOMIC ENERGY ACT OF 1954 AS
 13 OF THE PRIVATIZATION DATE.—

14 (1) REPEALS.—As of the privatization date (as
 15 defined in section 1201(13) of the Atomic Energy
 16 Act of 1954), the following sections (as in effect on
 17 such privatization date) of the Atomic Energy Act of
 18 1954 are repealed:

19 (A) Section 1202.

20 (B) Sections 1301 through 1304.

21 (C) Sections 1306 through 1316.

22 (D) Sections 1404 and 1405.

23 (E) Section 1601.

24 (F) Sections 1603 through 1607.

1 (2) CONFORMING AMENDMENT.—The table of
2 contents of such Act is amended by repealing the
3 items referring to sections repealed by paragraph
4 (1).

5 (b) STATUTORY MODIFICATIONS.—As of such privat-
6 ization date, the following shall take effect:

7 (1) For purposes of title I of the Atomic En-
8 ergy Act of 1954, all references in such Act to the
9 “United States Enrichment Corporation” shall be
10 deemed to be references to the corporation estab-
11 lished pursuant to section 1503 of the Atomic En-
12 ergy Act of 1954 (as added by section 3036(a)).

13 (2) Section 1018(1) of the Energy Policy Act of
14 1992 (42 U.S.C. 2296b–7(1)) is amended by strik-
15 ing “the United States” and all that follows through
16 the period and inserting “the corporation referred to
17 in section 1201(4) of the Atomic Energy Act of
18 1954.”.

19 (3) Section 9101(3) of title 31, United States
20 Code, is amended by striking subparagraph (N), as
21 added by section 902(b) of Public Law 102–486.

22 (c) REVISION OF SECTION 1305.—As of such privat-
23 ization date, section 1305 of the Atomic Energy Act of
24 1954 (42 U.S.C 2297b–4) is amended—

1 (1) by repealing subsections (a), (b), (c), and
2 (d), and

3 (2) in subsection (e)—

4 (A) by striking the subsection designation
5 and heading,

6 (B) by redesignating paragraph (1) (as
7 added by section 3038(a)) as subsection (a),
8 striking “IN GENERAL.—” and inserting “IN
9 GENERAL.—”, redesignating subparagraphs (A)
10 through (E) as paragraphs (1) through (5) (re-
11 designating in such paragraph, clauses (i)
12 through (iii) as subparagraphs (A) through
13 (C)), striking “clauses (i) through (iii)” in
14 paragraph (5) and inserting “subparagraphs
15 (A) through (C)”, and by moving the margins
16 2-ems to the left,

17 (C) by striking paragraph (3), and

18 (D) by redesignating paragraph (4) (as
19 amended by section 3038(b)) as subsection (b),
20 and by moving the margins 2-ems to the left.

1 **Subtitle D—Waste Isolation Pilot**
2 **Project**

3 **SEC. 3045. SHORT TITLE AND REFERENCE.**

4 (a) **SHORT TITLE.**—This subtitle may be cited as the
5 “Waste Isolation Pilot Plant Land Withdrawal Amend-
6 ment Act”.

7 (b) **REFERENCE.**—Except as otherwise expressly pro-
8 vided, whenever in this subtitle an amendment or repeal
9 is expressed in terms of an amendment to, or repeal of,
10 a section or other provision, the reference shall be consid-
11 ered to be made to a section or other provision of the
12 Waste Isolation Pilot Plant Land Withdrawal Act (Public
13 Law 102–579).

14 **SEC. 3046. DEFINITIONS.**

15 Paragraphs (18) and (19) of section 2 are repealed.

16 **SEC. 3047. TEST PHASE AND RETRIEVAL PLANS.**

17 Section 5 is repealed.

18 **SEC. 3048. TEST PHASE ACTIVITIES.**

19 Section 6 is amended—

20 (1) by repealing subsections (a) and (b),

21 (2) by repealing paragraph (1) of subsection

22 (c),

23 (3) by repealing subparagraph (A) of paragraph

24 (2) of subsection (c),

1 (4) by redesignating subsection (c) as sub-
2 section (a), by striking the subsection heading and
3 the matter before paragraph (1) and inserting
4 “STUDY.—The following study shall be conducted:”,
5 by striking “(2) REMOTE-HANDLED WASTE.—”, by
6 striking “(B) STUDY.—”, and by redesignating
7 clauses (i), (ii), and (iii) as paragraphs (1), (2), and
8 (3), respectively, and moving them 4-ems to the left,
9 and

10 (5) by redesignating subsection (d) as sub-
11 section (b).

12 **SEC. 3049. DISPOSAL OPERATIONS.**

13 Section 7(b) is repealed.

14 **SEC. 3050. ENVIRONMENTAL PROTECTION AGENCY DIS-**
15 **POSAL REGULATIONS.**

16 (a) SECTION 8(d)(1).—Section 8(d)(1) is amended by
17 striking subparagraphs (B), (C), and (D) and by adding
18 after subparagraph (A) the following:

19 “(B) COMMENTS OF ADMINISTRATOR.—
20 Within 2 months of receipt of the application
21 under subparagraph (A), the Administrator
22 shall provide the Secretary with any comments
23 on the Secretary’s application. Within one
24 month of the receipt of such comments, the
25 Secretary shall, to the extent practicable, incor-

1 porate the Administrator’s comments in the
2 Secretary’s application. The comments of the
3 Administrator provided to the Secretary should
4 also be transmitted to the appropriate commit-
5 tees of jurisdiction in the House of Representa-
6 tives and the Senate.”.

7 (b) SECTION 8(d) (2), (3).—Section 8(d) is amended
8 by striking paragraphs (2) and (3), by striking “(1) COM-
9 PLIANCE WITH DISPOSAL REGULATIONS.—”, and by re-
10 designating subparagraphs (A) and (B) of paragraph (1),
11 as amended by subsection (a), as paragraphs (1) and (2),
12 respectively, and moving them 2-ems to the left.

13 (c) SECTION 8(f).—Subsection (f) of section 8 is
14 amended—

15 (1) by amending the subsection heading to read
16 “PERIODIC REVIEW”, and

17 (2) by amending paragraph (2) to read as fol-
18 lows:

19 “(2) REVIEW BY THE ADMINISTRATOR.—The
20 Administrator shall, not later than 6 months after
21 receiving a submission under paragraph (1), com-
22 ment on whether or not the WIPP facility continues
23 to be in compliance with the final disposition regula-
24 tions.”.

1 (d) SECTION 8(g).—Section 8(g) is amended to read
2 as follows:

3 “(g) ENGINEERED AND NATURAL BARRIERS, ETC.—
4 The Secretary should determine whether or not engineered
5 barriers or natural barriers, or both, will be required at
6 WIPP consistent with regulations published as part 191
7 of 40 C.F.R.”.

8 **SEC. 3051. COMPLIANCE WITH ENVIRONMENTAL LAWS AND**
9 **REGULATIONS.**

10 (a) SECTION 9(a)(1).—Section 9(a)(1) is amended by
11 adding after and below subparagraph (H) the following:

12 “With respect to transuranic mixed waste designated
13 by the Secretary for disposal at WIPP, such waste
14 is exempt from the land disposal restrictions pub-
15 lished at part 268 of 40 C.F.R. because compliance
16 with the environmental radiation protection stand-
17 ards published at part 191 of 40 C.F.R. renders
18 compliance with the land disposal restrictions unnec-
19 essary to achieve desired environmental protection
20 and a no migration variance is not required for dis-
21 posal of transuranic mixed waste at WIPP.”.

22 (b) SECTION 9(b).—Subsection (b) of section 9 is re-
23 pealed.

24 (c) SECTIONS 9(c), (d).—Subsections (c) and (d) of
25 section 9 are repealed.

1 **SEC. 3052. RETRIEVABILITY.**

2 Section 10 is amended to read as follows:

3 **“SEC. 10. TRANSURANIC WASTE.**

4 “It is the intent of Congress that a decision will be
5 made by the Secretary with respect to the disposal of
6 transuranic waste no later than March 31, 1997.”.

7 **SEC. 3053. DECOMMISSIONING OF WIPP.**

8 Section 13 is amended—

9 (1) by repealing subsection (a), and

10 (2) in subsection (b), by striking “(b) MANAGE-
11 MENT PLAN FOR THE WITHDRAWAL AFTER DECOM-
12 MISSIONING.—Within 5 years after the date of the
13 enactment of this Act, the” and inserting “The”.

14 **SEC. 3054. ECONOMIC ASSISTANCE AND MISCELLANEOUS**
15 **PAYMENTS.**

16 Section 15(a) is amended—

17 (1) by striking “to the Secretary for payments
18 to the State \$20,000,000 for each of the 15 fiscal
19 years beginning with the fiscal year in which the
20 transport of transuranic waste to WIPP is initiated”
21 and inserting “to the State \$20,000,000 for each of
22 the 15 fiscal years beginning with the date of the en-
23 actment of the Waste Isolation Pilot Plant Land
24 Withdrawal Amendment Act”, and

1 (2) by adding at the end the following: “An ap-
2 appropriation to the State shall be in addition to any
3 appropriation for WIPP.”.

4 **SEC. 3055. NON-DEFENSE WASTE.**

5 Section 7(a) is amended by redesignating paragraph
6 (3) as paragraph (4) and by inserting after paragraph (2)
7 the following:

8 “(3) NONDEFENSE WASTE.—Within the capac-
9 ity prescribed by paragraph (4), WIPP may receive
10 transuranic waste from the Secretary which did not
11 result from a defense activity.”.

12 **Subtitle E—Naval Petroleum**
13 **Reserves**

14 **SEC. 3071. SHORT TITLE.**

15 This subtitle may be cited as the “Naval Petroleum
16 Reserve Privatization Act of 1995”.

17 **SEC. 3072. SALE OF NAVAL PETROLEUM RESERVES.**

18 (a) SALE OF RESERVES REQUIRED.—Chapter 641 of
19 title 10, United States Code, is amended by inserting after
20 section 7421 the following new section:

21 **“§ 7421a. Sale of naval petroleum reserves**

22 “(a) SALE REQUIRED.—(1) Notwithstanding any
23 other provision of this chapter, the Secretary shall sell all
24 right, title, and interest of the United States in and to
25 the lands owned or controlled by the United States inside

1 the naval petroleum and oil shale reserves established by
2 this chapter. In the case of Naval Petroleum Reserve
3 Numbered 1, the lands to be sold shall include sections
4 16 and 36 of township 30 south, range 23 east, Mount
5 Diablo Principal Meridian, California.

6 “(2) Not later than December 31, 1996, the Sec-
7 retary shall enter into one or more contracts for the sale
8 of all of the interest of the United States in the naval
9 petroleum reserves.

10 “(b) TIMING AND ADMINISTRATION OF SALE.—(1)
11 Not later than January 1, 1996, the Secretary shall retain
12 the services of five independent experts in the valuation
13 of oil and gas fields to conduct separate assessments, in
14 a manner consistent with commercial practices, of the fair
15 market value of the interest of the United States in each
16 naval petroleum reserve. In making their assessments for
17 each naval petroleum reserve, the independent experts
18 shall consider (among other factors) all equipment and fa-
19 cilities to be included in the sale, the net present value
20 of the reserve, and the net present value of the anticipated
21 revenue stream that the Secretary determines the Treas-
22 ury would receive from the reserve if it were not sold, ad-
23 justed for any anticipated increases in tax revenues that
24 would result if it were sold. The independent experts shall
25 complete their assessments not later than July 1, 1996.

1 In setting the minimum acceptable price for each naval
2 petroleum reserve, the Secretary shall consider the average
3 of the five assessments regarding the reserve or, if more
4 advantageous to the Government, the average of three as-
5 sessments after excluding the high and low assessments.

6 “(2) Not later than March 1, 1996, the Secretary
7 shall retain the services of an investment banker to inde-
8 pendently administer, in a manner consistent with com-
9 mercial practices and in a manner that maximizes sale
10 proceeds to the Government, the sale of the naval petro-
11 leum reserves under this section. The Secretary may enter
12 into the contracts required under this paragraph and
13 paragraph (1) on a noncompetitive basis.

14 “(3) Not later than August 1, 1996, the sales admin-
15 istrator selected under paragraph (2) shall complete a
16 draft contract for the sale of each naval petroleum reserve,
17 which shall accompany the invitation for bids and describe
18 the terms and provisions of the sale of the interest of the
19 United States in the reserve. Each draft contract shall
20 identify all equipment and facilities to be included in the
21 sales. Each draft contract, including the terms and provi-
22 sions of the sale of the interest of the United States in
23 the naval petroleum reserves, shall be subject to review
24 and approval by the Secretary, the Secretary of the Treas-

1 ury, and the Director of the Office of Management and
2 Budget.

3 “(4) Not later than September 1, 1996, the Secretary
4 shall publish an invitation for bids for the purchase of the
5 naval petroleum reserves.

6 “(5) Not later than November 1, 1996, the Secretary
7 shall accept the highest responsible offer for purchase of
8 the interest of the United States in the naval petroleum
9 reserves, or a particular reserve, that meets or exceeds the
10 minimum acceptable price determined under paragraph
11 (1). The Secretary may accept an offer for only a portion
12 of a reserve so long as the entire reserve is still sold under
13 this section at a price that meets or exceeds the minimum
14 acceptable price.

15 “(c) FUTURE LIABILITIES.—The United States shall
16 hold harmless and fully indemnify the purchaser of the
17 interest of the United States in a naval petroleum reserve
18 from and against any claim or liability as a result of own-
19 ership in the reserve by the United States.

20 “(d) SPECIAL RULES PREPARATORY TO SALE OF
21 NAVAL PETROLEUM RESERVE NUMBERED 1.—(1) Not
22 later than June 1, 1996, the Secretary shall finalize equity
23 interests of the known oil and gas zones in Naval Petro-
24 leum Reserve Numbered 1 in the manner provided by this
25 subsection.

1 “(2) The Secretary shall retain the services of an
2 independent petroleum engineer, mutually acceptable to
3 the equity owners, who shall prepare a recommendation
4 on final equity figures. The Secretary may accept the rec-
5 ommendation of the independent petroleum engineer for
6 final equity in each known oil and gas zone and establish
7 final equity interest in the Naval Petroleum Reserve Num-
8 bered 1 in accordance with such recommendation, or the
9 Secretary may use such other method to establish final
10 equity interest in that reserve as the Secretary considers
11 appropriate. The Secretary may enter into the contract re-
12 quired under this paragraph on a noncompetitive basis.

13 “(3) If, on the effective date of this section, there
14 is an ongoing equity redetermination dispute between the
15 equity owners under section 9(b) of the unit plan contract,
16 such dispute shall be resolved in the manner provided in
17 the unit plan contract not later than June 1, 1996. Such
18 resolution shall be considered final for all purposes under
19 this section.

20 “(4) In this section, the term ‘unit plan contract’
21 means the unit plan contract between equity owners of the
22 lands within the boundaries of Naval Petroleum Reserve
23 Numbered 1 (Elk Hills) entered into on June 19, 1944.

24 “(e) PRODUCTION ALLOCATION REGARDING NAVAL
25 PETROLEUM RESERVE NUMBERED 1.—(1) As part of the

1 contract for purchase of Naval Petroleum Reserve Num-
2 bered 1, the purchaser of the interest of the United States
3 in that reserve shall agree to make up to 25 percent of
4 the purchaser's share of annual petroleum production
5 from the purchased lands available for sale to small refin-
6 ers, which do not have their own adequate sources of sup-
7 ply of petroleum, for processing or use only in their own
8 refineries. None of the reserved production sold to small
9 refiners may be resold in kind. The purchaser of that re-
10 serve may reduce the quantity of petroleum reserved under
11 this subsection in the event of an insufficient number of
12 qualified bids. The seller of this petroleum production has
13 the right to refuse bids that are less than the prevailing
14 market price of comparable oil.

15 “(2) The purchaser of Naval Petroleum Reserve
16 Numbered 1 shall also agree to ensure that the terms of
17 every sale of the purchaser's share of annual petroleum
18 production from the purchased lands shall be so struc-
19 tured as to give full and equal opportunity for the acquisi-
20 tion of petroleum by all interested persons, including
21 major and independent oil producers and refiners alike.

22 “(f) MAINTAINING PRODUCTION PENDING SALE OF
23 NAVAL PETROLEUM RESERVE NUMBERED 1.—Until the
24 sale of Naval Petroleum Reserve Numbered 1 is completed
25 under this section, the Secretary shall continue to produce

1 that reserve at the maximum daily oil or gas rate from
2 a reservoir, which will permit maximum economic develop-
3 ment of the reservoir consistent with sound oil field engi-
4 neering practices in accordance with section 3 of the unit
5 plan contract. The definition of maximum efficient rate
6 in section 7420(6) of this title shall not apply to Naval
7 Petroleum Reserve Numbered 1.

8 “(g) EFFECT ON EXISTING CONTRACTS.—(1) In the
9 case of any contract, in effect on the effective date of this
10 section, for the purchase of production from any part of
11 the United States’ share of the naval petroleum reserves,
12 the sale of the interest of the United States in the reserves
13 shall be subject to the contract for a period of three
14 months after the closing date of the sale or until termi-
15 nation of the contract, whichever occurs first. The term
16 of any contract entered into after the effective date of this
17 section for the purchase of such production shall not ex-
18 ceed the anticipated closing date for the sale of the re-
19 serve.

20 “(2) In the case of Naval Petroleum Reserve Num-
21 bered 1, the Secretary shall exercise the termination pro-
22 cedures provided in the contract between the United
23 States and Bechtel Petroleum Operation, Inc., Contract
24 Number DE-ACO1-85FE60520 so that the contract ter-

1 minutes not later than the date of closing of the sale of
2 that reserve.

3 “(3) In the case of Naval Petroleum Reserve Num-
4 bered 1, the Secretary shall exercise the termination pro-
5 cedures provided in the unit plan contract so that the unit
6 plan contract terminates not later than the date of closing
7 of the sale of that reserve.

8 “(h) SET ASIDE OF SALE PROCEEDS ON ACCOUNT
9 OF CALIFORNIA CLAIMS REGARDING NAVAL PETROLEUM
10 RESERVE NUMBERED 1.—(1) An amount equal to seven
11 percent of the proceeds from the sale of Naval Petroleum
12 Reserve Numbered 1 shall be retained in a special account
13 in the Treasury for the purpose of paying any amount that
14 may be owed by the United States as a result of legal
15 action in connection with claims against the United States
16 by the State of California and the Teachers’ Retirement
17 Fund of the State of California with respect to lands with-
18 in Naval Petroleum Reserve Numbered 1, including sec-
19 tions 16 and 36 of township 30 south, range 23 east,
20 Mount Diablo Principal Meridian, California, or produc-
21 tion or proceeds of sale from that reserve.

22 “(2) In determining the amount of the proceeds aris-
23 ing from the sale of Naval Petroleum Reserve Numbered
24 1, the Secretary shall deduct the costs incurred to conduct
25 the sale of that reserve.

1 “(3) A payment may be made from the special ac-
2 count only to the extent that the aggregate amount of such
3 payment is provided for in advance in an appropriations
4 Act.

5 “(i) EFFECT ON ANTITRUST LAWS.—Nothing in this
6 section shall be construed to alter the application of the
7 antitrust laws of the United States to the purchaser of
8 a naval petroleum reserve or to the lands in the naval pe-
9 troleum reserves subject to sale under this section upon
10 the completion of the sale.

11 “(j) PRESERVATION OF PRIVATE RIGHT, TITLE, AND
12 INTEREST.—Nothing in this section shall be construed to
13 adversely affect the ownership interest of any other entity
14 having any right, title, and interest in and to lands within
15 the boundaries of the naval petroleum reserves.

16 “(k) CONGRESSIONAL NOTIFICATION.—Section 7431
17 of this title shall not apply to the sale of the naval petro-
18 leum reserves under this section. However, the Secretary
19 may not enter into a contract for the sale of a naval petro-
20 leum reserve until the end of the 15-day period beginning
21 on the date on which the Secretary notifies the Committee
22 on Armed Services of the Senate and the Committee on
23 National Security and the Committee on Commerce of the
24 House of Representatives that the Secretary has accepted

1 an offer under subsection (b)(5) for the sale of that re-
 2 serve.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 at the beginning of such chapter is amended by inserting
 5 after the item relating to section 7421 the following new
 6 item:

“7421a. Sale of naval petroleum reserves.”.

7 **TITLE IV—COMMITTEE ON ECO-** 8 **NOMIC AND EDUCATIONAL** 9 **OPPORTUNITIES**

10 **SEC. 4000. TABLE OF CONTENTS.**

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

TITLE IV—ECONOMIC AND EDUCATIONAL OPPORTUNITIES

Subtitle A—Higher Education

- Sec. 4001. Short title; effective date.
- Sec. 4002. Termination of direct lending.
- Sec. 4003. Elimination of grace period interest subsidies.
- Sec. 4004. Plus program reductions.
- Sec. 4005. Loan transfer fee.
- Sec. 4006. Lender fees to guaranty agencies.
- Sec. 4007. Additional loan program changes.
- Sec. 4008. Use of reserve funds to purchase defaulted loans.
- Sec. 4009. Extension of period a guaranty agency must hold a defaulted loan.
- Sec. 4010. Privatization of College Construction Loan Insurance Association.
- Sec. 4011. Eligible institution.
- Sec. 4012. Extension of program duration.

Subtitle B—Davis-Bacon and Service Contract Repeals

- Sec. 4101. Davis-Bacon Act.
- Sec. 4102. Service Contract Act of 1965.

Subtitle C—Provisions Relating to the Employee Retirement Income Security Act of 1974

- Sec. 4201. Waiver of minimum period for joint and survivor annuity explanation before annuity starting date.

1 **Subtitle A—Higher Education**

2 **SEC. 4001. SHORT TITLE; EFFECTIVE DATE.**

3 (a) **SHORT TITLE.**—This subtitle may be cited as the
4 “Higher Education Program Efficiency Act of 1995”.

5 (b) **EFFECTIVE DATE.**—Except as otherwise provided
6 therein, the amendments made by this subtitle shall take
7 effect on January 1, 1996.

8 **SEC. 4002. TERMINATION OF DIRECT LENDING.**

9 (a) **TERMINATION OF AUTHORITY.**—

10 (1) **PROGRAM AUTHORITY.**—Section 451(a) of
11 the Higher Education Act of 1965 (20 U.S.C.
12 1087a(a)) is amended by inserting “and ending
13 June 30, 1996” after “period beginning July 1,
14 1994”.

15 (2) **TERMINATION OF FUNDING.**—Section 452
16 of such Act (20 U.S.C. 1087b) is amended by add-
17 ing at the end the following new subsection:

18 “(e) **TERMINATION OF FUNDING.**—The Secretary
19 shall not provide funds under this section for loans for
20 any academic year beginning on or after July 1, 1996.
21 The Secretary shall not pay any fees pursuant to sub-
22 section (b) of this section on or after January 1, 1996.”.

23 (3) **TERMINATION OF AUTHORITY TO ENTER**
24 **NEW AGREEMENTS.**—Section 453(a) of such Act (20
25 U.S.C. 1087c(a)) is amended—

1 (A) in paragraph (1), by inserting “and
2 ending before July 1, 1996” after “academic
3 years beginning on or after July 1, 1994”;

4 (B) in paragraph (2)—

5 (i) by inserting “and” after the semi-
6 colon at the end of subparagraph (A);

7 (ii) by striking the semicolon at the
8 end of subparagraph (B) and inserting a
9 period; and

10 (iii) by striking subparagraphs (C)
11 and (D); and

12 (C) by striking paragraph (3) and redesign-
13 ating paragraph (4) as paragraph (3).

14 (b) ADMINISTRATIVE COST AMENDMENTS.—Section
15 458 of such Act (20 U.S.C. 1087h) of such Act is
16 amended—

17 (1) by striking subsection (d);

18 (2) by redesignating subsections (b) and (c) as
19 subsections (f) and (g), respectively; and

20 (3) by striking subsection (a) and inserting the
21 following:

22 “(a) IN GENERAL.—

23 “(1) DIRECT ADMINISTRATIVE COSTS.—Each
24 fiscal year there shall be available to the Secretary
25 of Education, from funds not otherwise appro-

1 priated, funds to be obligated for the subsidy costs
2 of direct administrative costs under this part, sub-
3 ject to subsection (b) of this section.

4 “(2) INDIRECT ADMINISTRATIVE COSTS.—There
5 shall also be available from funds available from
6 funds not otherwise appropriated, funds to be obli-
7 gated for indirect administrative costs under this
8 part and part B, subject to subsection (c) of this
9 section, not to exceed (from such funds not other-
10 wise appropriated) \$260,000,000 in fiscal year
11 1994, \$345,000,000 in fiscal year 1995,
12 \$110,000,000 in fiscal year 1996 (of which
13 \$40,000,000 shall be available for administrative
14 cost allowances for guaranty agencies for October
15 through December of 1995), and \$70,000,000 in
16 each of the fiscal years 1997 through 2002.

17 “(3) REDUCTION.—The amount authorized to
18 be made available for fiscal year 1997 under para-
19 graph (2) shall be reduced by the amount of any un-
20 obligated unexpended funds available to carry out
21 this subsection for any fiscal year prior to fiscal year
22 1996.

23 “(b) SUBSIDY COSTS.—For purposes of this section,
24 ‘subsidy cost’ means the estimated long-term cost to the

1 Federal Government of direct administrative expenses cal-
2 culated on a net present value basis.

3 “(c) DIRECT ADMINISTRATIVE EXPENSES.—For pur-
4 poses of this section, ‘direct administrative expenses’ shall
5 consist of the cost of—

6 “(1) activities related to credit extension, loan
7 origination, loan servicing, management of contrac-
8 tors, and payments to contractors, other government
9 entities, and program participants;

10 “(2) collection of delinquent loans; and

11 “(3) write-off and closeout of loans.

12 “(d) INDIRECT ADMINISTRATIVE EXPENSES.—For
13 purposes of this section, ‘indirect administrative expenses’
14 shall consist of the cost of—

15 “(1) personnel engaged in developing program
16 regulations, policy, and administrative guidelines;

17 “(2) audits of institutions and contractors;

18 “(3) program reviews; and

19 “(4) other oversight of the program.

20 “(e) LIMITATION ON PART D EXPENDITURES.—For
21 any fiscal year, expenditures for indirect administrative
22 expenses and for loan servicing for loans made pursuant
23 to this part shall not exceed 30 percent of funds available
24 pursuant to paragraph (2) for such fiscal year.”.

1 (c) ELIMINATION OF TRANSITION TO DIRECT
2 LOANS.—Such Act is further amended—

3 (1) in section 422(c)(7) (20 U.S.C.
4 1072(c)(7))—

5 (A) by striking “during the transition” and
6 all that follows through “part D of this title”
7 in subparagraph (A); and

8 (B) by striking “section 428(c)(10)(F)(v)”
9 in subparagraph (B) and inserting “section
10 428(c)(9)(F)(v)”;

11 (2) in section 428(c)(8) (20 U.S.C. 1078(c)(8)),
12 by striking subparagraph (B) and inserting the fol-
13 lowing:

14 “(B) Prior to making such determination for
15 any guaranty agency, the Secretary shall, in con-
16 sultation with the guaranty agency, develop criteria
17 to determine whether such guaranty agency has
18 made adequate collection efforts. In determining
19 whether a guaranty agency’s collection efforts have
20 met such criteria, the Secretary shall consider the
21 agency’s record of success in collecting on defaulted
22 loans, the age of the loans, and the amount of recent
23 payments received on the loans.”;

24 (3) in section 428(c)(9)(E)—

1 (A) by inserting “or” after the semicolon
2 at the end of clause (iv);

3 (B) by striking “; or” at the end of clause
4 (v) and inserting a period; and

5 (C) by striking clause (vi);

6 (4) in clause (vii) of section 428(c)(9)(F)—

7 (A) by inserting “and” before “to avoid
8 disruption”; and

9 (B) by striking “, and to ensure an orderly
10 transition” and all that follows through the end
11 of such clause and inserting a period;

12 (5) in section 428(c)(9)(K), by striking “the
13 progress of the transition from the loan programs
14 under this part to” and inserting “the integrity and
15 administration of”;

16 (6) in section 428(e)(1)(B)(ii), by striking
17 “during the transition” and all that follows through
18 “part D of this title”;

19 (7) in section 428(e)(3), by striking “of transi-
20 tion”;

21 (8) in section 428(j)(3)—

22 (A) by striking “DURING TRANSITION TO
23 DIRECT LENDING”; and

24 (B) by striking “during the transition”
25 and all that follows through “part D of this

1 title,” in subparagraph (A) and inserting a
2 comma;

3 (9) in section 453(c)(2) (20 U.S.C.
4 1087c(c)(2)), by striking “TRANSITION” and insert-
5 ing “INSTITUTIONAL”;

6 (10) in section 453(c), by striking paragraph
7 (3); and

8 (11) in section 456(b) (20 U.S.C. 1087f(b))—

9 (A) by inserting “and” after the semicolon
10 at the end of paragraph (3);

11 (B) by striking paragraph (4);

12 (C) by redesignating paragraph (5) as
13 paragraph (4); and

14 (D) in such paragraph (4) (as redesign-
15 ated), by striking “successful operation” and
16 inserting “integrity and efficiency”.

17 (d) ADDITIONAL CONFORMING AMENDMENTS.—

18 (1) ABILITY OF PART D BORROWERS TO OBTAIN
19 FEDERAL STAFFORD CONSOLIDATION LOANS.—Sec-
20 tion 428C(a)(4) of such Act (20 U.S.C. 1078–
21 3(a)(4)) is amended—

22 (A) by redesignating subparagraphs (C)
23 and (D) as subparagraphs (D) and (E); and

24 (B) by inserting after subparagraph (B)
25 the following new subparagraph:

1 “(C) made under part D of this title;”.

2 (2) CONFORMING AMENDMENTS.—Section
3 428C(b) of such Act (20 U.S.C. 1078–3(b)) is
4 amended by striking paragraph (5).

5 **SEC. 4003. ELIMINATION OF GRACE PERIOD INTEREST SUB-**
6 **SIDIES.**

7 Section 428(a)(3) of the Higher Education Act of
8 1965 (20 U.S.C. 1078(a)(3)) is amended by adding at the
9 end the following new subparagraph:

10 “(C) Notwithstanding subparagraph (A), no
11 portion of the interest which accrues after the stu-
12 dent ceases to carry at an eligible institution at least
13 one-half the normal full-time academic workload (as
14 determined by the institution) and prior to the be-
15 ginning of the repayment period of the loan shall be
16 paid by the Secretary under this subsection on any
17 loan made on or after January 1, 1996. Interest on
18 the unpaid principal amount of any such loan during
19 the interval described in the preceding sentence
20 shall, at the option of the borrower—

21 “(i) be paid monthly or quarterly, or

22 “(ii) be added by the lender to the prin-
23 cipal amount of the loan at the commencement
24 of the repayment period.”.

1 **SEC. 4004. PLUS PROGRAM REDUCTIONS.**

2 (a) LOAN LIMITS.—Section 428B(b) of the Higher
3 Education Act of 1965 (20 U.S.C. 1078-2(b)) is amend-
4 ed—

5 (1) by striking “(b) LIMITATION BASED ON
6 NEED.—” and inserting the following:

7 “(b) ANNUAL LIMITS.—

8 “(1) LIMITATION BASED ON NEED.—”;

9 (2) by inserting before the last sentence thereof
10 the following:

11 “(3) LIMITATION COMPUTED ON BASIS OF AC-
12 TUAL PAYMENTS.—”; and

13 (3) by inserting before paragraph (3) (as des-
14 ignated by the amendment made by paragraph (2)
15 of this subsection) the following new paragraph:

16 “(2) DOLLAR LIMITATION.—Subject to para-
17 graph (1), the maximum amount parents may bor-
18 row for one student in any academic year or its
19 equivalent (as defined by regulations of the Sec-
20 retary) is \$15,000.”.

21 (b) INTEREST REBATE.—Section 428B of such Act
22 is further amended by adding at the end the following new
23 subsection:

24 “(f) INTEREST REBATE.—

25 “(1) REBATE REQUIRED.—Each holder of a
26 loan under this section made on or after the date of

1 enactment of the Omnibus Budget Reconciliation
2 Act of 1995, shall pay, on June 30 and December
3 31 of each year, to the Secretary a rebate of sub-
4 sidies in an amount equal to 0.8 percent of the out-
5 standing principal balance of loans held on such
6 date. Payment of such rebate shall be made not later
7 than 60 days after each such date.

8 “(2) DEPOSIT OF REBATES.—The Secretary
9 shall deposit all fees collected pursuant to paragraph
10 (1) into the insurance fund established in section
11 431.”.

12 (c) PLUS LOANS INTEREST RATES.—Section
13 427A(c)(4) of such Act (20 U.S.C. 1077a(c)(4)) is amend-
14 ed by adding at the end the following new subparagraph:

15 “(F) Notwithstanding subparagraphs (A), (D),
16 and (E), for any loan made pursuant to section
17 428B for which the first disbursement is made on or
18 after January 1, 1996—

19 “(i) subparagraph (B) shall be applied by
20 substituting ‘4.0’ for ‘3.25’; and

21 “(ii) the interest rate shall not exceed 11
22 percent.”.

23 (d) CONFORMING AMENDMENT.—Section 427A(h) of
24 such Act (20 U.S.C. 1077a(h)) is amended—

25 (1) by striking paragraph (2); and

1 (2) by redesignating paragraph (3) as para-
2 graph (2).

3 **SEC. 4005. LOAN TRANSFER FEE.**

4 Section 428(b)(2) of the Higher Education Act of
5 1965 (20 U.S.C. 1078(b)(2)) is amended—

6 (1) by striking “and” at the end of subpara-
7 graph (E);

8 (2) by striking the period at the end of sub-
9 paragraph (F) and inserting “; and”; and

10 (3) by adding at the end thereof the following
11 new subparagraph:

12 “(G) provide that, if a lender or holder, on
13 or after January 1, 1996, sells, transfers, or as-
14 signs a loan under this part, then the transferee
15 shall pay to the Secretary a transfer fee in an
16 amount equal to 0.20 percent of the principal
17 of the loan, which transfer fee shall be depos-
18 ited into the insurance fund established in sec-
19 tion 431, except that the provisions of this sub-
20 paragraph shall not apply to any such sale,
21 transfer, or assignment by a lender or holder to
22 such lender’s or holder’s affiliate or pursuant to
23 a merger or other consolidation transaction.”.

1 **SEC. 4006. LENDER FEES TO GUARANTY AGENCIES.**

2 Subsection (f) of section 428 of the Higher Education
3 Act of 1965 (20 U.S.C. 1078(f)) is amended to read as
4 follows:

5 “(f) PAYMENTS OF CERTAIN COSTS.—

6 “(1) PAYMENTS FROM LENDERS.—With respect
7 to any loan under this part for which the first dis-
8 bursement is made on or after January 1, 1996, the
9 originating lender shall remit to the guaranty agency
10 which guarantees the loan, a fee equal to 0.70 per-
11 cent of the principal amount of the loan.

12 “(2) USE OF PAYMENTS.—Payments made pur-
13 suant to paragraph (1) shall be used for the pur-
14 poses of—

15 “(A) the administrative costs of collections
16 of loans;

17 “(B) the administrative costs of preclaim
18 assistance and other predefault activities;

19 “(C) the administrative costs of monitoring
20 the enrollment and repayment status of stu-
21 dents; and

22 “(D) other such costs related to the stu-
23 dent loan insurance program.

24 “(3) TIMING OF PAYMENTS.—Payments made
25 pursuant to paragraph (1) shall be made at the time

1 insurance premiums on such loans are paid to the
2 guaranty agency.

3 “(4) PROHIBITION ON PASS-THROUGH.—No
4 part of any payments required by this section shall
5 be assessed or collected, directly or indirectly, from
6 any borrower under this part.”.

7 **SEC. 4007. ADDITIONAL LOAN PROGRAM CHANGES.**

8 (a) RESERVE FUNDS.—

9 (1) AMENDMENTS TO SECTION 422.—Section
10 422 of the Higher Education Act of 1965 (20
11 U.S.C. 1072) is amended—

12 (A) in the last sentence of subsection
13 (a)(2), by striking “Except as provided in sec-
14 tion 428(c)(10)(E) or (F), such unencumbered”
15 and inserting “Such”;

16 (B) in subsection (g)(1), by striking “or
17 the program authorized by part D of this title”
18 each place it appears;

19 (C) in subsection (g)(1)(D), by striking
20 “(A) or (B)” and inserting “(A), (B), or (C)”;
21 and

22 (D) in subsection (g), by striking para-
23 graph (4) and inserting the following:

24 “(4) DISPOSITION OF FUNDS RETURNED TO OR
25 RECOVERED BY THE SECRETARY.—Any funds that

1 are returned to or otherwise recovered by the Sec-
2 retary pursuant to this subsection shall be returned
3 to the Treasury of the United States for purposes of
4 reducing the Federal debt and shall be deposited
5 into the special account under section 3113(d) of
6 title 31, United States Code.”.

7 (2) AMENDMENTS TO SECTION 428.—Section
8 428(c)(9)(A) of such Act (20 U.S.C. 1078(c)(9)(A))
9 is amended—

10 (A) by inserting “and” after the semicolon
11 at the end of clause (i);

12 (B) by striking “; and” at the end of
13 clause (ii) and inserting a period; and

14 (C) by striking clause (iii).

15 (b) APPLICATION FOR PART B LOANS USING FREE
16 FEDERAL APPLICATION.—

17 (1) SINGLE FORM REQUIRED.—Section 483(a)
18 of such Act (20 U.S.C. 1090(a)) is amended—

19 (A) in paragraph (1)—

20 (i) by inserting “B,” after “assistance
21 under parts A,”;

22 (ii) by striking “and to determine the
23 need of a student for the purpose of part
24 B of this title”; and

1 (iii) by striking the last sentence and
2 inserting the following: “Such form may be
3 in an electronic or any other format (sub-
4 ject to section 485B) in order to facilitate
5 use by borrowers and institutions.”; and

6 (B) in paragraph (3), by striking “and
7 States shall receive,” and inserting “, any guar-
8 anty agency authorized by any such institution,
9 and States shall receive, at their request and”.

10 (2) USE OF ELECTRONIC FORMS.—Section
11 483(a) of such Act is further amended by adding the
12 following new paragraph after paragraph (4):

13 “(5) ELECTRONIC FORMS.—(A) The Secretary,
14 in cooperation with representatives of institutions of
15 higher education, eligible lenders, and guaranty
16 agencies, shall prescribe an electronic version of the
17 form described in subsection (a)(1). Such electronic
18 form shall not require signatures to be collected at
19 the time such form is submitted if the data con-
20 tained in the electronic form is certified in one or
21 more separate writings. The Secretary shall pre-
22 scribe the initial electronic form not later than 90
23 days after the date of enactment of this paragraph.

24 “(B) Nothing in this Act shall preclude the use
25 of the electronic form prescribed under subpara-

1 graph (A) through software developed, produced,
2 distributed (including by diskette, modem or net-
3 work communication, or otherwise) or collected by
4 eligible lenders, guaranty agencies, eligible institu-
5 tions, or consortia thereof. Such organization or con-
6 sortium shall submit such electronic form to the Sec-
7 retary for review prior to its use. If such electronic
8 form is inconsistent with the provisions of this part,
9 the Secretary shall notify the submitting organiza-
10 tion or consortium of his objection within 30 days of
11 such submission, and shall specifically identify the
12 necessary changes. In the absence of such an objec-
13 tion the organization or consortium may use the
14 electronic form as submitted. No fee may be charged
15 in connection with use of the electronic form, or of
16 any other electronic forms used in conjunction with
17 such form in applying for Federal or State student
18 financial assistance.”.

19 (c) AMENDMENTS TO ELIGIBLE LENDER DEFINI-
20 TION.—Section 435(d)(1) of such Act (20 U.S.C. 1085)
21 is amended—

22 (1) by inserting before the semicolon at the end
23 of subparagraph (A) the following: “; and in deter-
24 mining whether the making or holding of loans to
25 students and parents under this part is the primary

1 consumer credit function of the eligible lender, loans
2 made or held as trustee or in a trust capacity for
3 the benefit of a third party shall not be considered”;

4 (2) by striking “and” at the end of subpara-
5 graph (I);

6 (3) in subparagraph (J), by striking the period
7 and inserting “; and”; and

8 (4) by adding at the end the following new sub-
9 paragraph:

10 “(K) a wholly owned subsidiary of a pub-
11 licly-held holding company which, as of the date
12 of enactment of this subparagraph, through one
13 or more subsidiaries (i) acts as a finance com-
14 pany, and (ii) participates in the program au-
15 thorized by this part pursuant to subparagraph
16 (C).”.

17 (d) ADDITIONAL AMENDMENTS TO SECTION 428.—

18 (1) AMENDMENTS.—Section 428 of such Act is
19 further amended—

20 (A) in subsection (b)(1)(G), by striking
21 “98 percent” and inserting “95 percent”;

22 (B) in subsection (b)(1)(X), by striking
23 “section 428(c)(10)” and inserting “section
24 428(c)(9)”;

1 (C) in subsection (c)(1)(A), by striking
2 “98 percent” and inserting “96 percent”;

3 (D) in subsection (c)(1)(B)(i), by striking
4 “88 percent” and inserting “86 percent”;

5 (E) in subsection (c)(1)(B)(ii), by striking
6 “78 percent” and inserting “76 percent”;

7 (F) in subsection (c)(9)(C)(ii), by striking
8 “80 percent” and inserting “76 percent”;

9 (G) in subsection (c)(9)(I) by inserting “on
10 the record” after “for a hearing”;

11 (H) in subsection (j)(2)(A), by striking
12 “60” and inserting “15”;

13 (I) in subsection (j)(2)(B), by striking
14 “two rejections” and inserting “one rejection”;
15 and

16 (J) in subsection (l)—

17 (i) by striking paragraph (2); and

18 (ii) by striking “(1) ASSISTANCE RE-
19 QUIRED.—”.

20 (2) EFFECTIVE DATE.—The amendments made
21 by paragraph (1) of this subsection shall apply to
22 loans on which the first disbursement of principal is
23 made on or after January 1, 1996.

1 (e) REINSURANCE PERCENTAGE UNDER SECTION
2 428I.—Section 428I of such Act (20 U.S.C. 1078–9) is
3 amended in subsection (b)(1)—

4 (1) by striking “100 PERCENT” in the heading
5 and inserting “95 PERCENT”; and

6 (2) by striking “100 percent” and inserting “95
7 percent”.

8 (f) LOAN FEES FROM LENDERS.—Section 438(d)(2)
9 of such Act (20 U.S.C. 1087–1(d)(2)) is amended to read
10 as follows:

11 “(2) AMOUNT OF LOAN FEES.—The amount of
12 the loan fee which shall be deducted under para-
13 graph (1) shall be—

14 “(A) 0.50 percent of the principal amount
15 of the loan, for any loan under this part for
16 which the first disbursement was made on or
17 after October 1, 1993, and before January 1,
18 1996; or

19 “(B) 0.30 percent of the principal amount
20 of the loan, for any loan under this part for
21 which the first disbursement was made on or
22 after January 1, 1996.”.

23 (g) SMALL LENDER AUDIT EXEMPTION.—Section
24 428(b)(1)(U)(iii) of such Act (20 U.S.C.
25 1078(b)(1)(U)(iii)) is amended—

1 (1) by inserting “in the case of any lender that
2 originates or holds more than \$5,000,000 in prin-
3 cipal on loans made under this title in any fiscal
4 year,” before “for (I)”;

5 (2) by inserting “such” before “lender at least
6 once”;

7 (3) by inserting “such” before “a lender that is
8 audited”; and

9 (4) by striking “if the lender” and inserting “if
10 such lender”.

11 **SEC. 4008. USE OF RESERVE FUNDS TO PURCHASE DE-**
12 **FAULTED LOANS.**

13 Section 422 of the Higher Education Act of 1965 (20
14 U.S.C. 1072) is amended by adding at the end the follow-
15 ing new subsection:

16 “(h) USE OF RESERVE FUNDS TO PURCHASE DE-
17 FAULTED LOANS.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), a guaranty agency shall use not less than
20 50 percent of such agency’s reserve funds to pur-
21 chase and hold defaulted loans that are guaranteed
22 by such agency and for which a claim for insurance
23 is filed with such agency by an eligible lender after
24 the date of enactment of this subsection. The
25 amount of such purchases shall be considered as re-

1 serve funds under this section and used in the cal-
 2 culation of the minimum reserve level under section
 3 428(c)(9).

4 “(2) SPECIAL RULE.—A guaranty agency shall
 5 not be required to use its reserve funds to purchase
 6 and hold defaulted loans in accordance with para-
 7 graph (1) to the extent that—

8 “(A) the dollar volume of insurance claims
 9 filed with such agency does not amount to 50
 10 percent of such agency’s available reserve
 11 funds; or

12 “(B) such use is prohibited by State law;
 13 or

14 “(C) such use will compromise the ability
 15 of the guaranty agency to pay program ex-
 16 penses.”.

17 **SEC. 4009. EXTENSION OF PERIOD A GUARANTY AGENCY**
 18 **MUST HOLD A DEFAULTED LOAN.**

19 (a) EXEMPTION FOR EXTENDED HOLDING PE-
 20 RIOD.—The last sentence of section 428(c)(1)(A) of the
 21 Higher Education Act of 1965 (20 U.S.C. 1078(c)(1)(A))
 22 is amended by striking out “A guaranty agency” and in-
 23 serting “Except as provided in section 428K, a guaranty
 24 agency”.

1 (b) NEW EXTENDED HOLDING PERIOD PROGRAM.—
2 Part B of title IV of such Act (20 U.S.C. 1071 et seq.)
3 is amended by inserting after section 428J the following
4 new section:

5 “SEC. 428K. GUARANTOR PURCHASE OF CLAIMS WITH RE-
6 SERVE FUNDS.

7 “(a) LOANS SUBJECT TO EXTENDED HOLDING PE-
8 RIOD.—Except as provided in subsection (b), a guaranty
9 agency shall file a claim for reimbursement with respect
10 to losses (resulting from the default of a student borrower)
11 subject to reimbursement by the Secretary pursuant to
12 section 428(c)(1) not less than 180 days nor more than
13 225 days after the guaranty agency discharges such agen-
14 cy’s insurance obligation on a loan insured under this
15 part. Such claim shall include losses on the unpaid prin-
16 cipal and accrued interest of any such loan, including in-
17 terest accrued from the date of such discharge to the date
18 such agency files the claim for reimbursement from the
19 Secretary.

20 “(b) LOANS EXCLUDED FROM EXTENDED HOLD-
21 ING.—A guaranty agency may file a claim with respect
22 to losses subject to reimbursement by the Secretary pursu-
23 ant to section 428(c)(1) prior to 180 days after the date
24 the guaranty agency discharges such agency’s insurance
25 obligation on a loan insured under this part, if—

1 “(1) such agency used 50 percent or more of
2 such agency’s reserve funds to purchase or hold
3 loans in accordance with section 422(h);

4 “(2) such claim is based on an inability to lo-
5 cate the borrower and the guaranty agency certifies
6 to the Secretary that—

7 “(A) diligent attempts were made to locate
8 the borrower through the use of reasonable
9 skip-tracing techniques in accordance with sec-
10 tion 428(c)(2)(G); and

11 “(B) such skip-tracing attempts to locate
12 the borrower were unsuccessful; or

13 “(3) the guaranty agency determines that the
14 borrower is unlikely to possess the financial re-
15 sources to begin repaying the loan prior to 180 days
16 after default by the borrower.

17 “(C) GUARANTY AGENCY EFFORTS DURING EX-
18 TENDED HOLDING PERIOD.—A guaranty agency shall at-
19 tempt to bring a loan described in subsection (a) into re-
20 payment status prior to 180 days after the date the guar-
21 anty agency discharges its insurance obligation on the
22 loan, so that no claim for reimbursement by the Secretary
23 is necessary. Upon securing payment satisfactory to the
24 guaranty agency during the 180-day period, such agency
25 shall, if practicable, sell such loan to an eligible lender.

1 Such loan shall not be sold to an eligible lender that the
 2 guaranty agency determines has substantially failed to ex-
 3 ercise the due diligence required of lenders under this
 4 part.

5 “(d) REGULATION PROHIBITED.—The Secretary
 6 shall not regulate the collection activities of a guaranty
 7 agency with respect to a loan described in subsection (a)
 8 for which reinsurance has not been paid under section
 9 428(c)(1).”.

10 **SEC. 4010. PRIVATIZATION OF COLLEGE CONSTRUCTION**
 11 **LOAN INSURANCE ASSOCIATION.**

12 (a) REPEAL OF STATUTORY RESTRICTIONS.—Part D
 13 of title VII of the Higher Education Act of 1965 (20
 14 U.S.C. 1132f et seq.) is repealed.

15 (b) STATUS OF THE CORPORATION.—

16 (1) STATUS OF THE CORPORATION.—The Cor-
 17 poration shall not be an agency, instrumentality, or
 18 establishment of the United States Government and
 19 shall not be a “Government corporation” nor a
 20 “Government controlled corporation” as defined in
 21 section 103 of title 5, United States Code. No action
 22 under section 1491 of title 28, United States Code
 23 (commonly known as the Tucker Act) shall be allow-
 24 able against the United States based on the actions
 25 of the Corporation.

1 (2) CORPORATE POWERS.—The Corporation
2 shall have the power to engage in any business or
3 other activities for which corporations may be orga-
4 nized under the laws of any State of the United
5 States or the District of Columbia. The Corporation
6 shall have the power to enter into contracts, to exe-
7 cute instruments, to incur liabilities, to provide prod-
8 ucts and services, and to do all things as are nec-
9 essary or incidental to the proper management of its
10 affairs and the efficient operation of a private, for-
11 profit business.

12 (3) LIMITATION ON OWNERSHIP OF STOCK.—
13 Except as provided in subsection (d)(2) of this sec-
14 tion, no stock of the Corporation may be sold or is-
15 sued to an agency, instrumentality, or establishment
16 of the United States Government, to a Government
17 corporation or a Government controlled corporation
18 (as such terms are defined in section 103 of title 5,
19 United States Code), or to a Government sponsored
20 enterprise (as such term is defined in section 622 of
21 title 2, United States Code). The Student Loan
22 Marketing Association shall not own any stock of
23 the Corporation, except that it may retain the stock
24 it owns on the date of enactment. The Student Loan
25 Marketing Association shall not control the oper-

1 ation of the Corporation, except that the Student
2 Loan Marketing Association may participate in the
3 election of directors as a shareholder, and may con-
4 tinue to exercise its right to appoint directors under
5 section 754 of the Higher Education Act of 1965 as
6 long as that section is in effect. The Student Loan
7 Marketing Association shall not provide financial
8 support or guarantees to the Corporation. Notwith-
9 standing the prohibitions in this subsection, the
10 United States may pursue any remedy against a
11 holder of the Corporation's stock to which it would
12 otherwise be entitled.

13 (C) RELATED PRIVATIZATION REQUIREMENTS.—

14 (1) NOTICE REQUIREMENTS.—During the 5-
15 year period following the date of the enactment of
16 this Act, the Corporation shall include in any docu-
17 ment offering the Corporation's securities, in any
18 contracts for insurance, guarantee, or reinsurance of
19 obligations, and in any advertisement or promotional
20 material, a statement that—

21 (A) the Corporation is not a Government-
22 sponsored enterprise or instrumentality of the
23 United States; and

1 (B) the Corporation's obligations are not
2 guaranteed by the full faith and credit of the
3 United States.

4 (2) CORPORATE CHARTER.—The Corporation's
5 charter shall be amended as necessary and without
6 delay to conform the requirements of this Act.

7 (3) CORPORATE NAME.—The name of the Cor-
8 poration, or of any direct or indirect subsidiary
9 thereof, may not contain the term "College Con-
10 struction Loan Insurance Association".

11 (4) ARTICLES OF INCORPORATION.—The Cor-
12 poration shall amend its articles of incorporation
13 without delay to reflect that one of the purposes of
14 the Corporation shall be to guarantee, insure and re-
15 insure bonds, leases, and other evidences of debt of
16 educational institutions, including Historically Black
17 Colleges and Universities and other academic insti-
18 tutions which are ranked in the lower investment
19 grade category using a nationally recognized credit
20 rating system.

21 (5) TRANSITION REQUIREMENTS.—

22 (A) REQUIREMENTS UNTIL STOCK SALE.—
23 Notwithstanding subsection (a), the require-
24 ments of section 754 of the Higher Education
25 Act of 1965 (20 U.S.C. 1132f–3), as in exist-

1 ence as of the day before enactment of this Act,
2 shall continue to be effective until the day im-
3 mediately following the date of closing of the
4 purchase of the Secretary's stock (or the date
5 of closing of the final purchase, in the case of
6 multiple transactions) pursuant to subsection
7 (d) of this section.

8 (B) REPORTS AFTER STOCK SALE.—The
9 Corporation shall, not later than March 30 of
10 the first full calendar year immediately follow-
11 ing the sale pursuant to subsection (d), and
12 each of the 2 succeeding years, submit to the
13 Secretary of Education a report describing the
14 Corporation's efforts to assist in the financing
15 of education facilities projects, including
16 projects for elementary, secondary, and post-
17 secondary educational institution infrastructure,
18 and detailing, on a project-by-project basis, the
19 Corporation's business dealings with edu-
20 cational institutions that are rated by a nation-
21 ally recognized statistical rating organization at
22 or below the organization's third highest rat-
23 ings.

24 (d) SALE OF FEDERALLY OWNED STOCK.—

1 (1) SALE OF STOCK REQUIRED.—The Secretary
2 of the Treasury shall make every effort to sell, pur-
3 suant to section 324 of title 31, United States Code,
4 the stock of the Corporation owned by the Secretary
5 of Education not later than 6 months after the date
6 of the enactment of this Act.

7 (2) PURCHASE BY THE CORPORATION.—In the
8 event that the Secretary of the Treasury is unable
9 to sell the stock, or any portion thereof, at a price
10 acceptable to the Secretary of Education and the
11 Secretary of the Treasury, the Corporation shall
12 purchase, within the period specified in paragraph
13 (1), such stock at a price determined by the Sec-
14 retary of the Treasury and acceptable to the Cor-
15 poration based on independent appraisal by one or
16 more nationally recognized financial firms, except
17 that such price shall not exceed the value of the Sec-
18 retary's stock as determined by the Congressional
19 Budget Office in House Report 104–153, dated
20 June 22, 1995. Such firms shall be selected by the
21 Secretary of the Treasury in consultation with the
22 Secretary of Education and the Corporation.

23 (e) ASSISTANCE BY THE CORPORATION.—The Cor-
24 poration shall provide such assistance as the Secretary of

1 the Treasury and the Secretary of Education may require
2 to facilitate the sale of the stock under this section.

3 (f) DEFINITION.—As used in this section, the term
4 “Corporation” means the Corporation established pursu-
5 ant to the provision of law repealed by subsection (a).

6 **SEC. 4011. ELIGIBLE INSTITUTION.**

7 (a) AMENDMENTS.—Section 481(b) of the Higher
8 Education Act of 1965 (20 U.S.C. 1088(b)) is amended—

9 (1) by inserting before the period at the end of
10 the first sentence the following: “on the basis of a
11 review by the institution’s independent auditor using
12 generally accepted accounting principles”; and

13 (2) by inserting after the end of such first sen-
14 tence the following new sentences: “For the purposes
15 of clause (6), revenues from sources that are not de-
16 rived from funds provided under this title include
17 revenues from programs of education or training
18 that do not meet the definition of an eligible pro-
19 gram in subsection (e), but are provided on a con-
20 tractual basis under Federal, State, or local training
21 programs, or to business and industry. For the pur-
22 poses of determining whether an institution meets
23 the requirements of clause (6), the Secretary shall
24 not consider the financial information of any institu-

1 tion for a fiscal year began on or before April 30,
2 1994.”.

3 (b) EFFECTIVE DATE.—Notwithstanding section 713
4 of this Act, the amendments made by subsection (a) shall
5 apply to any determination made on or after July 1, 1994,
6 by the Secretary of Education pursuant to section
7 481(b)(6) of the Higher Education Act of 1965.

8 **SEC. 4012. EXTENSION OF PROGRAM DURATION.**

9 Part B of title IV of the Higher Education Act of
10 1965 is amended—

11 (1) in section 424(a) (20 U.S.C. 1074(a)), by
12 striking “1998” and inserting “2002”;

13 (2) in section 428(a)(5) (20 U.S.C.
14 1078(a)(5))—

15 (A) by striking “2002” and inserting
16 “2006”; and

17 (B) by striking “1998” and inserting
18 “2002”; and

19 (3) in section 428C(e) (20 U.S.C. 1078–3(e)),
20 by striking the first sentence and inserting “The au-
21 thority to make loans under this section expires at
22 the close of September 30, 2002.”.

1 **Subtitle B—Davis-Bacon and**
2 **Service Contract Repeals**

3 **SEC. 4101. DAVIS-BACON ACT.**

4 (a) **REPEAL.**—The Act of March 3, 1931 (40 U.S.C.
5 276a et seq.) (commonly referred to as the Davis-Bacon
6 Act) is repealed.

7 (b) **REFERENCES.**—Any reference in any law to a
8 wage requirement of the Act of March 3, 1931, shall, 45
9 days after the date of the enactment of this Act, be null
10 and void.

11 (c) **EFFECTIVE DATE.**—The amendment made by
12 subsection (a) shall take effect 45 days after the date of
13 the enactment of this Act but shall not affect any contract
14 in existence on the expiration of such days or made pursu-
15 ant to an invitation for bids outstanding on the expiration
16 of such days.

17 **SEC. 4102. SERVICE CONTRACT ACT OF 1965.**

18 (a) **REPEAL.**—The Service Contract Act of 1965 (41
19 U.S.C. 351 et seq.) is repealed.

20 (b) **APPLICATION.**—The amendment made by sub-
21 section (a) shall not apply to a contract which was entered
22 into before the 45th day after the date of the enactment
23 of this Act and to which the Service Contract Act of 1965
24 applied.

1 **Subtitle C—Provisions Relating to**
2 **the Employee Retirement In-**
3 **come Security Act of 1974**

4 **SEC. 4201. WAIVER OF MINIMUM PERIOD FOR JOINT AND**
5 **SURVIVOR ANNUITY EXPLANATION BEFORE**
6 **ANNUITY STARTING DATE.**

7 (a) **GENERAL RULE.**—For purposes of section
8 205(c)(3)(A) of the Employee Retirement Income Security
9 Act of 1974 (29 U.S.C. 1055(c)(3)(A)), the minimum pe-
10 riod prescribed by the Secretary of the Treasury between
11 the date that the explanation referred to in such section
12 is provided and the annuity starting date shall not apply
13 if waived by the participant and, if applicable, the partici-
14 pant's spouse.

15 (b) **EFFECTIVE DATE.**—Subsection (a) shall apply to
16 plan years beginning after December 31, 1995.

17 **TITLE V—COMMITTEE ON GOV-**
18 **ERNMENT REFORM AND**
19 **OVERSIGHT**

20 [Text to be supplied.]

**TITLE VI—COMMITTEE ON
INTERNATIONAL RELATIONS**

SEC. 6001. RECOVERY OF COSTS OF HEALTH CARE SERVICES FOR PERSONNEL OF THE FOREIGN SERVICE OF THE UNITED STATES AND OTHER ELIGIBLE INDIVIDUALS.

(a) AUTHORITIES.—Section 904 of the Foreign Service Act of 1980 (22 U.S.C. 4084) is amended—

(1) in subsection (a) by—

(A) striking “and” before “members of the families of such members and employees”; and

(B) by inserting immediately before the period “, and for care provided abroad) such other persons as are designated by the Secretary of State, except that such persons shall be considered persons other than covered beneficiaries for purposes of subsections (g) and (h)”; and

(2) in subsection (d) by inserting “, subject to the provisions of subsections (g) and (h)” after “treatment”; and

(3) by adding the following new subsections:

“(g)(1) In the case of a person who is a covered beneficiary, the Secretary of State is authorized to collect from a third-party payer the reasonable costs incurred by the

1 Department of State on behalf of such person for health
2 care services to the same extent that the covered bene-
3 ficiary would be eligible to receive reimbursement or in-
4 demnification from the third-party payer for such costs.

5 “(2) If the insurance policy, plan, contract, or similar
6 agreement of that third-party payer includes a require-
7 ment for a deductible or copayment by the beneficiary of
8 the plan, then the Secretary of State may collect from the
9 third-party payer only the reasonable costs of the care pro-
10 vided less the deductible or copayment amount.

11 “(3) A covered beneficiary shall not be required to
12 pay any deductible or copayment for health care services
13 under this subsection.

14 “(4) No provision of any insurance, medical service,
15 or health plan contract or agreement having the effect of
16 excluding from coverage or limiting payment of charges
17 for care in the following circumstances shall operate to
18 prevent collection by the Secretary of State under para-
19 graph (1)—

20 “(A) care provided directly or indirectly by a
21 governmental entity;

22 “(B) care provided to an individual who has not
23 paid a required deductible or copayment; or

24 “(C) care provided by a provider with which the
25 third-party payer has no participation agreement.

1 “(5) No law of any State, or of any political subdivi-
2 sion of a State, and no provision of any contract or agree-
3 ment shall operate to prevent or hinder recovery or collec-
4 tion by the United States under this section.

5 “(6) As to the authority provided in paragraph (1)
6 of this subsection—

7 “(A) the United States shall be subrogated to
8 any right or claim that the covered beneficiary may
9 have against a third-party payer;

10 “(B) the United States may institute and pros-
11 ecute legal proceedings against a third-party payer
12 to enforce a right of the United States under this
13 subsection; and

14 “(C) the Secretary may compromise, settle, or
15 waive a claim of the United States under this sub-
16 section.

17 “(7) The Secretary shall prescribe regulations for the
18 administration of this subsection and subsection (h). Such
19 regulations shall provide for computation of the reasonable
20 cost of health care services.

21 “(8) Regulations prescribed under this subsection
22 shall provide that medical records of a covered beneficiary
23 receiving health care under this subsection shall be made
24 available for inspection and review by representatives of
25 the payer from which collection by the United States is

1 sought for the sole purpose of permitting the third party
2 to verify—

3 “(A) that the care or services for which recov-
4 ery or collection is sought were furnished to the cov-
5 ered beneficiary; and

6 “(B) that the provisions of such care or services
7 to the covered beneficiary meets criteria generally
8 applicable under the health plan contract involved,
9 except that this paragraph shall be subject to the
10 provisions of paragraphs (2) and (4).

11 “(9) Amounts collected under this subsection or
12 under subsection (h) from a third party payer or from any
13 other payer shall be deposited in the Treasury as a mis-
14 cellaneous offsetting receipt.

15 “(10) For purposes of this section—

16 “(A) the term ‘covered beneficiary’ means an
17 individual eligible to receive health care under this
18 section whose health care costs are to be paid by a
19 third-party payer under a contractual agreement
20 with such payer;

21 “(B) the term ‘services’, as used in ‘health care
22 services’ includes products; and

23 “(C) the term ‘third-party payer’ means an en-
24 tity that provides a fee-for-service insurance policy,
25 contract, or similar agreement through the Federal

1 Employees Health Benefit program, under which the
2 expenses of health care services for individuals are
3 paid.

4 “(h) In the case of a person, other than a covered
5 beneficiary, who receives health care services pursuant to
6 this section, the Secretary of State is authorized to collect
7 from such person the reasonable costs of health care serv-
8 ices incurred by the Department of State on behalf of such
9 person. The United States shall have the same rights
10 against persons subject to the provisions of this subsection
11 as against third-party payers covered by subsection (g).”.

12 (b) EFFECTIVE DATE.—The authorities of this sec-
13 tion shall be effective beginning on the date of the enact-
14 ment of this Act.

15 **SEC. 6002. ENACTMENT INTO LAW OF DIVISION A OF H.R.**

16 **1561.**

17 Division A of H.R. 1561, as passed the House of
18 Representatives on June 8, 1995 (relating to consolidation
19 of foreign affairs agencies), is hereby enacted into law.

20 **TITLE VII—COMMITTEE ON THE**
21 **JUDICIARY**

22 **SEC. 7001. PATENT AND TRADEMARK FEES.**

23 Section 10101 of the Omnibus Budget Reconciliation
24 Act of 1990 (35 U.S.C. 41 note) is amended—

1 (1) in subsection (a) by striking “1998” and in-
 2 serting “2002”;

3 (2) in subsection (b)(2) by striking “1998” and
 4 inserting “2002”; and

5 (3) in subsection (c)—

6 (A) by striking “through 1998” and insert-
 7 ing “through 2002”; and

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

9 “(9) \$119,000,000 in fiscal year 1999.

10 “(10) \$119,000,000 in fiscal year 2000.

11 “(11) \$119,000,000 in fiscal year 2001.

12 “(12) \$119,000,000 in fiscal year 2002.”.

13 **TITLE VIII—COMMITTEE ON** 14 **NATIONAL SECURITY**

15 **Subtitle A—Military Retired Pay**

16 **SEC. 8001. ELIMINATION OF DISPARITY BETWEEN EFFEC-**
 17 **TIVE DATES FOR MILITARY AND CIVILIAN RE-**
 18 **TIREE COST-OF-LIVING ADJUSTMENTS FOR**
 19 **FISCAL YEARS 1996, 1997, AND 1998.**

20 (a) CONFORMANCE WITH SCHEDULE FOR CIVIL
 21 SERVICE COLAS.—Subparagraph (B) of section
 22 1401a(b)(2) of title 10, United States Code, is amended—
 23 (1) by striking out “THROUGH 1998” the first
 24 place it appears and all that follows through “In the

1 case of” the second place it appears and inserting in
 2 lieu thereof “THROUGH 1996.—In the case of”;

3 (2) by striking “of 1994, 1995, 1996, or 1997”
 4 and inserting in lieu thereof “of 1993, 1994, or
 5 1995”; and

6 (3) by striking out “September” and inserting
 7 in lieu thereof “March”.

8 (b) REPEAL OF PRIOR CONDITIONAL ENACTMENT.—
 9 Section 8114A(b) of Public Law 103–335 (108 Stat.
 10 2648) is repealed.

11 **Subtitle B—Naval Petroleum** 12 **Reserves**

13 **SEC. 8011. SALE OF NAVAL PETROLEUM RESERVES.**

14 (a) SALE OF RESERVES REQUIRED.—Chapter 641 of
 15 title 10, United States Code, is amended by inserting after
 16 section 7421 the following new section:

17 **“§ 7421a. Sale of naval petroleum reserves**

18 “(a) SALE REQUIRED.—(1) Notwithstanding any
 19 other provision of this chapter, the Secretary shall sell all
 20 right, title, and interest of the United States in and to
 21 the lands owned or controlled by the United States inside
 22 the naval petroleum and oil shale reserves established by
 23 this chapter. In the case of Naval Petroleum Reserve
 24 Numbered 1, the lands to be sold shall include sections

1 16 and 36 of township 30 south, range 23 east, Mount
2 Diablo Principal Meridian, California.

3 “(2) Not later than September 30, 1996, the Sec-
4 retary shall enter into one or more contracts for the sale
5 of all of the interest of the United States in the naval
6 petroleum reserves.

7 “(b) TIMING AND ADMINISTRATION OF SALE.—(1)
8 Not later than January 1, 1996, the Secretary shall retain
9 the services of five independent experts in the valuation
10 of oil and gas fields to conduct separate assessments, in
11 a manner consistent with commercial practices, of the fair
12 market value of the interest of the United States in each
13 naval petroleum reserve. In making their assessments for
14 each naval petroleum reserve, the independent experts
15 shall consider (among other factors) all equipment and fa-
16 cilities to be included in the sale, the net present value
17 of the reserve, and the net present value of the anticipated
18 revenue stream that the Secretary determines the Treas-
19 ury would receive from the reserve if it were not sold, ad-
20 justed for any anticipated increases in tax revenues that
21 would result if it were sold. The independent experts shall
22 complete their assessments not later than June 1, 1996.
23 In setting the minimum acceptable price for each naval
24 petroleum reserve, the Secretary shall consider the average
25 of the five assessments regarding the reserve or, if more

1 advantageous to the Government, the average of three as-
2 sessments after excluding the high and low assessments.

3 “(2) Not later than March 1, 1996, the Secretary
4 shall retain the services of an investment banker to inde-
5 pendently administer, in a manner consistent with com-
6 mercial practices and in a manner that maximizes sale
7 proceeds to the Government, the sale of the naval petro-
8 leum reserves under this section. The Secretary may enter
9 into the contracts required under this paragraph and
10 paragraph (1) on a noncompetitive basis.

11 “(3) Not later than June 1, 1996, the sales adminis-
12 trator selected under paragraph (2) shall complete a draft
13 contract for the sale of each naval petroleum reserve,
14 which shall accompany the invitation for bids and describe
15 the terms and provisions of the sale of the interest of the
16 United States in the reserve. Each draft contract shall
17 identify all equipment and facilities to be included in the
18 sales. Each draft contract, including the terms and provi-
19 sions of the sale of the interest of the United States in
20 the naval petroleum reserves, shall be subject to review
21 and approval by the Secretary, the Secretary of the Treas-
22 ury, and the Director of the Office of Management and
23 Budget.

1 “(4) Not later than July 1, 1996, the Secretary shall
2 publish an invitation for bids for the purchase of the naval
3 petroleum reserves.

4 “(5) Not later than September 1, 1996, the Secretary
5 shall accept the highest responsible offer for purchase of
6 the interest of the United States in the naval petroleum
7 reserves, or a particular reserve, that meets or exceeds the
8 minimum acceptable price determined under paragraph
9 (1). The Secretary may accept an offer for only a portion
10 of a reserve so long as the entire reserve is still sold under
11 this section at a price that meets or exceeds the minimum
12 acceptable price.

13 “(c) FUTURE LIABILITIES.—To effectuate the sale of
14 the interest of the United States in a naval petroleum re-
15 serve, the Secretary may extend such indemnities and war-
16 ranties as the Secretary considers reasonable and nec-
17 essary to protect the purchaser from claims arising from
18 the ownership in the reserve by the United States.

19 “(d) SPECIAL RULES PREPARATORY TO SALE OF
20 NAVAL PETROLEUM RESERVE NUMBERED 1.—(1) Not
21 later than June 1, 1996, the Secretary shall finalize equity
22 interests of the known oil and gas zones in Naval Petro-
23 leum Reserve Numbered 1 in the manner provided by this
24 subsection.

1 “(2) The Secretary shall retain the services of an
2 independent petroleum engineer, mutually acceptable to
3 the equity owners, who shall prepare a recommendation
4 on final equity figures. The Secretary may accept the rec-
5 ommendation of the independent petroleum engineer for
6 final equity in each known oil and gas zone and establish
7 final equity interest in the Naval Petroleum Reserve Num-
8 bered 1 in accordance with such recommendation, or the
9 Secretary may use such other method to establish final
10 equity interest in that reserve as the Secretary considers
11 appropriate. The Secretary may enter into the contract re-
12 quired under this paragraph on a noncompetitive basis.

13 “(3) If, on the effective date of this section, there
14 is an ongoing equity redetermination dispute between the
15 equity owners under section 9(b) of the unit plan contract,
16 such dispute shall be resolved in the manner provided in
17 the unit plan contract not later than June 1, 1996. Such
18 resolution shall be considered final for all purposes under
19 this section.

20 “(4) In this section, the term ‘unit plan contract’
21 means the unit plan contract between equity owners of the
22 lands within the boundaries of Naval Petroleum Reserve
23 Numbered 1 (Elk Hills) entered into on June 19, 1944.

24 “(e) PRODUCTION ALLOCATION REGARDING NAVAL
25 PETROLEUM RESERVE NUMBERED 1.—(1) As part of the

1 contract for purchase of Naval Petroleum Reserve Num-
2 bered 1, the purchaser of the interest of the United States
3 in that reserve shall agree to make up to 25 percent of
4 the purchaser's share of annual petroleum production
5 from the purchased lands available for sale to small refin-
6 ers, which do not have their own adequate sources of sup-
7 ply of petroleum, for processing or use only in their own
8 refineries. None of the reserved production sold to small
9 refiners may be resold in kind. The purchaser of that re-
10 serve may reduce the quantity of petroleum reserved under
11 this subsection in the event of an insufficient number of
12 qualified bids. The seller of this petroleum production has
13 the right to refuse bids that are less than the prevailing
14 market price of comparable oil.

15 “(2) The purchaser of Naval Petroleum Reserve
16 Numbered 1 shall also agree to ensure that the terms of
17 every sale of the purchaser's share of annual petroleum
18 production from the purchased lands shall be so struc-
19 tured as to give full and equal opportunity for the acquisi-
20 tion of petroleum by all interested persons, including
21 major and independent oil producers and refiners alike.

22 “(f) MAINTAINING PRODUCTION PENDING SALE OF
23 NAVAL PETROLEUM RESERVE NUMBERED 1.—Until the
24 sale of Naval Petroleum Reserve Numbered 1 is completed
25 under this section, the Secretary shall continue to produce

1 that reserve at the maximum daily oil or gas rate from
2 a reservoir, which will permit maximum economic develop-
3 ment of the reservoir consistent with sound oil field engi-
4 neering practices in accordance with section 3 of the unit
5 plan contract. The definition of maximum efficient rate
6 in section 7420(6) of this title shall not apply to Naval
7 Petroleum Reserve Numbered 1.

8 “(g) EFFECT ON EXISTING CONTRACTS.—(1) In the
9 case of any contract, in effect on the effective date of this
10 section, for the purchase of production from any part of
11 the United States’ share of the naval petroleum reserves,
12 the sale of the interest of the United States in the reserves
13 shall be subject to the contract for a period of three
14 months after the closing date of the sale or until termi-
15 nation of the contract, whichever occurs first. The term
16 of any contract entered into after the effective date of this
17 section for the purchase of such production shall not ex-
18 ceed the anticipated closing date for the sale of the re-
19 serve.

20 “(2) In the case of Naval Petroleum Reserve Num-
21 bered 1, the Secretary shall exercise the termination pro-
22 cedures provided in the contract between the United
23 States and Bechtel Petroleum Operation, Inc., Contract
24 Number DE-ACO1-85FE60520 so that the contract ter-

1 minates not later than the date of closing of the sale of
2 that reserve.

3 “(3) In the case of Naval Petroleum Reserve Num-
4 bered 1, the Secretary shall exercise the termination pro-
5 cedures provided in the unit plan contract so that the unit
6 plan contract terminates not later than the date of closing
7 of the sale of that reserve.

8 “(h) OFFER OF SETTLEMENT OF STATE OF CALI-
9 FORNIA CLAIMS REGARDING NAVAL PETROLEUM RE-
10 SERVE NUMBERED 1.—(1) In connection with the sale of
11 Naval Petroleum Reserve Numbered 1, the Secretary shall
12 offer to settle all claims against the United States by the
13 State of California and the Teachers’ Retirement Fund
14 of the State of California with respect to lands within that
15 reserve, including sections 16 and 36 of township 30
16 south, range 23 east, Mount Diablo Principal Meridian,
17 California, or production or proceeds of sale from that re-
18 serve. Subject to paragraph (2), the Secretary shall offer
19 in settlement of such claims—

20 “(A) a payment from funds provided for this
21 purpose in advance in appropriation Acts;

22 “(B) a grant of land pursuant to sections 2275
23 and 2276 of the Revised Statutes of the United
24 States (43 U.S.C. 851 and 852) so long as such
25 land is not generating revenue for the United States;

1 “(C) any other option that would not be incon-
2 sistent with the Congressional Budget Act of 1974
3 (2 U.S.C. 621 et seq.); or

4 “(D) any combination of subparagraphs (A),
5 (B), and (C).

6 “(2) The value of any payment, grant, or option (or
7 combination thereof) offered as settlement under para-
8 graph (1) may not exceed an amount equal to seven per-
9 cent of the proceeds from the sale of Naval Petroleum Re-
10 serve Numbered 1, after deducting the costs incurred to
11 conduct the sale of that reserve.

12 “(3) Acceptance of the settlement offered under para-
13 graph (1) shall be subject to the condition that all claims
14 against the United States by the State of California or
15 the Teachers’ Retirement Fund of the State of California
16 are released with respect to lands within the Naval Petro-
17 leum Reserve Numbered 1, including sections 16 and 36
18 of township 30 south, range 23 east, Mount Diablo Prin-
19 cipal Meridian, California, or production or proceeds of
20 sale from that reserve. The Secretary may specify the
21 manner in which the release of such claims shall be evi-
22 denced.

23 “(i) EFFECT ON ANTITRUST LAWS.—Nothing in this
24 section shall be construed to alter the application of the
25 antitrust laws of the United States to the purchaser of

1 a naval petroleum reserve or to the lands in the naval pe-
2 troleum reserves subject to sale under this section upon
3 the completion of the sale.

4 “(j) PRESERVATION OF PRIVATE RIGHT, TITLE, AND
5 INTEREST.—Nothing in this section shall be construed to
6 adversely affect the ownership interest of any other entity
7 having any right, title, and interest in and to lands within
8 the boundaries of the naval petroleum reserves.

9 “(k) CONGRESSIONAL NOTIFICATION.—Section 7431
10 of this title shall not apply to the sale of the naval petro-
11 leum reserves under this section. However, the Secretary
12 may not enter into a contract for the sale of a naval petro-
13 leum reserve until the end of the 15-day period beginning
14 on the date on which the Secretary notifies the Committee
15 on Armed Services of the Senate and the Committee on
16 National Security and the Committee on Commerce of the
17 House of Representatives that the Secretary has accepted
18 an offer under subsection (b)(5) for the sale of that re-
19 serve.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of such chapter is amended by inserting
22 after the item relating to section 7421 the following new
23 item:

“7421a. Sale of naval petroleum reserves.”.

**Subtitle C—National Defense
Stockpile**

**SEC. 8021. DISPOSAL OF CERTAIN MATERIALS IN NATIONAL
DEFENSE STOCKPILE FOR DEFICIT REDUC-
TION.**

(a) DISPOSALS REQUIRED.—(1) During fiscal year 1996, the President shall dispose of all cobalt contained in the National Defense Stockpile that, as the date of the enactment of this Act, is authorized for disposal under any law (other than this Act).

(2) In addition to the disposal of cobalt under paragraph (1), the President shall dispose of additional quantities of cobalt and quantities of aluminum, ferro columbium, germanium, palladium, platinum, and rubber contained in the National Defense Stockpile so as to result in receipts to the United States in amounts equal to—

(A) \$21,000,000 during the fiscal year ending September 30, 1996;

(B) \$338,000,000 during the five-fiscal year period ending on September 30, 2000; and

(C) \$649,000,000 during the seven-fiscal year period ending on September 30, 2002.

(3) The President is not required to include the disposal of the materials identified in paragraph (2) in an annual materials plan for the National Defense Stockpile.

1 Disposals made under this section may be made without
 2 consideration of the requirements of an annual materials
 3 plan.

4 (b) LIMITATION ON DISPOSAL QUANTITY.—The total
 5 quantities of materials authorized for disposal by the
 6 President under subsection (a)(2) may not exceed the
 7 amounts set forth in the following table:

Authorized Stockpile Disposals

Material for disposal	Quantity
Aluminum	62,881 short tons
Cobalt	42,482,323 pounds con- tained
Ferro Columbium	930,911 pounds contained
Germanium	68,207 kilograms
Palladium	1,264,601 troy ounces
Platinum	452,641 troy ounces
Rubber	125,138 long tons

8 (c) DEPOSIT OF RECEIPTS.—Notwithstanding sec-
 9 tion 9 of the Strategic and Critical Materials Stock Piling
 10 Act (50 U.S.C. 98h), funds received as a result of the dis-
 11 posal of materials under subsection (a)(2) shall be depos-
 12 ited into the general fund of the Treasury for the purpose
 13 of deficit reduction.

14 (d) RELATIONSHIP TO OTHER DISPOSAL AUTHOR-
 15 ITY.—The disposal authority provided in subsection (a)(2)
 16 is new disposal authority and is in addition to, and shall
 17 not affect, any other disposal authority provided by law
 18 regarding the materials specified in such subsection.

19 (e) TERMINATION OF DISPOSAL AUTHORITY.—The
 20 President may not use the disposal authority provided in

1 subsection (a)(2) after the date on which the total amount
 2 of receipts specified in subparagraph (C) of such sub-
 3 section is achieved.

4 (f) DEFINITION.—The term “National Defense
 5 Stockpile” means the National Defense Stockpile provided
 6 for in section 4 of the Strategic and Critical Materials
 7 Stock Piling Act (50 U.S.C. 98c).

8 **TITLE IX—COMMITTEE ON** 9 **RESOURCES**

10 **SEC. 9000. TABLE OF CONTENTS.**

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

TITLE IX—COMMITTEE ON RESOURCES

Sec. 9000. Table of contents.

Subtitle A—Alaska and Helium Privatization

PART 1—ALASKA

Sec. 9001. Exports of Alaskan North Slope oil.
 Sec. 9002. Arctic Coastal Plain leasing and revenue.
 Sec. 9003. Alaska Power Administration sale.

PART 2—HELIUM PRIVATIZATION

Sec. 9011. Short title.
 Sec. 9012. Amendment of Helium Act.
 Sec. 9013. Authority of Secretary.
 Sec. 9014. Sale of crude helium.
 Sec. 9015. Elimination of stockpile.
 Sec. 9016. Repeal of authority to borrow.
 Sec. 9017. Reports.
 Sec. 9018. Land conveyance in Potter County, Texas.

Subtitle B—Water and Power

PART 1—POWER MARKETING ADMINISTRATIONS

Sec. 9201. Short title.
 Sec. 9202. Sale of the Southeastern Power Administration.
 Sec. 9203. Federal Energy Regulatory Commission jurisdiction.
 Sec. 9204. Evaluation of sales of Southwestern Power Administration and
 Western Area Power Administration facilities.
 Sec. 9205. Bonneville Power Administration appropriations refinancing.

PART 2—RECLAMATION

- Sec. 9211. Prepayment of certain repayment contracts between the United States and the Central Utah Water Conservancy District.
- Sec. 9212. Treatment of city of Folsom as a Central Valley Project contractor.
- Sec. 9213. Sly Park.
- Sec. 9214. Hetch Hetchy Dam.

Subtitle C—National Parks, Forests, and Public Lands

PART 1—CONCESSION REFORM

- Sec. 9301. Short title.
- Sec. 9302. Purpose.
- Sec. 9303. Definitions.
- Sec. 9304. Nature and types of concession authorizations.
- Sec. 9305. Competitive selection process for concession service agreements.
- Sec. 9306. Concessioner evaluations.
- Sec. 9307. Capital improvements.
- Sec. 9308. Duration of concession authorization.
- Sec. 9309. Rates and charges to the public.
- Sec. 9310. Transferability of concession authorizations.
- Sec. 9311. Fees charged by the United States for concession authorizations.
- Sec. 9312. Disposition of fees.
- Sec. 9313. Dispute resolution.
- Sec. 9314. Recordkeeping.
- Sec. 9315. Application of general governmental acquisition requirements.
- Sec. 9316. Rules of construction.
- Sec. 9317. Regulations.
- Sec. 9318. Relationship to other existing laws.

PART 2—NATIONAL FOREST SKI AREAS

- Sec. 9321. Privatization of Forest Service ski areas.
- Sec. 9322. Ski area permit fees and withdrawal of ski areas from operation of mining laws.

PART 3—DOMESTIC LIVESTOCK GRAZING

- Sec. 9331. Applicable regulations.
- Sec. 9332. Fees and charges.
- Sec. 9333. Animal unit month.
- Sec. 9334. Term of grazing permits or grazing leases.
- Sec. 9335. Conformance with land use plan.
- Sec. 9336. Effective date.

PART 4—REGIONAL DISPOSAL FACILITY OF SOUTHWESTERN LOW LEVEL
RADIOACTIVE WASTE DISPOSAL COMPACT

- Sec. 9341. Conveyance of property.
- Sec. 9342. Conveyance of easements.

Subtitle D—Territories

PART 1—COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

- Sec. 9401. Termination of annual direct grant assistance.

PART 2—TERRITORIAL ADMINISTRATIVE CESSATION ACT

- Sec. 9421. Short title.
- Sec. 9422. Congressional findings.
- Sec. 9423. Elimination of Office of Territorial and International Affairs.
- Sec. 9424. Certain activities not funded.

Subtitle E—Minerals

PART 1—HARDROCK MINING

- Sec. 9501. Findings and purpose.
- Sec. 9502. Patents under the general mining law.
- Sec. 9503. Royalty under the general mining law.
- Sec. 9504. Mineral materials.
- Sec. 9505. Claim maintenance requirements.

PART 2—FEDERAL OIL AND GAS ROYALTIES

- Sec. 9511. Short title.
- Sec. 9512. Definitions.
- Sec. 9513. Limitation periods.
- Sec. 9514. Adjustment and refunds.
- Sec. 9515. Required recordkeeping.
- Sec. 9516. Royalty interest, penalties, and payments.
- Sec. 9517. Limitation on assessments.
- Sec. 9518. Alternatives for marginal properties.
- Sec. 9519. Royalty in kind.
- Sec. 9520. Royalty simplification and cost-effective audit and collection requirements.
- Sec. 9521. Repeals.
- Sec. 9522. Delegation to States.
- Sec. 9523. Performance standard.
- Sec. 9524. Indian lands.
- Sec. 9525. Private lands.
- Sec. 9526. Effective date.

Subtitle F—Indian Gaming and Health

PART 1—INDIAN GAMING

- Sec. 9601. Indian gaming.

PART 2—INDIAN HEALTH: MEDICAID

- Sec. 9611. Health care facilities.
- Sec. 9612. Provider reimbursement.
- Sec. 9613. Study.

PART 3—INDIAN HEALTH: MEDICARE

- Sec. 9621. Health care facilities.
- Sec. 9622. Provider reimbursement.

Subtitle G—Consultation

- Sec. 9701. Consultation.

Subtitle H—Mapping

- Sec. 9801. Short title.
- Sec. 9802. Surveying and mapping contracting program.
- Sec. 9803. Inventory of activities.
- Sec. 9804. Plan to increase use of contracts.
- Sec. 9805. Reports.
- Sec. 9806. Definitions.

Subtitle I—National Park System Reform

- Sec. 9901. Short title.
- Sec. 9902. Definitions.

PART 1—NATIONAL PARK SYSTEM PLAN

- Sec. 9911. Preparation of National Park System plan.
- Sec. 9912. Management review of National Park System.
- Sec. 9913. National Park System Review Commission.
- Sec. 9914. Subsequent Act of Congress required to modify or terminate a park.
- Sec. 9915. Authorization of appropriations.
- Sec. 9916. Commendation and protection of National Park rangers.

PART 2—NEW AREA ESTABLISHMENT

- Sec. 9921. Study of new Park System areas.

1 **Subtitle A—Alaska and Helium** 2 **Privatization**

3 **PART 1—ALASKA**

4 **SEC. 9001. EXPORTS OF ALASKAN NORTH SLOPE OIL.**

5 (a) AMENDMENT OF MINERAL LEASING ACT.—Sec-
6 tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))
7 is amended to read as follows:

8 “EXPORTS OF ALASKAN NORTH SLOPE OIL

9 “(s)(1) Subject to paragraphs (2) through (6) of this
10 subsection and notwithstanding any other provision of this
11 Act or any other provision of law (including any regula-
12 tion) applicable to the export of oil transported by pipeline
13 over right-of-way granted pursuant to section 203 of the
14 Trans-Alaska Pipeline Authorization Act (43 U.S.C.
15 1652), such oil may be exported unless the President finds

1 that exportation of this oil is not in the national interest.
2 The President shall make his national interest determina-
3 tion within 5 months after the date of enactment of this
4 subsection. In evaluating whether exports of this oil are
5 in the national interest, the President shall at a minimum
6 consider—

7 “(A) whether exports of this oil would diminish
8 the total quantity or quality of petroleum available
9 to the United States;

10 “(B) the results of an appropriate environ-
11 mental review, including consideration of appropriate
12 measures to mitigate any potential adverse effects of
13 exports of this oil on the environment, which shall
14 be completed within four months of the date of the
15 enactment of this subsection; and

16 “(C) whether exports of this oil are likely to
17 cause sustained material oil supply shortages or sus-
18 tained oil prices significantly above world market
19 levels that would cause sustained material adverse
20 employment effects in the United States or that
21 would cause substantial harm to consumers, includ-
22 ing in noncontiguous States and Pacific territories.

23 If the President determines that exports of this oil are
24 in the national interest, he may impose such terms and
25 conditions (other than a volume limitation) as are nec-

1 essary or appropriate to ensure that such exports are con-
2 sistent with the national interest.

3 “(2) Except in the case of oil exported to a country
4 with which the United States entered into a bilateral inter-
5 national oil supply agreement before November 26, 1979,
6 or to a country pursuant to the International Emergency
7 Oil Sharing Plan of the International Energy Agency, any
8 oil transported by pipeline over right-of-way granted pur-
9 suant to section 203 of the Trans-Alaska Pipeline Author-
10 ization Act (43 U.S.C. 1652) shall, when exported, be
11 transported by a vessel documented under the laws of the
12 United States and owned by a citizen of the United States
13 (as determined in accordance with section 2 of the Ship-
14 ping Act, 1916 (46 U.S.C. App. 802)).

15 “(3) Nothing in this subsection shall restrict the au-
16 thority of the President under the Constitution, the Inter-
17 national Emergency Economic Powers Act (50 U.S.C.
18 1701 et seq.), or the National Emergencies Act (50 U.S.C.
19 1601 et seq.) to prohibit exports of this oil or under Part
20 B of title II of the Energy Policy and Conservation Act
21 (42 U.S.C. 6271–76).

22 “(4) The Secretary of Commerce shall issue any rules
23 necessary for implementation of the President’s national
24 interest determination, including any licensing require-
25 ments and conditions, within 30 days of the date of such

1 determination by the President. The Secretary of Com-
2 merce shall consult with the Secretary of Energy in ad-
3 ministering the provisions of this subsection.

4 “(5) If the Secretary of Commerce finds that export-
5 ing oil under authority of this subsection has caused sus-
6 tained material oil supply shortages or sustained oil prices
7 significantly above world market levels and further finds
8 that these supply shortages or price increases have caused
9 or are likely to cause sustained material adverse employ-
10 ment effects in the United States, the Secretary of Com-
11 merce, in consultation with the Secretary of Energy, shall
12 recommend, and the President may take, appropriate ac-
13 tion concerning exports of this oil, which may include
14 modifying or revoking authority to export such oil.

15 “(6) Administrative action under this subsection is
16 not subject to sections 551 and 553 through 559 of title
17 5, United States Code.”.

18 (b) GAO REPORT.—

19 (1) REVIEW.—The Comptroller General of the
20 United States shall conduct a review of energy pro-
21 duction in California and Alaska and the effects of
22 Alaskan North Slope oil exports, if any, on consum-
23 ers, independent refiners, and shipbuilding and ship
24 repair yards on the West Coast and in Hawaii. The
25 Comptroller General shall commence this review 2

1 years after the date of enactment of this Act and,
2 within 6 months after commencing the review, shall
3 provide a report to the Committee on Resources and
4 the Committee on Commerce of the House of Rep-
5 resentatives and the Committee on Energy and Nat-
6 ural Resources of the Senate.

7 (2) CONTENTS OF REPORT.—The report shall
8 contain a statement of the principal findings of the
9 review and recommendations for Congress and the
10 President to address job loss in the shipbuilding and
11 ship repair industry on the West Coast, as well as
12 adverse impacts on consumers and refiners on the
13 West Coast and in Hawaii, that the Comptroller
14 General attributes to Alaska North Slope oil exports.

15 **SEC. 9002. ARCTIC COASTAL PLAIN LEASING AND REVE-**
16 **NUE.**

17 (a) PURPOSE.—It is the purpose of this section to
18 reduce the Federal deficit by an estimated \$1,300,000,000
19 over the next 5 years. This revenue will be derived from
20 competitive bonus bids for oil and gas leases in the Coastal
21 Plain area of Alaska’s North Slope.

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

23 (1) The term “Secretary” means the Secretary
24 of the Interior.

1 (2) The term “Coastal Plain” means that por-
2 tion of the Arctic National Wildlife Refuge identified
3 in section 1002(b)(1) of the Alaska National Inter-
4 est Lands Conservation Act of 1980 (Public Law
5 96–487; 16 U.S.C. 3142(b)(1)) consisting of ap-
6 proximately 1,549,000 acres.

7 (c) COMPATIBILITY.—Congress hereby determines
8 that the oil and gas leasing program and activities author-
9 ized by this section in the Coastal Plain are compatible
10 with the purposes for which the Arctic National Wildlife
11 Refuge was established, and that no further findings or
12 decisions are required to implement this determination.

13 (d) AUTHORIZATION.—(1) Congress hereby author-
14 izes and directs the Secretary to establish and promptly
15 implement a program to assure the expeditious competi-
16 tive leasing exploration, development, production, and
17 transportation of the oil and gas resources of the Coastal
18 Plain. Regulations to implement this program and to gov-
19 ern oil and gas leasing, exploration, development and pro-
20 duction shall be promulgated by the Secretary within 6
21 months of the date of enactment of this section.

22 (2) The Coastal Plain leasing program required by
23 paragraph (1) shall include the following:

1 (A) The first lease sale of not less than 200,000
2 acres shall be conducted within 12 months of the
3 date of enactment of this section.

4 (B) The lease sales shall be based upon an in-
5 dustry nomination process.

6 (C) The Secretary is directed to grant to the
7 highest responsible qualified bidder or bidders by
8 competitive bidding, under regulations promulgated
9 in advance, any oil and gas lease on unleased Fed-
10 eral lands within the Coastal Plain. These regula-
11 tions may provide for the deposit of cash bids in an
12 interest-bearing account until the Secretary accepts
13 the bids, with interest earned paid to the General
14 Treasury for bids that are accepted, and to the un-
15 successful bidders for bids that are rejected.

16 (D) Royalty payments shall not be less than
17 12½ percent, and rental payments shall be pre-
18 scribed by the Secretary.

19 (E) The Attorney General of the United States
20 and the Federal Trade Commission may conduct
21 such review of lease terms and lease sale activities
22 as are necessary to ensure compliance with the anti-
23 trust laws.

24 (F) The size of lease tracts may be up to
25 11,520 acres but not less than 2,560 acres, as deter-

1 mined by the Secretary, except that the Secretary
2 may lease smaller tracts if he determines smaller
3 tracts are necessary to promote a more competitive
4 leasing program or are necessary in certain locations
5 to mitigate reasonably foreseeable impacts on the en-
6 vironment.

7 (G) Each lease shall be issued for an initial pe-
8 riod of up to 10 years and shall be extended as long
9 as oil or gas is produced in paying quantities from
10 the lease or unit area to which the lease is commit-
11 ted or as drilling or reworking operations as ap-
12 proved by the Secretary are conducted thereon.

13 (H) The Secretary is authorized and directed to
14 promulgate regulations and to include terms in
15 leases to ensure that—

16 (i) activities are conducted pursuant to an
17 approved exploration or development plan;

18 (ii) lessees secure an appropriate perform-
19 ance bond to cover activities;

20 (iii) provision is made for the suspension,
21 cancellation, assignment, relinquishment and
22 unitization of leases; and

23 (iv) the Secretary has access to lease infor-
24 mation and that confidential, privileged or pro-

1 proprietary information furnished by lessees is ade-
2 quately protected.

3 (e) JUDICIAL REVIEW.—Any complaint filed seeking
4 judicial review of an action of the Secretary in promulgat-
5 ing any regulation under this section may be filed only
6 in the United States Court of Appeals for the District of
7 Columbia, and such complaint shall be filed within 90 days
8 from the date of such promulgation, or after such date
9 if such complaint is based solely on grounds arising after
10 such 90th day, in which case the complaint must be filed
11 within 90 days after the complainant knew or reasonably
12 should have known of the grounds for the complaint. Any
13 complaint seeking judicial review of any other actions of
14 the Secretary under this section may be filed in any appro-
15 priate district court of the United States, and such com-
16 plaint must be filed within 90 days from the date of the
17 action being challenged, or after such date if such com-
18 plaint is based solely on grounds arising after such 90th
19 day, in which case the complaint must be filed within 90
20 days after the complainant knew or reasonably should
21 have known of the grounds for the complaint.

22 (f) ADMINISTRATION.—(1) Section 1003 of the Alas-
23 ka National Interest Lands Conservation Act of 1980 (94
24 Stat. 2452; 16 U.S.C. 3143) is repealed.

1 (2) This section shall be considered the primary land
2 management authorization for all activities associated
3 with exploration, development, and production from the
4 Coastal Plain. No land management review, determina-
5 tion, or other action shall be required except as specifically
6 authorized by this section.

7 (g) PROTECTION OF FISH AND WILDLIFE RE-
8 SOURCES AND OTHER ENVIRONMENTAL VALUES.—(1)
9 Before conducting a competitive oil and gas lease sale
10 under this section, the Secretary shall promulgate, within
11 6 months, as provided in subsection (d)(1), such rules and
12 regulations as are necessary to ensure that oil and gas
13 exploration, development, production, and transportation
14 activities undertaken in the Coastal Plain achieve the rea-
15 sonable protection of the fish and wildlife resources, envi-
16 ronment and subsistence uses of the Coastal Plain.

17 (2) The Secretary shall administer the provisions of
18 this section through regulations and lease terms that the
19 Secretary determines to be necessary to mitigate reason-
20 ably foreseeable and significantly adverse effects on the
21 fish and wildlife, surface resources and subsistence re-
22 sources of the Coastal Plain.

23 (3)(A) The Secretary, after consultation with the
24 State of Alaska, the city of Kaktovik, Alaska, and the
25 North Slope Borough, is authorized to close to leasing and

1 designate up to 30,000 acres of the Coastal Plain as Spe-
2 cial Areas if the Secretary determines that these lands are
3 of such unique character and interest so as to require spe-
4 cial management and regulatory protection. The Secretary
5 shall notify the Committee on Energy and Natural Re-
6 sources of the Senate and the Committee on Resources
7 of the House of Representatives 90 days in advance of
8 making such designations. The Secretary may permit leas-
9 ing of all or portions of any lands within the Coastal Plain
10 designated as Special Areas by setting lease terms that
11 limit or condition surface use and occupancy by lessees
12 of such lands but permit the use of horizontal drilling
13 technology from sites on leases located outside the des-
14 ignated Special Areas.

15 (B) Notwithstanding any other provision of law or
16 any international agreement to which the United States
17 is a party, the Secretary's sole authority to close lands
18 within the Coastal Plain to oil and gas leasing and to ex-
19 ploration, development, and production as provided for in
20 this part is set forth in subparagraph (A).

21 (4) The Secretary shall, in consultation with the
22 State of Alaska, the city of Kaktovik, Alaska, and the
23 North Slope Borough, develop guidelines to encourage the
24 siting of facilities having common use characteristics
25 (service bases, ports and docks, airports, major pipelines

1 and roads) in a manner which leads to facility consolida-
2 tion, avoids unnecessary duplication, utilizes existing fa-
3 cilities, minimizes impacts on fish, wildlife, habitat and the
4 subsistence activities of residents of Native communities,
5 and avoids disruption of the lives of the residents of the
6 Village of Kaktovik and other communities.

7 (5) Notwithstanding title XI of the Alaska National
8 Interest Lands Conservation Act of 1980 (94 Stat. 2457;
9 16 U.S.C. 3161 et seq.), the Secretary is authorized and
10 directed to grant, under sections 28(a) through (t) and
11 (v) through (y) of the Mineral Leasing Act (30 U.S.C.
12 185), rights-of-way and easements across the Coastal
13 Plain for the purposes of this section, for pipeline con-
14 struction, and the transportation of oil and gas and relat-
15 ed purposes.

16 (6) The Secretary is authorized to close, on a sea-
17 sonal basis, portions of the Coastal Plain to exploratory
18 drilling activities as necessary to protect caribou calving
19 areas and other species of fish and wildlife.

20 (h) APPLICATION OF ENVIRONMENTAL LAWS.—The
21 “Final Legislative Environmental Impact Statement”
22 (April 1987) prepared pursuant to section 1002 of the
23 Alaska National Interest Lands Conservation Act of 1980
24 (94 Stat. 2449; 16 U.S.C. 3142) and section 102(2)(C)
25 of the National Environmental Policy Act of 1969 (89

1 Stat. 424; 42 U.S.C. 4332(2)(C)) is hereby determined
2 to be adequate and legally sufficient for all actions author-
3 ized pursuant to this section, including all phases of oil
4 and gas leasing, exploration, development, production,
5 transportation and related activities, including the grant-
6 ing of rights-of-way, use permits and other authorizations.

7 (i) NEW REVENUES.—(1) Notwithstanding any other
8 provision of law, all revenues received from competitive
9 bids, sales, bonuses, royalties, rents, fees, interest or other
10 income derived from the leasing of oil and gas resources
11 within the Coastal Plain shall be deposited into the Treas-
12 ury of the United States: *Provided*, That 50 percent of
13 all such Coastal Plain revenues shall be paid by the Sec-
14 retary of the Treasury semiannually, on March 30th and
15 on September 30th of each year, to the State of Alaska.

16 (2) On March 1st of each year following the date of
17 enactment of this section, the Secretary shall prepare and
18 submit to the Congress an annual report on the revenues
19 derived and on the leasing program authorized by this sec-
20 tion.

21 (j) CONVEYANCE.—Notwithstanding the provisions of
22 section 1302(h)(2) of the Alaska National Interest Lands
23 Conservation Act (16 U.S.C. 3192(h)(2)), the Secretary
24 is authorized and directed to convey (1) to the Kaktovik
25 Inupiat Corporation the surface estate of the lands de-

1 scribed in paragraph 2 of Public Land Order 6959, to the
2 extent necessary to fulfill the corporation's entitlement
3 under section 12 of the Alaska Native Claims Settlement
4 Act (43 U.S.C. 1611), and (2) to the Arctic Slope Re-
5 gional Corporation the subsurface estate beneath such
6 surface estate pursuant to the August 9, 1983, agreement
7 between the Arctic Slope Regional Corporation and the
8 United States of America.

9 (k) PENALTY.—Any person, including any Federal
10 official, who fails to comply with any provision or mandate
11 of this section, a lease term, or a regulation promulgated
12 under this section, after notice of such failure and expira-
13 tion of a reasonable period for corrective action, shall be
14 liable, after hearing, for a civil penalty of not more than
15 \$10,000 for each day of the continuance of such failure.

16 (l) COMMUNITY ASSISTANCE.—There is hereby estab-
17 lished a Community Assistance Fund in the Treasury
18 which shall be maintained at a level of \$5,000,000 annu-
19 ally from the Federal share of Coastal Plain revenues and
20 shall be available to the Secretary for the purposes of this
21 section. Organized boroughs, other municipal subdivisions
22 of the State of Alaska, and recognized Indian Reorganiza-
23 tion Act entities which are impacted by activities author-
24 ized under this section shall be eligible, on application to
25 the Secretary, for local assistance from the Community

1 Assistance Fund for needed social services and to provide
2 public services and facilities required in connection with
3 supporting exploration and development of the Coastal
4 Plain.

5 (m) EMPLOYMENT AND CONTRACTING.—As a condi-
6 tion of any leases, permits, or other Federal authorizations
7 granted or issued pursuant to this section, a recipient of
8 those leases, permits, or authorizations shall be required
9 to use its best efforts to assure that the lessee and its
10 agents and contractors provide a fair share of employment
11 and contracting for Alaska Natives and Alaska Native
12 Corporations from throughout the State.

13 (n) USE OF ANWR REVENUES.—

14 (1) ESTABLISHMENT OF ENDOWMENT.—There
15 is hereby established in the general fund of the
16 Treasury a separate account which shall be known
17 as the National Endowment for Fish and Wildlife.

18 (2) CONTENTS.—(A) Except as provided in
19 subparagraph (B), the Endowment shall consist of
20 revenues received from the following sources:

21 (i) Gifts, devises, and bequests to the En-
22 dowment.

23 (ii) Amounts appropriated by the Congress
24 to the Endowment.

1 (iii) Any revenues deposited into the
2 Treasury of the United States under subsection
3 (i), from the Federal share of revenues derived
4 from oil and gas leasing within the Coastal
5 Plain, that exceed \$1,300,000,000.

6 (B) After the Endowment has reached a level of
7 \$250,000,000 in principal, further payments to the
8 Endowment shall consist only of the following:

9 (i) Gifts, devises, and bequests to the En-
10 dowment.

11 (ii) Amounts appropriated by the Congress
12 to the Endowment.

13 (iii) 5 percent of the Federal royalties de-
14 rived from commercial production of oil and gas
15 on Federal leases on the Coastal Plain.

16 (3) ESTABLISHMENT OF FISH AND WILDLIFE
17 CONSERVATION COMMISSION.—(A) To carry out the
18 purposes of this subsection, there is hereby estab-
19 lished a commission to be known as the Fish and
20 Wildlife Conservation Commission.

21 (B) The Commission shall consist of—

22 (i) the Secretary of the Interior, who shall
23 be the chairman,

24 (ii) 3 Members of the Senate selected by
25 the President of the Senate, and

1 (iii) 3 Members of the House of Represent-
2 atives selected by the Speaker.

3 (C) At least 1 member of the Commission se-
4 lected from each House of Congress shall be a mem-
5 ber of the minority party in that House.

6 (D) Any Member of the House of Representa-
7 tives who is a member of the Commission, if re-
8 elected to the succeeding Congress, may serve on the
9 Commission notwithstanding the expiration of a
10 Congress.

11 (E) Any vacancy on the Commission shall be
12 filled in the same manner as the original appoint-
13 ment.

14 (4) EXPENDITURES BY COMMISSION.—(A) The
15 Fish and Wildlife Commission may make expendi-
16 tures from the Endowment for the following fish and
17 wildlife conservation purposes:

18 (i) Acquisition of important habitat lands
19 for endangered species or threatened species
20 from owners of private property. Such lands
21 may be acquired solely on a willing seller basis
22 and shall be managed by the Secretary of the
23 Interior for the conservation of such species
24 pursuant to the terms of section 5 of the En-

1 dangered Species Act of 1973 (16 U.S.C.
2 1534).

3 (ii) Provision of funding for purposes au-
4 thorized under the Endangered Species Act of
5 1973.

6 (iii) Provision of funds to the North Amer-
7 ican Wetlands Conservation Fund pursuant to
8 the North American Wetlands Conservation Act
9 (16 U.S.C. 4401 et seq.).

10 (B) The amount expended under subparagraph
11 (A)(iii) each fiscal year shall equal or exceed 25 per-
12 cent of the total expenditures from the Endowment
13 in that fiscal year.

14 (C) The Secretary of the Interior may not rec-
15 ommend any lands or interest in lands for purchase
16 or other forms of acquisition using funds made
17 available under the terms of this section unless the
18 Secretary of the Interior—

19 (i) has determined that such lands are nec-
20 essary for the conservation of endangered spe-
21 cies or other fish and wildlife; and

22 (ii) has consulted with the county or other
23 unit of local government in which such lands
24 are located and with the Governor of the State
25 concerned.

1 (D) Land or an interest in land may not be ac-
2 quired with moneys from the Endowment unless—

3 (i) the acquisition thereof has been ap-
4 proved by the Governor of the State in which
5 the land is located; and

6 (ii) the owner of the land or interest has
7 offered the land or interest for acquisition
8 under this subsection and consented to the ac-
9 quisition.

10 (5) ANNUAL REPORT.—The Commission shall,
11 through its chairman, annually report in detail to
12 the Congress, by not later than the first Monday in
13 December, regarding the operations of the Commis-
14 sion during the preceding fiscal year.

15 (6) STATE LAW.—The jurisdiction of any State,
16 both civil and criminal, over persons upon areas ac-
17 quired under this subsection shall not be changed or
18 otherwise affected by reason of the acquisition and
19 administration of the areas by the United States as
20 endangered species habitat. Nothing in this sub-
21 section is intended to interfere with the operation of
22 the game laws of the States.

23 (7) ADMINISTRATION OF AREAS ACQUIRED.—
24 Areas of lands, waters, or interest therein acquired
25 or reserved pursuant to this subsection shall, unless

1 otherwise provided by law, be administered by the
2 Secretary of the Interior under rules and regulations
3 prescribed by the Secretary to conserve and protect
4 endangered species in accordance with the Endan-
5 gered Species Act of 1973, or to restore or develop
6 adequate wildlife habitat.

7 (8) DEFINITIONS.—In this subsection:

8 (A) The term “Commission” means the
9 Fish and Wildlife Conservation Commission es-
10 tablished by this subsection.

11 (B) The term “Endowment” means the
12 National Endowment for Fish and Wildlife es-
13 tablished by this subsection.

14 (9) CONFORMING AMENDMENT.—Section 7 of
15 the North American Wetlands Conservation Act of
16 1989 (16 U.S.C. 4406) is amended by adding at the
17 end the following:

18 “(e) FISH AND WILDLIFE COMMISSION FUNDING.—
19 In addition to the amounts made available under sub-
20 sections (a), (b), and (c) of this section, the Council may
21 receive funds from the Fish and Wildlife Commission to
22 carry out the purposes of this Act. Use of such funds shall
23 not be subject to the cost allocation requirements of sec-
24 tion 8 of this Act.”.

1 **SEC. 9003. ALASKA POWER ADMINISTRATION SALE.**

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

3 (1) The term “Eklutna assets” means the
4 Eklutna Hydroelectric Project and related assets as
5 described in section 4 and Exhibit A of the Eklutna
6 Purchase Agreement.

7 (2) The term “Eklutna Purchase Agreement”
8 means the August 2, 1989, Eklutna Purchase
9 Agreement between the Alaska Power Administra-
10 tion of the Department of Energy and the Eklutna
11 Purchasers, together with any amendments thereto
12 which were adopted before the enactment of this sec-
13 tion.

14 (3) The term “Eklutna Purchasers” means the
15 Municipality of Anchorage doing business as Munici-
16 pal Light and Power, the Chugach Electric Associa-
17 tion, Inc. and the Matanuska Electric Association,
18 Inc.

19 (4) The term “Secretary” means the Secretary
20 of Energy except where otherwise specified.

21 (5) The term “Snettisham assets” means the
22 Snettisham Hydroelectric Project and related assets
23 as described in section 4 and Exhibit A of the
24 Snettisham Purchase Agreement.

25 (6) The term “Snettisham Purchase Agree-
26 ment” means the February 10, 1989, Snettisham

1 Purchase Agreement between the Alaska Power Ad-
2 ministration of the Department of Energy and the
3 Alaska Power Authority and its successors in inter-
4 est, together with any amendments thereto which
5 were adopted before the enactment of this section.

6 (b) SALE OF SNETTISHAM AND EKLUNTA ASSETS.—

7 (1) SNETTISHAM.—The Secretary is authorized
8 and directed to sell and transfer the Snettisham as-
9 sets to the State of Alaska in accordance with the
10 terms of this section and the Snettisham Purchase
11 Agreement.

12 (2) EKLUTNA.—The Secretary is authorized
13 and directed to sell and transfer the Eklutna assets
14 to the Eklutna Purchasers in accordance with the
15 terms of this section and the Eklutna Purchase
16 Agreement.

17 (3) COOPERATION OF OTHER AGENCIES.—
18 Other departments, agencies, and instrumentalities
19 of the United States shall cooperate with the Sec-
20 retary in implementing the sales and transfers under
21 this section.

22 (4) AUTHORIZATION OF APPROPRIATIONS; CON-
23 TRIBUTED FUNDS.—(A) There are authorized to be
24 appropriated such sums as may be necessary to pre-
25 pare, survey, or acquire Snettisham and Eklutna as-

1 sets for sale and transfer under this section. Such
2 preparations and acquisitions shall provide sufficient
3 title in the assets to ensure beneficial use, enjoy-
4 ment, and occupancy thereof to the purchasers.

5 (B) Notwithstanding any other provision of law,
6 the Alaska Power Administration is authorized to re-
7 ceive, administer, and expend such contributed funds
8 as may be provided by the Eklutna Purchasers or
9 customers or the Snettisham Purchasers or cus-
10 tomers for the purposes of upgrading, improving,
11 maintaining, or administering Eklutna or
12 Snettisham. Upon the termination of the Alaska
13 Power Administration required under subsection (d),
14 the Secretary of Energy shall administer and expend
15 any remaining balances of such contributed funds
16 for the purposes intended by the contributors.

17 (C) GENERAL PROVISIONS.—

18 (1) RIGHTS-OF-WAY AND OTHER LANDS FOR
19 THE EKLUTNA PROJECT.—With respect to Eklutna
20 lands described in Exhibit A of the Eklutna Pur-
21 chase Agreement:

22 (A) The Secretary of the Interior shall
23 issue rights-of-way to the Alaska Power Admin-
24 istration for subsequent reassignment to the

1 Eklutna Purchasers at no cost to the Eklutna
2 Purchasers.

3 (B) Such rights-of-way shall remain effec-
4 tive for a period equal to the life of the Eklutna
5 hydroelectric project as extended by improve-
6 ments, repairs, renewals, or replacements.

7 (C) Such rights-of-way shall be sufficient
8 for the operation, maintenance, repair, and re-
9 placement of, and access to, the facilities of the
10 Eklutna hydroelectric project located on mili-
11 tary lands and lands managed by the Bureau of
12 Land Management, including land selected by,
13 but not yet conveyed to, the State of Alaska.

14 (D) If the Eklutna Purchasers subse-
15 quently sell or transfer the Eklutna hydro-
16 electric project to private ownership, the Bu-
17 reau of Land Management may assess reason-
18 able and customary fees for continued use of
19 the rights-of-way on lands managed by the Bu-
20 reau of Land Management and military lands
21 in accordance with applicable law.

22 (E) The Secretary shall transfer fee title to
23 lands at Anchorage Substation to the Eklutna
24 Purchasers at no additional cost if the Sec-
25 retary of the Interior determines that pending

1 claims to and selections of those lands are in-
2 valid or relinquished.

3 (F) With respect only to the Eklutna lands
4 identified in Exhibit A of the Eklutna Purchase
5 Agreement, the State of Alaska may select, and
6 the Secretary of the Interior shall convey, to the
7 State, improved lands under the selection enti-
8 tlements in section 6 of the Alaska Statehood
9 Act (Public Law 85–508; 72 Stat. 339) and the
10 North Anchorage Land Agreement of January
11 31, 1983. The conveyance of such lands is sub-
12 ject to the rights-of-way provided to the
13 Eklutna Purchasers under subparagraph (A).

14 (2) LANDS FOR THE SNETTISHAM PROJECT.—
15 With respect to the Snettisham lands identified in
16 Exhibit A of the Snettisham Purchase Agreement,
17 the State of Alaska may select, and the Secretary of
18 the Interior shall convey to the State, improved
19 lands under the selection entitlement in section 6 of
20 the Alaska Statehood Act (Public Law 85–508; 72
21 Stat. 339).

22 (3) EFFECT ON STATE SELECTIONS.—Notwith-
23 standing the expiration of the right of the State of
24 Alaska to make selections under section 6 of the
25 Alaska Statehood Act (Public Law 85–508; 72 Stat.

1 339), the State of Alaska may select lands author-
2 ized for selection under this section or any Purchase
3 Agreement incorporated into or ratified by this sec-
4 tion. The State shall complete such selections within
5 one year after the date of the enactment of this sec-
6 tion. The Secretary of the Interior shall convey lands
7 selected by the State under this section notwith-
8 standing the limitation contained in section 6(b) of
9 the Alaska Statehood Act (Public Law 85–508; 72
10 Stat. 339) regarding the occupancy, appropriation,
11 or reservation of selected lands. Nothing in this sub-
12 section shall be construed to authorize the Secretary
13 of the Interior to convey to the State of Alaska a
14 total acreage of selected lands in excess of the total
15 acreage which could be transferred to the State of
16 Alaska pursuant to the Alaska Statehood Act (Pub-
17 lic Law 85–508; 72 Stat. 339), and other applicable
18 law.

19 (4) REPEAL OF ACT OF AUGUST 9, 1955.—The
20 Act of August 9, 1955 (69 Stat. 618), concerning
21 water resources investigations in Alaska, is repealed.

22 (5) TREATMENT OF ASSET SALE.—The sales of
23 assets under this section shall not be considered a
24 disposal of Federal surplus property under the Fed-
25 eral Property and Administrative Services Act of

1 1949 (40 U.S.C. 484) or the Surplus Property Act
2 of 1944 (50 U.S.C. App. 1622).

3 (6) APPLICATION OF CERTAIN LAWS.—(A) The
4 Act of July 31, 1950 (64 Stat. 382), shall cease to
5 apply on the date, as determined by the Secretary,
6 when all Eklutna assets have been conveyed to the
7 Eklutna Purchasers.

8 (B) Section 204 of the Flood Control Act of
9 1962 (Public Law 87–874; 76 Stat. 1193) shall
10 cease to apply effective on the date, as determined
11 by the Secretary, when all Snettisham assets have
12 been conveyed to the State of Alaska.

13 (d) TERMINATION OF ALASKA POWER ADMINISTRA-
14 TION.—

15 (1) TERMINATION OF ALASKA POWER
16 ADMINISTRATION.—Not later than one year after both
17 of the sales authorized in this section have occurred,
18 as measured by the Transaction Dates stipulated in
19 the Purchase Agreements, the Secretary shall—

20 (A) complete the business of, and close
21 out, the Alaska Power Administration;

22 (B) prepare and submit to Congress a re-
23 port documenting the sales; and

1 (C) return unobligated balances of funds
2 appropriated for the Alaska Power Administra-
3 tion to the Treasury of the United States.

4 (2) DOE ORGANIZATION ACT.—Section 302(a)
5 of the Department of Energy Organization Act (42
6 U.S.C. 7152(a)) is amended as follows:

7 (A) In paragraph (1)—

8 (i) by striking out subparagraph (C);
9 and

10 (ii) by redesignating subparagraphs
11 (D), (E), and (F) as subparagraphs (C),
12 (D), and (E) respectively.

13 (B) In paragraph (2), by striking out “the
14 Bonneville Power Administration, and the Alas-
15 ka Power Administration” and inserting in lieu
16 thereof “and the Bonneville Power Administra-
17 tion”.

18 The amendments made by this paragraph shall take
19 effect on the date on which the Secretary submits
20 the report referred to in subparagraph (B) of para-
21 graph (1).

22 (e) PROCEEDS.—The proceeds from the sale of
23 Snettisham and Eklutna assets under this section shall be
24 credited to miscellaneous receipts in the Treasury.

1 **PART 2—HELIUM PRIVATIZATION**

2 **SEC. 9011. SHORT TITLE.**

3 This part may be cited as the “Helium Privatization
4 Act of 1995”.

5 **SEC. 9012. AMENDMENT OF HELIUM ACT.**

6 Except as otherwise expressly provided, whenever in
7 this part an amendment or repeal is expressed in terms
8 of an amendment to, or repeal of, a section or other provi-
9 sion, the reference shall be considered to be made to a
10 section or other provision of the Helium Act (50 U.S.C.
11 167 to 167n).

12 **SEC. 9013. AUTHORITY OF SECRETARY.**

13 Sections 3, 4, and 5 are amended to read as follows:

14 **“SEC. 3. AUTHORITY OF SECRETARY.**

15 “(a) EXTRACTION AND DISPOSAL OF HELIUM ON
16 FEDERAL LANDS.—(1) The Secretary may enter into
17 agreements with private parties for the recovery and dis-
18 posal of helium on Federal lands upon such terms and
19 conditions as he deems fair, reasonable and necessary. The
20 Secretary may grant leasehold rights to any such helium.
21 The Secretary may not enter into any agreement by which
22 the Secretary sells such helium other than to a private
23 party with whom the Secretary has an agreement for re-
24 covery and disposal of helium. Such agreements may be
25 subject to such rules and regulations as may be prescribed
26 by the Secretary.

1 “(2) Any agreement under this subsection shall be
2 subject to the existing rights of any affected Federal oil
3 and gas lessee. Each such agreement (and any extension
4 or renewal thereof) shall contain such terms and condi-
5 tions as deemed appropriate by the Secretary.

6 “(3) This subsection shall not in any manner affect
7 or diminish the rights and obligations of the Secretary and
8 private parties under agreements to dispose of helium pro-
9 duced from Federal lands in existence at the enactment
10 of the Helium Privatization Act of 1995 except to the ex-
11 tent that such agreements are renewed or extended after
12 such date.

13 “(b) STORAGE, TRANSPORTATION, AND SALE.—The
14 Secretary is authorized to store, transport, and sell helium
15 only in accordance with this Act.

16 “(c) MONITORING AND REPORTING.—The Secretary
17 is authorized to monitor helium production and helium re-
18 serves in the United States and to periodically prepare re-
19 ports regarding the amounts of helium produced and the
20 quantity of crude helium in storage in the United States.

21 **“SEC. 4. STORAGE, TRANSPORTATION, AND WITHDRAWAL**
22 **OF CRUDE HELIUM.**

23 “(a) STORAGE, TRANSPORTATION, AND WITH-
24 DRAWAL.—The Secretary is authorized to store and trans-
25 port crude helium and to maintain and operate existing

1 crude helium storage at the Bureau of Mines Cliffside
2 Field, together with related helium transportation and
3 withdrawal facilities.

4 “(b) CESSATION OF PRODUCTION, REFINING, AND
5 MARKETING.—Effective 18 months after the date of en-
6 actment of the Helium Privatization Act of 1995, the Sec-
7 retary shall cease producing, refining and marketing re-
8 fined helium and shall cease carrying out all other activi-
9 ties relating to helium which the Secretary was authorized
10 to carry out under this Act before the date of enactment
11 of the Helium Privatization Act of 1995, except those ac-
12 tivities described in subsection (a). The amount of helium
13 reserves owned by the United States and stored in the Bu-
14 reau of Mines Cliffside Field at such date of cessation,
15 less 600,000,000 cubic feet, shall be the helium reserves
16 owned by the United States required to be sold pursuant
17 to section 8(b) hereof.

18 “(c) DISPOSAL OF FACILITIES.—(1) Within two
19 years after the date on which the Secretary ceases produc-
20 ing, refining and marketing refined helium and ceases all
21 other activities relating to helium in accordance with sub-
22 section (b), the Secretary shall dispose of all facilities,
23 equipment, and other real and personal property, together
24 with all interests therein, held by the United States for
25 the purpose of producing, refining and marketing refined

1 helium. The disposal of such property shall be in accord-
2 ance with the provisions of law governing the disposal of
3 excess or surplus properties of the United States.

4 “(2) All proceeds accruing to the United States by
5 reason of the sale or other disposal of such property shall
6 be treated as moneys received under this chapter for pur-
7 poses of section 6(f). All costs associated with such sale
8 and disposal (including costs associated with termination
9 of personnel) and with the cessation of activities under
10 subsection (b) shall be paid from amounts available in the
11 helium production fund established under section 6(f).

12 “(3) Paragraph (1) shall not apply to any facilities,
13 equipment, or other real or personal property, or any in-
14 terest therein, necessary for the storage and transpor-
15 tation of crude helium or any equipment needed to main-
16 tain the purity, quality control, and quality assurance of
17 helium in the reserve.

18 “(d) EXISTING CONTRACTS.—All contracts which
19 were entered into by any person with the Secretary for
20 the purchase by such person from the Secretary of refined
21 helium and which are in effect on the date of the enact-
22 ment of the Helium Privatization Act of 1995 shall remain
23 in force and effect until the date on which the facilities
24 referred to in subsection (c) are disposed of. Any costs
25 associated with the termination of such contracts shall be

1 paid from the helium production fund established under
2 section 6(f).

3 **“SEC. 5. FEES FOR STORAGE, TRANSPORTATION AND WITH-**
4 **DRAWAL.**

5 “Whenever the Secretary provides helium storage,
6 withdrawal, or transportation services to any person, the
7 Secretary is authorized and directed to impose fees on
8 such person to reimburse the Secretary for the full costs
9 of providing such storage, transportation, and withdrawal.
10 All such fees received by the Secretary shall be treated
11 as moneys received under this Act for purposes of section
12 6(f).”.

13 **SEC. 9014. SALE OF CRUDE HELIUM.**

14 Section 6 is amended as follows:

15 (1) Subsection (a) is amended by striking out
16 “from the Secretary” and inserting “from persons
17 who have entered into enforceable contracts to pur-
18 chase an equivalent amount of crude helium from
19 the Secretary”.

20 (2) Subsection (b) is amended by inserting
21 “crude” before “helium” and by adding the follow-
22 ing at the end thereof: “Except as may be required
23 by reason of subsection (a), the Secretary shall not
24 make sales of crude helium under this section in

1 such amounts as will disrupt the market price of
2 crude helium.”.

3 (3) Subsection (c) is amended by inserting
4 “crude” before “helium” the first place it appears
5 and by striking “together with interest as provided
6 in subsection (d) of this section” and all that follows
7 down through the period at the end of such sub-
8 section and inserting the following:

9 “all funds required to be repaid to the United States as
10 of October 1, 1995, under this section (hereinafter re-
11 ferred to as ‘repayable amounts’). The price at which
12 crude helium is sold by the Secretary shall not be less than
13 the amount determined by the Secretary as follows:

14 “(1) Divide the outstanding amount of such re-
15 payable amounts by the volume (in mcf) of crude he-
16 lium owned by the United States and stored in the
17 Bureau of Mines Cliffside Field at the time of the
18 sale concerned.

19 “(2) Adjust the amount determined under para-
20 graph (1) by the Consumer Price Index for years be-
21 ginning after December 31, 1995.”.

22 (4) Subsection (d) is amended to read as fol-
23 lows:

24 “(d) EXTRACTION OF HELIUM FROM DEPOSITS ON
25 FEDERAL LANDS.—All moneys received by the Secretary

1 from the sale or disposition of helium on Federal lands
2 shall be paid to the Treasury and credited against the
3 amounts required to be repaid to the Treasury under sub-
4 section (c) of this section.”.

5 (5) Subsection (e) is repealed.

6 (6) Subsection (f) is amended by inserting
7 “(1)” after “(f)” and by adding the following at the
8 end thereof:

9 “(2) Within 7 days after the commencement of each
10 fiscal year after the disposal of the facilities referred to
11 in section 4(c), all amounts in such fund in excess of
12 \$2,000,000 (or such lesser sum as the Secretary deems
13 necessary to carry out this Act during such fiscal year)
14 shall be paid to the Treasury and credited as provided in
15 paragraph (1). Upon repayment of all amounts referred
16 to in subsection (c), the fund established under this sec-
17 tion shall be terminated and all moneys received under this
18 Act shall be deposited in the Treasury as General Reve-
19 nues.”.

20 **SEC. 9015. ELIMINATION OF STOCKPILE.**

21 Section 8 is amended to read as follows:

22 **“SEC. 8. ELIMINATION OF STOCKPILE.**

23 **“(a) REVIEW OF RESERVES.—**The Secretary shall re-
24 view annually the known helium reserves in the United
25 States and make a determination as to the expected life

1 of the domestic helium reserves (other than Federally
2 owned helium stored at the Cliffside Reservoir) at that
3 time.

4 “(b) STOCKPILE SALES.—Not later than January 1,
5 2005, the Secretary shall commence offering for sale crude
6 helium from helium reserves owned by the United States
7 in such minimum annual amounts as would be necessary
8 to dispose of all such helium reserves in excess of
9 600,000,000 cubic feet (mcf) on a straight-line basis be-
10 tween such date and January 1, 2015: *Provided*, That the
11 minimum price for all such sales, as determined by the
12 Secretary in consultation with the helium industry, shall
13 be such as will ensure repayment of the amounts required
14 to be repaid to the Treasury under section 6(c): *And pro-*
15 *vided further*, That the minimum annual sales requirement
16 may be deferred only if, and to the extent that, the Sec-
17 retary is unable to arrange sales at the minimum price.
18 The sales shall be at such times during each year and in
19 such lots as the Secretary determines, in consultation with
20 the helium industry, are necessary to carry out this sub-
21 section with minimum market disruption.

22 “(c) DISCOVERY OF ADDITIONAL RESERVES.—The
23 discovery of additional helium reserves shall not affect the
24 duty of the Secretary to make sales of helium as provided
25 in subsection (b), as the case may be.”.

1 **SEC. 9016. REPEAL OF AUTHORITY TO BORROW.**

2 Sections 12 and 15 are repealed.

3 **SEC. 9017. REPORTS.**

4 Section 16 is amended by redesignating existing sec-
5 tion 16 as section 16(a) and inserting the following at the
6 end thereof:

7 “(b)(1) The Inspector General of the Department of
8 the Interior shall cause to be prepared, not later than
9 March 31 following each fiscal year commencing with the
10 date of enactment of the Helium Privatization Act of
11 1995, annual financial statements for the Helium Oper-
12 ations of the Bureau of Mines. The Director of the Bureau
13 of Mines shall cooperate with the Inspector General in ful-
14 filling this requirement, and shall provide him with such
15 personnel and accounting assistance as may be necessary
16 for that purpose. The financial statements shall be audited
17 by the General Accounting Office, and a report on such
18 audit shall be delivered by the General Accounting Office
19 to the Secretary of the Interior and Congress, not later
20 than June 30 following the end of the fiscal year for which
21 they are prepared. The audit shall be prepared in accord-
22 ance with generally accepted government auditing stand-
23 ards.

24 “(2) The financial statements shall be comprised of
25 the following:

1 “(A) A balance sheet reflecting the overall fi-
2 nancial position of the Helium Operations, including
3 assets and liabilities thereof;

4 “(B) the Statement of Operations, reflecting
5 the fiscal period results of the Helium Operations;

6 “(C) a statement cash flows or changes in fi-
7 nancial position of the Helium Operations; and

8 “(D) a reconciliation of budget reports of the
9 Helium Operations.

10 “(3) The Statement of Operations shall include but
11 not be limited to the revenues from, and costs of, sales
12 of crude helium, the storage and transportation of crude
13 helium, the production, refining and marketing of refined
14 helium, and the maintenance and operation of helium stor-
15 age facilities at the Bureau of Mines Cliffside Field. The
16 term ‘revenues’ for this purpose shall exclude (A) royalties
17 paid to the United States for production of helium or other
18 extraction of resources, except to the extent that the He-
19 lium Operations incur direct costs in connection therewith,
20 and (B) proceeds from sales of assets other than inven-
21 tory. The term ‘expenses’ shall include, but not be limited
22 to (i) all labor costs of the Bureau of Mines Helium Oper-
23 ations, and of the Department of the Interior in connec-
24 tion therewith, and (ii) for financial reporting purposes
25 but not in connection with the determination of sales

1 prices in section 6(c), all current-period interest on out-
2 standing repayable amounts (as described in section 6(c))
3 calculated at the same rates as such interest was cal-
4 culated prior to the enactment of the Helium Privatization
5 Act of 1995.

6 “(4) The balance sheet shall include, but not be lim-
7 ited to, on the asset side, the present discounted market
8 value of crude helium reserves; and on the liability side,
9 the accrued liability for principal and interest on debt to
10 the United States. For financial reporting purposes but
11 not in connection with the determination of sales prices
12 in section 6(c), the balance sheet shall also include accrued
13 but unpaid interest on outstanding repayable amounts (as
14 described in section 6(c)) through the date of the report,
15 calculated at the same rates as such interest was cal-
16 culated prior to the enactment of the Helium Privatization
17 Act of 1995.”.

18 **SEC. 9018. LAND CONVEYANCE IN POTTER COUNTY, TEXAS.**

19 (a) IN GENERAL.—The Secretary of the Interior shall
20 transfer all right, title, and interest of the United States
21 in and to the parcel of land described in subsection (b)
22 to the Texas Plains Girl Scout Council for consideration
23 of \$1, reserving to the United States such easements as
24 may be necessary for pipeline rights-of-way.

1 (b) LAND DESCRIPTION.—The parcel of land re-
2 ferred to in subsection (a) is all those certain lots, tracts
3 or parcels of land lying and being situated in the County
4 of Potter and State of Texas, and being the East Three
5 Hundred Thirty-One (E331) acres out of Section Seventy-
6 eight (78) in Block Nine (9), B.S. & F. Survey, (some-
7 times known as the G. D. Landis pasture) Potter County,
8 Texas, located by certificate No. 1/39 and evidenced by
9 letters patents Nos. 411 and 412 issued by the State of
10 Texas under date of November 23, 1937, and of record
11 in Vol. 66A of the Patent Records of the State of Texas.
12 The metes and bounds description of such lands is as fol-
13 lows:

14 (1) FIRST TRACT.—One Hundred Seventy-one
15 (171) acres of land known as the North part of the
16 East part of said survey Seventy-eight (78) afore-
17 said, described by metes and bounds as follows:

18 Beginning at a stone 20 x 12 x 3 inches
19 marked X, set by W. D. Twichell in 1905, for
20 the Northeast corner of this survey and the
21 Northwest corner of Section 59;

22 Thence, South 0 degrees 12 minutes East with
23 the West line of said Section 59, 999.4 varas to
24 the Northeast corner of the South 160 acres of
25 East half of Section 78:

1 Thence, North 89 degrees 47 minutes West
2 with the North line of the South 150 acres of
3 the East half, 956.8 varas to a point in the
4 East line of the West half Section 78:

5 Thence North 0 degrees 10 minutes West with
6 the East line of the West half 999.4 varas to
7 a stone 18 x 14 x 3 inches in the middle of the
8 South line of Section 79;

9 Thence South 89 degrees 47 minutes East 965
10 varas to the place of beginning.

11 (2) SECOND TRACT.—One Hundred Sixty (160)
12 acres of land known as the South part of the East
13 part of said survey No. Seventy-eight (78) described
14 by metes and bounds as follows:

15 Beginning at the Southwest corner of Section
16 59, a stone marked X and a pile of stones;

17 Thence North 89 degrees 47 minutes West with
18 the North line of Section 77, 966.5 varas to the
19 Southeast corner of the West half of Section
20 78; Thence North 0 degrees 10 minutes West
21 with the East line of the West half of Section
22 78;

23 Thence South 89 degrees 47 minutes East
24 965.8 varas to a point in the East line of Sec-
25 tion 78;

1 Thence South 0 degrees 12 minutes East 934.6
2 varas to the place of beginning.

3 Containing an area of 331 acres, more or less.

4 **Subtitle B—Water and Power**

5 **PART 1—POWER MARKETING ADMINISTRATIONS**

6 **SEC. 9201. SHORT TITLE.**

7 This part may be cited as the “Power Administration
8 Act”.

9 **SEC. 9202. SALE OF THE SOUTHEASTERN POWER ADMINIS-**
10 **TRATION.**

11 (a) SALE OF THE SOUTHEASTERN POWER ADMINIS-
12 TRATION ASSETS.—The Secretary of Energy (hereafter in
13 this part referred to as the “Secretary”) is authorized and
14 directed to sell the facilities used to generate the electric
15 power marketed by the Southeastern Power Administra-
16 tion, including all dams, locks, reservoirs, and related
17 transmission and generation structures, equipment, facili-
18 ties and real property (including rights-of-way) which are
19 used in connection with the operation of such power gen-
20 eration facilities. The sale shall also include all contracts,
21 marketing agreements, and any and all other rights, inter-
22 ests, and obligations held or owed by the Southeastern
23 Power Administration. Each sale shall be subject to all
24 existing storage rights in such reservoirs acquired by local
25 interests pursuant to the Water Supply Act of 1958 (Pub-

1 lic Law 85–500; 43 U.S.C. 390b) and sections 1, 2, and
2 3 of Public Law 88–140 (43 U.S.C. 390c through 390e)
3 for water supply or other purposes and all such rights
4 shall survive such sale; all obligations of the United States
5 under contracts with such local interests for the use of
6 such storage shall be assumed by any purchaser so that
7 such local interests may continue to operate and utilize
8 their storage in accordance with their existing contracts
9 with the United States without entering into an additional
10 contract with the United States or the purchaser, notwith-
11 standing any provision of law or contract to the contrary.
12 In order to assure that the facilities are transferred in a
13 manner that provides a reasonable payment to the United
14 States, sales under this section shall be made through a
15 competitive bidding process open to all bidders determined
16 by the Secretary to be financially qualified and who have
17 the experience and resources necessary to manage the
18 transferred assets. No facility or group of facilities may
19 be sold for an amount less than the minimum bid estab-
20 lished and published by the Secretary. The minimum bid
21 shall be equal to the net present value of the outstanding
22 debt repayable to the United States and attributable to
23 the facility or group of facilities concerned.

24 (b) COOPERATION OF OTHER AGENCIES.—The heads
25 of other affected Federal departments and agencies shall

1 assist the Secretary in implementing the sales authorized
2 by this section. Upon receiving a written request from the
3 Secretary, the head of any such department or agency hav-
4 ing administrative jurisdiction over any facility to be sold
5 under this section shall transfer (at such time as may be
6 specified by the Secretary in such request) such facility
7 to the Secretary for purposes of effectuating such sale.

8 (c) FINANCIAL AND BID MANAGEMENT ADVISOR.—

9 (1) RETENTION OF ADVISOR.—Within six
10 months of the date of enactment of this Act, the
11 Secretary shall retain an experienced private sector
12 firm to serve as financial and bid management advi-
13 sor (hereinafter “advisor”) to the Secretary with re-
14 spect to such sales. The advisor shall not have any
15 substantial financial interest in the existing assets,
16 their operation or the ultimate purchasers.

17 (2) NOTICE.—Within six months after the date
18 of enactment of this Act, the Secretary shall also
19 publish a notice in the Federal Register soliciting all
20 parties which have an operational or ownership in-
21 terest in the Southeast Power Administration to pro-
22 vide evidence of such interest within 90 days of the
23 published notice.

24 (3) ADVISOR’S REPORT.—Within six months of
25 being retained by the Secretary and based on infor-

1 mation provided by the Secretary and the informa-
2 tion obtained in paragraph (2), the advisor shall pro-
3 vide to the Secretary a report containing each of the
4 following:

5 (A) A plan for the competitive sale of all
6 assets and interests, held by the Southeastern
7 Power Administration, out of Federal owner-
8 ship and operation.

9 (B) An estimate of the net present value of
10 the income expected to be derived over the next
11 50 years from each facility or group of facilities
12 to be sold under this section.

13 (C) An estimate of the net present value of
14 the expenses expected to be incurred over the
15 next 50 years in connection with each facility or
16 group of facilities to be sold under this section.

17 (D) a comparison between the net of sub-
18 paragraphs (A) and (B) and the net present
19 value of the outstanding debt which the Federal
20 government attributes to the asset being sold.

21 (E) The options for the grouping of facili-
22 ties to be sold under this section. The transfer
23 shall be structured to transfer assets and inter-
24 ests of the Southeast Power Administration by
25 watershed or by project unless the Advisor can

1 provide satisfactory information to the Sec-
2 retary that another alternative should be used.
3 Groupings of assets shall specifically be de-
4 signed to transfer all assets in a manner that
5 provides reasonable payment to the United
6 States of all assets within the Southeast Power
7 Administration.

8 (d) PROCEEDS.—The Secretary is directed to use up
9 to \$6,000,000 from unobligated balances available to the
10 Department of Energy to fund any sale preparation costs
11 or studies provided for in this section, and shall provide
12 an accounting of all sale preparation costs and studies to
13 the Committee on Resources of the House of Representa-
14 tives and to the Committee on Energy and Natural Re-
15 sources of the Senate within 60 days after completion of
16 the sale or study. The proceeds of any sale of a facility
17 or group of facilities under this section shall be used first
18 to offset the costs of carrying out such sale or study and
19 the remaining net proceeds shall be deemed to extinguish
20 the outstanding debt repayable to the United States and
21 attributable to such facility or group of facilities. Any por-
22 tion of such net proceeds which exceeds the net present
23 value of the outstanding debt repayable to the United
24 States and attributable to the facility or group of facilities

1 concerned shall be deposited in the Treasury of the United
2 States as miscellaneous receipts.

3 (e) TREATMENT OF SALES FOR PURPOSES OF CER-
4 TAIN LAWS.—The sales of assets under this part shall not
5 be considered a disposal of Federal surplus property under
6 the following provisions of law:

7 (1) Section 203 of the Federal Property and
8 Administrative Services Act of 1949 (40 U.S.C.
9 484).

10 (2) Section 13 of the Surplus Property Act of
11 1944 (50 U.S.C. App. 1622).

12 (f) EXISTING CONTRACTS, USES, ETC.—All sales of
13 assets and rights under this section shall be subject to all
14 contracts, debt obligations to non-Federal entities, and
15 other binding agreements which apply, as of the date of
16 such sale, to the facilities concerned and to the sale of
17 electric power from such facilities. The purchaser of each
18 such facility shall assume all liabilities and obligations of
19 the United States under such contracts, obligations or
20 other agreements. The Southeastern Power Administra-
21 tion shall not, after the date of enactment of this Act,
22 enter into a long-term agreement, contract, or other long-
23 term obligation or responsibility, except to the extent that
24 such an obligation is essential to the continued operation
25 of the Southeastern Power Administration or will signifi-

1 cantly enhance or maintain the value of a facility after
2 it is transferred. The United States shall remain respon-
3 sible for concluding all lawsuits associated with the assets
4 which are the subject of a transfer and which are extant
5 as of the date of the enactment of this Act, whether in
6 its capacity of plaintiff or defendant. Any right, title, or
7 interest of the United States which exists at the conclusion
8 of such lawsuits and which would otherwise have been
9 transferred, but for the lawsuit, shall be transferred to the
10 party in interest who acquired the related asset from the
11 United States. The United States shall remain responsible
12 for any outstanding Indian trust responsibilities, unless
13 the transfer in question specifically identifies the obliga-
14 tion being transferred.

15 (g) REPORT TO FERC.—Not later than June 30,
16 1997, the Secretary shall provide each of the following to
17 the Federal Energy Regulatory Commission each of the
18 following:

19 (1) A description of—

20 (A) all the assets tangible and intangible
21 that comprise each hydroelectric project to be
22 sold under this section;

23 (B) the existing terms of operation with
24 respect to such hydroelectric project; and

1 (C) any other interest being proposed for
2 transfer.

3 (2) The information pertaining to such hydro-
4 electric project required by title 18 of the Code of
5 Federal Regulations, subparts B and F, or G, as ap-
6 propriate, except exhibit E.

7 (3) The date when an offer for purchase of the
8 assets must be submitted.

9 (h) NOTICE OF SALE AND SOLICITATION OF BIDS.—
10 Not later than March 31, 1998, the Secretary shall pub-
11 lish a notice in the Federal Register which includes each
12 of the following:

13 (1) A description of—

14 (A) all the assets tangible and intangible
15 that comprise each hydroelectric project to be
16 sold under this section;

17 (B) the existing terms of operation with
18 respect to such hydroelectric project; and

19 (C) any other interest being proposed for
20 transfer.

21 (2) The date, time, and conditions of the bids
22 that must be met to submit a successful bid for the
23 assets to be sold under this part.

24 (3) The terms and conditions identified in the
25 proposed license provided from the Federal Energy

1 Regulatory Commission to the Secretary under this
2 part.

3 (i) DATE OF SALE.—All sales under this section shall
4 be completed between July 1, 1999, and September 30,
5 1999.

6 (j) TERMINATION OF THE SOUTHEASTERN POWER
7 ADMINISTRATION.—Following the sale of all facilities re-
8 ferred to in subsection (a), the Secretary shall complete
9 the business of and close out the Southeast Power Admin-
10 istration and return the unexpended balances of funds ap-
11 propriated for the Administration to the Treasury of the
12 United States. To the extent practical, the purchasers
13 under this section should, consistent with good business
14 practices, attempt to offer to employ those former employ-
15 ees of the Southeastern Power Administration who are
16 necessary to the continued operation of such facilities fol-
17 lowing the sale of the facilities.

18 **SEC. 9203. FEDERAL ENERGY REGULATORY COMMISSION**
19 **JURISDICTION.**

20 (a) REGULATION OF RATES AND CHARGES.—All
21 rates and charges established for the wholesale sale of
22 electric power from facilities sold under section 9202 shall
23 be subject to part 2 of the Federal Power Act. This sub-
24 section shall take effect upon the expiration of any con-
25 tract which is applicable to the sale of such electric power

1 on the date of the sale of the facility concerned. In approv-
2 ing, disapproving or establishing rates and charges for the
3 sale of electric power from any facility sold under section
4 9202, the Federal Energy Regulatory Commission shall
5 determine the extent to which any proposed increase in
6 any such rate or charge is attributable to the sale of such
7 facility. The Commission shall disallow any such increase
8 to the extent the increase is attributable to such sale and
9 is greater than $\frac{1}{2}$ of the increase (between the date of
10 sale of the facility and the date on which the application
11 for a rate increase is filed) in the Consumer Price Index
12 (published by the Bureau of Labor Statistics) for the re-
13 gion in which such power is sold. For purposes of deter-
14 mining the amount of a proposed increase in a rate or
15 charge for the sale of electric power from any facility sold
16 under section 9202, the increase shall be measured from
17 the rates and charges in effect on date of the sale of the
18 facility. This subsection applies to all wholesale purchasers
19 who, for the calendar year ending immediately prior to the
20 year in which this Act is enacted, received at least 20 per-
21 cent of their power from the Southeastern Power Adminis-
22 tration.

23 (b) ORIGINAL LICENSE.—Not later than January 1,
24 1998, the Federal Energy Regulatory Commission shall
25 provide the Secretary with a proposed license for each hy-

1 droelectric project to be sold under section 9202. Not later
2 than September 30, 1999, the Commission shall issue to
3 the purchaser of each hydroelectric project sold under sec-
4 tion 9202 a license under part I of the Federal Power
5 Act (16 U.S.C. 791a–823b) authorizing the continued op-
6 eration and maintenance of such project for a term of 30
7 years. Such license shall—

8 (1) be for the project purposes established by
9 the existing terms of operation and shall be consist-
10 ent with the proposed license provided to the Sec-
11 retary;

12 (2) be conditioned upon the requirement that
13 the licensed project continue to be operated and
14 maintained in accordance with the existing terms of
15 operation, except that the licensee may make im-
16 provements to the project which increase capacity
17 without amendment to the license so long as existing
18 minimum flows are not affected;

19 (3) be subject only to the appropriate standard
20 “L-Form” license conditions, published at 54 FPC
21 1792–1928 (1975), except that the license may not
22 be reopened for any purpose for the first 10 years
23 of the license;

24 (4) provide a 10-year period for the licensee to
25 meet the Commission’s dam safety regulations, set

1 forth at title 18 of the Code of Federal Regulations,
2 part 12;

3 (5) not be subject to: the word “constructed” in
4 section 3(10), the 4 provisos of section 4(e); section
5 6 to the extent it requires the licensee’s acceptance
6 of those terms and conditions of the Act that this
7 subsection waives; section 10(e) as it concerns an-
8 nual charges for the use and occupancy of Federal
9 lands and facilities; section 10(f), section 10(j), sec-
10 tion 18, section 19, section 20, and section 22 of the
11 Federal Power Act (16 U.S.C. 796(10), 797(e), 799,
12 803(e), 803(f), 803(j), 811, 812, 813, and 815); and

13 (6) contain minimum flow restrictions no more
14 restrictive than those currently in effect, if any, such
15 minimum flow restrictions may not be altered during
16 the primary term of the license.

17 (c) ACTS APPLICABLE TO LICENSING.—The issuance
18 of a license pursuant to subsection (b) shall not be subject
19 to the provisions of the Federal Land Policy and Manage-
20 ment Act of 1976, section 2402 of the Energy Policy Act
21 of 1992, the National Environmental Policy Act of 1969,
22 the Endangered Species Act of 1973, the Wild and Scenic
23 Rivers Act, the Federal Water Pollution Control Act, the
24 National Historic Preservation Act, the Coastal Zone
25 Management Act, the Fish and Wildlife Coordination Act,

1 or any other Act otherwise applicable to the licensing of
2 the projects.

3 (d) EFFECT OF LICENSE.—A license issued under
4 subsection (b)—

5 (1) is deemed to meet the licensing standards
6 of the Federal Power Act, including section 10(a)
7 and the last sentence of section 4(e) (16 U.S.C.
8 797(e)); and

9 (2) shall constitute the sole and exclusive source
10 for a transferred hydroelectric project of authoriza-
11 tions and requirements with respect to project oper-
12 ation.

13 (e) RESERVATIONS.—Any power site reservation es-
14 tablished by the President, the Department of the Interior,
15 or pursuant to section 24 of the Federal Power Act (16
16 U.S.C. 818), or any other law, which exists on any lands,
17 whether Federally or privately owned, that are included
18 within the final project boundaries of a transferred hydro-
19 electric project as approved by the Commission shall be
20 vacated by operation of law upon issuance of a license for
21 such project.

22 (f) RELICENSING.—All requirements of part I of the
23 Federal Power Act and of any other Act applicable to the
24 licensing of a hydroelectric project shall apply to a trans-

1 ferred hydroelectric project upon expiration of an original
2 license issued under this section.

3 (g) DEFINITIONS.—For purposes of this section:

4 (1) The term “Commission” means the Federal
5 Energy Regulatory Commission.

6 (2) The term “existing terms of operation”
7 means any applicable statutes, executive department
8 regulations, orders, rule curves and the like, memo-
9 randa of agreement, and contractual arrangements
10 pertaining to a transferred hydroelectric project that
11 were in effect as of the date of enactment of this
12 Act.

13 (3) The term “transferred hydroelectric
14 project” means the facilities, land, and other assets
15 sold or to be sold to a transferee under this part and
16 noticed by the Secretary, including any such land,
17 facilities, or assets that comprise a project as de-
18 fined in section 3(11) of the Federal Power Act (16
19 U.S.C. 796(11)).

20 **SEC. 9204. EVALUATION OF SALES OF SOUTHWESTERN**
21 **POWER ADMINISTRATION AND WESTERN**
22 **AREA POWER ADMINISTRATION FACILITIES.**

23 (a) ENABLING FEDERAL STUDIES.—Section 505 of
24 the Energy and Water Development Appropriations Act
25 of 1993 (Public Law 102–377) is hereby repealed.

1 (b) EVALUATION OF ISSUES.—The Secretary of En-
2 ergy and the Secretary of the Interior shall enter into ar-
3 rangements with an experienced private sector firm to
4 serve as advisor to the Secretary with respect to the sale
5 of the facilities used to generate and transmit the electric
6 power marketed by the Southwestern Power Administra-
7 tion and the Western Area Power Administration, includ-
8 ing all dams, locks, reservoirs, transmission and related
9 structures, equipment, facilities and all real and tangible
10 property (including rights-of-way) which are used in con-
11 nection with such power generation and transmission fa-
12 cilities. Prior to December 31, 1996, the advisor shall pro-
13 vide to the Secretary and the Congress a report identifying
14 all recipients of water and power from such facilities, all
15 contracts, debt obligations, equity interests, and other
16 binding agreements which apply to the facilities concerned
17 and to the sale of electric power from such facilities, all
18 assets tangible and intangible, all applicable requirements
19 relating to environmental mitigation, Indian trust respon-
20 sibilities, land ownership or use rights relevant to the pro-
21 posed transfers which could terminate based on a transfer
22 out of Federal ownership, and navigational requirements
23 which affect the operation of such facilities. Such evalua-
24 tion shall also include an evaluation of the tax con-
25 sequences, and the revenue impacts of such consequences

1 for the United States, of possible arrangements for the
2 sale of such facilities to potential transferees. The report
3 shall also investigate alternative groupings of the facilities
4 for purposes of sale in order to determine which groupings
5 would be most desirable for purposes of effectuating such
6 sales. Proposed transfers should be structured by water-
7 shed or by project unless the advisor can provide satisfac-
8 tory information to the Secretary that another alternative
9 should be used. Asset groupings shall specifically be de-
10 signed to effectuate the maximum return for all of the as-
11 sets.

12 **SEC. 9205. BONNEVILLE POWER ADMINISTRATION APPRO-**
13 **PRIATIONS REFINANCING.**

14 (a) **DEFINITIONS.**—For the purposes of this section:

15 (1) The term “Administrator” means the Ad-
16 ministrator of the Bonneville Power Administration.

17 (2) The term “capital investment” means a
18 capitalized cost funded by Federal appropriations
19 that—

20 (A) is for a project, facility, or separable
21 unit or feature of a project or facility;

22 (B) is a cost for which the Administrator
23 is required by law to establish rates to repay to
24 the United States Treasury through the sale of
25 electric power, transmission, or other services;

1 (C) excludes a Federal irrigation invest-
2 ment; and

3 (D) excludes an investment financed by the
4 current revenues of the Administrator or by
5 bonds issued and sold, or authorized to be is-
6 sued and sold, by the Administrator under sec-
7 tion 13 of the Federal Columbia River Trans-
8 mission System Act (16 U.S.C. 838(k)).

9 (3) The term “new capital investment” means
10 a capital investment for a project, facility, or sepa-
11 rable unit or feature of a project or facility, placed
12 in service after September 30, 1995.

13 (4) The term “old capital investment” means a
14 capital investment whose capitalized cost—

15 (A) was incurred, but not repaid, before
16 October 1, 1995; and

17 (B) was for a project, facility, or separable
18 unit or feature of a project or facility, placed in
19 service before October 1, 1995.

20 (5) The term “repayment date” means the end
21 of the period within which the Administrator’s rates
22 are to assure the repayment of the principal amount
23 of a capital investment.

24 (6) The term “Treasury rate” means—

1 (A) for an old capital investment, a rate
2 determined by the Secretary of the Treasury,
3 taking into consideration prevailing market
4 yields, during the month preceding October 1,
5 1995, on outstanding interest-bearing obliga-
6 tions of the United States with periods to matu-
7 rity comparable to the period between October
8 1, 1995, and the repayment date for the old
9 capital investment; and

10 (B) for a new capital investment, a rate
11 determined by the Secretary of the Treasury,
12 taking into consideration prevailing market
13 yields, during the month preceding the begin-
14 ning of the fiscal year in which the related
15 project, facility, or separable unit or feature is
16 placed in service, on outstanding interest-bear-
17 ing obligations of the United States with peri-
18 ods to maturity comparable to the period be-
19 tween the beginning of the fiscal year and the
20 repayment date for the new capital investment.

21 (b) NEW PRINCIPAL AMOUNTS.—(1) Effective Octo-
22 ber 1, 1995, an old capital investment shall have a new
23 principal amount that is the sum of—

24 (A) the present value of the old payment
25 amounts for the old capital investment, calculated

1 using a discount rate equal to the Treasury rate for
2 the old capital investment; and

3 (B) an amount equal to \$100,000,000 multi-
4 plied by a fraction whose numerator is the principal
5 amount of the old payment amounts for the old cap-
6 ital investment and whose denominator is the sum of
7 the principal amounts of the old payment amounts
8 for all old capital investments.

9 (2) With the approval of the Secretary of the Treas-
10 ury based solely on consistency with this Act, the Adminis-
11 trator shall determine the new principal amounts under
12 paragraph (1) and the assignment of interest rates to the
13 new principal amounts under subsection (c).

14 (3) For the purposes of this section, “old payment
15 amounts” means, for an old capital investment, the annual
16 interest and principal that the Administrator would have
17 paid to the United States Treasury from October 1, 1995,
18 if this section were not enacted, assuming that—

19 (A) the principal were repaid—

20 (i) on the repayment date the Adminis-
21 trator assigned before October 1, 1993, to the
22 old capital investment, or

23 (ii) with respect to an old capital invest-
24 ment for which the Administrator has not as-
25 signed a repayment date before October 1,

1 1993, on a repayment date the Administrator
2 shall assign to the old capital investment in ac-
3 cordance with paragraph 10(d)(1) of the ver-
4 sion of Department of Energy Order RA
5 6120.2 in effect on October 1, 1993; and

6 (B) interest were paid—

7 (i) at the interest rate the Administrator
8 assigned before October 1, 1993, to the old cap-
9 ital investment, or

10 (ii) with respect to an old capital invest-
11 ment for which the Administrator has not as-
12 signed an interest rate before October 1, 1993,
13 at a rate determined by the Secretary of the
14 Treasury, taking into consideration prevailing
15 market yields, during the month preceding the
16 beginning of the fiscal year in which the related
17 project, facility, or separable unit or feature is
18 placed in service, on outstanding interest-bear-
19 ing obligations of the United States with peri-
20 ods to maturity comparable to the period be-
21 tween the beginning of the fiscal year and the
22 repayment date for the old capital investment.

23 (c) INTEREST RATE FOR NEW PRINCIPAL
24 AMOUNTS.—As of October 1, 1995, the unpaid balance
25 on the new principal amount established for an old capital

1 investment under subsection (b) shall bear interest annu-
2 ally at the Treasury rate for the old capital investment
3 until the earlier of the date that the new principal amount
4 is repaid or the repayment date for the new principal
5 amount.

6 (d) REPAYMENT DATES.—As of October 1, 1995, the
7 repayment date for the new principal amount established
8 for an old capital investment under subsection (b) shall
9 be no earlier than the repayment date for the old capital
10 investment assumed in subsection (b)(3)(A).

11 (e) PREPAYMENT LIMITATIONS.—During the period
12 October 1, 1995, through September 30, 2000, the total
13 new principal amounts of old capital investments, as es-
14 tablished under subsection (b), that the Administrator
15 may pay before their respective repayment dates shall not
16 exceed \$100,000,000.

17 (f) INTEREST RATES FOR NEW CAPITAL INVEST-
18 MENTS DURING CONSTRUCTION.—(1) The principal
19 amount of a new capital investment includes interest in
20 each fiscal year of construction of the related project, facil-
21 ity, or separable unit or feature at a rate equal to the
22 one-year rate for the fiscal year on the sum of—

23 (A) construction expenditures that were made
24 from the date construction commenced through the
25 end of the fiscal year, and

1 (B) accrued interest during construction.

2 (2) The Administrator shall not be required to pay,
3 during construction of the project, facility, or separable
4 unit or feature, the interest calculated, accrued, and cap-
5 italized under paragraph (1).

6 (3) For the purposes of this subsection, “one-year
7 rate” for a fiscal year means a rate determined by the
8 Secretary of the Treasury, taking into consideration pre-
9 vailing market yields, during the month preceding the be-
10 ginning of the fiscal year, on outstanding interest-bearing
11 obligations of the United States with periods to maturity
12 of approximately one year.

13 (g) INTEREST RATES FOR NEW CAPITAL INVEST-
14 MENTS.—The unpaid balance on the principal amount of
15 a new capital investment bears interest at the Treasury
16 rate for the new capital investment from the date the re-
17 lated project, facility, or separable unit or feature is placed
18 in service until the earlier of the date the new capital in-
19 vestment is repaid or the repayment date for the new cap-
20 ital investment.

21 (h) CREDITS TO ADMINISTRATOR’S PAYMENTS TO
22 THE UNITED STATES TREASURY.—The Confederated
23 Tribe of the Colville Reservation Grand Coulee Dam Set-
24 tlement Act (Public Law 103–436) is amended by striking
25 section 6 and inserting the following:

1 **“SEC. 6. CREDITS TO ADMINISTRATOR’S PAYMENTS TO THE**
2 **UNITED STATES TREASURY.**

3 “(a) IN GENERAL.—So long as the Administrator
4 makes annual payments to the tribes under the settlement
5 agreement, the Administrator shall apply against amounts
6 otherwise payable by the Administrator to the United
7 States Treasury a credit that reduces the Administrator’s
8 payment in the amount and for each fiscal year as follows:
9 \$15,250,000 in fiscal year 1996; \$15,860,000 in fiscal
10 year 1997; \$16,490,000 in fiscal year 1998; \$17,150,000
11 in fiscal year 1999; \$17,840,000 in fiscal year 2000; and
12 \$4,100,000 in each succeeding fiscal year.

13 “(b) DEFINITIONS.—For the purposes of this sec-
14 tion—

15 “(1) The term ‘settlement agreement’ means
16 that settlement agreement between the United
17 States of America and the Confederated Tribes of
18 the Colville Reservation signed by the Tribes on
19 April 16, 1994, and by the United States of America
20 on April 21, 1994, which settlement agreement re-
21 solves claims of the Tribes in Docket 181–D of the
22 Indian Claims Commission, which docket has been
23 transferred to the United States Court of Federal
24 Claims; and

1 “(2) The term ‘Tribes’ means the Confederated
2 Tribes of the Colville Reservation, a Federally recog-
3 nized Indian Tribe.”.

4 (i) CONTRACT PROVISIONS.—In each contract of the
5 Administrator that provides for the Administrator to sell
6 electric power, transmission, or related services, and that
7 is in effect after September 30, 1995, the Administrator
8 shall offer to include, or as the case may be, shall offer
9 to amend to include, provisions specifying that after Sep-
10 tember 30, 1995—

11 (1) the Administrator shall establish rates and
12 charges on the basis that—

13 (A) the principal amount of an old capital
14 investment shall be no greater than the new
15 principal amount established under subsection
16 (b);

17 (B) the interest rate applicable to the un-
18 paid balance of the new principal amount of an
19 old capital investment shall be no greater than
20 the interest rate established under subsection
21 (c);

22 (C) any payment of principal of an old
23 capital investment shall reduce the outstanding
24 principal balance of the old capital investment

1 in the amount of the payment at the time the
2 payment is tendered; and

3 (D) any payment of interest on the unpaid
4 balance of the new principal amount of an old
5 capital investment shall be a credit against the
6 appropriate interest account in the amount of
7 the payment at the time the payment is ten-
8 dered;

9 (2) apart from charges necessary to repay the
10 new principal amount of an old capital investment as
11 established under subsection (b), and to pay the in-
12 terest on the principal amount under subsection (c),
13 no amount may be charged for return to the United
14 States Treasury as repayment for or return on an
15 old capital investment, whether by way of rate, rent,
16 lease payment, assessment, user charge, or any other
17 fee;

18 (3) amounts provided under section 1304 of
19 title 31, United States Code, shall be available to
20 pay, and shall be the sole source for payment of, a
21 judgment against or settlement by the Administrator
22 or the United States on a claim for a breach of the
23 contract provisions required by this Act; and

24 (4) the contract provisions specified in this Act
25 shall not—

1 (A) preclude the Administrator from recov-
2 ering, through rates or other means, any tax
3 that is generally imposed on electric utilities in
4 the United States, or

5 (B) affect the Administrator's authority
6 under applicable law, including section 7(g) of
7 the Pacific Northwest Electric Power Planning
8 and Conservation Act (16 U.S.C. 839e(g)), to—

9 (i) allocate costs and benefits, includ-
10 ing but not limited to fish and wildlife
11 costs, to rates or resources, or

12 (ii) design rates.

13 (j) SAVINGS PROVISIONS.—(1) This section does not
14 affect the obligation of the Administrator to repay the
15 principal associated with each capital investment, and to
16 pay interest on the principal, only from the “Administra-
17 tor's net proceeds,” as defined in section 13 of the Federal
18 Columbia River Transmission System Act (16 U.S.C.
19 838k(b)).

20 (2) Except as provided in subsection (e) of this sec-
21 tion, this section does not affect the authority of the Ad-
22 ministrator to pay all or a portion of the principal amount
23 associated with a capital investment before the repayment
24 date for the principal amount.

1 (k) DOE STUDY.—(1) The Administrator shall un-
2 dertake a study to determine the effect that increases in
3 the rates for electric power sales made by the Adminis-
4 trator may have on the customer base of the Bonneville
5 Power Administration. Such study shall identify other
6 sources of electric power that may be available to cus-
7 tomers of the Bonneville Power Administration and shall
8 estimate the level at which higher rates for power sales
9 by the Administration may result in the loss of customers
10 by the Administration.

11 (2) The Administrator shall undertake a study to de-
12 termine the total prior costs incurred by the Bonneville
13 Power Administration for compliance with the provisions
14 of the Endangered Species Act of 1973 and the total fu-
15 ture costs anticipated to be incurred by the Administration
16 for compliance with such provisions.

17 (3) The Administrator shall submit the results of the
18 studies undertaken under this section to the Congress
19 within 180 days after the date of the enactment of this
20 Act.

PART 2—RECLAMATION

SEC. 9211. PREPAYMENT OF CERTAIN REPAYMENT CONTRACTS BETWEEN THE UNITED STATES AND THE CENTRAL UTAH WATER CONSERVANCY DISTRICT.

The second sentence of section 210 of the Central Utah Project Completion Act (106 Stat. 4624) is amended to read as follows: “The Secretary of the Interior shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of the municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under such terms and conditions as the Secretary deems appropriate to protect the interest of the United States, which shall be similar to the terms and conditions contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The District shall exercise its right to prepayment pursuant to this section by the end of fiscal year 2002.”.

SEC. 9212. TREATMENT OF CITY OF FOLSOM AS A CENTRAL VALLEY PROJECT CONTRACTOR.

For the purposes of being considered eligible to be a transferee of Central Valley Project water to be used for municipal and industrial purposes, the city of Folsom,

1 California, shall be treated as a Central Valley Project
2 contractor as of November 1, 1990.

3 **SEC. 9213. SLY PARK.**

4 (a) **SHORT TITLE.**—This section may be cited as the
5 “Sly Park Unit Conveyance Act”.

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

7 (1) The term “El Dorado Irrigation District”
8 or “District” means a political subdivision of the
9 State of California duly organized, existing, and act-
10 ing pursuant to the laws thereof with its principal
11 place of business in the city of Placerville, El Do-
12 rado County, California.

13 (2) The term “Secretary” means the Secretary
14 of the Interior.

15 (3) The term “Sly Park Unit” means the Sly
16 Park Dam and Reservoir, Camp Creek Diversion
17 Dam and Tunnel and conduits and canals as author-
18 ized under the American River Act of October 14,
19 1949 (63 Stat. 852), together with all other facilities
20 owned by the United States including those used to
21 convey and store water delivered from Sly Park, as
22 well as all recreation facilities associated thereto.

23 (c) **SALE OF THE SLY PARK UNIT.**—

24 (1) **IN GENERAL.**—The Secretary shall, within
25 one year after the date of enactment of this Act, sell

1 and convey to the El Dorado Irrigation District the
2 Sly Park Unit. Within such one-year period, the Sec-
3 retary shall also transfer and assign the water rights
4 relating to the Sly Park Unit held in trust by the
5 Secretary for diversion and storage under California
6 State permits numbered 2631, 5645A, 10473, and
7 10474 to the El Dorado Irrigation District.

8 (2) SALE PRICE.—The sale price shall not ex-
9 ceed—

10 (A) the construction costs (\$30,926,230),
11 as included in the accounts of the Secretary,
12 plus

13 (B) interest on the construction costs allo-
14 cated to domestic use, at the authorized rate in-
15 cluded in enactment of the Act of October 14,
16 1949 (63 Stat. 852), up to an agreed upon
17 date, less

18 (C) all revenues to date as collected under
19 the terms of the contract between the United
20 States and the El Dorado Irrigation District,
21 estimated at \$9,146,885.

22 (3) TERMS OF PAYMENT.—The Secretary shall
23 provide for a payment of the purchase price under
24 paragraph (2) on terms not to exceed 20 years. The
25 interest rate to be paid by the District shall be the

1 authorized rate included in the Act of October 14,
2 1949 (63 Stat. 852). Section 213(c) of the Reclama-
3 tion Reform Act of 1982 (43 U.S.C. 390mm(c))
4 shall not apply to the purchase of the Sly Park Unit
5 under this section.

6 (4) CONVEYANCE.—Upon signing the agree-
7 ment to carry out the sale required by this section,
8 the Secretary shall convey and assign to the El Do-
9 rado Irrigation District all right, title, and interest
10 of the United States in and to the Sly Park Unit.

11 (5) NO ADDITIONAL ENVIRONMENTAL IM-
12 PACT.—The Congress specifically finds that (A) the
13 sale, conveyance and assignment of the Sly Park
14 Unit and water rights under this section involves the
15 transfer of the ownership and operation of an exist-
16 ing ongoing water project, (B) the Sly Park Unit op-
17 eration, facilities and water rights have been, and
18 after the sale and transfer will continue to be, com-
19 mitted to maximum reasonable and beneficial use for
20 existing services, and (C) the sale, conveyance and
21 assignment of the Sly Park Unit and water rights
22 does not involve any additional growth or expansion
23 of the project or other environmental impacts. Con-
24 sequently, the sale, conveyance and assignment of
25 the Sly Park Unit and water rights shall not be sub-

1 ject to environmental review pursuant to the Na-
2 tional Environmental Policy Act of 1969 (42 U.S.C.
3 4332) or endangered species review or consultation
4 pursuant to section 7 of the Endangered Species Act
5 of 1973 (16 U.S.C. 1536).

6 **SEC. 9214. HETCH HETCHY DAM.**

7 Section 7 of the Act of December 19, 1913 (38 Stat.
8 242), is amended—

9 (1) by striking “\$30,000” in the first sentence
10 and inserting “\$8,000,000”, and

11 (2) by amending the second and third sentences
12 to read as follows: “These funds shall be placed in
13 a separate fund by the United States and, notwith-
14 standing any other provision of law, shall not be
15 available for obligation or expenditure until appro-
16 priated by the Congress. The highest priority use of
17 the funds shall be for annual operation of Yosemite
18 National Park, with the remainder of any funds to
19 be used to fund operations of other national parks
20 in the State of California.”.

**Subtitle C—National Parks,
Forests, and Public Lands**

PART 1—CONCESSION REFORM

SEC. 9301. SHORT TITLE.

This part may be cited as the “Visitor Facilities and Services Enhancement Act of 1995”.

SEC. 9302. PURPOSE.

The purpose of this part is to ensure that quality visitor facilities and services are provided by the Federal land management agencies (Forest Service, United States Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Reclamation and United States Army Corps of Engineers). Each Federal land management agency shall implement a program to encourage appropriate development and operation of services and facilities for the accommodation of visitors. The program implemented by each such agency shall consist of actions which—

(1) recognize the importance of the private sector in providing a quality visitor experience on Federal lands by encouraging private sector investments for facilities and services on Federal lands under a fair and competitive process;

(2) establish the basis for an effective relationship between the land management agencies and pri-

1 vate businesses operating on public lands and waters
2 in efforts to serve the public and to protect the re-
3 sources of these areas;

4 (3) measure quality and value of services pro-
5 vided by concessioners and provide incentives for
6 consistent excellence.

7 (4) ensure a fair return to the Federal Govern-
8 ment; and

9 (5) are consistent among the various agencies
10 to the extent practicable in order to increase effi-
11 ciency of the Federal Government and simplify re-
12 quirements for concessioners.

13 **SEC. 9303. DEFINITIONS.**

14 For the purposes of this part:

15 (1) The term “adjusted gross receipts” means
16 gross receipts less revenue derived from goods and
17 services provided on other than Federal lands or
18 conveyed to units of Government for hunting or fish-
19 ing licenses or for entrance or recreation fees, or
20 from such other exclusions as the Secretary con-
21 cerned might apply.

22 (2) The term “agency head” means the head of
23 an agency or his or her designated representative.

24 (3) The term “concessioner” means a person or
25 other entity acting under a concession authorization

1 which provides public services, facilities, or activities
2 on Federal lands or waters pursuant to a concession
3 services agreement or concession license.

4 (4) The term “concession license” means a
5 written contract between the agency head and the
6 concessioner which sets forth the terms and condi-
7 tions under which the concessioner is authorized to
8 provide recreation services or activities on a limited
9 basis as well as the rights and obligations of the
10 Federal Government.

11 (5) The term “concession service agreement”
12 means a written contract between the agency head
13 and the concessioner which sets forth the terms and
14 conditions under which the concessioner is author-
15 ized to provide visitor services, facilities, or activities
16 as well as the rights and obligations of the Federal
17 Government.

18 (6) The term “gross receipts” means revenue
19 from goods or services provided by concession serv-
20 ices, facilities, or activities on Federal lands and wa-
21 ters.

22 (7) The term “performance incentive” means a
23 credit based on past performance toward the score
24 awarded by the Secretary to a concessioner’s pro-

1 proposal submitted in response to a solicitation for the
2 reissuance of such contract.

3 (8) The term “proposal” means the complete
4 submission for a concession service agreement of-
5 fered in response to the solicitation for such conces-
6 sion service agreement.

7 (9) The term “prospectus” means a document
8 or documents issued by the Secretary concerned and
9 included with a solicitation which sets forth the min-
10 imum requirements for the award of a concession
11 service agreement.

12 (10) The term “Secretary concerned” means—

13 (A) the Secretary of the Interior with re-
14 spect to the United States Fish and Wildlife
15 Service, National Park Service, Bureau of Land
16 Management, and Bureau of Reclamation;

17 (B) the Secretary of Agriculture with re-
18 spect to the Forest Service; and

19 (C) the Secretary of the Army with respect
20 to the United States Army Corps of Engineers.

21 (11) The term “solicitation” means a request
22 by the Secretary concerned for proposals in response
23 to a prospectus.

1 **SEC. 9304. NATURE AND TYPES OF CONCESSION AUTHOR-**
2 **IZATIONS.**

3 (a) IN GENERAL.—The Secretary concerned may
4 enter into concession authorizations, as follows:

5 (1) CONCESSION SERVICES AGREEMENT.—A
6 concession service agreement shall be entered into
7 for all concessions where the Secretary concerned
8 makes a finding that the provision of concession
9 services is in the interest of the Federal Government
10 and issues either a competitive offering for conces-
11 sion services, facilities or activities or a noncompeti-
12 tive offering for such services, facilities, or activities
13 based on a finding that due to special circumstances
14 it is not in the public interest of the United States
15 to award a concession service agreement on a com-
16 petitive basis. Where the concessioner develops or
17 uses fixed facilities on Federal lands, the Secretary
18 concerned shall issue a lease.

19 (2) CONCESSION LICENSE.—Whenever the Sec-
20 retary concerned makes a finding that public enjoy-
21 ment of Federal lands would be enhanced through
22 the provision of concession services and that there
23 exists no need to limit the number of concessioners
24 providing such services, he shall consider entering
25 into a concession license with a qualified conces-
26 sioner. Activities covered under a concession license

1 would typically be one-time, intermittent, or infre-
2 quently scheduled. The Secretary concerned may not
3 limit the number of concession licenses issued for
4 the same types of activities in a particular geo-
5 graphic area. The Secretary concerned shall monitor
6 such concession licenses to determine whether issu-
7 ance of a concession service agreement would be a
8 more appropriate authorization.

9 (3) LANDS UNDER MULTIPLE JURISDIC-
10 TIONS.—The Secretaries of the Departments con-
11 cerned shall designate an agency to be the lead
12 agency concerning concessions which conduct a sin-
13 gle operation on lands or waters under the jurisdic-
14 tion of more than one agency. Unless otherwise
15 agreed to by each such Secretary concerned, the lead
16 agency shall be that agency under whose jurisdiction
17 the concessioner generates the greatest amount of
18 gross receipts. The agency so designated shall issue
19 a single authorization and collect a single fee under
20 paragraphs (1) and (2) for such operation. Such au-
21 thorization shall provide for use in a manner consist-
22 ent with the plans and policies for each agency.

23 (b) LEASES OF AREAS TO STATES AND STATE THIRD
24 PARTY AGREEMENT NOT COVERED.—This part does not
25 apply to leases or licenses of entire areas to States or other

1 political subdivisions or to any third party agreement is-
2 sued by any such State or political subdivisions with re-
3 spect to such entire area.

4 **SEC. 9305. COMPETITIVE SELECTION PROCESS FOR CON-**
5 **CESSION SERVICE AGREEMENTS.**

6 (a) AWARD TO BEST PROPOSAL.—The Secretary
7 shall enter into, and reissue, a concession service agree-
8 ment with the person whom the Secretary determines in
9 accordance with this section submits the best proposal
10 through a competitive process as defined in this section.

11 (b) SOLICITATION AND PROSPECTUS.—The Sec-
12 retary concerned shall prepare a solicitation and prospec-
13 tus which describes the concession service opportunity and
14 shall publish, in appropriate locations, announcements of
15 the availability of the solicitation, prospectus, and the con-
16 cession service opportunity. The solicitation shall include
17 (but need not be limited to) the following:

18 (1) A description of the services and facilities to
19 be provided by the concessioner.

20 (2) The level of capital investment required by
21 the concessioner (if any).

22 (3) Terms and conditions of the concession
23 service agreement.

1 (4) Minimum facilities and services to be pro-
2 vided by the Secretary to the concessioner and the
3 public.

4 (5) Minimum fees to the United States.

5 (c) FACTORS AND MINIMUM STANDARDS IN DETER-
6 MINING BEST PROPOSAL.—The prospectus shall assign a
7 weight to each factor indentified therein related to the im-
8 portance of such factor in the selection process. Points
9 shall be awarded for each such factor, based on the rel-
10 ative strength of the proposal concerning that factor. In
11 determining the best proposal, the Secretary concerned
12 shall take into consideration (but shall not be limited to)
13 the following, including whether the proposal meets the
14 minimum requirements (if any) of the Secretary for each
15 of the following:

16 (1) Responsiveness to the prospectus.

17 (2) Quality of visitor services taking into ac-
18 count the nature of equipment and facilities to be
19 provided.

20 (3) Experience and performance in providing
21 similar services. This factor shall account for not
22 less than 20 percent of the maximum points avail-
23 able under any prospectus. Where the Secretary con-
24 cerned determines it to be warranted to provide for
25 a high quality visitor experience, the prospectus for

1 a concession service agreement shall provide greater
2 weight to this factor based on such aspects of the
3 concession service agreement as scope or size, com-
4 plexity, nature of technical skills required, and site-
5 specific knowledge of the area. The similarity of the
6 qualifying experience outlined in the proposal to the
7 nature of the services required under the concession
8 service agreement and the length of such qualifying
9 experience shall be the basis for awarding points for
10 this factor.

11 (4) Record of resource protection (as appro-
12 priate for services and activities with potential to im-
13 pact natural or cultural resources).

14 (5) Financial capability.

15 (6) Fees to the United States.

16 (d) SELECTION PROCESS.—The process for selecting
17 the best proposal shall consist of the following:

18 (1) First, the Secretary concerned shall identify
19 those proposals which meet the minimum standards
20 (if any) for the factors identified under subsection
21 (c).

22 (2) Second, the Secretary concerned shall evalu-
23 ate all proposals identified under paragraph (1),
24 considering all factors identified under subsection
25 (c), as well as performance incentives earned under

1 section 9306(c) and renewal penalties incurred
2 under section 9306(d).

3 (3) Third, the Secretary concerned shall offer
4 the concession service agreement to the best quali-
5 fied applicant as determined by the evaluation under
6 paragraph (2).

7 (e) INAPPLICABILITY OF NEPA TO TEMPORARY EX-
8 TENSIONS AND SIMILAR REISSUANCE OF CONCESSIONS
9 AGREEMENTS.—The temporary extension of a concession
10 authorization, or reissuance of a concession authorization
11 to provide concession services similar in nature and
12 amount to concession services provided under the previous
13 authorization, is hereby determined to be a categorical ex-
14 clusion as provided for under the National Environmental
15 Policy Act of 1969 (42 U.S.C. 4331 et seq.).

16 (f) PROVISION FOR ADDITIONAL RELATED SERV-
17 ICES.—The Secretary concerned may modify the conces-
18 sion service agreement to allow concessioners to provide
19 services closely related to such agreement, if the Secretary
20 concerned determines that such changes would enhance
21 the safety or enjoyment of visitors and would not unduly
22 restrict the award of future concession service agreements.

23 **SEC. 9306. CONCESSIONER EVALUATIONS.**

24 (a) IN GENERAL.—The Secretary concerned shall de-
25 velop a program of evaluations of the concessioners oper-

1 ating under a concession service agreement who are pro-
2 viding visitor services in areas under the jurisdiction of
3 the Secretary. The evaluations shall be on an annual basis
4 over the duration of the concession service agreement. In
5 developing the evaluation program, the Secretary con-
6 cerned shall seek broad public input from concessioners,
7 State agencies, and other interested persons. The evalua-
8 tion program shall—

9 (1) include the four program areas of: quality
10 of visitor services provided; resource protection (as
11 applicable); financial performance; and compliance
12 with concession service agreement provisions and
13 pertinent laws and regulations;

14 (2) define three levels of performance—

15 (A) good, which shall be defined as a level
16 of performance which exceeds the requirements
17 outlined in the prospectus, but which is attain-
18 able;

19 (B) satisfactory, which shall be defined as
20 meeting the requirements as contained in the
21 prospectus; and

22 (C) unsatisfactory, which shall be defined
23 as not meeting the requirements contained in
24 the prospectus;

25 (3) be based on criteria which—

1 (A) are objective, measurable, and attain-
2 able; and

3 (B) shall include as applicable general
4 standards for all concession operations, indus-
5 try-specific standards, and standards developed
6 by the Secretary concerned in consultation with
7 the concessioner for each concession service
8 agreement;

9 (4) be designed in such a manner that the an-
10 nual evaluation represents the overall performance of
11 the concessioner without undue weight to matters of
12 limited importance; and

13 (5) take into account factors beyond the control
14 of the concessioner, such as general market and
15 other economic fluctuations, as well as weather and
16 other natural phenomena, so that such factors may
17 not be used as a justification for denial of perform-
18 ance incentives.

19 (b) ANNUAL EVALUATIONS.—

20 (1) REQUIREMENTS.—The Secretary concerned
21 shall at least semiannually review the performance of
22 each concessioner and shall assign an overall rating
23 for each concessioner for each year. The procedure
24 for any performance evaluation shall be provided to
25 the concessioner prior to the beginning of any eval-

1 uation period. Such procedure shall provide for ade-
2 quate notification of the concessioner prior to any
3 on-site evaluation and permit a representative of the
4 concessioner to observe the evaluation. The conces-
5 sioner shall be entitled to a complete explanation of
6 any rating given. If the Secretary's performance
7 evaluation for any year results in an unsatisfactory
8 rating of the concessioner, the Secretary concerned
9 shall so notify the concessioner, in writing. Such no-
10 tification shall identify the nature of conditions
11 which require corrective action and shall provide the
12 concessioner with a list of corrective actions nec-
13 essary to meet the standards.

14 (2) SUSPENSION, REVOCATION, AND TERMI-
15 NATION OF AUTHORIZATION.—The Secretary con-
16 cerned may suspend, revoke, or terminate a conces-
17 sion authorization if the concessioner fails to correct
18 the conditions identified by the Secretary within the
19 limitations established by the Secretary at the time
20 notice of the unsatisfactory rating is provided to the
21 concessioner. The Secretary may immediately sus-
22 pend or revoke a concession authorization where nec-
23 essary to protect the public health or welfare.

24 (c) PERFORMANCE INCENTIVES.—

1 (1) In evaluating the performance of a conces-
2 sioner, the incumbent concessioner is entitled to a
3 performance incentive of—

4 (A) one percent of the maximum points
5 available under such evaluations for perform-
6 ance in each year in which the concessioner's
7 annual performance is rated good, as specified
8 in subsection (a)(2)(A), and

9 (B) a one-time three year merit term ex-
10 tension upon a finding that a concessioner has
11 been rated as good in each annual performance
12 evaluation through the term of the concession
13 service agreement.

14 (2) A performance incentive awarded under
15 paragraph (1)(A) may not exceed 10 percent of the
16 maximum points available under such evaluations
17 over the life of the concession service agreement.

18 (d) RENEWAL PENALTY.—In evaluating the perform-
19 ance of a concessioner, a concessioner shall be penalized
20 one percent of the maximum points available under such
21 evaluation for performance in each year in which the con-
22 cessioner's annual performance is found to be unsatisfac-
23 tory.

1 **SEC. 9307. CAPITAL IMPROVEMENTS.**

2 (a) PRIVATE SECTOR DEVELOPMENT.—It is the pol-
3 icy of the United States to encourage the private sector
4 to develop, own, and maintain to the extent possible such
5 public recreation facilities which would enhance public use
6 and enjoyment of Federal lands as are contained in ap-
7 proved plans developed by the Secretary concerned. Under
8 the terms of this part, concessioners may only construct
9 or finance construction under terms of section 9312 such
10 public facilities on Federal lands as are to be used by the
11 concessioner under the terms of their concession service
12 agreement or facilities which are necessary for the conces-
13 sioner to administer such public facilities on Federal
14 lands.

15 (b) INVESTMENT INTEREST.—

16 (1) IN GENERAL.—A concessioner, who is re-
17 quired or authorized under a concession service
18 agreement pursuant to this part to acquire or con-
19 struct any structure, improvement, or fixture pursu-
20 ant to such agreement on Federal lands shall have
21 an investment interest therein, to the extent pro-
22 vided by the agreement and this part. Such invest-
23 ment interest shall not be extinguished by the expi-
24 ration of such agreement. Such investment interest
25 may be assigned, transferred, encumbered or relin-
26 quished.

1 (2) LIMITATION.—Such investment interest
2 shall not be construed to include or imply any au-
3 thority, privilege, or right to operate or engage in
4 any business or other activity, and the use of any
5 improvement in which the concessioner has an in-
6 vestment interest shall be wholly subject to the ap-
7 plicable provisions of the concession service agree-
8 ment and of laws and regulations relating to the
9 area.

10 (3) FEDERAL PROPERTY.—The agreement shall
11 specify which new improvements required under
12 terms of the concession service agreement, if any,
13 shall become the property of the Federal Govern-
14 ment at the end of the agreement. No concession
15 service agreement shall provide for a concessioner to
16 obtain an investment interest in any building which
17 is wholly owned by the Federal Government. Title to
18 the land on which such structure, improvement, or
19 fixture is placed shall remain in the United States.

20 (c) SALE OF ASSETS.—If the existing concessioner is
21 not selected as the best qualified applicant at the time of
22 reissuance of a concession service agreement, the Sec-
23 retary concerned shall require the new concessioner to buy
24 the investment interest of the existing concessioner.

1 (d) CLOSURE OF CONCESSIONER FACILITIES.—In
2 the event of a decision by the Secretary concerned, that
3 the public interest, by reason of public and safety consid-
4 erations or for other reasons beyond the control of the con-
5 cessioner, requires the discontinuation or closure of facili-
6 ties in which the concessioner has an investment interest,
7 the Secretary shall compensate the concessioner in the
8 amount equal to the value of the investment interest.

9 (e) DETERMINATION OF VALUE OF INVESTMENT IN-
10 TEREST.—For purposes of this part, the investment inter-
11 est of any capital improvement at the end of the conces-
12 sion service agreement period is the actual cost of con-
13 struction of such capital improvement adjusted from the
14 completion of such construction by changes in the
15 Consumer Price Index (selected in the same manner as
16 such Index is selected under section 9311(c)(2)) less de-
17 preciation evidenced by the condition and prospective serv-
18 iceability in comparison with a new unit of like kind, but
19 not to exceed fair market value. Such value shall be deter-
20 mined by appraisal and included in any prospectus.

21 **SEC. 9308. DURATION OF CONCESSION AUTHORIZATION.**

22 (a) CONCESSION SERVICE AGREEMENT.—The stand-
23 ard term of a concession service agreement shall be ten
24 years. The Secretary concerned may issue a concession
25 service agreement for less than ten years if he determines

1 (in his discretion) that the average annual gross receipts
2 over the life of the concession service agreement would be
3 less than \$100,000. The Secretary concerned may not
4 issue a concession service agreement for less than five
5 years. The Secretary concerned shall issue a concession
6 service agreement for longer than ten years if the Sec-
7 retary determines (in his discretion) that such longer term
8 is in the public interest or necessary due to the extent
9 of investment and associated financing requirements and
10 to meet the obligations assumed. The term for a conces-
11 sion service agreement may not exceed 30 years.

12 (b) CONCESSION LICENSE.—The term for a conces-
13 sion license may not exceed two years.

14 (c) TEMPORARY EXTENSION.—The Secretary may
15 agree to temporary extensions of concession service agree-
16 ments for up to two years on a noncompetitive basis to
17 avoid interruption of services to the public.

18 **SEC. 9309. RATES AND CHARGES TO THE PUBLIC.**

19 In general, rates and charges to the public shall be
20 set by the concessioner. For concession service agreements
21 only, a concessioner's rates and charges to the public shall
22 be subject to the approval of the Secretary concerned in
23 those instances where the Secretary determines that suffi-
24 cient competition for such facilities and services does not
25 exist within or in close proximity to the area in which the

1 concessioner operates. In those instances, the concession
2 service agreement shall state that the reasonableness of
3 the concessioner's rates and charges to the public shall
4 be reviewed and approved by the Secretary concerned pri-
5 marily by comparison with those rates and charges for fa-
6 cilities and services of comparable character under similar
7 conditions, with due consideration for length of season,
8 seasonal variations, average percentage of occupancy, ac-
9 cessibility, availability and costs of labor and materials,
10 type of patronage, and other factors deemed significant
11 by the Secretary concerned. Such review shall be com-
12 pleted within 90 days of receipt of all necessary informa-
13 tion, or the requirement for the Secretary's approval shall
14 be waived and such rates and charges as proposed by the
15 concessioner considered to be approved for immediate use.

16 **SEC. 9310. TRANSFERABILITY OF CONCESSION AUTHORIZA-**
17 **TIONS.**

18 (a) CONCESSION SERVICE AGREEMENTS.—

19 (1) APPROVAL REQUIRED.—A concession serv-
20 ice agreement is transferable or assignable only upon
21 the approval of the Secretary concerned, which ap-
22 proval may not be unreasonably withheld or delayed.
23 The Secretary may not approve any such transfer or
24 assignment if the Secretary determines that the pro-
25 spective concessioner is or is likely to be unable to

1 completely satisfy all of the material requirements,
2 terms, and conditions of the agreement or that the
3 terms of the transfer or assignment would preclude
4 providing appropriate facilities or services to the
5 public at reasonable rates.

6 (2) CONSIDERATION PERIOD.—If the Secretary
7 fails to approve or disapprove a transfer or assign-
8 ment under paragraph (1) within 90 days after the
9 date on which the Secretary receives all necessary
10 information requested by the Secretary with respect
11 to such transfer, the transfer or assignment shall be
12 deemed approved.

13 (3) NO MODIFICATION OF TERMS AND CONDI-
14 TIONS.—The terms and conditions of the concessions
15 service agreement shall not be subject to modifica-
16 tion by reason of any transfer or assignment under
17 this section.

18 (4) PERFORMANCE INCENTIVE.—Upon approval
19 of the sale or transfer, the prospective concessioner
20 shall be entitled to the benefit of performance incen-
21 tives earned by the previous concessioner.

22 (b) CONCESSION LICENSE.—A concession license
23 may not be transferred.

1 **SEC. 9311. FEES CHARGED BY THE UNITED STATES FOR**
2 **CONCESSION AUTHORIZATIONS.**

3 (a) IN GENERAL.—The Secretary concerned shall
4 charge a fee for the privilege of providing concession serv-
5 ices pursuant to this part. The fee for any concession serv-
6 ice agreement may include any of the following:

7 (1) An annual cash payment for the privilege of
8 providing concession services.

9 (2) The amount required for capital improve-
10 ments required pursuant to section 9307(a).

11 (3) Fees for rental or lease of Government-
12 owned facilities or lands occupied by the conces-
13 sioner.

14 (4) Expenditures for maintenance of or im-
15 provements to Government-owned facilities occupied
16 by the concessioner.

17 (b) ESTABLISHMENT OF AMOUNT.—

18 (1) MINIMUM ACCEPTABLE FEE.—The Sec-
19 retary concerned shall establish a minimum fee for
20 each applicable category specified in paragraphs (1)
21 through (4) of subsection (a) which is acceptable to
22 the Secretary under this section and shall include
23 the minimum fee in the prospectus under section
24 9305. This fee shall be based on historical data,
25 where available, as well as industry-specific and

1 other market data available to the Secretary con-
2 cerned.

3 (2) FINAL FEE.—Except as provided by para-
4 graph (3), the final fee shall be the amount bid by
5 the selected applicant under section 9305.

6 (3) SUBSTANTIALLY SIMILAR SERVICES IN A
7 SPECIFIC GEOGRAPHIC AREA.—Where the Secretary
8 concerned simultaneously offers authorizations for
9 more than one river runner, outfitter, or guide con-
10 cession operation to provide substantially similar
11 services in a defined geographic area, the concession
12 fee for all such concessioners shall be specified by
13 the Secretary concerned in the prospectus. The Sec-
14 retary concerned shall base the fee on historical
15 data, where available, as well as on industry-specific
16 and other market data available to the Secretary
17 concerned or may establish a charge per user day.

18 (c) ADJUSTMENT OF FEES.—

19 (1) IN GENERAL.—The amount of any fee for
20 the term of the concession service agreement shall be
21 set at the beginning of the concession authorization
22 and may only be modified on the basis of inflation,
23 if the annual payment is not determined by a per-
24 centage of adjusted gross receipts (as measured by
25 changes in the Consumer Price Index), to reflect

1 substantial changes from the conditions specified in
2 the prospectus, or in the event of an unforeseen dis-
3 aster.

4 (2) CPI.—For the purposes of adjustments for
5 inflation under paragraph (1), the Federal agencies
6 shall select a Consumer Price Index published by the
7 Bureau of Labor Statistics and shall use such index
8 in a consistent manner.

9 (d) CONCESSION LICENSE FEE.—The fee for a con-
10 cession license shall at least cover the program administra-
11 tive costs and may not be changed over the term of the
12 license.

13 **SEC. 9312. DISPOSITION OF FEES.**

14 (a) CONCESSION IMPROVEMENT ACCOUNT.—

15 (1) IN GENERAL.—The Secretary concerned
16 shall, whenever the concession service agreement re-
17 quires or authorizes the concessioner to make capital
18 improvements or occupy Government-owned facili-
19 ties, require the concessioner to establish a conces-
20 sion improvement account. The concessioner shall
21 deposit into this account—

22 (A) all funds for capital improvements as
23 specified in the concession service agreement;

1 (B) all funds for maintenance of or im-
2 provements to Government-owned facilities oc-
3 cupied by the concessioner; and

4 (C) all amounts received from the Sec-
5 retary concerned pursuant to subsection (b).

6 (2) TERMS AND CONDITIONS.—The account
7 shall be maintained by the concessioner in an inter-
8 est bearing account in a Federally insured financial
9 institution. The concessioner shall maintain the ac-
10 count separately from any other funds or accounts
11 and shall not commingle the monies in the account
12 with any other moneys. The Secretary concerned
13 may establish such other terms, conditions, or re-
14 quirements as the Secretary determines to be nec-
15 essary to ensure the financial integrity of the ac-
16 count.

17 (3) DISBURSEMENTS.—The concessioner shall
18 make disbursements from the account for improve-
19 ments and other activities, only as specified in the
20 concession service agreement and subsection
21 (b)(2)(C).

22 (4) RECORDS.—The concessioner shall maintain
23 proper records for all disbursements made from the
24 account. Such records shall include (but not be lim-
25 ited to) invoices, bank statements, canceled checks,

1 and such other information as the Secretary con-
2 cerned determines to be necessary.

3 (5) ANNUAL FINANCIAL STATEMENT.—The
4 concessioner shall annually submit to the Secretary
5 concerned a statement reflecting total activity in the
6 account for the preceding financial year. The state-
7 ment shall reflect monthly deposits, expenditures by
8 project, interest earned, and such other information
9 as the Secretary concerned requires.

10 (6) TRANSFER OF REMAINING BALANCE.—
11 Upon the termination of a concession authorization,
12 or upon the transfer of a concession service agree-
13 ment, any remaining balance in the account shall be
14 transferred by the concessioner to the successor con-
15 cessioner, to be used solely as set forth in this sub-
16 section. In the event there is no successor conces-
17 sioner, the account balance shall be deposited in the
18 Treasury as miscellaneous receipts.

19 (b) AMOUNTS RECEIVED RELATING TO PRIVILEGE
20 OF PROVIDING CONCESSION SERVICES AND RENTAL OF
21 GOVERNMENT-OWNED FACILITIES.—

22 (1) DEPOSIT INTO TREASURY.—The Secretary
23 concerned shall deposit into the Treasury of the
24 United States as miscellaneous receipts amounts re-
25 ceived for a fiscal year for the privilege of providing

1 concession services and the rental of Government-
2 owned facilities up to the amount specified in the
3 table in paragraph (3) for the National Park Service
4 for that fiscal year. For the other agencies covered
5 under this part, the Secretary concerned shall de-
6 velop a schedule of anticipated receipts to be depos-
7 ited to the Treasury and submit such schedule to the
8 appropriate Congressional committees within 18
9 months of the date of enactment of this Act. Noth-
10 ing in this part shall be construed to modify any
11 provision of law relating to sharing of Federal re-
12 cepts with any other level of Government.

13 (2) DEPOSIT INTO CONCESSION IMPROVEMENT
14 ACCOUNTS.—(A) Amounts received by the Secretary
15 concerned for a fiscal year for the privilege of pro-
16 viding concession services and the use of Govern-
17 ment-owned facilities which exceed the amount speci-
18 fied in the table in paragraph (3) for that fiscal year
19 shall be available for deposit in the succeeding fiscal
20 year into concession improvement accounts.

21 (B) Of the amounts available for deposit into
22 concession improvement accounts, the Secretary
23 shall make available to each concessioner a percent-
24 age of such excess amounts which bears the same
25 ratio as the amount paid by the concessioner to the

1 Secretary concerned for a fiscal year for the privi-
 2 lege of providing concession services and the use of
 3 Government-owned facilities bears to the total
 4 amount paid to the Secretary concerned by all con-
 5 cessioners for that fiscal year for such privilege on
 6 an agency-wide basis.

7 (C) Amounts made available to a concessioner
 8 under this paragraph may be used only for expendi-
 9 tures on visitor services and facilities at the area at
 10 which the funds were generated.

11 (3) DEPOSIT INTO CONCESSION IMPROVEMENT
 12 ACCOUNTS.—The table referred to in paragraph (2),
 13 expressed by fiscal year on an agency basis, is as fol-
 14 lows:

National Park Service

Fiscal year:	Amount:
1997	\$15,800,000
1998	\$21,100,000
1999	\$26,700,000
2000	\$32,300,000
2001	\$38,200,000
2002	\$44,400,000.

15 (c) AUDIT REQUIREMENT.—Beginning with fiscal
 16 year 1998, the Inspector General of the Department con-
 17 cerned shall conduct a biennial audit of concession fees
 18 generated pursuant to this part. The Inspector General
 19 shall make a determination as to whether concession fees
 20 are being collected and expended in accordance with this
 21 part and shall submit copies of each audit to the Commit-

tee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 9313. DISPUTE RESOLUTION.

(a) BOARD OF CONTRACT APPEALS.—The Board of Contract Appeals within each Department shall adjudicate disputes between the Federal Government and concessioners arising under this part, including disputes regarding the revocation, suspension, or termination of a concession authorization, transfers of concession service agreements, and performance evaluations of concessions. Such disputes shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.). The expiration of a concession authorization shall not be subject to appeal to the Board.

(b) ADMINISTRATIVE REVIEW.—Appeals of decisions may be taken to the Board of Contract Appeals after one level of review of decisions made within an agency.

(c) EXPEDITED PROCEDURE.—Appeals of decisions to suspend, revoke, or terminate a concession authorization shall be considered under an expedited procedure, as provided by the Secretary concerned by regulation.

(d) JUDICIAL REVIEW.—

(1) IN GENERAL.—A person may seek judicial review of decisions made by the Board. Such review

1 shall be conducted by the court with jurisdiction on
2 a de novo basis.

3 (2) CONCESSION SERVICE AGREEMENTS.—Judi-
4 cial review of decisions rendered by the Board re-
5 garding concession service agreements shall be to the
6 United States Court of Federal Claims in accord-
7 ance with section 1491 of title 28, United States
8 Code (commonly referred to as the “Tucker Act”).

9 (3) CONCESSION LICENSES.—Judicial review of
10 decisions rendered by the Board regarding conces-
11 sion licenses shall be to the appropriate Federal Dis-
12 trict Court.

13 (d) INAPPLICABILITY OF CERTAIN PROVISIONS.—
14 Disputes arising under this part shall not be subject to
15 the jurisdiction of the General Accounting Office to review
16 bid protests under the Competition in Contracting Act of
17 1984.

18 **SEC. 9314. RECORDKEEPING.**

19 (a) MAINTENANCE AND ACCESS.—Each concessioner
20 shall keep such records as the Secretary concerned may
21 prescribe to enable the Secretary to determine that all
22 terms of the concession authorization have been and are
23 being faithfully performed, and the Secretary and his duly
24 authorized representatives shall, for the purpose of audit
25 and examination, have access at reasonable times and lo-

1 cations to such records and to other books, documents,
2 and papers of the concessioner pertinent to the concession
3 authorization and all the terms and conditions thereof.

4 (b) ACCESS BY COMPTROLLER GENERAL.—The
5 Comptroller General of the United States or any of his
6 duly authorized representatives shall, until the expiration
7 of five calendar years after the close of the business year
8 of each concessioner have access to and the right to exam-
9 ine any pertinent books, documents, papers, and records
10 of the concessioner related to the concession authorization
11 involved.

12 **SEC. 9315. APPLICATION OF GENERAL GOVERNMENTAL AC-**
13 **QUISITION REQUIREMENTS.**

14 The following laws and regulations shall not apply to
15 concession service agreements and concession licenses
16 under this part:

17 (1) Title III of the Federal Property and Ad-
18 ministrative Services Act of 1949 (41 U.S.C. 251–
19 266).

20 (2) The Office of Federal Procurement Policy
21 Act (41 U.S.C. 401 et seq.).

22 (3) The Federal Acquisition Streamlining Act
23 of 1994 (Public Law 103–355).

24 (4) The Brooks Automatic Data Processing Act
25 (40 U.S.C. 759).

1 (5) Chapters 137 and 141 of title 10, United
2 States Code.

3 (6) The Federal Acquisition Regulation and any
4 laws not listed in paragraphs (1) through (5) provid-
5 ing authority to promulgate regulations in the Fed-
6 eral Acquisition Regulation.

7 (7) The Act of June 20, 1936 (20 U.S.C. 107;
8 commonly referred to as the “Randolph-Sheppard
9 Act”) and the Service Contract Act of 1965 (41
10 U.S.C. 351 et seq.).

11 **SEC. 9316. RULES OF CONSTRUCTION.**

12 Concession programs of an agency on Federal lands
13 and waters subject to this part shall be fully consistent
14 with the agency’s mission and laws applicable to the agen-
15 cy. Nothing in this part shall be construed as limiting or
16 restricting any right, title, or interest of the United States
17 in any land or resources.

18 **SEC. 9317. REGULATIONS.**

19 (a) **IN GENERAL.**—Pursuant to enactment of this
20 part, no new concession authorization may be issued, nor
21 may any existing concession authorization remain in effect
22 after two years after the date of the enactment of this
23 Act, unless regulations fully implementing this part are
24 in effect. During such two-year period, the Secretary may
25 only extend an existing concession authorization for a pe-

1 riod ending at the end of such two-year period. Such ex-
2 tensions shall be made in accordance with the applicable
3 provisions of law specified in section 9318, as such provi-
4 sions were in effect on the day before the date of the en-
5 actment of this Act. The Secretary of the Interior, Sec-
6 retary of Agriculture, and Secretary of the Army shall de-
7 velop a single set of regulations which specify a uniform
8 set of recordkeeping requirements for all concessioners
9 with respect to implementation of this part.

10 (b) QUALIFICATIONS OF AGENCY PERSONNEL AS-
11 SIGNED CONCESSION MANAGEMENT DUTIES.—The Sec-
12 retary, by regulation under subsection (a) and taking into
13 account the provisions of this part, shall specify the mini-
14 mum training and qualifications required for agency per-
15 sonnel assigned predominantly to concession management
16 duties, including (but not limited to) competency in busi-
17 ness management, public health and safety, and the deliv-
18 ery of quality customer services.

19 **SEC. 9318. RELATIONSHIP TO OTHER EXISTING LAWS.**

20 (a) REPEALS.—

21 (1) The Act entitled “An Act relating to the es-
22 tablishment of concession policies in the areas ad-
23 ministered by the National Park Service and for
24 other purposes” (16 U.S.C. 20–20g) approved Octo-
25 ber 9, 1965, is repealed.

1 (2) The last paragraph under the heading
2 “FOREST SERVICE” in the Act of March 4, 1915 (38
3 Stat. 1101), as amended by the Act of July 28,
4 1956 (chap. 771; 70 Stat. 708) (16 U.S.C. 497), is
5 repealed.

6 (3) Section 7 of the Act of April 24, 1950 (16
7 U.S.C. 580d) is repealed.

8 (b) SUPERSEDED PROVISIONS.—The provisions of
9 this part shall supersede the provisions of the following
10 Acts as they pertain to concessions management:

11 (1) The Federal Land Policy and Management
12 Act of 1976 (Oct. 21, 1976).

13 (2) Public Law 87–714 (16 U.S.C. 460k et
14 seq.; commonly known as the “Refuge Recreation
15 Act”).

16 (3) The National Wildlife Refuge System Ad-
17 ministration Act of 1966 (16 U.S.C. 668dd).

18 (c) CONFORMING AMENDMENT.—The fourth sen-
19 tence of section 3 of the Act of August 25, 1916 (16
20 U.S.C. 3; 39 Stat. 535), is amended by striking all
21 through “no natural” and inserting in lieu thereof “No
22 natural”.

23 (d) MODIFIED PROVISIONS.—The second sentence of
24 section 4 of the Act entitled “An Act authorizing the con-
25 struction of certain public works on rivers and harbors for

1 flood control, and for other purposes” (16 U.S.C. 460d)
2 is amended by inserting “, except for commercial conces-
3 sions purposes” the first place it appears after “public in-
4 terest”.

5 (e) SAVINGS.—

6 (1) IN GENERAL.—The repeal of any provision,
7 the superseding of any provision, and the amend-
8 ment of any provision, of an Act referred to in sub-
9 sections (a), (b), or (c) shall not affect the validity
10 of any authorizations entered into under any such
11 Act. The provisions of this part shall apply to any
12 such authorizations, except to the extent such provi-
13 sions are inconsistent with the express terms and
14 conditions of such authorizations.

15 (2) RIGHT OF RENEWAL.—The right of renewal
16 explicitly provided for by any concession contract
17 under any such provision shall be preserved for a
18 single renewal of a contract following the enactment
19 of, or concession authorization under, this part.

20 (3) VALUE OF CAPITAL IMPROVEMENTS OR
21 POSSESSORY INTEREST.—Nothing in this part shall
22 be construed to change the value of existing capital
23 improvements or possessory interest as identified in
24 concession contracts entered into before the enact-
25 ment of this Act.

1 (4) ANILCA.—Nothing in this part shall be
2 construed to amend, supersede or otherwise affect
3 any provision of the Alaska National Interest Lands
4 Conservation Act (16 U.S.C. 3101 et seq.) relating
5 to revenue-producing visitor services.

6 (5) SKI AREA PERMITS.—No provision of this
7 part shall apply to any ski area permittee operating
8 on lands administered by the Forest Service.

9 (6) PROCEDURES FOR CONSIDERING EXISTING
10 CONCESSIONERS IN REISSUANCE OF CONTRACTS.—
11 In the case of any concession contract which has ex-
12 pired prior to the date of the enactment of this Act,
13 or within five years after the date of the enactment
14 of this Act, the incumbent concessioner shall be enti-
15 tled to a one-time bonus of five percent of the maxi-
16 mum points available in the reissuance of a previous
17 concession authorization. For any concession con-
18 tract entered into prior to the date of enactment of
19 this Act, which is projected to terminate five years
20 or later after the enactment of this Act, any conces-
21 sioner shall be entitled to a performance incentive as
22 outlined in this part. The concessioner shall be enti-
23 tled to an evaluation for the purposes of section
24 9306 of good for each year in which the Secretary

1 concerned does not complete an evaluation as pro-
2 vided for in this part.

3 **PART 2—NATIONAL FOREST SKI AREAS**

4 **SEC. 9321. PRIVATIZATION OF FOREST SERVICE SKI AREAS.**

5 (a) AUTHORIZATION TO SELL.—

6 (1) IN GENERAL.—Not later than five years
7 after the date of enactment of this part, the Sec-
8 retary of Agriculture shall offer to sell not less than
9 40 ski areas to the qualifying ski area operator. Any
10 such sale shall provide for continuation of public ac-
11 cess for diverse recreational uses. The Secretary
12 shall offer such areas for sale only after consultation
13 with State and local governments. Any such sale
14 shall be at fair market value and, subject to valid ex-
15 isting rights, shall transfer all right, title, and inter-
16 est of the United States in and to the lands. In any
17 such sale, the Secretary shall establish the minimum
18 acceptable bid based on the appraised fair market
19 value of such lands.

20 (2) QUALIFYING LANDS.—For the purposes of
21 subsection (a), lands are qualifying concession lands
22 if such lands are—

23 (A) subject to a lease on the date of the
24 enactment of this Act for use as a ski area with

1 improvements with a fair market value greater
2 than \$2,000,000; and

3 (B) located either adjacent to the boundary
4 of the Federal lands or adjacent to other sig-
5 nificant private inholdings.

6 (b) APPRAISAL.—

7 (1) IN GENERAL.—The Secretary shall provide
8 for an independent appraisal of the lands and inter-
9 ests therein to be transferred pursuant to subsection

10 (a). The appraiser shall—

11 (A) utilize nationally recognized appraisal
12 standards, including to the extent appropriate
13 the uniform appraisal standards for Federal
14 land acquisition; and

15 (B) not include the value of any improve-
16 ment placed on the lands by the concessioner.

17 (2) APPRAISAL REPORT.—The appraiser shall
18 submit a detailed report to the Secretary.

19 (c) ADDITIONAL LANDS.—In addition to the national
20 forest ski area, the Secretary may transfer by sale or ex-
21 change additional National Forest System lands for the
22 purpose of adding such lands to and operating them as
23 part of a ski area sold under subsection (a). The transfer
24 of additional lands under this subsection shall be in ac-

1 cordance with this part and the laws generally applicable
2 to the National Forest System.

3 (d) USE OF PROCEEDS BY THE APPROPRIATE SEC-
4 RETARY.—The Secretary may retain 50 percent of the
5 funds generated through sales under this section to ac-
6 quire other high priority lands identified for acquisition
7 in any forest land and resource management plan. The
8 remaining 50 percent of such amount shall be deposited
9 in the Treasury as miscellaneous receipts.

10 **SEC. 9322. SKI AREA PERMIT FEES AND WITHDRAWAL OF**
11 **SKI AREAS FROM OPERATION OF MINING**
12 **LAWS.**

13 The National Forest Ski Area Permit Act of 1986
14 (16 U.S.C. 497b) is amended by adding at the end the
15 following new sections:

16 **“SEC. 4. SKI AREA PERMIT FEES.**

17 **“(a) SKI AREA PERMIT FEE.—**

18 **“(1) IN GENERAL.—**Except as provided by
19 paragraph (2), after the date of the enactment of
20 this section, the fee for all ski area permits on Na-
21 tional Forest System lands shall be calculated,
22 charged, and paid only as set forth in subsection (b).

23 **“(2) EXCEPTION.—**Paragraph (1) does not
24 apply to any ski area where the existing permit in
25 effect on the date of enactment of this section speci-

1 fies a different method to calculate the fee. In any
2 such situation the terms of such permit shall prevail,
3 unless the permit holder notifies the Forest Service
4 that the permit holder agrees to adopt the method
5 of fee calculation specified in this section. The For-
6 est Service should encourage such permit holders to
7 consider adopting the new method of fee calculation
8 in order to reduce its administrative costs.

9 “(b) METHOD OF CALCULATION.—

10 “(1) DETERMINATION OF ADJUSTED GROSS
11 REVENUE SUBJECT TO FEE.—The Secretary of Agri-
12 culture shall calculate the ski area permit fee to be
13 charged a ski area permittee by first determining
14 the permittee’s adjusted gross revenue to be subject
15 to the permit fee. The permittee’s adjusted gross
16 revenue is equal to the sum of the following:

17 “(A) The permittee’s gross revenues from
18 alpine lift ticket and alpine season pass sales
19 plus revenue from alpine ski school operations,
20 with such total multiplied by the permittee’s
21 slope transport feet percentage on National
22 Forest System lands.

23 “(B) The permittee’s gross revenues from
24 nordic ski use pass sales and nordic ski school
25 operations, with such total multiplied by the

1 permittee's percentage of nordic trails on Na-
2 tional Forest System lands.

3 “(C) The permittee's gross revenues from
4 ancillary facilities physically located on National
5 Forest System lands, including all permittee or
6 subpermittee lodging, food service, rental shops,
7 parking, and other ancillary operations.

8 “(2) DETERMINATION OF SKI AREA PERMIT
9 FEE.—The Secretary shall determine the ski area
10 permit fee to be charged a ski area permittee by
11 multiplying adjusted gross revenue determined under
12 paragraph (1) for the permittee by the following per-
13 centages for each revenue bracket and adding the
14 total for each revenue bracket:

15 “(A) 1.5 percent of all adjusted gross reve-
16 nue below \$3,000,000.

17 “(B) 2.5 percent for adjusted gross reve-
18 nue between \$3,000,000 and \$15,000,000.

19 “(C) 2.75 percent for adjusted gross reve-
20 nue between \$15,000,000 and \$50,000,000.

21 “(D) 4.0 percent for the amount of ad-
22 justed gross revenue that exceeds \$50,000,000.

23 “(3) SLOPE TRANSPORT FEET PERCENTAGE.—
24 In cases where ski areas are only partially located on
25 National Forest System lands, the slope transport

1 feet percentage on national forest land referred to in
2 paragraph (1) shall be calculated as generally de-
3 scribed in the Forest Service Manual in effect as of
4 January 1, 1992.

5 “(4) ANNUAL ADJUSTMENT OF ADJUSTED
6 GROSS REVENUE.—In order to insure that the ski
7 area permit fee set forth in this subsection remains
8 fair and equitable to both the United States and ski
9 area permittees, the Secretary shall adjust, on an
10 annual basis, the adjusted gross revenue figures for
11 each revenue bracket in subparagraphs (A) through
12 (D) of paragraph (2) by the percent increase or de-
13 crease in the national Consumer Price Index for the
14 preceding calendar year.

15 “(c) MINIMUM FEE.—In cases where an area of Na-
16 tional Forest System land is under a ski area permit but
17 the permittee does not have revenue or sales qualifying
18 for fee payment pursuant to subsection (a), the permittee
19 shall pay an annual minimum fee of \$2 for each acre of
20 National Forest System land under permit. Rental fees
21 imposed under this subsection shall be paid at the time
22 specified in subsection (d).

23 “(d) TIME FOR PAYMENT.—The fee set forth in sub-
24 section (b) shall be due on June 1 of each year and shall
25 be paid or prepaid by the permittee on a monthly, quar-

1 terly, annual, or other schedule as determined appropriate
2 by the Secretary in consultation with the permittee. It is
3 the intention of Congress that unless mutually agreed oth-
4 erwise by the Secretary and the permittee, the payment
5 or prepayment schedule shall conform to the permittee's
6 schedule in effect prior to the enactment of this section.
7 To simplify bookkeeping and fee calculation burdens on
8 the permittee and the Forest Service, the Secretary shall
9 each year provide the permittee with a standardized form
10 and worksheets (including annual fee calculations brackets
11 and rates) to be utilized for fee calculation and submitted
12 with the fee payment. Information provided on such forms
13 shall be compiled by the Secretary annually and kept in
14 the Office of the Chief, United States Forest Service.

15 “(e) DEFINITIONS.—To simplify bookkeeping and ad-
16 ministrative burdens on ski area permittees and the For-
17 est Service, as used in this section, the terms ‘revenue’
18 and ‘sales’ mean actual income from sales. Such terms do
19 not include sales of operating equipment, refunds, rent
20 paid to the permittee by sublessees, sponsor contributions
21 to special events or any amounts attributable to employee
22 gratuities, discounts, complimentary lift tickets, or other
23 goods or services (except for bartered goods) for which the
24 permittee does not receive money.

1 “(f) EFFECTIVE DATE FOR FEES.—The ski area per-
2 mit fees as provided under this section shall become effec-
3 tive on July 1, 1996, and cover receipts retroactive to July
4 1, 1995. If a ski area permittee has paid fees for the 12-
5 month period ending on June 30, 1996, under the grad-
6 uated rate fee system formula in effect prior to the date
7 of the enactment of this section, such fees shall be credited
8 toward the new ski area permit fee due for that period
9 under this section.

10 “(g) REPORT ON FAIR MARKET VALUE.—No later
11 than five years after the date of enactment of this section
12 and every 10 years thereafter, the Secretary shall submit
13 to the Committee on Energy and Natural Resources of
14 the United States Senate and the Committees of Agri-
15 culture and Resources of the United States House of Rep-
16 resentatives a report analyzing whether the ski area per-
17 mit fee system legislated by this section is returning a fair
18 market value rental to the United States together with any
19 recommendations the Secretary may have for modifica-
20 tions in the system.

21 “(h) TRANSITION PERIOD.—Where the new fee pro-
22 vided for in this section results in an increase in permit
23 fee greater than one percent of the permittee’s adjusted
24 gross revenue (as defined in subsection (b)(1)), the new

1 fee shall be phased in over a three year period in a manner
2 providing for increases of approximately equal increments.

3 “(i) APPLICABILITY OF NEPA TO REISSUANCE OF
4 SKI AREA PERMITS.—The reissuance of a ski area permit
5 to provide activities similar in nature and amount to the
6 activities provided under the previous permit is hereby de-
7 termined to be a categorical exclusion as provided for
8 under the National Environmental Policy Act of 1969 (42
9 U.S.C. 4331 et seq.).

10 **“SEC. 5. WITHDRAWAL OF SKI AREAS FROM OPERATION OF**
11 **MINING LAWS.**

12 “Subject to valid existing rights, all lands located
13 within the boundaries of ski area permits issued prior to,
14 on, or after the date of the enactment of this section pur-
15 suant to the authority of the Act of March 4, 1915 (16
16 U.S.C. 497), the Act of June 4, 1897 (16 U.S.C. 473 et
17 seq.), or section 3 of this Act are hereby and henceforth
18 automatically withdrawn from all forms of appropriation
19 under the mining laws and from disposition under all laws
20 pertaining to mineral and geothermal leasing. Such with-
21 drawal shall continue for the full term of the permit and
22 any modification, reissuance, or renewal of the permit.
23 Such withdrawal shall be canceled automatically upon ex-
24 piration or other termination of the permit unless, at the
25 request of the Secretary of Agriculture, the Secretary of

1 the Interior determines to continue the withdrawal. Upon
2 cancellation of the withdrawal, the land shall be automati-
3 cally restored to all appropriation not otherwise restricted
4 under the public land laws.”.

5 **PART 3—DOMESTIC LIVESTOCK GRAZING**

6 **SEC. 9331. APPLICABLE REGULATIONS.**

7 (a) BLM LANDS.—Except as otherwise provided by
8 this part, grazing of domestic livestock on lands adminis-
9 tered by the Bureau of Land Management shall be in ac-
10 cordance with part 1780 and part 4100 of title 43, Code
11 of Federal Regulations, as in effect on January 1, 1995.

12 (b) FOREST SERVICE LANDS.—Except as otherwise
13 provided by this part, grazing of domestic livestock on
14 lands administered by the Forest Service shall, to the ex-
15 tent possible, be in accordance with regulations, which the
16 Secretary of Agriculture shall promulgate, which are sub-
17 stantially similar to the regulations referred to in sub-
18 section (a). Regulations promulgated under this sub-
19 section may differ from the regulations referred to in sub-
20 section (a) to the extent necessary to conform to the laws
21 governing the National Forest System (other than this
22 part).

23 (c) FEDERAL LANDS.—For the purposes of this part,
24 the term “Federal lands” means lands administered by

1 the Bureau of Land Management and lands administered
2 by the Forest Service.

3 **SEC. 9332. FEES AND CHARGES.**

4 (a) BASIC FEE.—The basic fee for each animal unit
5 month in a grazing fee year to be determined by the Bu-
6 reau of Land Management and the Forest Service shall
7 be equal to the 3-year average of the total gross value of
8 production for beef cattle, as compiled by the Economic
9 Research Service of the Department of Agriculture in ac-
10 cordance with subsection (b) on the basis of economic data
11 published by the Service in the Economic Indicators of the
12 Farm Sector: Cost of Production—Major Field Crops &
13 Livestock and Dairy for the 3 years preceding the grazing
14 fee year, multiplied by the 10 year average of the United
15 States Treasury Securities 6-month bill “new issue” rate
16 and divided by 12.

17 (b) CRITERIA.—The Economic Research Service of
18 the Department of Agriculture shall continue to compile
19 the gross production value of production of beef cattle as
20 reported in a dollar per bred cow basis in the “U.S. Cow-
21 Calf Production Cash Costs and Returns”.

22 (c) SURCHARGE.—

23 (1) IN GENERAL.—A surcharge shall be added
24 to the grazing fee billings for authorized grazing of

1 livestock owned by persons other than the permittee
2 or lessee except where—

3 (A) such use is made by livestock owned by
4 a spouse, child, or grandchild or their respective
5 spouse of the permittee and lessee; or

6 (B) the permittee or lessee is unable to
7 make full grazing use, as authorized by a graz-
8 ing permit or lease, due to the infirmed condi-
9 tion or death of the permittee or lessee.

10 (2) TREATMENT AS ADDITIONAL FEE.—The
11 surcharge shall be over and above any other fees
12 that may be charged for using public land forage.

13 (3) PRIOR PAYMENT REQUIRED.—Surcharges
14 shall be paid prior to grazing use.

15 (4) AMOUNT.—The surcharge for authorized
16 pasturing of livestock owned by persons other than
17 the permittee or lessee shall be equal to 25 percent
18 of the difference between the current year's Federal
19 grazing fee and the prior year's private grazing land
20 lease rate per AUM for the appropriate State as
21 compiled by the National Agricultural Statistics
22 Service.

23 (5) IN GENERAL.—The Bureau of Land Man-
24 agement and the Forest Service shall make a deter-
25 mination under subsection (a) based on the following

1 information gathered by the National Agriculture
2 Statistics Service of the Department of Agriculture
3 with respect to the largest single grazing lease of
4 each grazing operator (in terms of dollars):

5 (A) Whether the operator charged—

6 (i) per acre;

7 (ii) per head per month;

8 (iii) per pound of gain;

9 (iv) per hundredweight of gain; or

10 (v) by another measure, and the rate
11 charged.

12 (B)(i) The estimated average pounds
13 gained per season for the grazing lease.

14 (ii) The total dollar amount estimated to
15 be realized from the grazing lease.

16 (iii) Grazing lease acreage.

17 (iv) The State and county where the graz-
18 ing lease is located.

19 (C) The classes of livestock grazed.

20 (D) The term of the grazing lease.

21 (E)(i) Whether grazing lease payments are
22 paid if no grazing occurred.

23 (ii) Whether the grazing lease contains a
24 take or pay provision.

1 (F) Additional information on whether the
2 following are provided by the landlord on a 5-
3 year basis:

4 (i) Fencing maintenance.

5 (ii) Animal management and over-
6 sight.

7 (iii) Water maintenance.

8 (iv) Salt and minerals.

9 (v) Other service (specified).

10 (vi) No services.

11 (vii) Hunting.

12 (viii) Fishing.

13 (ix) Other (specified).

14 (x) None.

15 (6) PRIVATE NATIVE RANGELAND.—For the
16 purpose of determining rates for grazing leases of
17 private native rangeland, rates for irrigated pasture,
18 crop aftermath, and dryland winter wheat shall be
19 excluded.

20 **SEC. 9333. ANIMAL UNIT MONTH.**

21 (a) DEFINITION OF ANIMAL UNIT MONTH.—The
22 term “animal unit month” means 1 month’s use and occu-
23 pancy of range by—

24 (1) 1 cow, bull, steer, heifer, horse, burro, or
25 mule, 7 sheep, or 7 goats, each of which is 6 months

1 of age or older on the date on which the animal be-
2 gins grazing on Federal land;

3 (2) any such animal regardless of age if the
4 animal is weaned on the date on which the animal
5 begins grazing on Federal land; and

6 (3) any such animal that will become 12
7 months of age during the period of use authorized
8 under a grazing permit or grazing lease.

9 (b) LIVESTOCK NOT COUNTED.—There shall not be
10 counted as an animal unit month the use of Federal land
11 for grazing by an animal that is less than 6 months of
12 age on the date on which the animal begins grazing on
13 Federal land and is the natural progeny of an animal on
14 which a grazing fee is paid if the animal is removed from
15 the Federal land before becoming 12 months of age.

16 **SEC. 9334. TERM OF GRAZING PERMITS OR GRAZING**
17 **LEASES.**

18 A grazing permit or grazing lease shall be issued for
19 a term of 15 years unless—

20 (1) the land is pending disposal;

21 (2) the land will be devoted to a public purpose
22 that precludes grazing prior to the end of 15 years;
23 or

24 (3) the Secretary determines that it would be in
25 the best interest of sound land management to speci-

1 fy a shorter term, if the decision to specify a shorter
2 term is supported by appropriate and accepted re-
3 source analysis and evaluation.

4 **SEC. 9335. CONFORMANCE WITH LAND USE PLAN.**

5 Livestock grazing activities and management actions
6 approved by the Secretary of the Interior or the Secretary
7 of Agriculture, as the case may be—

8 (1) may include any such activities as are not
9 clearly prohibited by a land use plan; and

10 (2) shall not require any consideration under
11 the National Environmental Policy Act of 1969 (42
12 U.S.C. 4321 et seq.) in addition to the studies sup-
13 porting the land use plan.

14 **SEC. 9336. EFFECTIVE DATE.**

15 This part shall apply to grazing on Federal lands on
16 and after the date of the enactment of this Act.

17 **PART 4—REGIONAL DISPOSAL FACILITY OF**
18 **SOUTHWESTERN LOW LEVEL RADIOACTIVE**
19 **WASTE DISPOSAL COMPACT**

20 **SEC. 9341. CONVEYANCE OF PROPERTY.**

21 (a) CONVEYANCE.—Upon the tendering of \$500,000
22 on behalf of the State of California and the release of the
23 United States by the State of California from any liability
24 for claims relating to the property described in subsection
25 (b), all right, title and interest of the United States in

1 and to said lands and improvements thereon are conveyed
2 to the Department of Health Services of the State of Cali-
3 fornia: *Provided*, That the property shall revert to the
4 United States if the property is not used as a low-level
5 radioactive waste disposal facility.

6 (b) DESCRIPTION.—The lands conveyed are those de-
7 picted on a map designated USGS 7.5 minute quadrangle,
8 west of Flattop Mtn, CA 1984, entitled “Location Map
9 for Ward Valley Site”, located in San Bernardino Merid-
10 ian, Township 9 North, Range 19 East.

11 (c) TITLE.—The Secretary of the Interior shall issue
12 evidence of title pursuant to this Act notwithstanding any
13 other provision of law. The Southwestern Low-Level Ra-
14 dioactive Waste Disposal Compact’s Ward Valley regional
15 disposal facility and transfer of the land are in compliance
16 with any applicable provisions of section 7 of Endangered
17 Species Act of 1973 (16 U.S.C. 1536) and the National
18 Environmental Policy Act of 1969 (42 U.S.C. 4332).

19 (d) DEPOSIT OF FUNDS.—Sums received pursuant to
20 subsection (a) shall be deposited as miscellaneous receipts
21 in the Treasury of the United States.

22 (e) EXPIRATION OF AUTHORITY.—This authority ex-
23 pires October 1, 2010.

1 **SEC. 9342. CONVEYANCE OF EASEMENTS.**

2 Concurrent with the conveyance property described in
 3 section 9341(b) to the Department of Health Services of
 4 the State of California, all necessary easements for utili-
 5 ties and ingress and egress to said lands described in sec-
 6 tion 9341(b) of this Act and the right to improve those
 7 easements, are also conveyed to the Department of Health
 8 Services of the State of California: *Provided*, That the De-
 9 partment of Health Services right-of-way easements revert
 10 to the United States if the lands referenced in section
 11 9341 are not licensed and used as a low-level radioactive
 12 waste disposal facility.

13 **Subtitle D—Territories**

14 **PART 1—COMMONWEALTH OF THE NORTHERN**
 15 **MARIANA ISLANDS**

16 **SEC. 9401. TERMINATION OF ANNUAL DIRECT GRANT AS-**
 17 **SISTANCE.**

18 (a) **TERMINATION.**—Pursuant to section 704(d) of
 19 the Covenant to Establish a Commonwealth of the North-
 20 ern Mariana Islands in Political Union with the United
 21 States of America (48 U.S.C. 1681 note), the annual pay-
 22 ments under section 702 of the Covenant shall terminate
 23 as of September 30, 1995.

24 (b) **REPEAL.**—Sections 3 and 4 of the Act of March
 25 24, 1976 (Public Law 94–241; 48 U.S.C. 1681 note), as
 26 amended, are repealed, effective October 1, 1995.

1 (c) REMOVAL OF AUTHORITY TO OBLIGATE CERTAIN
2 FUNDS.—Amounts appropriated under title VII of the
3 Covenant to Establish a Commonwealth of the Northern
4 Mariana Islands in Political Union with the United States
5 of America, and under sections 3 and 4 of Public Law
6 94–241 (48 U.S.C. 1681), which are not obligated as of
7 the date of the enactment of this Act may not be obligated
8 after such date.

9 (d) CONFORMING AMENDMENTS.—Section 5 of such
10 Act (48 U.S.C. 1681 note) is amended—

11 (1) by striking out “agreement identified in sec-
12 tion 3 of this Act” and inserting in lieu thereof
13 “Agreement of the Special Representatives on Fu-
14 ture United States Financial Assistance for the Gov-
15 ernment of the Northern Mariana Islands, executed
16 July 10, 1985, between the special representative of
17 the President of the United States and the special
18 representatives of the Governor of the Northern
19 Mariana Islands”; and

20 (2) by striking out “Committee on Interior and
21 Insular Affairs” and inserting in lieu thereof “Com-
22 mittee on Resources”.

1 **PART 2—TERRITORIAL ADMINISTRATIVE**
2 **CESSATION ACT**

3 **SEC. 9421. SHORT TITLE.**

4 This part may be cited as the “Territorial Adminis-
5 trative Cessation Act”.

6 **SEC. 9422. CONGRESSIONAL FINDINGS.**

7 The Congress finds that—

8 (1) each of the four political subdivisions of the
9 United Nations Trust Territory of the Pacific Is-
10 lands, known as the Japanese Mandated Islands,
11 have successfully entered into distinct self-governing
12 entities, thereby culminating in the final termination
13 of the Trusteeship and the end of the trusteeship re-
14 sponsibilities of the United States as administering
15 authority of the Trust Territory on October 1, 1994;

16 (2) the United States territories have developed
17 progressively increased local self-government over
18 the past five decades;

19 (3) the territories predominantly deal directly
20 with Federal agencies and departments, as a State
21 would;

22 (4) the administering responsibilities of the De-
23 partment of the Interior with respect to the insular
24 areas has declined substantially during the past five
25 decades; and

1 (5) Federal-territorial relations can be enhanced
2 and Federal fiscal conditions improved by the elimi-
3 nation of unnecessary Federal bureaucracy.

4 **SEC. 9423. ELIMINATION OF OFFICE OF TERRITORIAL AND**
5 **INTERNATIONAL AFFAIRS.**

6 (a) **IN GENERAL.**—The Office of Territorial and
7 International Affairs of the Department of the Interior,
8 established pursuant to the Order of the Secretary of the
9 Interior 3046, of February 14, 1980, as amended, is here-
10 by abolished.

11 (b) **TERMINATION OF POSITION OF ASSISTANT SEC-**
12 **RETARY.**—Section 5315 of title 5, United States Code, is
13 amended by striking “Assistant Secretaries of the Interior
14 (6)” and inserting “Assistant Secretaries of the Interior
15 (5)”.

16 (c) **EFFECTIVE DATE.**—Subsection (a) and the
17 amendment made by subsection (b) shall take effect on
18 the first day of the first fiscal year that begins after the
19 date of the enactment of this Act.

20 **SEC. 9424. CERTAIN ACTIVITIES NOT FUNDED.**

21 Amounts may not be made available for the following
22 program activities for assistance to territories for fiscal
23 years beginning after September 30, 1995, as identified
24 under the appropriations account numbered 14–0412–0–
25 1–808:

- 1 (1) technical assistance, item 00.12;
- 2 (2) maintenance assistance, item 00.14;
- 3 (3) disaster fund, item 00.17; and
- 4 (4) insular management controls, item 00.19.

5 **Subtitle E—Minerals**

6 **PART 1—HARDROCK MINING**

7 **SEC. 9501. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—Congress finds and declares that—

9 (1) a secure and reliable supply of locatable
10 minerals is essential to the industrial base of the
11 United States, national security, and balance of
12 trade;

13 (2) many of the deposits of locatable minerals
14 that may be commercially developed are on Federal
15 lands as that term is defined in this Act, and are
16 difficult and expensive to discover, mine, extract and
17 process;

18 (3) the national need for locatable minerals will
19 continue to expand, and without a strong mining in-
20 dustry the demand for the minerals will exceed do-
21 mestic sources of supply;

22 (4) mining of locatable minerals is an extremely
23 high-risk, capital-intensive endeavor, which, to at-
24 tract necessary investment, requires certainty and
25 predictability in access to Federal lands in establish-

1 ment of mining titles, and in the rights of owners of
2 mining claims or sites to develop minerals;

3 (5) the national interest is to foster and encour-
4 age private enterprise in the development of a do-
5 mestic minerals industry to maintain and create
6 high-paying jobs and the various Federal, State, and
7 local taxes paid by the mining industry in the
8 United States;

9 (6) changes in the general mining laws of the
10 United States to provide more direct economic re-
11 turn to the United States and greater protection of
12 public resources are desirable, so long as these
13 changes do not act as a disincentive to development
14 of minerals, adversely affect employment in the min-
15 ing industry or in industries that provide goods and
16 services required for mining activities, interfere with
17 a secure and reliable domestic supply of minerals, or
18 adversely affect the balance of trade of the United
19 States; and

20 (7) mining claims, mill sites and tunnel sites lo-
21 cated under the general mining laws are property in-
22 terests, and any law or regulation that substantially
23 impairs existing property rights may expose the Fed-
24 eral Government to takings claims under the fifth
25 amendment to the United States Constitution.

1 (b) PURPOSE.—It is the purpose of this subtitle to—

2 (1) affirm and maintain the policy established
3 in section 2 of the Mining and Minerals Policy Act
4 of 1970;

5 (2) promote exploration for and the develop-
6 ment of a secure and reliable domestic source of
7 locatable minerals;

8 (3) provide for increased Federal revenue from
9 the location and production of locatable minerals
10 from Federal lands through patent payments and
11 royalties; and

12 (4) recognize that unpatented mining claims,
13 mill sites and tunnel sites are property rights in the
14 fullest sense and avoid, to the greatest extent pos-
15 sible, claims of takings of existing property rights
16 under the general mining laws that could require
17 compensation under the fifth amendment to the
18 United States Constitution.

19 **SEC. 9502. PATENTS UNDER THE GENERAL MINING LAW.**

20 (a) IN GENERAL.—Any patent issued by the United
21 States under the general mining laws after the date of
22 the enactment of this Act for any interest in land covered
23 by a mining claim or site under such laws shall be issued
24 only—

1 (1) upon payment by the owner of the mining
2 claim or site of the fair market value for the interest
3 in the land owned by the United States exclusive of,
4 and without regard to, the mineral deposits in the
5 land or the use of such land for mineral activities
6 unless the requirements of subsection (b) are met,
7 and

8 (2) subject to a reservation by the United
9 States of the royalty provided in section 9503(a),
10 unless the requirements in subsection (b) are met.

11 (b) PATENT TRANSITION.—(1) Subsection (a) shall
12 not apply to any mining claim or site if—

13 (A) the claimant establishes that the claim or
14 site constituted a valid mining claim as of the date
15 of the enactment of this Act; and

16 (B) the claimant has filed a patent application
17 or mineral survey application prior to the date of the
18 enactment of this Act, or files such an application
19 with the Bureau of Land Management before the
20 date 2 years after the date of the enactment of this
21 Act. A patent application or mineral survey applica-
22 tion referred to in this subparagraph shall be
23 deemed timely, notwithstanding that the application
24 may be corrected or supplemented and resubmitted
25 thereafter.

1 (2) During the 2-year period in paragraph (1)(B), or
2 while there is pending a mineral survey or patent applica-
3 tion to which this subsection applies, an owner of the min-
4 ing claim or site may continue work on a mining claim
5 or site directed toward establishment and confirmation of
6 entitlement to a patent, and may amend the application
7 as necessary.

8 (3) Where access to any mining claim or site has been
9 denied or impeded by the action or inaction of any Federal
10 official, agency, or court during all or part of the 5-year
11 period preceding the date of enactment of this Act, includ-
12 ing any mining claim or site within the area described in
13 section 106 of Public Law 103–433, and the mining claim
14 or site may require further exploration or development in
15 order for the claimant to file a patent application or a
16 mineral survey application and otherwise meet the require-
17 ments of paragraph (1), the claimant may, within 1 year
18 after the date of enactment of this Act, submit a certified
19 written statement to the Secretary describing the access
20 denial or impediment, and shall then have a period of 10
21 years from the date of enactment of this Act or the termi-
22 nation of such access denial or impediment, whichever oc-
23 curs first, to conduct such mineral exploration or develop-
24 ment activities, file a patent application or mineral survey

1 application, and otherwise meet the requirements of para-
2 graph (1).

3 (c) PAYMENT PLAN.—(1) Any owner grossing less
4 than \$500,000 annually shall qualify for a payment plan.
5 Upon completion of the patent process, the owner of the
6 mining claim may purchase the surface estate under the
7 following conditions:

8 (A) Payment to be amortized over 5 years with
9 5 equal annual payments, including principal and in-
10 terest.

11 (B) Interest shall be calculated per annum at a
12 rate of 2 percent over the “Treasury Current Value
13 of Funds Rate” on the date of execution of the pay-
14 ment plan agreement.

15 (2) The purchaser shall be notified by certified mail
16 after 60 days of delinquent payments and have 90 days
17 from receipt of notification to correct the delinquency. Re-
18 possession shall be by and under the laws of repossession,
19 foreclosure, and replevin of the State wherein the land is
20 situated.

21 (d) REPEAL OF PATENTING MORATORIUM; PROCESS-
22 ING OF PATENT APPLICATIONS.—Sections ____ and ____
23 of Public Law ____ are hereby repealed. The Secretary
24 of the Interior shall diligently process all patent applica-
25 tions under the general mining laws pending on the date

1 of enactment and shall make determinations for all such
2 applications regarding patent issuance within 2 years.

3 **SEC. 9503. ROYALTY UNDER THE GENERAL MINING LAW.**

4 (a) IN GENERAL.—The production and sale of
5 locatable minerals (including associated minerals) from
6 any unpatented mining claim (other than those from Fed-
7 eral lands to which subsection 9502(b) applies) or any
8 mining claim patented under section 9502(a) shall be sub-
9 ject to a royalty of 3.5 percent on the net proceeds from
10 such production mined and sold from such claim.

11 (b) ROYALTY EXCLUSION.—(1) The royalty payable
12 under this section shall be waived for any person or cor-
13 poration with annual net proceeds from mineral produc-
14 tion subject to subsection (a) of less than \$50,000.

15 (2) Where mining operations subject to this section
16 are conducted in 2 or more places by 1 person or corpora-
17 tion, the operations shall be considered a single operation
18 the aggregate net proceeds from which shall be subject
19 to the \$50,000 limitation set forth in this subsection.

20 (3) No royalty shall be payable under this section
21 with respect to minerals processed at a facility by the same
22 person or entity which extracted the minerals if an urban
23 development action grant has been made under section
24 119 of the Housing and Community Development Act of
25 1974 with respect to any portion of such facility.

1 (4) The obligation to pay royalties under this section
2 shall accrue only upon the sale of locatable minerals or
3 mineral products produced from a mining claim subject
4 to such royalty, and not upon the stockpiling of the same
5 for future processing.

6 (c) DEFINITIONS.—For the purposes of this subtitle:

7 (1) The term “net proceeds” means gross yield,
8 less the sum of the following deductions for costs in-
9 curred prior to sale or value determination, and none
10 other:

11 (A) The actual cost of extracting the
12 locatable mineral.

13 (B) The actual cost of transporting the
14 locatable mineral from the claim to the place or
15 places of reduction, beneficiation, refining, and
16 sale.

17 (C) The actual cost of crushing, process-
18 ing, reduction, beneficiation, refining, and sale
19 of the locatable mineral.

20 (D) The actual cost of marketing and de-
21 livering the locatable mineral and the conver-
22 sion of the locatable mineral into money.

23 (E) The actual cost of maintenance and re-
24 pairs of—

1 (i) all machinery, equipment, appara-
2 tus, and facilities used in the mine;

3 (ii) all crushing, milling, leaching, re-
4 fining, smelting, and reduction works,
5 plants, and facilities; and

6 (iii) all facilities and equipment for
7 transportation.

8 (F) The actual cost for support personnel
9 and support services at the mine site, including
10 without limitation, accounting, assaying, draft-
11 ing and mapping, computer services, surveying,
12 housing, camp, and office expenses, safety, and
13 security.

14 (G) The actual cost of engineering, sam-
15 pling, and assaying pertaining to development
16 and production.

17 (H) The actual cost of permitting, rec-
18 lamation, environmental compliance and mon-
19 itoring.

20 (I) The actual cost of fire and other insur-
21 ance on the machinery, equipment, apparatus,
22 works, plants, and facilities mentioned in sub-
23 paragraph (E).

24 (J) Depreciation of the original capitalized
25 cost of the machinery, equipment, apparatus,

1 works, plants, and facilities listed in subpara-
2 graph (E). The annual depreciation charge shall
3 consist of amortization of the original cost in
4 the manner consistent with the Internal Reve-
5 nue Code of 1986, as amended from time to
6 time. The probable life of the property rep-
7 resented by the original cost must be considered
8 in computing the depreciation charge.

9 (K) All money expended for premiums for
10 industrial insurance, and the owner paid cost of
11 hospital and medical attention and accident
12 benefits and group insurance for all employees
13 engaged in the production or processing of
14 locatable minerals.

15 (L) All money paid as contributions or
16 payments under State unemployment com-
17 pensation law, all money paid as contributions
18 under the Federal Social Security Act, and all
19 money paid to State government in real prop-
20 erty taxes and severance or other taxes meas-
21 ured or levied on production, or Federal excise
22 tax payments and payments as fees or charges
23 for use of the Federal lands from which the
24 locatable minerals are produced.

1 (M) The actual cost of the developmental
2 work in or about the mine or upon a group of
3 mines when operated as a unit.

4 (2) The term “gross yield” shall having the fol-
5 lowing meaning:

6 (A) In the case of sales of gold and silver
7 ore, concentrates or bullion, or the sales of
8 other locatable minerals in the form of ore or
9 concentrates, the term “gross yield” means the
10 actual proceeds of sale of such ore, concentrates
11 or bullion.

12 (B) In the case of sales of beneficiated
13 products from locatable minerals other than
14 those subject to subparagraph (A) (including
15 cathode, anode or copper rod or wire, or other
16 products fabricated from the locatable min-
17 erals), the term “gross yield” means the gross
18 income from mining derived from the first com-
19 mercially marketable product determined in the
20 same manner as under section 613 of the Inter-
21 nal Revenue Code of 1986.

22 (C) If ore, concentrates, beneficiated or
23 fabricated products, or locatable minerals are
24 used or consumed and are not sold in an arms
25 length transaction, the term “gross yield”

1 means the reasonable fair market value of the
2 ore, concentrates, beneficiated or fabricated
3 products at the mine or wellhead determined
4 from the first applicable of the following:

5 (i) Published or other competitive sell-
6 ing prices of locatable minerals of like kind
7 and grade.

8 (ii) Any proceeds of sale.

9 (iii) Value received in exchange for
10 any thing or service.

11 (iv) The value of any locatable min-
12 erals in kind or used or consumed in a
13 manufacturing process or in providing a
14 service.

15 Without limiting the foregoing, the profits or
16 losses incurred in connection with forward
17 sales, futures or commodity options trading,
18 metal loans, or any other price hedging or spec-
19 ulative activity or arrangement shall not be in-
20 cluded in gross yield.

21 (3) The term “Secretary” means the Secretary
22 of the Interior.

23 (d) LIMITATIONS AND ALLOCATIONS OF NET PRO-
24 CEEDS, GROSS YIELD, AND ALLOWABLE COSTS.—(1) The
25 deductions listed in subsection (c)(1) are intended to allow

1 a reasonable allowance for overhead. Such deductions shall
2 not include any expenditures for salaries, or any portion
3 of salaries, of any person not actually engaged in—

4 (A) the working of the mine;

5 (B) the operating of the leach pads, ponds,
6 plants, mills, smelters, or reduction works;

7 (C) the operating of the facilities or equipment
8 for transportation; or

9 (D) superintending the management of any of
10 those operations described in subparagraphs (A)
11 through (C).

12 (2) Ores or solutions of locatable minerals subject to
13 the royalty requirements of this section may be extracted
14 from mines comprised of mining claims and lands other
15 than mining claims and ore or solutions of locatable min-
16 erals subject to the royalty requirements of this section
17 may be commingled with ores or solutions from lands
18 other than mining claims. In any such case, for purposes
19 of determining the amount of royalties payable under this
20 section—

21 (A) the operator shall first sample, weigh or
22 measure, and assay the same in accordance with ac-
23 cepted industry standards; and

24 (B) gross yield, allowable costs and net pro-
25 ceeds for royalty purposes shall be allocated in pro-

1 portion to mineral products recovered from the min-
2 ing claims in accordance with accepted industry
3 standards.

4 (e) LIABILITY FOR ROYALTY PAYMENTS.—The
5 owner or co-owners of a mining claim subject to a royalty
6 under this section shall be liable for such royalty to the
7 extent of the interest in such claim owned. As used in this
8 subsection, the terms “owner” and “co-owner” mean the
9 person or persons owning the right to mine locatable min-
10 erals from such claim and receiving the net proceeds of
11 such sale. No person who makes any royalty payment at-
12 tributable to the interest of the owner or co-owners liable
13 therefor shall become liable to the United States for such
14 royalty as a result of making such payment on behalf of
15 such owner or co-owners.

16 (f) TIME AND MANNER OF PAYMENT.—(1) Royalty
17 payments for production from any mining claim subject
18 to the royalty payable under this section shall be due to
19 the United States at the end of the month following the
20 end of the calendar quarter in which the net proceeds from
21 the sale of such production are received by the owner or
22 co-owners. Royalty payments may be made based upon
23 good faith estimates of the gross yield, net proceeds and
24 the quantity of ore, concentrates, or other beneficiated or
25 fabricated products of locatable minerals, subject to ad-

1 justment when the actual annual gross yield, net proceeds
2 and quantity are determined by the owner of the mining
3 claim or site or co-owners.

4 (2) Each royalty payment or adjustment shall be ac-
5 companied by a statement containing each of the follow-
6 ing:

7 (A) The name and Bureau of Land Manage-
8 ment serial number of the mining claim or claims
9 from which ores, concentrates, solutions or
10 beneficiated products of locatable minerals subject to
11 the royalty required in this section were produced
12 and sold for the period covered by such payment or
13 adjustment.

14 (B) The estimated (or actual, if determined)
15 quantity of such ore, concentrates, solutions or
16 beneficiated or fabricated products produced and
17 sold from such mining claim or claims for such pe-
18 riod.

19 (C) The estimated (or actual, if determined)
20 gross yield from the production and sale of such ore,
21 concentrates, solutions or beneficiated products for
22 such period.

23 (D) The estimated (or actual, if determined)
24 net proceeds from the production and sale of such
25 ores, concentrates, solutions or beneficiated products

1 for such period, including an itemization of the ap-
2 plicable deductions described in subsection (c)(1).

3 (E) The estimated (or actual, if determined)
4 royalty due to the United States, or adjustment due
5 to the United States or such owner or co-owners, for
6 such period.

7 (3) In lieu of receiving a refund under subsection (h),
8 the owner or co-owners may elect to apply any adjustment
9 due to such owner or co-owners as an offset against royal-
10 ties due from such owner or co-owners to the United
11 States under this Act, regardless of whether such royalties
12 are due for production and sale from the same mining
13 claim or claims.

14 (g) RECORDKEEPING AND REPORTING REQUIRE-
15 MENTS.—(1) An owner, operator, or other person directly
16 involved in the conduct of mineral activities, transpor-
17 tation, purchase, or sale of locatable minerals, con-
18 centrates, or products derived therefrom, subject to the
19 royalty under this section, through the point of royalty
20 computation, shall establish and maintain any records,
21 make any reports, and provide any information that the
22 Secretary may reasonably require for the purposes of im-
23 plementing this section or determining compliance with
24 regulations or orders under this section. Upon the request
25 of the Secretary when conducting an audit or investigation

1 pursuant to subsection (i), the appropriate records, re-
2 ports, or information required by this subsection shall be
3 made available for inspection and duplication by the Sec-
4 retary.

5 (2) Records required by the Secretary under this sec-
6 tion shall be maintained for 3 years after the records are
7 generated unless the Secretary notifies the record holder
8 that he or she has initiated an audit or investigation spe-
9 cifically identifying and involving such records and that
10 such records must be maintained for a longer period.
11 When an audit or investigation is under way, such records
12 shall be maintained until the earlier of the date that the
13 Secretary releases the record holder of the obligation to
14 maintain such records or the date that the limitations pe-
15 riod applicable to such audit or investigation under sub-
16 section (i) expires.

17 (h) INTEREST ASSESSMENTS.—(1) If royalty pay-
18 ments under this section are not received by the Secretary
19 on the date that such payments are due, or if such pay-
20 ments are less than the amount due, the Secretary shall
21 charge interest on such unpaid amount. Interest under
22 this subsection shall be computed at the rate published
23 by the Department of the Treasury as the “Treasury Cur-
24 rent Value of Funds Rate.” In the case of an
25 underpayment or partial payment, interest shall be com-

1 puted and charged only on the amount of the deficiency
2 and not on the total amount, and only for the number
3 of days such payment is late. No other late payment or
4 underpayment charge or penalty shall be charged with re-
5 spect to royalties under this section.

6 (2) In any case in which royalty payments are made
7 in excess of the amount due, or amounts are held by the
8 Secretary pending the outcome of any appeal in which the
9 Secretary does not prevail, the Secretary shall promptly
10 refund such overpayments or pay such amounts to the per-
11 son or persons entitled thereto, together with interest
12 thereon for the number of days such overpayment or
13 amounts were held by the Secretary, with the addition of
14 interest charged against the United States computed at
15 the rate published by the Department of the Treasury as
16 the “Treasury Current Value of Funds Rate.”

17 (i) AUDITS, PAYMENT DEMANDS AND LIMITA-
18 TIONS.—(1) The Secretary may conduct, after notice, any
19 audit reasonably necessary and appropriate to verify the
20 payments required under this section.

21 (2) The Secretary shall send or issue any billing or
22 demand letter for royalty due on locatable minerals pro-
23 duced and sold from any mining claim subject to royalty
24 required by this section not later than 3 years after the
25 date such royalty was due and must specifically identify

1 the production involved, the royalty allegedly due and the
2 basis for the claim. No action, proceeding or claim for roy-
3 alty due on locatable minerals produced and sold, or relat-
4 ing to such production, may be brought by the United
5 States, including but not limited to any claim for addi-
6 tional royalties or claim of the right to offset the amount
7 of such additional royalties against amounts owed to any
8 person by the United States, unless judicial suit or admin-
9 istrative proceedings are commenced to recover specific
10 amounts claimed to be due prior to the expiration of 3
11 years from the date such royalty is alleged to have been
12 due.

13 (j) TRANSITIONAL RULES.—Any mining claim for
14 which a patent is issued pursuant to section 9502(b) shall
15 not be subject to the obligation to pay the royalty pursu-
16 ant to this section. Royalty payments for any claim proc-
17 essed under section 9502(b) shall be suspended pending
18 final determination of the right to patent. For any such
19 claim that is determined not to qualify for the issuance
20 of a patent under section 9502(b), royalties shall be pay-
21 able under this section on production after the date of en-
22 actment of this Act, plus interest computed at the rate
23 published by the Department of the Treasury as the
24 “Treasury Current Value of Funds Rate” on production

1 after such date of enactment and before the date of such
2 determination.

3 (k) DISBURSEMENT OF REVENUES.—The receipts
4 from royalties collected under this section shall be dis-
5 bursed as follows:

6 (1) Two-thirds of such receipts shall be paid
7 into the Treasury of the United States and deposited
8 as miscellaneous receipts.

9 (2) One-third of such receipts shall be paid by
10 the Secretary of the Treasury to the State in which
11 the mining claim from which production occurred is
12 located.

13 (l) NO IMPLIED COVENANTS.—The owner of a min-
14 ing claim subject to the provisions of this title shall have
15 no obligation, express or implied, to explore for, develop,
16 produce or market locatable minerals as a result of the
17 obligation to pay a royalty hereunder, and the timing, na-
18 ture, extent and manner of exploring, developing, mining
19 and marketing such locatable minerals shall be in the sole
20 discretion of the claim owner.

21 **SEC. 9504. MINERAL MATERIALS.**

22 (a) DETERMINATIONS.—Section 3 of the Act of July
23 23, 1955 (30 U.S.C. 611), is amended as follows:

24 (1) Insert “(a)” before the first sentence.

1 (2) Add the following new subsection at the end
2 thereof:

3 “(b)(1) Subject to valid existing rights, after the date
4 of enactment of this subsection, notwithstanding the ref-
5 erence to common varieties in subsection (a) and to the
6 exception to such term relating to a deposit of materials
7 with some property giving it distinct and special value, all
8 deposits of mineral materials referred to in such sub-
9 section, including the block pumice referred to in such
10 subsection, shall be subject to disposal only under the
11 terms and conditions of the Materials Act of 1947.

12 “(2) For purposes of paragraph (1), the term ‘valid
13 existing rights’ means that a mining claim located for any
14 such mineral material had some property giving it the dis-
15 tinct and special value referred to in subsection (a), or
16 as the case may be, met the definition of block pumice
17 referred to in such subsection, was properly located and
18 maintained under the general mining laws prior to the
19 date of the enactment of this subsection, and was sup-
20 ported by a discovery of a valuable mineral deposit within
21 the meaning of the general mining laws as in effect imme-
22 diately prior to such date of enactment and that such
23 claim continues to be valid under this Act.”.

24 (b) IDENTIFIED DEPOSITS.—In order to assure that
25 the Secretary has the authority to provide for the develop-

1 ment of mineral materials which, in order to justify the
2 investment necessary for the development of the appro-
3 priate mine, quarry or other workings and related facili-
4 ties, may require longer and more secure tenure than is
5 provided by sales contracts under the Act entitled “An Act
6 to provide for the disposal of materials on the public lands
7 of the United States”, approved July 31, 1947 (30 U.S.C.
8 602), and in order to provide flexibility with regard to the
9 manner of disposition of mineral materials section 2 of
10 such Act is amended by adding at the end the following:

11 “(b) IDENTIFIED DEPOSITS.—(1) Lands known to
12 contain valuable deposits of mineral materials subject to
13 this Act and subsequent amendments and not covered by
14 any contract, permit, or lease under this section shall also
15 be subject to disposition by lease under this Act by the
16 Secretary of the Interior through advertisement, competi-
17 tive bidding, or such other methods as he may by general
18 regulations adopt, and in such reasonably compact areas
19 as he shall fix.

20 “(2) All leases will be conditioned upon—

21 “(A) the payment by the lessee of such royalty
22 as may be fixed in the lease, not less than two per-
23 cent of the quantity or gross value of the output of
24 mineral materials, and

1 “(B) the payment in advance of a rental of 25
2 cents per acre for the first calendar year or fraction
3 thereof; 50 cents per acre for the second, third,
4 fourth, and fifth years, respectively; and \$1 per acre
5 per annum thereafter during the continuance of the
6 lease, such rental for that year being credited
7 against royalties accruing for that year.

8 “(3)(A) Any lease issued under this subsection shall
9 be for a term of 20 years and so long thereafter as the
10 lessee complies with the terms and conditions of the lease
11 and upon the further condition that at the end of each
12 20-year period succeeding the date of the lease such rea-
13 sonable adjustment of the terms and conditions thereof
14 may be made therein as may be prescribed by the Sec-
15 retary of the Interior unless otherwise provided by law at
16 the expiration of such periods.

17 “(B) Leases shall be conditioned upon a minimum
18 annual production or the payment of a minimum royalty
19 in lieu thereof, except when production is interrupted by
20 strikes, the elements, or casualties not attributable to the
21 lessee.

22 “(C) The Secretary of the Interior may permit sus-
23 pension of operations under any such leases when market-
24 ing conditions are such that the leases cannot be operated
25 except at a loss.

1 “(D) The Secretary upon application by the lessee
2 prior to the expiration of any existing lease in good stand-
3 ing shall amend such lease to provide for the same tenure
4 and to contain the same conditions, including adjustment
5 at the end of each 20-year period succeeding the date of
6 said lease, as provided for in this subsection.

7 “(C) OTHER LANDS.—(1) The Secretary of the Inte-
8 rior is hereby authorized, under such rules and regulations
9 as he may prescribe, to grant to any qualified applicant
10 a prospecting permit which shall give the exclusive right
11 to prospect for mineral materials in lands belonging to the
12 United States which are not subject to subsection (b), and
13 are not covered by a contract, permit, or lease under this
14 Act, except that a prospecting permit shall not exceed a
15 period of 2 years and the area to be included in such a
16 permit shall not exceed 2,560 acres of land in reasonably
17 compact form.

18 “(2) The Secretary of the Interior shall reserve and
19 may exercise the authority to cancel any prospecting per-
20 mit upon failure by the permittee to exercise due diligence
21 in the prosecution of the prospecting work in accordance
22 with the terms and conditions stated in the permit, and
23 shall insert in every such permit issued under the provi-
24 sions of this Act appropriate provisions for its cancellation
25 by him.

1 “(3) Upon showing to the satisfaction of the Sec-
2 retary of the Interior that valuable deposits of one of the
3 mineral materials subject to the Materials Act of 1947
4 have been discovered by the permittee within the area cov-
5 ered by his permit, and that such land is valuable therefor,
6 the permittee shall be entitled to a lease for any or all
7 of the land embraced in the prospecting permit, at a roy-
8 alty of not less than two percent of the quantity or gross
9 value of the output of the mineral materials at the point
10 of shipment to market, such lease to be taken in compact
11 form by legal subdivisions of the public land surveys, or
12 if the land be not surveyed, by survey executed at the cost
13 of the permittee in accordance with regulations prescribed
14 by the Secretary of the Interior.”.

15 (d) MINERAL MATERIALS DISPOSAL CLARIFICA-
16 TION.—Section 4 of the Act of July 23, 1955 (30 U.S.C.
17 612), as amended as follows:

18 (1) In subsection (b) insert “and mineral mate-
19 rial” after “vegetative”.

20 (2) In subsection (c) insert “and mineral mate-
21 rial” after “vegetative”.

22 (e) CONFORMING AMENDMENT.—Section 1 of the
23 Act of July 31, 1947, entitled “An Act to provide for the
24 disposal of materials on the public lands of the United

1 States” (30 U.S.C. 601 and following) is amended by
2 striking “common varieties of” in the first sentence.

3 (f) SHORT TITLES.—

4 (1) SURFACE RESOURCES.—The Act of July
5 23, 1955, is amended by inserting after section 7
6 the following new section:

7 “SEC. 8. This Act may be cited as the ‘Surface Re-
8 sources Act of 1955’.”.

9 (2) MINERAL MATERIALS.—The Act of July 31,
10 1947, entitled “An Act to provide for the disposal of
11 materials on the public lands of the United States”
12 (30 U.S.C. 601 and following) is amended by insert-
13 ing after section 4 the following new section:

14 “SEC. 5. This Act may be cited as the ‘Materials Act
15 of 1947’.”.

16 (g) REPEALS.—(1) Subject to valid existing rights,
17 the Act of August 4, 1892 (27 Stat. 348, 30 U.S.C. 161),
18 commonly known as the Building Stone Act, is hereby re-
19 pealed.

20 (2) Subject to valid existing rights, the Act of Janu-
21 ary 31, 1901 (30 U.S.C. 162), commonly known as the
22 Saline Placer Act, is hereby repealed.

23 (h) AUTHORIZATION FOR DISPOSAL OF MINERAL
24 MATERIALS BY CONTRACT.—Section 2(a) of the Act enti-
25 tled “An Act to provide for the disposal of materials on

1 the public lands of the United States”, approved July 31,
2 1947 (30 U.S.C. 602(a)), is amended—

3 (1) by striking the period at the end of para-
4 graph (3) and inserting “or, if”; and

5 (2) by adding after paragraph (3) the following:

6 “(4) the material is a mineral material.”.

7 (i) SODIUM.—Section 24 of the Mineral Leasing Act
8 (30 U.S.C. 181 et seq.) is amended by inserting after “2
9 per centum” in each place it appears the following: “and
10 not greater than five and one-half per centum”. Any rate
11 under section 24 of the Mineral Leasing Act (30 U.S.C.
12 181) in excess of five and one-half per centum shall not
13 be allowed unless the following conditions are met:

14 (1) the Secretary, in consultation with the Sec-
15 retary of Commerce and the United States Trade
16 Representative, finds that any increase in the royalty
17 rate for sodium will not have an adverse effect on
18 the export of domestically produced soda ash;

19 (2) the Secretary reports this finding of no “ad-
20 verse effect” to Congress and recommends an addi-
21 tional proposed royalty rate increase; and

22 (3) the Congress, within 360 days, approves the
23 Secretary’s recommendation.

1 The Secretary shall, within 90 days, offer for competitive
2 bid all tracts for which there are applications pending on
3 sodium leases.

4 **SEC. 9505. CLAIM MAINTENANCE REQUIREMENTS.**

5 (a) MAINTENANCE FEES.—

6 (1) ANNUAL MAINTENANCE FEE.—After the
7 date of enactment of this Act, the owner of each
8 unpatented mining claim or site located pursuant to
9 the general mining laws, whether located before or
10 after the enactment of this Act, shall pay to the Sec-
11 retary in advance on or before September 1 of each
12 year, until a patent has been issued therefor, an an-
13 nual maintenance fee per mining claim or site.

14 (2) INITIAL MAINTENANCE FEE.—The owner of
15 each unpatented mining claim or site located after
16 the date of enactment of this Act pursuant to the
17 general mining laws shall pay to the Secretary, at
18 the time the copy of the notice or certificate of loca-
19 tion is filed with the Bureau of Land Management
20 pursuant to section 314(b) of the Federal Land Pol-
21 icy and Management Act of 1976 (43 U.S.C.
22 1744(b)), the location fee required under subsection
23 (i) of this section, in lieu of the annual maintenance
24 fee of \$100 per mining claim or site for the assess-

1 ment year which includes the date of location of
2 such mining claim or site.

3 (3) EXEMPTION.—The owner of any mining
4 claim or site who certifies in writing to the Secretary
5 on or before the first day of any assessment year
6 that access to such mining claim or site was denied
7 or impeded during the prior assessment year by the
8 action or inaction of any local, State, or Federal
9 governmental officer, agency, or court, or by any In-
10 dian tribal authority, shall be exempt from the an-
11 nual maintenance fee requirements of paragraph (1)
12 for the assessment year following the filing of the
13 certification.

14 (4) AMOUNT OF ANNUAL MAINTENANCE FEE.—
15 For each assessment year the annual maintenance
16 fee payable under paragraph (1) for a claim or site
17 referred to in paragraph (1) shall be in the amount
18 specified in Table 1.

TABLE 1

Assessment Year	Amount of Fee Per Site or Claim
1 through 3	\$100 per year
4 through 5	\$150 per year
6 through 10	\$200 per year
11 through 15	\$300 per year
16 and thereafter	\$500 per year

19 For purposes of applying Table 1 in the case of claims
20 filed before the enactment of this Act, the portion of the

1 assessment year in which this Act is enacted shall be treat-
2 ed as the first assessment year.

3 (5) EFFECT OF FORFEITURE.—No owner or co-
4 owner of a mining claim or site which has been for-
5 feited because the maintenance fee has not been paid
6 and no person who is a related person of any such
7 owner or co-owner may relocate a new claim on any
8 part of lands located within the forfeited claim for
9 a period of 18 months after the date of forfeiture.

10 (6) DEPOSIT OF FEES.—The full amount of all
11 fees paid under this subsection shall be deposited in
12 the General Fund of the Treasury.

13 (b) ANNUAL LABOR.—(1) Amounts expended on ac-
14 tivities that qualify as annual labor under the general min-
15 ing laws may be credited on a dollar for dollar basis to-
16 wards up to 75 percent of the annual maintenance fee pay-
17 able under this section for the following assessment year.

18 (2) Subject to the 75 percent limit set forth in para-
19 graph (1), the excess of amounts expended for annual
20 labor performed in any one year over such 75 percent limit
21 may be applied to the maintenance fee due in subsequent
22 years for a period of up to three years.

23 (3) In order to receive credit under this subsection
24 for annual labor work or excess annual labor, the descrip-
25 tion and value of the work must be included in the state-

1 ment required in subsection (e) and the statement must
2 be timely filed.

3 (4) Annual labor performed on an individual mining
4 claim or site within a group of contiguous claims may be
5 credited towards the aggregate amount of maintenance
6 fees due on all of the contiguous claims within that group.

7 (c) WORK QUALIFYING AS ANNUAL LABOR.—(1)
8 Only work which directly benefits or develops a mining
9 claim or facilitates the extraction of ore qualifies as annual
10 labor. Acceptable labor and improvements include any of
11 the following:

12 (A) Drilling or excavating, including ore extrac-
13 tion.

14 (B) Mining costs directly associated with the
15 production of ore.

16 (C) Prospecting work which benefits the loca-
17 tion or a contiguous location.

18 (D) Development work toward an actual mine,
19 such as shafts, tunnels, crosscuts and drifts, settling
20 ponds and dams.

21 (E) Bringing in water for direct mining or mill-
22 ing purposes.

23 (F) Clearing of brush, timber, debris, or over-
24 burden where necessary to facilitate the extraction
25 or processing of minerals.

1 (G) Construction of trails, roads, or landing
2 strips providing access to claims.

3 (H) Construction costs of worker housing, mills,
4 and equipment storage buildings where reasonably
5 necessary for the development of the location.

6 (I) Reasonable value of the use of equipment
7 for prospecting, mining, or development purposes on
8 the location.

9 (J) Repairs of equipment used for prospecting,
10 sampling, or production of minerals provided that
11 such equipment has been on site during the assess-
12 ment year.

13 (K) Cost of moving workers, materials, and
14 equipment among contiguous locations.

15 (L) Watchman services of a bona fide employed
16 watchman on the property where reasonably nec-
17 essary to protect mining equipment of substantial
18 value.

19 (M) Activities covered under section 1 of the
20 Act of September 2, 1958 (30 U.S.C. 28–1), as
21 amended.

22 (N) Reclamation conducted pursuant to State
23 or Federal surface management regulations.

24 (O) Other activities which the Secretary may
25 determine qualify as annual labor.

1 (2) The following activities do not qualify as annual
2 labor:

3 (A) Work involved in maintaining the location
4 such as brushing and marking boundaries or replac-
5 ing corner posts and location notices.

6 (B) Transportation of workers to or from the
7 location.

8 (C) Prospecting or exploration work not con-
9 ducted within the location or a contiguous location.

10 (d) AMENDMENTS OF PUBLIC LAW 85–876.—The
11 Act of September 2, 1958 (Public Law 85–876; 30 U.S.C.
12 28–1), is amended as follows:

13 (1) Section 1 is amended by inserting “mineral
14 activities, environmental baseline monitoring, and”
15 after “without being limited to” and before “geologi-
16 cal, geochemical and geophysical surveys” and by
17 striking “Such” at the beginning of the last sentence
18 and inserting “Airborne”.

19 (2) Section 2(d) is amended by inserting “envi-
20 ronmental baseline monitoring or” after “experience
21 to conduct” and before “geological, geochemical or
22 geophysical surveys”.

23 (3) Section 2 is amended by adding at the end
24 of the following new subsection at the end thereof:

1 “(e) The term ‘environmental baseline monitoring’
2 means activities for collecting, reviewing and analyzing in-
3 formation concerning soil, vegetation, wildlife, mineral,
4 air, water, cultural, historical, archaeological or other re-
5 sources related to planning for or complying with Federal
6 and State environmental or permitting requirements appli-
7 cable to potential or proposed mineral activities on the
8 claim(s).”.

9 (e) MAINTENANCE FEE STATEMENT.—Each pay-
10 ment under subsection (a) of this section shall be accom-
11 panied by a statement which reasonably identifies the min-
12 ing claim or site for which the maintenance fee is being
13 paid. The statement required under this subsection shall
14 be in lieu of any annual filing requirements for mining
15 claims or sites, under any other Federal law, but shall not
16 supersede any such filing requirement under applicable
17 State law.

18 (f) ANNUAL LABOR REPORT.—When the value of an-
19 nual labor is credited towards part or all of the mainte-
20 nance fee, subject to the 75-percent limit set forth in sub-
21 section (b)(1), the following shall apply:

22 (1) The maintenance fee statement required in
23 subsection (e) must also state the dates of perform-
24 ance of the labor, describe the character and total
25 value of the improvements made or the labor per-

1 formed, the amount of labor used as a credit toward
2 the maintenance fee for the current year, and the
3 value of excess labor performed in previous years
4 which is to be applied to the maintenance fee for the
5 current year.

6 (2) Documentation which reasonably supports
7 the activities or improvements claimed must accom-
8 pany the maintenance fee statement. Such docu-
9 mentation may include, but is not limited to, copies
10 of maps showing sample locations, drill locations, or
11 survey data; environmental baseline data; reports on
12 geology, geochemistry, or geophysics by qualified ex-
13 perts; drill results; or engineering reports by quali-
14 fied engineers.

15 (3) All supporting material filed pursuant to
16 paragraph (2) shall remain confidential in accord-
17 ance with section 552 of title 5 of the United States
18 Code as long as the location is maintained and for
19 a period of one year after the location is abandoned,
20 after which all data filed shall be considered public
21 information.

22 (g) EFFECT OF COMPLIANCE AS AGAINST SUBSE-
23 QUENT LOCATORS.—(1) Except as provided in paragraph
24 (2), after the date of enactment of this Act, compliance
25 with the requirements of this section shall, from the time

1 the location notice or certificate is posted on the land
2 under applicable State law, confer upon the owner of any
3 unpatented mining claim or site, whether located before
4 or after the date of enactment of this Act, an exclusive
5 right of possession, as against subsequent locators, of the
6 land included in such mining claim or site under the gen-
7 eral mining laws. If more than one mining claim or site
8 owned or controlled by the same claim or site owner covers
9 substantially the same land, by reason of the location of
10 one or more mining claims or sites on such land, the
11 amendment or relocation of any such mining claim or site,
12 or otherwise, such exclusive right of possession shall ex-
13 tend to all such mining claims or sites, effective from the
14 time the location notice or certificate for the initial mining
15 claim or site was posted on such land under applicable
16 State law. The order of location, amendment, or relocation
17 of any such mining claims or sites on such land shall not
18 affect the validity of any such mining claim or site. Such
19 owner of the mining claim or site shall not be required
20 to be in actual, physical occupation of such land and shall
21 not be required to exclude rival locators from such land.
22 Such exclusive right of possession shall be subject to appli-
23 cable Federal law, including the Multiple Mineral Develop-
24 ment Act of 1954 (30 U.S.C. 521–31), the Materials Act
25 of 1947 (30 U.S.C. 601–604) and the Surface Resources

1 Act of 1955 (30 U.S.C. 611–15) to the extent applicable,
2 and shall neither enlarge nor diminish any rights of such
3 owner of the mining claim or site as against the United
4 States in such land. This paragraph shall supersede the
5 common law doctrine of pedis possessio.

6 (2) Conflicts over the right of exclusive possession of
7 land included in any mining claim or site shall be deter-
8 mined in proceedings between owners of mining claims or
9 sites under the provisions of section 910 of the Revised
10 Statutes (30 U.S.C. 53) and other applicable law, includ-
11 ing but not limited to each of the following:

12 (A) Any conflict based upon circumstances ex-
13 isting as of the date of enactment of this Act be-
14 tween mining claims or sites located before the date
15 of enactment of this Act, shall be resolved under the
16 law in effect on the day prior to the date of enact-
17 ment of this Act, including the common law doctrine
18 of pedis possessio.

19 (B) Any conflict arising on or after the date of
20 enactment of this Act between mining claims or sites
21 located before, on or after the date of enactment
22 over whether either owner of the mining claim or
23 site has complied with the requirements of this sec-
24 tion, shall be resolved under this Act.

1 (h) FAILURE OF CO-OWNER TO CONTRIBUTE.—

2 Upon the failure of any one or more of several co-owners
3 of any mining claim or site to contribute such co-owner
4 or owners' portion of any location or maintenance fee pay-
5 able under this section, any co-owner who has paid such
6 fee may, after the payment due date, serve the delinquent
7 co-owner or owners with notice of such failure in writing
8 or, if such delinquent co-owner or owners cannot be lo-
9 cated after reasonable efforts, by publication in a general
10 circulation newspaper published in a location nearest the
11 mining claim or site at least once a week for at least 90
12 days. If at the expiration of 90 days after such notice in
13 writing or by publication, any delinquent co-owner fails or
14 refuses to contribute the owed portion, such co-owner or
15 owners' interest shall become the property of the owner
16 or co-owners who have paid the required fee.

17 (i) LOCATION FEE.—The owner of each unpatented
18 mining claim or site located on or after the date of enact-
19 ment of this Act pursuant to the general mining laws shall
20 pay to the Secretary, at the time the notice or certificate
21 of location is filed with the Bureau of Land Management
22 pursuant to subsection 314(b) of the Federal Land Policy
23 and Management Act of 1976 (43 U.S.C. 1744(b)), a loca-
24 tion fee of \$25.00 per mining claim or site. The full
25 amount of all fees paid under this subsection shall be de-

1 posited in the General Fund of the Treasury. Effective
2 on the date of the enactment of this Act, section 10102
3 of the Omnibus Budget Reconciliation Act of 1993 (107
4 Stat. 406; 30 U.S.C. 28g) is repealed.

5 (j) CREDIT AGAINST MAINTENANCE FEE.—(1) Ex-
6 cept as provided in paragraph (2), the annual maintenance
7 fee payable for any unpatented mining claim or site for
8 any assessment year shall be reduced by the amount of
9 royalty paid by such claimholder for such mining claim
10 or site, or for any contiguous mining claim or site, during
11 the prior assessment year.

12 (2) Royalties paid during any assessment year prior
13 to the first full assessment year commencing after the en-
14 actment of this Act shall not reduce the amount of any
15 maintenance fee.

16 (k) OIL SHALE CLAIMS SUBJECT TO CLAIM MAINTE-
17 NANCE FEE UNDER ENERGY POLICY ACT OF 1992.—
18 This section shall not apply to any oil shale claims for
19 which a fee is required to be paid under paragraph
20 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C.
21 242(e)(2)).

22 (l) FAILURE TO COMPLY.—The failure of the owner
23 of the mining claim or site to pay any claim maintenance
24 fee or location fee for a mining claim or site on or before
25 the date such payment is due under this section shall con-

1 stitute forfeiture of the mining claim or site and such min-
2 ing claim or site shall be null and void, effective as of the
3 day after the date such payment is due, except that if such
4 maintenance fee or location fee is paid or tendered on or
5 before the 30th day after such payment was due under
6 subsection of this section, such mining claim or site shall
7 not be forfeited or null or void, and such maintenance fee
8 or location fee shall be deemed timely paid.

9 (m) AMENDMENT OF FLPMA FILING REQUIRE-
10 MENTS.—(1) Section 314(a) of the Federal Land Policy
11 and Management Act of 1976 (43 U.S.C. 1744(a)) is
12 hereby repealed.

13 (2) Section 314(c) of the Federal Land Policy and
14 Management Act of 1976 (43 U.S.C. 1744(c)) is amended
15 to read as follows:

16 “(c) FAILURE TO FILE AS CONSTITUTING FORFEIT-
17 URE; DEFECTIVE OR UNTIMELY FILING.—The failure to
18 timely file the copy of the notice or certificate of location
19 as required by subsection (b) shall constitute forfeiture of
20 the mining claim and such claim shall be null and void
21 by operation of law; except that it shall not be considered
22 a failure to file if the notice or certificate of location is
23 defective or not timely filed for record under other State
24 or Federal laws permitting or requiring the filing or re-
25 cording thereof, or if the copy of the notice or certificate

1 is filed by or on behalf of some but not all of the owners
2 of the claim.”.

3 (n) RELATED PERSONS.—As used in this section, the
4 term “related persons” includes—

5 (1) the spouse and dependent children (as de-
6 fined in section 152 of the Internal Revenue Code of
7 1986), of the owner of the mining claim or site; and

8 (2) a person controlled by, controlling, or under
9 common control with the owner of the mining claim
10 or site.

11 (o) REPEAL.—Section 10101 of the Omnibus Budget
12 Reconciliation Act of 1993 (107 Stat. 406; 30 U.S.C. 28g)
13 is repealed, effective with respect to assessment year com-
14 mencing after the enactment of this Act.

15 (p) PERIODIC REVIEW OF FEE STRUCTURE.—Begin-
16 ning in the year 2005 and at 10 year intervals thereafter,
17 the Secretary shall review the costs incurred by the Sec-
18 retary to administer mining claims for locatable minerals
19 under the general mining laws and the structure and level
20 of maintenance and location fees received by the Secretary
21 with respect to such claims. The Secretary shall determine
22 if the revenues from such fees is adequate to cover such
23 costs, taking inflation and other appropriate factors into
24 account. The Secretary shall submit the results of each

1 such review to the Congress, together with such legislative
2 recommendations as the Secretary deems appropriate.

3 **PART 2—FEDERAL OIL AND GAS ROYALTIES**

4 **SEC. 9511. SHORT TITLE.**

5 This part may be cited as the “Federal Oil and Gas
6 Royalty Simplification and Fairness Act of 1995”.

7 **SEC. 9512. DEFINITIONS.**

8 (a) IN GENERAL.—Section 3 of the Federal Oil and
9 Gas Royalty Management Act of 1982 (30 U.S.C. 1701
10 et seq.) is amended—

11 (1) by amending paragraph (7) to read as fol-
12 lows:

13 “(7) ‘lessee’ means any person to whom the
14 United States, an Indian tribe, or an Indian allottee
15 issues a lease or any person to whom operating
16 rights have been assigned;”; and

17 (2) by striking “and” at the end of paragraph
18 (15), by striking the period at the end of paragraph
19 (16) and inserting a semicolon, and by adding at the
20 end the following:

21 “(17) ‘adjustment’ means an amendment to a
22 previously filed report on an obligation, and any ad-
23 ditional payment or credit, if any, applicable thereto,
24 to rectify an underpayment or overpayment on a
25 lease;

1 “(18) ‘administrative proceeding’ means any
2 agency process in which a demand, decision or order
3 issued by the Secretary is subject to appeal or has
4 been appealed;

5 “(19) ‘assessment’ means any fee or charge lev-
6 ied or imposed by the Secretary or the United States
7 other than—

8 “(A) the principal amount of any royalty,
9 minimum royalty, rental, bonus, net profit
10 share or proceed of sale;

11 “(B) any interest; or

12 “(C) any civil or criminal penalty;

13 “(20) ‘commence’ means—

14 “(A) with respect to a judicial proceeding,
15 the service of a complaint, petition, counter-
16 claim, crossclaim, or other pleading seeking af-
17 firmative relief or seeking credit or recoupment;
18 or

19 “(B) with respect to a demand, the receipt
20 by the Secretary or a lessee of the demand;

21 “(21) ‘credit’ means the application of an over-
22 payment (in whole or in part) against an obligation
23 which has become due to discharge, cancel or reduce
24 the obligation;

25 “(22) ‘demand’ means—

1 “(A) an order to pay issued by the Sec-
2 retary; or

3 “(B) a separate written request by a lessee
4 which asserts an obligation due the lessee,
5 but does not mean any royalty or production report,
6 or any information contained therein, required by
7 the Secretary;

8 “(23) ‘obligation’ means—

9 “(A) any duty of the Secretary or the
10 United States—

11 “(i) to take oil or gas royalty in kind;
12 or

13 “(ii) to pay, refund, offset, or credit
14 monies including but not limited to—

15 “(I) the principal amount of any
16 royalty, minimum royalty, rental,
17 bonus, net profit share or proceed of
18 sale; or

19 “(II) any interest;

20 “(B) any duty of a lessee—

21 “(i) to deliver oil or gas royalty in
22 kind; or

23 “(ii) to pay, offset or credit monies in-
24 cluding but not limited to—

1 “(I) the principal amount of any
2 royalty, minimum royalty, rental,
3 bonus, net profit share or proceed of
4 sale;

5 “(II) any interest;

6 “(III) any penalty; or

7 “(IV) any assessment,

8 which arises from or relates to any lease adminis-
9 tered by the Secretary for, or any mineral leasing
10 law related to, the exploration, production and devel-
11 opment of oil or gas on Federal lands or the Outer
12 Continental Shelf;

13 “(24) ‘order to pay’ means a written order is-
14 sued by the Secretary or the United States which—

15 “(A) asserts a definite and quantified obli-
16 gation; and

17 “(B) specifically identifies the obligation by
18 lease, production month and amount of such
19 obligation ordered to be paid, as well as the rea-
20 son or reasons such obligation is claimed to be
21 due,

22 but such term does not include any other commu-
23 nication or action by or on behalf of the Secretary
24 or the United States;

1 “(25) ‘overpayment’ means any payment by a
2 lessee in excess of an amount legally required to be
3 paid on an obligation and includes the portion of any
4 estimated payment for a production month that is in
5 excess of the royalties due for that month;

6 “(26) ‘payment’ means satisfaction, in whole or
7 in part, of an obligation;

8 “(27) ‘penalty’ means a statutorily authorized
9 civil fine levied or imposed by the Secretary or the
10 United States for a violation of this Act, any mineral
11 leasing law, or a term or provision of a lease admin-
12 istered by the Secretary;

13 “(28) ‘refund’ means the return of an overpay-
14 ment by the Secretary or the United States by the
15 drawing of funds from the United States Treasury;

16 “(29) ‘State concerned’ means, with respect to
17 a lease, a State which receives a portion of royalties
18 under this Act from such lease; and

19 “(30) ‘underpayment’ means any payment or
20 nonpayment by a lessee that is less than the amount
21 legally required to be paid on an obligation.’”.

22 (b) LESSEE LIABILITY.—Section 102(a) of the Fed-
23 eral Oil and Gas Royalty Management Act of 1982 (30
24 U.S.C. 1712(a)) is amended to read as follows:

1 “(a) A lessee who is required to make any royalty
2 or other payment under a lease or under the mineral leas-
3 ing laws, shall make such payments in the time and man-
4 ner as may be specified by the Secretary. A lessee may
5 designate a person to act on the lessee’s behalf and shall
6 notify the Secretary in writing of such designation. The
7 person to whom the United States issues a lease or the
8 person by whom operating rights are currently owned, but
9 not both, shall remain primarily liable for its obligations.”.

10 **SEC. 9513. LIMITATION PERIODS.**

11 (a) IN GENERAL.—The Federal Oil and Gas Royalty
12 Management Act of 1982 (30 U.S.C. 1701 et seq.) is
13 amended by adding after section 114 the following new
14 section:

15 **“SEC. 115. LIMITATION PERIODS AND AGENCY ACTIONS.**

16 “(a) IN GENERAL.—A judicial proceeding or demand
17 which arises from, or relates to an obligation, shall be
18 commenced within six years from the date on which the
19 obligation becomes due and if not so commenced shall be
20 barred, except as otherwise provided by this section.

21 “(b) OBLIGATION BECOMES DUE.—

22 “(1) IN GENERAL.—For purposes of this Act,
23 an obligation becomes due when the right to enforce
24 the obligation is fixed.

1 “(2) ROYALTY OBLIGATIONS.—The right to en-
2 force the royalty obligation for a production month
3 for a lease is fixed for purposes of this Act on the
4 last day of the calendar month following the month
5 in which oil or gas is produced.

6 “(3) ROYALTY PAYMENT.—The right to collect
7 a royalty payment for an obligation for a production
8 month for a lease is fixed for purposes of this Act
9 on the last day of the second calendar month follow-
10 ing the month in which gas is produced, to be
11 phased in by the Secretary in a manner which does
12 not have a negative impact on the Federal budget.

13 “(c) TOLLING OF LIMITATION PERIOD.—The run-
14 ning of the limitation period under subsection (a) shall
15 not be suspended, tolled, extended, or enlarged for any ob-
16 ligation for any reason by any action, including an action
17 by the Secretary or the United States, other than the fol-
18 lowing:

19 “(1) TOLLING AGREEMENT.—A written agree-
20 ment executed during the limitation period between
21 the Secretary and a lessee which tolls the limitation
22 period for the amount of time during which the
23 agreement is in effect.

24 “(2) SUBPOENA.—The issuance of a subpoena
25 in accordance with the provisions of section 107(c)

1 shall toll the limitation period with respect to the ob-
2 ligation which is the subject of a subpoena only for
3 the period beginning on the date the lessee receives
4 the subpoena and ending on the date on which (A)
5 the lessee has produced such subpoenaed records for
6 the subject obligation, (B) the Secretary receives
7 written notice that the subpoenaed records for the
8 subject obligation are not in existence or are not in
9 the lessee's possession or control, or (C) a court has
10 determined in a final decision that such records are
11 not required to be produced, whichever occurs first.

12 “(3) FRAUD OR CONCEALMENT.—Any fraud or
13 concealment by a lessee in an attempt to defeat or
14 evade an obligation in which case the limitation pe-
15 riod shall be tolled for the period of such fraud or
16 such concealment.

17 “(4) TOLLING REQUEST.—A written tolling re-
18 quest from a lessee based upon the lessee's represen-
19 tation that the lessee's entitlement to an overpay-
20 ment has not been finally determined. The limitation
21 period shall be tolled pursuant to this paragraph
22 from the date the Secretary receives the tolling re-
23 quest until the earlier of the end of the requested
24 period or 12 months after the date the Secretary re-
25 ceives the tolling request, but is subject to successive

1 12-month renewals by the lessee made prior to the
2 expiration of the then applicable 12-month period.
3 The tolling request shall be sufficient if it identi-
4 fies—

5 “(A) the person who made the potential
6 overpayment;

7 “(B) the leases and production months in-
8 volved in the potential overpayment; and

9 “(C) the reasons the lessee believes that it
10 may later be entitled to a refund of the over-
11 payment.

12 “(5) ORDER TO PERFORM A RESTRUCTURED
13 ACCOUNTING.—The issuance of a notice under sec-
14 tion 107(d)(4) that the lessee has not adequately
15 performed a restructured accounting shall toll the
16 limitation period with respect to the obligation which
17 is the subject of the notice only for the period begin-
18 ning on the date the lessee receives the notice and
19 ending on the date on which (A) the Secretary re-
20 ceives written notice the accounting or other require-
21 ment has been performed, or (B) a court has deter-
22 mined in a final decision that the lessee is not re-
23 quired to perform the accounting, whichever occurs
24 first.

1 “(d) TERMINATION OF LIMITATIONS PERIOD.—The
2 limitations period shall be terminated in the event—

3 “(1) the Secretary has notified the lessee in
4 writing that a time period is closed to further audit;
5 or

6 “(2) the Secretary and a lessee have so agreed
7 in writing.

8 “(e) FINAL AGENCY ACTION.—

9 “(1) 3-YEAR PERIOD.—The Secretary shall
10 issue a final decision in any administrative proceed-
11 ing, including any administrative proceedings pend-
12 ing on the date of enactment of the Federal Oil and
13 Gas Royalty Simplification and Fairness Act of
14 1995, within three years from the date such pro-
15 ceeding was initiated or three years from the date of
16 such enactment, whichever is later. The three-year
17 period may be extended by any period of time agreed
18 upon in writing by the Secretary and the lessee.

19 “(2) EFFECT OF FAILURE TO ISSUE DECI-
20 SION.—

21 “(A) IN GENERAL.—If no such decision
22 has been issued by the Secretary within the
23 three-year period referred to in paragraph (1)—

24 “(i) the Secretary shall be deemed to
25 have issued and granted a decision in favor

1 of the lessee or lessees as to any
2 nonmonetary obligation and any monetary
3 obligation the principal amount of which is
4 less than \$2,500; and

5 “(ii) the Secretary shall be deemed to
6 have issued a final decision in favor of the
7 Secretary, which decision shall be deemed
8 to affirm those issues for which the agency
9 rendered a decision prior to the end of
10 such period, as to any monetary obligation
11 the principal amount of which is \$2,500 or
12 more, and the lessee shall have a right to
13 a de novo judicial review of such deemed
14 final decision.

15 “(B) NO PRECEDENTIAL EFFECT ON
16 OTHER PROCEEDINGS.—Deemed decisions
17 under subparagraph (A) shall have no
18 precedential effect in any judicial or administra-
19 tive proceeding or for any other purpose.

20 “(f) ADMINISTRATIVE SETTLEMENT.—During the
21 pendency of any administrative proceeding, the parties
22 shall hold at least one settlement consultation for the pur-
23 pose of discussing disputed matters between the parties.
24 For purposes of settlement, the Secretary may take such
25 action as is appropriate to compromise and settle a dis-

1 puted obligation, including interest and allowing offsetting
2 of obligations among leases. The Secretary and the State
3 concerned shall seek to resolve disputes with a lessee in
4 as expeditious a manner as possible, through settlement
5 negotiations and other alternative dispute resolution pro-
6 cesses methods. If any dispute involving an obligation due
7 is not resolved by the end of the six-year period beginning
8 on the date the obligation became due, the amount of in-
9 terest otherwise payable with respect to the obligation
10 shall accrue after such six-year period at the rate—

11 “(1) for purposes of section 111(h), reduced
12 each year thereafter by two additional percentage
13 points from the rate in effect under this subsection
14 for the previous year (but not less than zero); and

15 “(2) for purposes of section 111(a), reduced
16 each year thereafter by one additional percentage
17 point from the rate in effect under this subsection
18 for the previous year (but not less than zero).

19 “(g) LIMITATION ON CERTAIN ACTIONS.—When an
20 action on or enforcement of an obligation under the min-
21 eral leasing laws is barred under this section—

22 “(1) no other or further action regarding that
23 obligation, including (but not limited to) the issu-
24 ance of any order, request, demand or other commu-
25 nication seeking any document, accounting, deter-

1 mination, calculation, recalculation, payment, prin-
2 cipal, interest, assessment, or penalty or the initi-
3 ation, pursuit or completion of an audit with respect
4 to that obligation may be taken; and

5 “(2) no other equitable or legal remedy, wheth-
6 er under statute or common law, with respect to an
7 action on or an enforcement of said obligation may
8 be pursued.

9 “(h) JUDICIAL REVIEW.—In the event a demand sub-
10 ject to this section is timely commenced, a judicial pro-
11 ceeding challenging the final agency action with respect
12 to such demand shall be deemed timely so long as such
13 judicial proceeding is commenced within 180 days from
14 receipt of notice by the lessee of the final agency action.

15 “(i) IMPLEMENTATION OF FINAL DECISION.—In the
16 event a judicial proceeding or demand subject to this sec-
17 tion is timely commenced and thereafter the limitation pe-
18 riod in this section lapses during the pendency of such
19 proceeding, any party to such proceeding shall not be
20 barred from taking such action as is required or necessary
21 to implement a final unappealable judicial or administra-
22 tive decision, including any action required or necessary
23 to implement such decision by the recovery or recoupment
24 of an underpayment or overpayment by means of refund
25 or credit.

1 “(j) STAY OF PAYMENT OBLIGATION PENDING RE-
2 VIEW.—Any party ordered by the Secretary or the United
3 States to pay any obligation (other than an assessment)
4 shall be entitled to a stay of such payment without bond
5 or other surety instrument pending an administrative or
6 judicial proceeding if the party periodically demonstrates
7 to the satisfaction of the Secretary that such party is fi-
8 nancially solvent or otherwise able to pay the obligation.
9 In the event the party is not able to so demonstrate, the
10 Secretary may require a bond or other surety instrument
11 satisfactory to cover the obligation. Any party ordered by
12 the Secretary to pay an assessment shall be entitled to
13 a stay without bond or other surety instrument.

14 “(k) INAPPLICABILITY OF THE OTHER STATUTES OF
15 LIMITATION.—The limitations set forth in sections 2401,
16 2415, 2416, and 2462 of title 28, United States Code,
17 section 42 of the Mineral Leasing Act (30 U.S.C. 226-
18 2) and section 3716 of title 31, United States Code, shall
19 not apply to any obligation to which this Act applies.”.

20 (b) SUBPOENA.—Section 107 of the Federal Oil and
21 Gas Royalty Management Act of 1982 (30 U.S.C. 1717)
22 is amended by adding at the end the following:

23 “(c) RULES REGARDING ISSUANCE OF SUBPOENA
24 RELATING TO REPORTING AND PAYMENT OF AN OBLIGA-
25 TION DUE.—

1 “(1) IN GENERAL.—A subpoena which requires
2 a lessee to produce records necessary to determine
3 the proper reporting and payment of an obligation
4 due the Secretary may be issued under this section
5 only by an Assistant Secretary of the Interior and
6 an acting Assistant Secretary of the Interior who is
7 a schedule C employee (as defined by section
8 213.3301 of title 5, Code of Federal Regulations)
9 and may not be delegated.

10 “(2) PRIOR WRITTEN REQUEST REQUIRED.—A
11 subpoena described in paragraph (1) may only be is-
12 sued against a lessee during the limitation period
13 provided in section 115 and only after the Secretary
14 has in writing requested the records from the lessee
15 related to the obligation which is the subject of the
16 subpoena and has determined that—

17 “(A) the lessee has failed to respond within
18 a reasonable period of time to the Secretary’s
19 written request for such records necessary for
20 an audit, investigation or other inquiry made in
21 accordance with the Secretary’s responsibilities
22 under this Act;

23 “(B) the lessee has in writing denied the
24 Secretary’s written request to produce such
25 records in the lessee’s possession or control nec-

1 essary for an audit, investigation or other in-
2 quiry made in accordance with the Secretary's
3 responsibilities under this Act; or

4 “(C) the lessee has unreasonably delayed
5 in producing records necessary for an audit, in-
6 vestigation or other inquiry made in accordance
7 with the Secretary's responsibilities under this
8 Act after the Secretary's written request.

9 “(3) REASONABLE PERIOD FOR COMPLIANCE
10 WITH WRITTEN REQUEST.—In seeking records, the
11 Secretary shall afford the lessee a reasonable period
12 of time after a written request by the Secretary in
13 which to provide such records prior to the issuance
14 of any subpoena.”.

15 (c) RESTRUCTURED ACCOUNTING.—Section 107 of
16 the Federal Oil and Gas Royalty Management Act of 1982
17 (30 U.S.C. 1717), as amended by subsection (b) of this
18 section, is amended by adding at the end the following:

19 “(d) RESTRUCTURED ACCOUNTING.—

20 “(1) IN GENERAL.—The Secretary shall issue
21 an order to perform a restructured accounting when
22 the Secretary determines during an in-depth audit of
23 a lessee that the lessee should recalculate royalty
24 due on an obligation based upon the Secretary's
25 finding that the lessee has made identified under-

1 payments or overpayments which are demonstrated
2 by the Secretary to be based upon repeated, systemic
3 reporting errors for a significant number of leases or
4 a single lease for a significant number of reporting
5 months with the same type of error which con-
6 stitutes a pattern of violations and which are likely
7 to result in either significant underpayments or over-
8 payments.

9 “(2) DELEGATION.—The power of the Sec-
10 retary to issue an order to perform a restructured
11 accounting may not be delegated below the most
12 senior career professional position having respon-
13 sibility for the royalty management program, which
14 position is currently designated as the ‘Associate Di-
15 rector for Royalty Management’. An order to per-
16 form a restructured accounting shall—

17 “(A) be issued within a reasonable period
18 of time from when the audit identifies the sys-
19 temic, reporting errors;

20 “(B) specify the reasons and factual bases
21 for such order; and

22 “(C) be specifically identified as an ‘order
23 to perform a restructured accounting’.

24 “(3) ORDER TO PERFORM.—An order to per-
25 form a restructured accounting shall not include any

1 other communication or action by or on behalf of the
2 Secretary or the United States.

3 “(4) NOTICE.—If a lessee fails to adequately
4 perform a restructured accounting pursuant to this
5 subsection, a notice shall be issued to the lessee that
6 the restructured accounting has not been adequately
7 performed. Such notice may be issued under this
8 section only by an Assistant Secretary of the Inte-
9 rior or an acting Assistant Secretary of the Interior
10 who is a schedule C employee (as defined by section
11 213.3301 of title 5, Code of Federal Regulations)
12 and may not be delegated.”.

13 (d) STATE SUITS.—Section 204 of the Federal Oil
14 and Gas Royalty Management Act of 1982 (30 U.S.C.
15 1751) is amended by adding at the end the following:

16 “(d) With respect to an obligation, a State bringing
17 an action under this section shall enjoy no greater rights
18 than the Secretary enjoys under this Act.”.

19 (e) CLERICAL AMENDMENT.—The table of contents
20 in section 1 of such Act (30 U.S.C. 1701) is amended by
21 adding after the item relating to section 114 the following
22 new item:

“Sec. 115. Limitation periods and agency actions.”.

23 **SEC. 9514. ADJUSTMENT AND REFUNDS.**

24 (a) IN GENERAL.—The Federal Oil and Gas Royalty
25 Management Act of 1982 (30 U.S.C. 1701 et seq.) is

1 amended by adding after section 111 the following new
2 section:

3 **“SEC. 111A. ADJUSTMENTS AND REFUNDS.**

4 “(a) ADJUSTMENTS.—

5 “(1) If, during the adjustment period, a lessee
6 determines that an adjustment or refund request is
7 necessary to correct an underpayment or overpay-
8 ment of an obligation, the lessee shall make such ad-
9 justment or request a refund within a reasonable pe-
10 riod of time and only during the adjustment period.
11 The filing of a royalty report which reflects the
12 underpayment or overpayment of an obligation shall
13 constitute prior written notice to the Secretary of an
14 adjustment.

15 “(2)(A) For any adjustment, the lessee shall
16 calculate and report the interest due attributable to
17 such adjustment at the same time the lessee adjusts
18 the principal amount of the subject obligation, ex-
19 cept as provided by subparagraph (B).

20 “(B) In the case of a lessee on whom the Sec-
21 retary determines that subparagraph (A) would im-
22 pose a hardship, the Secretary shall calculate the in-
23 terest due and notify the lessee within a reasonable
24 time of the amount of interest due, unless such les-

1 see elects to calculate and report interest in accord-
2 ance with subparagraph (A).

3 “(3) An adjustment or a request for a refund
4 for an obligation may be made after the adjustment
5 period only upon written notice to and approval by
6 the Secretary during an audit of the period which
7 includes the production month for which the adjust-
8 ment is being made. If an overpayment is identified
9 during an audit, then the Secretary shall allow a
10 credit or refund in the amount of the overpayment.

11 “(4) For purposes of this section, the adjust-
12 ment period for any obligation shall be the five-year
13 period following the date on which an obligation be-
14 came due. The adjustment period shall be sus-
15 pended, tolled, extended, enlarged, or terminated by
16 the same actions as the limitation period in section
17 115.

18 “(b) REFUNDS.—

19 “(1) IN GENERAL.—A request for refund is suf-
20 ficient if it—

21 “(A) is made in writing to the Secretary
22 and, for purposes of section 115, is specifically
23 identified as a demand;

24 “(B) identifies the person entitled to such
25 refund;

1 “(C) provides the Secretary information
2 that reasonably enables the Secretary to iden-
3 tify the overpayment for which such refund is
4 sought; and

5 “(D) provides the reasons why the pay-
6 ment was an overpayment.

7 “(2) PAYMENT BY SECRETARY OF THE TREAS-
8 URY.—The Secretary shall certify the amount of the
9 refund to be paid under paragraph (1) to the Sec-
10 retary of the Treasury who shall make such refund.
11 Such refund shall be paid from amounts received as
12 current receipts from sales, bonuses, royalties (in-
13 cluding interest charges collected under this section)
14 and rentals of the public lands and the Outer Con-
15 tinental Shelf under the provisions of the Mineral
16 Leasing Act and the Outer Continental Shelf Lands
17 Act, which are not payable to a State or the Rec-
18 lamation Fund. The portion of any such refund at-
19 tributable to any amounts previously disbursed to a
20 State, the Reclamation Fund, or any recipient pre-
21 scribed by law shall be deducted from the next dis-
22 bursements to that recipient made under the appli-
23 cable law. Such amounts deducted from subsequent
24 disbursements shall be credited to miscellaneous re-
25 ceipts in the Treasury.

1 “(3) PAYMENT PERIOD.—A refund under this
2 subsection shall be paid or denied (with an expla-
3 nation of the reasons for the denial) within 120 days
4 of the date on which the request for refund is re-
5 ceived by the Secretary. Such refund shall be subject
6 to later audit by the Secretary and subject to the
7 provisions of this Act.

8 “(4) PROHIBITION AGAINST REDUCTION OF RE-
9 FUNDS OR CREDITS.—In no event shall the Sec-
10 retary directly or indirectly claim any amount or
11 amounts against, or reduce any refund or credit (or
12 interest accrued thereon) by the amount of any obli-
13 gation the enforcement of which is barred by section
14 115.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
16 in section 1 of such Act (30 U.S.C. 1701) is amended by
17 adding after the item relating to section 111 the following
18 new item:

“Sec. 111A. Adjustments and refunds.”.

19 **SEC. 9515. REQUIRED RECORDKEEPING.**

20 Section 103 of the Federal Oil and Gas Royalty Man-
21 agement Act of 1982 (30 U.S.C. 1713(b)) is amended by
22 adding at the end the following:

23 “(c) Records required by the Secretary for the pur-
24 pose of determining compliance with any applicable min-
25 eral leasing law, lease provision, regulation or order with

1 respect to oil and gas leases from Federal lands or the
2 Outer Continental Shelf shall be maintained for the same
3 period of time during which a judicial proceeding or de-
4 mand may be commenced under section 115(a). If a judi-
5 cial proceeding or demand is timely commenced, the
6 record holder shall maintain such records until the final
7 nonappealable decision in such judicial proceeding is
8 made, or with respect to that demand is rendered, unless
9 the Secretary authorizes in writing an earlier release of
10 the requirement to maintain such records. Notwithstand-
11 ing anything herein to the contrary, under no cir-
12 cumstance shall a record holder be required to maintain
13 or produce any record relating to an obligation for any
14 time period which is barred by the applicable limitation
15 in section 115.”.

16 **SEC. 9516. ROYALTY INTEREST, PENALTIES, AND PAY-**
17 **MENTS.**

18 (a) PERIOD.—Section 111(f) of the Federal Oil and
19 Gas Royalty Management Act of 1982 (30 U.S.C.
20 1721(f)) is amended to read as follows:

21 “(f) Upon a determination that it will further the ef-
22 fective and efficient performance of his duties and respon-
23 sibilities, the Secretary may waive or forego such interest
24 in whole or in part. Interest shall be charged under this
25 section only for the number of days a payment is late.”.

1 (b) LESSEE INTEREST.—Section 111 of the Federal
2 Oil and Gas Royalty Management Act of 1982 (30 U.S.C.
3 1721) is amended by adding after subsection (g) the fol-
4 lowing:

5 “(h) Interest shall be allowed and the Secretary shall
6 pay or credit such interest on any overpayment, with such
7 interest to accrue from the date such overpayment was
8 made, at the rate obtained by applying the provisions of
9 subparagraphs (A) and (B) of section 6621(a)(1) of the
10 Internal Revenue Code of 1986. Interest which has ac-
11 crued on any overpayment may be applied to reduce an
12 underpayment. This subsection applies to overpayments
13 made later than six months after the date of enactment
14 of this subsection or September 1, 1996, whichever is
15 later. Such interest shall be paid from amounts received
16 as current receipts from sales, bonuses, royalties (includ-
17 ing interest charges collected under this section) and rent-
18 als of the public lands and the Outer Continental Shelf
19 under the provisions of the Mineral Leasing Act, and the
20 Outer Continental Shelf Lands Act, which are not payable
21 to a State or the Reclamation Fund. The portion of any
22 such interest payment attributable to any amounts pre-
23 viously disbursed to a State, the Reclamation Fund, or
24 any other recipient designated by law shall be deducted
25 from the next disbursements to that recipient made under

1 the applicable law. Such amounts deducted from subse-
2 quent disbursements shall be credited to miscellaneous re-
3 ceipts in the Treasury.”.

4 (c) LIMITATION ON INTEREST.—Section 111 of such
5 Act, as amended by subsection (b) of this Act, is further
6 amended by adding at the end the following:

7 “(i) Upon a determination by the Secretary that an
8 excessive overpayment (based upon all obligations of a les-
9 see for a given reporting month) was made for the sole
10 purpose of receiving interest, interest shall not be paid on
11 the excessive amount of such overpayment. For purposes
12 of this Act, an ‘excessive overpayment’ shall be the amount
13 that any overpayment a lessee pays for a given reporting
14 month (excluding payments for demands for obligations
15 as a result of judicial or administrative proceedings for
16 settlement agreements and for other similar payments) for
17 the aggregate of all of its Federal leases exceeds 25 per-
18 cent of the total royalties paid that month for those
19 leases.”.

20 (d) ESTIMATED PAYMENT.—Section 111 of such Act,
21 as amended by subsections (b) and (c) of this Act, is fur-
22 ther amended by adding at the end the following:

23 “(j) A lessee may make a payment for the approxi-
24 mate amount of royalties (hereinafter in this subsection
25 ‘estimated payment’) that would otherwise be due to the

1 Secretary for such lease to avoid underpayment or
2 nonpayment interest charges. When an estimated payment
3 is made, actual royalties become due at the end of the
4 month following the period covered by the estimated pay-
5 ment. If the lessee makes a payment for such actual royal-
6 ties, the lessee may apply the estimated payment to future
7 royalties. Any estimated payment may be adjusted, re-
8 couped, or reinstated at any time by the lessee.”.

9 (e) VOLUME ALLOCATION OF OIL AND GAS PRODUC-
10 TION.—Section 111 of such Act (30 U.S.C. 1721), as
11 amended by subsections (b) through (d) of this Act, is
12 amended by adding at the end the following:

13 “(k)(1) Except as otherwise provided by this sub-
14 section—

15 “(A) a lessee of a lease in a unit or
16 communitization agreement which contains only
17 Federal leases with the same royalty rate and funds
18 distribution must report and pay royalties on oil and
19 gas production for each production month based on
20 the actual volume of production sold by or on behalf
21 of that lessee;

22 “(B) a lessee of a lease in any other unit or
23 communitization agreement must report and pay
24 royalties on oil and gas production for each produc-
25 tion month based on the volume of oil and gas pro-

1 duced from such agreement and allocated to the
2 lease in accordance with the terms of the agreement;
3 and

4 “(C) a lessee of a lease that is not contained in
5 a unit or communitization agreement must report
6 and pay royalties on oil and gas production for each
7 production month based on the actual volume of pro-
8 duction sold by or on behalf of that lessee.

9 “(2) This subsection applies only to requirements for
10 reporting and paying royalties. Nothing in this subsection
11 is intended to alter a lessee’s liability for royalties on oil
12 or gas production based on the share of production allo-
13 cated to the lease in accordance with the terms of the
14 lease, a unit or communitization agreement, or any other
15 agreement.

16 “(3) For any unit or communitization agreement, if
17 all lessees contractually agree to an alternative method of
18 royalty reporting and payment, the lessees may submit
19 such alternative method to the Secretary for approval and
20 make payments in accordance with such approved alter-
21 native method so long as such alternative method does not
22 reduce the amount of the royalty obligation.

23 “(4) The Secretary shall grant an exception from the
24 reporting and payment requirements for marginal prop-
25 erties by allowing for any calendar year or portion thereof

1 royalties to be paid each month based on the volume of
2 production sold. Interest shall not accrue on the difference
3 for the entire calendar year or portion thereof between the
4 amount of oil and gas actually sold and the share of pro-
5 duction allocated to the lease until the beginning of the
6 month following calendar year or portion thereof. Any ad-
7 ditional royalties due or overpaid royalties and associated
8 interest shall be paid, refunded, or credited within six
9 months after the end of each calendar year in which royal-
10 ties are paid based on volumes of production sold. For
11 the purpose of this subsection, the term ‘marginal prop-
12 erty’ means a lease that produces on average the combined
13 equivalent of less than 15 barrels of oil per day or 90 thou-
14 sand cubic feet of gas per day, or a combination thereof,
15 determined by dividing the average daily production of do-
16 mestic crude oil and domestic natural gas from producing
17 wells on such lease by the number of such wells, unless
18 the Secretary, together with the State concerned, deter-
19 mines that a different production is more appropriate.

20 “(5) Not later than two years after the date of the
21 enactment of this subsection, the Secretary shall issue any
22 appropriate demand for all outstanding royalty payment
23 disputes regarding who is required to report and pay roy-
24 alties on production from units and communitization
25 agreements outstanding on the date of the enactment of

1 this subsection, and collect royalty amounts owed on such
2 production.”.

3 (f) PRODUCTION ALLOCATION.—Section 111 of such
4 Act (30 U.S.C. 1721), as amended by subsections (b)
5 through (e) of this Act, is amended by adding at the end
6 the following:

7 “(l) The Secretary shall issue all determinations of
8 allocations of production for units and communitization
9 agreements within 120 days of a request for determina-
10 tion. If the Secretary fails to issue a determination within
11 such 120-day period, the Secretary shall waive interest
12 due on obligations subject to the determination until the
13 end of the month following the month in which the deter-
14 mination is made.”.

15 **SEC. 9517. LIMITATION ON ASSESSMENTS.**

16 Section 111 of the Federal Oil and Gas Royalty Man-
17 agement Act of 1982 (30 U.S.C. 1721), as amended by
18 section 9516, is further amended by adding at the end
19 the following:

20 “(m)(1) After the date of enactment of this sub-
21 section, the Secretary shall not impose any assessment for
22 any late payment or underpayment. After the date of en-
23 actment of this subsection, the Secretary may impose an
24 assessment only for erroneous reports submitted by lessees
25 subject to the limitations of paragraph (2). Nothing in this

1 section shall prohibit the Secretary from imposing pen-
2 alties or interest under other sections of this Act for late
3 payments or underpayments.

4 “(2) No assessment for erroneous reports shall be im-
5 posed for 18 months following the date of enactment of
6 this subsection, or until the Secretary issues a final rule
7 which provides for imposition of an assessment only on
8 a lessee who chronically submits erroneous reports and
9 which establishes what constitutes chronic errors for a les-
10 see, whichever is later. However, if the Secretary deter-
11 mines during that 18-month period that the reporting
12 error rate for all reporters for all Federal leases has in-
13 creased by one-third for three consecutive report months
14 for either production reporting or royalty reporting over
15 the 12 months preceding the date of enactment of this
16 subsection, the Secretary may impose an assessment for
17 erroneous reports only for the increased category of report
18 under regulations in effect on the date of enactment of
19 this subsection.”.

20 **SEC. 9518. ALTERNATIVES FOR MARGINAL PROPERTIES.**

21 (a) IN GENERAL.—The Federal Oil and Gas Royalty
22 Management Act of 1982 (30 U.S.C. 1701 et seq.), as
23 amended by section 9513 of this Act, is further amended
24 by adding at the end the following:

1 **“SEC. 116. ALTERNATIVES FOR MARGINAL PROPERTIES.**

2 **“(a) SELLING THE REVENUE STREAM.—**

3 **“(1) IN GENERAL.—**Notwithstanding the provi-
4 sions of any lease to the contrary, upon request of
5 the lessee or a State under section 205(g), the Sec-
6 retary shall authorize a lessee for a marginal prop-
7 erty and for a lease, the administration of which is
8 not cost-effective for the Secretary to administer, to
9 make a prepayment in lieu of royalty payments
10 under the lease for the remainder of the lease term.
11 For the purposes of this section, the term ‘marginal
12 property’ has the same meaning given such term in
13 section 111(k)(4), unless the Secretary, together
14 with each State in which such marginal production
15 occurs, determines that a different definition of mar-
16 ginal property better achieves the purpose of this
17 section.

18 **“(2) MARGINAL PROPERTIES.—**For marginal
19 properties, prepayments under paragraph (1) shall
20 begin—

21 **“(A)** in the case of those properties pro-
22 ducing on average \$500 or less per month in
23 total royalties to the United States, two years
24 after the date of the enactment of this section;

25 **“(B)** in the case of those properties pro-
26 ducing on average more than \$500 but \$1,000

1 or less per month in total royalties to the Unit-
2 ed States, three years after the date of the en-
3 actment of this section;

4 “(C) in the case of those properties pro-
5 ducing on average more than \$1,000 but
6 \$1,500 or less per month in total royalties to
7 the United States, four years after the date of
8 the enactment of this section; and

9 “(D) in the case of those properties not de-
10 scribed in subparagraphs (A) through (C), five
11 years after the date of the enactment of this
12 section.

13 “(3) ADMINISTRATION NOT COST-EFFECTIVE.—
14 For a lease, the administration of which is not cost-
15 effective for the Secretary to administer, prepay-
16 ments under paragraph (1) shall begin on the date
17 of the enactment of this section.

18 “(4) SATISFACTION OF ROYALTY OBLIGA-
19 TION.—A lessee who makes a prepayment under this
20 section shall have satisfied in full its obligation to
21 pay royalty on production from the lease or a por-
22 tion of a lease and shall not be required to submit
23 any royalty reports to the Secretary. The prepay-
24 ment shall be shared by the Secretary with any

1 State or other recipient to the same extent as any
2 royalty payment for such lease.

3 “(5) VALUATION.—The prepayment authorized
4 under this section shall only occur if the Secretary,
5 the State concerned, and the lessee determine that
6 such prepayment is based on the present value of
7 the projected remaining royalties from the produc-
8 tion from the lease, based on appropriate nominal
9 discount rate for a comparable term. Prior to ac-
10 cepting such prepayment, the Secretary and State
11 concerned shall agree that such prepayment is in the
12 best interest of the United States and the State con-
13 cerned.

14 “(b) ALTERNATIVE ACCOUNTING AND AUDITING RE-
15 QUIREMENTS.—

16 “(1) IN GENERAL.—Within one year after the
17 date of the enactment of this section, for the mar-
18 ginal properties referenced in subsection (a)(1), the
19 Secretary shall provide accounting, reporting, and
20 auditing relief that will encourage lessees to continue
21 to produce and develop such properties: *Provided*,
22 That such relief will only be available to lessees in
23 a State that concurs. Prior to granting such relief,
24 the Secretary and the State concerned shall agree
25 that the type of marginal wells and relief provided

1 under this paragraph is in the best interest of the
2 United States and the State concerned.

3 “(2) PAYMENT DATE.—For leases subject to
4 this section, the Secretary may allow royalties to be
5 paid later than the time specified in the lease.”.

6 (b) CLERICAL AMENDMENT.—The table of contents
7 in section 1 of such Act (30 U.S.C. 1701) is amended by
8 adding after the item relating to section 115 the following
9 new item:

“Sec. 116. Alternatives for marginal properties.”.

10 **SEC. 9519. ROYALTY IN KIND.**

11 (a) IN GENERAL.—

12 (1) OCS.—Section 27(a)(1) of the Outer Con-
13 tinental Shelf Lands Act (43 U.S.C. 1353(a)(1)) is
14 amended by adding at the end the following:

15 “Any royalty or net profit share of oil or gas accruing
16 to the United States under any such lease, at the Sec-
17 retary’s option, may be taken in kind at or near the lease
18 (unless the lease expressly provides for delivery at a dif-
19 ferent location) upon prior written notice given reasonably
20 in advance by the Secretary to the lessee. Once the United
21 States has commenced taking royalty in kind, it shall con-
22 tinue to do so until a reasonable time after the Secretary
23 has provided written notice reasonably in advance to the
24 lessee that it will resume taking royalty in value. Delivery

1 of royalty in kind by the lessee shall satisfy in full the
2 lessee's royalty obligation. Once the oil or gas is delivered,
3 the lessee shall not be subject to the reporting and record-
4 keeping requirements under section 103 for its share of
5 oil and gas production other than records necessary to ver-
6 ify the quantity of oil or gas delivered.''.
7

8 (2) ONSHORE.—Section 36 of the Mineral
9 Leasing Act (30 U.S.C. 192) is amended by adding
10 at the end the following undesignated paragraph:

11 “Notwithstanding the provisions of the previous para-
12 graph, any royalty or net profit share of oil or gas accru-
13 ing to the United States under any lease issued or main-
14 tained by the Secretary for the exploration, production
15 and development of oil and gas on Federal lands, at the
16 Secretary's option, may be taken in kind at or near the
17 lease (unless the lease expressly provides for delivery at
18 a different location) after prior written notice given rea-
19 sonably in advance by the Secretary to the lessee. Once
20 the United States has commenced taking royalty in kind,
21 it shall continue to do so until a reasonable time after the
22 Secretary has provided written notice reasonably in ad-
23 vance to the lessee that it will resume taking royalty in
24 value. Delivery of royalty in kind by the lessee shall satisfy
25 in full the lessee's royalty obligation. Once the oil or gas
is delivered, the lessee shall not be subject to the reporting

1 and recordkeeping requirements under section 103 for its
2 share of oil and gas production other than records nec-
3 essary to verify the quantity of oil or gas delivered.”.

4 (b) SALE.—Sections 27(b)(1) and (c)(1) of the Outer
5 Continental Shelf Lands Act (43 U.S.C. 1353(c)(1)) are
6 each amended by striking “competitive bidding for not
7 more than its regulated price, or, if no regulated price ap-
8 plies, not less than its fair market value” and inserting
9 “competitive bidding or private sale”.

10 **SEC. 9520. ROYALTY SIMPLIFICATION AND COST-EFFEC-**
11 **TIVE AUDIT AND COLLECTION REQUIRE-**
12 **MENTS.**

13 (a) IN GENERAL.—Section 101 of the Federal Oil
14 and Gas Royalty Management Act of 1982 (30 U.S.C.
15 1711) is amended by adding at the end the following:

16 “(d)(1) For the purpose of reducing costs and in-
17 creasing net royalties to the United States and the States,
18 the Secretary, in consultation with States concerned, shall,
19 within one year after the date of the enactment of this
20 subsection, streamline and simplify current royalty man-
21 agement requirements and practices, including royalty re-
22 porting, instructions, audits and collections. This stream-
23 lining and simplification shall specifically include—

24 “(A) elimination of all unnecessary royalty and
25 production reports;

1 “(B) modification and simplification of remain-
2 ing reports and associated instructions to eliminate
3 redundant or unnecessary reports and information
4 that are provided or can be obtained from other re-
5 quired reports, forms, computer databases or gov-
6 ernment agencies;

7 “(C) elimination or modifications of accounting,
8 reporting, audit and collection requirements that are
9 not cost-effective, particularly those associated with
10 de minimis monetary amounts;

11 “(D) implementation of specific recommenda-
12 tions and comments contained in Secretarial spon-
13 sored teams, rulemakings, and studies or those par-
14 ticipated in by the Secretary to the extent these rec-
15 ommendations simplify and streamline royalty man-
16 agement requirements without adversely affecting
17 the Secretary’s ability to meet obligations under this
18 Act or other mineral leasing statutes;

19 “(E) recommendations and comments submit-
20 ted by interested parties to the extent these rec-
21 ommendations and comments simplify and stream-
22 line royalty management requirements without ad-
23 versely affecting the Secretary’s ability to meet obli-
24 gations under this Act or other mineral leasing stat-
25 utes.

1 “(2) The Secretary shall submit to the Congress a
2 progress report on the implementation of this section with-
3 in six months from date of enactment of this Act, and
4 a final report within 12 months from date of enactment
5 of this Act. These reports shall include—

6 “(A) a description of the extent to which the
7 Secretary has implemented the requirements in
8 paragraph (1), including a list of specific initiatives
9 implemented;

10 “(B) a list and description of additional initia-
11 tives identified by the Secretary to simplify and
12 streamline royalty management requirements and
13 practices; and

14 “(C) cost savings of implemented initiatives in-
15 cluding impact on net-receipts sharing for States.

16 “(3) If the Secretary and the State concerned deter-
17 mines that the cost of accounting and auditing for and
18 collecting of any obligation due for any oil and gas produc-
19 tion exceeds the amount of the obligation to be collected,
20 the Secretary shall waive such obligation.

21 “(4) The Secretary and the State concerned shall not
22 perform accounting, reporting, or audit activities if the
23 Secretary and the State concerned determines that the
24 cost of conducting the activity exceeds the expected
25 amount to be collected by the activity.

1 “(5) The Secretary and the State concerned shall de-
2 velop a reporting and audit strategy which eliminates mul-
3 tiple or redundant reporting of information.”.

4 (b) PAPERWORK REDUCTION.—Section 107 of the
5 Federal Oil and Gas Royalty Management Act of 1982
6 (30 U.S.C. 1717), as amended by section 9513(b) and (c),
7 is amended by adding at the end the following:

8 “(e) PAPERWORK REDUCTION.—Administrative ac-
9 tions and investigations (including, but not limited to, ac-
10 counting collection and audits) under this Act involving
11 obligations shall be subject to section 3518(c)(1)(B) of
12 title 44, United States Code.”.

13 **SEC. 9521. REPEALS.**

14 (a) FOGRMA.—Section 307 of the Federal Oil and
15 Gas Royalty Management Act of 1982 (30 U.S.C. 1755),
16 is repealed. Section 1 of such Act (relating to the table
17 of contents) is amended by striking out the item relating
18 to section 307.

19 (b) OCSLA.—Effective on the date of the enactment
20 of this Act, section 10 of the Outer Continental Shelf
21 Lands Act (43 U.S.C. 1339) is repealed.

22 **SEC. 9522. DELEGATION TO STATES.**

23 (a) GENERAL AUTHORITY.—Section 205(a) of the
24 Federal Oil and Gas Royalty Management Act of 1982
25 (30 U.S.C. 1735(a)) is amended to read as follows:

1 “(a) Upon written request of any State, the Secretary
2 is authorized to delegate, in accordance with the provisions
3 of this section, all or part of the authorities and respon-
4 sibilities of the Secretary under this Act to conduct inspec-
5 tions, such production and royalty accounting duties and
6 responsibilities as the Secretary determines are legally del-
7 egable, all audit coverage, and investigations to any State
8 with respect to all Federal lands within the State.”.

9 (b) STANDARDIZED REPORTING.—Section 205(b) of
10 such Act (30 U.S.C. 1735(b)) is amended—

11 (1) by striking “and” at the end of paragraph
12 (2);

13 (2) by striking the comma at the end of para-
14 graph (3) and inserting “; and”; and

15 (3) by inserting after paragraph (3) the follow-
16 ing:

17 “(4) the State agrees to adopt Federal stand-
18 ardized reporting for Federal royalty accounting and
19 collection purposes,”.

20 (c) COST EFFECTIVE COLLECTION OF DE MINIMIS
21 ROYALTY AMOUNTS.—Section 205 of such Act (30 U.S.C.
22 1735) is amended by adding at the end the following:

23 “(g) Upon written request of any State, the Secretary
24 is authorized to delegate for any year the responsibility
25 to collect royalties from all Federal leases within the State

1 if the average amount per year of mineral revenues re-
2 ceived by the State on all such leases under all Federal
3 mineral leasing laws for the previous five years is less than
4 \$100,000. The State may also request that the Secretary
5 sell the revenue stream from all or part of the Federal
6 leases within the State in accordance with section 116 of
7 the Federal Oil and Gas Royalty Management Act of
8 1982, as added by section 9518 of the Federal Oil and
9 Gas Royalty Simplification and Fairness Act of 1995.”.

10 **SEC. 9523. PERFORMANCE STANDARD.**

11 Section 109 of the Federal Oil and Gas Royalty Man-
12 agement Act of 1982 (30 U.S.C. 1719) is amended in sub-
13 sections (c) and (d), by striking “knowingly or willfully”
14 and inserting “by willful misconduct or gross negligence”
15 each place it appears.

16 **SEC. 9524. INDIAN LANDS.**

17 The amendments made by this part shall not apply
18 with respect to Indian lands, and the provisions of the
19 Federal Oil and Gas Royalty Management Act of 1982
20 as in effect on the day before the date of enactment of
21 this Act shall continue to apply after such date with re-
22 spect to Indian lands.

23 **SEC. 9525. PRIVATE LANDS.**

24 This part shall not apply to any privately owned min-
25 erals.

1 **SEC. 9526. EFFECTIVE DATE.**

2 Except as provided by section 115(e), section 111(h),
3 section 111(k)(5), and section 116 of the Federal Oil and
4 Gas Royalty Management Act of 1982 (as added by this
5 part), this part, and the amendments made by this part,
6 shall apply with respect to the production of oil and gas
7 after the first day of the month following the date of the
8 enactment of this Act.

9 **Subtitle F—Indian Gaming and**
10 **Health**

11 **PART 1—INDIAN GAMING**

12 **SEC. 9601. INDIAN GAMING.**

13 (a) COMMISSION FUNDING.—Section 18(a) of the In-
14 dian Gaming Regulatory Act (25 U.S.C. 2717(a)) is
15 amended by striking out “\$1,500,000” each place it ap-
16 pears and inserting in lieu thereof “\$2,500,000”.

17 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
18 19(a) of the Indian Gaming Regulatory Act (25 U.S.C.
19 2718(a)) is amended by striking out all after “(a)” and
20 inserting in lieu thereof the following: “Notwithstanding
21 the provisions of section 18, no funds may be authorized
22 to be appropriated for the operation of the Commission.”.

1 **PART 2—INDIAN HEALTH: MEDICAID**

2 **SEC. 9611. HEALTH CARE FACILITIES.**

3 (a) TREATMENT OF PAYMENTS.—Section 402 of the
4 Indian Health Care Improvement Act (25 U.S.C. 1642)
5 is amended—

6 (1) in the first sentence of subsection (a), by in-
7 serting “, Indian Tribe, tribal organization, or urban
8 Indian organization” after “Service” each place it
9 appears; and

10 (2) in the second sentence of subsection (a), by
11 inserting “, Indian Tribe, tribal organization, or
12 urban Indian organization” after “facilities of the
13 Service”.

14 (b) ELIGIBILITY FOR REIMBURSEMENT.—Section
15 1911 of the Social Security Act (42 U.S.C. 1396j) is
16 amended in subsection (a), by inserting “, Indian Tribe,
17 tribal organization, or urban Indian organization” after
18 “Indian Health Service”.

19 **SEC. 9612. PROVIDER REIMBURSEMENT.**

20 Section 402 of the Indian Health Care Improvement
21 Act (25 U.S.C. 1642) is amended by adding the following
22 new subsections:

23 “(c) Notwithstanding any other provision of law, a
24 health program of the Indian Health Service, an Indian
25 tribe, tribal organization, or urban Indian organization,
26 that is eligible for reimbursement for medical assistance

1 under title XIX of the Social Security Act shall be eligible
2 to participate in, and receive reimbursement for medical
3 assistance provided to individuals served under any State
4 plan authorized under any law which succeeds such title
5 XIX on the same basis as any other health care provider
6 in the State in which the health program of the Indian
7 Health Service, an Indian tribe, tribal organization, or
8 urban Indian organization is operated.

9 “(d) Nothing in this section, or any other law, shall
10 prevent an Indian eligible for services through an Indian
11 health program from participating in any State plan au-
12 thorized under any law which succeeds such title XIX.

13 “(e) Nothing in this section, or any other law, shall
14 authorize a State to deny or limit payments to any pro-
15 vider for medical assistance for items or services to Indi-
16 ans.

17 “(f) Any State that authorizes a health plan under
18 any law which succeeds such title XIX or applies for a
19 waiver under section 1115 of title XIX of the Social Secu-
20 rity Act shall consult with the Indian tribes located within
21 the State in the development of the health plan’s stand-
22 ards.”.

23 **SEC. 9613. STUDY.**

24 The Secretary of Health and Human Services shall
25 conduct a comprehensive study of the number of Indians

1 eligible to receive services under title XIX of the Social
2 Security Act, the number of Indians actually receiving
3 such services, and the effect upon Indians of eliminating
4 the entitlement status of title XIX and transferring fund-
5 ing under that title to the States, and shall provide rec-
6 ommendations for the improvement of such services to eli-
7 gible Indians. The Secretary shall submit the report to
8 Congress no later than June 1, 1996.

9 **PART 3—INDIAN HEALTH: MEDICARE**

10 **SEC. 9621. HEALTH CARE FACILITIES.**

11 (a) TRIBAL FACILITIES.—Section 401(a) of the In-
12 dian Health Care Improvement Act (25 U.S.C 1641(a))
13 is amended by striking “a hospital or skilled nursing facil-
14 ity of the Service (whether operated by the Service or by
15 an Indian tribe or tribal organization pursuant to a con-
16 tract under the Indian Self-Determination Act)” and in-
17 serting “facility of the Service, Indian tribe, tribal organi-
18 zation, or urban Indian organization”.

19 (b) ELIGIBILITY FOR REIMBURSEMENT.—Section
20 1880(a) of the Social Security Act (42 U.S.C. 1395qq)
21 is amended—

22 (1) by striking “hospital or skilled nursing”;

23 (2) by inserting “, Indian Tribe, tribal organi-
24 zation, or urban Indian organization” after “Indian
25 Health Service”; and

1 (3) by striking “generally to hospitals or skilled
2 nursing facilities (as the case may be)”.

3 **SEC. 9622. PROVIDER REIMBURSEMENT.**

4 Section 401 of the Indian Health Care Improvement
5 Act (25 U.S.C. 1641) is amended by adding the following
6 new subsection:

7 “(c) Notwithstanding any other provision of law, a
8 health program of the Indian Health Service, an Indian
9 tribe, tribal organization, or urban Indian organization,
10 that is eligible for reimbursement for medical assistance
11 under title XVIII of the Social Security Act shall be eligi-
12 ble to participate in, and receive reimbursement for medi-
13 cal assistance provided to individuals served under any
14 plan offered under the Medicare Plus plan on the same
15 basis as any other health care provider in the State in
16 which the health program of the Indian Health Service,
17 an Indian tribe, tribal organization, or urban Indian orga-
18 nization is operated.”.

19 **Subtitle G—Consultation**

20 **SEC. 9701. CONSULTATION.**

21 Section 7(d) of the Endangered Species Act of 1973
22 (16 U.S.C. 1536(d)) is amended to read as follows:

23 “(d) LIMITATION ON COMMITMENT OF RE-
24 SOURCES.—After initiation of consultation required under
25 subsection (a)(2) of this section, the Federal agency and

1 the permit or license applicant shall not make any irre-
2 versible or irretrievable commitment of resources with re-
3 spect to the agency action which has the effect of foreclos-
4 ing the formulation or implementation of any reasonable
5 and prudent alternative measures which would not violate
6 subsection (a)(2) of this section. This limitation on the
7 commitment of resources is only applicable to consulta-
8 tions regarding site-specific projects and activities, and
9 shall not apply to any consultation regarding an agency's
10 periodic or long-term planning activities, mission or policy
11 statements, programmatic documents, or general policies,
12 regulations, or activities, whether or not such consultation
13 has previously been initiated pursuant to a court order,
14 and regardless of the date on which consultation was or-
15 dered or initiated.”.

16 **Subtitle H—Mapping**

17 **SEC. 9801. SHORT TITLE.**

18 This subtitle may be cited as the “Department of the
19 Interior Surveying and Mapping Efficiency and Economic
20 Opportunity Act of 1995”.

21 **SEC. 9802. SURVEYING AND MAPPING CONTRACTING PRO-** 22 **GRAM.**

23 In order to provide private firms, including small and
24 small disadvantaged businesses, ample opportunities to
25 provide quality services to the Department of the Interior

1 (hereinafter referred to as the “Department”), the Sec-
2 retary of the Interior (hereinafter referred to as the “Sec-
3 retary”) shall conduct a surveying and mapping contract-
4 ing program.

5 **SEC. 9803. INVENTORY OF ACTIVITIES.**

6 (a) PUBLICATION OF INVENTORY.—Not later than
7 90 days after the date of enactment of this Act, the Sec-
8 retary, in consultation with the Administrator of the Of-
9 fice of Federal Procurement Policy, the Administrator of
10 the Small Business Administration and the trade associa-
11 tion of private surveying and mapping firms, shall publish
12 an inventory of surveying and mapping activities in the
13 Department of the Interior for the last fiscal year com-
14 pleted prior to the date of enactment of this Act.

15 (b) ITEMS INCLUDED.—The inventory shall include
16 each of the following:

17 (1) The total dollar value of surveying and
18 mapping activities in each agency of the Depart-
19 ment.

20 (2) The total dollar value of surveying and
21 mapping activities in each agency of the Department
22 performed by contract with private sector firms.

23 (3) The total dollar value of surveying and
24 mapping activities in each agency of the Department
25 performed by personnel of the Department.

1 (4) The total dollar value of surveying and
2 mapping activities in each agency of the Department
3 performed for any other department or agency of the
4 Federal Government.

5 (5) The total dollar value of surveying and
6 mapping activities in each agency of the Department
7 performed for any State or political subdivision
8 thereof, or for any foreign government.

9 (6) The total number of personnel involved in
10 surveying and mapping activities in each agency of
11 the Department.

12 **SEC. 9804. PLAN TO INCREASE USE OF CONTRACTS.**

13 (a) **ESTABLISHMENT.**—Based on the inventory con-
14 ducted pursuant to section 9803 of this Act, not later than
15 180 days after the date of enactment of this Act, the Sec-
16 retary, in consultation with the Administrator of the Of-
17 fice of Federal Procurement Policy, the Administrator of
18 the Small Business Administration and the trade associa-
19 tion of private surveying and mapping firms, shall develop
20 and implement a plan to increase the use of contracts with
21 private firms for surveying and mapping services.

22 (b) **ITEMS INCLUDED IN PLAN.**—The plan estab-
23 lished pursuant to subsection (a) of this section shall in-
24 clude, but not be limited to each of the following:

1 (1) A reduction of surveying and mapping ac-
2 tivities by personnel in the Department that dupli-
3 cate capabilities available by contract from the pri-
4 vate sector.

5 (2) A reduction of acquisition and maintenance
6 of surveying and mapping equipment that duplicate
7 capabilities and capital investment already made by
8 the private sector.

9 (3) The elimination of unfair Government com-
10 petition in activities in which the Department uses
11 its personnel to perform surveying and mapping for
12 which it shares the cost with, is reimbursed for, or
13 makes a grant to any other agency of the Federal
14 Government, a State or political subdivision thereof,
15 or a foreign government, for such activities, when
16 such activities can be obtained by contract from the
17 private sector.

18 (4) The use of contracts to perform surveying
19 and mapping requirements of the Department cre-
20 ated through attrition.

21 (5) The enhancement of the leadership role of
22 the Department of the Interior in—

23 (A) the preparation of standards and spec-
24 ifications;

1 (B) research in surveying and mapping in-
2 strumentation and procedures, and the prompt
3 transfer of technology to the private sector;

4 (C) providing technical guidance, coordina-
5 tion, cost sharing, cooperative efforts and ad-
6 ministration in the use of Federal funds for
7 surveying and mapping activities, and the devel-
8 opment of geographic information systems, that
9 are performed by the private sector by the con-
10 tract to Federal, State, and local government
11 agencies;

12 (D) establishing a schedule with quantifi-
13 able goals for increasing the use of contracts
14 with private sector for current and future sur-
15 veying and mapping activities; and

16 (E) using Department personnel to per-
17 form only those surveying and mapping activi-
18 ties that are inherently governmental in nature,
19 necessary to keep current the skills of such per-
20 sonnel for evaluating contractor performance
21 and administering contracts, and to perform
22 basic research.

23 **SEC. 9805. REPORTS.**

24 The Secretary shall transmit to the Committee on
25 Resources of the House of Representatives and the Com-

1 mittee on Energy and Natural Resources of the Senate
2 a report on implementation of the program not later than
3 January 15 of each year.

4 **SEC. 9806. DEFINITIONS.**

5 As used in this subtitle:

6 (1) The term “surveying and mapping” means
7 collecting, storing, retrieving, or disseminating
8 graphical or digital data depicting natural or man-
9 made physical features, phenomena and boundaries
10 of the earth and any information related thereto, in-
11 cluding but not limited to data shown on or in rela-
12 tion to surveys, maps, and charts.

13 (2) The “contract” means an instrument to re-
14 tain private firms with licensed, certified, or other-
15 wise qualified professionals in such fields as survey-
16 ing, photogrammetry, cartography, and geodesy,
17 which shall be awarded in accordance with the selec-
18 tion procedures in title IX of the Federal Property
19 and Administrative Services Act of 1949 (40 U.S.C.
20 541 and following).

21 **Subtitle I—National Park System**
22 **Reform**

23 **SEC. 9901. SHORT TITLE.**

24 This subtitle may be cited as the “National Park Sys-
25 tem Reform Act of 1995”.

1 **SEC. 9902. DEFINITIONS.**

2 As used in this subtitle:

3 (1) The term “Secretary” means the Secretary
4 of the Interior.

5 (2) The term “Plan” means the National Park
6 System Plan developed under section 101.

7 (3) The term “Commission” means the Na-
8 tional Park System Review Commission established
9 pursuant to section 103.

10 (4) The term “Congressional resources commit-
11 tees” means the Committee on Resources of the
12 House of Representatives and the Committee on En-
13 ergy and Natural Resources of the Senate.

14 **PART 1—NATIONAL PARK SYSTEM PLAN**

15 **SEC. 9911. PREPARATION OF NATIONAL PARK SYSTEM**
16 **PLAN.**

17 (a) PREPARATION OF PLAN.—The Secretary of the
18 Interior, acting through the Director of the National Park
19 Service, shall prepare a National Park System Plan to
20 guide the direction of the National Park System into the
21 next century. The Plan shall include each of the following:

22 (1) Identification of goals and objectives for use
23 in defining the mission and role of the National
24 Park Service and the National Park System in pre-
25 serving our Nation’s heritage, relative to other ef-
26 forts at the Federal, State, local, and private levels.

1 This statement shall include a refinement for the
2 definition of “nationally significant” for purposes of
3 inclusion in the National Park System.

4 (2) Criteria to be used in determining which
5 themes and types of resources are appropriate for
6 representation in the National Park System, as well
7 as criteria for judging individual sites, areas, and
8 themes that are appropriate for inclusion as units of
9 the National Park System.

10 (3) Identification of what constitutes adequate
11 representation of a particular resource type or theme
12 in the National Park System.

13 (4) Identification of which aspects of the Na-
14 tion’s heritage are adequately represented in the ex-
15 isting National Park System.

16 (5) Identification of appropriate aspects of the
17 Nation’s heritage not currently or adequately rep-
18 resented in the National Park System.

19 (6) Priorities of the themes and types of re-
20 sources which should be added to the National Park
21 System in order to provide more complete represen-
22 tation of our Nation’s heritage.

23 (7) A thorough analysis of the role of the Na-
24 tional Park System and the National Park Service
25 with respect to (but not limited to) conservation of

1 natural areas and ecosystems; preservation of indus-
2 trial America; preservation of intangible cultural
3 heritage such as arts, music, and folklife; presi-
4 dential sites; open space protection; and provision of
5 outdoor recreation opportunities.

6 (8) A comprehensive financial management plan
7 for the National Park System which identifies all
8 funding available to the agency, how funds will be
9 allocated to support various programs, and the level
10 of service to be provided.

11 (b) PUBLIC PARTICIPATION AND CONSULTATION.—
12 During the preparation of the Plan under subsection (a),
13 the Secretary shall ensure broad public participation in a
14 manner which, at a minimum, consists of the following
15 two elements:

16 (1) Solicitation of the views of the American
17 public with regard to the future of the National
18 Park System. Opportunities for public participation
19 shall be made available throughout the planning
20 process and shall include specific regional public
21 meetings.

22 (2) Consultation with other Federal land man-
23 agement agencies, State and local officials, resource
24 management, recreation and scholarly organizations,

1 and other interested parties as the Secretary deems
2 advisable.

3 (c) TRANSMITTAL OF REPORT.—Prior to the end of
4 the second complete fiscal year commencing after the date
5 of enactment of this Act, the Secretary shall transmit the
6 Plan developed under this section to the Congressional re-
7 sources committees.

8 (d) CONGRESSIONAL APPROVAL.—Unless Congress
9 enacts a joint resolution rejecting all or modifying part
10 of the Plan within 180 calendar days after the date of
11 its transmittal to Congress, the Plan shall be deemed ap-
12 proved.

13 (e) IDENTIFICATION OF UNITS OF THE NATIONAL
14 PARK SYSTEM.—The Secretary shall submit to the Con-
15 gressional resources committees an official list of areas or
16 units of the National Park System within 180 days after
17 the date of the enactment of this Act. The Secretary shall
18 establish a set of criteria for the purpose of developing
19 such list and shall transmit those criteria to the Congres-
20 sional resources committees.

21 (f) AUTHORITY TO ESTABLISH UNITS OF THE NA-
22 TIONAL PARK SYSTEM.—After the enactment of this Act,
23 units or areas of the National Park System may only be
24 established pursuant to an Act of Congress or by Presi-
25 dential action in accordance with the Act entitled “An Act

1 for the preservation of American antiquities” (16 U.S.C.
2 431 et seq.).

3 **SEC. 9912. MANAGEMENT REVIEW OF NATIONAL PARK**
4 **SYSTEM.**

5 (a) SELECTION CRITERIA.—(1) The Secretary shall,
6 not later than 45 days after transmittal of the Plan under
7 section 9911(c), publish in the Federal Register and
8 transmit to the Congressional resources committees the
9 criteria proposed to be used by the Department of the In-
10 terior in reviewing existing units of the National Park Sys-
11 tem under this section. The Secretary shall provide an op-
12 portunity for public comment on the proposed criteria for
13 a period of at least 30 days.

14 (2)(A) The Secretary shall, within 60 days of the
15 transmittal of proposed criteria under paragraph (1), pub-
16 lish in the Federal Register and transmit to the Congres-
17 sional resources committees the final criteria to be used
18 in carrying out this section. Except as provided in sub-
19 paragraph (B), such criteria shall be the final criteria to
20 be used unless disapproved by a joint resolution of Con-
21 gress enacted not more than 30 legislative days after re-
22 ceipt of the final criteria. For the purpose of the preceding
23 sentence, the term “legislative day” means a day on which
24 both Houses of Congress are in session.

1 (B) The Secretary may amend such criteria, but such
2 amendments may not become effective until they have
3 been published in the Federal Register, opened to public
4 comment for at least 30 days, and transmitted to the Con-
5 gressional resources committees in final form.

6 (b) REVIEW.—(1)(A) Using the Plan deemed to be
7 approved pursuant to section 9911(d) and the criteria de-
8 veloped pursuant to subsection (a), the Secretary shall re-
9 view the existing National Park System to determine
10 whether any existing units or significant portions of such
11 units do not conform to the Plan. For any such areas,
12 the Secretary shall determine whether there are more ap-
13 propriate alternatives for managing all or a portion of
14 such units, including through partnerships or direct man-
15 agement by States, local governments, other agencies and
16 the private sector.

17 (B) The Secretary shall develop a report which con-
18 tains a list of any unit of the National Park System where
19 National Park Service management should be terminated
20 and a list of any portion of units where National Park
21 Service management should be modified as a result of
22 nonconformance with the Plan. No area or portion of an
23 area which Congress has designated as a national park
24 may be included in the report.

1 (2) Should any such unit or portion of such unit not
2 be recommended for continued National Park Service
3 management, the Secretary shall make recommendations
4 regarding management by an entity or entities other than
5 the National Park Service.

6 (3) For any such unit or portion of such unit deter-
7 mined to have national significance, prior to including
8 such unit or portion of such unit on a list under paragraph
9 (1), the Secretary shall identify feasible alternatives to
10 National Park Service management which will protect the
11 resources of and assure continued public access to the
12 unit.

13 (c) CONSULTATION.—In developing the report re-
14 ferred to in subsection (b), the Secretary shall consult with
15 other Federal land management agencies, State and local
16 officials, resource management, recreation and scholarly
17 organizations, and other interested parties as the Sec-
18 retary deems advisable.

19 (d) TRANSMITTAL.—Not later than 18 months after
20 the Plan has been deemed approved, the Secretary shall
21 transmit the report developed under this section simulta-
22 neously to the Congressional resources committees and the
23 Commission. The report shall contain the recommenda-
24 tions of the Secretary for termination of National Park
25 Service management for any unit of the National Park

1 System that is determined not to conform with the Plan,
2 a list of portions of units where National Park Service
3 management should be modified, and the recommenda-
4 tions for alternative management by an entity or entities
5 other than the National Park Service for such unit.

6 **SEC. 9913. NATIONAL PARK SYSTEM REVIEW COMMISSION.**

7 (a) ESTABLISHMENT OF COMMISSION; DUTIES.—(1)
8 Following completion of the Plan as specified in section
9 9911, a National Park System Review Commission shall
10 be established.

11 (2) The Commission shall either review the report de-
12 veloped under section 9912 or, if the Secretary fails to
13 develop and transmit such report, develop the report itself.
14 In conducting its review (or developing the report, if nec-
15 essary), the Commission shall be subject to the provisions
16 of sections 9912(b) and (c) in the same manner as such
17 provisions apply to the Secretary. If the Secretary develops
18 and transmits the report, the review of the Commission
19 shall be limited to the manner in which the criteria have
20 been applied to the existing National Park System. In ad-
21 dition the Commission shall seek broad public input and
22 ensure the opportunity for input from persons who would
23 be directly affected by recommendations regarding Na-
24 tional Park System units identified in its report.

1 (3) Within 2 years after the date of its establishment,
2 the Commission shall prepare and transmit to the Con-
3 gressional resources committees a report of its work under
4 paragraph (2) in which the Commission recommends a list
5 of National Park System units where National Park Serv-
6 ice management should be terminated and a list of por-
7 tions of units where National Park Service management
8 should be modified.

9 (b) MEMBERSHIP AND APPOINTMENT.—The Com-
10 mission shall consist of 11 members, each of whom shall
11 have substantial familiarity with, and understanding of,
12 the National Park System and related fields. In addition,
13 the Commission members shall have expertise in natural
14 sciences, history, archaeology, and outdoor recreation.
15 Five members of the Commission, one of whom shall be
16 the Director of the National Park Service, shall be ap-
17 pointed by the Secretary. Two members shall be appointed
18 by the Speaker of the United States House of Representa-
19 tives in consultation with the chairman of the Committee
20 on Resources, and one member shall be appointed by the
21 Minority Leader of the House of Representatives in con-
22 sultation with the ranking minority member of the Com-
23 mittee on Resources. Two members shall be appointed by
24 the President pro tempore of the United States Senate,
25 in consultation with the chairman of the Committee on

1 Energy and Natural Resources and one member shall be
2 appointed by the Minority Leader of the Senate in con-
3 sultation with the ranking minority member of the Com-
4 mittee on Energy and Natural Resources. Each member
5 shall be appointed within three months after the comple-
6 tion of the Plan as specified in section 101.

7 (c) CHAIR.—The Commission shall elect a chair from
8 among its members.

9 (d) VACANCIES.—Vacancies occurring on the Com-
10 mission shall not affect the authority of the remaining
11 members of the Commission to carry out the functions of
12 the Commission. Any vacancy in the Commission shall be
13 promptly filled in the same manner in which the original
14 appointment was made.

15 (e) QUORUM.—A simple majority of Commission
16 members shall constitute a quorum.

17 (f) MEETINGS.—The Commission shall meet at least
18 quarterly or upon the call of the chair or a majority of
19 the members of the Commission.

20 (g) COMPENSATION.—Members of the Commission
21 shall serve without compensation as such. Members of the
22 Commission, when engaged in official Commission busi-
23 ness, shall be entitled to travel expenses, including per
24 diem in lieu of subsistence, in the same manner as persons

1 employed intermittently in government service under sec-
2 tion 5703 of title 5, United States Code.

3 (h) TERMINATION.—The Commission established
4 pursuant to this section shall terminate 90 days after the
5 transmittal of the report to Congress as provided in sub-
6 section (a).

7 (i) LIMITATION ON NATIONAL PARK SERVICE
8 STAFF.—The Commission may hire staff to carry out its
9 assigned responsibilities. Not more than one-half of the
10 professional staff of the Commission shall be made up of
11 current employees of the National Park Service.

12 (j) STAFF OF OTHER AGENCIES.—Upon the request
13 of the Commission, the head of any Federal agency may
14 detail, on a reimbursable basis, any of the personnel of
15 such agency to the Commission to assist the Commission.

16 (k) EXPERTS AND CONSULTANTS.—Subject to such
17 rules as may be adopted by the Commission, the Commis-
18 sion may procure temporary and intermittent services to
19 the same extent as authorized by section 3109(b) of title
20 5, United States Code, but at rates determined by the
21 Commission to be advisable.

22 (l) POWERS OF THE COMMISSION.—(1) The Commis-
23 sion shall for the purpose of carrying out this title hold
24 such public hearings, sit and act at such times and places,

1 take such testimony, and receive such evidence as the
2 Commission deems advisable.

3 (2) The Commission may make such bylaws, rules,
4 and regulations, consistent with this part, as it considers
5 necessary to carry out its functions under this part.

6 (3) When so authorized by the Commission, any
7 member or agent of the Commission may take any action
8 which the Commission is authorized to take by this sec-
9 tion.

10 (4) The Commission may use the United States mails
11 in the same manner and upon the same conditions as
12 other departments and agencies of the United States.

13 (5) The Secretary shall provide to the Commission
14 any information available to the Secretary and requested
15 by the Commission regarding the Plan and any other in-
16 formation requested by the Commission which is relevant
17 to the duties of the Commission and available to the Sec-
18 retary.

19 **SEC. 9914. SUBSEQUENT ACT OF CONGRESS REQUIRED TO**
20 **MODIFY OR TERMINATE A PARK.**

21 Nothing in this part shall be construed as modifying
22 or terminating any unit of the National Park System with-
23 out a subsequent Act of Congress. This limitation shall
24 not limit any existing authority of the Secretary.

1 **SEC. 9915. AUTHORIZATION OF APPROPRIATIONS.**

2 There are hereby authorized to be appropriated
3 \$2,000,000 to carry out the purposes of this part.

4 **SEC. 9916. COMMENDATION AND PROTECTION OF NA-**
5 **TIONAL PARK RANGERS.**

6 (a) FINDING.—The Congress recognizes the dedica-
7 tion, expertise and courage of the men and women who
8 serve as rangers and other employees of the National Park
9 Service and finds their service to the protection of our
10 park resources and the safety of the hundreds of millions
11 of Americans who visit our national parks each year to
12 be indispensable.

13 (b) PROTECTION OF NATIONAL PARK SERVICE EM-
14 PLOYEES.—As soon as possible as part of the report devel-
15 oped under section 9911, the Secretary shall report on the
16 procedures that have been instituted to report to the Unit-
17 ed States Attorney or other appropriate law enforcement
18 official any intimidation, threats, or acts of violence
19 against employees of the National Park Service related to
20 their duties.

21 **PART 2—NEW AREA ESTABLISHMENT**

22 **SEC. 9921. STUDY OF NEW PARK SYSTEM AREAS.**

23 Section 8 of the Act of August 18, 1970, entitled “An
24 Act to improve the Administration of the National Park
25 System by the Secretary of the Interior, and to clarify the
26 authorities applicable to the system, and for other pur-

1 poses” (16 U.S.C. 1a–1 and following) is amended as fol-
2 lows:

3 (1) By inserting “GENERAL AUTHORITY.—”
4 after “(a)”.

5 (2) By striking the second through the sixth
6 sentences of subsection (a).

7 (3) By redesignating the last two sentences of
8 subsection (a) as subsection (f) and inserting in the
9 first of such sentences before the words “For the
10 purposes of carrying” the following: “(f) AUTHOR-
11 IZATION OF APPROPRIATIONS.—”.

12 (4) By striking subsection (b).

13 (5) By inserting the following after subsection
14 (a):

15 “(b) STUDIES OF AREAS FOR POTENTIAL ADDI-
16 TION.—(1) At the beginning of each calendar year, along
17 with the annual budget submission, the Secretary shall
18 submit to the Committee on Resources of the House of
19 Representatives and to the Committee on Energy and
20 Natural Resources of the United States Senate a list of
21 areas recommended for study for potential inclusion in the
22 National Park System.

23 “(2) In developing the list to be submitted under this
24 subsection, the Secretary shall give consideration to those
25 areas that have the greatest potential to meet the estab-

1 lished criteria of national significance, suitability, and fea-
2 sibility. The Secretary shall give special consideration to
3 themes, sites, and resources not already adequately rep-
4 resented in the National Park System as identified in the
5 National Park System Plan to be developed under section
6 101 of the National Park System Reform Act of 1995.

7 “(3) No study of the potential of an area for inclusion
8 in the National Park System may be initiated after the
9 date of enactment of this subsection, except as provided
10 by specific authorization of an Act of Congress.

11 “(4) Nothing in this Act shall limit the authority of
12 the National Park Service to conduct preliminary resource
13 assessments, gather data on potential study areas, provide
14 technical and planning assistance, prepare or process
15 nominations for administrative designations, update pre-
16 vious studies, or complete reconnaissance surveys of indi-
17 vidual areas requiring a total expenditure of less than
18 \$25,000.

19 “(5) Nothing in this section shall be construed to
20 apply to or to affect or alter the study of any river segment
21 for potential addition to the national wild and scenic rivers
22 system or to apply to or to affect or alter the study of
23 any trail for potential addition to the national trails sys-
24 tem.

1 “(c) REPORT.—(1) The Secretary shall complete the
2 study for each area for potential inclusion in the National
3 Park System within 3 complete fiscal years following the
4 date of enactment of specific legislation providing for the
5 study of such area. Each study under this section shall
6 be prepared with appropriate opportunity for public in-
7 volvement, including at least one public meeting in the vi-
8 cinity of the area under study, and after reasonable efforts
9 to notify potentially affected landowners and State and
10 local governments.

11 “(2) In conducting the study, the Secretary shall con-
12 sider whether the area under study—

13 “(A) possesses nationally significant natural or
14 cultural resources, or outstanding recreational op-
15 portunities, and that the area represents one of the
16 most important examples of a particular resource
17 type in the country; and

18 “(B) is a suitable and feasible addition to the
19 system.

20 “(3) Each study—

21 “(A) shall consider the following factors with
22 regard to the area being studied—

23 “(i) the rarity and integrity of the re-
24 sources;

25 “(ii) the threats to those resources;

1 “(iii) whether similar resources are already
2 protected in the National Park System or in
3 other public or private ownership;

4 “(iv) the public use potential;

5 “(v) the interpretive and educational po-
6 tential;

7 “(vi) costs associated with acquisition, de-
8 velopment and operation;

9 “(vii) the socioeconomic impacts of any
10 designation;

11 “(viii) the level of local and general public
12 support, and

13 “(ix) whether the area is of appropriate
14 configuration to ensure long-term resource pro-
15 tection and visitor use;

16 “(B) shall consider whether direct National
17 Park Service management or alternative protection
18 by other public agencies or the private sector is ap-
19 propriate for the area;

20 “(C) shall identify what alternative or combina-
21 tion of alternatives would in the professional judg-
22 ment of the Director of the National Park Service
23 be most effective and efficient in protecting signifi-
24 cant resources and providing for public enjoyment;
25 and

1 “(D) may include any other information which
2 the Secretary deems to be relevant.

3 “(4) Each study shall be completed in compliance
4 with the National Environmental Policy Act of 1969.

5 “(5) The letter transmitting each completed study to
6 Congress shall contain a recommendation regarding the
7 Secretary’s preferred management option for the area.

8 “(d) NEW AREA STUDY OFFICE.—The Secretary
9 shall establish a single office to be assigned to prepare
10 all new area studies and to implement other functions of
11 this section.

12 “(e) LIST OF AREAS.—At the beginning of each cal-
13 endar year, along with the annual budget submission, the
14 Secretary shall submit to the Committee on Resources of
15 the House of Representatives and to the Committee on
16 Energy and Natural Resources of the United States Sen-
17 ate a list of areas which have been previously studied
18 which contain primarily historical resources, and a list of
19 areas which have been previously studied which contain
20 primarily natural resources, in numerical order of priority
21 for addition to the National Park System. In developing
22 the lists, the Secretary should consider threats to resource
23 values, cost escalation factors, and other factors listed in
24 subsection (c) of this section. The Secretary should only

1 include on the lists areas for which the supporting data
2 is current and accurate.”.

3 **TITLE X—COMMITTEE ON**
4 **TRANSPORTATION AND IN-**
5 **FRASTRUCTURE**
6 **Subtitle A—Water Resources**

7 **SEC. 10001. COMMERCIAL CONCESSIONS AT CORPS OF EN-**
8 **GINEERS PROJECTS.**

9 Notwithstanding part 1 of subtitle C of title IX of
10 this Act, the Secretary of the Army shall not modify any
11 concession service agreement, concession license, or simi-
12 lar instrument (or any policy or procedure relating to such
13 agreement, license, or agreement) except to the extent that
14 such modification is permitted under laws in effect on the
15 day before the date of the enactment of this Act.

16 **SEC. 10002. PROHIBITION ON SALE OF CORPS OF ENGI-**
17 **NEERS PROJECTS.**

18 (a) PROHIBITION.—Notwithstanding part 1 of sub-
19 title B of title IX of this Act, the sale of any project or
20 project feature operated by the Corps of Engineers (in-
21 cluding any dam, lock, reservoir, related transmission and
22 generation structures, equipment, facilities, and real prop-
23 erty) is prohibited.

24 (b) COOPERATION WITH PURCHASERS OF ELECTRIC
25 POWER.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the Secretary of the Army shall cooperate, to the
3 maximum extent practicable, with a non-Federal
4 purchaser of electric power generated at any project
5 under the jurisdiction of the Secretary to facilitate
6 the purchaser's access to, operation of, and mainte-
7 nance, repair, rehabilitation, and replacement of hy-
8 droelectric power facilities at the project.

9 (2) CONTINUED EFFECTIVENESS OF PROJECT
10 PURPOSES.—In carrying out paragraph (1), the Sec-
11 retary shall take such actions as may be necessary
12 to ensure that each project referred to in paragraph
13 (1) continues to operate in accordance with the au-
14 thorized purpose or purposes of the project.

15 **SEC. 10003. FEMA RADIOLOGICAL EMERGENCY PREPARED-**
16 **NESS FEES.**

17 (a) IN GENERAL.—The Director of the Federal
18 Emergency Management Agency may assess and collect
19 fees applicable to persons subject to radiological emer-
20 gency preparedness regulations issued by the Director.

21 (b) REQUIREMENTS.—The assessment and collection
22 of fees by the Director under subsection (a) shall be fair
23 and equitable and shall reflect the full amount of costs
24 to the Agency of providing radiological emergency plan-
25 ning, preparedness, response, and associated services.

1 Such fees shall be assessed by the Director in a manner
2 which reflects the use of resources of the Agency for class-
3 es of regulated persons and the administrative costs of col-
4 lecting such fees.

5 (c) AMOUNT OF FEES.—The aggregate amount of
6 fees assessed under subsection (a) in a fiscal year shall
7 approximate, but not be less than, 100 percent of the
8 amounts anticipated by the Director to be obligated for
9 the radiological emergency preparedness program of the
10 Agency for such fiscal year.

11 (d) DEPOSIT OF FEES IN TREASURY.—Fees received
12 pursuant to subsection (a) shall be deposited in the gen-
13 eral fund of the Treasury as offsetting receipts.

14 (e) EXPIRATION OF AUTHORITY.—The authority of
15 the Director to assess and collect fees under subsection
16 (a) shall expire on September 30, 2002.

17 **Subtitle B—Ocean Shipping** 18 **Reform**

19 **SEC. 10201. SHORT TITLE.**

20 This subtitle may be cited as the “Ocean Shipping
21 Reform Act of 1995”.

22 **CHAPTER 1—OCEAN SHIPPING REFORM**

23 **SEC. 10211. PURPOSES.**

24 Section 2 of the Shipping Act of 1984 (46 U.S.C.
25 App. 1701) is amended—

1 (1) by striking “and” at the end of paragraph
2 (2);

3 (2) by striking the period at the end of para-
4 graph (3) and inserting “; and”; and

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

6 “(4) to permit carriers and shippers to develop
7 transportation arrangements to meet their specific
8 needs.”.

9 **SEC. 10212. DEFINITIONS.**

10 Section 3 of the Shipping Act of 1984 (46 U.S.C.
11 App. 1702) is amended—

12 (1) effective January 1, 1997—

13 (A) by striking paragraph (9); and

14 (B) by redesignating paragraphs (10)
15 through (19) as paragraphs (9) through (18),
16 respectively; and

17 (2) effective June 1, 1997—

18 (A) by striking paragraph (4);

19 (B) in paragraph (7) by striking “a com-
20 mon tariff;” and inserting “a common schedule
21 of transportation rates, charges, classifications,
22 rules, and practices;”;

23 (C) by striking paragraph (10) (as redesign-
24 nated by paragraph (1) of this section);

1 (D) by striking paragraph (13) (as redesignated by paragraph (1) of this section);

3 (E) by striking paragraph (16) (as redesignated by paragraph (1) of this section);

5 (F) by striking paragraph (18) (as redesignated by paragraph (1) of this section) and inserting the following:

8 “(18) ‘ocean freight forwarder’ means a person
9 that—

10 “(A)(i) in the United States, dispatches
11 shipments from the United States via a common carrier and books or otherwise arranges
12 space for those shipments on behalf of shippers;
13 or
14

15 “(ii) processes the documentation or performs related activities incident to those shipments; or
16
17

18 “(B) acts as a common carrier that does
19 not operate the vessels by which the ocean transportation is provided, and is a shipper in
20 its relationship with an ocean common carrier.”;

23 (G) by striking paragraph (21);

24 (H) in paragraph (23)—

1 (i) by striking “or” the second place
2 it appears and inserting a comma; and

3 (ii) by striking the period and insert-
4 ing “, a shippers’ association, or an ocean
5 freight forwarder that accepts responsibil-
6 ity for payment of the ocean freight.”;

7 (I) by striking paragraph (24) and insert-
8 ing the following:

9 “(24) ‘shippers’ association’ means a group of
10 shippers that consolidates or distributes freight, on
11 a nonprofit basis for the members of the group in
12 order to secure carload, truckload, or other volume
13 rates or ocean transportation contracts.”; and

14 (J) by inserting after paragraph (18) (as
15 redesignated by paragraph (1) of this section)
16 the following:

17 “(19) ‘ocean transportation contract’ means a
18 contract in writing separate from the bill of lading
19 or receipt between 1 or more common carriers or a
20 conference and 1 or more shippers to provide speci-
21 fied services under specified rates and conditions.”.

22 **SEC. 10213. AGREEMENTS WITHIN THE SCOPE OF THE ACT.**

23 Effective June 1, 1997, section 4(a) of the Shipping
24 Act of 1984 (46 U.S.C. App. 1703(a)) is amended—

1 (1) in paragraph (5) by striking “non-vessel-op-
2 erating common carriers” and inserting “ocean
3 freight forwarders”; and

4 (2) by striking paragraph (7) and inserting the
5 following:

6 “(7) discuss any matter related to ocean trans-
7 portation contracts, and enter ocean transportation
8 contracts and agreements related to those con-
9 tracts.”.

10 **SEC. 10214. AGREEMENTS.**

11 Section 5 of the Shipping Act of 1984 (46 U.S.C.
12 App. 1704) is amended—

13 (1) effective January 1, 1997—

14 (A) in subsection (b)(4) by striking “at the
15 request of any member, require an independent
16 neutral body to police fully” and inserting
17 “state the provisions, if any, for the policing
18 of”;

19 (B) in subsection (b)(7) by striking “and”
20 at the end;

21 (C) in subsection (b)(8) by striking the pe-
22 riod and inserting “; and”; and

23 (D) by adding at the end of subsection (b)
24 the following:

1 “(9) provide that a member of the conference
2 may enter individual and independent negotiations
3 and may conclude individual and independent service
4 contracts under section 8 of this Act.”;

5 (2) effective June 1, 1997—

6 (A) by striking subsection (b)(8) and in-
7 serting the following:

8 “(8) provide that any member of the conference
9 may take independent action on any rate or service
10 item agreed upon by the conference for transpor-
11 tation provided under section 8(a) of this Act upon
12 not more than 3 business days’ notice to the con-
13 ference, and that the conference will provide the new
14 rate or service item for use by that member, effec-
15 tive no later than 3 business days after receipt of
16 that notice, and by any other member that notifies
17 the conference that it elects to adopt the independ-
18 ent rate or service item on or after its effective date,
19 in lieu of the existing conference provision for that
20 rate or service item;”;

21 (B) in subsection (b)(9) by striking “serv-
22 ice” and inserting “ocean transportation” and
23 by striking the period at the end and inserting
24 “; and”;

1 (C) by adding at the end of subsection (b)
2 the following:

3 “(10) prohibit the conference from—

4 “(A) prohibiting or restricting the mem-
5 bers of the conference from engaging in individ-
6 ual negotiations for ocean transportation con-
7 tracts under section 8(b) with 1 or more ship-
8 pers; and

9 “(B) issuing mandatory rules or require-
10 ments affecting ocean transportation contracts
11 that may be entered by 1 or more members of
12 the conference, except that a conference may
13 require that a member of the conference dis-
14 close the existence of an existing individual
15 ocean transportation contract or negotiations on
16 an ocean transportation contract, when the con-
17 ference enters negotiations on an ocean trans-
18 portation contract with the same shipper.”; and

19 (D) in subsection (e) by striking “carrier
20 that are required to be set forth in a tariff,”
21 and inserting “carrier,”.

22 **SEC. 10215. EXEMPTION FROM ANTITRUST LAWS.**

23 Section 7 of the Shipping Act of 1984 (46 U.S.C.
24 App. 1706) is amended—

1 (1) by striking subsection (a)(6) and inserting
2 the following:

3 “(6) subject to section 20(e)(2) of this Act, any
4 agreement, modification, or cancellation, in effect be-
5 fore the effective date of this Act and any tariff,
6 rate, fare, charge, classification, rule, or regulation
7 explanatory thereof implementing that agreement,
8 modification, or cancellation.”; and

9 (2) in subsection (c)(1) by striking “agency”
10 and inserting “agency, department,”.

11 **SEC. 10216. COMMON AND CONTRACT CARRIAGE.**

12 (a) IN GENERAL.—Effective June 1, 1997—

13 (1) section 502 of the High Seas Driftnet Fish-
14 eries Enforcement Act (46 U.S.C. App. 1707a) is re-
15 pealed; and

16 (2) section 8 of the Shipping Act of 1984 (46
17 U.S.C. App. 1707) is amended to read as follows:

18 **“SEC. 8. COMMON AND CONTRACT CARRIAGE.**

19 “(a) COMMON CARRIAGE.—

20 “(1) A common carrier and a conference shall
21 make available a schedule of transportation rates
22 which shall include the rates, terms, and conditions
23 for transportation services not governed by an ocean
24 transportation contract, and shall provide the sched-
25 ule of transportation rates, in writing, upon the re-

1 quest of any person. A common carrier and a con-
2 ference may assess a reasonable charge for comply-
3 ing with a request for a rate, term, and condition,
4 except that the charge may not exceed the cost of
5 providing the information requested.

6 “(2) A dispute between a common carrier or
7 conference and a person as to the applicability of the
8 rates, terms, and conditions for ocean transportation
9 services shall be decided in an appropriate State or
10 Federal court of competent jurisdiction, unless the
11 parties otherwise agree.

12 “(3) A claim concerning a rate for ocean trans-
13 portation services which involves false billing, false
14 classification, false weighing, false report of weight,
15 or false measurement shall be decided in an appro-
16 priate State or Federal court of competent jurisdic-
17 tion, unless the parties otherwise agree.

18 “(b) CONTRACT CARRIAGE.—

19 “(1) 1 or more common carriers or a conference
20 may enter into an ocean transportation contract
21 with 1 or more shippers. A common carrier may
22 enter into ocean transportation contracts without
23 limitations concerning the number of ocean trans-
24 portation contracts or the amount of cargo or space
25 involved. The status of a common carrier as an

1 ocean common carrier is not affected by the number
2 or terms of ocean transportation contracts entered.

3 “(2) A party to an ocean transportation con-
4 tract entered under this section shall have no duty
5 in connection with services provided under the con-
6 tract other than the duties specified by the terms of
7 the contract.

8 “(3)(A) An ocean transportation contract or the
9 transportation provided under that contract may not
10 be challenged in any court on the grounds that the
11 contract violates a provision of this Act.

12 “(B) The exclusive remedy for an alleged
13 breach of an ocean transportation contract is an ac-
14 tion in an appropriate State or Federal court of
15 competent jurisdiction, unless the parties otherwise
16 agree.

17 “(4) The requirements and prohibitions con-
18 cerning contracting by conferences contained in sec-
19 tions 5(b)(9) and (10) of this Act shall also apply
20 to any agreement among one or more ocean common
21 carriers that is filed under section 5(a) of this Act.”.

22 (b) CONFIDENTIALITY OF CONTRACTS.—Effective
23 January 1, 1998, section 8(b) of the Shipping Act of 1984
24 (46 U.S.C. App. 1707(b)), as amended by subsection (a)

1 of this section, is amended by adding at the end the
2 following:

3 “(5) A contract entered under this section may
4 be made on a confidential basis, upon agreement of
5 the parties. An ocean common carrier that is a
6 member of a conference agreement may not be pro-
7 hibited or restricted from agreeing with 1 or more
8 shippers that the parties to the contract will not dis-
9 close the rates, services, terms, or conditions of that
10 contract to any other member of the agreement, to
11 the conference, to any other carrier, shipper, con-
12 ference, or to any other third party.”.

13 **SEC. 10217. PROHIBITED ACTS.**

14 Section 10 of the Shipping Act of 1984 (46 U.S.C.
15 App. 1709) is amended—

16 (1) effective January 1, 1997, in subsection
17 (b)—

18 (A) by striking paragraph (1) and insert-
19 ing the following:

20 “(1) except for service contracts, subject a per-
21 son, place, port, or shipper to unreasonable discrimi-
22 nation;”; and

23 (B) by striking paragraphs (2), (3), (4),
24 and (8);

1 (2) effective June 1, 1997, by striking sub-
2 section (b) and inserting the following:

3 “(b) COMMON CARRIERS.—No common carrier, ei-
4 ther alone or in conjunction with any other person, directly
5 or indirectly, may—

6 “(1) except for ocean transportation contracts,
7 subject a person, place, port, or shipper to unreason-
8 able discrimination;

9 “(2) retaliate against any shipper by refusing,
10 or threatening to refuse, cargo space accommoda-
11 tions when available, or resort to other unfair or un-
12 justly discriminatory methods because the shipper
13 has patronized another carrier or has filed a com-
14 plaint, or for any other reason;

15 “(3) employ any fighting ship;

16 “(4) subject any particular person, locality,
17 class, or type of shipper or description of traffic to
18 an unreasonable refusal to deal;

19 “(5) refuse to negotiate with a shippers’ asso-
20 ciation;

21 “(6) knowingly and willfully accept cargo from
22 or transport cargo for the account of an ocean
23 freight forwarder that does not have a bond, insur-
24 ance, or other surety as required by section 19;

1 “(7) knowingly and willfully enter into an ocean
2 transportation contract with an ocean freight for-
3 warder or in which an ocean freight forwarder is
4 listed as an affiliate that does not have a bond, in-
5 surance, or other surety as required by section 19;
6 or

7 “(8)(A) knowingly disclose, offer, solicit, or re-
8 ceive any information concerning the nature, kind,
9 quantity, destination, consignee, or routing of any
10 property tendered or delivered to a common carrier
11 without the consent of the shipper or consignee if
12 that information—

13 “(i) may be used to the detriment or preju-
14 dice of the shipper or consignee;

15 “(ii) may improperly disclose its business
16 transaction to a competitor; or

17 “(iii) may be used to the detriment or prej-
18 udice of any common carrier;

19 except that nothing in this paragraph shall be con-
20 strued to prevent providing the information, in re-
21 sponse to legal process, to the United States, or to
22 an independent neutral body operating within the
23 scope of its authority to fulfill the policing obliga-
24 tions of the parties to an agreement effective under
25 this Act. Nor shall it be prohibited for any ocean

1 common carrier that is a party to a conference
2 agreement approved under this Act, or any receiver,
3 trustee, lessee, agent, or employee of that carrier, or
4 any other person authorized by that carrier to re-
5 ceive information, to give information to the con-
6 ference or any person, firm, corporation, or agency
7 designated by the conference or to prevent the con-
8 ference or its designee from soliciting or receiving
9 information for the purpose of determining whether
10 a shipper or consignee has breached an agreement
11 with a conference or for the purpose of determining
12 whether a member of the conference has breached
13 the conference agreement or for the purpose of com-
14 piling statistics of cargo movement, but the use of
15 that information for any other purpose prohibited by
16 this Act or any other Act is prohibited; and

17 “(B) after December 31, 1997, the rates, serv-
18 ices, terms, and conditions of an ocean transpor-
19 tation contract may not be disclosed under this
20 paragraph if the contract has been made on a con-
21 fidential basis under section 8(b) of this Act.

22 The exclusive remedy for a disclosure under this para-
23 graph shall be an action for breach of contract as provided
24 in section 8(b)(3) of this Act.”;

25 (3) effective June 1, 1997—

1 (A) by striking subsection (c)(1) and in-
2 serting the following:

3 “(1) boycott, take any concerted action re-
4 sulting in an unreasonable refusal to deal, or
5 implement a policy or practice that results in
6 an unreasonable refusal to deal;”;

7 (B) in subsection (c)(5) by inserting “as
8 defined in section 3(14)(A) of this Act” after
9 “freight forwarder”; and

10 (C) in subsection (c)(6) by striking “a
11 service contract.” and inserting “an ocean
12 transportation contract.”; and

13 (4) effective June 1, 1997, in subsection (d)(3)
14 by striking “subsection (b) (11), (12), and (16)”
15 and inserting “paragraphs (1), (4), and (8) of sub-
16 section (b)”.

17 **SEC. 10218. REPARATIONS.**

18 Effective June 1, 1997, section 11(g) of the Shipping
19 Act of 1984 (46 U.S.C. App. 1710(g)) is amended—

20 (1) by inserting “or counter-complainant” after
21 “complainant” the second place it appears;

22 (2) by striking “10(b) (5) or (7)” and inserting
23 “10(b) (2) or (3)”; and

24 (3) by striking the last sentence.

1 **SEC. 10219. FOREIGN LAWS AND PRACTICES.**

2 Effective on June 1, 1997, section 10002 of the For-
3 eign Shipping Practices Act of 1988 (46 U.S.C. App.
4 1710a) is amended—

5 (1) in subsection (a)(1)—

6 (A) by striking “‘non-vessel-operating
7 common carrier’,”; and

8 (B) by inserting “‘ocean freight for-
9 warder’,” after “‘ocean common carrier’,”;

10 (2) in subsection (a)(4) by striking “non-vessel-
11 operating common carrier operations,”;

12 (3) in subsection (e)(1) by striking subpara-
13 graphs (B), (C), and (D) and inserting the follow-
14 ing:

15 “(B) suspension, in whole or in part, of the
16 right of an ocean common carrier to operate under
17 any agreement filed with the Secretary, including
18 agreements authorizing preferential treatment at
19 terminals, preferential terminal leases, space char-
20 tering, or pooling of cargo or revenues with other
21 ocean common carriers; and

22 “(C) a fee, not to exceed \$1,000,000 per voy-
23 age.”; and

24 (4) in subsection (h) by striking “section
25 13(b)(5) of the Shipping Act of 1984 (46 U.S.C.
26 App. 1712(b)(5))” and inserting “section 13(b)(2)

1 of the Shipping Act of 1984 (46 U.S.C. App.
2 1712(b)(2))”.

3 **SEC. 10220. PENALTIES.**

4 Effective June 1, 1997, section 13 of the Shipping
5 Act of 1984 (46 U.S.C. App. 1712) is amended—

6 (1) in subsection (b)—

7 (A) by striking paragraphs (1) and (3) and
8 redesignating paragraphs (2), (4), (5), and (6)
9 as paragraphs (1), (2), (3), and (4), respec-
10 tively;

11 (B) by striking paragraph (1), as so redes-
12 ignated, and inserting the following:

13 “(1) If the Secretary finds, after notice and an
14 opportunity for a hearing, that a common carrier
15 has failed to supply information ordered to be pro-
16 duced or compelled by subpoena under section 12 of
17 this Act, the Secretary may request that the Sec-
18 retary of the Treasury refuse or revoke any clear-
19 ance required for a vessel operated by that common
20 carrier. Upon request by the Secretary, the Sec-
21 retary of the Treasury shall, with respect to the ves-
22 sel concerned, refuse or revoke any clearance re-
23 quired by section 4197 of the Revised Statutes of
24 the United States (46 U.S.C. App. 91).”; and

1 (C) in paragraph (3), as so redesignated,
 2 by striking “finds appropriate,” and all that
 3 follows through the period at the end and in-
 4 serting “finds appropriate including the imposi-
 5 tion of the penalties authorized under para-
 6 graph (2).”; and

7 (2) in subsection (f)(1) by striking “section 10
 8 (a)(1), (b)(1), or (b)(4)” and inserting “section
 9 10(a)(1)”.

10 **SEC. 10221. REPORTS.**

11 (a) IN GENERAL.—Effective January 1, 1997, sec-
 12 tion 15 of the Shipping Act of 1984 (46 U.S.C. App.
 13 1714) is amended—

14 (1) in the section heading by striking “**AND**
 15 **CERTIFICATES**”;

16 (2) by striking “(a) REPORTS.—”; and

17 (3) by striking subsection (b).

18 (b) CLERICAL AMENDMENT.—The table of contents
 19 contained in the first section of such Act (46 U.S.C. App.
 20 1701) is amended by striking the item relating to section
 21 15 and inserting the following:

“Sec. 15. Reports.”.

22 **SEC. 10222. REGULATIONS.**

23 Section 17 of the Shipping Act of 1984 (46 U.S.C.
 24 App. 1716) is amended—

25 (1) by striking “(a)”; and

1 (2) by striking subsection (b).

2 **SEC. 10223. REPEAL.**

3 (a) REPEAL.—Section 18 of the Shipping Act of
4 1984 (46 U.S.C. App. 1717) is repealed.

5 (b) CLERICAL AMENDMENT.—The table of contents
6 contained in the first section of such Act (46 U.S.C. App.
7 1701) is amended by striking the item relating to section
8 18.

9 **SEC. 10224. OCEAN FREIGHT FORWARDERS.**

10 Effective June 1, 1997, section 19 of the Shipping
11 Act of 1984 (46 U.S.C. App. 1718) is amended—

12 (1) by striking subsection (a) and inserting the
13 following:

14 “(a) LICENSE.—No person in the United States may
15 act as an ocean freight forwarder unless that person holds
16 a license issued by the Commission. The Commission shall
17 issue a forwarder’s license to any person that the Commis-
18 sion determines to be qualified by experience and char-
19 acter to render forwarding services.”;

20 (2) by redesignating subsections (b), (c), and
21 (d) as subsections (c), (d), and (e), respectively;

22 (3) by inserting after subsection (a) the follow-
23 ing:

24 “(b) FINANCIAL RESPONSIBILITY.—

1 “(1) No person may act as an ocean freight for-
2 warder unless that person furnishes a bond, proof of
3 insurance, or other surety in a form and amount de-
4 termined by the Commission to insure financial re-
5 sponsibility that is issued by a surety company
6 found acceptable by the Secretary of the Treasury.

7 “(2) A bond, insurance, or other surety ob-
8 tained pursuant to this section shall be available to
9 pay any judgment for damages against an ocean
10 freight forwarder arising from its transportation-re-
11 lated activities under this Act or order for reparation
12 issued pursuant to section 11 or 14 of this Act.

13 “(3) An ocean freight forwarder not domiciled
14 in the United States shall designate a resident agent
15 in the United States for receipt of service of judicial
16 and administrative process, including subpoenas.”;

17 (4) in subsection (c), as redesignated by para-
18 graph (2) of this section, by striking “a bond in ac-
19 cordance with subsection (a)(2)” and inserting “a
20 bond, proof of insurance, or other surety in accord-
21 ance with subsection (b)(1)”;

22 (5) in subsection (e), as redesignated by para-
23 graph (2) of this section—

24 (A) by striking paragraph (3) and redesign-
25 nating paragraph (4) as paragraph (3); and

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

2 “(4) No conference or group of 2 or more ocean
3 common carriers in the foreign commerce of the
4 United States that is authorized to agree upon the
5 level of compensation paid to an ocean freight for-
6 warder, as defined in section 3(18)(A) of this Act,
7 may—

8 “(A) deny to any member of the con-
9 ference or group the right, upon notice of not
10 more than 3 business days, to take independent
11 action on any level of compensation paid to an
12 ocean freight forwarder; or

13 “(B) agree to limit the payment of com-
14 pensation to an ocean freight forwarder, as de-
15 fined in section 3(18)(A) of this Act, to less
16 than 1.25 percent of the aggregate of all rates
17 and charges which are applicable under a com-
18 mon schedule of transportation rates provided
19 under section 8(a) of this Act, and which are
20 assessed against the cargo on which the for-
21 warding services are provided.”.

22 **SEC. 10225. EFFECTS ON CERTAIN AGREEMENTS AND CON-**
23 **TRACTS.**

24 Section 20(e) of the Shipping Act of 1984 (46 U.S.C.
25 App. 1719) is amended to read as follows:

1 “(e) SAVINGS PROVISIONS.—

2 “(1) Each service contract entered into by a
3 shipper and an ocean common carrier or conference
4 before the date of the enactment of the Ocean Ship-
5 ping Reform Act of 1995 may remain in full force
6 and effect according to its terms.

7 “(2) This Act and the amendments made by
8 this Act shall not affect any suit—

9 “(A) filed before the date of the enactment
10 of the Ocean Shipping Reform Act of 1995;

11 “(B) with respect to claims arising out of
12 conduct engaged in before the date of the en-
13 actment of the Ocean Shipping Reform Act of
14 1995, filed within 1 year after the date of the
15 enactment of the Ocean Shipping Reform Act
16 of 1995;

17 “(C) with respect to claims arising out of
18 conduct engaged in after the date of the enact-
19 ment of the Ocean Shipping Reform Act of
20 1995 but before January 1, 1997, pertaining to
21 a violation of section 10(b) (1), (2), (3), (4), or
22 (8), as in effect before January 1, 1997, filed
23 by June 1, 1997;

24 “(D) with respect to claims pertaining to
25 the failure of a common carrier or conference to

1 file its tariffs or service contracts in accordance
2 with this Act in the period beginning January
3 1, 1997, and ending June 1, 1997, filed by De-
4 cember 31, 1997; or

5 “(E) with respect to claims arising out of
6 conduct engaged in on or after the date of the
7 enactment of the Ocean Shipping Reform Act
8 of 1995 but before June 1, 1997, filed by De-
9 cember 31, 1997.”.

10 **SEC. 10226. REPEAL.**

11 (a) REPEAL.—Effective June 1, 1997, section 23 of
12 the Shipping Act of 1984 (46 U.S.C. App. 1721) is re-
13 pealed.

14 (b) CLERICAL AMENDMENT.—Effective June 1,
15 1997, the table of contents contained in the first section
16 of such Act (46 U.S.C. App. 1701) is amended by striking
17 the item relating to section 23.

18 **SEC. 10227. MARINE TERMINAL OPERATOR SCHEDULES.**

19 (a) IN GENERAL.—Effective June 1, 1997, the Ship-
20 ping Act of 1984 (46 U.S.C. App. 1701 et seq.) is amend-
21 ed by adding at the end the following:

22 **“SEC. 24. MARINE TERMINAL OPERATOR SCHEDULES.**

23 “A marine terminal operator shall make available to
24 the public a schedule of rates, regulations, and practices,
25 including limitations of liability, pertaining to receiving,

1 delivering, handling, or storing property at its marine ter-
 2 minal. The schedule shall be enforceable as an implied
 3 contract, without proof of actual knowledge of its provi-
 4 sions, for any activity by the marine terminal operator
 5 that is taken to—

6 “(1) efficiently transfer property between trans-
 7 portation modes;

8 “(2) protect property from damage or loss;

9 “(3) comply with any governmental require-
 10 ment; or

11 “(4) store property in excess of the terms of
 12 any other contract or agreement, if any, entered into
 13 by the marine terminal operator.”.

14 (b) CLERICAL AMENDMENT.—The table of contents
 15 contained in the first section of such Act (46 U.S.C. App.
 16 1701) is amended by adding at the end the following:

“Sec. 24. Marine terminal operator schedules.”.

17 **CHAPTER 2—CONTROLLED CARRIERS** 18 **AMENDMENTS**

19 **SEC. 10231. CONTROLLED CARRIERS.**

20 Effective June 1, 1997, section 9 of the Shipping Act
 21 of 1984 (46 U.S.C. App. 1708) is amended—

22 (1)(A) in the first sentence of subsection (a)—

23 (i) by striking “in its tariffs or service con-
 24 tracts filed with the Commission”; and

1 (ii) by striking “in those tariffs or service
2 contracts”; and

3 (B) in the last sentence of subsection (a) by
4 striking “filed by a controlled carrier”;

5 (2) in paragraphs (1) and (2) of subsection (b)
6 by striking “filed” and inserting “published”;

7 (3) in subsection (c) by striking the first sen-
8 tence;

9 (4) by striking subsection (d) and inserting the
10 following:

11 “(d) Within 120 days of the receipt of information
12 requested by the Secretary under this section, the Sec-
13 retary shall determine whether the rates, charges, classi-
14 fications, rules, or regulations of a controlled carrier may
15 be unjust and unreasonable. If so, the Secretary shall
16 issue an order to the controlled carrier to show cause why
17 those rates, charges, classifications, rules, or regulations
18 should not be approved. Pending a determination, the Sec-
19 retary may suspend the rates, charges, classifications,
20 rules, or regulations at any time. No period of suspension
21 may be greater than 180 days. Whenever the Secretary
22 has suspended any rates, charges, classifications, rules, or
23 regulations under this subsection, the affected carrier may
24 publish and, after notification to the Secretary, assess new
25 rates, charges, classifications, rules, or regulations—ex-

1 cept that the Secretary may reject the new rates, charges,
2 classifications, rules, or regulations if the Secretary deter-
3 mines that they are unreasonable.”;

4 (5) in subsection (f) by striking “This” and in-
5 serting “Subject to subsection (g), this”; and

6 (6) by adding at the end the following:

7 “(g) The rate standards, information submissions,
8 remedies, reviews, and penalties in this section shall also
9 apply to ocean common carriers that are not controlled,
10 but who have been determined by the Secretary to be
11 structurally or financially affiliated with nontransporta-
12 tion entities or organizations (government or private) in
13 such a way as to affect their pricing or marketplace behav-
14 ior in an unfair, predatory, or anticompetitive way that
15 disadvantages an ocean common carrier or carriers. The
16 Secretary may make such determinations upon request of
17 any person or upon the Secretary’s own motion, after con-
18 ducting an investigation and a public hearing.

19 “(h) The Secretary shall issue regulations by June
20 1, 1997, that prescribe the procedures and requirements
21 that would govern how price and other information is to
22 be submitted by controlled carriers and carriers subject
23 to determinations made under subsection (g) when such
24 information would be needed to determine whether prices

1 charged by these carriers are unfair, predatory, or anti-
2 competitive.

3 “(i) In any instance where information provided to
4 the Secretary under this section does not result in an af-
5 firmative finding or enforcement action by the Secretary
6 that information may not be made public and shall be ex-
7 empt from disclosure under section 552 of title 5, United
8 States Code, except as may be relevant to an administra-
9 tive or judicial action or proceeding. This section does not
10 prevent disclosure to either body of Congress or to a duly
11 authorized committee or subcommittee of Congress.”.

12 **SEC. 10232. NEGOTIATING STRATEGY TO REDUCE GOVERN-**
13 **MENT OWNERSHIP AND CONTROL OF COM-**
14 **MON CARRIERS.**

15 Not later than January 1, 1997, the Secretary of
16 Transportation shall develop, submit to Congress, and
17 begin implementing a negotiation strategy to persuade for-
18 eign governments to divest themselves of ownership and
19 control of ocean common carriers (as that term is defined
20 in section 3(18) of the Shipping Act of 1984 (46 U.S.C.
21 App. 1702)).

22 **SEC. 10233. ANNUAL REPORT BY THE SECRETARY.**

23 Not later than September 30, 1998, and annually
24 thereafter, the Secretary shall report to Congress on the
25 actions taken under the Foreign Shipping Practices Act

1 (46 U.S.C. App. 1708), section 9 of the Shipping Act of
2 1984 (46 U.S.C. App. 1708), and section 10232 of this
3 Act and the effect on United States maritime employment
4 of laws, rules, regulations, policies, or practices of foreign
5 governments, or any practices of foreign carriers or other
6 persons providing maritime or maritime-related services in
7 a foreign country that result in the existence of conditions
8 that adversely affect the operations of United States car-
9 riers in United States oceanborne trade.

10 **CHAPTER 3—ELIMINATION OF THE**
11 **FEDERAL MARITIME COMMISSION**

12 **SEC. 10241. PLAN FOR AGENCY TERMINATION.**

13 (a) IN GENERAL.—No later than 30 days after the
14 date of the enactment of this Act, the Director of the Of-
15 fice of Management and Budget, in consultation with the
16 Secretary of Transportation, shall submit to Congress a
17 plan to eliminate the Federal Maritime Commission no
18 later than October 1, 1997. The plan shall include a time-
19 table for the transfer of remaining functions of the Fed-
20 eral Maritime Commission to the Secretary of Transpor-
21 tation beginning as soon as feasible in fiscal year 1996.
22 The plan shall also address matters related to personnel
23 and other resources necessary for the Secretary of Trans-
24 portation to perform the remaining functions of the Fed-
25 eral Maritime Commission.

1 (b) IMPLEMENTATION.—The Director of the Office of
2 Management and Budget shall implement the plan to
3 eliminate the Federal Maritime Commission submitted to
4 Congress under subsection (a) beginning as soon as fea-
5 sible in fiscal year 1996.

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated such sums as may be
8 necessary to carry out this subtitle and the amendments
9 made by this subtitle.

10 **Subtitle C—Midewin National**
11 **Tallgrass Prairie**

12 **CHAPTER 1—GENERAL PROVISIONS**

13 **SEC. 10301. SHORT TITLE.**

14 This subtitle may be cited as the “Illinois Land Con-
15 servation Act of 1995”.

16 **SEC. 10302. DEFINITIONS.**

17 For purposes of this subtitle, the following definitions
18 apply:

19 (1) ADMINISTRATOR.—The term “Adminis-
20 trator” means the Administrator of the United
21 States Environmental Protection Agency.

22 (2) AGRICULTURAL PURPOSES.—The term “ag-
23 ricultural purposes” means the use of land for row
24 crops, pasture, hay, and grazing.

1 (3) ARSENAL.—The term “Arsenal” means the
2 Joliet Army Ammunition Plant located in the State
3 of Illinois.

4 (4) CERCLA.—The term “CERCLA” means
5 the Comprehensive Environmental Response, Com-
6 pensation, and Liability Act of 1980 (42 U.S.C.
7 9601 et seq.).

8 (5) DEFENSE ENVIRONMENTAL RESTORATION
9 PROGRAM.—The term “Defense Environmental Res-
10 toration Program” means the program of environ-
11 mental restoration for defense installations estab-
12 lished by the Secretary of Defense under section
13 2701 of title 10, United States Code.

14 (6) ENVIRONMENTAL LAW.—The term “envi-
15 ronmental law” means all applicable Federal, State,
16 and local laws, regulations, and requirements related
17 to protection of human health, natural and cultural
18 resources, or the environment, including CERCLA,
19 the Solid Waste Disposal Act (42 U.S.C. 6901 et
20 seq.), the Federal Water Pollution Control Act (33
21 U.S.C. 1251 et seq.), the Clean Air Act (42 U.S.C.
22 7401 et seq.), the Federal Insecticide, Fungicide,
23 and Rodenticide Act (7 U.S.C. 136 et seq.), the
24 Toxic Substances Control Act (15 U.S.C. 2601 et

1 seq.), and the Safe Drinking Water Act (42 U.S.C.
2 300f et seq.).

3 (7) HAZARDOUS WASTE.—The term “hazardous
4 substance” has the meaning given such term by sec-
5 tion 101(14) of CERCLA (42 U.S.C. 9601(14)).

6 (8) MNP.—The term “MNP” means the
7 Midewin National Tallgrass Prairie established pur-
8 suant to section 10314 and managed as a part of
9 the National Forest System.

10 (9) NATIONAL CEMETERY.—The term “national
11 cemetery” means a cemetery established and oper-
12 ated as part of the National Cemetery System of the
13 Department of Veterans Affairs and subject to the
14 provisions of chapter 24 of title 38, United States
15 Code.

16 (10) PERSON.—The term “person” has the
17 meaning given such term by section 101(21) of
18 CERCLA (42 U.S.C. 9601(21)).

19 (11) POLLUTANT OR CONTAMINANT.—The term
20 “pollutant or contaminant” has the meaning given
21 such term by section 101(33) of CERCLA (42
22 U.S.C. 9601(33)).

23 (12) RELEASE.—The term “release” has the
24 meaning given such term by section 101(22) of
25 CERCLA (42 U.S.C. 9601(22)).

1 (13) RESPONSE ACTION.—The term “response
2 action” has the meaning given the term “response”
3 by section 101(25) of CERCLA (42 U.S.C.
4 9601(25)).

5 **CHAPTER 2—CONVERSION OF JOLIET ARMY AM-**
6 **MUNITION PLANT TO MIDWIN NATIONAL**
7 **TALLGRASS PRAIRIE**

8 **SEC. 10311. PRINCIPLES OF TRANSFER.**

9 (a) LAND USE PLAN.—The Congress ratifies in prin-
10 ciple the proposals generally identified by the land use
11 plan which was developed by the Joliet Arsenal Citizen
12 Planning Commission and unanimously approved on May
13 30, 1995.

14 (b) TRANSFER WITHOUT REIMBURSEMENT.—The
15 area constituting the Midewin National Tallgrass Prairie
16 shall be transferred, without reimbursement, to the Sec-
17 retary of Agriculture.

18 (c) MANAGEMENT OF MNP.—Management by the
19 Secretary of Agriculture of those portions of the Arsenal
20 transferred to the Secretary under this subtitle shall be
21 in accordance with sections 10314 and 10315 regarding
22 the Midewin National Tallgrass Prairie.

23 (d) SECURITY MEASURES.—The Secretary of the
24 Army and the Secretary of Agriculture shall each provide
25 and maintain physical and other security measures on

1 such portion of the Arsenal as is under the administrative
2 jurisdiction of such Secretary. Such security measures
3 (which may include fences and natural barriers) shall in-
4 clude measures to prevent members of the public from
5 gaining unauthorized access to such portions of the Arse-
6 nal as are under the administrative jurisdiction of such
7 Secretary and that may endanger health or safety.

8 (e) COOPERATIVE AGREEMENTS.—The Secretary of
9 the Army, the Secretary of Agriculture, and the Adminis-
10 trator are individually and collectively authorized to enter
11 into cooperative agreements and memoranda of under-
12 standing among each other and with other affected Fed-
13 eral agencies, State and local governments, private organi-
14 zations, and corporations to carry out the purposes for
15 which the Midewin National Tallgrass Prairie is estab-
16 lished.

17 (f) INTERIM ACTIVITIES OF THE SECRETARY OF AG-
18 RICULTURE.—Prior to transfer and subject to such rea-
19 sonable terms and conditions as the Secretary of the Army
20 may prescribe, the Secretary of Agriculture may enter
21 upon the Arsenal property for purposes related to plan-
22 ning, resource inventory, fish and wildlife habitat manipu-
23 lation (which may include prescribed burning), and other
24 such activities consistent with the purposes for which the
25 Midewin National Tallgrass Prairie is established.

1 **SEC. 10312. TRANSFER OF MANAGEMENT RESPONSIBIL-**
2 **ITIES AND JURISDICTION OVER ARSENAL.**

3 (a) INITIAL TRANSFER OF JURISDICTION.—Within 6
4 months after the date of the enactment of this Act, the
5 Secretary of the Army shall effect the transfer of those
6 portions of the Arsenal property identified for transfer to
7 the Secretary of Agriculture pursuant to subsection (d).
8 The Secretary of the Army shall transfer to the Secretary
9 of Agriculture only those portions of the Arsenal for which
10 the Secretary of the Army and the Administrator concur
11 that no further action is required under any environmental
12 law and which therefore have been eliminated from the
13 areas to be further studied pursuant to the Defense Envi-
14 ronmental Restoration Program for the Arsenal. Within
15 4 months after the date of the enactment of this Act, the
16 Secretary of the Army and the Administrator shall provide
17 to the Secretary of Agriculture all existing documentation
18 supporting such finding and all existing information relat-
19 ing to the environmental conditions of the portions of the
20 Arsenal to be transferred to the Secretary of Agriculture
21 pursuant to this subsection.

22 (b) ADDITIONAL TRANSFERS.—The Secretary of the
23 Army shall transfer to the Secretary of Agriculture in ac-
24 cordance with section 10316(c) any portion of the prop-
25 erty generally identified in subsection (d) and not trans-
26 ferred under subsection (a) after the Secretary of the

1 Army and the Administrator concur that no further action
2 is required at that portion of property under any environ-
3 mental law and that such portion is therefore eliminated
4 from the areas to be further studied pursuant to the De-
5 fense Environmental Restoration Program for the Arse-
6 nal. At least 2 months before any transfer under this sub-
7 section, the Secretary of the Army and the Administrator
8 shall provide to the Secretary of Agriculture all existing
9 documentation supporting such finding and all existing in-
10 formation relating to the environmental conditions of the
11 portion of the Arsenal to be transferred. Transfer of juris-
12 diction pursuant to this subsection may be accomplished
13 on a parcel-by-parcel basis.

14 (c) EFFECT ON CONTINUED RESPONSIBILITIES AND
15 LIABILITY OF SECRETARY OF THE ARMY.—Subsections
16 (a) and (b), and their requirements, shall not in any way
17 affect the responsibilities and liabilities of the Secretary
18 of the Army specified in section 10313.

19 (d) IDENTIFICATION OF PORTIONS FOR TRANSFER
20 FOR MNP.—The lands to be transferred to the Secretary
21 of Agriculture under subsections (a) and (b) shall be iden-
22 tified on a map or maps which shall be agreed to by the
23 Secretary of the Army and the Secretary of Agriculture.
24 Generally, the land to be transferred to the Secretary of
25 Agriculture shall be all the real property and improve-

1 ments comprising the Arsenal, except for lands and facili-
2 ties described in subsection (e) or designated for transfer
3 or disposal under section 10316 or chapter 3.

4 (e) PROPERTY USED FOR ENVIRONMENTAL CLEAN-
5 UP.—

6 (1) RETENTION.—The Secretary of the Army
7 shall retain jurisdiction, authority, and control over
8 real property at the Arsenal to be used for—

9 (A) water treatment;

10 (B) the treatment, storage, or disposal of
11 any hazardous substance, pollutant or contami-
12 nant, hazardous material, or petroleum prod-
13 ucts or their derivatives;

14 (C) other purposes related to any response
15 action at the Arsenal; and

16 (D) other actions required at the Arsenal
17 under any environmental law to remediate con-
18 tamination or conditions of noncompliance with
19 any environmental law.

20 (2) CONDITIONS.—The Secretary of the Army
21 shall consult with the Secretary of Agriculture re-
22 garding the identification and management of the
23 real property retained under this subsection and en-
24 sure that activities carried out on that property are
25 consistent, to the extent practicable, with the pur-

1 poses for which the Midewin National Tallgrass
2 Prairie is established, as specified in section
3 10314(c), and with the other provisions of sections
4 10314 and 10315.

5 (3) PRIORITY OF RESPONSE ACTIONS.—In the
6 case of any conflict between management of the
7 property by the Secretary of Agriculture and any re-
8 sponse action, or any other action required under
9 any other environmental law, including actions to re-
10 mediate petroleum products of their derivatives, the
11 response action or other action shall take priority.

12 (f) SURVEYS.—All costs of necessary surveys for the
13 transfer of jurisdiction of Arsenal property from the Sec-
14 retary of the Army to the Secretary of Agriculture shall
15 be borne by the Secretary of Agriculture.

16 **SEC. 10313. CONTINUATION OF RESPONSIBILITY AND LI-**
17 **ABILITY OF SECRETARY OF THE ARMY FOR**
18 **ENVIRONMENTAL CLEANUP.**

19 (a) RESPONSIBILITY.—The liabilities and responsibil-
20 ities of the Secretary of the Army under any environ-
21 mental law shall not transfer under any circumstances to
22 the Secretary of Agriculture as a result of the property
23 transfers made under section 10312 or section 10316, or
24 as a result of interim activities of the Secretary of Agri-
25 culture on Arsenal property under section 10311(f). With

1 respect to the real property at the Arsenal, the Secretary
2 of the Army shall remain liable for and continue to carry
3 out—

4 (1) all response actions required under
5 CERCLA at or related to the property;

6 (2) all remediation actions required under any
7 other environmental law at or related to the prop-
8 erty; and

9 (3) all actions required under any other envi-
10 ronmental law to remediate petroleum products or
11 their derivatives (including motor oil and aviation
12 fuel) at or related to the property.

13 (b) LIABILITY.—

14 (1) IN GENERAL.—Nothing in this Act shall be
15 construed to effect, modify, amend, repeal, alter,
16 limit, or otherwise change, directly or indirectly, the
17 responsibilities or liabilities under any environmental
18 law of any person (including the Secretary of Agri-
19 culture), except as provided in paragraph (3) with
20 respect to the Secretary of Agriculture.

21 (2) LIABILITY OF SECRETARY OF THE ARMY.—

22 The Secretary of the Army shall retain any obliga-
23 tion or other liability at the Arsenal that the Sec-
24 retary may have under CERCLA and other environ-
25 mental laws. Following transfer of any portions of

1 the Arsenal pursuant to this Act, the Secretary of
2 the Army shall be accorded all easements and access
3 to such property as may be reasonably required to
4 carry out such obligation or satisfy such liability.

5 (3) SPECIAL RULES FOR SECRETARY OF AGRICULTURE.—The Secretary of Agriculture shall not
6 be responsible or liable under any environmental law
7 for matters which are in any way related directly or
8 indirectly to activities of the Secretary of the Army,
9 or any party acting under the authority of the Sec-
10 retary in connection with the Defense Environmental
11 Restoration Program, at the Arsenal and which are
12 for any of the following:

13 (A) Costs of response actions required
14 under CERCLA at or related to the Arsenal.

15 (B) Costs, penalties, or fines related to
16 noncompliance with any environmental law at
17 or related to the Arsenal or related to the pres-
18 ence, release, or threat of release of any hazard-
19 ous substance, pollutant, contaminant, hazard-
20 ous waste or hazardous material of any kind at
21 or related to the Arsenal, including contamina-
22 tion resulting from migration of hazardous sub-
23 stances, pollutants, contaminants, hazardous
24 materials, or petroleum products or their de-
25

1 derivatives disposed during activities of the De-
2 partment of the Army.

3 (C) Costs of actions necessary to remedy
4 such noncompliance or other problem specified
5 in subparagraph (B).

6 (c) PAYMENT OF RESPONSE ACTION COSTS.—Any
7 Federal department or agency that had or has operations
8 at the Arsenal resulting in the release or threatened re-
9 lease of hazardous substances, pollutants, or contaminants
10 shall pay the cost of related response actions, or related
11 actions under other environmental laws, including actions
12 to remediate petroleum products or their derivatives.

13 (d) CONSULTATION.—The Secretary of Agriculture
14 shall consult with the Secretary of the Army with respect
15 to the Secretary of Agriculture's management of real prop-
16 erty included in the Midewin National Tallgrass Prairie
17 subject to any response action or other action at the Arse-
18 nal being carried out by or under the authority of the Sec-
19 retary of the Army under any environmental law. The Sec-
20 retary of Agriculture shall consult with the Secretary of
21 the Army prior to undertaking any activities on the
22 Midewin National Tallgrass Prairie that may disturb the
23 property to ensure that such activities will not exacerbate
24 contamination problems or interfere with performance by
25 the Secretary of the Army of response actions at the prop-

erty. In carrying out response actions at the Arsenal, the Secretary of the Army shall consult with the Secretary of Agriculture to ensure that such actions are carried out in a manner consistent with the purposes for which the Midewin National Tallgrass Prairie is established, as specified in section 10314(c), and the other provisions of sections 10314 and 10315.

**SEC. 10314. ESTABLISHMENT AND ADMINISTRATION OF
MIDEWIN NATIONAL TALLGRASS PRAIRIE.**

(a) ESTABLISHMENT.—On the effective date of the initial transfer of jurisdiction of portions of the Arsenal to the Secretary of Agriculture under section 10312(a), the Secretary of Agriculture shall establish the Midewin National Tallgrass Prairie. The MNP shall—

(1) be administered by the Secretary of Agriculture; and

(2) consist of the real property so transferred and such other portions of the Arsenal subsequently transferred under section 10312(b) or 10316.

(b) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary of Agriculture shall manage the Midewin National Tallgrass Prairie as a part of the National Forest System in accordance with this Act and the laws, rules, and regulations pertaining to the National Forest System, ex-

1 cept that the Bankhead-Jones Farm Tenant Act of
2 1937 (7 U.S.C. 1010–1012) shall not apply to the
3 MNP.

4 (2) INITIAL MANAGEMENT ACTIVITIES.—In
5 order to expedite the administration and public use
6 of the Midewin National Tallgrass Prairie, the Sec-
7 retary of Agriculture may conduct management ac-
8 tivities at the MNP to effectuate the purposes for
9 which the MNP is established, as specified in sub-
10 section (c), in advance of the development of a land
11 and resource management plan for the MNP.

12 (3) LAND AND RESOURCE MANAGEMENT
13 PLAN.—In developing a land and resource manage-
14 ment plan for the Midewin National Tallgrass Prai-
15 rie, the Secretary of Agriculture shall consult with
16 the Illinois Department of Conservation and local
17 governments adjacent to the MNP and provide an
18 opportunity for public comment. Any parcel trans-
19 ferred to the Secretary of Agriculture under this Act
20 after the development of a land and resource man-
21 agement plan for the MNP may be managed in ac-
22 cordance with such plan without need for an amend-
23 ment to the plan.

24 (c) PURPOSES OF THE MIDEWIN NATIONAL
25 TALLGRASS PRAIRIE.—The Midewin National Tallgrass

1 Prairie is established to be managed for National Forest
2 System purposes, including the following:

3 (1) To manage the land and water resources of
4 the MNP in a manner that will conserve and en-
5 hance the native populations and habitats of fish,
6 wildlife, and plants.

7 (2) To provide opportunities for scientific, envi-
8 ronmental, and land use education and research.

9 (3) To allow the continuation of agricultural
10 uses of lands within the MNP consistent with sec-
11 tion 10315(b).

12 (4) To provide a variety of recreation opportu-
13 nities that are not inconsistent with the preceding
14 purposes.

15 (d) OTHER LAND ACQUISITION FOR MNP.—

16 (1) LAND ACQUISITION FUNDS.—Notwithstand-
17 ing section 7 of the Land and Water Conservation
18 Fund Act of 1965 (16 U.S.C. 460l–9), monies ap-
19 propriated from the Land and Water Conservation
20 Fund established under section 2 of such Act (16
21 U.S.C. 460l–5) shall be available for acquisition of
22 lands and interests in land for inclusion in the
23 Midewin National Tallgrass Prairie.

24 (2) ACQUISITION OF PRIVATE LANDS.—Acquisi-
25 tion of private lands for inclusion in the Midewin

1 National Tallgrass Prairie shall be on a willing seller
2 basis only.

3 (e) COOPERATION WITH STATES, LOCAL GOVERN-
4 MENTS AND OTHER ENTITIES.—In the management of
5 the Midewin National Tallgrass Prairie, the Secretary of
6 Agriculture is authorized and encouraged to cooperate
7 with appropriate Federal, State, and local governmental
8 agencies, private organizations and corporations. Such co-
9 operation may include cooperative agreements as well as
10 the exercise of the existing authorities of the Secretary
11 under the Cooperative Forestry Assistance Act of 1978
12 and the Forest and Rangeland Renewable Resources Re-
13 search Act of 1978. The objects of such cooperation may
14 include public education, land and resource protection and
15 cooperative management among government, corporate,
16 and private landowners in a manner which furthers the
17 purposes for which the Midewin National Tallgrass Prairie
18 is established.

19 **SEC. 10315. SPECIAL MANAGEMENT REQUIREMENTS FOR**
20 **MIDEWIN NATIONAL TALLGRASS PRAIRIE.**

21 (a) PROHIBITION AGAINST THE CONSTRUCTION OF
22 NEW THROUGH ROADS.—No new construction of any
23 highway, public road, or any part of the interstate system,
24 whether Federal, State, or local, shall be permitted
25 through or across any portion of the Midewin National

1 Tallgrass Prairie. Nothing herein shall preclude construc-
2 tion and maintenance of roads for use within the MNP
3 or the granting of authorizations for utility rights-of-way
4 under applicable Federal law or preclude such access as
5 is necessary. Nothing herein shall preclude necessary ac-
6 cess by the Secretary of the Army for purposes of restora-
7 tion and cleanup as provided in this subtitle.

8 (b) AGRICULTURAL LEASES AND SPECIAL USE AU-
9 THORIZATIONS.—Within the Midewin National Tallgrass
10 Prairie, use of the lands for agricultural purposes shall
11 be permitted subject to the following terms and conditions:

12 (1) If, at the time of transfer of jurisdiction
13 under section 10312, there exists any lease issued by
14 the Department of the Army, Department of De-
15 fense, or any other agency thereof, for agricultural
16 purposes upon the parcel transferred, the Secretary
17 of Agriculture, upon transfer of jurisdiction, shall
18 convert the lease to a special use authorization, the
19 terms of which shall be identical in substance to the
20 lease that existed prior to the transfer, including the
21 expiration date and any payments owed the United
22 States.

23 (2) The Secretary of Agriculture may issue spe-
24 cial use authorizations to persons for use of the
25 Midewin National Tallgrass Prairie for agricultural

1 purposes. Special use authorizations issued pursuant
2 to this paragraph shall include terms and conditions
3 as the Secretary of Agriculture may deem appro-
4 priate.

5 (3) No agricultural special use authorization
6 shall be issued for agricultural purposes which has
7 a term extending beyond the date 20 years from the
8 date of the enactment of this Act, except that noth-
9 ing in this Act shall preclude the Secretary of Agri-
10 culture from issuing agricultural special use author-
11 izations or grazing permits which are effective after
12 20 years from the date of the enactment of this Act
13 for purposes primarily related to erosion control,
14 provision for food and habitat for fish and wildlife,
15 or other resource management activities consistent
16 with the purposes of the Midewin National Tallgrass
17 Prairie.

18 (c) TREATMENT OF RENTAL FEES.—Monies received
19 pursuant to subsection (b) shall be subject to distribution
20 to the State of Illinois and affected counties pursuant to
21 the Acts of May 23, 1908, and March 1, 1911 (16 U.S.C.
22 500). All such monies not distributed pursuant to such
23 Acts shall be deposited into the Treasury and shall con-
24 stitute a special fund, which shall be available to the Sec-
25 retary of Agriculture, in such amounts as are provided in

1 advance in appropriation Acts, to cover the cost to the
2 United States of such prairie-improvement work as the
3 Secretary may direct. Any portion of any deposit made
4 to the fund which the Secretary determines to be in excess
5 of the cost of doing such work shall be transferred, upon
6 such determination, to miscellaneous receipts, Forest
7 Service Fund, as a National Forest receipt of the fiscal
8 year in which such transfer is made.

9 (d) USER FEES.—The Secretary of Agriculture is au-
10 thorized to charge reasonable fees for the admission, occu-
11 pancy, and use of the Midewin National Tallgrass Prairie
12 and may prescribe a fee schedule providing for reduced,
13 or a waiver of, fees for persons or groups engaged in au-
14 thorized activities including those providing volunteer
15 services, research, or education. The Secretary shall per-
16 mit admission, occupancy, and use at no additional charge
17 for persons possessing a valid Golden Eagle Passport or
18 Golden Age Passport.

19 (e) SALVAGE OF IMPROVEMENTS.—The Secretary of
20 Agriculture may sell for salvage value any facilities and
21 improvements which have been transferred to the Sec-
22 retary pursuant to this subtitle.

23 (f) TREATMENT OF USER FEES AND SALVAGE RE-
24 CEIPTS.—Monies collected pursuant to subsections (d)
25 and (e) shall be covered into the Treasury and constitute

1 a special fund to be known as the Midewin National
2 Tallgrass Prairie Restoration Fund. Deposits in the
3 Midewin National Tallgrass Prairie Restoration Fund
4 shall be available to the Secretary of Agriculture, in such
5 amounts as are provided in advance in appropriation Acts,
6 for restoration and administration of the Midewin Na-
7 tional Tallgrass Prairie, including construction of a visitor
8 and education center, restoration of ecosystems, construc-
9 tion of recreational facilities (such as trails), construction
10 of administrative offices, and operation and maintenance
11 of the MNP.

12 **SEC. 10316. SPECIAL DISPOSAL RULES FOR CERTAIN ARSE-**
13 **NAL PARCELS INTENDED FOR MNP.**

14 (a) DESCRIPTION OF PARCELS.—Except as provided
15 in subsection (b), the following areas are designated for
16 transfer or disposal pursuant to subsection (c):

17 (1) Manufacturing Area—Study Area 1—
18 Southern Ash Pile, Study Area 2—Explosive Burn-
19 ing Ground, Study Area 3—Flashing Grounds,
20 Study Area 4—Lead Azide Area, Study Area 10—
21 Toluene Tank Farms, Study Area 11—Landfill,
22 Study Area 12—Sellite Manufacturing Area, Study
23 Area 14—Former Pond Area, Study Area 15—Sew-
24 age Treatment Plant.

1 (2) Load Assemble Packing Area—Group 61:
2 Study Area L1, Explosive Burning Ground: Study
3 Area L2, Demolition Area: Study Area L3, Landfill
4 Area: Study Area L4, Salvage Yard: Study Area L5,
5 Group 1: Study Area L7, Group 2: Study Area L8,
6 Group 3: Study Area L9, Group 3A: Study Area
7 L10, Group 4: Study Area L14, Group 5: Study
8 Area L15, Group 8: Study Area L18, Group 9:
9 Study Area L19, Group 27: Study Area L23, Group
10 62: Study Area L25, PVC Area: Study Area L33,
11 including all associated inventoried buildings and
12 structures as identified in the Joliet Army Ammuni-
13 tion Plant Plantwide Building and Structures Re-
14 port and the contaminate study sites for both the
15 Manufacturing and Load Assembly and Packing
16 sides of the Joliet Arsenal as delineated in the
17 Dames and Moore Final Report, Proposed Future
18 Land Use Map, dated May 30, 1995.

19 (b) EXCEPTION.—The parcels described in subsection
20 (a) shall not include the property at the Arsenal des-
21 ignated for disposal under chapter 3.

22 (c) INITIAL OFFER TO SECRETARY OF AGRICULTURE.—Within 6 months after the construction and
23 installation of any remedial design approved by the Ad-
24 ministrators and required for any lands described in sub-
25

1 section (a), the Administrator shall provide to the Sec-
2 retary of Agriculture all existing information regarding
3 the implementation of such remedy, including information
4 regarding its effectiveness. Within 3 months after the Ad-
5 ministrator provides such information to the Secretary of
6 Agriculture, the Secretary of the Army shall offer the Sec-
7 retary of Agriculture the option of accepting a transfer
8 of the areas described in subsection (a), without reim-
9 bursement, to be added to the Midewin National Tallgrass
10 Prairie and subject to the terms and conditions, including
11 the limitations on liability, contained in this subtitle. In
12 the event the Secretary of Agriculture declines such offer,
13 the property may be disposed of as the Secretary of the
14 Army would ordinarily dispose of such property under ap-
15 plicable provisions of law. Any sale or other transfer of
16 property conducted pursuant to this subsection may be ac-
17 complished on a parcel-by-parcel basis.

18 **CHAPTER 3—OTHER REAL PROPERTY DISPOSALS**
19 **INVOLVING JOLIET ARMY AMMUNITION PLANT**
20 **SEC. 10321. DISPOSAL OF CERTAIN REAL PROPERTY AT AR-**
21 **SENAL FOR A NATIONAL CEMETERY.**

22 (a) **TRANSFER REQUIRED.**—Subject to section
23 10331, the Secretary of the Army shall transfer, without
24 reimbursement, to the Secretary of Veterans Affairs the

1 parcel of real property at the Arsenal described in sub-
2 section (b) for use as a national cemetery.

3 (b) DESCRIPTION OF PROPERTY.—The real property
4 to be transferred under subsection (a) is a parcel of real
5 property at the Arsenal consisting of approximately 982
6 acres, the approximate legal description of which includes
7 part of sections 30 and 31 Jackson Township, T34N
8 R10E, and part of sections 25 and 36 Channahon Town-
9 ship, T34N R9E, Will County, Illinois, as depicted in the
10 Arsenal Land Use Concept.

11 (c) SECURITY MEASURES.—The Secretary of Veter-
12 ans Affairs shall provide and maintain physical and other
13 security measures on the real property transferred under
14 subsection (a). Such security measures (which may include
15 fences and natural barriers) shall include measures to pre-
16 vent members of the public from gaining unauthorized ac-
17 cess to the portion of the Arsenal that is under the admin-
18 istrative jurisdiction of the Secretary of Veterans Affairs
19 and that may endanger health or safety.

20 (d) SURVEYS.—All costs of necessary surveys for the
21 transfer of jurisdiction of Arsenal properties from the Sec-
22 retary of the Army to the Secretary of Veterans Affairs
23 shall be borne solely by the Secretary of Veterans Affairs.

1 **SEC. 10322. DISPOSAL OF CERTAIN REAL PROPERTY AT AR-**
2 **SENAL FOR A COUNTY LANDFILL.**

3 (a) **TRANSFER REQUIRED.**—Subject to section
4 10331, the Secretary of the Army shall transfer, without
5 compensation, to Will County, Illinois, all right, title, and
6 interest of the United States in and to the parcel of real
7 property at the Arsenal described in subsection (b), which
8 shall be operated as a landfill by the County.

9 (b) **DESCRIPTION OF PROPERTY.**—The real property
10 to be transferred under subsection (a) is a parcel of real
11 property at the Arsenal consisting of approximately 455
12 acres, the approximate legal description of which includes
13 part of sections 8 and 17, Florence Township, T33N
14 R10E, Will County, Illinois, as depicted in the Arsenal
15 Land Use Concept.

16 (c) **CONDITION ON CONVEYANCE.**—The conveyance
17 shall be subject to the condition that the Army (or its
18 agents or assigns) may use the landfill established on the
19 real property transferred under subsection (a) for the dis-
20 posal of construction debris, refuse, and other
21 nonhazardous materials from the restoration and cleanup
22 of the Arsenal property as provided for in this Act. Such
23 use shall be at no cost to the Federal Government.

24 (d) **REVERSIONARY INTEREST.**—During the 5-year
25 period beginning on the date the Secretary of the Army
26 makes the conveyance under subsection (a), if the Sec-

1 retary of the Army determines that the conveyed real
2 property is not being operated as a landfill or that Will
3 County, Illinois, is in violation of the condition specified
4 in subsection (c), then, at the option of the United States,
5 all right, title, and interest in and to the property, includ-
6 ing improvements thereon, shall be subject to reversion to
7 the United States. In the event the United States exercises
8 its option to cause the property to revert, the United
9 States shall have the right of immediate entry onto the
10 property. Any determination of the Secretary of the Army
11 under this subsection shall be made on the record after
12 an opportunity for a hearing.

13 (e) SURVEYS.—All costs of necessary surveys for the
14 transfer of real property under this section shall be borne
15 by Will County, Illinois.

16 (f) ADDITIONAL TERMS AND CONDITIONS.—The Sec-
17 retary of the Army may require such additional terms and
18 conditions in connection with the conveyance under this
19 section as the Secretary of the Army considers appropriate
20 to protect the interests of the United States.

21 **SEC. 10323. DISPOSAL OF CERTAIN REAL PROPERTY AT AR-**
22 **SENAL FOR ECONOMIC DEVELOPMENT.**

23 (a) TRANSFER REQUIRED.—Subject to section
24 10331, the Secretary of the Army shall transfer to the
25 State of Illinois, all right, title, and interest of the United

1 States in and to the parcel of real property at the Arsenal
2 described in subsection (b), which shall be used for eco-
3 nomic redevelopment to replace all or a part of the eco-
4 nomic activity lost at the Arsenal.

5 (b) DESCRIPTION OF PROPERTY.—The real property
6 to be transferred under subsection (a) is a parcel of real
7 property at the Arsenal consisting of—

8 (1) approximately 1,900 acres, the approximate
9 legal description of which includes part of section
10 30, Jackson Township, Township 34 North, Range
11 10 East, and sections or parts of sections 24, 25,
12 26, 35, and 36, Township 34 North, Range 9 East,
13 in Channahon Township, an area of 9.77 acres
14 around the Des Plaines River Pump Station located
15 in the southeast quarter of section 15, Township 34
16 North, Range 9 East of the Third Principal Merid-
17 ian, in Channahon Township, and an area of 511
18 feet by 596 feet around the Kankakee River Pump
19 Station in the Northwest Quarter of section 5,
20 Township 33 North, Range 9 East, east of the
21 Third Principal Meridian in Wilmington Township,
22 containing 6.99 acres, located along the easterly side
23 of the Kankakee Cut-Off in Will County, Illinois, as
24 depicted in the Arsenal Re-Use Concept, and the
25 connecting piping to the northern industrial site, as

1 described by the United States Army Report of
2 Availability, dated 13 December 1993; and

3 (2) approximately 1,100 acres, the approximate
4 legal description of which includes part of sections
5 16, 17, 18 Florence Township, Township 33 North,
6 Range 10 East, Will County, Illinois, as depicted in
7 the Arsenal Land Use Concept.

8 (c) CONSIDERATION.—The transfer under subsection
9 (a) shall be made without consideration. However, the
10 transfer shall be subject to the condition that, if the State
11 of Illinois reconveys all or any part of the transferred
12 property to a non-Federal entity, the State shall pay to
13 the United States an amount equal to the fair market
14 value of the reconveyed property. The Secretary of the
15 Army shall determine the fair market value of any prop-
16 erty reconveyed by the State as of the time of the
17 reconveyance, excluding the value of improvements made
18 to the property by the State. The Secretary may treat a
19 lease of the property as a reconveyance if the Secretary
20 determines that the lease was used in an effort to avoid
21 operation of this subsection. Amounts received under this
22 subsection shall be deposited in the general fund of the
23 Treasury for purposes of deficit reduction.

24 (d) OTHER CONDITIONS OF CONVEYANCE.—

1 (1) REDEVELOPMENT AUTHORITY.—The trans-
2 fer under subsection (a) shall be subject to the fur-
3 ther condition that the Governor of the State of Illi-
4 nois establish a redevelopment authority to be re-
5 sponsible for overseeing the economic redevelopment
6 of the transferred land.

7 (2) TIME FOR ESTABLISHMENT.—To satisfy the
8 condition specified in paragraph (1), the redevelop-
9 ment authority shall be established within 1 year
10 after the date of the enactment of this Act.

11 (e) REVERSIONARY INTEREST.—During the 20-year
12 period beginning on the date the Secretary of the Army
13 makes the transfer under subsection (a), if the Secretary
14 determines that a condition specified in subsection (c) or
15 (d) is not being satisfied or that the transferred land is
16 not being used for economic development purposes, then,
17 at the option of the United States, all right, title, and in-
18 terest in and to the property, including improvements
19 thereon, shall be subject to reversion to the United States.
20 In the event the United States exercises its option to cause
21 the property to revert, the United States shall have the
22 right of immediate entry onto the property. Any deter-
23 mination of the Secretary under this subsection shall be
24 made on the record after an opportunity for a hearing.

1 (f) SURVEYS.—All costs of necessary surveys for the
2 transfer of real property under this section shall be borne
3 by the State of Illinois.

4 (g) ADDITIONAL TERMS AND CONDITIONS.—The
5 Secretary of the Army may require such additional terms
6 and conditions in connection with the transfer under this
7 section as the Secretary considers appropriate to protect
8 the interests of the United States.

9 **CHAPTER 4—MISCELLANEOUS PROVISIONS**

10 **SEC. 10331. DEGREE OF ENVIRONMENTAL CLEANUP.**

11 (a) IN GENERAL.—Nothing in this Act shall be con-
12 strued to restrict or lessen the degree of cleanup at the
13 Arsenal required to be carried out under provisions of any
14 environmental law.

15 (b) RESPONSE ACTION.—The establishment of the
16 Midewin National Tallgrass Prairie under chapter 2 and
17 the additional real property transfers and disposals re-
18 quired under chapter 3 shall not restrict or lessen in any
19 way any response action or degree of cleanup under
20 CERCLA or other environmental law, or any response ac-
21 tion required under any environmental law to remediate
22 petroleum products or their derivatives (including motor
23 oil and aviation fuel), required to be carried out under the
24 authority of the Secretary of the Army at the Arsenal and

1 surrounding areas, except to the extent otherwise allow-
2 able under such laws.

3 (c) ENVIRONMENTAL QUALITY OF PROPERTY.—Any
4 contract for sale, deed, or other transfer of real property
5 under chapter 3 shall be carried out in compliance with
6 all applicable provisions of section 120(h) of CERCLA and
7 other environmental laws.

8 **Subtitle D—Miscellaneous**
9 **Provisions**

10 **SEC. 10401. EXTENSION OF HIGHER VESSEL TONNAGE DU-**
11 **TIES.**

12 (a) EXTENSION OF DUTIES.—Section 36 of the Act
13 of August 5, 1909 (36 Stat. 111; 46 App. U.S.C. 121),
14 is amended by striking “for fiscal years 1991, 1992, 1993,
15 1994, 1995, 1996, 1997, 1998,” each place it appears and
16 inserting “for fiscal years through fiscal year 2002,”.

17 (b) CONFORMING AMENDMENT.—The Act entitled
18 “An Act concerning tonnage duties on vessels entering
19 otherwise than by sea”, approved March 8, 1910 (36 Stat.
20 234; 46 App. U.S.C. 132), is amended by striking “for
21 fiscal years 1991, 1992, 1993, 1994, 1995, 1996, 1997,
22 and 1998,” and inserting “for fiscal years through fiscal
23 year 2002,”.

1 **SEC. 10402. SALE OF GOVERNORS ISLAND, NEW YORK.**

2 (a) IN GENERAL.—Notwithstanding any other provi-
3 sion of law, the Administrator of General Services shall
4 dispose of by sale at fair market value all rights, title, and
5 interests of the United States in and to the land of, and
6 improvements to, Governors Island, New York.

7 (b) RIGHT OF FIRST REFUSAL.—Before a sale is
8 made under subsection (a) to any other parties, the State
9 of New York and the city of New York shall be given the
10 right of first refusal to purchase all or part of Governors
11 Island. Such right may be exercised by either the State
12 of New York or the city of New York or by both parties
13 acting jointly.

14 (c) PROCEEDS.—Proceeds from the disposal of Gov-
15 ernors Island under subsection (a) shall be deposited in
16 the general fund of the Treasury and credited as mis-
17 cellaneous receipts.

18 **SEC. 10403. SALE OF AIR RIGHTS.**

19 (a) IN GENERAL.—Notwithstanding any other provi-
20 sion of law, the Administrator of General Services shall
21 sell, at fair market value and in a manner to be deter-
22 mined by the Administrator, the air rights adjacent to
23 Washington Union Station described in subsection (b), in-
24 cluding air rights conveyed to the Administrator under
25 subsection (d). The Administrator shall complete the sale
26 by such date as is necessary to ensure that the proceeds

1 from the sale will be deposited in accordance with sub-
2 section (c).

3 (b) DESCRIPTION.—The air rights referred to in sub-
4 section (a) total approximately 16.5 acres and are depicted
5 on the plat map of the District of Columbia as follows:

6 (1) Part of lot 172, square 720.

7 (2) Part of lots 172 and 823, square 720.

8 (3) Part of lot 811, square 717.

9 (c) PROCEEDS.—Before September 30, 1996, pro-
10 ceeds from the sale of air rights under subsection (a) shall
11 be deposited in the general fund of the Treasury and cred-
12 ited as miscellaneous receipts.

13 (d) CONVEYANCE OF AMTRAK AIR RIGHTS.—

14 (1) GENERAL RULE.—As a condition of future
15 Federal financial assistance, Amtrak shall convey to
16 the Administrator of General Services on or before
17 December 31, 1995, at no charge, all of the air
18 rights of Amtrak described in subsection (b).

19 (2) FAILURE TO COMPLY.—If Amtrak does not
20 meet the condition established by paragraph (1),
21 Amtrak shall be prohibited from obligating Federal
22 funds after March 1, 1996.

23 **SEC. 10404. COLLECTION OF PARKING FEES.**

24 (a) IN GENERAL.—The Administrator of General
25 Services shall issue regulations requiring each Executive

1 agency to collect fees for the use of all parking facilities
2 provided for the agency at Federal expense.

3 (b) SPECIFIC REQUIREMENTS.—The regulations—

4 (1) shall include provisions under which any
5 such user fee shall be computed based on the fair
6 market value of the use of the parking facility in-
7 volved; and

8 (2) shall take effect on or before the 90th day
9 after the date of enactment of this Act.

10 (c) FEES TO BE DEPOSITED IN THE TREASURY.—

11 All user fees collected under this section shall be deposited
12 in the Treasury of the United States as miscellaneous re-
13 ceipts.

14 (d) PROHIBITION ON USE OF FEDERAL FUNDS.—No

15 Federal funds may be used to pay any user fee collected
16 under this section.

17 (e) EXECUTIVE AGENCY DEFINED.—In this section,

18 the term “Executive agency” has the meaning given such
19 term by section 105 of title 5, United States Code.

20 **Subtitle E—Economic Development**
21 **Administration and Appalach-**
22 **ian Regional Commission**

23 **SEC. 10501. SHORT TITLE; EFFECTIVE DATE.**

24 (a) SHORT TITLE.—This subtitle may be cited as the
25 “Economic Development Partnership Act of 1995”.

1 (b) EFFECTIVE DATE.—Except as otherwise ex-
2 pressly provided, this subtitle and the amendments made
3 by this subtitle shall take effect 6 months after the date
4 of the enactment of this Act.

5 **CHAPTER 1—TRANSFER OF FUNCTIONS**
6 **OF ECONOMIC DEVELOPMENT ADMIN-**
7 **ISTRATION**

8 **SEC. 10511. REAUTHORIZATION OF PUBLIC WORKS AND**
9 **ECONOMIC DEVELOPMENT ACT OF 1965.**

10 The Public Works and Economic Development Act of
11 1965 (40 U.S.C. 3131 et seq.) is amended by striking all
12 after the first section and inserting the following:

13 **“SEC. 2. FINDINGS AND DECLARATION.**

14 **“(a) FINDINGS.—Congress finds that—**

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

22 **“(2) to overcome this problem the Federal Gov-**
23 **ernment, in cooperation with the States, should help**
24 **areas and regions of substantial and persistent un-**
25 **employment and underemployment to take effective**

1 steps in planning and financing their public works
2 and economic development;

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

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

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

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

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

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

9 **“TITLE I—ECONOMIC**
10 **DEVELOPMENT COMMISSION**

11 **“SEC. 101. ESTABLISHMENT OF ECONOMIC DEVELOPMENT**
12 **COMMISSION.**

13 “(a) ESTABLISHMENT.—There is established an Eco-
14 nomic Development Commission which shall be an inde-
15 pendent establishment in the executive branch.

16 “(b) APPOINTMENT OF FEDERAL COCHAIRMAN.—
17 The Commission shall headed by a Federal Cochairman
18 of the Economic Development Commission (hereinafter in
19 this Act referred to as the ‘Federal Cochairman’) who
20 shall be appointed by the President by and with the advice
21 and consent of the Senate.

22 “(c) DUTIES.—It shall be the duty of the Federal Co-
23 chairman to carry out duties vested in the Federal Co-
24 chairman under this Act.

1 **“SEC. 102. ESTABLISHMENT OF REGIONAL COMMISSIONS.**

2 “(a) ESTABLISHMENT.—The Federal Cochairman
3 shall establish for each region established by section 106
4 an Economic Development Regional Commission (herein-
5 after in this Act referred to as a ‘Regional Commission’).

6 “(b) MEMBERSHIP.—

7 “(1) IN GENERAL.—Each Regional Commission
8 shall be composed of 1 Federal member and 1 State
9 member from each participating State in the region
10 represented by the Regional Commission.

11 “(2) FEDERAL COCHAIRMAN.—The Federal
12 member of each Regional Commission shall be the
13 Federal Cochairman.

14 “(3) STATE MEMBERS.—Each State member of
15 a Regional Commission shall be the chief executive
16 officer of the State. The State members of a Re-
17 gional Commission shall elect a Cochairman from
18 among such State members for a term of not less
19 than 1 year.

20 “(4) ALTERNATES.—

21 “(A) STATE ALTERNATES.—Each State
22 member of a Regional Commission may have a
23 single alternate appointed by the chief executive
24 officer of the State from among members of the
25 chief executive officer’s cabinet or the chief ex-
26 ecutive officer’s personal staff.

1 “(B) FEDERAL ALTERNATE.—The Presi-
2 dent, by and with the advice and consent of the
3 Senate, shall appoint an alternate for the Fed-
4 eral Cochairman.

5 “(C) DUTIES.—An alternate shall vote in
6 the event of the absence, death, disability, re-
7 moval, or resignation of the State or Federal
8 representative for which he or she is an alter-
9 nate. A State alternate shall not be counted to-
10 ward the establishment of a quorum of the
11 Commission in any instance in which a quorum
12 of the State members is required to be present.

13 “(c) DECISIONMAKING.—

14 “(1) VOTING.—Decisions by a Regional Com-
15 mission shall require an affirmative vote of the Fed-
16 eral Cochairman (or the Federal Cochairman’s alter-
17 nate) and of the majority of the State members.

18 “(2) QUORUM.—No decision of a Regional
19 Commission involving Commission policy, developing
20 investment strategies, or allocating funds among
21 States may be made without the Federal Cochair-
22 man (or the Federal Cochairman’s alternate) and a
23 quorum of the State members present. For purposes
24 of this Act, the Federal Cochairman (or the Federal

1 Cochairman’s alternate) and a majority of the State
2 members shall constitute a quorum.

3 “(d) PAY.—

4 “(1) FEDERAL COCHAIRMAN.—The Federal Co-
5 chairman shall be compensated by the Federal Gov-
6 ernment at the rate prescribed for level III of the
7 Executive Schedule under section 5314 of title 5,
8 United States Code.

9 “(2) FEDERAL COCHAIRMAN’S ALTERNATE.—
10 The Federal Cochairman’s alternate shall be com-
11 pensated by the Federal Government at the rate pre-
12 scribed for level V of the Executive Schedule under
13 section 5316 of title 5, United States Code, and
14 when not serving as an alternate for the Federal Co-
15 chairman shall perform such functions and duties as
16 are delegated by the Federal Cochairman.

17 “(3) STATE MEMBERS AND THEIR ALTER-
18 NATES.—Each State member and the State mem-
19 ber’s alternate shall be compensated by the State
20 which they represent at the rate established by law
21 of such State.

22 **“SEC. 103. COOPERATION OF FEDERAL AGENCIES.**

23 “Each Federal department and agency, in accordance
24 with applicable laws and within the limits of available
25 funds, shall cooperate with each Regional Commission in

1 order to assist the Regional Commission in carrying out
2 the functions of the Regional Commission.

3 **“SEC. 104. ADMINISTRATIVE EXPENSES.**

4 “(a) PAYMENT BY STATES.—Fifty percent of the ad-
5 ministrative expenses of a Regional Commission (other
6 than the expenses of the Federal Cochairman) shall be
7 paid by the States in the region represented by the Re-
8 gional Commission and the remaining 50 percent of such
9 expenses shall be paid by the Federal Government. The
10 expenses of the Federal Cochairman, the Federal Cochair-
11 man’s alternate, and the Federal Cochairman’s staff shall
12 be paid solely by the Federal Government.

13 “(b) DETERMINATION OF STATE SHARE.—The share
14 of the administrative expenses to be paid by each State
15 shall be determined by the Regional Commission. The
16 Federal Cochairman shall not participate or vote in such
17 determination.

18 “(c) DELINQUENT PAYMENTS.—No assistance au-
19 thorized by this Act shall be furnished to any State or
20 to any political subdivision or resident of a State, nor shall
21 the State member of a Regional Commission participate
22 or vote in any determination by the Regional Commission,
23 while such State is delinquent in the payment of such
24 State’s share of the administrative expenses of the Re-
25 gional Commission.

1 **“SEC. 105. ADMINISTRATIVE POWERS.**

2 “To carry out its duties under this Act, consistent
3 with regulations issued by the Federal Cochairman, a Re-
4 gional Commission may take any of the following actions:

5 “(1) Adopt, amend, and repeal bylaws and rules
6 governing the conduct of the Regional Commission’s
7 business and the performance of its functions.

8 “(2) Appoint and fix the pay of an executive di-
9 rector and such other personnel as may be necessary
10 to enable the Regional Commission to carry out its
11 functions; except that the compensation for any indi-
12 vidual so appointed shall not exceed the rate of basic
13 pay for level V of the Executive Schedule and no
14 member, officer, or employee of the Regional Com-
15 mission, other than the Federal Cochairman, the
16 Federal Cochairman’s alternate, employees of the
17 Federal Cochairman, and any Federal employees de-
18 tailed under paragraph (3), shall be deemed a Fed-
19 eral employee for any purpose.

20 “(3) Request the head of a Federal department
21 or agency to detail to temporary duty with the Re-
22 gional Commission such personnel within the admin-
23 istrative jurisdiction of such head as the Regional
24 Commission may need for carrying out its functions,
25 and each such detail shall be without loss of senior-
26 ity, pay, or other employee status.

1 “(4) Arrange for the services of personnel from
2 any State or local government or any subdivision or
3 agency thereof, or any intergovernmental agency.

4 “(5) Make arrangements, including contracts,
5 with any participating State government for inclu-
6 sion in a suitable retirement and employee benefits
7 system of such of its personnel as may not be eligi-
8 ble for, or continue in, another governmental retire-
9 ment or employee benefit system, or otherwise pro-
10 vide for such coverage of its personnel. The Director
11 of the Office of Personnel Management is authorized
12 to contract with a Regional Commission for contin-
13 ued coverage of any Regional Commission employee
14 who, on a date in the 6-month period ending on the
15 date of Regional Commission employment, was a
16 Federal employee, in the retirement program and
17 other employee benefit programs of the Federal Gov-
18 ernment.

19 “(6) Accept, use, and dispose of gifts or dona-
20 tions of services or property, real, personal, or
21 mixed, tangible or intangible.

22 “(7) Subject to the requirements of the Federal
23 Property and Administrative Services Act of 1949,
24 enter into and perform such contracts, leases, coop-
25 erative agreements, or other transactions as may be

1 necessary in carrying out the Regional Commission's
2 functions and on such terms as the Regional Com-
3 mission may deem appropriate, with any depart-
4 ment, agency, or instrumentality of the United
5 States, or with any person, firm, association, or cor-
6 poration.

7 “(8) Take such other actions and incur such
8 other expenses as may be necessary and appropriate.

9 **“SEC. 106. ESTABLISHMENT OF REGIONS.**

10 “(a) IN GENERAL.—For the purposes of this Act,
11 there are established 8 regions of the United States as
12 follows:

13 “(1) REGION I.—Region I shall be composed of
14 the States of Alabama, Florida, Georgia, Kentucky,
15 Mississippi, North Carolina, South Carolina, and
16 Tennessee.

17 “(2) REGION II.—Region II shall be composed
18 of the States of Arkansas, Louisiana, New Mexico,
19 Oklahoma, and Texas.

20 “(3) REGION III.—Region III shall be composed
21 of the States of Illinois, Indiana, Michigan, Min-
22 nesota, Ohio, and Wisconsin.

23 “(4) REGION IV.—Region IV shall be composed
24 of the States of Colorado, Iowa, Kansas, Missouri,

1 Montana, Nebraska, North Dakota, South Dakota,
2 Utah, and Wyoming.

3 “(5) REGION V.—Region V shall be composed
4 of the State of California.

5 “(6) REGION VI.—Region VI shall be composed
6 of the States of Alaska, Arizona, Hawaii, Idaho, Ne-
7 vada, Oregon, and Washington and American
8 Samoa, Guam, the Marshall Islands, Micronesia,
9 and the Northern Mariana Islands.

10 “(7) REGION VII.—Region VII shall be com-
11 posed of the States of Delaware, Maryland, New
12 Jersey, New York, Pennsylvania, Virginia, and West
13 Virginia and the District of Columbia.

14 “(8) REGION VIII.—Region VIII shall be com-
15 posed of the States of Connecticut, Maine, Massa-
16 chusetts, New Hampshire, Rhode Island, and Ver-
17 mont and Puerto Rico and the Virgin Islands.

18 “(b) PARTICIPATION NOT REQUIRED.—No State
19 shall be required to participate in any program under this
20 Act.

1 **“TITLE II—GRANTS FOR PUBLIC**
2 **WORKS AND DEVELOPMENT**
3 **FACILITIES**

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

5 “(a) IN GENERAL.—Upon the application of any eli-
6 gible recipient, a Regional Commission may—

7 “(1) make direct grants for the acquisition or
8 development of land and improvements for public
9 works, public service, or development facility usage,
10 and the acquisition, design and engineering, con-
11 struction, rehabilitation, alteration, expansion, or im-
12 provement of such facilities, including related ma-
13 chinery and equipment, within an area described in
14 section 502(a), if the Regional Commission finds
15 that—

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

18 “(i) tend to improve the opportunities,
19 in the area where such project is or will be
20 located, for the successful establishment or
21 expansion of industrial or commercial
22 plants or facilities;

23 “(ii) otherwise assist in the creation
24 of additional long-term employment oppor-
25 tunities for such area; or

1 “(iii) primarily benefit the long-term
2 unemployed and members of low-income
3 families;

4 “(B) the project for which a grant is re-
5 quested will fulfill a pressing need of the area,
6 or part thereof, in which it is, or will be, lo-
7 cated;

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

12 “(D) in the case of an area described in
13 section 502(a)(4), the project to be undertaken
14 will provide immediate useful work to unem-
15 ployed and underemployed persons in that area;
16 and

17 “(2) make supplementary grants in order to en-
18 able the States and other entities within areas de-
19 scribed in section 502(a) to take maximum advan-
20 tage of designated Federal grant-in-aid programs (as
21 defined in subsection (c)(4)), direct grants-in-aid au-
22 thorized under this section, and Federal grant-in-aid
23 programs authorized by the Watershed Protection
24 and Flood Prevention Act (68 Stat. 666), and the
25 11 watersheds authorized by the Flood Control Act

1 of December 22, 1944 (58 Stat. 887), for which
2 they are eligible but for which, because of their eco-
3 nomic situation, they cannot supply the required
4 matching share.

5 “(b) COST SHARING.—Subject to subsection (c), the
6 amount of any direct grant under this subsection for any
7 project shall not exceed 50 percent of the cost of such
8 project.

9 “(c) REQUIREMENTS APPLICABLE TO SUPPLE-
10 MENTARY GRANTS.—

11 “(1) AMOUNT OF SUPPLEMENTARY GRANTS.—

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

21 “(B) EXCEPTIONS.—Notwithstanding sub-
22 paragraph (A)—

23 “(i) in the case of a grant to an In-
24 dian tribe, a Regional Commission may re-
25 duce the non-Federal share below the per-

1 centage specified in subparagraph (A) or
2 may waive the non-Federal share;

3 “(ii) in the case of any State or a po-
4 litical subdivision of the State which the
5 Regional Commission determines has ex-
6 hausted its effective taxing and borrowing
7 capacity, the Regional Commission shall
8 reduce the non-Federal share below the
9 percentage specified in subparagraph (A)
10 or shall waive the non-Federal share in the
11 case of such a grant for a project in an
12 area described in section 502(a)(4); and

13 “(iii) in case of any community devel-
14 opment corporation which the Regional
15 Commission determines has exhausted its
16 effective borrowing capacity, the Regional
17 Commission may reduce the non-Federal
18 share below the percentage specified in
19 subparagraph (A) or waive the non-Federal
20 share in the case of such a grant for a
21 project in an area described in section
22 502(a)(4).

23 “(2) FORM OF SUPPLEMENTARY GRANTS.—

24 Supplementary grants shall be made by a Regional
25 Commission, in accordance with such regulations as

1 the Federal Cochairman may prescribe, by increas-
2 ing the amounts of direct grants authorized under
3 this section or by the payment of funds appropriated
4 under this Act to the heads of the departments,
5 agencies, and instrumentalities of the Federal Gov-
6 ernment responsible for the administration of the
7 applicable Federal programs.

8 “(3) FEDERAL SHARE LIMITATIONS SPECIFIED
9 IN OTHER LAWS.—Notwithstanding any requirement
10 as to the amount or sources of non-Federal funds
11 that may otherwise be applicable to the Federal pro-
12 gram involved, funds provided under this subsection
13 shall be used for the sole purpose of increasing the
14 Federal contribution to specific projects in areas de-
15 scribed in section 502(a) under such programs above
16 the fixed maximum portion of the cost of such
17 project otherwise authorized by the applicable law.

18 “(4) DESIGNATED FEDERAL GRANT-IN-AID
19 PROGRAMS DEFINED.—In this subsection, the term
20 ‘designated Federal grant-in-aid programs’ means
21 such existing or future Federal grant-in-aid pro-
22 grams assisting in the construction or equipping of
23 facilities as the Federal Cochairman may, in further-
24 ance of the purposes of this Act, designate as eligi-
25 ble for allocation of funds under this section.

1 “(5) CONSIDERATION OF RELATIVE NEED IN
2 DETERMINING AMOUNT.—In determining the
3 amount of any supplementary grant available to any
4 project under this section, a Regional Commission
5 shall take into consideration the relative needs of the
6 area and the nature of the projects to be assisted.

7 “(d) REGULATIONS.—The Federal Cochairman shall
8 prescribe rules, regulations, and procedures to carry out
9 this section which will assure that adequate consideration
10 is given to the relative needs of eligible areas. In prescrib-
11 ing such rules, regulations, and procedures the Federal
12 Cochairman shall consider among other relevant factors—

13 “(1) the severity of the rates of unemployment
14 in the eligible areas and the duration of such unem-
15 ployment; and

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

18 “(e) REVIEW AND COMMENT UPON PROJECTS BY
19 LOCAL GOVERNMENTAL AUTHORITIES.—The Federal Co-
20 chairman shall prescribe regulations which will assure that
21 appropriate local governmental authorities have been given
22 a reasonable opportunity to review and comment upon
23 proposed projects under this section.

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

2 “In any case where a grant (including a supplemental
3 grant) has been made by a Regional Commission under
4 this title for a project and after such grant has been made
5 but before completion of the project, the cost of such
6 project based upon the designs and specifications which
7 were the basis of the grant has been increased because
8 of increases in costs, the amount of such grant may be
9 increased by an amount equal to the percentage increase,
10 as determined by the Regional Commission, in such costs,
11 but in no event shall the percentage of the Federal share
12 of such project exceed that originally provided for in such
13 grant.

14 **“SEC. 203. USE OF FUNDS IN PROJECTS CONSTRUCTED**
15 **UNDER PROJECTED COST.**

16 “In any case where a grant (including a supplemental
17 grant) has been made by a Regional Commission under
18 this title for a project, and after such grant has been made
19 but before completion of the project, the cost of such
20 project based upon the designs and specifications which
21 were the basis of the grant has decreased because of de-
22 creases in costs, such underrun funds may be used to im-
23 prove the project either directly or indirectly as deter-
24 mined by the Regional Commission.

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

2 “In any case where a grant (including a supplemental
3 grant) has been made by a Regional Commission under
4 this title for a project, and after such grant has been made
5 but before completion of the project, the purpose or scope
6 of such project based upon the designs and specifications
7 which were the basis of the grant has changed, the Re-
8 gional Commission may approve the use of grant funds
9 on such changed project if the Regional Commission deter-
10 mines that such changed project meets the requirements
11 of this title and that such changes are necessary to en-
12 hance economic development in the area.

13 **“TITLE III—SPECIAL ECONOMIC**
14 **DEVELOPMENT AND ADJUST-**
15 **MENT ASSISTANCE**

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

17 “The purpose of this title to provide special economic
18 development and adjustment assistance programs to help
19 State and local areas meet special needs arising from ac-
20 tual or threatened severe unemployment arising from eco-
21 nomic dislocation, including unemployment arising from
22 actions of the Federal Government and from compliance
23 with environmental requirements which remove economic
24 activities from a locality, and economic adjustment prob-
25 lems resulting from severe changes in economic conditions
26 (including long-term economic deterioration), and to en-

1 courage cooperative intergovernmental action to prevent
2 or solve economic adjustment problems. Nothing in this
3 title is intended to replace the efforts of the economic ad-
4 justment program of the Department of Defense.

5 **“SEC. 302. GRANTS BY REGIONAL COMMISSIONS.**

6 “(a) IN GENERAL.—A Regional Commission is au-
7 thorized to make grants directly to any eligible recipient
8 in an area which the Regional Commission determines, in
9 accordance with criteria to be established by the Federal
10 Cochairman by regulation—

11 “(1) has experienced, or may reasonably be
12 foreseen to be about to experience, a special need to
13 meet an expected rise in unemployment, or other
14 economic adjustment problems (including those
15 caused by any action or decision of the Federal Gov-
16 ernment); or

17 “(2) has demonstrated long-term economic de-
18 terioration.

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

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

23 “(2) is approved by the Regional Commission.

24 “(c) TYPES OF ASSISTANCE.—In carrying out an in-
25 vestment strategy using amounts from grants under sub-

1 section (a), an eligible recipient may provide assistance for
2 any of the following:

3 “(1) Public facilities.

4 “(2) Public services.

5 “(3) Business development.

6 “(4) Planning.

7 “(5) Research and technical assistance.

8 “(6) Administrative expenses.

9 “(7) Training.

10 “(8) Relocation of individuals and businesses.

11 “(9) Other assistance which demonstrably fur-
12 thers the economic adjustment objectives of this
13 title.

14 “(d) DIRECT EXPENDITURE OR REDISTRIBUTION BY
15 RECIPIENT.—Amounts from grants under subsection (a)
16 may be used in direct expenditures by the eligible recipient
17 or through redistribution by the eligible recipient to public
18 and private entities in grants, loans, loan guarantees, pay-
19 ments to reduce interest on loan guarantees, or other ap-
20 propriate assistance, but no grant shall be made by an
21 eligible recipient to a private profit-making entity.

22 “(e) COORDINATION.—A Regional Commission to the
23 extent practicable shall coordinate the activities relating
24 to the requirements for investment strategies and making
25 grants and loans under this title with other Federal pro-

1 grams, States, economic development districts, and other
2 appropriate planning and development organizations.

3 “(f) BASE CLOSINGS AND REALIGNMENTS.—

4 “(1) LOCATION OF PROJECTS.—In any case in
5 which a Regional Commission determines a need for
6 assistance under subsection (a) due to the closure or
7 realignment of a military installation, the Regional
8 Commission may make such assistance available for
9 projects to be carried out on the military installation
10 and for projects to be carried out in communities ad-
11 versely affected by the closure or realignment.

12 “(2) INTEREST IN PROPERTY.—Notwithstand-
13 ing any other provision of law, a Regional Commis-
14 sion may provide to an eligible recipient any assist-
15 ance available under this Act for a project to be car-
16 ried out on a military installation that is closed or
17 scheduled for closure or realignment without requir-
18 ing that the eligible recipient have title to the prop-
19 erty or a leasehold interest in the property for any
20 specified term.

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

22 “Each eligible recipient which receives assistance
23 under this title from a Regional Commission shall annu-
24 ally during the period such assistance continue to make
25 a full and complete report to the Regional Commission,

1 in such manner as the Regional Commission shall pre-
2 scribe, and such report shall contain an evaluation of the
3 effectiveness of the economic assistance provided under
4 this title in meeting the need it was designed to alleviate
5 and the purposes of this title.

6 **“SEC. 304. SALE OF FINANCIAL INSTRUMENTS IN REVOLV-**
7 **ING LOAN FUNDS.**

8 “Any loan, loan guarantee, equity, or other financial
9 instrument in the portfolio of a revolving loan fund, in-
10 cluding any financial instrument made available using
11 amounts from a grant made before the effective date of
12 the Economic Development Partnership Act of 1995, may
13 be sold, encumbered, or pledged at the discretion of the
14 grantee of the Fund, to a third party provided that the
15 net proceeds of the transaction—

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

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

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

23 “(a) IN GENERAL.—Amounts from grants made
24 under this title which are used by an eligible recipient to
25 establish a revolving loan fund shall not be treated, except

1 as provided by subsection (b), as amounts derived from
2 Federal funds for the purposes of any Federal law after
3 such amounts are loaned from the fund to a borrower and
4 repaid to the fund.

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

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

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

13 “(c) REGULATIONS.—Not later than 30 days after
14 the effective date of the Economic Development Partner-
15 ship Act of 1995, the Federal Cochairman shall issue reg-
16 ulations to carry out subsection (a).

17 “(d) PUBLIC REVIEW AND COMMENT.—Before issu-
18 ing any final guidelines or administrative manuals govern-
19 ing the operation of revolving loan funds established using
20 amounts from grants under this title, the Federal Cochair-
21 man shall provide reasonable opportunity for public review
22 of and comment on such guidelines and administrative
23 manuals.

24 “(e) APPLICABILITY TO PAST GRANTS.—The re-
25 quirements of this section applicable to amounts from

1 grants made under this title shall also apply to amounts
2 from grants made, before the effective date of the Eco-
3 nomic Development Partnership Act of 1995, under title
4 I of this Act, as in effect on the day before such effective
5 date.

6 **“TITLE IV—TECHNICAL ASSIST-**
7 **ANCE, RESEARCH, AND IN-**
8 **FORMATION**

9 **“SEC. 401. TECHNICAL ASSISTANCE.**

10 “(a) IN GENERAL.—In carrying out its duties under
11 this Act, a Regional Commission may provide technical as-
12 sistance which would be useful in alleviating or preventing
13 conditions of excessive unemployment or
14 underemployment to areas which the Regional Commis-
15 sion finds have substantial need for such assistance. Such
16 assistance shall include project planning and feasibility
17 studies, management and operational assistance, estab-
18 lishment of business outreach centers, and studies evaluat-
19 ing the needs of, and development potentialities for, eco-
20 nomic growth of such areas.

21 “(b) PROCEDURES AND TERMS.—

22 “(1) MANNER OF PROVIDING ASSISTANCE.—As-
23 sistance may be provided by a Regional Commission
24 through—

1 “(A) members of the Regional Commis-
2 sion’s staff;

3 “(B) the payment of funds authorized for
4 this section to departments or agencies of the
5 Federal Government;

6 “(C) the employment of private individ-
7 uals, partnerships, firms, corporations, or suit-
8 able institutions under contracts entered into
9 for such purposes; or

10 “(D) grants-in-aid to appropriate public or
11 private nonprofit State, area, district, or local
12 organizations.

13 “(2) REPAYMENT TERMS.—A Regional Com-
14 mission, in its discretion, may require the repayment
15 of assistance provided under this subsection and pre-
16 scribe the terms and conditions of such repayment.

17 “(c) GRANTS COVERING ADMINISTRATIVE EX-
18 PENSES.—

19 “(1) IN GENERAL.—A Regional Commission
20 may make grants to defray not to exceed 75 percent
21 of the administrative expenses of organizations
22 which the Regional Commission determines to be
23 qualified to receive grants-in-aid under subsections
24 (a) and (b); except that in the case of a grant under
25 this subsection to an Indian tribe, the Regional

1 Commission is authorized to defray up to 100 per-
2 cent of such expenses.

3 “(2) DETERMINATION OF NON-FEDERAL
4 SHARE.—In determining the amount of the non-Fed-
5 eral share of such costs or expenses, a Regional
6 Commission shall give due consideration to all con-
7 tributions both in cash and in kind, fairly evaluated,
8 including contributions of space, equipment, and
9 services.

10 “(3) USE OF GRANTS WITH PLANNING
11 GRANTS.—Where practicable, grants-in-aid author-
12 ized under this subsection shall be used in conjunc-
13 tion with other available planning grants to assure
14 adequate and effective planning and economical use
15 of funds.

16 “(d) AVAILABILITY OF TECHNICAL INFORMATION;
17 FEDERAL PROCUREMENT.—A Regional Commission shall
18 aid areas described in section 502(a) and other areas by
19 furnishing to interested individuals, communities, indus-
20 tries, and enterprises within such areas any assistance,
21 technical information, market research, or other forms of
22 assistance, information, or advice which would be useful
23 in alleviating or preventing conditions of excessive unem-
24 ployment or underemployment within such areas. The Re-
25 gional Commission may furnish the procurement divisions

1 of the various departments, agencies, and other instru-
2 mentalities of the Federal Government with a list contain-
3 ing the names and addresses of business firms which are
4 located in areas described in section 502(a) and which are
5 desirous of obtaining Government contracts for the fur-
6 nishing of supplies or services, and designating the sup-
7 plies and services such firms are engaged in providing.

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

9 “(a) DIRECT GRANTS.—

10 “(1) IN GENERAL.—A Regional Commission
11 may, upon application of any State, or city, or other
12 political subdivision of a State, or sub-State plan-
13 ning and development organization (including an
14 area described in section 502(a) or an economic de-
15 velopment district), make direct grants to such
16 State, city, or other political subdivision, or organi-
17 zation to pay up to 80 percent of the cost for eco-
18 nomic development planning.

19 “(2) PLANNING PROJECTS SPECIFICALLY IN-
20 CLUDED.—The planning for cities, other political
21 subdivisions, and sub-State planning and develop-
22 ment organizations (including areas described in sec-
23 tion 502(a) and economic development districts) as-
24 sisted under this section shall include systematic ef-
25 forts to reduce unemployment and increase incomes.

1 “(3) PLANNING PROCESS.—The planning shall
2 be a continuous process involving public officials and
3 private citizens in analyzing local economies, defin-
4 ing development goals, determining project opportu-
5 nities, and formulating and implementing a develop-
6 ment program.

7 “(4) COORDINATION OF ASSISTANCE UNDER
8 SECTION 401(c).—The assistance available under
9 this section may be provided in addition to assist-
10 ance available under section 401(c) but shall not
11 supplant such assistance.

12 “(b) COMPLIANCE WITH REVIEW PROCEDURE.—The
13 planning assistance authorized under this title shall be
14 used in conjunction with any other available Federal plan-
15 ning assistance to assure adequate and effective planning
16 and economical use of funds.

17 **“TITLE V—ELIGIBILITY AND** 18 **INVESTMENT STRATEGIES**

19 **“PART A—ELIGIBILITY**

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

21 “‘In this Act, the term ‘eligible recipient’ means an
22 area described in section 502(a), an economic development
23 district designated under section 510, an Indian tribe, a
24 State, a city or other political subdivision of a State, or
25 a consortium of such political subdivisions, or a public or

1 private nonprofit organization or association acting in co-
2 operation with officials of such political subdivisions.

3 **“SEC. 502. AREA ELIGIBILITY.**

4 “(a) CERTIFICATION.—In order to be eligible for as-
5 sistance under title II, an applicant seeking assistance to
6 undertake a project in an area shall certify, as part of
7 an application for such assistance, that the area on the
8 date of submission of such application meets 1 or more
9 of the following criteria:

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

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

16 “(3) The area has experienced or is about to
17 experience a sudden economic dislocation resulting
18 in job loss that is significant both in terms of the
19 number of jobs eliminated and the effect upon the
20 employment rate of the area.

21 “(4) The area is a community or neighborhood
22 (defined without regard to political or other subdivi-
23 sions or boundaries) which the Federal Cochairman
24 determines has one or more of the following condi-
25 tions:

1 “(A) A large concentration of low-income
2 persons.

3 “(B) Rural areas having substantial out-
4 migration.

5 “(C) Substantial unemployment.

6 “(b) DOCUMENTATION.—A certification made under
7 subsection (a) shall be supported by Federal data, when
8 available, and in other cases by data available through the
9 State government. Such documentation shall be accepted
10 by a Regional Commission unless it is determined to be
11 inaccurate. The most recent statistics available shall be
12 used.

13 “(c) SPECIAL RULE.—An area which a Regional
14 Commission determines has 1 or more of the conditions
15 described in subsection (a)(4)—

16 “(1) shall not be subject to the requirements of
17 subparagraphs (A) and (C) of section 201(a)(1); and

18 “(2) shall not be eligible to meet the require-
19 ments of section 510(a)(1)(B).

20 “(d) PRIOR DESIGNATIONS.—Any designation of a
21 redevelopment area made before the effective date of the
22 Economic Development Partnership Act of 1995 shall not
23 be effective after such effective date.

1 **“SEC. 503. INVESTMENT STRATEGY.**

2 “A Regional Commission may provide assistance
3 under titles II and III to an applicant for a project only
4 if the applicant submits to the Regional Commission, as
5 part of an application for such assistance, and the Re-
6 gional Commission approves an investment strategy
7 which—

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

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

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

19 “(4) provides a description of the project nec-
20 essary to implement the strategy, estimates of costs,
21 and timetables; and

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

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

25 “Only applications for grants or other assistance
26 under this Act for specific projects shall be approved which

1 are certified by the State member of the Regional Com-
2 mission representing such applicant and determined by
3 the Federal Cochairman—

4 “(1) to be included in a State investment strat-
5 egy approved by the Regional Commission;

6 “(2) to have adequate assurance that the
7 project will be properly administered, operated, and
8 maintained; and

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

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

12 **“SEC. 510. DESIGNATION OF ECONOMIC DEVELOPMENT**
13 **DISTRICTS AND ECONOMIC DEVELOPMENT**
14 **CENTERS.**

15 “(a) IN GENERAL.—In order that economic develop-
16 ment projects of broader geographic significance may be
17 planned and carried out, a Regional Commission may—

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

22 “(A) the proposed district is of sufficient
23 size or population, and contains sufficient re-
24 sources, to foster economic development on a

1 scale involving more than a single area de-
2 scribed in section 502(a);

3 “(B) the proposed district contains at least
4 1 area described in section 502(a);

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

13 “(D) the proposed district has a district
14 investment strategy which includes adequate
15 land use and transportation planning and con-
16 tains a specific program for district cooperation,
17 self-help, and public investment and is approved
18 by the State or States affected and by the Re-
19 gional Commission;

20 “(2) designate as ‘economic development cen-
21 ters’, in accordance with such regulations as the
22 Federal Cochairman shall prescribe, such areas as
23 the Regional Commission may deem appropriate,
24 if—

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

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

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

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

19 “(A) the project will further the objectives
20 of the investment strategy of the district in
21 which it is to be located:

22 “(B) the project will enhance the economic
23 growth potential of the district or result in ad-
24 ditional long-term employment opportunities

1 commensurate with the amount of Federal fi-
2 nancial assistance requested; and

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

7 “(4) subject to the 20 percent non-Federal
8 share required for any project by section 201(c), in-
9 crease the amount of grant assistance authorized by
10 section 201 for projects within areas described in
11 section 502(a), by an amount not to exceed 10 per-
12 cent of the aggregate cost of any such project, in ac-
13 cordance with such regulations as the Federal Co-
14 chairman shall prescribe if—

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

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

22 “(b) AUTHORITIES.—In designating economic devel-
23 opment districts and approving district investment strate-
24 gies under subsection (a), a Regional Commission may,

1 under regulations prescribed by the Federal Cochair-
2 man—

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 Federal Cochairman shall by regulation pre-
17 scribe standards for the termination or modification of
18 economic development districts and economic development
19 centers 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 a Regional Commission as an
4 economic development district. Such term includes
5 any economic development district designated under
6 section 403 of this Act, as in effect on the day be-
7 fore the effective date of the Economic Development
8 Partnership Act of 1995.

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

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

21 “(e) PARTS OF ECONOMIC DEVELOPMENT DISTRICTS
22 NOT WITHIN AREAS DESCRIBED IN SECTION 502(a).—
23 A Regional Commission is authorized to provide the finan-
24 cial assistance which is available to an area described in
25 section 502(a) under this Act to those parts of an eco-

1 nomic development district which are not within an area
2 described in section 502(a), when such assistance will be
3 of a substantial direct benefit to an area described in sec-
4 tion 502(a) within such district. Such financial assistance
5 shall be provided in the same manner and to the same
6 extent as is provided in this Act for an area described in
7 section 502(a); except that nothing in this subsection shall
8 be construed to permit such parts to receive the increase
9 in the amount of grant assistance authorized subsection
10 (a)(4).

11 **“TITLE VI—ADMINISTRATION**

12 **“SEC. 601. FUNCTIONS OF ECONOMIC DEVELOPMENT COM-** 13 **MISSION.**

14 “In administering the Economic Development Com-
15 mission, the Federal Cochairman shall ensure that the
16 Commission—

17 “(1) serves as a central information clearing-
18 house on matters relating to economic development,
19 economic adjustment, disaster recovery, and defense
20 conversion programs and activities of the Federal
21 and State governments, including political subdivi-
22 sions of the States; and

23 “(2) helps potential and actual applicants for
24 economic development, economic adjustment, disas-
25 ter recovery, and defense conversion assistance

1 under Federal, State, and local laws in locating and
2 applying for such assistance, including financial and
3 technical assistance.

4 **“SEC. 602. CONSULTATION WITH OTHER PERSONS AND**
5 **AGENCIES.**

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

13 “(b) CONSULTATION ON ADMINISTRATION OF ACT.—
14 The Federal Cochairman may make provisions for such
15 consultation with interested departments and agencies as
16 the Federal Cochairman may deem appropriate in the per-
17 formance of the functions vested in the Federal Cochair-
18 man by this Act.

19 **“SEC. 603. ADMINISTRATION, OPERATION, AND MAINTENANCE.**
20 **NANCE.**

21 “No Federal assistance shall be approved under this
22 Act unless the Federal Cochairman is satisfied that the
23 project for which Federal assistance is granted will be
24 properly and efficiently administered, operated, and main-
25 tained.

1 **“SEC. 604. TREATMENT OF ECONOMIC DEVELOPMENT AD-**
2 **MINISTRATION EMPLOYEES.**

3 “In considering applications for employment at the
4 Economic Development Commission or in a Regional Com-
5 mission, preference shall be given to individuals who are
6 employees of the Economic Development Administration
7 on the effective date of the Economic Development Part-
8 nership Act of 1995.

9 **“TITLE VII—MISCELLANEOUS**

10 **“SEC. 701. POWERS OF FEDERAL COCHAIRMAN.**

11 “(a) IN GENERAL.—In performing the Federal Co-
12 chairman’s duties under this Act, the Federal Cochairman
13 is authorized to—

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

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

20 “(3) hold such hearings, sit and act at such
21 times and places, and take such testimony, as the
22 Federal Cochairman may deem advisable;

23 “(4) request directly from any executive depart-
24 ment, bureau, agency, board, commission, office,
25 independent establishment, or instrumentality infor-
26 mation, suggestions, estimates, and statistics needed

1 to carry out the purposes of this Act; and each de-
2 partment, bureau, agency, board, commission, office,
3 establishment, or instrumentality is authorized to
4 furnish such information, suggestions, estimates,
5 and statistics directly to the Federal Cochairman;

6 “(5) under regulations prescribed by the Fed-
7 eral Cochairman, assign or sell at public or private
8 sale, or otherwise dispose of for cash or credit, in
9 the Federal Cochairman’s discretion and upon such
10 terms and conditions and for such consideration as
11 the Federal Cochairman determines to be reason-
12 able, any evidence of debt, contract, claim, personal
13 property, or security assigned to or held by the Fed-
14 eral Cochairman in connection with assistance ex-
15 tended under this Act, and collect or compromise all
16 obligations assigned to or held by the Federal Co-
17 chairman in connection with such assistance until
18 such time as such obligations may be referred to the
19 Attorney General for suit or collection;

20 “(6) deal with, complete, renovate, improve,
21 modernize, insure, rent, or sell for cash or credit,
22 upon such terms and conditions and for such consid-
23 eration as the Federal Cochairman determines to be
24 reasonable, any real or personal property conveyed
25 to, or otherwise acquired by the Federal Cochairman

1 in connection with assistance extended under this
2 Act;

3 “(7) pursue to final collection, by way of com-
4 promise or other administrative action, prior to ref-
5 erence to the Attorney General, all claims against
6 third parties assigned to the Federal Cochairman in
7 connection with assistance extended this Act;

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

14 “(9) in addition to any powers, functions, privi-
15 leges, and immunities otherwise vested in the Fed-
16 eral Cochairman, take any action, including the pro-
17 curement of the services of attorneys by contract,
18 determined by the Federal Cochairman to be nec-
19 essary or desirable in making, purchasing, servicing,
20 compromising, modifying, liquidating, or otherwise
21 administratively dealing with assets held in connec-
22 tion with financial assistance extended under this
23 Act;

24 “(10) employ experts and consultants or organi-
25 zations as authorized by section 3109 of title 5,

1 United States Code, compensate individuals so em-
2 ployed at rates not in excess of \$100 per diem, in-
3 cluding travel time, and allow them, while away from
4 their homes or regular places of business, travel ex-
5 penses (including per diem in lieu of subsistence) as
6 authorized by section 5703 of title 5, United States
7 Code, for persons in the Government service em-
8 ployed intermittently, while so employed, except that
9 contracts for such employment may be renewed an-
10 nually;

11 “(11) sue and be sued in any court of record
12 of a State having general jurisdiction or in any Unit-
13 ed States district court, and jurisdiction is conferred
14 upon such district court to determine such con-
15 troversies without regard to the amount in con-
16 troversy; but no attachment, injunction, garnish-
17 ment, or other similar process, mesne or final, shall
18 be issued against the Federal Cochairman or the
19 Federal Cochairman’s property;

20 “(12) make discretionary grants, pursuant to
21 authorities otherwise available to a Regional Com-
22 mission under this Act and without regard to the re-
23 quirements of section 504, to implement significant
24 regional initiatives, to take advantage of special de-
25 velopment opportunities, or to respond to emergency

1 economic distress in the region from the funds with-
2 held from distribution to the Regional Commissions;
3 except that the aggregate amount of such discre-
4 tionary grants in any fiscal year may not exceed 10
5 percent of the amounts appropriated under title VIII
6 for such fiscal year; and

7 “(13) establish such rules, regulations, and pro-
8 cedures as the Federal Cochairman considers appro-
9 priate in carrying out the provisions of this Act.

10 “(b) DEFICIENCY JUDGMENTS.—The authority
11 under subsection (a)(7) to pursue claims shall include the
12 authority to obtain deficiency judgments or otherwise in
13 the case of mortgages assigned to the Federal Cochair-
14 man.

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

23 “(d) POWERS OF CONVEYANCE AND EXECUTION.—
24 The power to convey and to execute, in the name of the
25 Federal Cochairman, deeds of conveyance, deeds of re-

1 lease, assignments and satisfactions of mortgages, and any
2 other written instrument relating to real or personal prop-
3 erty or any interest therein acquired by the Federal Co-
4 chairman pursuant to the provisions of this Act may be
5 exercised by the Federal Cochairman, or by any officer
6 or agent appointed by the Federal Cochairman for such
7 purpose, without the execution of any express delegation
8 of power or power of attorney.

9 **“SEC. 702. ALLOCATION OF FUNDS.**

10 The Federal Cochairman shall establish a formula for
11 the equitable allocation among the Regional Commissions
12 of amounts appropriated to carry out this Act.

13 **“SEC. 703. PERFORMANCE MEASURES.**

14 “The Federal Cochairman shall establish perform-
15 ance measures for grants and other assistance provided
16 under this Act. Such performance measures shall be used
17 to evaluate project proposals and conduct evaluations of
18 projects receiving such assistance.

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

20 “The Federal Cochairman shall continue to imple-
21 ment and enforce the provisions of section 712 of this Act,
22 as in effect on the day before the effective date of the
23 Economic Development Partnership Act of 1995.

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

2 “The functions, powers, duties, and authorities and
3 the assets, funds, contracts, loans, liabilities, commit-
4 ments, authorizations, allocations, and records which are
5 vested in or authorized to be transferred to the Secretary
6 of the Treasury under section 29(b) of the Area Redevel-
7 opment Act, and all functions, powers, duties, and authori-
8 ties under section 29(c) of such Act are hereby vested in
9 the Federal Cochairman.

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

11 “In this Act, the terms ‘State’, ‘States’, and ‘United
12 States’ include the several States and each of the other
13 political entities included in a region established by section
14 106.

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

16 “The Federal Cochairman shall transmit a com-
17 prehensive and detailed annual report to Congress of the
18 Federal Cochairman’s and each Regional Commission’s
19 operations under this Act for each fiscal year beginning
20 with the fiscal year ending September 30, 1996. Such re-
21 port shall be printed and shall be transmitted to Congress
22 not later than April 1 of the year following the fiscal year
23 with respect to which such report is made.

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

25 “(a) DELEGATION OF FUNCTIONS TO OTHER FED-
26 ERAL DEPARTMENTS AND AGENCIES.—The Federal Co-

1 chairman may delegate to the heads of other departments
2 and agencies of the Federal Government any of the Fed-
3 eral Cochairman's functions, powers, and duties under this
4 Act as the Federal Cochairman may deem appropriate,
5 and to authorize the redelegation of such functions, pow-
6 ers, and duties by the heads of such departments and
7 agencies.

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

13 “(c) TRANSFER BETWEEN DEPARTMENTS.—Funds
14 authorized to be appropriated under this Act may be
15 transferred between departments and agencies of the Gov-
16 ernment, if such funds are used for the purposes for which
17 they are specifically authorized and appropriated.

18 “(d) FUNDS TRANSFERRED FROM OTHER DEPART-
19 MENTS AND AGENCIES.—In order to carry out the objec-
20 tives of this Act, the Federal Cochairman may accept
21 transfers of funds from other departments and agencies
22 of the Federal Government if the funds are used for the
23 purposes for which (and in accordance with the terms
24 under which) the funds are specifically authorized and ap-
25 propriated. Such transferred funds shall remain available

1 until expended, and may be transferred to and merged
2 with the appropriations under the heading ‘salaries and
3 expenses’ by the Federal Cochairman to the extent nec-
4 essary to administer the program.

5 **“SEC. 709. PENALTIES.**

6 “(a) FALSE STATEMENTS; SECURITY OVER-
7 VALUATION.—Whoever makes any statement knowing it
8 to be false, or whoever willfully overvalues any security,
9 for the purpose of obtaining for such person or for any
10 applicant any financial assistance under this Act or any
11 extension of such assistance by renewal, deferment or ac-
12 tion, or otherwise, or the acceptance, release, or substi-
13 tution of security for such assistance, or for the purpose
14 of influencing in any way the action of the Federal Co-
15 chairman or a Regional Commission or for the purpose
16 of obtaining money, property, or anything of value, under
17 this Act, shall be fined under title 18, United States Code,
18 imprisoned for not more than 5 years, or both.

19 “(b) EMBEZZLEMENT AND FRAUD-RELATED
20 CRIMES.—Whoever, being connected in any capacity with
21 the Federal Cochairman or a Regional Commission, in the
22 administration of this Act—

23 “(1) embezzles, abstracts, purloins, or willfully
24 misapplies any moneys, funds, securities, or other

1 things of value, whether belonging to such person or
2 pledged or otherwise entrusted to such person;

3 “(2) with intent to defraud the Federal Co-
4 chairman or a Regional Commission or any other
5 body politic or corporate, or any individual, or to de-
6 ceive any officer, auditor, or examiner, makes any
7 false entry in any book, report, or statement of or
8 to the Federal Cochairman or a Regional Commis-
9 sion, or without being duly authorized draws any or-
10 ders or issues, puts forth, or assigns any note, de-
11 benture, bond, or other obligation, or draft, bill of
12 exchange, mortgage, judgment, or decree thereof;

13 “(3) with intent to defraud participates or
14 shares in or receives directly or indirectly any
15 money, profit, property, or benefit through any
16 transaction, loan, grant, commission, contract, or
17 any other act of the Federal Cochairman or a Re-
18 gional Commission; or

19 “(4) gives any unauthorized information con-
20 cerning any future action of plan of the Federal Co-
21 chairman or a Regional Commission which might af-
22 fect the value of securities, or having such knowl-
23 edge invests or speculates, directly or indirectly, in
24 the securities or property of any company or cor-
25 poration receiving loans, grants, or other assistance

1 from the Federal Cochairman or a Regional Com-
2 mission,
3 shall be fined under title 18, United States Code, impris-
4 oned for not more than 5 years, or both.

5 **“SEC. 710. EMPLOYMENT OF EXPEDITERS AND ADMINIS-**
6 **TRATIVE EMPLOYEES.**

7 “No financial assistance shall be extended by a Re-
8 gional Commission under this Act to any business enter-
9 prise unless the owners, partners, or officers of such busi-
10 ness enterprise—

11 “(1) certify to the Regional Commission the
12 names of any attorneys, agents, and other persons
13 engaged by or on behalf of such business enterprise
14 for the purpose of expediting applications made to
15 the Regional Commission for assistance of any sort,
16 under this Act, and the fees paid or to be paid to
17 any such person; and

18 “(2) execute an agreement binding such busi-
19 ness enterprise, for a period of 2 years after such
20 assistance is rendered by the Regional Commission
21 to such business enterprise, to refrain from employ-
22 ing, tendering any office or employment to, or re-
23 taining for professional services, any person who, on
24 the date such assistance or any part thereof was
25 rendered, or within the 1-year period ending on such

1 date, shall have served as an officer, attorney, agent,
2 or employee, occupying a position or engaging in ac-
3 tivities which the Regional Commission determines
4 involves discretion with respect to the granting of
5 assistance under this Act.

6 **“SEC. 711. PERSONAL FINANCIAL INTERESTS.**

7 “(a) IN GENERAL.—Except as permitted by sub-
8 section (b), no State member or alternate and no officer
9 or employee of a Regional Commission shall participate
10 personally and substantially as member, alternate, officer,
11 or employee, through decision, approval, disapproval, rec-
12 ommendation, the rendering of advice, investigation, or
13 otherwise, in any proceeding, application, request for a
14 ruling or other determination, contract, claim, con-
15 troversy, or other particular matter in which, to the indi-
16 vidual’s knowledge, the individual, the individual’s spouse,
17 minor child, partner, organization (other than a State or
18 political subdivision thereof) in which the individual is
19 serving as officer, director, trustee, partner, or employee,
20 or any person or organization with whom the individual
21 is serving as officer, director, trustee, partner, or em-
22 ployee, or any person or organization with whom the indi-
23 vidual is negotiating or has any arrangement concerning
24 prospective employment, has a financial interest. Any indi-
25 vidual who shall violate the provisions of this subsection

1 shall be fined under title 18, United States Code, impris-
2 oned for not more than 2 years, or both.

3 “(b) EXCEPTION.—Subsection (a) shall not apply if
4 the State member, alternate, officer, or employee first ad-
5 vises the Regional Commission of the nature and cir-
6 cumstances of the proceeding, application, request for a
7 ruling or other determination, contract, claim, con-
8 troversy, or other particular matter and makes full disclo-
9 sure of the financial interest and receives in advance a
10 written determination made by the Regional Commission
11 that the interest is not so substantial as to be deemed like-
12 ly to affect the integrity of the services which the Regional
13 Commission may expect from such State member, alter-
14 nate, officer, or employee.

15 “(c) SALARIES.—No State member or alternate of a
16 Regional Commission shall receive any salary, or any con-
17 tribution to or supplementation of salary for the individ-
18 ual’s services on the Regional Commission from any
19 source other than the State of the individual. No individ-
20 ual detailed to serve the Regional Commission under au-
21 thority of section 105 shall receive any salary or any con-
22 tribution to or supplementation of salary for the individ-
23 ual’s services on the Regional Commission from any
24 source other than the State, local, or intergovernmental
25 department or agency from which he was detailed or from

1 the Regional Commission. Any individual who shall violate
2 the provisions of this subsection shall be fined under title
3 18, United States Code, imprisoned for not more than 1
4 year, or both.

5 “(d) NONAPPLICABILITY TO FEDERAL OFFICIALS.—
6 Notwithstanding any other provision of this section, the
7 Federal Cochairman (or the Federal Cochairman’s alter-
8 nate) and any Federal officers or employees detailed to
9 duty with a Regional Commission pursuant to section 105
10 shall not be subject to such provisions but shall remain
11 subject to sections 202 through 209 of title 18, United
12 States Code.

13 “(e) AUTHORITY TO RESCIND CERTAIN AGREE-
14 MENTS.—A Regional Commission may, in the Regional
15 Commission’s discretion, declare void and rescind any
16 agreement to extend financial assistance under this Act
17 entered into by the Regional Commission in relation to
18 which the Regional Commission finds that there has been
19 a violation of subsection (a) or (c) of this section or any
20 of the provisions of sections 202 through 209 of title 18,
21 United States Code.

1 **“SEC. 712. MAINTENANCE OF RECORDS OF APPROVED AP-**
2 **PLICATIONS FOR FINANCIAL ASSISTANCE;**
3 **PUBLIC INSPECTION.**

4 “(a) MAINTENANCE OF RECORD REQUIRED.—The
5 Federal Cochairman shall maintain as a permanent part
6 of the records of the Economic Development Commission
7 a list of applications approved for financial assistance
8 under this Act, which shall be kept available for public
9 inspection during the regular business hours of the Eco-
10 nomic Development Commission.

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

14 “(1) The name of the applicant and, in the case
15 of corporate applications, the names of the officers
16 and directors thereof.

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

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

21 **“SEC. 713. RECORDS AND AUDIT.**

22 “(a) RECORDKEEPING AND DISCLOSURE REQUIRE-
23 MENTS.—Each recipient of assistance under this Act shall
24 keep such records as the Federal Cochairman shall pre-
25 scribe, including records which fully disclose the amount
26 and the disposition by such recipient of the proceeds of

1 such assistance, the total cost of the project or undertak-
2 ing in connection with which such assistance is given or
3 used, and the amount and nature of that portion of the
4 cost of the project or undertaking supplied by other
5 sources, and such other records as will facilitate an effec-
6 tive audit.

7 “(b) ACCESS TO BOOKS FOR EXAMINATION AND
8 AUDIT.—The Federal Cochairman and the Comptroller
9 General of the United States, or any of their duly author-
10 ized representatives, shall have access for the purpose of
11 audit and examination to any books, documents, papers,
12 and records of the recipient that are pertinent to assist-
13 ance received under this Act.

14 **“SEC. 714. PROHIBITION AGAINST A STATUTORY CON-**
15 **STRUCTION WHICH MIGHT CAUSE DIMINU-**
16 **TION IN OTHER FEDERAL ASSISTANCE.**

17 “All financial and technical assistance authorized
18 under this Act shall be in addition to any Federal assist-
19 ance previously authorized, and no provision of this Act
20 shall be construed as authorizing or permitting any reduc-
21 tion or diminution in the proportional amount of Federal
22 assistance to which any State or other entity eligible under
23 this Act would otherwise be entitled under the provisions
24 of any other Act.

1 **“SEC. 715. ACCEPTANCE OF APPLICANTS’ CERTIFICATIONS.**

2 “A Regional Commission may accept, when deemed
3 appropriate, the applicants’ certifications to meet the re-
4 quirements of this Act.

5 **“TITLE VIII—FUNDING**

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

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

11 **“SEC. 802. DEFENSE CONVERSION ACTIVITIES.**

12 “In addition to the appropriations authorized by sec-
13 tion 801, there are authorized to be appropriated to carry
14 out this Act such sums as may be necessary to provide
15 assistance for defense conversion activities. Such funding
16 may include pilot projects for privatization and economic
17 development activities for closed or realigned military in-
18 stallations. Such sums shall remain available until ex-
19 pended.”.

20 **SEC. 10512. CONFORMING AMENDMENTS.**

21 Title 5, United States Code, is amended—

22 (1) in section 5314 by adding at the end the
23 following:

24 “Federal Cochairman of the Economic Develop-
25 ment Commission.”; and

26 (2) in section 5316—

1 (A) by striking the following:

2 “Administrator for Economic Development.”;

3 and

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

5 “Alternate for the Federal Cochairman of the
6 Economic Development Commission.”.

7 **SEC. 10513. SAVINGS PROVISIONS.**

8 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
9 rules, regulations, permits, grants, loans, contracts, agree-
10 ments, certificates, licenses, and privileges—

11 (1) that have been issued, made, granted, or al-
12 lowed to become effective by the President, the Sec-
13 retary of Commerce, any officer or employee of any
14 office transferred by this chapter, or any other Gov-
15 ernment official, or by a court of competent jurisdic-
16 tion, in the performance of any function that is
17 transferred by this chapter; 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 chapter 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 chapter, but such proceedings and ap-
8 plications shall be continued. Orders shall be issued in
9 such proceedings, appeals shall be taken therefrom, and
10 payments shall be made pursuant to such orders, as if this
11 chapter had not been enacted, and orders issued in any
12 such proceeding shall continue in effect until modified, ter-
13 minated, superseded, or revoked by a duly authorized offi-
14 cial, by a court of competent jurisdiction, or by operation
15 of law. Nothing in this subsection shall be considered to
16 prohibit the discontinuance or modification of any such
17 proceeding under the same terms and conditions and to
18 the same extent that such proceeding could have been dis-
19 continued or modified if this chapter had not been en-
20 acted.

21 (c) SUITS.—This chapter shall not affect suits com-
22 menced before the date of the enactment of this Act, and
23 in all such suits, proceeding shall be had, appeals taken,
24 and judgments rendered in the same manner and with the
25 same effect as if this chapter 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 chapter, shall abate by reason of the enact-
7 ment of this chapter.

8 (e) CONTINUANCE OF SUITS.—If any officer of the
9 Department of Commerce in the official capacity of such
10 officer is party to a suit with respect to a function of the
11 officer, and under this chapter such function is transferred
12 to any other officer or office, then such suit shall be con-
13 tinued with the other officer or the head of such other
14 office, as applicable, substituted or added as a party.

15 **SEC. 10514. REFERENCES.**

16 Any reference in any other Federal law, Executive
17 order, rule, regulation, or delegation of authority, or any
18 document of or pertaining to an office from which a func-
19 tion is transferred by this chapter—

20 (1) to the Secretary of Commerce or an officer
21 of the Department of Commerce, is deemed to refer
22 to the head of the department or office to which
23 such function is transferred; or

24 (2) to the Department of Commerce or an
25 agency in the Department of Commerce is deemed

1 to refer to the department or office to which such
2 function is transferred.

3 **CHAPTER 2—APPALACHIAN REGIONAL**
4 **DEVELOPMENT**

5 **SEC. 10521. FINDINGS AND PURPOSES.**

6 Section 2 of the Appalachian Regional Development
7 Act of 1965 (40 U.S.C. App. 2) is amended by adding
8 at the end the following:

9 “(c) 1995 FINDINGS AND PURPOSES.—The Congress
10 further finds and declares that, while substantial progress
11 has been made in fulfilling many of the objectives of this
12 Act, rapidly changing national and global economies over
13 the past decade have created new problems and challenges
14 for rural areas throughout the Nation and especially for
15 the Appalachian region. It is, therefore, also the purpose
16 of this Act to assist the region in providing the infrastruc-
17 ture necessary for economic and human resource develop-
18 ment, in developing its industry, in building entrepreneur-
19 ial communities, in generating a diversified regional econ-
20 omy, and in making its industrial and commercial re-
21 sources more competitive in national and world markets.
22 It is further the purpose of this Act to provide a frame-
23 work for coordinating Federal, State, and local initiatives
24 to respond to the economic competitive challenge through
25 improving the skills of the region’s workforce, adapting

1 and applying new technologies for the region’s businesses,
2 and improving the access of the region’s businesses to the
3 technical and financial resources necessary to their devel-
4 opment. Finally, it is the purpose of this Act to address
5 the needs of severely and persistently distressed and un-
6 derdeveloped areas of the region so as to provide a fairer
7 opportunity for the people of the region to share the qual-
8 ity of life generally enjoyed by citizens across this Na-
9 tion.”.

10 **SEC. 10522. MEETINGS.**

11 (a) ANNUAL MEETING REQUIREMENT.—Section
12 101(a) of the Appalachian Regional Development Act of
13 1965 (40 U.S.C. App. 101(a)) is amended by adding at
14 the end the following: “The Commission shall conduct at
15 least one meeting each year with the Federal Cochairman
16 and at least a majority of the State members present.”.

17 (b) ADDITIONAL MEETINGS BY ELECTRONIC
18 MEANS.—Section 101 of such Act (40 U.S.C. App. 101)
19 is amended—

20 (1) in subsection (a), as amended by subsection
21 (a) of this section, by adding at the end the follow-
22 ing: “The Commission may conduct such additional
23 meetings by electronic means as the Commission
24 considers advisable, including meetings to decide
25 matters requiring an affirmative vote.”; and

1 (2) in subsection (c) by striking “to be present”
2 at the end of the fourth sentence.

3 (c) DECISIONS REQUIRING A QUORUM.—Section
4 101(b) of such Act (40 U.S.C. App. 101(b)) is amended
5 by striking the third sentence and inserting the following:
6 “No decision involving Commission policy, approval of
7 State, regional, or subregional development plans or imple-
8 menting investment programs, any modification or revi-
9 sion of the Appalachian Regional Commission Code, any
10 allocation of funds among the State, or any designation
11 of a distressed county or an economically competitive
12 county may be made without a quorum of State mem-
13 bers.”.

14 **SEC. 10523. AUTHORIZATIONS FOR ADMINISTRATIVE EX-**
15 **PENSES.**

16 Section 105(b) of the Appalachian Regional Develop-
17 ment Act of 1965 (40 U.S.C. App. 105(b)) is amended
18 to read as follows:

19 “(b) AUTHORIZATION OF APPROPRIATIONS.—

20 “(1) IN GENERAL.—There is authorized to be
21 appropriated to carry out this section \$3,645,000
22 per fiscal year for each of fiscal years 1996 through
23 2000. Such sums shall remain available until ex-
24 pended.

1 “(2) EXPENSES OF FEDERAL COCHAIRMAN.—
2 Of the amounts appropriated pursuant to paragraph
3 (1), not to exceed \$1,245,000 per fiscal year for
4 each of fiscal years 1996 through 2000 shall be
5 available for expenses of the Federal Cochairman,
6 the Federal Cochairman’s alternate, and the Federal
7 Cochairman’s staff.”.

8 **SEC. 10524. ADMINISTRATIVE POWERS OF COMMISSION.**

9 (a) AUTHORITY TO LEASE.—Section 106(7) of the
10 Appalachian Regional Development Act of 1965 (40
11 U.S.C. App. 106(7)) is amended—

12 (1) by inserting “subject to the requirements of
13 the Federal Property and Administrative Services
14 Act of 1949,” after “(7)”;

15 (2) by striking “notwithstanding any other pro-
16 vision of law,”; and

17 (3) by striking “1982” and inserting “2000”.

18 (b) AUTHORITY TO MAINTAIN TEMPORARY OF-
19 FICE.—Section 106(8) of such Act (40 U.S.C. App.
20 106(8)) is amended by inserting “subject to the require-
21 ments of the Federal Property and Administrative Serv-
22 ices Act of 1949,” after “(8)”.

23 **SEC. 10525. HIGHWAY SYSTEM.**

24 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
25 201(g) of the Appalachian Regional Development Act of

1 1965 (40 U.S.C. App. 201(g)) is amended to read as fol-
2 lows:

3 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
4 is authorized to be appropriated to carry out this section
5 \$90,000,000 per fiscal year for each of fiscal years 1996
6 through 2000. Such sums shall remain available until ex-
7 pended.”.

8 (b) COST SHARING.—

9 (1) IN GENERAL.—Section 201(h)(1) of such
10 Act (40 U.S.C. App. 201(h)(1)) is amended by strik-
11 ing “70 per centum” and inserting “80 percent”.

12 (2) APPLICABILITY.—The amendment made by
13 paragraph (1) shall apply to projects approved after
14 March 31, 1979.

15 **SEC. 10526. COST SHARING OF DEMONSTRATION HEALTH**
16 **PROJECTS.**

17 (a) OPERATION COSTS.—Section 202(c) of the Appa-
18 lachian Regional Development Act of 1965 (40 U.S.C.
19 App. 202(c)) is amended in the first sentence by striking
20 “100 per centum of the costs thereof” and all that follows
21 through the period at the end of the second sentence and
22 inserting “50 percent of the costs thereof (or 80 percent
23 of such costs in the case of a project to be carried out
24 in a county for which a distressed county designation is
25 in effect under section 226).”.

1 (b) COST SHARING.—Section 202 of such Act (40
2 U.S.C. App. 202) is amended by adding at the end the
3 following:

4 “(f) MAXIMUM COMMISSION CONTRIBUTION AFTER
5 SEPTEMBER 30, 1995.—After September 30, 1995, not
6 more than 50 percent of any project cost eligible for finan-
7 cial assistance under this section may be provided from
8 funds appropriated to carry out this Act; except that such
9 maximum Commission contribution may be increased to
10 80 percent, or to the percentage of the maximum Federal
11 contribution authorized by this section, whichever is less,
12 for a project to be carried out in a county for which a
13 distressed county designation is in effect under section
14 226.”.

15 **SEC. 10527. REPEAL OF LAND STABILIZATION, CONSERVA-**
16 **TION, AND EROSION CONTROL PROGRAM.**

17 Section 203 of the Appalachian Regional Develop-
18 ment Act of 1965 (40 U.S.C. App. 203) is repealed.

19 **SEC. 10528. REPEAL OF TIMBER DEVELOPMENT PROGRAM.**

20 Section 204 of the Appalachian Regional Develop-
21 ment Act of 1965 (40 U.S.C. App. 204) is repealed.

22 **SEC. 10529. REPEAL OF MINING AREA RESTORATION PRO-**
23 **GRAM.**

24 Section 205 of the Appalachian Regional Develop-
25 ment Act of 1965 (40 U.S.C. App. 205) is repealed.

1 **SEC. 10530. REPEAL OF WATER RESOURCE SURVEY.**

2 Section 206 of the Appalachian Regional Develop-
3 ment Act of 1965 (40 U.S.C. App. 206) is repealed.

4 **SEC. 10531. COST SHARING OF HOUSING PROJECTS.**

5 (a) LOANS.—Section 207(b) of the Appalachian Re-
6 gional Development Act of 1965 (40 U.S.C. App. 207(b))
7 is amended by striking “80 per centum” and inserting “50
8 percent (or 80 percent in the case of a project to be carried
9 out in a county for which a distressed county designation
10 is in effect under section 226)”.

11 (b) GRANTS.—Section 207(c)(1) of such Act (40
12 U.S.C. 207(c)(1)) is amended by striking “80 per cen-
13 tum” and inserting “50 percent (or 80 percent in the case
14 of a project to be carried out in a county for which a dis-
15 tressed county designation is in effect under section
16 226)”.

17 **SEC. 10532. REPEAL OF AIRPORT SAFETY IMPROVEMENTS**
18 **PROGRAM.**

19 Section 208 of the Appalachian Regional Develop-
20 ment Act of 1965 (40 U.S.C. App. 208) is repealed.

21 **SEC. 10533. COST SHARING OF VOCATIONAL EDUCATION**
22 **AND EDUCATION DEMONSTRATION**
23 **PROJECTS.**

24 (a) OPERATION COSTS.—Section 211(b)(3) of the
25 Appalachian Regional Development Act of 1965 (40
26 U.S.C. App. 211(b)(3)) is amended in the first sentence

1 by striking “100 per centum of the costs thereof” and all
2 that follows through the period at the end of the second
3 sentence and inserting “50 percent of the costs thereof
4 (or 80 percent of such costs in the case of a project to
5 be carried out in a county for which a distressed county
6 designation is in effect under section 226).”

7 (b) COST SHARING.—Section 211 of such Act (40
8 U.S.C. App. 211) is amended by adding at the end the
9 following:

10 “(c) MAXIMUM COMMISSION CONTRIBUTION AFTER
11 SEPTEMBER 30, 1995.—After September 30, 1995, not
12 more than 50 percent of any project cost eligible for finan-
13 cial assistance under this section may be provided from
14 funds appropriated to carry out this Act; except that such
15 maximum Commission contribution may be increased to
16 80 percent, or to the percentage of the maximum Federal
17 contribution authorized by this section, whichever is less,
18 for a project to be carried out in a county for which a
19 distressed county designation is in effect under section
20 226.”.

21 **SEC. 10534. SEWAGE TREATMENT WORKS PROGRAM.**

22 Section 212 of the Appalachian Regional Develop-
23 ment Act of 1965 (40 U.S.C. App. 212) is repealed.

1 **SEC. 10535. REPEAL OF AMENDMENTS TO HOUSING ACT OF**
2 **1954.**

3 Section 213 of the Appalachian Regional Develop-
4 ment Act of 1965 (40 U.S.C. App. 213) is repealed.

5 **SEC. 10536. SUPPLEMENTS TO FEDERAL GRANT-IN-AID**
6 **PROGRAMS.**

7 (a) AVAILABILITY OF AMOUNTS.—The first sentence
8 of section 214(a) of the Appalachian Regional Develop-
9 ment Act of 1965 (40 U.S.C. App. 214(a)) is amended
10 by striking “the President is authorized to provide funds
11 to the Federal Cochairman to be used” and inserting “the
12 Federal Cochairman may use amounts made available to
13 carry out this section”.

14 (b) COST SHARING.—Section 214(b) of such Act (40
15 U.S.C. App. 214(b)) is amended—

16 (1) by striking “(b)” and inserting “(b)(1)”;
17 and

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

19 “(2) After September 30, 1995, not more than 50
20 percent of any project cost eligible for financial assistance
21 under this section may be provided from funds appro-
22 priated to carry out this Act; except that such maximum
23 Commission contribution may be increased to 80 percent
24 for a project to be carried out in a county for which a
25 distressed county designation is in effect under section
26 226.”.

1 (c) FEDERAL GRANT-IN-AID PROGRAMS DEFINED.—

2 The first sentence of section 214(c) of such Act (40 U.S.C.
3 App. 214(c)) is amended by striking “on or before Decem-
4 ber 31, 1980,”.

5 (d) LIMITATION ON COVERED ROAD PROJECTS.—

6 The second sentence of section 214(c) of such Act is
7 amended by inserting “authorized by title 23, United
8 States Code” after “road construction”.

9 **SEC. 10537. PROGRAM DEVELOPMENT CRITERIA.**

10 (a) CONSIDERATIONS.—Section 224(a) of the Appa-
11 lachian Regional Development Act of 1965 (40 U.S.C.
12 App. 224(a)) is amended by inserting before the semicolon
13 at the end of paragraph (1) the following: “or in a severely
14 and persistently distressed and underdeveloped county or
15 area”.

16 (b) OUTCOME MEASUREMENTS.—Section 224(a) of
17 such Act is further amended—

18 (1) by striking the period at the end of para-
19 graph (5) and inserting “; and”; and

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

21 “(6) the extent to which the project design pro-
22 vides for detailed outcome measurements by which
23 grant expenditures may be justified.”.

1 (c) REMOVAL OF LIMITATIONS.—Section 224(b) of
2 such Act (40 U.S.C. App. 224(b)) is amended to read as
3 follows:

4 “(b) LIMITATION.—No financial assistance made
5 available under this Act may be used to assist establish-
6 ments relocating from one area to another.”.

7 **SEC. 10538. DISTRESSED AND ECONOMICALLY COMPETI-**
8 **TIVE COUNTIES.**

9 Part C of title II of the Appalachian Regional Devel-
10 opment Act of 1965 (40 U.S.C. App. 221–225) is amend-
11 ed by adding at the end the following:

12 **“SEC. 226. DISTRESSED AND ECONOMICALLY COMPETITIVE**
13 **COUNTIES.**

14 “(a) DESIGNATIONS.—Not later than 90 days after
15 the effective date of the Economic Development Partner-
16 ship Act of 1995, and annually thereafter, the Commis-
17 sion, in accordance with such criteria as the Commission
18 may establish, shall—

19 “(1) designate as ‘distressed counties’ those
20 counties in the region that are the most severely and
21 persistently distressed and underdeveloped; and

22 “(2) designate as ‘economically competitive
23 counties’ those counties in the region which have at-
24 tained substantial economic parity with the rest of
25 the Nation.

1 “(b) PERIOD OF EFFECTIVENESS.—In making an-
2 nual designations under subsection (a), the Commission
3 may discontinue an existing designation at the discretion
4 of the Commission; except that any designation of a dis-
5 tressed county shall remain in effect for the 3-year period
6 beginning on the date of the designation.

7 “(c) FUNDING PROHIBITION FOR PROJECTS LO-
8 CATED IN ECONOMICALLY COMPETITIVE COUNTIES.—

9 “(1) IN GENERAL.—Except as provided by
10 paragraph (2), no funds may be provided under this
11 Act for a project located in a county for which an
12 economically competitive county designation is in ef-
13 fect under this section.

14 “(2) EXCEPTIONS.—The prohibition established
15 by paragraph (1) shall not apply to—

16 “(A) projects on the Appalachian develop-
17 ment highway system authorized by section
18 201;

19 “(B) local development district administra-
20 tive projects authorized by section 302(a)(1); or

21 “(C) discretionary grants authorized by
22 section 302(a).”.

1 **SEC. 10539. GRANTS FOR ADMINISTRATIVE EXPENSES AND**
2 **COMMISSION PROJECTS.**

3 (a) AVAILABILITY OF AMOUNTS.—Section 302(a) of
4 the Appalachian Regional Development Act of 1965 (40
5 U.S.C. App. 302(a)) is amended—

6 (1) by striking “The President” and inserting
7 “The Commission”; and

8 (2) in paragraphs (1), (2), and (3) by striking
9 “to the Commission” each place it appears.

10 (b) COST SHARING.—Section 302(a) of such Act is
11 further amended—

12 (1) in paragraph (1) by striking “75 per cen-
13 tum” and inserting “50 percent”; and

14 (2) by adding at the end the following: “After
15 September 30, 1995, not more than 50 percent of
16 the cost of any activity eligible for financial assist-
17 ance under this section may be provided from funds
18 appropriated to carry out this Act (or 80 percent of
19 such costs in the case of a project to be carried out
20 in a county for which a distressed county designa-
21 tion is in effect under section 226); except that dis-
22 cretionary grants by the Commission to implement
23 significant regional initiatives, to take advantage of
24 special development opportunities, or to respond to
25 emergency economic distress in the region may be
26 made without regard to such percentage limitations.

1 The aggregate amount of discretionary grants re-
2 ferred to in the preceding sentence in any fiscal year
3 shall not exceed 10 percent of the amounts appro-
4 priated under section 401 for such fiscal year.”.

5 (c) REPEALS.—Section 302 of such Act (40 U.S.C.
6 App. 302) is amended—

7 (1) by striking paragraphs (3) and (4) of sub-
8 section (b);

9 (2) by striking subsection (d); and

10 (3) by striking subsection (e).

11 **SEC. 10540. AUTHORIZATION OF APPROPRIATIONS FOR**
12 **GENERAL PROGRAM.**

13 Section 401 of the Appalachian Regional Develop-
14 ment Act of 1965 (40 U.S.C. App. 401) is amended to
15 read as follows:

16 **“SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

17 “In addition to the appropriations authorized by sec-
18 tion 105 for administrative expenses and by section 201(g)
19 for the Appalachian development highway system and
20 local access roads, there is authorized to be appropriated
21 to the Commission to carry out this Act \$88,355,000 per
22 fiscal year for each of fiscal years 1996 through 2000.
23 Such sums shall remain available until expended.”.

1 **SEC. 10541. EXTENSION OF TERMINATION DATE.**

2 Section 405 of the Appalachian Regional Develop-
 3 ment Act of 1965 (40 U.S.C. App. 405) is amended by
 4 striking “1982” and inserting “2000”.

5 **TITLE XI—COMMITTEE ON**
 6 **VETERANS’ AFFAIRS**

7 **SEC. 11001. SHORT TITLE; TABLE OF CONTENTS.**

8 (a) **SHORT TITLE.**—This title may be cited as the
 9 “Veterans Reconciliation Act of 1995”.

10 (b) **TABLE OF CONTENTS.**—The contents of this title
 11 are as follows:

TITLE XI—COMMITTEE ON VETERANS’ AFFAIRS

Sec. 11001. Short title; table of contents.

Subtitle A—Extension of Temporary Authorities

Sec. 11011. Authority to require that certain veterans agree to make
 copayments in exchange for receiving health-care benefits.

Sec. 11012. Medical care cost recovery authority.

Sec. 11013. Income verification authority.

Sec. 11014. Limitation on pension for certain recipients of medicaid-covered
 nursing home care.

Sec. 11015. Home loan fees.

Sec. 11016. Procedures applicable to liquidation sales on defaulted home loans
 guaranteed by the Department of Veterans Affairs.

Subtitle B—Other Matters

Sec. 11021. Revision to prescription drug copayment.

Sec. 11022. Rounding down of cost-of-living adjustments in compensation and
 DIC rates.

Sec. 11023. Revised standard for liability for injuries resulting from Depart-
 ment of Veterans Affairs treatment.

Sec. 11024. Enhanced loan asset sale authority.

Sec. 11025. Withholding of payments and benefits.

Subtitle C—Health Care Eligibility Reform

Sec. 11031. Hospital care and medical services.

Sec. 11032. Extension of authority to priority health care for Persian Gulf vet-
 erans.

Sec. 11033. Prosthetics.

Sec. 11034. Management of health care.

Sec. 11035. Improved efficiency in health care resource management.
Sec. 11036. Sharing agreements for specialized medical resources.
Sec. 11037. Personnel furnishing shared resources.

Subtitle A—Extension of Temporary Authorities

SEC. 11011. AUTHORITY TO REQUIRE THAT CERTAIN VETERANS AGREE TO MAKE COPAYMENTS IN EXCHANGE FOR RECEIVING HEALTH-CARE BENEFITS.

(a) HOSPITAL AND MEDICAL CARE.—Section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 (38 U.S.C. 1710 note) is amended by striking out “September 30, 1998” and inserting in lieu thereof “September 30, 2002”.

(b) OUTPATIENT MEDICATIONS.—Section 1722A(c) of title 38, United States Code, is amended by striking out “September 30, 1998” and inserting in lieu thereof “September 30, 2002”.

SEC. 11012. MEDICAL CARE COST RECOVERY AUTHORITY.

Section 1729(a)(2)(E) of title 38, United States Code, is amended by striking out “before October 1, 1998,” and inserting “before October 1, 2002,”.

SEC. 11013. INCOME VERIFICATION AUTHORITY.

(a) TITLE 38.—Section 5317(g) of title 38, United States Code, is amended by striking out “September 30, 1998” and inserting in lieu thereof “September 30, 2002”.

1 (b) INTERNAL REVENUE CODE OF 1986.—Section
2 6103(l)(7)(D) of the Internal Revenue Code of 1986 is
3 amended by striking out “Clause (viii) shall not apply
4 after September 30, 1998” and inserting in lieu thereof
5 “Clause (viii) shall not apply after September 30, 2002”.

6 **SEC. 11014. LIMITATION ON PENSION FOR CERTAIN RECIPI-**
7 **ENTS OF MEDICAID-COVERED NURSING**
8 **HOME CARE.**

9 Section 5503(f)(7) of title 38, United States Code,
10 is amended by striking out “September 30, 1998” and in-
11 serting in lieu thereof “September 30, 2002”.

12 **SEC. 11015. HOME LOAN FEES.**

13 Section 3729(a) of title 38, United States Code, is
14 amended—

15 (1) in paragraph (4), by striking out “October
16 1, 1998” and inserting in lieu thereof “October 1,
17 2002”; and

18 (2) in paragraph (5)(C), by striking out “Octo-
19 ber 1, 1998” and inserting in lieu thereof “October
20 1, 2002”.

1 **SEC. 11016. PROCEDURES APPLICABLE TO LIQUIDATION**
2 **SALES ON DEFAULTED HOME LOANS GUAR-**
3 **ANTEED BY THE DEPARTMENT OF VETERANS**
4 **AFFAIRS.**

5 Section 3732(c)(11) of title 38, United States Code,
6 is amended by striking out “October 1, 1998” and insert-
7 ing “October 1, 2002”.

8 **Subtitle B—Other Matters**

9 **SEC. 11021. REVISION TO PRESCRIPTION DRUG**
10 **COPAYMENT.**

11 (a) INCREASE IN AMOUNT OF COPAYMENT.—Section
12 1722A(a) of title 38, United States Code, is amended—

13 (1) in paragraph (1), by striking out “\$2” and
14 inserting in lieu thereof “\$3”;

15 (2) by striking out paragraph (2); and

16 (3) by redesignating paragraph (3) as para-
17 graph (2).

18 (b) RECOVERY OF INDEBTEDNESS.—(1) Section
19 5302 of such title is amended by adding at the end the
20 following new subsection:

21 “(f) The Secretary may not waive under this section
22 the recovery of any payment or the collection of any in-
23 debtedness owed under section 1722A of this title.”.

24 (2) The amendment made by paragraph (1) shall
25 apply with respect to amounts that become due to the
26 United States under section 1722A of title 38, United

1 States Code, on or after the date of the enactment of this
2 Act.

3 **SEC. 11022. ROUNDING DOWN OF COST-OF-LIVING ADJUST-**
4 **MENTS IN COMPENSATION AND DIC RATES.**

5 (a) FISCAL YEAR 1996 COLA.—(1) Effective as of
6 December 1, 1995, the Secretary of Veterans Affairs shall
7 recompute any increase in an adjustment that is otherwise
8 provided by law to be effective during fiscal year 1996 in
9 the rates of disability compensation and dependency and
10 indemnity compensation paid by the Secretary as such
11 rates were in effect on November 30, 1995. The recom-
12 putation shall provide for the same percentage increase
13 as provided under such law, but with amounts so recom-
14 puted (if not a whole dollar amount) rounded down to the
15 next lower whole dollar amount (rather than to the nearest
16 whole dollar amount) and with each old-law DIC rate in-
17 creased by the amount by which the new-law DIC rate
18 is increased (rather than by a uniform percentage).

19 (2) For purposes of paragraph (1):

20 (A) The term “old-law DIC rate” means a dol-
21 lar amount in effect under section 1311(a)(3) of title
22 38, United States Code.

23 (B) The term “new-law DIC rate” means the
24 dollar amount in effect under section 1311(a)(1) of
25 title 38, United States Code.

1 (b) OUT-YEAR COMPENSATION COLAS.—(1) Chap-
2 ter 11 of title 38, United States Code, is amended by in-
3 serting after section 1102 the following new section:

4 **“§ 1103. Cost-of-living adjustments**

5 “(a) In the computation of cost-of-living adjustments
6 for fiscal years 1997 through 2002 in the rates of, and
7 dollar limitations applicable to, compensation payable
8 under this chapter, such adjustments shall be made by a
9 uniform percentage that is no more than the percentage
10 equal to the social security increase for that fiscal year,
11 with all increased monthly rates and limitations (other
12 than increased rates or limitations equal to a whole dollar
13 amount) rounded down to the next lower whole dollar
14 amount.

15 “(b) For purposes of this section, the term ‘social se-
16 curity increase’ means the percentage by which benefit
17 amounts payable under title II of the Social Security Act
18 (42 U.S.C. 401 et seq.) are increased for any fiscal year
19 as a result of a determination under section 215(i) of such
20 Act (42 U.S.C. 415(i)).”.

21 (2) The table of sections at the beginning of such
22 chapter is amended by inserting after the item relating
23 to section 1102 the following new item:

“1103. Cost-of-living adjustments.”.

1 (c) OUT-YEAR DIC COLAs.—(1) Chapter 13 of title
2 38, United States Code, is amended by inserting after sec-
3 tion 1302 the following new section:

4 **“§ 1303. Cost-of-living adjustments**

5 “(a) In the computation of cost-of-living adjustments
6 for fiscal years 1997 through 2002 in the rates of depend-
7 ency and indemnity compensation payable under this
8 chapter, such adjustments (except as provided in sub-
9 section (b)) shall be made by a uniform percentage that
10 is no more than the percentage equal to the social security
11 increase for that fiscal year, with all increased monthly
12 rates (other than increased rates equal to a whole dollar
13 amount) rounded down to the next lower whole dollar
14 amount.

15 “(b)(1) Cost-of-living adjustments for each of fiscal
16 years 1997 through 2002 in old-law DIC rates shall be
17 in a whole dollar amount that is no greater than the
18 amount by which the new-law DIC rate is increased for
19 that fiscal year as determined under subsection (a).

20 “(2) For purposes of paragraph (1):

21 “(A) The term ‘old-law DIC rates’ means the
22 dollar amounts in effect under section 1311(a)(3) of
23 this title.

1 “(B) The term ‘new-law DIC rate’ means the
2 dollar amount in effect under section 1311(a)(1) of
3 this title.

4 “(c) For purposes of this section, the term ‘social se-
5 curity increase’ means the percentage by which benefit
6 amounts payable under title II of the Social Security Act
7 (42 U.S.C. 401 et seq.) are increased for any fiscal year
8 as a result of a determination under section 215(i) of such
9 Act (42 U.S.C. 415(i)).”.

10 (2) The table of sections at the beginning of such
11 chapter is amended by inserting after the item relating
12 to section 1302 the following new item:

 “1303. Cost-of-living adjustments.”.

13 **SEC. 11023. REVISED STANDARD FOR LIABILITY FOR INJU-**
14 **RIES RESULTING FROM DEPARTMENT OF**
15 **VETERANS AFFAIRS TREATMENT.**

16 (a) REVISED STANDARD.—Section 1151 of title 38,
17 United States Code, is amended—

18 (1) by designating the second sentence as sub-
19 section (c);

20 (2) by striking out the first sentence and insert-
21 ing in lieu thereof the following:

22 “(a) Compensation under this chapter and depend-
23 ency and indemnity compensation under chapter 13 of this
24 title shall be awarded for a qualifying additional disability
25 of a veteran or the qualifying death of a veteran in the

1 same manner as if such disability or death were service-
2 connected.

3 “(b)(1) For purposes of this section, a disability or
4 death is a qualifying additional disability or a qualifying
5 death only if the disability or death—

6 “(A) was caused by Department health care
7 and was a proximate result of—

8 “(i) negligence on the part of the Depart-
9 ment in furnishing the Department health care;
10 or

11 “(ii) an event not reasonably foreseeable;
12 or

13 “(B) was incurred as a proximate result of the
14 provision of training and rehabilitation services by
15 the Secretary (including by a service-provider used
16 by the Secretary for such purpose under section
17 3115 of this title) as part of an approved rehabilita-
18 tion program under chapter 31 of this title.

19 “(2) For purposes of this section, the term ‘Depart-
20 ment health care’ means hospital care, medical or surgical
21 treatment, or an examination that is furnished under any
22 law administered by the Secretary to a veteran by a De-
23 partment employee or in a Department facility (as defined
24 in section 1701(3)(A) of this title).

1 “(3) A disability or death of a veteran which is the
2 result of the veteran’s willful misconduct is not a qualify-
3 ing disability or death for purposes of this section.”; and

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

5 “(d) Effective with respect to injuries, aggravations
6 of injuries, and deaths occurring after September 30,
7 2002, a disability or death is a qualifying additional dis-
8 ability or a qualifying death for purposes of this section
9 (notwithstanding the provisions of subsection (b)(1)) if the
10 disability or death—

11 “(1) was the result of Department health care;

12 or

13 “(2) was the result of the pursuit of a course
14 of vocational rehabilitation under chapter 31 of this
15 title.”.

16 (b) CONFORMING AMENDMENTS.—Subsection (c) of
17 such section, as designated by subsection (a)(1), is amend-
18 ed—

19 (1) by striking out “, aggravation,” both places
20 it appears; and

21 (2) by striking out “sentence” and inserting in
22 lieu thereof “subsection”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to any administrative or judicial
25 determination of eligibility for benefits under section 1151

1 of title 38, United States Code, based on a claim that is
2 received by the Secretary on or after October 1, 1995, in-
3 cluding any such determination based on an original appli-
4 cation or an application seeking to reopen, revise, recon-
5 sider, or otherwise readjudicate any claim for benefits
6 under section 1151 of that title or any predecessor provi-
7 sion of law.

8 **SEC. 11024. ENHANCED LOAN ASSET SALE AUTHORITY.**

9 Section 3720(h)(2) of title 38, United States Code,
10 is amended by striking out “December 31, 1995” and in-
11 serting in lieu thereof “September 30, 1996”.

12 **SEC. 11025. WITHHOLDING OF PAYMENTS AND BENEFITS.**

13 (a) NOTICE REQUIRED IN LIEU OF CONSENT OR
14 COURT ORDER.—Section 3726 of title 38, United States
15 Code, is amended by striking out “unless” and all that
16 follows and inserting in lieu thereof the following: “unless
17 the Secretary provides such veteran or surviving spouse
18 with notice by certified mail with return receipt requested
19 of the authority of the Secretary to waive the payment
20 of indebtedness under section 5302(b) of this title. If the
21 Secretary does not waive the entire amount of the liability,
22 the Secretary shall then determine whether the veteran or
23 surviving spouse should be released from liability under
24 section 3713(b) of this title. If the Secretary determines
25 that the veteran or surviving spouse should not be released

1 from liability, the Secretary shall notify the veteran or sur-
2 viving spouse of that determination and provide a notice
3 of the procedure for appealing that determination, unless
4 the Secretary has previously made such determination and
5 notified the veteran or surviving spouse of the procedure
6 for appealing the determination.”.

7 (b) CONFORMING AMENDMENT.—Section 5302(b) of
8 such title is amended by inserting “with return receipt re-
9 quested” after “certified mail”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to any indebtedness
12 to the United States arising pursuant to chapter 37 of
13 title 38, United States Code, before, on, or after the date
14 of the enactment of this Act.

15 **Subtitle C—Health Care Eligibility** 16 **Reform**

17 **SEC. 11031. HOSPITAL CARE AND MEDICAL SERVICES.**

18 (a) ELIGIBILITY FOR CARE.—Section 1710(a) of title
19 38, United States Code, is amended by striking out para-
20 graphs (1) and (2) and inserting the following:

21 “(a)(1) The Secretary shall, to the extent and in the
22 amount provided in advance in appropriations Acts for
23 these purposes, provide hospital care and medical services,
24 and may provide nursing home care, which the Secretary
25 determines is needed to any veteran—

1 “(A) with a compensable service-connected dis-
2 ability;

3 “(B) whose discharge or release from active
4 military, naval, or air service was for a compensable
5 disability that was incurred or aggravated in the line
6 of duty;

7 “(C) who is in receipt of, or who, but for a sus-
8 pension pursuant to section 1151 of this title (or
9 both a suspension and the receipt of retired pay),
10 would be entitled to disability compensation, but
11 only to the extent that such veteran’s continuing eli-
12 gibility for such care is provided for in the judgment
13 or settlement provided for in such section;

14 “(D) who is a former prisoner of war;

15 “(E) of the Mexican border period or of World
16 War I;

17 “(F) who was exposed to a toxic substance, ra-
18 diation, or environmental hazard, as provided in sub-
19 section (e); and

20 “(G) who is unable to defray the expenses of
21 necessary care as determined under section 1722(a)
22 of this title.

23 “(2) In the case of a veteran who is not described
24 in paragraph (1), the Secretary may, to the extent re-
25 sources and facilities are available and subject to the pro-

visions of subsection (f), furnish hospital care, medical services, and nursing home care which the Secretary determines is needed.”.

(b) CONFORMING AMENDMENTS.—(1) Section 1710(e) of such title is amended—

(A) in paragraph (1), by striking out “hospital care and nursing home care” in subparagraphs (A), (B), and (C) and inserting in lieu thereof “hospital care, medical services, and nursing home care”;

(B) in paragraph (2), by inserting “and medical services” after “Hospital and nursing home care”; and

(C) by striking out “subsection (a)(1)(G) of this section” each place it appears and inserting in lieu thereof “subsection (a)(1)(F)”.

(2) Chapter 17 of such title is amended—

(A) by redesignating subsection (g) of section 1710 as subsection (h); and

(B) by transferring subsection (f) of section 1712 of such title to section 1710 so as to appear after subsection (f), redesignating such subsection as subsection (g), and amending such subsection by striking out “section 1710(a)(2) of this title” in paragraph (1) and inserting in lieu thereof “subsection (a)(2) of this section”.

1 (3) Section 1712 of such title is amended—

2 (A) by striking out subsections (a) and (i); and

3 (B) by redesignating subsections (b), (c), (d),

4 (h) and (j), as subsections (a), (b), (c), (d), and (e),

5 respectively.

6 **SEC. 11032. EXTENSION OF AUTHORITY TO PRIORITY**

7 **HEALTH CARE FOR PERSIAN GULF VETER-**

8 **ANS.**

9 Section 1710(e)(3) of title 38, United States Code,
10 is amended by striking out “December 31, 1995” and in-
11 serting in lieu thereof “December 31, 1998”.

12 **SEC. 11033. PROSTHETICS.**

13 (a) **ELIGIBILITY FOR PROSTHETICS.**—Section
14 1701(6)(A)(i) of title 38, United States Code, is amend-
15 ed—

16 (1) by striking out “(in the case of a person
17 otherwise receiving care or services under this chap-
18 ter)” and “(except under the conditions described in
19 section 1712(a)(5)(A) of this title),”;

20 (2) by inserting “(in the case of a person other-
21 wise receiving care or services under this chapter)”
22 before “wheelchairs,”; and

23 (3) by inserting “except that the Secretary may
24 not furnish sensori-neural aids other than in accord-

1 ance with guidelines which the Secretary shall pre-
2 scribe,” after “reasonable and necessary,”.

3 (b) REGULATIONS.—Not later than 30 days after the
4 date of the enactment of this Act, the Secretary of Veter-
5 ans Affairs shall prescribe the guidelines required by the
6 amendments made by subsection (a) and shall furnish a
7 copy of those guidelines to the Committees on Veterans’
8 Affairs of the Senate and House of Representatives.

9 **SEC. 11034. MANAGEMENT OF HEALTH CARE.**

10 (a) IN GENERAL.—(1) Chapter 17 of title 38, United
11 States Code, is amended by inserting after section 1704
12 the following new sections:

13 **“§ 1705. Management of health care: patient enroll-**
14 **ment system**

15 “(a) In managing the provision of hospital care and
16 medical services under section 1710(a)(1) of this title, the
17 Secretary, in accordance with regulations the Secretary
18 shall prescribe, shall establish and operate a system of an-
19 nual patient enrollment. The Secretary shall manage the
20 enrollment of veterans in accordance with the following
21 priorities, in the order listed:

22 “(1) Veterans with service-connected disabilities
23 rated 30 percent or greater.

1 “(2) Veterans who are former prisoners of war
2 and veterans with service connected disabilities rated
3 10 percent or 20 percent.

4 “(3) Veterans who are in receipt of increased
5 pension based on a need of regular aid and attend-
6 ance or by reason of being permanently housebound
7 and other veterans who are catastrophically disabled.

8 “(4) Veterans not covered by paragraphs (1)
9 through (3) who are unable to defray the expenses
10 of necessary care as determined under section
11 1722(a) of this title.

12 “(5) All other veterans eligible for hospital care,
13 medical services, and nursing home care under sec-
14 tion 1710(a)(1) of this title.

15 “(b) In the design of an enrollment system under
16 subsection (a), the Secretary—

17 “(1) shall ensure that the system will be man-
18 aged in a manner to ensure that the provision of
19 care to enrollees is timely and acceptable in quality;

20 “(2) may establish additional priorities within
21 each priority group specified in subsection (a), as
22 the Secretary determines necessary; and

23 “(3) may provide for exceptions to the specified
24 priorities where dictated by compelling medical rea-
25 sons.

1 **“§ 1706. Management of health care: other require-**
2 **ments**

3 “(a) In managing the provision of hospital care and
4 medical services under section 1710(a) of this title, the
5 Secretary shall, to the extent feasible, design, establish
6 and manage health care programs in such a manner as
7 to promote cost-effective delivery of health care services
8 in the most clinically appropriate setting.

9 “(b) In managing the provision of hospital care and
10 medical services under section 1710(a) of this title, the
11 Secretary—

12 “(1) may contract for hospital care and medical
13 services when Department facilities are not capable
14 of furnishing such care and services economically,
15 and

16 “(2) shall make such rules and regulations re-
17 garding acquisition procedures or policies as the Sec-
18 retary considers appropriate to provide such needed
19 care and services.

20 “(c) In managing the provision of hospital care and
21 medical services under section 1710(a) of this title, the
22 Secretary shall ensure that the Department maintains its
23 capacity to provide for the specialized treatment and reha-
24 bilitative needs of disabled veterans described in section
25 1710(a) of this title (including veterans with spinal cord
26 dysfunction, blindness, amputations, and mental illness)

1 within distinct programs or facilities of the Department
 2 that are dedicated to the specialized needs of those veter-
 3 ans in a manner that (1) affords those veterans reasonable
 4 access to care and services for those specialized needs, and
 5 (2) ensures that overall capacity of the Department to pro-
 6 vide such services is not reduced below the capacity of the
 7 Department, nationwide, to provide those services, as of
 8 the date of the enactment of this section.

9 “(d) In managing the provision of hospital care and
 10 medical services under section 1710(a) of this title, the
 11 Secretary shall ensure that any veteran with a service-con-
 12 nected disability is provided all benefits under this chapter
 13 for which that veteran was eligible before the date of the
 14 enactment of this section.”.

15 (2) The table of sections at the beginning of chapter
 16 17 of such title is amended by inserting after the item
 17 relating to section 1704 the following new items:

“1705. Management of health care: patient enrollment system.

“1706. Management of health care: other requirements.”.

18 (b) CONFORMING AMENDMENTS TO SECTION
 19 1703.—(1) Section 1703 of such title is amended—

20 (A) by striking out subsections (a) and (b); and

21 (B) in subsection (c) by—

22 (i) striking out “(c)”, and

23 (ii) striking out “this section, sections”

24 and inserting in lieu thereof “sections 1710,”.

1 (2)(A) The heading of such section is amended to
2 read as follows:

3 **“§ 1703. Annual report on furnishing of care and**
4 **services by contract”.**

5 (B) The item relating to such section in the table of
6 sections at the beginning of chapter 17 of such title is
7 amended to read as follows:

“1703. Annual report on furnishing of care and services by contract.”.

8 **SEC. 11035. IMPROVED EFFICIENCY IN HEALTH CARE RE-**
9 **SOURCE MANAGEMENT.**

10 (a) REPEAL OF SUNSET PROVISION.—Section 204 of
11 the Veterans Health Care Act of 1992 (Public Law 102–
12 585; 106 Stat. 4950) is repealed.

13 (b) COST RECOVERY.—Title II of such Act is further
14 amended by adding at the end the following new section:

15 **“SEC. 207. AUTHORITY TO BILL HEALTH-PLAN CONTRACTS.**

16 **“(a) RIGHT TO RECOVER.—**In the case of a primary
17 beneficiary (as described in section 201(2)(B)) who has
18 coverage under a health-plan contract, as defined in sec-
19 tion 1729(i)(1)(A) of title 38, United States Code, and
20 who is furnished care or services by a Department medical
21 facility pursuant to this title, the United States shall have
22 the right to recover or collect charges for such care or
23 services from such health-plan contract to the extent that
24 the beneficiary (or the provider of the care or services)
25 would be eligible to receive payment for such care or serv-

1 ices from such health-plan contract if the care or services
2 had not been furnished by a department or agency of the
3 United States. Any funds received from such health-plan
4 contract shall be credited to funds that have been allotted
5 to the facility that furnished the care or services.

6 “(b) ENFORCEMENT.—The right of the United
7 States to recover under such a beneficiary’s health-plan
8 contract shall be enforceable in the same manner as that
9 provided by subsections (a)(3), (b), (c)(1), (d), (f), (h),
10 and (i) of section 1729 of title 38, United States Code.”.

11 **SEC. 11036. SHARING AGREEMENTS FOR SPECIALIZED MED-**
12 **ICAL RESOURCES.**

13 (a) REPEAL OF SECTION 8151.—(1) Subchapter IV
14 of chapter 81 of title 38, United States Code, is amend-
15 ed—

16 (A) by striking out section 8151; and

17 (B) by redesignating sections 8152, 8153,
18 8154, 8155, 8156, 8157, and 8158 as sections 8151,
19 8152, 8153, 8154, 8155, 8156, and 8157, respec-
20 tively.

21 (2) The table of sections at the beginning of chapter
22 81 is amended—

23 (A) by striking out the item relating to section
24 8151; and

1 (B) by revising the items relating to sections
2 8152, 8153, 8154, 8155, 8156, 8157, and 8158 to
3 reflect the redesignations by paragraph (1)(B).

4 (b) REVISED AUTHORITY FOR SHARING AGREE-
5 MENTS.—Section 8152 of such title, as redesignated by
6 subsection (a)(1)(B), is amended—

7 (1) in subsection (a)(1)(A)—

8 (A) by striking out “specialized medical re-
9 sources” and inserting in lieu thereof “health-
10 care resources”; and

11 (B) by striking out “other” and all that
12 follows through “medical schools” and inserting
13 in lieu thereof “any medical school, health-care
14 provider, health-care plan, insurer, or other en-
15 tity or individual”;

16 (2) in subsection (a)(2) by striking out “only”
17 and all that follows through “are not” and inserting
18 in lieu thereof “if such resources are not, or would
19 not be,”;

20 (3) in subsection (b), by striking out “reciprocal
21 reimbursement” in the first sentence and all that
22 follows through the period at the end of that sen-
23 tence and inserting in lieu thereof “payment to the
24 Department in accordance with procedures that pro-

1 vide appropriate flexibility to negotiate payment
2 which is in the best interest of the Government.”;

3 (4) in subsection (d), by striking out “preclude
4 such payment, in accordance with—” and all that
5 follows through “to such facility therefor” and in-
6 serting in lieu thereof “preclude such payment to
7 such facility for such care or services”;

8 (5) by redesignating subsection (e) as sub-
9 section (f); and

10 (6) by inserting after subsection (d) the follow-
11 ing new subsection (e):

12 “(e) The Secretary may make an arrangement that
13 authorizes the furnishing of services by the Secretary
14 under this section to individuals who are not veterans only
15 if the Secretary determines—

16 “(1) that such an arrangement will not result
17 in the denial of, or a delay in providing access to,
18 care to any veteran at that facility; and

19 “(2) that such an arrangement—

20 “(A) is necessary to maintain an accept-
21 able level and quality of service to veterans at
22 that facility; or

23 “(B) will result in the improvement of
24 services to eligible veterans at that facility.”.

1 (c) CROSS-REFERENCE AMENDMENTS.—(1) Section
2 8110(c)(3)(A) of such title is amended by striking out
3 “8153” and inserting in lieu thereof “8152”.

4 (2) Subsection (b) of section 8154 of such title (as
5 redesignated by subsection (a)(1)(B)) is amended by strik-
6 ing out “section 8154” and inserting in lieu thereof “sec-
7 tion 8153”.

8 (3) Section 8156 of such title (as redesignated by
9 subsection (a)(1)(B)) is amended—

10 (A) in subsection (a), by striking out “section
11 8153(a)” and inserting in lieu thereof “section
12 8152(a)”; and

13 (B) in subsection (b)(3), by striking out “sec-
14 tion 8153” and inserting in lieu thereof “section
15 8152”.

16 (4) Subsection (a) of section 8157 of such title (as
17 redesignated by subsection (a)(1)(B)) is amended—

18 (A) in the matter preceding paragraph (1), by
19 striking out “section 8157” and “section 8153(a)”
20 and inserting in lieu thereof “section 8156” and
21 “section 8152(a)”, respectively; and

22 (B) in paragraph (1), by striking out “section
23 8157(b)(4)” and inserting in lieu thereof “section
24 8156(b)(4)”.

1 **SEC. 11037. PERSONNEL FURNISHING SHARED RESOURCES.**

2 Section 712(b)(2) of title 38, United States Code, is
3 amended—

4 (1) by striking out “the sum of—” and insert-
5 ing in lieu thereof “the sum of the following:”;

6 (2) by capitalizing the first letter of the first
7 word of each of subparagraphs (A) and (B);

8 (3) by striking out “; and” at the end of sub-
9 paragraph (A) and inserting in lieu thereof a period;
10 and

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

12 “(C) The number of such positions in the
13 Department during that fiscal year held by per-
14 sons involved in providing health-care resources
15 under section 8111 or 8152 of this title.”.

16 **TITLE XII—COMMITTEE ON**
17 **WAYS AND MEANS—TRADE**
18 **Subtitle A—Technical Corrections**
19 **and Miscellaneous Trade Provi-**
20 **sions**

21 **SEC. 12001. PAYMENT OF DUTIES AND FEES.**

22 (a) **INTEREST ACCRUAL.**—Section 505(c) of the Tar-
23 iff Act of 1930 (19 U.S.C. 1505(c)) is amended in the
24 second sentence by inserting after “duties, fees, and inter-
25 est” the following: “or, in a case in which a claim is made

1 under section 520(d), from the date on which such claim
2 is made,”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to claims made pursuant to sec-
5 tion 520(d) of the Tariff Act of 1930 on or after April
6 25, 1995.

7 **SEC. 12002. OTHER TECHNICAL AND CONFORMING AMEND-**
8 **MENTS.**

9 (a) EXAMINATION OF BOOKS AND WITNESSES.—Sec-
10 tion 509(a)(2) of the Tariff Act of 1930 (19 U.S.C.
11 1509(a)(2)) is amended by striking “(c)(1)(A)” and in-
12 serting “(d)(1)(A)”.

13 (b) REQUIREMENT FOR CERTIFICATE FOR IMPORTA-
14 TION OF ALCOHOLIC LIQUORS IN SMALL VESSELS.—Sec-
15 tion 7 of the Act of August 5, 1935 (19 U.S.C. 1707;
16 49 Stat. 520), is repealed.

17 (c) MANIFESTS.—Section 431(c)(1) of the Tariff Act
18 of 1930 (19 U.S.C. 1431(c)(1)) is amended in the matter
19 preceding subparagraph (A) by striking “such manifest”
20 and inserting “a vessel manifest”.

21 (d) DOCUMENTATION FOR ENTRY OF MERCHAN-
22 DISE.—Section 484(a)(1) of the Tariff Act of 1930 (19
23 U.S.C. 1484(a)(1)) is amended in the matter preceding
24 subparagraph (A) by striking “553, and 336(j)” and in-
25 serting “and 553”.

1 (e) PENALTIES FOR CERTAIN VIOLATIONS.—Section
2 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amend-
3 ed—

4 (1) in subsection (a)(1), by striking “lawful
5 duty” and inserting “lawful duty, tax, or fee”; and

6 (2) in subsections (b)(1)(A)(vi), (c)(2)(A)(ii),
7 (c)(3)(A)(ii), (c)(4)(A)(i), and (c)(4)(B) by striking
8 “lawful duties” each place it appears and inserting
9 “lawful duties, taxes, and fees”.

10 (f) DEPRIVATION OF LAWFUL DUTIES, TAXES, OR
11 FEES.—Section 592(d) of the Tariff Act of 1930 (19
12 U.S.C. 1592(d)) is amended by striking “or fees be re-
13 stored” and inserting “and fees be restored”.

14 (g) RECONCILIATION TREATED AS ENTRY FOR REC-
15 ORDKEEPING.—

16 (1) Section 401(s) of the Tariff Act of 1930
17 (19 U.S.C. 1401(s)) is amended by inserting “rec-
18 ordkeeping,” after “reliquidation,”.

19 (2) Section 508(c)(1) of such Act (19 U.S.C.
20 1508(c)(1)) is amended by inserting “, filing of a
21 reconciliation,” after “entry”.

22 (h) EXTENSION OF LIQUIDATION.—Section 504(d) of
23 the Tariff Act of 1930 (19 U.S.C. 1504(d)) is amended
24 by inserting “, unless liquidation is extended under sub-
25 section (b),” after “shall liquidate the entry”.

1 (i) EXEMPTION FROM DUTY FOR PERSONAL AND
2 HOUSEHOLD GOODS ACCOMPANYING RETURNING RESI-
3 DENTS.—Section 321(a)(2)(B) of the Tariff Act of 1930
4 (19 U.S.C. 1321(a)(2)(B)) is amended by inserting “,
5 9804.00.65,” after “9804.00.30”.

6 (j) DEBT COLLECTION.—Section 631(a) of the Tariff
7 Act of 1930 (19 U.S.C. 1631(a)) is amended—

8 (1) by inserting after “law,” the following: “in-
9 cluding section 3302 of title 31, United States Code,
10 and subchapters I and II of chapter 37 of such
11 title,”; and

12 (2) by inserting “and the expenses associated
13 with recovering such indebtedness,” after “Govern-
14 ment,”.

15 (k) EXAMINATION OF BOOKS AND WITNESSES.—Sec-
16 tion 509(b) of the Tariff Act of 1930 (19 U.S.C. 1509(b))
17 is amended in paragraphs (3) and (4) by striking “appro-
18 priate regional commissioner” and inserting “officer des-
19 ignated pursuant to regulations”.

20 (l) REVIEW OF PROTESTS.—Section 515(d) of the
21 Tariff Act of 1930 (19 U.S.C. 1515(d)) is amended by
22 striking “district director” and inserting “port director”.

23 (m) EFFECTIVE DATE.—The amendments made by
24 this section apply as of December 8, 1993.

1 **SEC. 12003. CLARIFICATION REGARDING THE APPLICATION**
2 **OF CUSTOMS USER FEES.**

3 (a) IN GENERAL.—Subparagraph (D) of section
4 13031(b)(8) of the Consolidated Omnibus Budget Rec-
5 onciliation Act of 1985 (19 U.S.C. 58c(b)(8)(D)) is
6 amended—

7 (1) in clause (iv)—

8 (A) by striking “subparagraph 9802.00.80
9 of such Schedules” and inserting “heading
10 9802.00.80 of such Schedule”; and

11 (B) by striking “and” at the end of clause
12 (iv);

13 (2) by striking the period at the end of clause
14 (v) and inserting “; and”; and

15 (3) by inserting after clause (v) the following
16 new clause:

17 “(vi) in the case of merchandise entered from
18 a foreign trade zone (other than merchandise to
19 which clause (v) applies), be applied only to the
20 value of the privileged or nonprivileged foreign sta-
21 tus merchandise under section 3 of the Act of June
22 18, 1934 (commonly known as the Foreign Trade
23 Zones Act, 19 U.S.C. 81c).”.

24 (b) EFFECTIVE DATE.—The amendments made by
25 subsection (a) apply to—

(c) APPLICATION OF FEES TO CERTAIN AGRICULTURAL PRODUCTS.—The amendment made by section 111(b)(2)(D)(iv) of the Customs and Trade Act of 1990 shall apply to—

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if the liquidation of the entry was not final before such 15th day.

Subsection (b) of section 484H of the Customs and Trade Act of 1990 (19 U.S.C. 1553 note) is amended by striking “, or withdrawn from warehouse for consumption,” and inserting “for transportation in bond”.

1 **SEC. 12005. TECHNICAL AMENDMENTS REGARDING CER-**
2 **TAIN BENEFICIARY COUNTRIES.**

3 (a) **CARIBBEAN BASIN ECONOMIC RECOVERY ACT.**—

4 Section 213(h)(1) of the Caribbean Basin Economic Re-
5 covery Act (19 U.S.C. 2703(h)(1)) is amended by adding
6 at the end thereof the following flush sentence:

7 “The duty reductions provided for under this paragraph
8 shall not apply to textile and apparel articles which are
9 subject to textile agreements.”.

10 (b) **ANDEAN TRADE PREFERENCE ACT.**—Section
11 204(c)(1) of the Andean Trade Preference Act (19 U.S.C.
12 3203(c)(1)) is amended by adding at the end thereof the
13 following flush sentence:

14 “The duty reductions provided for under this paragraph
15 shall not apply to textile and apparel articles which are
16 subject to textile agreements.”

17 (c) **EFFECTIVE DATE.**—The amendments made by
18 this section apply with respect to—

19 (1) articles entered, or withdrawn from ware-
20 house for consumption, on or after the 15th day
21 after the date of the enactment of this Act, and

22 (2) articles entered after December 31, 1991,
23 and before such 15th day, if the liquidation of the
24 entry of such articles was not final before such 15th
25 day.

1 **SEC. 12006. CLARIFICATION OF FEES FOR CERTAIN CUS-**
2 **TOMS SERVICES.**

3 (a) IN GENERAL.—Section 13031(b)(9)(A) of the
4 Consolidated Omnibus Budget Reconciliation Act of 1985
5 (19 U.S.C. 58c(b)(9)(A)) is amended—

6 (1) by striking “centralized hub facility or” in
7 clause (i); and

8 (2) in clause (ii)—

9 (A) by striking “facility—” and inserting
10 “facility or centralized hub facility—”,

11 (B) by striking “customs inspectional” in
12 subclause (I), and

13 (C) by striking “at the facility” in
14 subclause (I) and inserting “for the facility”.

15 (b) DEFINITIONS.—Section 13031(b)(9)(B)(i) of the
16 Consolidated Omnibus Budget Reconciliation Act of 1985
17 (19 U.S.C. 58c(b)(9)(B)(i)) is amended—

18 (1) by striking “, as in effect on July 30,
19 1990”, and

20 (2) by adding at the end thereof the following
21 new sentence: “Nothing in this paragraph shall be
22 construed as prohibiting the Secretary of the Treas-
23 ury from processing merchandise that is informally
24 entered or released at any centralized hub facility or
25 express consignment carrier facility during the nor-
26 mal operating hours of the Customs Service, subject

1 to reimbursement and payment under subparagraph
2 (A).”.

3 (c) CITATION.—Section 13031(b)(9)(B)(ii) of the
4 Consolidated Omnibus Budget Reconciliation Act of 1985
5 (19 U.S.C. 58c(b)(9)(B)(ii)) is amended by striking “sec-
6 tion 236 of the Tariff and Trade Act of 1984” and insert-
7 ing “section 236 of the Trade and Tariff Act of 1984”.

8 **SEC. 12007. SPECIAL RULE FOR EXTENDING TIME FOR FIL-**
9 **ING DRAWBACK CLAIMS.**

10 Section 313(r) of the Tariff Act of 1930 (19 U.S.C.
11 1313(r)) is amended by adding at the end the following:

12 “(3)(A)(i) Subject to clause (ii), the Customs
13 Service may, notwithstanding the limitation set forth
14 in paragraph (1), extend the time for filing a draw-
15 back claim for a period not to exceed 18 months,
16 if—

17 “(I) the claimant establishes to the satis-
18 faction of the Customs Service that the claim-
19 ant was unable to file the drawback claim be-
20 cause of an event declared by the President to
21 be a major disaster on or after January 1,
22 1994; and

23 “(II) the claimant files a request for such
24 extension with the Customs Service within one

1 year from the last day of the 3-year period re-
2 ferred to in paragraph (1).

3 “(ii) In the case of a major disaster occurring
4 on or after January 1, 1994, and before the date of
5 the enactment of this paragraph—

6 “(I) the Customs Service may extend the
7 time for filing the drawback claim for a period
8 not to exceed 1 year; and

9 “(II) the request under clause (i)(II) must
10 be filed not later than 1 year from the date of
11 the enactment of this paragraph.

12 “(B) If an extension is granted with respect to
13 a request filed under this paragraph, the periods of
14 time for retaining records set forth in subsection (t)
15 of this section and section 508(c)(3) shall be ex-
16 tended for an additional 18 months or, in a case to
17 which subparagraph (A)(ii) applies, for a period not
18 to exceed 1 year from the date the claim is filed.

19 “(C) For purposes of this paragraph, the term
20 ‘major disaster’ has the meaning given that term in
21 section 102(2) of the Robert T. Stafford Disaster
22 Relief and Emergency Assistance Act (42 U.S.C.
23 5122(2)).”.

1 **SEC. 12008. TREATMENT OF CERTAIN ENTRIES.**

2 (a) **LIQUIDATION OR RELIQUIDATION OF ENTRIES.**—

3 Notwithstanding sections 514 and 520 of the Tariff Act
 4 of 1930 (19 U.S.C. 1514 and 1520), and any other provi-
 5 sion of law, the United States Customs Service shall liq-
 6 uidate or reliquidate those entry numbers made at New
 7 York, New York, which are listed in subsection (c), in ac-
 8 cordance with the final results of the administrative re-
 9 view, covering the period from May 1, 1984, through
 10 March 31, 1985, undertaken by the International Trade
 11 Administration of the Department of Commerce for such
 12 entries (case number A-580-008).

13 (b) **PAYMENT OF AMOUNTS OWED.**—Any amounts
 14 owed by the United States pursuant to the liquidation or
 15 reliquidation of an entry under subsection (a) shall be paid
 16 by the Customs Service within 90 days after such liquida-
 17 tion or reliquidation.

18 (c) **ENTRY LIST.**—The entries referred to in sub-
 19 section (a) are the following:

Entry Number	Date of Entry
84-4426808	August 29, 1984
84-4427823	September 4, 1984
84-4077985	July 25, 1984
84-4080859	August 3, 1984
84-4080817	August 3, 1984
84-4077723	August 1, 1984
84-4075194	July 10, 1984
84-4076481	July 17, 1984
84-4080930	August 9, 1984.

1 **SEC. 12009. TEMPORARY DUTY SUSPENSION FOR PER-**
 2 **SONAL EFFECTS OF PARTICIPANTS IN CER-**
 3 **TAIN WORLD ATHLETIC EVENTS.**

4 (a) IN GENERAL.—Subchapter II of chapter 99 of
 5 the Harmonized Tariff Schedule of the United States is
 6 amended by inserting in numerical sequence the following
 7 new heading:

“	9902.98.05	Any of the following articles not intended for sale or distribution to the public: personal effects of aliens who are participants in, officials of, or accredited members of delegations to, the 1998 Goodwill Games, and of persons who are immediate family members of or servants to any of the foregoing persons; equipment and materials imported in connection with the foregoing event by or on behalf of the foregoing persons or the organizing committee of such event; articles to be used in exhibitions depicting the culture of a country participating in such event; and, if consistent with the foregoing, such other articles as the Secretary of the Treasury may allow	Free	No change	Free	On or before 2/1/99	”.

8 (b) TAXES AND FEES NOT TO APPLY.—The articles
 9 described in heading 9902.98.05 of the Harmonized Tariff
 10 Schedule of the United States (as added by subsection (a))

1 shall be free of taxes and fees which may be otherwise
2 applicable.

3 (c) EFFECTIVE DATE.—The amendment made by
4 this section applies to articles entered, or withdrawn from
5 warehouse for consumption, on or after the 15th day after
6 the date of the enactment of this Act.

7 **SEC. 12010. MISCELLANEOUS TECHNICAL CORRECTIONS.**

8 (a) DRAWBACK AND REFUNDS.—Section
9 313(s)(2)(B) of the Tariff Act of 1930 (19 U.S.C.
10 1313(s)(2)(B)) is amended by striking “successor” the
11 first place it appears and inserting “predecessor”.

12 (b) TRADE ACT OF 1974.—Section 301(c)(4) of the
13 Trade Act of 1974 (19 U.S.C. 2411(c)(4)) is amended by
14 striking “(1)(C)(iii)” and inserting “(1)(D)(iii)”.

15 **SEC. 12011. URUGUAY ROUND AGREEMENTS ACT.**

16 Section 405(b) of the Uruguay Round Agreements
17 Act (19 U.S.C. 3602(b)) is amended—

18 (1) in paragraph (1) by striking “1(a)” and in-
19 serting “1(b)”; and

20 (2) in paragraph (2) by striking “1(b)” and in-
21 serting “1(a)”.

22 **SEC. 12012. FILING OF CERTIFICATIONS FOR CIVIL AIR-**
23 **CRAFT PARTS.**

24 General Note 6 of the Harmonized Tariff Schedule
25 of the United States is amended—

1 (1) by inserting “or electronic” after “shall file
2 a written”; and

3 (2) by striking “with the appropriate customs
4 officer” and inserting “with the United States Customs Service”.
5

6 **SEC. 12013. EXEMPTION REGARDING CERTAIN VESSEL RE-**
7 **PAIRS.**

8 (a) TEMPORARY EXEMPTION EXTENDED.—Section
9 484E(b)(2)(B) of the Customs and Trade Act of 1990 (19
10 U.S.C. 1466 note) is amended by striking “December 31,
11 1992” and inserting “December 31, 1994”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section applies to any entry made after December 31,
14 1992, and before January 1, 1995.

15 **SEC. 12014. FEES FOR CERTAIN CUSTOMS SERVICES.**

16 (a) IN GENERAL.—Section 13031(a)(5) of the Con-
17 solidated Omnibus Budget Reconciliation Act of 1985 (19
18 U.S.C. 58c(a)(5)) is amended—

19 (1) in subparagraph (A), by inserting “a place”
20 after “aircraft from”; and

21 (2) in subparagraph (B), by striking “sub-
22 section (b)(1)(A)” and inserting “subsection
23 (b)(1)(A)(i)”.

1 (b) LIMITATION ON FEES.—Section 13031(b)(1) of
2 the Consolidated Omnibus Budget Reconciliation Act of
3 1985 (19 U.S.C. 58c(b)(1)) is amended to read as follows:

4 “(b) LIMITATIONS ON FEES.—(1)(A) No fee may be
5 charged under subsection (a) of this section for customs
6 services provided in connection with—

7 “(i) the arrival of any passenger whose jour-
8 ney—

9 “(I) originated in—

10 “(aa) Canada,

11 “(bb) Mexico,

12 “(cc) a territory or possession of the
13 United States, or

14 “(dd) any adjacent island (within the
15 meaning of section 101(b)(5) of the Immi-
16 gration and Nationality Act (8 U.S.C.
17 1101(b)(5))), or

18 “(II) originated in the United States and
19 was limited to—

20 “(aa) Canada,

21 “(bb) Mexico,

22 “(cc) territories and possessions of the
23 United States, and

24 “(dd) such adjacent islands;

1 “(ii) the arrival of any railroad car the journey
2 of which originates and terminates in the same
3 country, but only if no passengers board or dis-
4 embark from the train and no cargo is loaded or un-
5 loaded from such car while the car is within any
6 country other than the country in which such car
7 originates and terminates;

8 “(iii) the arrival of any ferry; or

9 “(iv) the arrival of any passenger on board a
10 commercial vessel traveling only between ports which
11 are within the customs territory of the United
12 States.

13 “(B) The exemption provided for in subparagraph
14 (A) shall not apply in the case of the arrival of any pas-
15 senger on board a commercial vessel whose journey origi-
16 nates and terminates at the same place in the United
17 States if there are no intervening stops.

18 “(C) The exemption provided for in subparagraph
19 (A)(i) shall not apply to fiscal years 1994, 1995, 1996,
20 and 1997.”.

21 (c) FEE ASSESSED ONLY ONCE.—Section
22 13031(b)(4) of the Consolidated Omnibus Budget Rec-
23 onciliation Act of 1985 (19 U.S.C. 58c(b)(4)) is amend-
24 ed—

1 (1) by redesignating subparagraphs (A) and
2 (B) as clauses (i) and (ii), respectively;

3 (2) by striking “No fee” and inserting “(A) No
4 fee”; and

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(B) In the case of a commercial vessel making a
8 single voyage involving 2 or more United States ports with
9 respect to which the passengers would otherwise be
10 charged a fee pursuant to subsection (a)(5), such fee shall
11 be charged only 1 time for each passenger.”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect as if included in the amend-
14 ments made by section 521 of the North American Free
15 Trade Agreement Implementation Act.

16 **SEC. 12015. TECHNICAL CORRECTION TO CERTAIN CHEMI-**
17 **CAL DESCRIPTION.**

18 (a) AMENDMENT TO SUBHEADING 2933.90.02.—The
19 article description for subheading 2933.90.02 of the Har-
20 monized Tariff Schedule of the United States is amended
21 by striking “(Quizalofop ethyl)”.

22 (b) EFFECTIVE DATE.—

23 (1) GENERAL RULE.—The amendment made by
24 this section applies to articles entered, or withdrawn

1 from warehouse for consumption, on or after the
2 15th day after the date of the enactment of this Act.

3 (2) RETROACTIVE PROVISION.—Notwithstand-
4 ing section 514 of the Tariff Act of 1930 or any
5 other provision of law, upon proper request (which
6 includes sufficient information to identify and locate
7 the entry) filed with the Customs Service on or be-
8 fore the date that is 180 days after the date of the
9 enactment of this Act, any entry, or withdrawal
10 from warehouse for consumption, of an article that
11 occurred—

12 (A) after December 31, 1994, and before
13 the date that is 15 days after the date of the
14 enactment of this Act, and

15 (B) with respect to which there would have
16 been no duty or a lesser duty if the amendment
17 made by subsection (a) applied to such entry or
18 withdrawal,

19 shall be liquidated or reliquidated as though such
20 amendment applied to such entry or withdrawal.

21 **SEC. 12016. MARKING OF IMPORTED ARTICLES AND CON-**
22 **TAINERS.**

23 (a) IN GENERAL.—Section 304 of the Tariff Act of
24 1930 (19 U.S.C.1304) is amended—

1 (1) by redesignating subsections (f), (g), (h),
2 and (i) as subsections (i), (j), (k), and (l), respec-
3 tively, and

4 (2) by inserting after subsection (e) the follow-
5 ing new subsections:

6 “(f) MARKING OF METAL FORGINGS.—The marking
7 requirements of subsections (a) and (b) shall not apply
8 to—

9 “(1) metal forgings that—

10 “(A) are imported for processing into fin-
11 ished hand tools in the United States, and

12 “(B) have not been improved in condition
13 beyond rough burring, trimming, grinding,
14 turning, hammering, chiseling, or filing; and

15 “(2) hand tools made from metal forgings de-
16 scribed in paragraph (1).

17 “(g) MARKING OF CERTAIN COFFEE AND TEA PROD-
18 UCTS.—The marking requirements of subsections (a) and
19 (b) shall not apply to articles described in subheading
20 0901.21, 0901.22, 0902.10, 0902.20, 0902.30, 0902.40,
21 2101.10, or 2101.20 of the Harmonized Tariff Schedule
22 of the United States, as in effect on January 1, 1995.

23 “(h) MARKING OF SPICES.—The marking require-
24 ments of subsections (a) and (b) shall not apply to articles
25 provided for under subheadings 0904.11, 0904.12,

1 0904.20, 0905.00, 0906.10, 0906.20, 0907.00, 0908.10,
 2 0908.20, 0908.30, 0909.10, 0909.20, 0909.30, 0909.40,
 3 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50,
 4 0910.91, 0910.99, 1106.20, 1207.40, 1207.50, 1207.91,
 5 1404.90, and 3302.10, and items classifiable in categories
 6 0712.90.60, 0712.90.8080, 1209.91.2000, 1211.90.2000,
 7 1211.90.8040, 1211.90.8050, 1211.90.8090,
 8 2006.00.3000, 2918.13.2000, 3203.00.8000,
 9 3301.90.1010, 3301.90.1020, and 3301.90.1050 of the
 10 Harmonized Tariff Schedule of the United States, as in
 11 effect on January 1, 1995.”.

12 (b) EFFECTIVE DATE.—The amendments made by
 13 this section apply to goods entered, or withdrawn from
 14 warehouse for consumption, on or after the date of the
 15 enactment of this Act.

16 **SEC. 12017. RELIQUIDATING ENTRY OF WARP KNITTING**
 17 **MACHINES.**

18 Notwithstanding section 514 of the Tariff Act of
 19 1930 (19 U.S.C. 1514) or any other provision of law, upon
 20 proper request filed with the Customs Service before the
 21 180th day after the date of the enactment of this Act,
 22 the Secretary of the Treasury shall—

23 (1) liquidate or reliquidate as duty free Entry
 24 No. 100–3022436–3, made on July 12, 1989, at the
 25 port of Charleston, South Carolina; and

1 (2) refund any duties and interest paid with re-
2 spect to such entry.

3 **SEC. 12018. IDENTIFICATION OF TRADE EXPANSION PRIOR-**
4 **ITIES.**

5 Section 310(a)(1) of the Trade Act of 1974 (19
6 U.S.C. 2420(a)(1)) is amended by striking “calendar year
7 1995” and inserting “each of calendar years 1995 through
8 2000”.

9 **Subtitle B—Generalized System of**
10 **Preferences**

11 **SEC. 12101. SHORT TITLE.**

12 This subtitle may be cited as the “GSP Renewal Act
13 of 1995”.

14 **SEC. 12102. GENERALIZED SYSTEM OF PREFERENCES.**

15 (a) IN GENERAL.—Title V of the Trade Act of 1974
16 is amended to read as follows:

17 **“TITLE V—GENERALIZED**
18 **SYSTEM OF PREFERENCES**

19 **“SEC. 501. AUTHORITY TO EXTEND PREFERENCES.**

20 “The President may provide duty-free treatment for
21 any eligible article from any beneficiary developing coun-
22 try in accordance with the provisions of this title. In tak-
23 ing any such action, the President shall have due regard
24 for—

1 “(1) the effect such action will have on further-
2 ing the economic development of developing coun-
3 tries through the expansion of their exports;

4 “(2) the extent to which other major developed
5 countries are undertaking a comparable effort to as-
6 sist developing countries by granting generalized
7 preferences with respect to imports of products of
8 such countries;

9 “(3) the anticipated impact of such action on
10 United States producers of like or directly competi-
11 tive products; and

12 “(4) the extent of the beneficiary developing
13 country’s competitiveness with respect to eligible ar-
14 ticles.

15 **“SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING**
16 **COUNTRIES.**

17 “(a) AUTHORITY TO DESIGNATE COUNTRIES.—

18 “(1) BENEFICIARY DEVELOPING COUNTRIES.—

19 The President is authorized to designate countries
20 as beneficiary developing countries for purposes of
21 this title.

22 “(2) LEAST-DEVELOPED BENEFICIARY DEVEL-
23 OPING COUNTRIES.—The President is authorized to
24 designate any beneficiary developing country as a
25 least-developed beneficiary developing country for

1 purposes of this title, based on the considerations in
2 section 501 and subsection (c) of this section.

3 “(b) COUNTRIES INELIGIBLE FOR COUNTRY DES-
4 IGNATION.—

5 “(1) SPECIFIC COUNTRIES.—The following
6 countries may not be designated as beneficiary devel-
7 oping countries for purposes of this title:

8 “(A) Australia.

9 “(B) Canada.

10 “(C) European Union member states.

11 “(D) Iceland.

12 “(E) Japan.

13 “(F) Monaco.

14 “(G) New Zealand.

15 “(H) Norway.

16 “(I) Switzerland.

17 “(2) OTHER BASES FOR INELIGIBILITY.—The
18 President shall not designate any country a bene-
19 ficiary developing country under this title if any of
20 the following applies:

21 “(A) Such country is a Communist coun-
22 try, unless—

23 “(i) the products of such country re-
24 ceive nondiscriminatory treatment,

1 “(ii) such country is a WTO Member
2 (as such term is defined in section 2 of the
3 Uruguay Round Agreements Act,) and a
4 member of the International Monetary
5 Fund, and

6 “(iii) such country is not dominated
7 or controlled by international communism.

8 “(B) Such country is a party to an ar-
9 rangement of countries and participates in any
10 action pursuant to such arrangement, the effect
11 of which is—

12 “(i) to withhold supplies of vital com-
13 modity resources from international trade
14 or to raise the price of such commodities
15 to an unreasonable level, and

16 “(ii) to cause serious disruption of the
17 world economy.

18 “(C) Such country affords preferential
19 treatment to the products of a developed coun-
20 try, other than the United States, which has, or
21 is likely to have, a significant adverse effect on
22 United States commerce.

23 “(D)(i) Such country—

24 “(I) has nationalized, expropriated, or
25 otherwise seized ownership or control of

1 property, including patents, trademarks, or
2 copyrights, owned by a United States citi-
3 zen or by a corporation, partnership, or as-
4 sociation which is 50 percent or more ben-
5 efiticially owned by United States citizens,

6 “(II) has taken steps to repudiate or
7 nullify an existing contract or agreement
8 with a United States citizen or a corpora-
9 tion, partnership, or association which is
10 50 percent or more beneficially owned by
11 United States citizens, the effect of which
12 is to nationalize, expropriate, or otherwise
13 seize ownership or control of property, in-
14 cluding patents, trademarks, or copyrights,
15 so owned, or

16 “(III) has imposed or enforced taxes
17 or other exactions, restrictive maintenance
18 or operational conditions, or other meas-
19 ures with respect to property, including
20 patents, trademarks, or copyrights, so
21 owned, the effect of which is to nationalize,
22 expropriate, or otherwise seize ownership
23 or control of such property,

24 unless clause (ii) applies.

1 “(ii) This clause applies if the President
2 determines that—

3 “(I) prompt, adequate, and effective
4 compensation has been or is being made to
5 the citizen, corporation, partnership, or as-
6 sociation referred to in clause (i),

7 “(II) good faith negotiations to pro-
8 vide prompt, adequate, and effective com-
9 pensation under the applicable provisions
10 of international law are in progress, or the
11 country described in clause (i) is otherwise
12 taking steps to discharge its obligations
13 under international law with respect to
14 such citizen, corporation, partnership, or
15 association, or

16 “(III) a dispute involving such citizen,
17 corporation, partnership, or association
18 over compensation for such a seizure has
19 been submitted to arbitration under the
20 provisions of the Convention for the Settle-
21 ment of Investment Disputes, or in an-
22 other mutually agreed upon forum,

23 and the President promptly furnishes a copy of
24 such determination to the Senate and House of
25 Representatives.

1 “(E) Such country fails to act in good
2 faith in recognizing as binding or in enforcing
3 arbitral awards in favor of United States citi-
4 zens or a corporation, partnership, or associa-
5 tion which is 50 percent or more beneficially
6 owned by United States citizens, which have
7 been made by arbitrators appointed for each
8 case or by permanent arbitral bodies to which
9 the parties involved have submitted their dis-
10 pute.

11 “(F) Such country aids or abets, by grant-
12 ing sanctuary from prosecution to, any individ-
13 ual or group which has committed an act of
14 international terrorism.

15 “(G) Such country has not taken or is not
16 taking steps to afford internationally recognized
17 worker rights to workers in the country (includ-
18 ing any designated zone in that country).

19 Subparagraphs (D), (E), (F), and (G) shall not pre-
20 vent the designation of any country as a beneficiary
21 developing country under this title if the President
22 determines that such designation will be in the na-
23 tional economic interest of the United States and re-
24 ports such determination to the Congress with the
25 reasons therefor.

1 “(c) FACTORS AFFECTING COUNTRY DESIGNA-
2 TION.—In determining whether to designate any country
3 as a beneficiary developing country under this title, the
4 President shall take into account—

5 “(1) an expression by such country of its desire
6 to be so designated;

7 “(2) the level of economic development of such
8 country, including its per capita gross national prod-
9 uct, the living standards of its inhabitants, and any
10 other economic factors which the President deems
11 appropriate;

12 “(3) the extent to which other major developed
13 countries are extending generalized preferential tar-
14 iff treatment to such country;

15 “(4) the extent to which such country has as-
16 sured the United States that it will provide equitable
17 and reasonable access to the markets and basic com-
18 modity resources of such country and the extent to
19 which such country has assured the United States
20 that it will refrain from engaging in unreasonable
21 export practices;

22 “(5) whether such country is providing ade-
23 quate and effective protection of intellectual property
24 rights;

1 “(6) the extent to which such country has taken
2 action to—

3 “(A) reduce trade distorting investment
4 practices and policies (including export per-
5 formance requirements); and

6 “(B) reduce or eliminate barriers to trade
7 in services;

8 “(7) whether or not such country has taken or
9 is taking steps to afford to workers in that country
10 (including any designated zone in that country)
11 internationally recognized worker rights; and

12 “(8) the extent to which such country fails to
13 cooperate with the United States in preventing the
14 proliferation of nuclear weapons, nuclear weapons
15 components, and nuclear weapons delivery systems,
16 or in preventing illegal drug trafficking.

17 A country may be found to not provide adequate and effec-
18 tive protection of intellectual property rights under para-
19 graph (5) and section 503(d)(2)(B), notwithstanding the
20 fact that it may be in compliance with the specific obliga-
21 tions of the Agreement on Trade-Related Aspects of Intel-
22 lectual Property Rights referred to in section 101(d)(15)
23 of the Uruguay Round Agreements Act.

24 “(d) WITHDRAWAL, SUSPENSION, OR LIMITATION OF
25 COUNTRY DESIGNATION.—

1 “(1) IN GENERAL.—The President may with-
2 draw, suspend, or limit the application of the duty-
3 free treatment accorded under this title with respect
4 to any country. Except in exceptional circumstances,
5 the President, before taking any action under this
6 subsection, shall provide a period for the submission
7 of public comments on the matter under consider-
8 ation, and in taking any action under this sub-
9 section, the President shall consider the factors set
10 forth in section 501 and subsection (c) of this sec-
11 tion, and comments received from the public.

12 “(2) CHANGED CIRCUMSTANCES.—The Presi-
13 dent shall, after complying with the requirements of
14 subsection (f)(2), withdraw or suspend the designa-
15 tion of any country as a beneficiary developing coun-
16 try if, after such designation, the President deter-
17 mines that as the result of changed circumstances
18 such country would be barred from designation as a
19 beneficiary developing country under subsection
20 (b)(2). Such country shall cease to be a beneficiary
21 developing country on the day on which the Presi-
22 dent issues an Executive order or Presidential proc-
23 lamation revoking the designation of such country
24 under this title.

1 “(e) MANDATORY GRADUATION OF BENEFICIARY
2 DEVELOPING COUNTRIES.—If the President determines
3 that a beneficiary developing country has become a ‘high
4 income’ country, as defined by the official statistics of the
5 International Bank for Reconstruction and Development,
6 then the President shall terminate the designation of such
7 country as a beneficiary developing country for purposes
8 of this title, effective on January 1 of the second year fol-
9 lowing the year in which such determination is made.

10 “(f) CONGRESSIONAL NOTIFICATION.—

11 “(1) NOTIFICATION OF DESIGNATION.—

12 “(A) IN GENERAL.—Before the President
13 designates any country as a beneficiary develop-
14 ing country under this title, the President shall
15 notify the Congress of the President’s intention
16 to make such designation, together with the
17 considerations entering into such decision.

18 “(B) DESIGNATION AS LEAST-DEVELOPED
19 BENEFICIARY DEVELOPING COUNTRY.—At least
20 60 days before the President designates any
21 country as a least-developed beneficiary develop-
22 ing country, the President shall notify the Con-
23 gress of the President’s intention to make such
24 designation.

1 “(2) NOTIFICATION OF TERMINATION.—If the
2 President has designated any country as a bene-
3 ficiary developing country under this title, the Presi-
4 dent shall not terminate such designation unless, at
5 least 60 days before such termination, the President
6 has notified the Congress and has notified such
7 country of the President’s intention to terminate
8 such designation, together with the considerations
9 entering into such decision.

10 **“SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.**

11 “(a) ELIGIBLE ARTICLES.—

12 “(1) DESIGNATION.—

13 “(A) IN GENERAL.—Except as provided in
14 subsection (b), the President is authorized to
15 designate articles as eligible articles for all ben-
16 eficiary developing countries for purposes of
17 this title by Executive order or Presidential
18 proclamation after receiving the advice of the
19 International Trade Commission in accordance
20 with subsection (e).

21 “(B) LEAST-DEVELOPED BENEFICIARY DE-
22 VELOPING COUNTRIES.—Except as provided in
23 subsection (b), the President is authorized to
24 designate additional articles as eligible articles
25 only for countries designated as least-developed

1 beneficiary developing countries under section
2 502(a)(2) if, after receiving the advice of the
3 International Trade Commission in accordance
4 with subsection (e) of this section, the Presi-
5 dent determines that such articles are not im-
6 port-sensitive in the context of imports from
7 least-developed beneficiary developing countries.

8 “(C) THREE-YEAR RULE.—If, after receiv-
9 ing the advice of the International Trade Com-
10 mission under subsection (e), an article has
11 been formally considered for designation as an
12 eligible article under this title and denied such
13 designation, such article may not be reconsid-
14 ered for such designation for a period of three
15 years after such denial.

16 “(2) RULE OF ORIGIN.—

17 “(A) GENERAL RULE.—The duty-free
18 treatment provided under this title shall apply
19 to any eligible article which is the growth, prod-
20 uct, or manufacture of a beneficiary developing
21 country if—

22 “(i) that article is imported directly
23 from a beneficiary developing country into
24 the customs territory of the United States;
25 and

1 “(ii) the sum of—

2 “(I) the cost or value of the ma-
3 terials produced in the beneficiary de-
4 veloping country or any two or more
5 countries which are members of the
6 same association of countries which is
7 treated as one country under section
8 506(2), plus

9 “(II) the direct costs of process-
10 ing operations performed in such ben-
11 eficiary developing country or such
12 member countries,

13 is not less than 35 percent of the ap-
14 praised value of such article at the time it
15 is entered.

16 “(B) EXCLUSIONS.—An article shall not
17 be treated as the growth, product, or manufac-
18 ture of a beneficiary developing country by vir-
19 tue of having merely undergone—

20 “(i) simple combining or packaging
21 operations, or

22 “(ii) mere dilution with water or mere
23 dilution with another substance that does
24 not materially alter the characteristics of
25 the article.

1 “(3) REGULATIONS.—The Secretary of the
2 Treasury, after consulting with the United States
3 Trade Representative, shall prescribe such regula-
4 tions as may be necessary to carry out paragraph
5 (2), including, but not limited to, regulations provid-
6 ing that, in order to be eligible for duty-free treat-
7 ment under this title, an article—

8 “(A) must be wholly the growth, product,
9 or manufacture of a beneficiary developing
10 country, or

11 “(B) must be a new or different article of
12 commerce which has been grown, produced, or
13 manufactured in the beneficiary developing
14 country.

15 “(b) ARTICLES THAT MAY NOT BE DESIGNATED AS
16 ELIGIBLE ARTICLES.—

17 “(1) IMPORT SENSITIVE ARTICLES.—The Presi-
18 dent may not designate any article as an eligible ar-
19 ticle under subsection (a) if such article is within
20 one of the following categories of import-sensitive ar-
21 ticles:

22 “(A) Textile and apparel articles which
23 were not eligible articles for purposes of this
24 title on January 1, 1994, as this title was in ef-
25 fect on such date.

1 “(B) Import-sensitive electronic articles.

2 “(C) Import-sensitive steel articles.

3 “(D) Footwear, handbags, luggage, flat
4 goods, work gloves, and leather wearing apparel
5 which were not eligible articles for purposes of
6 this title on January 1, 1995, as this title was
7 in effect on such date.

8 “(E) Import-sensitive semimanufactured
9 and manufactured glass products.

10 “(F) Any other articles which the Presi-
11 dent determines to be import-sensitive in the
12 context of the Generalized System of Pref-
13 erences.

14 “(2) ARTICLES AGAINST WHICH OTHER AC-
15 TIONS TAKEN.—An article shall not be an eligible
16 article for purposes of this title for any period dur-
17 ing which such article is the subject of any action
18 proclaimed pursuant to section 203 of this Act (19
19 U.S.C. 2253) or section 232 or 351 of the Trade
20 Expansion Act of 1962 (19 U.S.C. 1862, 1981).

21 “(3) AGRICULTURAL PRODUCTS.—No quantity
22 of an agricultural product subject to a tariff-rate
23 quota that exceeds the in-quota quantity shall be eli-
24 gible for duty-free treatment under this title.

1 “(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF
2 DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITA-
3 TION.—

4 “(1) IN GENERAL.—The President may with-
5 draw, suspend, or limit the application of the duty-
6 free treatment accorded under this title with respect
7 to any article, except that no rate of duty may be
8 established with respect to any article pursuant to
9 this subsection other than the rate which would
10 apply but for this title. In taking any action under
11 this subsection, the President shall consider the fac-
12 tors set forth in sections 501 and 502(c).

13 “(2) COMPETITIVE NEED LIMITATION.—

14 “(A) BASIS FOR WITHDRAWAL OF DUTY-
15 FREE TREATMENT.—Except as provided in this
16 paragraph and subject to subsection (d), when-
17 ever the President determines that a beneficiary
18 developing country has exported (directly or in-
19 directly) to the United States during any cal-
20 endar year beginning after December 31,
21 1995—

22 “(i) a quantity of an eligible article
23 having an appraised value in excess of
24 \$75,000,000, except that, in applying this
25 clause, the amount of \$75,000,000 shall be

1 increased by \$5,000,000 on January 1 of
2 each calendar year after calendar year
3 1995, or

4 “(ii) a quantity of an eligible article
5 equal to or exceeding 50 percent of the ap-
6 praised value of the total imports of that
7 article into the United States during the
8 calendar year,

9 then the President shall, not later than July 1
10 of the next calendar year, terminate the duty-
11 free treatment for that article from that bene-
12 ficiary developing country.

13 “(B) COUNTRY DEFINED.—For purposes
14 of this paragraph, the term ‘country’ does not
15 include an association of countries which is
16 treated as one country under section 506(2),
17 but does include a country which is a member
18 of any such association.

19 “(C) REDESIGNATIONS.—A country which
20 is no longer treated as a beneficiary developing
21 country with respect to an eligible article by
22 reason of subparagraph (A) may be redesign-
23 nated a beneficiary developing country with re-
24 spect to such article, subject to the consider-
25 ations set forth in sections 501 and 502, if im-

1 ports of such article from such country did not
2 exceed the limitations in subparagraph (A) dur-
3 ing the preceding calendar year.

4 “(D) LEAST-DEVELOPED BENEFICIARY
5 DEVELOPING COUNTRIES.—Subparagraph (A)
6 shall not apply to any least-developed bene-
7 ficiary developing country.

8 “(E) ARTICLES NOT PRODUCED IN THE
9 UNITED STATES EXCLUDED.—Subparagraph
10 (A)(ii) shall not apply with respect to any eligi-
11 ble article if a like or directly competitive article
12 was not produced in the United States on Jan-
13 uary 1, 1995.

14 “(F) DE MINIMIS WAIVERS.—The Presi-
15 dent may disregard subparagraph (A)(ii) with
16 respect to any eligible article from any bene-
17 ficiary developing country if the appraised value
18 of the total imports of such article into the
19 United States during calendar year 1995 or any
20 calendar year thereafter does not exceed
21 \$13,000,000, except that, in applying this sub-
22 paragraph, the amount of \$13,000,000 shall be
23 increased by \$500,000 on January 1 of each
24 calendar year after calendar year 1995.

25 “(d) WAIVER OF COMPETITIVE NEED LIMITATION.—

1 “(1) IN GENERAL.—The President may waive
2 the application of subsection (c)(2) with respect to
3 any eligible article of any beneficiary developing
4 country if, before July 1 of the calendar year begin-
5 ning after the calendar year for which a determina-
6 tion described in subsection (c)(2)(A) was made with
7 respect to such eligible article, the President—

8 “(A) receives the advice of the Inter-
9 national Trade Commission under section 332
10 of the Tariff Act of 1930 on whether any indus-
11 try in the United States is likely to be adversely
12 affected by such waiver,

13 “(B) determines, based on the consider-
14 ations described in sections 501 and 502(c) and
15 the advice described in subparagraph (A), that
16 such waiver is in the national economic interest
17 of the United States, and

18 “(C) publishes the determination described
19 in subparagraph (B) in the Federal Register.

20 “(2) CONSIDERATIONS BY THE PRESIDENT.—In
21 making any determination under paragraph (1), the
22 President shall give great weight to—

23 “(A) the extent to which the beneficiary
24 developing country has assured the United
25 States that such country will provide equitable

1 and reasonable access to the markets and basic
2 commodity resources of such country, and

3 “(B) the extent to which such country pro-
4 vides adequate and effective protection of intel-
5 lectual property rights.

6 “(3) EFFECTIVE PERIOD OF WAIVER.—Any
7 waiver granted under this subsection shall remain in
8 effect until the President determines that such waiv-
9 er is no longer warranted due to changed cir-
10 cumstances.

11 “(e) INTERNATIONAL TRADE COMMISSION AD-
12 VICE.—Before designating articles as eligible articles
13 under section 503(a)(1), the President shall publish and
14 furnish the International Trade Commission with lists of
15 articles which may be considered for designation as eligible
16 articles for purposes of this title. The provisions of sec-
17 tions 131, 132, 133, and 134 shall be complied with as
18 though action under section 501 and this section were ac-
19 tion under section 123 to carry out a trade agreement en-
20 tered into under section 123.

21 “(f) SPECIAL RULE CONCERNING PUERTO RICO.—
22 No action under this title may affect any tariff duty im-
23 posed by the Legislature of Puerto Rico pursuant to sec-
24 tion 319 of the Tariff Act of 1930 on coffee imported into
25 Puerto Rico.

1 **“SEC. 504. REVIEW AND REPORTS TO CONGRESS.**

2 “(a) REPORT ON OPERATION OF TITLE.—On or be-
3 fore July 31, 1997, the President shall submit to the Con-
4 gress a full and complete report regarding the operation
5 of this title.

6 “(b) ANNUAL REPORTS ON WORKER RIGHTS.—The
7 President shall submit an annual report to the Congress
8 on the status of internationally recognized worker rights
9 within each beneficiary developing country.

10 **“SEC. 505. DATE OF TERMINATION.**

11 “‘No duty-free treatment provided under this title
12 shall remain in effect after December 31, 1997.

13 **“SEC. 506. DEFINITIONS.**

14 “‘For purposes of this title:

15 “(1) BENEFICIARY DEVELOPING COUNTRY.—
16 The term ‘beneficiary developing country’ means any
17 country with respect to which there is in effect an
18 Executive order or Presidential proclamation by the
19 President designating such country as a beneficiary
20 developing country for purposes of this title.

21 “(2) COUNTRY.—The term ‘country’ means any
22 foreign country or territory, including any overseas
23 dependent territory or possession of a foreign coun-
24 try, or the Trust Territory of the Pacific Islands. In
25 the case of an association of countries which is a
26 free trade area or customs union, or which is con-

1 tributing to comprehensive regional economic inte-
2 gration among its members through appropriate
3 means, including, but not limited to, the reduction
4 of duties, the President may by Executive order or
5 Presidential proclamation provide that all members
6 of such association other than members which are
7 barred from designation under section 502(b) shall
8 be treated as one country for purposes of this title.

9 “(3) ENTERED.—The term ‘entered’ means en-
10 tered, or withdrawn from warehouse for consump-
11 tion, in the customs territory of the United States.

12 “(4) INTERNATIONALLY RECOGNIZED WORKER
13 RIGHTS.—The term ‘internationally recognized work-
14 er rights’ includes—

15 “(A) the right of association;

16 “(B) the right to organize and bargain col-
17 lectively;

18 “(C) a prohibition on the use of any form
19 of forced or compulsory labor;

20 “(D) a minimum age for the employment
21 of children; and

22 “(E) acceptable conditions of work with re-
23 spect to minimum wages, hours of work, and
24 occupational safety and health.

1 “(5) LEAST-DEVELOPED BENEFICIARY DEVEL-
 2 OPING COUNTRY.—The term ‘least-developed bene-
 3 ficiary developing country’ means a beneficiary de-
 4 veloping country that is designated as a least-devel-
 5 oped beneficiary developing country under section
 6 502(a)(2).”.

7 (b) TABLE OF CONTENTS.—The items relating to
 8 title V in the table of contents of the Trade Act of 1974
 9 are amended to read as follows:

 “TITLE V—GENERALIZED SYSTEM OF PREFERENCES

 “Sec. 501. Authority to extend preferences.

 “Sec. 502. Designation of beneficiary developing countries.

 “Sec. 503. Designation of eligible articles.

 “Sec. 504. Review and reports to Congress.

 “Sec. 505. Date of termination.

 “Sec. 506. Definitions.”.

10 **SEC. 12103. RETROACTIVE APPLICATION FOR CERTAIN LIQ-**
 11 **UIDATIONS AND RELIQUIDATIONS.**

12 (a) IN GENERAL.—Notwithstanding section 514 of
 13 the Tariff Act of 1930 or any other provision of law and
 14 subject to subsection (b), the entry—

15 (1) of any article to which duty-free treatment
 16 under title V of the Trade Act of 1974 would have
 17 applied if the entry had been made on July 31,
 18 1995, and

19 (2) that was made after July 31, 1995, and be-
 20 fore the date of the enactment of this Act,
 21 shall be liquidated or reliquidated as free of duty, and the
 22 Secretary of the Treasury shall refund any duty paid with

1 respect to such entry. As used in this subsection, the term
2 “entry” includes a withdrawal from warehouse for con-
3 sumption.

4 (b) REQUESTS.—Liquidation or reliquidation may be
5 made under subsection (a) with respect to an entry only
6 if a request therefor is filed with the Customs Service,
7 within 180 days after the date of the enactment of this
8 Act, that contains sufficient information to enable the
9 Customs Service—

10 (1) to locate the entry; or

11 (2) to reconstruct the entry if it cannot be lo-
12 cated.

13 (c) TREATMENT OF CERTAIN ENTRIES OF
14 BUFFALO LEATHER.—Notwithstanding section 514
15 of the Tariff Act of 1930 or any other provision of
16 law, buffalo leather, provided for under subheading
17 4104.39.20 of the Harmonized Tariff Schedule of
18 the United States, that is a product of Thailand and
19 entered into the United States under entry numbers
20 M42–1113868–8 and M42–1113939–7, shall be liq-
21 uidated or reliquidated, as appropriate, as if entered
22 on June 30, 1995.

23 **SEC. 12104. CONFORMING AMENDMENTS.**

24 (a) TRADE LAWS.—

1 (1) Section 1211(b) of the Omnibus Trade and
2 Competitiveness Act of 1988 (19 U.S.C. 3011(b)) is
3 amended—

4 (A) in paragraph (1), by striking “(19
5 U.S.C. 2463(a), 2464(c)(3))” and inserting
6 “(as in effect on the day before the date of the
7 enactment of the GSP Renewal Act of 1995)”;
8 and

9 (B) in paragraph (2), by striking “(19
10 U.S.C. 2464(c)(1))” and inserting the follow-
11 ing: “(as in effect on the day before the date
12 of the enactment of the GSP Renewal Act of
13 1995)”.

14 (2) Section 203(c)(7) of the Andean Trade
15 Preference Act (19 U.S.C. 3202(c)(7)) is amended
16 by striking “502(a)(4)” and inserting “506(4)”.

17 (3) Section 212(b)(7) of the Caribbean Basin
18 Economic Recovery Act (19 U.S.C. 2702(b)(7)) is
19 amended by striking “502(a)(4)” and inserting
20 “506(4)”.

21 (4) General note 3(a)(iv)(C) of the Harmonized
22 Tariff Schedule of the United States is amended by
23 striking “sections 503(b) and 504(c)” and inserting
24 “subsections (a), (c), and (d) of section 503”.

25 (b) OTHER LAWS.—

1 (1) Section 871(f)(2)(B) of the Internal Reve-
2 nue Code of 1986 is amended by striking “within
3 the meaning of section 502” and inserting “under
4 title V”.

5 (2) Section 2202(8) of the Export Enhance-
6 ment Act of 1988 (15 U.S.C. 4711(8)) is amended
7 by striking “502(a)(4)” and inserting “506(4)”.

8 (3) Section 231A(a) of the Foreign Assistance
9 Act of 1961 (22 U.S.C. 2191a(a)) is amended—

10 (A) in paragraph (1) by striking
11 “502(a)(4) of the Trade Act of 1974 (19
12 U.S.C. 2462(a)(4))” and inserting “506(4) of
13 the Trade Act of 1974”;

14 (B) in paragraph (2) by striking “505(c)
15 of the Trade Act of 1974 (19 U.S.C. 2465(c))”
16 and inserting “504(b) of the Trade Act of
17 1974”; and

18 (C) in paragraph (4) by striking
19 “502(a)(4)” and inserting “506(4)”.

**Subtitle C—Trade Adjustment
Assistance**

**SEC. 12201. MODIFICATION OF TRADE ADJUSTMENT AS-
SISTANCE.**

(a) REQUIREMENT OF TRAINING.—(1) Section 231(c) of the Trade Act of 1974 (19 U.S.C. 2291) is amended—

(A) in paragraph (1)(A) and (B) by striking “it is not feasible or appropriate to approve a training program” and inserting “a training program is not available”; and

(B) in paragraph (2)(A) and (B) by striking “it is feasible or appropriate to approve a training program” and inserting “a training program is available”.

(2) Section 233(b) of such Act (19 U.S.C. 2293(b)) is repealed.

(3) Paragraph (3) of section 250(d) of the Trade Act of 1974 (19 U.S.C. 2331(d)) is amended—

(A) by striking “it is not feasible or appropriate to approve a training program” in subparagraph (A) and inserting “a training program is not available”, and

(B) by striking “notwithstanding the provisions of section 233(b),” in subparagraph (B).

1 (b) TERMINATION OF RELOCATION ALLOWANCES.—

2 (1) Section 238 of the Trade Act of 1974 (19 U.S.C.
3 2298), and the item relating to that section in the table
4 of contents for that Act, are repealed.

5 (2) Section 250(d) of the Trade Act of 1974 (19
6 U.S.C. 2331(d)) is amended by striking paragraph (5).

7 (c) TERMINATION OF PROGRAM.—Section 285(c) of
8 the Trade Act of 1974 (19 U.S.C. 2271 preceding note)
9 is amended—

10 (1) in paragraph (1), by striking “1998” and
11 inserting “2000”; and

12 (2) by amending paragraph (2) to read as fol-
13 lows:

14 “(2) No assistance, vouchers, allowances, or other
15 payments may be provided under subchapter D of chapter
16 2 after September 30, 1998.”.

17 (d) EXTENSION OF AUTHORIZATION.—(1) Section
18 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is
19 amended by striking “and 1998” and inserting “1998,
20 1999, and 2000”.

21 (2) Section 256(b) of the Trade Act of 1974 (19
22 U.S.C. 2346(a)) is amended by striking “and 1998” and
23 inserting “1998, 1999, and 2000”.

24 (e) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 shall take effect on the date of the enactment of this
 4 Act.

5 (2) SUBSECTIONS (a) AND (b).—The amend-
 6 ments made by subsections (a) and (b) shall take ef-
 7 fect on October 1, 1996.

8 **TITLE XIII—COMMITTEE ON**
 9 **WAYS AND MEANS—REVENUE**
 10 **RECONCILIATION**

11 **SEC. 13001. SHORT TITLE; AMENDMENT OF 1986 CODE.**

12 (a) SHORT TITLE.—This title may be cited as the
 13 “Revenue Reconciliation Act of 1995”.

14 (b) AMENDMENT OF 1986 CODE.—Except as other-
 15 wise expressly provided, whenever in this title an amend-
 16 ment or repeal is expressed in terms of an amendment
 17 to, or repeal of, a section or other provision, the reference
 18 shall be considered to be made to a section or other provi-
 19 sion of the Internal Revenue Code of 1986.

20 (c) TABLE OF CONTENTS.—The table of contents for
 21 this title is as follows:

TITLE XIII—COMMITTEE ON WAYS AND MEANS—REVENUE
 RECONCILIATION

Sec. 13001. Short title; amendment of 1986 Code.

Subtitle A—Extension of Expiring Provisions, Etc.

PART I—EXTENSIONS THROUGH DECEMBER 31, 1997

Sec. 13101. Work opportunity tax credit.

- Sec. 13102. Employer-provided educational assistance programs.
- Sec. 13103. Research credit.
- Sec. 13104. Contributions of stock to private foundations.
- Sec. 13105. Credit for clinical testing expenses.

PART II—PERMANENT EXTENSION OF FUTA EXEMPTION FOR ALIEN
AGRICULTURAL WORKERS

- Sec. 13106. FUTA exemption for alien agricultural workers.

PART III—COMMERCIAL AVIATION FUEL

- Sec. 13111. Delay of scheduled increase in tax on fuel used in commercial aviation.

PART IV—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXCISE
TAXES

- Sec. 13116. Extension of Airport and Airway Trust Fund excise taxes.

Subtitle B—Medical Savings Accounts

- Sec. 13201. Medical savings accounts.

Subtitle C—Pickle-Johnson Taxpayer Bill of Rights 2

PART I—TAXPAYER ADVOCATE

- Sec. 13301. Establishment of position of taxpayer advocate within Internal Revenue Service.
- Sec. 13302. Expansion of authority to issue taxpayer assistance orders.

PART II—MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

- Sec. 13306. Notification of reasons for termination of installment agreements.
- Sec. 13307. Administrative review of termination of installment agreement.

PART III—ABATEMENT OF INTEREST AND PENALTIES

- Sec. 13311. Expansion of authority to abate interest.
- Sec. 13312. Review of IRS failure to abate interest.
- Sec. 13313. Extension of interest-free period for payment of tax after notice and demand.

PART IV—JOINT RETURNS

- Sec. 13316. Studies of joint return-related issues.
- Sec. 13317. Joint return may be made after separate returns without full payment of tax.
- Sec. 13318. Disclosure of collection activities.

PART V—COLLECTION ACTIVITIES

- Sec. 13321. Modifications to lien and levy provisions.
- Sec. 13322. Offers-in-compromise.

PART VI—INFORMATION RETURNS

- Sec. 13326. Civil damages for fraudulent filing of information returns.

- Sec. 13327. Requirement to conduct reasonable investigations of information returns.

PART VII—AWARDING OF COSTS AND CERTAIN FEES

- Sec. 13331. United States must establish that its position in proceeding was substantially justified.
- Sec. 13332. Increased limit on attorney fees.
- Sec. 13333. Failure to agree to extension not taken into account.
- Sec. 13334. Award of litigation costs permitted in declaratory judgment proceedings.
- Sec. 13335. Effective date.

PART VIII—MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

- Sec. 13336. Increase in limit on recovery of civil damages for unauthorized collection actions.
- Sec. 13337. Court discretion to reduce award for litigation costs for failure to exhaust administrative remedies.

PART IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

- Sec. 13341. Preliminary notice requirement.
- Sec. 13342. Disclosure of certain information where more than 1 person liable for penalty for failure to collect and pay over tax.
- Sec. 13343. Right of contribution where more than 1 person liable for penalty for failure to collect and pay over tax.
- Sec. 13344. Volunteer board members of tax-exempt organizations exempt from penalty for failure to collect and pay over tax.

PART X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

- Sec. 13346. Enrolled agents included as third-party recordkeepers.
- Sec. 13347. Safeguards relating to designated summonses.
- Sec. 13348. Annual report to Congress concerning designated summonses.

PART XI—RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS

- Sec. 13351. Relief from retroactive application of Treasury Department regulations.

PART XII—MISCELLANEOUS PROVISIONS

- Sec. 13356. Report on pilot program for appeal of enforcement actions.
- Sec. 13357. Phone number of person providing payee Statements required to be shown on such Statement.
- Sec. 13358. Required notice of certain payments.
- Sec. 13359. Unauthorized enticement of information disclosure.
- Sec. 13360. Annual reminders to taxpayers with outstanding delinquent accounts.
- Sec. 13361. 5-year extension of authority for undercover operations.
- Sec. 13362. Disclosure of form 8300 information on cash transactions.
- Sec. 13363. Disclosure of returns and return information to designee of taxpayer.
- Sec. 13364. Study of netting of interest on overpayments and liabilities.

- Sec. 13365. Credit for expenses of certain TCMP audits.
- Sec. 13366. Expenses of detection of underpayments and fraud, etc.

Subtitle D—Additional Technical Corrections

- Sec. 13401. Reporting of real estate transactions.
- Sec. 13402. Clarification of denial of deduction for stock redemption expenses.
- Sec. 13403. Clarification of depreciation class for certain energy property.
- Sec. 13404. Clerical amendment to section 404.
- Sec. 13405. Treatment of certain veterans' reemployment rights.

Subtitle E—Tax Information Sharing

- Sec. 13501. Disclosure of return information for administration of certain veterans programs.

Subtitle F—Revenue Increases

PART I—PROVISIONS RELATING TO BUSINESSES

- Sec. 13601. Tax treatment of certain extraordinary dividends.
- Sec. 13602. Registration of confidential corporate tax shelters.
- Sec. 13603. Denial of deduction for interest on loans with respect to company-owned insurance.
- Sec. 13604. Termination of suspense accounts for family corporations required to use accrual method of accounting.
- Sec. 13605. Termination of Puerto Rico and possession tax credit.
- Sec. 13606. Depreciation under income forecast method.
- Sec. 13607. Transfers of excess pension assets.

PART II—LEGAL REFORMS

- Sec. 13611. Repeal of exclusion for punitive damages and for damages not attributable to physical injuries or sickness.
- Sec. 13612. Reporting of certain payments made to attorneys.

PART III—TREATMENT OF INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP

- Sec. 13616. Revision of income, estate, and gift taxes on individuals who lose United States citizenship.
- Sec. 13617. Information on individuals losing United States citizenship.
- Sec. 13618. Report on tax compliance by United States citizens and residents living abroad.

PART IV—REFORMS RELATING TO ENERGY PROVISIONS

- Sec. 13621. Termination of credit for electricity produced from certain renewable resources.
- Sec. 13622. Reduction of incentives for alcohol fuels.
- Sec. 13623. Exclusion for energy conservation subsidies limited to subsidies with respect to dwelling units.

PART V—REFORMS RELATING TO NONRECOGNITION PROVISIONS

- Sec. 13626. Basis adjustment to property held by corporation where stock in corporation is replacement property under involuntary conversion rules.

- Sec. 13627. Expansion of requirement that involuntarily converted property be replaced with property acquired from an unrelated person.
- Sec. 13628. No rollover or exclusion of gain on sale of principal residence which is attributable to depreciation deductions.
- Sec. 13629. Nonrecognition of gain on sale of principal residence by noncitizens limited to new residences located in the United States.

PART VI—REFORMS RELATING TO GAMING ACTIVITIES

- Sec. 13631. Treatment of Indian gaming activities under unrelated business income tax.
- Sec. 13632. Repeal of targeted exemption from tax on unrelated trade or business income from gambling in certain States.
- Sec. 13633. Extension of withholding to certain gambling winnings.

PART VII—OTHER REFORMS

- Sec. 13636. Sunset of low-income housing credit.
- Sec. 13637. Repeal of credit for contributions to community development corporations.
- Sec. 13638. Repeal of diesel fuel tax rebate to purchasers of diesel-powered automobiles and light trucks.
- Sec. 13639. Application of failure-to-pay penalty to substitute returns.
- Sec. 13640. Repeal of special rule for rental use of vacation homes, etc., for less than 15 days.
- Sec. 13641. Election to cease status as qualified scholarship funding corporation.
- Sec. 13642. Certain amounts derived from foreign corporations treated as unrelated business taxable income.

PART VIII—EXCISE TAX ON AMOUNTS OF PRIVATE EXCESS BENEFITS

- Sec. 13646. Excise taxes for failure by certain charitable organizations to meet certain qualification requirements.
- Sec. 13647. Reporting of certain excise taxes and other information.
- Sec. 13648. Exempt organizations required to provide copy of return.
- Sec. 13649. Certain organizations required to disclose nonexempt status.
- Sec. 13650. Increase in penalties on exempt organizations for failure to file complete and timely annual returns.
- Sec. 13651. Studies.

Subtitle G—Reform of the Earned Income Tax Credit

- Sec. 13701. Repeal of earned income credit for individuals without qualifying children; modifications to credit phaseout.
- Sec. 13702. Modification of adjusted gross income used for phaseout.
- Sec. 13703. Earned income tax credit denied to individuals not authorized to be employed in the United States.

Subtitle H—Increase in Public Debt Limit

- Sec. 13801. Increase in public debt limit.

Subtitle I—Coal Industry Retiree Health Equity

- Sec. 13901. Repeal of reachback provisions of coal industry health benefit system.

1 **Subtitle A—Extension of Expiring**
2 **Provisions, Etc.**

3 **PART I—EXTENSIONS THROUGH DECEMBER 31,**
4 **1997**

5 **SEC. 13101. WORK OPPORTUNITY TAX CREDIT.**

6 (a) AMOUNT OF CREDIT.—Subsection (a) of section
7 51 is amended by striking “40 percent” and inserting “35
8 percent”.

9 (b) MEMBERS OF TARGETED GROUPS.—Subsection
10 (d) of section 51 is amended to read as follows:

11 “(d) MEMBERS OF TARGETED GROUPS.—For pur-
12 poses of this subpart—

13 “(1) IN GENERAL.—An individual is a member
14 of a targeted group if such individual is—

15 “(A) a qualified AFDC recipient,

16 “(B) a qualified ex-felon,

17 “(C) a high-risk youth,

18 “(D) a vocational rehabilitation referral, or

19 “(E) a qualified summer youth employee.

20 “(2) QUALIFIED AFDC RECIPIENT.—

21 “(A) IN GENERAL.—The term ‘qualified
22 AFDC recipient’ means any individual who is
23 certified by the designated local agency as being
24 a member of a family receiving assistance under
25 an AFDC program for at least a 9-month pe-

1 riod ending during the 9-month period ending
2 on the hiring date.

3 “(B) AFDC PROGRAM.—For purposes of
4 this paragraph, the term ‘AFDC program’
5 means any program providing aid under a State
6 plan approved under part A of title IV of the
7 Social Security Act (relating to aid to families
8 with dependent children) and any successor of
9 such program.

10 “(C) SPECIAL RULES FOR VETERANS.—In
11 the case of a veteran, subparagraph (A) shall be
12 applied by substituting ‘12-month’ for ‘9-
13 month’ the second place it appears.

14 “(D) VETERAN.—For purposes of sub-
15 paragraph (C), the term ‘veteran’ means any
16 individual who is certified by the designated
17 local agency as—

18 “(i)(I) having served on active duty
19 (other than active duty for training) in the
20 Armed Forces of the United States for a
21 period of more than 180 days, or

22 “(II) having been discharged or re-
23 leased from active duty in the Armed
24 Forces of the United States for a service-
25 connected disability, and

1 “(ii) not having any day during the
2 60-day period ending on the hiring date
3 which was a day of extended active duty in
4 the Armed Forces of the United States.

5 For purposes of clause (ii), the term ‘extended
6 active duty’ means a period of more than 90
7 days during which the individual was on active
8 duty (other than active duty for training).

9 “(3) QUALIFIED EX-FELON.—The term ‘quali-
10 fied ex-felon’ means any individual who is certified
11 by the designated local agency—

12 “(A) as having been convicted of a felony
13 under any statute of the United States or any
14 State,

15 “(B) as having a hiring date which is not
16 more than 1 year after the last date on which
17 such individual was so convicted or was released
18 from prison, and

19 “(C) as being a member of a family which
20 had an income during the 6 months imme-
21 diately preceding the earlier of the month in
22 which such income determination occurs or the
23 month in which the hiring date occurs, which,
24 on an annual basis, would be 70 percent or less

1 of the Bureau of Labor Statistics lower living
2 standard.

3 Any determination under subparagraph (C) shall be
4 valid for the 45-day period beginning on the date
5 such determination is made.

6 “(4) HIGH-RISK YOUTH.—

7 “(A) IN GENERAL.—The term ‘high-risk
8 youth’ means any individual who is certified by
9 the designated local agency—

10 “(i) as having attained age 18 but not
11 age 25 on the hiring date, and

12 “(ii) as having his principal place of
13 abode within an empowerment zone or en-
14 terprise community.

15 “(B) YOUTH MUST CONTINUE TO RESIDE
16 IN ZONE.—In the case of a high-risk youth, the
17 term ‘qualified wages’ shall not include wages
18 paid or incurred for services performed while
19 such youth’s principal place of abode is outside
20 an empowerment zone or enterprise community.

21 “(5) VOCATIONAL REHABILITATION REFER-
22 RAL.—The term ‘vocational rehabilitation referral’
23 means any individual who is certified by the des-
24 ignated local agency as—

1 “(A) having a physical or mental disability
2 which, for such individual, constitutes or results
3 in a substantial handicap to employment, and

4 “(B) having been referred to the employer
5 upon completion of (or while receiving) rehabili-
6 tative services pursuant to—

7 “(i) an individualized written rehabili-
8 tation plan under a State plan for voca-
9 tional rehabilitation services approved
10 under the Rehabilitation Act of 1973, or

11 “(ii) a program of vocational rehabili-
12 tation carried out under chapter 31 of title
13 38, United States Code.

14 “(6) QUALIFIED SUMMER YOUTH EMPLOYEE.—

15 “(A) IN GENERAL.—The term ‘qualified
16 summer youth employee’ means any individ-
17 ual—

18 “(i) who performs services for the em-
19 ployer between May 1 and September 15,

20 “(ii) who is certified by the designated
21 local agency as having attained age 16 but
22 not 18 on the hiring date (or if later, on
23 May 1 of the calendar year involved),

24 “(iii) who has not been an employee
25 of the employer during any period prior to

1 the 90-day period described in subpara-
2 graph (B)(i), and

3 “(iv) who is certified by the des-
4 ignated local agency as having his principal
5 place of abode within an empowerment
6 zone or enterprise community.

7 “(B) SPECIAL RULES FOR DETERMINING
8 AMOUNT OF CREDIT.—For purposes of applying
9 this subpart to wages paid or incurred to any
10 qualified summer youth employee—

11 “(i) subsection (b)(2) shall be applied
12 by substituting ‘any 90-day period between
13 May 1 and September 15’ for ‘the 1-year
14 period beginning with the day the individ-
15 ual begins work for the employer’, and

16 “(ii) subsection (b)(3) shall be applied
17 by substituting ‘\$3,000’ for ‘\$6,000’.

18 The preceding sentence shall not apply to an in-
19 dividual who, with respect to the same em-
20 ployer, is certified as a member of another tar-
21 geted group after such individual has been a
22 qualified summer youth employee.

23 “(C) YOUTH MUST CONTINUE TO RESIDE
24 IN ZONE.—Paragraph (4)(B) shall apply for
25 purposes of this paragraph.

1 “(7) **HIRING DATE.**—The term ‘hiring date’
2 means the day the individual is hired by the em-
3 ployer.

4 “(8) **DESIGNATED LOCAL AGENCY.**—The term
5 ‘designated local agency’ means a State employment
6 security agency established in accordance with the
7 Act of June 6, 1933, as amended (29 U.S.C. 49–
8 49n).

9 “(9) **SPECIAL RULES FOR CERTIFICATIONS.**—

10 “(A) **IN GENERAL.**—An individual shall
11 not be treated as a member of a targeted group
12 unless—

13 “(i) on or before the day on which
14 such individual begins work for the em-
15 ployer, the employer has received a certifi-
16 cation from a designated local agency that
17 such individual is a member of a targeted
18 group, or

19 “(ii)(I) on or before the day the indi-
20 vidual is offered employment with the em-
21 ployer, a pre-screening notice is completed
22 with respect to such individual, and

23 “(II) not later than the 14th day after
24 the individual begins work for the em-
25 ployer, the employer submits such notice to

1 the designated local agency as part of a
2 written request for such a certification
3 from such agency.

4 For purposes of this paragraph, the term ‘pre-
5 screening notice’ means a document (in such
6 form as the Secretary shall prescribe) which is
7 signed by the employer and the individual under
8 penalties of perjury and which contains infor-
9 mation provided by the individual on the basis
10 of which the employer believes that the individ-
11 ual is a member of a targeted group.

12 “(B) INCORRECT CERTIFICATIONS.—If—

13 “(i) an individual has been certified
14 by a designated local agency as a member
15 of a targeted group, and

16 “(ii) such certification is incorrect be-
17 cause it was based on false information
18 provided by such individual,

19 the certification shall be revoked and wages
20 paid by the employer after the date on which
21 notice of revocation is received by the employer
22 shall not be treated as qualified wages.

23 “(C) EXPLANATION OF DENIAL OF RE-
24 QUEST.—If a designated local agency denies a
25 request for certification of membership in a tar-

1 geted group, such agency shall provide to the
2 person making such request a written expla-
3 nation of the reasons for such denial.”

4 (c) MINIMUM EMPLOYMENT PERIOD.—Paragraph
5 (3) of section 51(i) is amended to read as follows:

6 “(3) INDIVIDUALS NOT MEETING MINIMUM EM-
7 PLOYMENT PERIOD.—No wages shall be taken into
8 account under subsection (a) with respect to any in-
9 dividual unless such individual either—

10 “(A) is employed by the employer at least
11 180 days (20 days in the case of a qualified
12 summer youth employee), or

13 “(B) has completed at least 500 hours
14 (120 hours in the case of a qualified summer
15 youth employee) of services performed for the
16 employer.”

17 (d) DEFINITION OF WAGES.—Subsection (c) of sec-
18 tion 51 is amended by striking paragraph (3).

19 (e) TERMINATION.—Paragraph (4) of section 51(c)
20 is amended to read as follows:

21 “(3) TERMINATION.—The term ‘wages’ shall
22 not include any amount paid or incurred to an indi-
23 vidual who begins work for the employer—

24 “(A) after December 31, 1994, and before
25 January 1, 1996, or

1 “(B) after December 31, 1997.”

2 (f) REDESIGNATION OF CREDIT.—

3 (1) Sections 38(b)(2) and 51(a) are each
4 amended by striking “targeted jobs credit” and in-
5 serting “work opportunity credit”.

6 (2) The subpart heading for subpart F of part
7 IV of subchapter A of chapter 1 is amended by
8 striking “**Targeted Jobs Credit**” and inserting
9 “**Work Opportunity Credit**”.

10 (3) The table of subparts for such part IV is
11 amended by striking “targeted jobs credit” and in-
12 serting “work opportunity credit”.

13 (g) BUSINESS AWARENESS PROGRAM.—The Sec-
14 retary of Labor shall implement a program to encourage
15 small businesses to use the services of local agencies to
16 identify individuals who qualify to be certified as members
17 of targeted groups (as defined in section 51 of the Internal
18 Revenue Code of 1986, as amended by this section). Such
19 Secretary, and the heads of other Federal agencies, shall
20 make every effort to encourage small businesses to benefit
21 from the credit allowable under such section by simplifying
22 procedures to the extent possible.

23 (h) TECHNICAL AMENDMENTS.—

24 (1) Paragraph (1) of section 51(c) is amended
25 by striking “, subsection (d)(8)(D),”.

1 (2) Paragraph (3) of section 51(i) is amended
2 by striking “(d)(12)” each place it appears and in-
3 serting “(d)(6)”.

4 (i) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to individuals who begin work for
6 the employer after December 31, 1995.

7 **SEC. 13102. EMPLOYER-PROVIDED EDUCATIONAL ASSIST-**
8 **ANCE PROGRAMS.**

9 (a) EXTENSION.—Subsection (d) of section 127 (re-
10 lating to educational assistance programs) is amended by
11 striking “December 31, 1994” and inserting “December
12 31, 1997”.

13 (b) LIMITATION TO EDUCATION BELOW GRADUATE
14 LEVEL.—The last sentence of section 127(c)(1) is amend-
15 ed by inserting before the period “or at the graduate
16 level”.

17 (c) EFFECTIVE DATES.—

18 (1) EXTENSION.—The amendment made by
19 subsection (a) shall apply to taxable years beginning
20 after December 31, 1994.

21 (2) LIMITATION.—The amendment made by
22 subsection (b) shall apply to taxable years beginning
23 after December 31, 1995.

1 **SEC. 13103. RESEARCH CREDIT.**

2 (a) IN GENERAL.—Subsection (h) of section 41 (re-
3 lating to credit for research activities) is amended—

4 (1) by striking “June 30, 1995” each place it
5 appears and inserting “December 31, 1997”, and

6 (2) by striking “July 1, 1995” each place it ap-
7 pears and inserting “January 1, 1998”.

8 (b) BASE AMOUNT FOR START-UP COMPANIES.—
9 Clause (i) of section 41(c)(3)(B) (relating to start-up com-
10 panies) is amended to read as follows:

11 “(i) TAXPAYERS TO WHICH SUBPARA-
12 GRAPH APPLIES.—The fixed-base percent-
13 age shall be determined under this sub-
14 paragraph if—

15 “(I) the first taxable year in
16 which a taxpayer had both gross re-
17 cepts and qualified research expenses
18 begins after December 31, 1983, or

19 “(II) there are fewer than 3 tax-
20 able years beginning after December
21 31, 1983, and before January 1,
22 1989, in which the taxpayer had both
23 gross receipts and qualified research
24 expenses.”

25 (c) ELECTION OF ALTERNATIVE INCREMENTAL
26 CREDIT.—Subsection (c) of section 41 is amended by re-

1 designating paragraphs (4) and (5) as paragraphs (5) and
2 (6), respectively, and by inserting after paragraph (3) the
3 following new paragraph:

4 “(4) ELECTION OF ALTERNATIVE INCREMEN-
5 TAL CREDIT.—

6 “(A) IN GENERAL.—At the election of the
7 taxpayer, the credit determined under sub-
8 section (a)(1) shall be equal to the sum of—

9 “(i) 1.65 percent of so much of the
10 qualified research expenses for the taxable
11 year as exceeds 1 percent of the average
12 described in subsection (c)(1)(B) but does
13 not exceed 1.5 percent of such average,

14 “(ii) 2.2 percent of so much of such
15 expenses as exceeds 1.5 percent of such av-
16 erage but does not exceed 2 percent of
17 such average, and

18 “(iii) 2.75 percent of so much of such
19 expenses as exceeds 2 percent of such aver-
20 age.

21 “(B) ELECTION.—An election under this
22 paragraph may be made only for the first tax-
23 able year of the taxpayer beginning after June
24 30, 1995. Such an election shall apply to the
25 taxable year for which made and all succeeding

1 taxable years unless revoked with the consent of
2 the Secretary.”

3 (d) INCREASED CREDIT FOR CONTRACT RESEARCH
4 EXPENSES WITH RESPECT TO CERTAIN RESEARCH CON-
5 SORTIA.—Paragraph (3) of section 41(b) is amended by
6 adding at the end the following new subparagraph:

7 “(C) AMOUNTS PAID TO CERTAIN RE-
8 SEARCH CONSORTIA.—

9 “(i) IN GENERAL.—Subparagraph (A)
10 shall be applied by substituting ‘75 per-
11 cent’ for ‘65 percent’ with respect to
12 amounts paid or incurred by the taxpayer
13 to a qualified research consortium for
14 qualified research.

15 “(ii) QUALIFIED RESEARCH CONSOR-
16 TIUM.—The term ‘qualified research con-
17 sortium’ means any organization described
18 in subsection (e)(6)(B) if—

19 “(I) at least 15 unrelated tax-
20 payers paid (during the calendar year
21 in which the taxable year of the tax-
22 payer begins) amounts to such organi-
23 zation for qualified research,

24 “(II) no 3 persons paid during
25 such calendar year more than 50 per-

1 cent of the total amounts paid during
2 such calendar year for qualified re-
3 search, and

4 “(III) no person contributed
5 more than 20 percent of such total
6 amounts.

7 For purposes of subclause (I), all persons
8 treated as a single employer under sub-
9 section (a) or (b) of section 52 shall be
10 treated as related taxpayers.”

11 (e) CONFORMING AMENDMENT.—Subparagraph (D)
12 of section 28(b)(1) is amended by striking “June 30,
13 1995” and inserting “December 31, 1997”.

14 (f) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to taxable years ending after June 30,
18 1995.

19 (2) SUBSECTIONS (c) AND (d).—The amend-
20 ments made by subsections (c) and (d) shall apply
21 to taxable years beginning after June 30, 1995.

1 **SEC. 13104. CONTRIBUTIONS OF STOCK TO PRIVATE FOUN-**
2 **DATIONS.**

3 (a) IN GENERAL.—Subparagraph (D) of section
4 170(e)(5) is amended by striking “December 31, 1994”
5 and inserting “December 31, 1997”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to contributions made after De-
8 cember 31, 1994.

9 **SEC. 13105. CREDIT FOR CLINICAL TESTING EXPENSES.**

10 (a) IN GENERAL.—Subsection (e) of section 28 is
11 amended by striking “December 31, 1994” and inserting
12 “December 31, 1997”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to taxable years ending after De-
15 cember 31, 1994.

16 **PART II—PERMANENT EXTENSION OF FUTA EX-**
17 **EMPTION FOR ALIEN AGRICULTURAL WORK-**
18 **ERS**

19 **SEC. 13106. FUTA EXEMPTION FOR ALIEN AGRICULTURAL**
20 **WORKERS.**

21 (a) IN GENERAL.—Subparagraph (B) of section
22 3306(c)(1) (defining employment) is amended by striking
23 “before January 1, 1995,”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to services performed after De-
26 cember 31, 1994.

1 **PART III—COMMERCIAL AVIATION FUEL**

2 **SEC. 13111. DELAY OF SCHEDULED INCREASE IN TAX ON**
3 **FUEL USED IN COMMERCIAL AVIATION.**

4 (a) 2-YEAR DELAY.—Sections 4092(b)(2),
5 6421(f)(2)(B), and 6427(l)(4)(B) are each amended by
6 striking “September 30, 1995” and inserting “September
7 30, 1997”.

8 (b) CONFORMING AMENDMENT.—Section 13245 of
9 the Omnibus Budget Reconciliation Act of 1993 is hereby
10 repealed.

11 (c) EFFECTIVE DATE.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall take effect on September 30, 1995.

14 (2) CROSS REFERENCE.—

**For refund of tax paid on commercial aviation
fuel before the date of the enactment of this Act, see
section 6427(l) of the Internal Revenue Code of 1986.**

15 (d) FLOOR STOCKS TAX.—

16 (1) IMPOSITION OF TAX.—In the case of com-
17 mercial aviation fuel which is held by any person on
18 October 1, 1997, there is hereby imposed a floor
19 stocks tax equal to 4.3 cents per gallon.

20 (2) LIABILITY FOR TAX AND METHOD OF PAY-
21 MENT.—

22 (A) LIABILITY FOR TAX.—A person hold-
23 ing aviation fuel on October 1, 1997, to which

1 the tax imposed by paragraph (1) applies shall
2 be liable for such tax.

3 (B) METHOD OF PAYMENT.—The tax im-
4 posed by paragraph (1) shall be paid in such
5 manner as the Secretary shall prescribe.

6 (C) TIME FOR PAYMENT.—The tax im-
7 posed by paragraph (1) shall be paid on or be-
8 fore April 30, 1998.

9 (3) DEFINITIONS.—For purposes of this sub-
10 section—

11 (A) HELD BY A PERSON.—Aviation fuel
12 shall be considered as “held by a person” if
13 title thereto has passed to such person (whether
14 or not delivery to the person has been made).

15 (B) COMMERCIAL AVIATION FUEL.—The
16 term “commercial aviation fuel” means aviation
17 fuel (as defined in section 4093 of such Code)
18 which is held on October 1, 1997, for sale or
19 use in commercial aviation (as defined in sec-
20 tion 4092(b) of such Code).

21 (C) SECRETARY.—The term “Secretary”
22 means the Secretary of the Treasury or his del-
23 egate.

24 (4) EXCEPTION FOR EXEMPT USES.—The tax
25 imposed by paragraph (1) shall not apply to aviation

1 fuel held by any person exclusively for any use for
2 which a credit or refund of the entire tax imposed
3 by section 4091 of such Code (other than the rate
4 imposed by section 4091(b)(2) of such Code) is al-
5 lowable for aviation fuel so used.

6 (5) EXCEPTION FOR CERTAIN AMOUNTS OF
7 FUEL.—

8 (A) IN GENERAL.—No tax shall be im-
9 posed by paragraph (1) on aviation fuel held on
10 October 1, 1997, by any person if the aggregate
11 amount of commercial aviation fuel held by
12 such person on such date does not exceed 2,000
13 gallons. The preceding sentence shall apply only
14 if such person submits to the Secretary (at the
15 time and in the manner required by the Sec-
16 retary) such information as the Secretary shall
17 require for purposes of this paragraph.

18 (B) EXEMPT FUEL.—For purposes of sub-
19 paragraph (A), there shall not be taken into ac-
20 count fuel held by any person which is exempt
21 from the tax imposed by paragraph (1) by rea-
22 son of paragraph (4).

23 (C) CONTROLLED GROUPS.—For purposes
24 of this paragraph—

25 (i) CORPORATIONS.—

1 (I) IN GENERAL.—All persons
2 treated as a controlled group shall be
3 treated as 1 person.

4 (II) CONTROLLED GROUP.—The
5 term “controlled group” has the
6 meaning given to such term by sub-
7 section (a) of section 1563 of such
8 Code; except that for such purposes
9 the phrase “more than 50 percent”
10 shall be substituted for the phrase “at
11 least 80 percent” each place it ap-
12 pears in such subsection.

13 (ii) NONINCORPORATED PERSONS
14 UNDER COMMON CONTROL.—Under regula-
15 tions prescribed by the Secretary, prin-
16 ciples similar to the principles of clause (i)
17 shall apply to a group of persons under
18 common control where 1 or more of such
19 persons is not a corporation.

20 (6) OTHER LAWS APPLICABLE.—All provisions
21 of law, including penalties, applicable with respect to
22 the taxes imposed by section 4091 of such Code
23 shall, insofar as applicable and not inconsistent with
24 the provisions of this subsection, apply with respect
25 to the floor stock taxes imposed by paragraph (1) to

1 the same extent as if such taxes were imposed by
2 such section 4091.

3 (f) STUDY.—The Secretary of the Treasury or his
4 delegate shall, in consultation with the Secretary of Trans-
5 portation, conduct a study of the Federal excise tax bur-
6 dens on each of the various modes of transportation and
7 the benefits provided to each such mode from revenues
8 derived from such excise taxes. The results of such study
9 shall be submitted not later than June 30, 1996, to the
10 Committee on Ways and Means of the House of Rep-
11 resentatives and the Committee on Finance of the Senate.

12 **PART IV—EXTENSION OF AIRPORT AND AIRWAY**

13 **TRUST FUND EXCISE TAXES**

14 **SEC. 13116. EXTENSION OF AIRPORT AND AIRWAY TRUST**

15 **FUND EXCISE TAXES.**

16 (a) FUEL TAX.—

17 (1) Subparagraph (A) of section 4091(b)(3) is
18 amended by striking “January 1, 1996” and insert-
19 ing “October 1, 1996”.

20 (2) Paragraph (2) of section 4081(d), as
21 amended by section 14721 of this Act, is amended
22 by striking “January 1, 1996” and inserting “Octo-
23 ber 1, 1996”.

1 (b) TICKET TAXES.—Sections 4261(g) and 4271(d)
 2 are each amended by striking “January 1, 1996” and in-
 3 serting “October 1, 1996”.

4 (c) TRANSFER TO AIRPORT AND AIRWAY TRUST
 5 FUND.—

6 (1) Subsection (b) of section 9502 is amended
 7 by striking “January 1, 1996” each place it appears
 8 and inserting “October 1, 1996”.

9 (2) Paragraph (3) of section 9502(f) is amend-
 10 ed by striking “December 31, 1995” and inserting
 11 “September 30, 1996”.

12 **Subtitle B—Medical Savings** 13 **Accounts**

14 **SEC. 13201. MEDICAL SAVINGS ACCOUNTS.**

15 (a) IN GENERAL.—Part VII of subchapter B of chap-
 16 ter 1 (relating to additional itemized deductions for indi-
 17 viduals) is amended by redesignating section 220 as sec-
 18 tion 221 and by inserting after section 219 the following
 19 new section:

20 **“SEC. 220. MEDICAL SAVINGS ACCOUNTS.**

21 **“(a) DEDUCTION ALLOWED.—**In the case of an indi-
 22 vidual who is an eligible individual for any month during
 23 the taxable year, there shall be allowed as a deduction for
 24 the taxable year an amount equal to the aggregate amount

1 paid in cash during such taxable year by such individual
2 to a medical savings account of such individual.

3 “(b) LIMITATIONS.—

4 “(1) IN GENERAL.—Except as otherwise pro-
5 vided in this subsection, the amount allowable as a
6 deduction under subsection (a) to an individual for
7 the taxable year shall not exceed the lesser of—

8 “(A) \$2,500, or

9 “(B) the deductible under the catastrophic
10 health plan covering such individual.

11 If the catastrophic health plan covering such individ-
12 ual provides coverage for any other eligible individ-
13 ual who is the spouse or any dependent (as defined
14 in section 152) of the taxpayer, subparagraph (A)
15 shall be applied by substituting ‘\$5,000’ for
16 ‘\$2,500’. The preceding sentence shall not apply if
17 the spouse or any dependent (as so defined) of such
18 individual is covered under any other catastrophic
19 health plan.

20 “(2) SPECIAL RULE FOR MARRIED INDIVID-
21 UALS.—

22 “(A) IN GENERAL.—This subsection shall
23 be applied separately for each married individ-
24 ual.

1 “(B) SPECIAL RULE.—If individuals who
2 are married to each other are covered under the
3 same catastrophic health plan, then the
4 amounts applicable under subparagraphs (A)
5 and (B) of paragraph (1) shall be divided equal-
6 ly between them unless they agree on a dif-
7 ferent division.

8 “(3) COORDINATION WITH EXCLUSION FOR EM-
9 PLOYER CONTRIBUTIONS.—No deduction shall be al-
10 lowed under this section for any amount paid for
11 any taxable year to a medical savings account of an
12 individual if—

13 “(A) any amount is paid to any medical
14 savings account of such individual which is ex-
15 cludable from gross income under section
16 106(b) for such year, or

17 “(B) in a case described in paragraph (2),
18 any amount is paid to any medical savings ac-
19 count of either spouse which is so excludable for
20 such year.

21 “(4) PRORATION OF LIMITATION.—

22 “(A) IN GENERAL.—The limitation under
23 paragraph (1) shall be the sum of the monthly
24 limitations for months during the taxable year
25 that the individual is an eligible individual if—

1 “(i) such individual is not an eligible
2 individual for all months of the taxable
3 year,

4 “(ii) the deductible under the cata-
5 strophic health plan covering such individ-
6 ual is not the same throughout such tax-
7 able year, or

8 “(iii) such limitation is determined
9 using the next to the last sentence of para-
10 graph (1) for some but not all months dur-
11 ing such taxable year.

12 “(B) MONTHLY LIMITATION.—The month-
13 ly limitation for any month shall be an amount
14 equal to $\frac{1}{12}$ of the limitation which would (but
15 for this paragraph and paragraph (3)) be deter-
16 mined under paragraph (1) if the facts and cir-
17 cumstances as of the first day of such month
18 that such individual is covered under a cata-
19 strophic health plan were true for the entire
20 taxable year.

21 “(5) DENIAL OF DEDUCTION TO DEPEND-
22 ENTS.—No deduction shall be allowed under this
23 section to any individual with respect to whom a de-
24 duction under section 151 is allowable to another
25 taxpayer for a taxable year beginning in the cal-

1 endar year in which such individual's taxable year
2 begins.

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

4 “(1) ELIGIBLE INDIVIDUAL.—

5 “(A) IN GENERAL.—The term ‘eligible in-
6 dividual’ means, with respect to any month, any
7 individual—

8 “(i) who is covered under a cata-
9 strophic health plan at any time during
10 such month, and

11 “(ii) who is not, while covered under
12 a catastrophic health plan, covered under
13 any health plan—

14 “(I) which is not a catastrophic
15 health plan, and

16 “(II) which provides coverage for
17 any benefit which is covered under the
18 catastrophic health plan.

19 “(B) CERTAIN COVERAGE DIS-
20 REGARDED.—Subparagraph (A)(ii) shall be ap-
21 plied without regard to—

22 “(i) coverage for any benefit provided
23 by permitted insurance, and

1 “(ii) coverage (whether through insur-
2 ance or otherwise) for accidents, dental
3 care, vision care, or long-term care.

4 “(2) CATASTROPHIC HEALTH PLAN.—The term
5 ‘catastrophic health plan’ means any health plan
6 which provides no compensation for an individual’s
7 expenses covered by the plan for any calendar year
8 to the extent such expenses for such calendar year
9 do not exceed \$1,500 (\$3,000 if the catastrophic
10 health plan covering the taxpayer provides coverage
11 for more than 1 individual) or such higher amounts
12 as may be specified by the plan.

13 “(3) PERMITTED INSURANCE.—The term ‘per-
14 mitted insurance’ means—

15 “(A) Medicare supplemental insurance,

16 “(B) insurance if substantially all of the
17 coverage provided under such insurance relates
18 to—

19 “(i) liabilities incurred under workers’
20 compensation laws,

21 “(ii) tort liabilities,

22 “(iii) liabilities relating to ownership
23 or use of property,

24 “(iv) credit insurance, or

1 “(v) such other similar liabilities as
2 the Secretary may specify by regulations,

3 “(C) insurance for a specified disease or
4 illness, and

5 “(D) insurance paying a fixed amount per
6 day (or other period) of hospitalization.

7 “(d) MEDICAL SAVINGS ACCOUNT.—For purposes of
8 this section—

9 “(1) MEDICAL SAVINGS ACCOUNT.—The term
10 ‘medical savings account’ means a trust created or
11 organized in the United States exclusively for the
12 purpose of paying the qualified medical expenses of
13 the account holder, but only if the written governing
14 instrument creating the trust meets the following re-
15 quirements:

16 “(A) Except in the case of a rollover con-
17 tribution described in subsection (f)(4), no con-
18 tribution will be accepted unless it is in cash.

19 “(B) The trustee is a bank (as defined in
20 section 408(n)), an insurance company (as de-
21 fined in section 816), or another person who
22 demonstrates to the satisfaction of the Sec-
23 retary that the manner in which such person
24 will administer the trust will be consistent with
25 the requirements of this section.

1 “(C) No part of the trust assets will be in-
2 vested in life insurance contracts.

3 “(D) The assets of the trust will not be
4 commingled with other property except in a
5 common trust fund or common investment
6 fund.

7 “(E) The interest of an individual in the
8 balance in his account is nonforfeitable.

9 “(2) QUALIFIED MEDICAL EXPENSES.—

10 “(A) IN GENERAL.—The term ‘qualified
11 medical expenses’ means, with respect to an ac-
12 count holder, amounts paid by such holder—

13 “(i) for medical care (as defined in
14 section 213(d)) for such individual, the
15 spouse of such individual, and any depend-
16 ent (as defined in section 152) of such in-
17 dividual, but only to the extent such
18 amounts are not compensated for by insur-
19 ance or otherwise, or

20 “(ii) for long-term care insurance for
21 such individual, spouse, or dependent.

22 “(B) HEALTH INSURANCE MAY NOT BE
23 PURCHASED FROM ACCOUNT.—Subparagraph
24 (A)(i) shall not apply to any payment for insur-
25 ance.

1 “(3) ACCOUNT HOLDER.—The term ‘account
2 holder’ means the individual on whose behalf the
3 medical savings account was established.

4 “(4) CERTAIN RULES TO APPLY.—Rules similar
5 to the following rules shall apply for purposes of this
6 section:

7 “(A) Section 219(d)(2) (relating to no de-
8 duction for rollovers).

9 “(B) Section 219(f)(3) (relating to time
10 when contributions deemed made).

11 “(C) Except as provided in section 106(b),
12 section 219(f)(5) (relating to employer pay-
13 ments).

14 “(D) Section 408(g) (relating to commu-
15 nity property laws).

16 “(E) Section 408(h) (relating to custodial
17 accounts).

18 “(e) TAX TREATMENT OF ACCOUNTS.—

19 “(1) ACCOUNT TAXED AS GRANTOR TRUST.—

20 “(A) IN GENERAL.—Except as provided in
21 subparagraph (B), the account holder of a med-
22 ical savings account shall be treated for pur-
23 poses of this title as the owner of such account
24 and shall be subject to tax thereon in accord-
25 ance with subpart E of part I of subchapter J

1 of this chapter (relating to grantors and others
2 treated as substantial owners).

3 “(B) TREATMENT OF CAPITAL LOSSES.—

4 With respect to assets held in a medical savings
5 account, any capital loss for a taxable year
6 from the sale or exchange of such an asset shall
7 be allowed only to the extent of capital gains
8 from such assets for such taxable year. Any
9 capital loss which is disallowed under the pre-
10 ceding sentence shall be treated as a capital
11 loss from the sale or exchange of such an asset
12 in the next taxable year. For purposes of this
13 subparagraph, all medical savings accounts of
14 the account holder shall be treated as 1 ac-
15 count.

16 “(2) ACCOUNT ASSETS TREATED AS DISTRIB-
17 UTED IN THE CASE OF PROHIBITED TRANSACTIONS
18 OR ACCOUNT PLEDGED AS SECURITY FOR LOAN.—

19 Rules similar to the rules of paragraphs (2) and (4)
20 of section 408(e) shall apply to medical savings ac-
21 counts, and any amount treated as distributed under
22 such rules shall be treated as not used to pay quali-
23 fied medical expenses.

24 “(3) TREATMENT OF ACCOUNT AFTER DEATH
25 OF ACCOUNT HOLDER.—

1 “(A) IN GENERAL.—A trust shall not con-
2 stitute a medical savings account unless the
3 written governing instrument provides that, if
4 the account holder dies while there is a balance
5 in the account, the entire balance of the ac-
6 count holder will be distributed within 5 years
7 after the death of the account holder.

8 “(B) EXCEPTION WHERE SPOUSE BE-
9 COMES ACCOUNT HOLDER.—Subparagraph (A)
10 shall not apply if the account is payable to (or
11 for the benefit of) the surviving spouse of the
12 decedent.

13 “(f) TAX TREATMENT OF DISTRIBUTIONS.—

14 “(1) INCLUSION OF AMOUNTS NOT USED FOR
15 QUALIFIED MEDICAL EXPENSES.—

16 “(A) IN GENERAL.—No amount shall be
17 included in the gross income of the account
18 holder by reason of a payment or distribution
19 from a medical savings account which is used
20 exclusively to pay the qualified medical expenses
21 of the account holder. Any amount paid or dis-
22 tributed from a medical savings account which
23 is not so used shall be included in the gross in-
24 come of such holder to the extent such amount
25 does not exceed the excess of—

1 “(i) the aggregate contributions to
2 such account which were allowed as a de-
3 duction under this section or which were
4 excluded under section 106(b), over

5 “(ii) the aggregate prior payments or
6 distributions from such account which were
7 includible in gross income under this para-
8 graph.

9 “(B) SPECIAL RULES.—For purposes of
10 subparagraph (A)—

11 “(i) all medical savings accounts of
12 the account holder shall be treated as 1 ac-
13 count,

14 “(ii) all payments and distributions
15 during any taxable year shall be treated as
16 1 distribution, and

17 “(iii) any distribution of property
18 shall be taken into account at its fair mar-
19 ket value on the date of the distribution.

20 “(2) PENALTY FOR DISTRIBUTIONS NOT USED
21 FOR QUALIFIED MEDICAL EXPENSES.—

22 “(A) IN GENERAL.—The tax imposed by
23 this chapter for any taxable year in which there
24 is a payment or distribution from a medical
25 savings account which is not used exclusively to

1 pay the qualified medical expenses of the ac-
2 count holder shall be increased by 10 percent of
3 the amount of such payment or distribution
4 which is includible in gross income under para-
5 graph (1).

6 “(B) EXCEPTIONS.—Subparagraph (A)
7 shall not apply if the payment or distribution is
8 made on or after the date the account holder—

9 “(i) attains age 59 ½,

10 “(ii) becomes disabled within the
11 meaning of section 72(m)(7), or

12 “(iii) dies.

13 “(3) WITHDRAWAL OF EXCESS CONTRIBU-
14 TIONS.—Paragraph (1) shall not apply to the dis-
15 tribution of any contribution paid during a taxable
16 year to a medical savings account if—

17 “(A) such distribution is received on or be-
18 fore the day prescribed by law (including exten-
19 sions of time) for filing such individual’s return
20 for such taxable year,

21 “(B) no deduction is allowed under this
22 section with respect to such contribution, and

23 “(C) such distribution is accompanied by
24 the amount of net income attributable to such
25 contribution.

1 In the case of such a distribution, for purposes of section
2 61, any net income described in subparagraph (C) shall
3 be deemed to have been earned and receivable in the tax-
4 able year in which such contribution is made.

5 “(4) ROLLOVERS.—Paragraph (1) shall not
6 apply to any amount paid or distributed out of a
7 medical savings account to the account holder if the
8 entire amount received (including money and any
9 other property) is paid into another medical savings
10 account for the benefit of such holder not later than
11 the 60th day after the day on which he received the
12 payment or distribution.

13 “(5) COORDINATION WITH MEDICAL EXPENSE
14 DEDUCTION.—For purposes of section 213, any pay-
15 ment or distribution out of a medical savings ac-
16 count for qualified medical expenses shall not be
17 treated as an expense paid for medical care to the
18 extent of the amount of such payment or distribu-
19 tion which is excludable from gross income solely by
20 reason of paragraph (1)(A).

21 “(g) COST-OF-LIVING ADJUSTMENT.—

22 “(1) IN GENERAL.—In the case of any taxable
23 year beginning in a calendar year after 1996, each
24 dollar amount in subsection (b)(1) or in subsection
25 (c)(2) shall be increased by an amount equal to—

1 “(A) such dollar amount, multiplied by

2 “(B) the medical care cost adjustment for
3 such calendar year.

4 If any increase under the preceding sentence is not
5 a multiple of \$50, such increase shall be rounded to
6 the nearest multiple of \$50.

7 “(2) MEDICAL CARE COST ADJUSTMENT.—For
8 purposes of paragraph (1), the medical care cost ad-
9 justment for any calendar year is the percentage (if
10 any) by which—

11 “(A) the medical care component of the
12 Consumer Price Index (as defined in section
13 1(f)(5)) for August of the preceding calendar
14 year, exceeds

15 “(B) such component for August of 1995.

16 “(h) REPORTS.—The trustee of a medical savings ac-
17 count shall make such reports regarding such account to
18 the Secretary and to the account holder with respect to
19 contributions, distributions, and such other matters as the
20 Secretary may require under regulations. The reports re-
21 quired by this subsection shall be filed at such time and
22 in such manner and furnished to such individuals at such
23 time and in such manner as may be required by those reg-
24 ulations.”

1 (b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL
2 INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
3 of section 62 is amended by inserting after paragraph (15)
4 the following new paragraph:

5 “(16) MEDICAL SAVINGS ACCOUNTS.—The de-
6 duction allowed by section 220.”

7 (c) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO
8 MEDICAL SAVINGS ACCOUNTS.—

9 (1) EXCLUSION FROM INCOME TAX.—The text
10 of section 106 (relating to contributions by employer
11 to accident and health plans) is amended to read as
12 follows:

13 “(a) GENERAL RULE.—Gross income of an employee
14 does not include employer-provided coverage under an ac-
15 cident or health plan.

16 “(b) CONTRIBUTIONS TO MEDICAL SAVINGS AC-
17 COUNTS.—

18 “(1) IN GENERAL.—In the case of an employee
19 who is an eligible individual, gross income does not
20 include amounts contributed by such employee’s em-
21 ployer to any medical savings account of such em-
22 ployee.

23 “(2) COORDINATION WITH DEDUCTION LIMITA-
24 TION.—The amount excluded from the gross income
25 of an employee under this subsection for any taxable

1 year shall not exceed the limitation under section
2 220(b)(1) (determined without regard to this sub-
3 section) which is applicable to such employee for
4 such taxable year.”

5 “(3) NO CONSTRUCTIVE RECEIPT.—No amount
6 shall be included in the gross income of any em-
7 ployee solely because the employee may choose be-
8 tween the contributions referred to in paragraph (1)
9 and employer contributions to another health plan of
10 the employer.

11 “(4) SPECIAL RULE FOR DEDUCTION OF EM-
12 PLOYER CONTRIBUTIONS.—Any employer contribu-
13 tion to a medical savings account, if otherwise allow-
14 able as a deduction under this chapter, shall be al-
15 lowed only for the taxable year in which paid.

16 “(5) DEFINITIONS.—For purposes of this sub-
17 section, the terms ‘eligible individual’ and ‘medical
18 savings account’ have the respective meanings given
19 to such terms by section 220.”

20 (2) EXCLUSION FROM EMPLOYMENT TAXES.—

21 (A) SOCIAL SECURITY TAXES.—

22 (i) Subsection (a) of section 3121 is
23 amended by striking “or” at the end of
24 paragraph (20), by striking the period at
25 the end of paragraph (21) and inserting “;

1 or”, and by inserting after paragraph (21)
2 the following new paragraph:

3 “(22) any payment made to or for the benefit
4 of an employee if at the time of such payment it is
5 reasonable to believe that the employee will be able
6 to exclude such payment from income under section
7 106(b).”

8 (ii) Subsection (a) of section 209 of
9 the Social Security Act is amended by
10 striking “or” at the end of paragraph (17),
11 by striking the period at the end of para-
12 graph (18) and inserting “; or”, and by in-
13 serting after paragraph (18) the following
14 new paragraph:

15 “(19) any payment made to or for the benefit
16 of an employee if at the time of such payment it is
17 reasonable to believe that the employee will be able
18 to exclude such payment from income under section
19 106(b) of the Internal Revenue Code of 1986.”

20 (B) RAILROAD RETIREMENT TAX.—Sub-
21 section (e) of section 3231 is amended by add-
22 ing at the end the following new paragraph:

23 “(10) MEDICAL SAVINGS ACCOUNT CONTRIBU-
24 TIONS.—The term ‘compensation’ shall not include
25 any payment made to or for the benefit of an em-

1 ployee if at the time of such payment it is reason-
2 able to believe that the employee will be able to ex-
3 clude such payment from income under section
4 106(b).”

5 (C) UNEMPLOYMENT TAX.—Subsection (b)
6 of section 3306 is amended by striking “or” at
7 the end of paragraph (15), by striking the pe-
8 riod at the end of paragraph (16) and inserting
9 “; or”, and by inserting after paragraph (16)
10 the following new paragraph:

11 “(17) any payment made to or for the benefit
12 of an employee if at the time of such payment it is
13 reasonable to believe that the employee will be able
14 to exclude such payment from income under section
15 106(b).”

16 (D) WITHHOLDING TAX.—Subsection (a)
17 of section 3401 is amended by striking “or” at
18 the end of paragraph (19), by striking the pe-
19 riod at the end of paragraph (20) and inserting
20 “; or”, and by inserting after paragraph (20)
21 the following new paragraph:

22 “(21) any payment made to or for the benefit
23 of an employee if at the time of such payment it is
24 reasonable to believe that the employee will be able

1 to exclude such payment from income under section
2 106(b).”

3 (d) MEDICAL SAVINGS ACCOUNT CONTRIBUTIONS
4 NOT AVAILABLE UNDER CAFETERIA PLANS.—Subsection
5 (f) of section 125 is amended by inserting “106(b),” be-
6 fore “117”.

7 (e) TAX ON PROHIBITED TRANSACTIONS.—Section
8 4975 (relating to tax on prohibited transactions) is
9 amended—

10 (1) by adding at the end of subsection (c) the
11 following new paragraph:

12 “(4) SPECIAL RULE FOR MEDICAL SAVINGS AC-
13 COUNTS.—An individual for whose benefit a medical
14 savings account (within the meaning of section
15 220(d)) is established shall be exempt from the tax
16 imposed by this section with respect to any trans-
17 action concerning such account (which would other-
18 wise be taxable under this section) if, with respect
19 to such transaction, the account ceases to be a medi-
20 cal savings account by reason of the application of
21 section 220(e)(2) to such account.”, and

22 (2) by inserting “or a medical savings account
23 described in section 220(d)” in subsection (e)(1)
24 after “described in section 408(a)”.

1 (f) FAILURE TO PROVIDE REPORTS ON MEDICAL
2 SAVINGS ACCOUNTS.—Section 6693 (relating to failure to
3 provide reports on individual retirement accounts or annu-
4 ities) is amended—

5 (1) by inserting “**OR ON MEDICAL SAVINGS**
6 **ACCOUNTS**” after “**ANNUITIES**” in the heading of
7 such section, and

8 (2) by adding at the end of subsection (a) the
9 following: “The person required by section 220(h) to
10 file a report regarding a medical savings account at
11 the time and in the manner required by such section
12 shall pay a penalty of \$50 for each failure to so file
13 unless it is shown that such failure is due to reason-
14 able cause.”

15 (g) CLERICAL AMENDMENTS.—

16 (1) The table of sections for part VII of sub-
17 chapter B of chapter 1 is amended by striking the
18 last item and inserting the following:

“Sec. 220. Medical savings accounts.

“Sec. 221. Cross reference.”

19 (2) The table of sections for subchapter B of
20 chapter 68 is amended by inserting “or on medical
21 savings accounts” after “annuities” in the item re-
22 lating to section 6693.

1 (h) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 1995.

4 **Subtitle C—Pickle-Johnson**
5 **Taxpayer Bill of Rights 2**

6 **PART I—TAXPAYER ADVOCATE**

7 **SEC. 13301. ESTABLISHMENT OF POSITION OF TAXPAYER**
8 **ADVOCATE WITHIN INTERNAL REVENUE**
9 **SERVICE.**

10 (a) GENERAL RULE.—Section 7802 (relating to
11 Commissioner of Internal Revenue; Assistant Commis-
12 sioner (Employee Plans and Exempt Organizations)) is
13 amended by adding at the end the following new sub-
14 section:

15 “(d) OFFICE OF TAXPAYER ADVOCATE.—

16 “(1) IN GENERAL.—There is established in the
17 Internal Revenue Service an office to be known as
18 the ‘Office of the Taxpayer Advocate’. Such office
19 shall be under the supervision and direction of an of-
20 ficial to be known as the ‘Taxpayer Advocate’ who
21 shall be appointed by and report directly to the
22 Commissioner of Internal Revenue. The Taxpayer
23 Advocate shall be entitled to compensation at the
24 same rate as the highest level official reporting di-

1 rectly to the Deputy Commissioner of the Internal
2 Revenue Service.

3 “(2) FUNCTIONS OF OFFICE.—

4 “(A) IN GENERAL.—It shall be the func-
5 tion of the Office of Taxpayer Advocate to—

6 “(i) assist taxpayers in resolving prob-
7 lems with the Internal Revenue Service,

8 “(ii) identify areas in which taxpayers
9 have problems in dealings with the Internal
10 Revenue Service,

11 “(iii) to the extent possible, propose
12 changes in the administrative practices of
13 the Internal Revenue Service to mitigate
14 problems identified under clause (ii), and

15 “(iv) identify potential legislative
16 changes which may be appropriate to miti-
17 gate such problems.

18 “(B) ANNUAL REPORTS.—

19 “(i) OBJECTIVES.—Not later than
20 June 30 of each calendar year after 1995,
21 the Taxpayer Advocate shall report to the
22 Committee on Ways and Means of the
23 House of Representatives and the Commit-
24 tee on Finance of the Senate on the objec-
25 tives of the Taxpayer Advocate for the fis-

1 cal year beginning in such calendar year.
2 Any such report shall contain full and sub-
3 stantive analysis, in addition to statistical
4 information.

5 “(ii) ACTIVITIES.—Not later than De-
6 cember 31 of each calendar year after
7 1995, the Taxpayer Advocate shall report
8 to the Committee on Ways and Means of
9 the House of Representatives and the
10 Committee on Finance of the Senate on
11 the activities of the Taxpayer Advocate
12 during the fiscal year ending during such
13 calendar year. Any such report shall con-
14 tain full and substantive analysis, in addi-
15 tion to statistical information, and shall—

16 “(I) identify the initiatives the
17 Taxpayer Advocate has taken on im-
18 proving taxpayer services and Internal
19 Revenue Service responsiveness,

20 “(II) contain recommendations
21 received from individuals with the au-
22 thority to issue Taxpayer Assistance
23 Orders under section 7811,

24 “(III) contain a summary of at
25 least 20 of the most serious problems

1 encountered by taxpayers, including a
2 description of the nature of such prob-
3 lems,

4 “(IV) contain an inventory of the
5 items described in subclauses (I), (II),
6 and (III) for which action has been
7 taken and the result of such action,

8 “(V) contain an inventory of the
9 items described in subclauses (I), (II),
10 and (III) for which action remains to
11 be completed and the period during
12 which each item has remained on such
13 inventory,

14 “(VI) contain an inventory of the
15 items described in subclauses (II) and
16 (III) for which no action has been
17 taken, the period during which each
18 item has remained on such inventory,
19 the reasons for the inaction, and iden-
20 tify any Internal Revenue Service offi-
21 cial who is responsible for such inac-
22 tion,

23 “(VII) identify any Taxpayer As-
24 sistance Order which was not honored
25 by the Internal Revenue Service in a

1 timely manner, as specified under sec-
2 tion 7811(b),

3 “(VIII) contain recommendations
4 for such administrative and legislative
5 action as may be appropriate to re-
6 solve problems encountered by tax-
7 payers,

8 “(IX) describe the extent to
9 which regional problem resolution offi-
10 cers participate in the selection and
11 evaluation of local problem resolution
12 officers, and

13 “(X) include such other informa-
14 tion as the Taxpayer Advocate may
15 deem advisable.

16 “(iii) REPORT TO BE SUBMITTED DI-
17 RECTLY.—Each report required under this
18 subparagraph shall be provided directly to
19 the Committees referred to in clauses (i)
20 and (ii) without any prior review or com-
21 ment from the Commissioner, the Sec-
22 retary of the Treasury, any other officer or
23 employee of the Department of the Treas-
24 ury, or the Office of Management and
25 Budget.

1 “(3) RESPONSIBILITIES OF COMMISSIONER.—

2 The Commissioner of Internal Revenue shall estab-
3 lish procedures requiring a formal response to all
4 recommendations submitted to the Commissioner
5 by the Taxpayer Advocate within 3 months after
6 submission to the Commissioner.”

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 7811 (relating to Taxpayer Assist-
9 ance Orders) is amended—

10 (A) by striking “the Office of Ombuds-
11 man” in subsection (a) and inserting “the Of-
12 fice of the Taxpayer Advocate”, and

13 (B) by striking “Ombudsman” each place
14 it appears (including in the headings of sub-
15 sections (e) and (f)) and inserting “Taxpayer
16 Advocate”.

17 (2) The heading for section 7802 is amended to
18 read as follows:

19 **“SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; AS-**
20 **SISTANT COMMISSIONERS; TAXPAYER ADVO-**
21 **CATE.”**

22 (3) The table of sections for subchapter A of
23 chapter 80 is amended by striking the item relating

1 to section 7802 and inserting the following new
2 item:

“Sec. 7802. Commissioner of Internal Revenue; Assistant Com-
missioners; Taxpayer Advocate.”

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act.

6 **SEC. 13302. EXPANSION OF AUTHORITY TO ISSUE TAX-**
7 **PAYER ASSISTANCE ORDERS.**

8 (a) TERMS OF ORDERS.—Subsection (b) of section
9 7811 (relating to terms of Taxpayer Assistance Orders)
10 is amended—

11 (1) by inserting “within a specified time pe-
12 riod” after “the Secretary”, and

13 (2) by inserting “take any action as permitted
14 by law,” after “cease any action,”.

15 (b) LIMITATION ON AUTHORITY TO MODIFY OR RE-
16 SCIND.—Section 7811(c) (relating to authority to modify
17 or rescind) is amended to read as follows:

18 “(c) AUTHORITY TO MODIFY OR RESCIND.—Any
19 Taxpayer Assistance Order issued by the Taxpayer Advo-
20 cate under this section may be modified or rescinded—

21 “(1) only by the Taxpayer Advocate, the Com-
22 missioner of Internal Revenue, the Deputy Commis-
23 sioner of Internal Revenue, or a regional problem
24 resolution officer, and

1 “(2) only if a written explanation of the reasons
2 for the modification or rescission is provided to the
3 Taxpayer Advocate.”

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of the enactment
6 of this Act.

7 **PART II—MODIFICATIONS TO INSTALLMENT**

8 **AGREEMENT PROVISIONS**

9 **SEC. 13306. NOTIFICATION OF REASONS FOR TERMINATION**
10 **OF INSTALLMENT AGREEMENTS.**

11 (a) TERMINATIONS.—Subsection (b) of section 6159
12 (relating to extent to which agreements remain in effect)
13 is amended by adding at the end the following new para-
14 graph:

15 “(5) NOTICE REQUIREMENTS.—The Secretary
16 may not take any action under paragraph (2), (3),
17 or (4) unless—

18 “(A) a notice of such action is provided to
19 the taxpayer not later than the day 30 days be-
20 fore the date of such action, and

21 “(B) such notice includes an explanation
22 why the Secretary intends to take such action.

23 The preceding sentence shall not apply in any case
24 in which the Secretary believes that collection of any

1 tax to which an agreement under this section relates
2 is in jeopardy.”

3 (b) CONFORMING AMENDMENT.—Paragraph (3) of
4 section 6159(b) is amended to read as follows:

5 “(3) SUBSEQUENT CHANGE IN FINANCIAL CON-
6 DITIONS.—If the Secretary makes a determination
7 that the financial condition of a taxpayer with whom
8 the Secretary has entered into an agreement under
9 subsection (a) has significantly changed, the Sec-
10 retary may alter, modify, or terminate such agree-
11 ment.”

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date 6 months after
14 the date of the enactment of this Act.

15 **SEC. 13307. ADMINISTRATIVE REVIEW OF TERMINATION OF**
16 **INSTALLMENT AGREEMENT.**

17 (a) GENERAL RULE.—Section 6159 (relating to
18 agreements for payment of tax liability in installments)
19 is amended by adding at the end the following new sub-
20 section:

21 “(c) ADMINISTRATIVE REVIEW.—The Secretary shall
22 establish procedures for an independent administrative re-
23 view of terminations of installment agreements under this
24 section for taxpayers who request such a review.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on January 1, 1996.

3 **PART III—ABATEMENT OF INTEREST AND**
4 **PENALTIES**

5 **SEC. 13311. EXPANSION OF AUTHORITY TO ABATE INTER-**
6 **EST.**

7 (a) GENERAL RULE.—Paragraph (1) of section
8 6404(e) (relating to abatement of interest in certain cases)
9 is amended—

10 (1) by inserting “unreasonable” before “error”
11 each place it appears in subparagraphs (A) and (B),
12 and

13 (2) by striking “in performing a ministerial
14 act” each place it appears and inserting “in per-
15 forming a ministerial or managerial act”.

16 (b) CLERICAL AMENDMENT.—The subsection head-
17 ing for subsection (e) of section 6404 is amended—

18 (1) by striking “ASSESSMENTS” and inserting
19 “ABATEMENT”, and

20 (2) by inserting “UNREASONABLE” before “ER-
21 RORS”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to interest accruing with respect
24 to deficiencies or payments for taxable years beginning
25 after the date of the enactment of this Act.

1 **SEC. 13312. REVIEW OF IRS FAILURE TO ABATE INTEREST.**

2 (a) IN GENERAL.—Section 6404 is amended by add-
3 ing at the end the following new subsection:

4 “(g) REVIEW OF DENIAL OF REQUEST FOR ABATE-
5 MENT OF INTEREST.—The Tax Court shall have jurisdic-
6 tion over any action brought by a taxpayer who meets the
7 requirements referred to in section 7430(c)(4)(A)(iii) to
8 determine whether the Secretary’s failure to abate interest
9 under this section was an abuse of discretion if such action
10 is brought within 6 months after the date of the Sec-
11 retary’s final determination not to abate such interest.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to requests for abatement after the
14 date of the enactment of this Act.

15 **SEC. 13313. EXTENSION OF INTEREST-FREE PERIOD FOR**
16 **PAYMENT OF TAX AFTER NOTICE AND DE-**
17 **MAND.**

18 (a) GENERAL RULE.—Paragraph (3) of section
19 6601(e) (relating to payments made within 10 days after
20 notice and demand) is amended to read as follows:

21 “(3) PAYMENTS MADE WITHIN SPECIFIED PE-
22 RIOD AFTER NOTICE AND DEMAND.—If notice and
23 demand is made for payment of any amount and if
24 such amount is paid within 21 calendar days (10
25 business days if the amount for which such notice
26 and demand is made equals or exceeds \$100,000)

1 after the date of such notice and demand, interest
2 under this section on the amount so paid shall not
3 be imposed for the period after the date of such no-
4 tice and demand.”

5 (b) CONFORMING AMENDMENTS.—

6 (1) Subparagraph (A) of section 6601(e)(2) is
7 amended by striking “10 days from the date of no-
8 tice and demand therefor” and inserting “21 cal-
9 endar days from the date of notice and demand
10 therefor (10 business days if the amount for which
11 such notice and demand is made equals or exceeds
12 \$100,000)”.

13 (2) Paragraph (3) of section 6651(a) is amend-
14 ed by striking “10 days of the date of the notice and
15 demand therefor” and inserting “21 calendar days
16 from the date of notice and demand therefor (10
17 business days if the amount for which such notice
18 and demand is made equals or exceeds \$100,000)”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply in the case of any notice and de-
21 mand given after June 30, 1996.

PART IV—JOINT RETURNS**SEC. 13316. STUDIES OF JOINT RETURN-RELATED ISSUES.**

The Secretary of the Treasury or his delegate and the Comptroller General of the United States shall each conduct separate studies of—

(1) the effects of changing the liability for tax on a joint return from being joint and several to being proportionate to the tax attributable to each spouse,

(2) the effects of providing that, if a divorce decree allocates liability for tax on a joint return filed before the divorce, the Secretary may collect such liability only in accordance with the decree,

(3) whether those provisions of the Internal Revenue Code of 1986 intended to provide relief to innocent spouses provide meaningful relief in all cases where such relief is appropriate, and

(4) the effect of providing that community income (as defined in section 66(d) of such Code) which, in accordance with the rules contained in section 879(a) of such Code, would be treated as the income of one spouse is exempt from a levy for failure to pay any tax imposed by subtitle A by the other spouse for a taxable year ending before their marriage.

1 The reports of such studies shall be submitted to the Com-
2 mittee on Ways and Means of the House of Representa-
3 tives and the Committee on Finance of the Senate within
4 6 months after the date of the enactment of this Act.

5 **SEC. 13317. JOINT RETURN MAY BE MADE AFTER SEPA-**
6 **RATE RETURNS WITHOUT FULL PAYMENT OF**
7 **TAX.**

8 (a) **GENERAL RULE.**—Paragraph (2) of section
9 6013(b) (relating to limitations on filing of joint return
10 after filing separate returns) is amended by striking sub-
11 paragraph (A) and redesignating the following subpara-
12 graphs accordingly.

13 (b) **EFFECTIVE DATE.**—The amendment made by
14 subsection (a) shall apply to taxable years beginning after
15 the date of the enactment of this Act.

16 **SEC. 13318. DISCLOSURE OF COLLECTION ACTIVITIES.**

17 Subsection (e) of section 6103 (relating to disclosure
18 to persons having material interest) is amended by adding
19 at the end the following new paragraph:

20 “(8) **DISCLOSURE OF COLLECTION ACTIVITIES**
21 **WITH RESPECT TO JOINT RETURN.**—If any defi-
22 ciency of tax with respect to a joint return is as-
23 sessed and the individuals filing such return are no
24 longer married or no longer reside in the same
25 household, upon request in writing by either of such

1 individuals, the Secretary shall disclose in writing to
2 the individual making the request whether the Sec-
3 retary has attempted to collect such deficiency from
4 such other individual, the general nature of such col-
5 lection activities, and the amount collected.”

6 **PART V—COLLECTION ACTIVITIES**

7 **SEC. 13321. MODIFICATIONS TO LIEN AND LEVY PROVI-**
8 **SIONS.**

9 (a) WITHDRAWAL OF CERTAIN NOTICES.—Section
10 6323 (relating to validity and priority against certain per-
11 sons) is amended by adding at the end the following new
12 subsection:

13 “(j) WITHDRAWAL OF NOTICE IN CERTAIN CIR-
14 CUMSTANCES.—

15 “(1) IN GENERAL.—The Secretary may with-
16 draw a notice of a lien filed under this section and
17 this chapter shall be applied as if the withdrawn no-
18 tice had not been filed, if the Secretary determines
19 that—

20 “(A) the filing of such notice was pre-
21 mature or otherwise not in accordance with ad-
22 ministrative procedures of the Secretary,

23 “(B) the taxpayer has entered into an
24 agreement under section 6159 to satisfy the tax
25 liability for which the lien was imposed by

1 means of installment payments, unless such
2 agreement provides otherwise,

3 “(C) the withdrawal of such notice will fa-
4 cilitate the collection of the tax liability, or

5 “(D) with the consent of the taxpayer or
6 the Taxpayer Advocate, the withdrawal of such
7 notice would be in the best interests of the tax-
8 payer (as determined by the Taxpayer Advo-
9 cate) and the United States.

10 Any such withdrawal shall be made by filing notice
11 at the same office as the withdrawn notice. A copy
12 of such notice of withdrawal shall be provided to the
13 taxpayer.

14 “(2) NOTICE TO CREDIT AGENCIES, ETC.—
15 Upon written request by the taxpayer with respect
16 to whom a notice of a lien was withdrawn under
17 paragraph (1), the Secretary shall promptly make
18 reasonable efforts to notify credit reporting agencies,
19 and any financial institution or creditor whose name
20 and address is specified in such request, of the with-
21 drawal of such notice. Any such request shall be in
22 such form as the Secretary may prescribe.”

23 (b) RETURN OF LEVIED PROPERTY IN CERTAIN
24 CASES.—Section 6343 (relating to authority to release

1 levy and return property) is amended by adding at the
2 end the following new subsection:

3 “(d) RETURN OF PROPERTY IN CERTAIN CASES.—
4 If—

5 “(1) any property has been levied upon, and

6 “(2) the Secretary determines that—

7 “(A) the levy on such property was pre-
8 mature or otherwise not in accordance with ad-
9 ministrative procedures of the Secretary,

10 “(B) the taxpayer has entered into an
11 agreement under section 6159 to satisfy the tax
12 liability for which the levy was imposed by
13 means of installment payments, unless such
14 agreement provides otherwise,

15 “(C) the return of such property will facili-
16 tate the collection of the tax liability, or

17 “(D) with the consent of the taxpayer or
18 the Taxpayer Advocate, the return of such
19 property would be in the best interests of the
20 taxpayer (as determined by the Taxpayer Advo-
21 cate) and the United States,

22 the provisions of subsection (b) shall apply in the same
23 manner as if such property had been wrongly levied upon,
24 except that no interest shall be allowed under subsection
25 (c).”

1 (c) MODIFICATIONS IN CERTAIN LEVY EXEMPTION
2 AMOUNTS.—

3 (1) FUEL, ETC.—Paragraph (2) of section
4 6334(a) (relating to fuel, provisions, furniture, and
5 personal effects exempt from levy) is amended—

6 (A) by striking “If the taxpayer is the
7 head of a family, so” and inserting “So”,

8 (B) by striking “his household” and insert-
9 ing “the taxpayer’s household”, and

10 (C) by striking “\$1,650 (\$1,550 in the
11 case of levies issued during 1989)” and insert-
12 ing “\$2,500”.

13 (2) INFLATION ADJUSTMENT.—Section 6334
14 (relating to property exempt from levy) is amended
15 by adding at the end the following new subsection:
16 “(f) INFLATION ADJUSTMENT.—

17 “(1) IN GENERAL.—In the case of any calendar
18 year beginning after 1996, each dollar amount re-
19 ferred to in paragraphs (2) and (3) of subsection (a)
20 shall be increased by an amount equal to—

21 “(A) such dollar amount, multiplied by

22 “(B) the cost-of-living adjustment deter-
23 mined under section 1(f)(3) for such calendar
24 year, by substituting ‘calendar year 1995’ for

1 ‘calendar year 1992’ in subparagraph (B)
2 thereof.

3 “(2) ROUNDING.—If any dollar amount after
4 being increased under paragraph (1) is not a mul-
5 tiple of \$10, such dollar amount shall be rounded to
6 the nearest multiple of \$10.”

7 (3) TECHNICAL AMENDMENT.—Paragraph (3)
8 of section 6334(a) is amended by striking “(\$1,050
9 in the case of levies issued during 1989)”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall take effect on the date of the enactment of this
14 Act.

15 (2) EXEMPT AMOUNTS.—The amendments
16 made by subsection (c) shall take effect with respect
17 to levies issued after December 31, 1995.

18 **SEC. 13322. OFFERS-IN-COMPROMISE.**

19 (a) REVIEW REQUIREMENTS.—Subsection (b) of sec-
20 tion 7122 (relating to records) is amended by striking
21 “\$500.” and inserting “\$100,000. However, such com-
22 promise shall be subject to continuing quality review by
23 the Secretary.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **PART VI—INFORMATION RETURNS**

5 **SEC. 13326. CIVIL DAMAGES FOR FRAUDULENT FILING OF**
6 **INFORMATION RETURNS.**

7 (a) GENERAL RULE.—Subchapter B of chapter 76
8 (relating to proceedings by taxpayers and third parties)
9 is amended by redesignating section 7434 as section 7435
10 and by inserting after section 7433 the following new
11 section:

12 **“SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF**
13 **INFORMATION RETURNS.**

14 “(a) IN GENERAL.—If any person willfully files a
15 fraudulent information return with respect to payments
16 purported to be made to any other person, such other per-
17 son may bring a civil action for damages against the per-
18 son so filing such return.

19 “(b) DAMAGES.—In any action brought under sub-
20 section (a), upon a finding of liability on the part of the
21 defendant, the defendant shall be liable to the plaintiff in
22 an amount equal to the greater of \$5,000 or the sum of—
23 “(1) any actual damages sustained by the plain-
24 tiff as a proximate result of the filing of the fraudu-
25 lent information return (including any costs attrib-

1 utable to resolving deficiencies asserted as a result
2 of such filing),

3 “(2) the costs of the action, and

4 “(3) in the court’s discretion, reasonable attor-
5 neys fees.

6 “(c) PERIOD FOR BRINGING ACTION.—Notwith-
7 standing any other provision of law, an action to enforce
8 the liability created under this section may be brought
9 without regard to the amount in controversy and may be
10 brought only within the later of—

11 “(1) 6 years after the date of the filing of the
12 fraudulent information return, or

13 “(2) 1 year after the date such fraudulent in-
14 formation return would have been discovered by ex-
15 ercise of reasonable care.

16 “(d) COPY OF COMPLAINT FILED WITH IRS.—Any
17 person bringing an action under subsection (a) shall pro-
18 vide a copy of the complaint to the Internal Revenue Serv-
19 ice upon the filing of such complaint with the court.

20 “(e) FINDING OF COURT TO INCLUDE CORRECT
21 AMOUNT OF PAYMENT.—The decision of the court award-
22 ing damages in an action brought under subsection (a)
23 shall include a finding of the correct amount which should
24 have been reported in the information return.

1 “(f) INFORMATION RETURN.—For purposes of this
 2 section, the term ‘information return’ means any state-
 3 ment described in section 6724(d)(1)(A).”

4 (b) CLERICAL AMENDMENT.—The table of sections
 5 for subchapter B of chapter 76 is amended by striking
 6 the item relating to section 7434 and inserting the
 7 following:

“Sec. 7434. Civil damages for fraudulent filing of information re-
 turns.

“Sec. 7435. Cross references.”

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to fraudulent information returns
 10 filed after the date of the enactment of this Act.

11 **SEC. 13327. REQUIREMENT TO CONDUCT REASONABLE IN-**
 12 **VESTIGATIONS OF INFORMATION RETURNS.**

13 (a) GENERAL RULE.—Section 6201 (relating to as-
 14 sessment authority) is amended by redesignating sub-
 15 section (d) as subsection (e) and by inserting after sub-
 16 section (c) the following new subsection:

17 “(d) REQUIRED REASONABLE VERIFICATION OF IN-
 18 FORMATION RETURNS.—In any court proceeding, if a tax-
 19 payer asserts a reasonable dispute with respect to any
 20 item of income reported on an information return filed
 21 with the Secretary under subpart B or C of part III of
 22 subchapter A of chapter 61 by a third party and the tax-
 23 payer has fully cooperated with the Secretary (including
 24 providing, within a reasonable period of time, access to

1 and inspection of all witnesses, information, and docu-
2 ments within the control of the taxpayer as reasonably re-
3 quested by the Secretary), the Secretary shall have the
4 burden of producing reasonable and probative information
5 concerning such deficiency in addition to such information
6 return.”

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall take effect on the date of the enact-
9 ment of this Act.

10 **PART VII—AWARDING OF COSTS AND CERTAIN**
11 **FEES**

12 **SEC. 13331. UNITED STATES MUST ESTABLISH THAT ITS PO-**
13 **SITION IN PROCEEDING WAS SUBSTANTIALLY**
14 **JUSTIFIED.**

15 (a) GENERAL RULE.—Subparagraph (A) of section
16 7430(c)(4) (defining prevailing party) is amended by
17 striking clause (i) and by redesignating clauses (ii) and
18 (iii) as clauses (i) and (ii), respectively.

19 (b) BURDEN OF PROOF ON UNITED STATES.—Para-
20 graph (4) of section 7430(c) is amended by redesignating
21 subparagraph (B) as subparagraph (C) and by inserting
22 after subparagraph (A) the following new subparagraph:
23 “(B) EXCEPTION IF UNITED STATES ES-
24 TABLISHES THAT ITS POSITION WAS SUBSTAN-
25 Tially JUSTIFIED.—

1 “(i) GENERAL RULE.—A party shall
2 not be treated as the prevailing party in a
3 proceeding to which subsection (a) applies
4 if the United States establishes that the
5 position of the United States in the pro-
6 ceeding was substantially justified.

7 “(ii) PRESUMPTION OF NO JUSTIFICA-
8 TION IF INTERNAL REVENUE SERVICE
9 DIDN’T FOLLOW CERTAIN PUBLISHED
10 GUIDANCE.—For purposes of clause (i),
11 the position of the United States shall be
12 presumed not to be substantially justified
13 if the Internal Revenue Service did not fol-
14 low its applicable published guidance in the
15 administrative proceeding. Such presump-
16 tion may be rebutted.

17 “(iii) APPLICABLE PUBLISHED GUID-
18 ANCE.—For purposes of clause (ii), the
19 term ‘applicable published guidance’
20 means—

21 “(I) regulations, revenue rulings,
22 revenue procedures, information re-
23 leases, notices, and announcements,
24 and

1 “(II) any of the following which
2 are issued to the taxpayer: private let-
3 ter rulings, technical advice memo-
4 randa, and determination letters.”

5 (c) CONFORMING AMENDMENTS.—

6 (1) Subparagraph (B) of section 7430(c)(2) is
7 amended by striking “paragraph (4)(B)” and insert-
8 ing “paragraph (4)(C)”.

9 (2) Subparagraph (C) of section 7430(c)(4), as
10 redesignated by subsection (b), is amended by strik-
11 ing “subparagraph (A)” and inserting “this para-
12 graph”.

13 (3) Sections 6404(g) and 6656(c)(1), as amend-
14 ed by this title, are each amended by striking “sec-
15 tion 7430(c)(4)(A)(iii)” and inserting “section
16 7430(c)(4)(A)(ii)”.

17 **SEC. 13332. INCREASED LIMIT ON ATTORNEY FEES.**

18 Paragraph (1) of section 7430(c) (defining reason-
19 able litigation costs) is amended—

20 (1) by striking “\$75” in clause (iii) of subpara-
21 graph (B) and inserting “\$110”,

22 (2) by striking “an increase in the cost of living
23 or” in clause (iii) of subparagraph (B), and

24 (3) by adding after clause (iii) the following:

1 “In the case of any calendar year beginning after
2 1996, the dollar amount referred to in clause (iii)
3 shall be increased by an amount equal to such dollar
4 amount multiplied by the cost-of-living adjustment
5 determined under section 1(f)(3) for such calendar
6 year, by substituting ‘calendar year 1995’ for ‘cal-
7 endar year 1992’ in subparagraph (B) thereof. If
8 any dollar amount after being increased under the
9 preceding sentence is not a multiple of \$10, such
10 dollar amount shall be rounded to the nearest mul-
11 tiple of \$10.”

12 **SEC. 13333. FAILURE TO AGREE TO EXTENSION NOT TAKEN**
13 **INTO ACCOUNT.**

14 Paragraph (1) of section 7430(b) (relating to require-
15 ment that administrative remedies be exhausted) is
16 amended by adding at the end the following new sentence:
17 “Any failure to agree to an extension of the time for the
18 assessment of any tax shall not be taken into account for
19 purposes of determining whether the prevailing party
20 meets the requirements of the preceding sentence.”

21 **SEC. 13334. AWARD OF LITIGATION COSTS PERMITTED IN**
22 **DECLARATORY JUDGMENT PROCEEDINGS.**

23 Subsection (b) of section 7430 is amended by striking
24 paragraph (3) and by redesignating paragraph (4) as
25 paragraph (3).

1 **SEC. 13335. EFFECTIVE DATE.**

2 The amendments made by this part shall apply in the
3 case of proceedings commenced after the date of the enact-
4 ment of this Act.

5 **PART VIII—MODIFICATION TO RECOVERY OF**
6 **CIVIL DAMAGES FOR UNAUTHORIZED COL-**
7 **LECTION ACTIONS**

8 **SEC. 13336. INCREASE IN LIMIT ON RECOVERY OF CIVIL**
9 **DAMAGES FOR UNAUTHORIZED COLLECTION**
10 **ACTIONS.**

11 (a) **GENERAL RULE.**—Subsection (b) of section 7433
12 (relating to damages) is amended by striking “\$100,000”
13 and inserting “\$1,000,000”.

14 (b) **EFFECTIVE DATE.**—The amendment made by
15 subsection (a) shall apply to actions by officers or employ-
16 ees of the Internal Revenue Service after the date of the
17 enactment of this Act.

18 **SEC. 13337. COURT DISCRETION TO REDUCE AWARD FOR**
19 **LITIGATION COSTS FOR FAILURE TO EX-**
20 **HAUST ADMINISTRATIVE REMEDIES.**

21 (a) **GENERAL RULE.**—Paragraph (1) of section
22 7433(d) (relating to civil damages for certain unauthor-
23 ized collection actions) is amended to read as follows:

24 “(1) **AWARD FOR DAMAGES MAY BE REDUCED**
25 **IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.**—

26 The amount of damages awarded under subsection

1 (b) may be reduced if the court determines that the
 2 plaintiff has not exhausted the administrative rem-
 3 edies available to such plaintiff within the Internal
 4 Revenue Service.”

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply in the case of proceedings com-
 7 menced after the date of the enactment of this Act.

8 **PART IX—MODIFICATIONS TO PENALTY FOR**
 9 **FAILURE TO COLLECT AND PAY OVER TAX**

10 **SEC. 13341. PRELIMINARY NOTICE REQUIREMENT.**

11 (a) IN GENERAL.—Section 6672 (relating to failure
 12 to collect and pay over tax, or attempt to evade or defeat
 13 tax) is amended by redesignating subsection (b) as sub-
 14 section (c) and by inserting after subsection (a) the follow-
 15 ing new subsection:

16 “(b) PRELIMINARY NOTICE REQUIREMENT.—

17 “(1) IN GENERAL.—No penalty shall be im-
 18 posed under subsection (a) unless the Secretary noti-
 19 fies the taxpayer in writing by mail to an address as
 20 determined under section 6212(b) that the taxpayer
 21 shall be subject to an assessment of such penalty.

22 “(2) TIMING OF NOTICE.—The mailing of the
 23 notice described in paragraph (1) shall precede any
 24 notice and demand of any penalty under subsection
 25 (a) by at least 60 days.

1 “(3) STATUTE OF LIMITATIONS.—If a notice
2 described in paragraph (1) with respect to any pen-
3 alty is mailed before the expiration of the period
4 provided by section 6501 for the assessment of such
5 penalty (determined without regard to this para-
6 graph), the period provided by such section for the
7 assessment of such penalty shall not expire before
8 the later of—

9 “(A) the date 90 days after the date on
10 which such notice was mailed, or

11 “(B) if there is a timely protest of the pro-
12 posed assessment, the date 30 days after the
13 Secretary makes a final administrative deter-
14 mination with respect to such protest.

15 “(4) EXCEPTION FOR JEOPARDY.—This sub-
16 section shall not apply if the Secretary finds that the
17 collection of the penalty is in jeopardy.”

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to proposed assessments made
20 after June 30, 1996.

1 **SEC. 13342. DISCLOSURE OF CERTAIN INFORMATION**
2 **WHERE MORE THAN 1 PERSON LIABLE FOR**
3 **PENALTY FOR FAILURE TO COLLECT AND**
4 **PAY OVER TAX.**

5 (a) IN GENERAL.—Subsection (e) of section 6103
6 (relating to disclosure to persons having material interest),
7 as amended by section 13318, is amended by adding at
8 the end the following new paragraph:

9 “(9) DISCLOSURE OF CERTAIN INFORMATION
10 WHERE MORE THAN 1 PERSON SUBJECT TO PEN-
11 ALTY UNDER SECTION 6672.—If the Secretary deter-
12 mines that a person is liable for a penalty under sec-
13 tion 6672(a) with respect to any failure, upon re-
14 quest in writing of such person, the Secretary shall
15 disclose in writing to such person—

16 “(A) the name of any other person whom
17 the Secretary has determined to be liable for
18 such penalty with respect to such failure, and

19 “(B) whether the Secretary has attempted
20 to collect such penalty from such other person,
21 the general nature of such collection activities,
22 and the amount collected.”

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall take effect on the date of the enact-
25 ment of this Act.

1 **SEC. 13343. RIGHT OF CONTRIBUTION WHERE MORE THAN**
2 **1 PERSON LIABLE FOR PENALTY FOR FAIL-**
3 **URE TO COLLECT AND PAY OVER TAX.**

4 (a) IN GENERAL.—Section 6672 (relating to failure
5 to collect and pay over tax, or attempt to evade or defeat
6 tax) is amended by adding at the end the following new
7 subsection:

8 “(d) RIGHT OF CONTRIBUTION WHERE MORE THAN
9 1 PERSON LIABLE FOR PENALTY.—If more than 1 person
10 is liable for the penalty under subsection (a) with respect
11 to any tax, each person who paid such penalty shall be
12 entitled to recover from other persons who are liable for
13 such penalty an amount equal to the excess of the amount
14 paid by such person over such person’s proportionate
15 share of the penalty. Any claim for such a recovery may
16 be made only in a proceeding which is separate from, and
17 is not joined with—

18 “(1) an action for collection of such penalty
19 brought by the United States, or

20 “(2) a proceeding in which the United States
21 files a counterclaim or third-party complaint for the
22 collection of such penalty.”

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply to penalties assessed after the
25 date of the enactment of this Act.

1 **SEC. 13344. VOLUNTEER BOARD MEMBERS OF TAX-EXEMPT**
2 **ORGANIZATIONS EXEMPT FROM PENALTY**
3 **FOR FAILURE TO COLLECT AND PAY OVER**
4 **TAX.**

5 (a) IN GENERAL.—Section 6672 is amended by add-
6 ing at the end the following new subsection:

7 “(e) EXCEPTION FOR VOLUNTARY BOARD MEMBERS
8 OF TAX-EXEMPT ORGANIZATIONS.—No penalty shall be
9 imposed by subsection (a) on any unpaid, volunteer mem-
10 ber of any board of trustees or directors of an organization
11 exempt from tax under subtitle A if such member—

12 “(1) is solely serving in an honorary capacity,

13 “(2) does not participate in the day-to-day or
14 financial operations of the organization, and

15 “(3) does not have actual knowledge of the fail-
16 ure on which such penalty is imposed.

17 The preceding sentence shall not apply if it results in no
18 person being liable for the penalty imposed by subsection
19 (a).”

20 (b) PUBLIC INFORMATION REQUIREMENTS.—

21 (1) IN GENERAL.—The Secretary of the Treas-
22 ury or the Secretary’s delegate (hereafter in this
23 subsection referred to as the “Secretary”) shall take
24 such actions as may be appropriate to ensure that
25 employees are aware of their responsibilities under
26 the Federal tax depository system, the circumstances

1 under which employees may be liable for the penalty
2 imposed by section 6672 of the Internal Revenue
3 Code of 1986, and the responsibility to promptly re-
4 port to the Internal Revenue Service any failure re-
5 ferred to in subsection (a) of such section 6672.
6 Such actions shall include—

7 (A) printing of a warning on deposit cou-
8 pon booklets and the appropriate tax returns
9 that certain employees may be liable for the
10 penalty imposed by such section 6672, and

11 (B) the development of a special informa-
12 tion packet.

13 (2) DEVELOPMENT OF EXPLANATORY MATE-
14 RIALS.—The Secretary shall develop materials ex-
15 plaining the circumstances under which board mem-
16 bers of tax-exempt organizations (including vol-
17 untary and honorary members) may be subject to
18 penalty under section 6672 of such Code. Such ma-
19 terials shall be made available to tax-exempt organi-
20 zations.

21 (3) IRS INSTRUCTIONS.—The Secretary shall
22 clarify the instructions to Internal Revenue Service
23 employees on the application of the penalty under
24 section 6672 of such Code with regard to voluntary

1 members of boards of trustees or directors of tax-
2 exempt organizations.

3 **PART X—MODIFICATIONS OF RULES RELATING**
4 **TO SUMMONSES**

5 **SEC. 13346. ENROLLED AGENTS INCLUDED AS THIRD-**
6 **PARTY RECORDKEEPERS.**

7 (a) IN GENERAL.—Paragraph (3) of section 7609(a)
8 (relating to third-party recordkeeper defined) is amended
9 by striking “and” at the end of subparagraph (G), by
10 striking the period at the end of subparagraph (H) and
11 inserting “; and”, and by adding at the end the following
12 the subparagraph:

13 “(I) any enrolled agent.”

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall apply to summonses issued after the
16 date of the enactment of this Act.

17 **SEC. 13347. SAFEGUARDS RELATING TO DESIGNATED SUM-**
18 **MONSES.**

19 (a) STANDARD OF REVIEW.—Subparagraph (A) of
20 section 6503(j)(2) (defining designated summons) is
21 amended by redesignating clauses (i) and (ii) as clauses
22 (ii) and (iii), respectively, and by inserting before clause
23 (ii) (as so redesignated) the following new clause:

24 “(i) the issuance of such summons is
25 preceded by a review of such issuance by

1 the regional counsel of the Office of Chief
2 Counsel for the region in which the exam-
3 ination of the corporation is being con-
4 ducted,”.

5 (b) LIMITATION ON PERSONS TO WHOM DES-
6 IGNATED SUMMONS MAY BE ISSUED.—Paragraph (1) of
7 section 6503(j) is amended by striking “with respect to
8 any return of tax by a corporation” and inserting “to a
9 corporation (or to any other person to whom the corpora-
10 tion has transferred records) with respect to any return
11 of tax by such corporation for a taxable year (or other
12 period) for which such corporation is being examined
13 under the coordinated examination program (or any suc-
14 cessor program) of the Internal Revenue Service”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to summonses issued after the date
17 of the enactment of this Act.

18 **SEC. 13348. ANNUAL REPORT TO CONGRESS CONCERNING**
19 **DESIGNATED SUMMONSES.**

20 Not later than December 31 of each calendar year
21 after 1995, the Secretary of the Treasury or his delegate
22 shall report to the Committee on Ways and Means of the
23 House of Representatives and the Committee on Finance
24 of the Senate on the number of designated summonses (as
25 defined in section 6503(j) of the Internal Revenue Code

1 of 1986) which were issued during the preceding 12
2 months.

3 **PART XI—RELIEF FROM RETROACTIVE APPLICA-**
4 **TION OF TREASURY DEPARTMENT REGULA-**
5 **TIONS**

6 **SEC. 13351. RELIEF FROM RETROACTIVE APPLICATION OF**
7 **TREASURY DEPARTMENT REGULATIONS.**

8 (a) IN GENERAL.—Subsection (b) of section 7805
9 (relating to rules and regulations) is amended to read as
10 follows:

11 “(b) RETROACTIVITY OF REGULATIONS.—

12 “(1) IN GENERAL.—Except as otherwise pro-
13 vided in this subsection, no temporary, proposed, or
14 final regulation relating to the internal revenue laws
15 shall apply to any taxable period ending before the
16 earliest of the following dates:

17 “(A) The date on which such regulation is
18 filed with the Federal Register.

19 “(B) In the case of any final regulation,
20 the date on which any proposed or temporary
21 regulation to which such final regulation relates
22 was filed with the Federal Register.

23 “(C) The date on which any notice sub-
24 stantially describing the expected contents of

1 any temporary, proposed, or final regulation is
2 issued to the public.

3 “(2) EXCEPTION FOR PROMPTLY ISSUED REGU-
4 LATIONS.—Paragraph (1) shall not apply to regula-
5 tions filed or issued within 12 months of the date of
6 the enactment of the statutory provision to which
7 the regulation relates.

8 “(3) PREVENTION OF ABUSE.—The Secretary
9 may provide that any regulation may take effect or
10 apply retroactively to prevent abuse.

11 “(4) CORRECTION OF PROCEDURAL DE-
12 FECTS.—The Secretary may provide that any regu-
13 lation may apply retroactively to correct a proce-
14 dural defect in the issuance of any prior regulation.

15 “(5) INTERNAL REGULATIONS.—The limitation
16 of paragraph (1) shall not apply to any regulation
17 relating to internal Treasury Department policies,
18 practices, or procedures.

19 “(6) CONGRESSIONAL AUTHORIZATION.—The
20 limitation of paragraph (1) may be superseded by a
21 legislative grant from Congress authorizing the Sec-
22 retary to prescribe the effective date with respect to
23 any regulation.

24 “(7) ELECTION TO APPLY RETROACTIVELY.—
25 Paragraph (1) shall not apply to any regulation

1 which the taxpayer elects to apply before the dates
2 specified in paragraph (1) but only if such election
3 applies to all regulations which were issued with
4 such regulation under the statutory provision to
5 which such regulation relates.

6 “(8) APPLICATION TO RULINGS.—The Sec-
7 retary may prescribe the extent, if any, to which any
8 ruling (including any judicial decision or any admin-
9 istrative determination other than by regulation) re-
10 lating to the internal revenue laws shall be applied
11 without retroactive effect.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply with respect to regulations
14 which relate to statutory provisions enacted on or after
15 the date of the enactment of this Act.

16 **PART XII—MISCELLANEOUS PROVISIONS**

17 **SEC. 13356. REPORT ON PILOT PROGRAM FOR APPEAL OF**
18 **ENFORCEMENT ACTIONS.**

19 Not later than March 1, 1996, the Secretary of the
20 Treasury or his delegate shall submit to the Committee
21 on Ways and Means of the House of Representatives and
22 the Committee on Finance of the Senate a report on the
23 pilot program for appeals of enforcement actions (includ-
24 ing lien, levy, and seizure actions) to the Appeals Division

1 of the Internal Revenue Service, together with such rec-
2 ommendations as he may deem advisable.

3 **SEC. 13357. PHONE NUMBER OF PERSON PROVIDING PAYEE**
4 **STATEMENTS REQUIRED TO BE SHOWN ON**
5 **SUCH STATEMENT.**

6 (a) GENERAL RULE.—The following provisions are
7 each amended by striking “name and address” and insert-
8 ing “name, address, and phone number of the information
9 contact”:

- 10 (1) Section 6041(d)(1).
- 11 (2) Section 6041A(e)(1).
- 12 (3) Section 6042(c)(1).
- 13 (4) Section 6044(e)(1).
- 14 (5) Section 6045(b)(1).
- 15 (6) Section 6049(c)(1)(A).
- 16 (7) Section 6050B(b)(1).
- 17 (8) Section 6050H(d)(1).
- 18 (9) Section 6050I(e)(1).
- 19 (10) Section 6050J(e).
- 20 (11) Section 6050K(b)(1).
- 21 (12) Section 6050N(b)(1).

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall apply to statements required to be fur-
24 nished after December 31, 1996 (determined without
25 regard to any extension).

1 **SEC. 13358. REQUIRED NOTICE OF CERTAIN PAYMENTS.**

2 If any payment is received by the Secretary of the
3 Treasury or his delegate from any taxpayer and the Sec-
4 retary cannot associate such payment with such taxpayer,
5 the Secretary shall make reasonable efforts to notify the
6 taxpayer of such inability within 60 days after the re-
7 ceipt of such payment.

8 **SEC. 13359. UNAUTHORIZED ENTICEMENT OF INFORMA-**
9 **TION DISCLOSURE.**

10 (a) IN GENERAL.—Subchapter B of chapter 76 (re-
11 lating to proceedings by taxpayers and third parties), as
12 amended by section 13316(a), is amended by redesignat-
13 ing section 7435 as section 7436 and by inserting after
14 section 7434 the following new section:

15 **“SEC. 7435. CIVIL DAMAGES FOR UNAUTHORIZED ENTICE-**
16 **MENT OF INFORMATION DISCLOSURE.**

17 “(a) IN GENERAL.—If any officer or employee of the
18 United States intentionally compromises the determina-
19 tion or collection of any tax due from an attorney, certified
20 public accountant, or enrolled agent representing a tax-
21 payer in exchange for information conveyed by the tax-
22 payer to the attorney, certified public accountant, or en-
23 rolled agent for purposes of obtaining advice concerning
24 the taxpayer’s tax liability, such taxpayer may bring a civil
25 action for damages against the United States in a district
26 court of the United States. Such civil action shall be the

1 exclusive remedy for recovering damages resulting from
2 such actions.

3 “(b) DAMAGES.—In any action brought under sub-
4 section (a), upon a finding of liability on the part of the
5 defendant, the defendant shall be liable to the plaintiff in
6 an amount equal to the lesser of \$500,000 or the sum
7 of—

8 “(1) actual, direct economic damages sustained
9 by the plaintiff as a proximate result of the informa-
10 tion disclosure, and

11 “(2) the costs of the action.

12 Damages shall not include the taxpayer’s liability for any
13 civil or criminal penalties, or other losses attributable to
14 incarceration or the imposition of other criminal sanctions.

15 “(c) PAYMENT AUTHORITY.—Claims pursuant to
16 this section shall be payable out of funds appropriated
17 under section 1304 of title 31, United States Code.

18 “(d) PERIOD FOR BRINGING ACTION.—Notwith-
19 standing any other provision of law, an action to enforce
20 liability created under this section may be brought without
21 regard to the amount in controversy and may be brought
22 only within 2 years after the date the actions creating such
23 liability would have been discovered by exercise of reason-
24 able care.

1 “(e) MANDATORY STAY.—Upon a certification by the
 2 Commissioner or the Commissioner’s delegate that there
 3 is an ongoing investigation or prosecution of the taxpayer,
 4 the district court before which an action under this section
 5 is pending, shall stay all proceedings with respect to such
 6 action pending the conclusion of the investigation or
 7 prosecution.

8 “(f) CRIME-FRAUD EXCEPTION.—Subsection (a)
 9 shall not apply to information conveyed to an attorney,
 10 certified public accountant, or enrolled agent for the pur-
 11 pose of perpetrating a fraud or crime.”

12 (b) CLERICAL AMENDMENT.—The table of sections
 13 for subchapter B of chapter 76, as amended by section
 14 13316(b), is amended by striking the item relating to sec-
 15 tion 7435 and by adding at the end the following new
 16 items:

“Sec. 7435. Civil damages for unauthorized enticement of infor-
 mation disclosure.

“Sec. 7436. Cross references.”

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to actions after the date of the
 19 enactment of this Act.

20 **SEC. 13360. ANNUAL REMINDERS TO TAXPAYERS WITH OUT-**
 21 **STANDING DELINQUENT ACCOUNTS.**

22 (a) IN GENERAL.—Chapter 77 (relating to mis-
 23 cellaneous provisions) is amended by adding at the end
 24 the following new section:

1 **“SEC. 7524. ANNUAL NOTICE OF TAX DELINQUENCY.**

2 “Not less often than annually, the Secretary shall
3 send a written notice to each taxpayer who has a tax delin-
4 quent account of the amount of the tax delinquency as
5 of the date of the notice.”

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for chapter 77 is amended by adding at the end the follow-
8 ing new item:

 “Sec. 7524. Annual notice of tax delinquency.”

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to calendar years after 1995.

11 **SEC. 13361. 5-YEAR EXTENSION OF AUTHORITY FOR UNDER-**
12 **COVER OPERATIONS.**

13 (a) IN GENERAL.—Paragraph (3) of section 7601(c)
14 of the Anti-Drug Abuse Act of 1988 is amended by strik-
15 ing all that follows “this Act” and inserting a period.

16 (b) RESTORATION OF AUTHORITY FOR 5 YEARS.—
17 Subsection (c) of section 7608 is amended by adding at
18 the end the following new paragraph:

19 “(6) APPLICATION OF SECTION.—The provi-
20 sions of this subsection—

21 “(A) shall apply after November 17, 1988,
22 and before January 1, 1990, and

23 “(B) shall apply after the date of the en-
24 actment of this paragraph and before January
25 1, 2001.

1 All amounts expended pursuant to this subsection
2 during the period described in subparagraph (B)
3 shall be recovered to the extent possible, and depos-
4 ited in the Treasury of the United States as mis-
5 cellaneous receipts, before January 1, 2001.”

6 (c) ENHANCED OVERSIGHT.—

7 (1) ADDITIONAL INFORMATION REQUIRED IN
8 REPORTS TO CONGRESS.—Subparagraph (B) of sec-
9 tion 7608(c)(4) is amended—

10 (A) by striking “preceding the period” in
11 clause (ii),

12 (B) by striking “and” at the end of clause
13 (ii), and

14 (C) by striking clause (iii) and inserting
15 the following:

16 “(iii) the number, by programs, of un-
17 dercover investigative operations closed in
18 the 1-year period for which such report is
19 submitted, and

20 “(iv) the following information with
21 respect to each undercover investigative op-
22 eration pending as of the end of the 1-year
23 period for which such report is submitted
24 or closed during such 1-year period—

1 “(I) the date the operation began
2 and the date of the certification re-
3 ferred to in the last sentence of para-
4 graph (1),

5 “(II) the total expenditures
6 under the operation and the amount
7 and use of the proceeds from the op-
8 eration,

9 “(III) a detailed description of
10 the operation including the potential
11 violation being investigated and
12 whether the operation is being con-
13 ducted under grand jury auspices, and

14 “(IV) the results of the operation
15 including the results of criminal pro-
16 ceedings.”

17 (2) AUDITS REQUIRED WITHOUT REGARD TO
18 AMOUNTS INVOLVED.—Subparagraph (C) of section
19 7608(c)(5) is amended to read as follows:

20 “(C) UNDERCOVER INVESTIGATIVE OPER-
21 ATION.—The term ‘undercover investigative op-
22 eration’ means any undercover investigative op-
23 eration of the Service; except that, for purposes
24 of subparagraphs (A) and (C) of paragraph (4),
25 such term only includes an operation which is

1 exempt from section 3302 or 9102 of title 31,
2 United States Code.”

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall take effect on the date of the
5 enactment of this Act.

6 **SEC. 13362. DISCLOSURE OF FORM 8300 INFORMATION ON**
7 **CASH TRANSACTIONS.**

8 (a) IN GENERAL.—Subsection (l) of section 6103 (re-
9 lating to disclosure of returns and return information for
10 purposes other than tax administration) is amended by
11 adding at the end the following new paragraph:

12 “(15) DISCLOSURE OF RETURNS FILED UNDER
13 SECTION 6050I.—The Secretary may, upon written
14 request, disclose to officers and employees of—

15 “(A) any Federal agency,

16 “(B) any agency of a State or local govern-
17 ment, or

18 “(C) any agency of the government of a
19 foreign country,

20 information contained on returns filed under section
21 6050I. Any such disclosure shall be made on the
22 same basis, and subject to the same conditions, as
23 apply to disclosures of information on reports filed
24 under section 5313 of title 31, United States Code;
25 except that no disclosure under this paragraph shall

1 be made for purposes of the administration of any
2 tax law.”

3 (b) CONFORMING AMENDMENTS.—

4 (1) Subsection (i) of section 6103 is amended
5 by striking paragraph (8).

6 (2) Subparagraph (A) of section 6103(p)(3) is
7 amended—

8 (A) by striking “(7)(A)(ii), or (8)” and in-
9 serting “or (7)(A)(ii)”, and

10 (B) by striking “or (14)” and inserting
11 “(14), or (15)”.

12 (3) The material preceding subparagraph (A) of
13 section 6103(p)(4) is amended—

14 (A) by striking “(5), or (8)” and inserting
15 “or (5)”,

16 (B) by striking “(i)(3)(B)(i), or (8)” and
17 inserting “(i)(3)(B)(i),”, and

18 (C) by striking “or (12)” and inserting
19 “(12), or (15)”.

20 (4) Clause (ii) of section 6103(p)(4)(F) is
21 amended—

22 (A) by striking “(5), or (8)” and inserting
23 “or (5)”, and

24 (B) by striking “or (14)” and inserting
25 “(14), or (15)”.

7 SEC. 13363. DISCLOSURE OF RETURNS AND RETURN INFOR-
8 MATION TO DESIGNEE OF TAXPAYER.

14 SEC. 13364. STUDY OF NETTING OF INTEREST ON OVERPAY-
15 MENTS AND LIABILITIES.

(1) conduct a study of the manner in which the Internal Revenue Service has implemented the netting of interest on overpayments and underpayments and of the policy and administrative implications of global netting, and

•HR 2491 RH

1 (b) REPORT.—The report of such study shall be sub-
2 mitted not later than 6 months after the date of the enact-
3 ment of this Act to the Committee on Ways and Means
4 of the House of Representatives and the Committee on
5 Finance of the Senate.

6 **SEC. 13365. CREDIT FOR EXPENSES OF CERTAIN TCMP AU-**
7 **DITS.**

8 (a) IN GENERAL.—Subchapter B of chapter 65 is
9 amended by adding at the end the following new section:
10 **“SEC. 6428. CREDIT FOR EXPENSES OF 1994 TCMP AUDITS.**

11 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
12 dividual, there shall be allowed as a credit against the tax
13 imposed by subtitle A an amount equal to the qualified
14 TCMP expenses paid or incurred by the taxpayer during
15 the taxable year.

16 “(b) LIMITATION.—The amount of the credit allowed
17 by subsection (a) shall not exceed \$3,000 with respect to
18 an audit.

19 “(c) QUALIFIED TCMP EXPENSES.—For purposes
20 of this section, the term ‘qualified TCMP expenses’ means
21 amounts which would (but for subsection (d)) be allowed
22 as a deduction under section 162 or 212(3) in connection
23 with an audit under the Taxpayer Compliance Measure-
24 ment Program of the taxpayer’s return of tax imposed by
25 chapter 1 for any taxable year beginning during 1994.

1 Such term shall not include any expense in connection
2 with an audit of an estate, trust, partnership, or S cor-
3 poration.

4 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
5 shall be allowed under chapter 1 for any amount for which
6 a credit is allowed under this section.

7 “(e) CREDIT TREATED AS SUBPART C CREDIT.—For
8 purposes of this title, the credit allowed under subsection
9 (a) shall be treated as a credit allowed under subpart C
10 of part IV of subchapter A of chapter 1.”

11 (b) TECHNICAL AMENDMENTS.—

12 (1) Paragraph (2) of section 1324(b) of title
13 31, United States Code, is amended by inserting be-
14 fore the period “, or from section 6428 of such
15 Code”.

16 (2) The table of sections for such subchapter B
17 is amended by adding at the end the following new
18 item:

“Sec. 6428. Credit for expenses of 1994 TCMP audits.”

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to amounts paid or incurred after
21 December 31, 1994, in taxable years ending after such
22 date.

1 **SEC. 13366. EXPENSES OF DETECTION OF UNDERPAYMENTS**
2 **AND FRAUD, ETC.**

3 (a) IN GENERAL.—Section 7623 (relating to ex-
4 penses of deduction and punishment of frauds) is amended
5 to read as follows:

6 **“SEC. 7623. EXPENSES OF DETECTION OF UNDERPAYMENTS**
7 **AND FRAUD, ETC.**

8 “The Secretary, under regulations prescribed by the
9 Secretary, is authorized to pay such sums as he deem nec-
10 essary for—

11 “(1) detecting underpayments of tax, and
12 “(2) detecting and bringing to trial and punish-
13 ment persons guilty of violating the internal revenue
14 laws or conniving at the same,
15 in cases where such expenses are not otherwise provided
16 for by law. Any amount payable under the preceding sen-
17 tence shall be paid from the proceeds of amounts (other
18 than interest) collected by reason of the information pro-
19 vided, and any amount so collected shall be available for
20 such payments.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for subchapter B of chapter 78 is amended by striking
23 the item relating to section 7623 and inserting the follow-
24 ing new item:

“Sec. 7623. Expenses of detection of underpayments and fraud,
etc.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date which is 6 months
3 after the enactment of this Act.

4 (d) REPORT.—The Secretary of the Treasury or his
5 delegate shall submit an annual report to the Committee
6 on Ways and Means of the House of Representatives and
7 the Committee on Finance of the Senate on the payments
8 under section 7623 of the Internal Revenue Code of 1986
9 during the year and on the amounts collected for which
10 such payments were made.

11 **Subtitle D—Additional Technical**
12 **Corrections**

13 **SEC. 13401. REPORTING OF REAL ESTATE TRANSACTIONS.**

14 (a) IN GENERAL.—Paragraph (3) of section 6045(e)
15 (relating to prohibition of separate charge for filing re-
16 turn) is amended by adding at the end the following new
17 sentence: “Nothing in this paragraph shall be construed
18 to prohibit the real estate reporting person from taking
19 into account its cost of complying with such requirement
20 in establishing its charge (other than a separate charge
21 for complying with such requirement) to any customer for
22 performing services in the case of a real estate trans-
23 action.”

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall take effect as if included in section

1 1015(e)(2)(A) of the Technical and Miscellaneous Reve-
2 nue Act of 1988.

3 **SEC. 13402. CLARIFICATION OF DENIAL OF DEDUCTION**
4 **FOR STOCK REDEMPTION EXPENSES.**

5 (a) IN GENERAL.—Paragraph (1) of section 162(k)
6 is amended by striking “the redemption of its stock” and
7 inserting “the reacquisition of its stock or of the stock
8 of any related person (as defined in section
9 465(b)(3)(C))”.

10 (b) CERTAIN DEDUCTIONS PERMITTED.—Subpara-
11 graph (A) of section 162(k)(2) is amended by striking
12 “or” at the end of clause (i), by redesignating clause (ii)
13 as clause (iii), and by inserting after clause (i) the follow-
14 ing new clause:

15 “(ii) deduction for amounts which are
16 properly allocable to indebtedness and am-
17 ortized over the term of such indebtedness,
18 or”.

19 (c) CLERICAL AMENDMENT.—The subsection head-
20 ing for subsection (k) of section 162 is amended by strik-
21 ing “REDEMPTION” and inserting “REACQUISITION”.

22 (d) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the amendments made by this section
25 shall apply to amounts paid or incurred after Sep-

1 tember 13, 1995, in taxable years ending after such
2 date.

3 (2) SUBSECTION (b).—The amendment made
4 by subsection (b) shall take effect as if included in
5 the amendment made by section 613 of the Tax Re-
6 form Act of 1986.

7 **SEC. 13403. CLARIFICATION OF DEPRECIATION CLASS FOR**
8 **CERTAIN ENERGY PROPERTY.**

9 (a) IN GENERAL.—Subparagraph (B) of section
10 168(e)(3) (relating to 5-year property) is amended by add-
11 ing at the end the following flush sentence:

12 “Nothing in any provision of law shall be con-
13 strued to treat property as not being described
14 in clause (vi)(I) (or the corresponding provi-
15 sions of prior law) by reason of being public
16 utility property (within the meaning of section
17 48(a)(3)).”

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall take effect as if included in the
20 amendments made by section 11813 of the Revenue Rec-
21 onciliation Act of 1990.

22 **SEC. 13404. CLERICAL AMENDMENT TO SECTION 404.**

23 (a) IN GENERAL.—Paragraph (1) of section 404(j)
24 is amended by striking “(10)” and inserting “(9)”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect as if included in the
3 amendments made by section 713(d)(4)(A) of the Deficit
4 Reduction Act of 1984.

5 **SEC. 13405. TREATMENT OF CERTAIN VETERANS' REEM-**
6 **PLOYMENT RIGHTS.**

7 (a) IN GENERAL.—Section 414 is amended by adding
8 at the end the following new subsection:

9 “(u) SPECIAL RULES RELATING TO VETERANS' RE-
10 EMPLOYMENT RIGHTS.—

11 “(1) TREATMENT OF CERTAIN CONTRIBUTIONS
12 MADE PURSUANT TO VETERANS' REEMPLOYMENT
13 RIGHTS.—If any contribution is made by an em-
14 ployer or an employee under an individual account
15 plan with respect to an employee, or by an employee
16 to a defined benefit pension plan that provides for
17 employee contributions, and such contribution is re-
18 quired by reason of such employee's rights under
19 chapter 43 of title 38, United States Code, resulting
20 from qualified military service, then—

21 “(A) such contribution shall not be subject
22 to any otherwise applicable limitation contained
23 in section 402(g), 402(h), 403(b), 404(a),
24 404(h), 408, 415, or 457, and shall not be
25 taken into account in applying such limitations

1 to other contributions or benefits under such
2 plan or any other plan, with respect to the year
3 in which the contribution is made,

4 “(B) such contribution shall be subject to
5 the limitations referred to in subparagraph (A)
6 with respect to the year to which the contribu-
7 tion relates (in accordance with rules prescribed
8 by the Secretary), and

9 “(C) such plan shall not be treated as fail-
10 ing to meet the requirements of section
11 401(a)(4), 401(a)(26), 401(k)(3), 401(m),
12 403(b)(12), 408(k)(3), 408(k)(6), 410(b), or
13 416 by reason of the making of such contribu-
14 tion.

15 For purposes of the preceding sentence, any elective
16 deferral or employee contribution made under para-
17 graph (2) shall be treated as required by reason of
18 the employee’s rights under such chapter.

19 “(2) REEMPLOYMENT RIGHTS WITH RESPECT
20 TO ELECTIVE DEFERRALS.—

21 “(A) IN GENERAL.—For purposes of this
22 subchapter and subchapter E, if an employee is
23 entitled to the benefits of chapter 43 of title 38,
24 United States Code, with respect to any plan
25 which provides for elective deferrals, the em-

1 employer sponsoring the plan shall be treated as
2 meeting the requirements of such chapter 43
3 with respect to such elective deferrals only if
4 such employer—

5 “(i) permits such employee to make
6 additional elective deferrals under such
7 plan (in the amount determined under sub-
8 paragraph (B) or such lesser amount as is
9 elected by the employee) during the period
10 which begins on the date of the reemploy-
11 ment of such employee with such employer
12 and has the same length as the lesser of—

13 “(I) the product of 3 and the pe-
14 riod of qualified military service which
15 resulted in such rights, and

16 “(II) 5 years, and

17 “(ii) makes a matching contribution
18 with respect to any additional elective de-
19 ferral made pursuant to clause (i) which
20 would have been required had such defer-
21 ral actually been made during the period of
22 such qualified military service.

23 “(B) AMOUNT OF MAKEUP REQUIRED.—

24 The amount determined under this subpara-
25 graph with respect to any plan is the maximum

1 amount of the elective deferrals that the indi-
2 vidual would have been permitted to make
3 under the plan in accordance with the limita-
4 tions referred to in paragraph (1)(A) during his
5 period of qualified military service if he had
6 continued to be employed by the employer dur-
7 ing such period and received compensation as
8 determined under paragraph (7). Proper adjust-
9 ment shall be made to the amount determined
10 under the preceding sentence for any elective
11 deferrals actually made during the period of
12 such qualified military service.

13 “(C) ELECTIVE DEFERRAL.—For purposes
14 of this paragraph, the term ‘elective deferral’
15 has the meaning given such term by section
16 402(g)(3); except that such term shall include
17 any deferral of compensation under an eligible
18 deferred compensation plan (as defined in sec-
19 tion 457(b)).

20 “(D) AFTER-TAX EMPLOYEE CONTRIBU-
21 TIONS.—References in subparagraphs (A) and
22 (B) to elective deferrals shall be treated as in-
23 cluding references to other employee contribu-
24 tions.

1 “(3) CERTAIN RETROACTIVE ADJUSTMENTS
2 NOT REQUIRED.—For purposes of this subchapter
3 and subchapter E, no provision of chapter 43 of title
4 38, United States Code, shall be construed as re-
5 quiring—

6 “(A) any crediting of earnings to an em-
7 ployee with respect to any contribution before
8 such contribution is actually made, or

9 “(B) any allocation of any forfeiture with
10 respect to the period of qualified military serv-
11 ice.

12 “(4) LOAN REPAYMENT SUSPENSIONS PER-
13 MITTED.—If any plan suspends the obligation to
14 repay any loan made to an employee from such plan
15 for any part of any period during which such em-
16 ployee is performing qualified military service, such
17 suspension shall not be taken into account for pur-
18 poses of section 72(p), 401(a), or 4975(d)(1).

19 “(5) QUALIFIED MILITARY SERVICE.—For pur-
20 poses of this subsection, the term ‘qualified military
21 service’ means any service in the uniformed services
22 (as defined in chapter 43 of title 38, United States
23 Code) by any individual if such individual is entitled
24 to reemployment rights under such chapter with re-
25 spect to such service.

1 “(6) INDIVIDUAL ACCOUNT PLAN.—For pur-
2 poses of this subsection, the term ‘individual account
3 plan’ means any defined contribution plan, any tax-
4 sheltered annuity plan under section 403(b), and
5 any eligible deferred compensation plan (as defined
6 in section 457(b)).

7 “(7) COMPENSATION.—For purposes of section
8 415(c)(3), an employee who is in qualified military
9 service shall be treated as receiving compensation
10 from the employer during such period of qualified
11 military service equal to—

12 “(A) the compensation the employee would
13 have received during such period if the em-
14 ployee were not in qualified military service, de-
15 termined based on the rate of pay the employee
16 would have received from the employer but for
17 absence during the period of qualified military
18 service, or

19 “(B) if the compensation of the employee
20 was not based on a fixed rate, the employee’s
21 average compensation from the employer during
22 the 12-month period immediately preceding the
23 qualified military service (or, if shorter, the pe-
24 riod of employment immediately preceding the
25 qualified military service).

1 “(8) REQUIREMENTS FOR QUALIFIED RETIRE-
2 MENT PLAN.—For purposes of this subchapter and
3 subchapter E, an employer sponsoring a plan shall
4 be treated as meeting the requirements of chapter
5 43 of title 38, United States Code, only if each of
6 the following requirements is met:

7 “(A) An individual reemployed under such
8 chapter is treated with respect to such plan as
9 not having incurred a break in service with the
10 employer maintaining the plan by reason of
11 such individual’s period of qualified military
12 service.

13 “(B) Each period of qualified military
14 service served by an individual is, upon reem-
15 ployment under such chapter, deemed with re-
16 spect to such plan to constitute service with the
17 employer maintaining the plan for the purpose
18 of determining the nonforfeitability of the indi-
19 vidual’s accrued benefits under such plan and
20 for the purpose of determining the accrual of
21 benefits under such plan.

22 “(C) An individual reemployed under such
23 chapter is entitled to accrued benefits that are
24 contingent on the making of, or derived from,
25 employee contributions or elective deferrals only

1 to the extent the individual makes payment to
2 the plan with respect to such contributions or
3 deferrals. No such payment may exceed the
4 amount the individual would have been per-
5 mitted or required to contribute had the indi-
6 vidual remained continuously employed by the
7 employer throughout the period of qualified
8 military service. Any payment to such plan shall
9 be made during the period beginning with the
10 date of reemployment and whose duration is 3
11 times the period of the qualified military service
12 (but not greater than 5 years).

13 “(9) REFERENCES.—For purposes of this sec-
14 tion, any reference to chapter 43 of title 38, United
15 States Code, shall be treated as a reference to such
16 chapter as in effect on December 12, 1994 (without
17 regard to any subsequent amendment).”

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall be effective as of December 12, 1994.

**Subtitle E—Tax Information
Sharing**

**SEC. 13501. DISCLOSURE OF RETURN INFORMATION FOR
ADMINISTRATION OF CERTAIN VETERANS
PROGRAMS.**

(a) GENERAL RULE.—Subparagraph (D) of section 6103(l)(7) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended by striking “Clause (viii) shall not apply after September 30, 1998.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle F—Revenue Increases

PART I—PROVISIONS RELATING TO BUSINESSES

**SEC. 13601. TAX TREATMENT OF CERTAIN EXTRAORDINARY
DIVIDENDS.**

(a) TREATMENT OF EXTRAORDINARY DIVIDENDS IN EXCESS OF BASIS.—Paragraph (2) of section 1059(a) (relating to corporate shareholder’s basis in stock reduced by nontaxed portion of extraordinary dividends) is amended to read as follows:

“(2) AMOUNTS IN EXCESS OF BASIS.—If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated as gain from the

1 sale or exchange of such stock for the taxable year
2 in which the extraordinary dividend is received.”

3 (b) TREATMENT OF REDEMPTIONS WHERE OPTIONS
4 INVOLVED.—Paragraph (1) of section 1059(e) (relating to
5 treatment of partial liquidations and non-pro rata redemp-
6 tions) is amended to read as follows:

7 “(1) TREATMENT OF PARTIAL LIQUIDATIONS
8 AND CERTAIN REDEMPTIONS.—Except as otherwise
9 provided in regulations—

10 “(A) REDEMPTIONS.—In the case of any
11 redemption of stock—

12 “(i) which is part of a partial liquida-
13 tion (within the meaning of section 302(e))
14 of the redeeming corporation,

15 “(ii) which is not pro rata as to all
16 shareholders, or

17 “(iii) which would not have been
18 treated (in whole or in part) as a dividend
19 if any options had not been taken into ac-
20 count under section 318(a)(4),

21 any amount treated as a dividend with respect
22 to such redemption shall be treated as an ex-
23 traordinary dividend to which paragraphs (1)
24 and (2) of subsection (a) apply without regard
25 to the period the taxpayer held such stock. In

1 the case of a redemption described in clause
2 (iii), only the basis in the stock redeemed shall
3 be taken into account under subsection (a).

4 “(B) REORGANIZATIONS, ETC.—An ex-
5 change described in section 356(a)(1) which is
6 treated as a dividend under section 356(a)(2)
7 shall be treated as a redemption of stock for
8 purposes of applying subparagraph (A).”

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to distributions after May 3,
12 1995.

13 (2) TRANSITION RULE.—The amendments
14 made by this section shall not apply to any distribu-
15 tion made pursuant to the terms of—

16 (A) a written binding contract in effect on
17 May 3, 1995, and at all times thereafter before
18 such distribution, or

19 (B) a tender offer outstanding on May 3,
20 1995.

21 (3) CERTAIN DIVIDENDS NOT PURSUANT TO
22 CERTAIN REDEMPTIONS.—In determining whether
23 the amendment made by subsection (a) applies to
24 any extraordinary dividend other than a dividend
25 treated as an extraordinary dividend under section

1 1059(e)(1) of the Internal Revenue Code of 1986
2 (as amended by this Act), paragraphs (1) and (2)
3 shall be applied by substituting “September 13,
4 1995” for “May 3, 1995”.

5 **SEC. 13602. REGISTRATION OF CONFIDENTIAL CORPORATE**
6 **TAX SHELTERS.**

7 (a) IN GENERAL.—Section 6111 (relating to registra-
8 tion of tax shelters) is amended by redesignating sub-
9 sections (d) and (e) as subsections (e) and (f), respectively,
10 and by inserting after subsection (c) the following new
11 subsection:

12 “(d) CERTAIN CONFIDENTIAL ARRANGEMENTS
13 TREATED AS TAX SHELTERS.—

14 “(1) IN GENERAL.—For purposes of this sec-
15 tion, the term ‘tax shelter’ includes any entity, plan,
16 arrangement, or transaction—

17 “(A) a significant purpose of which is the
18 avoidance or evasion of Federal income tax for
19 a participant which is a corporation,

20 “(B) which is offered to any potential par-
21 ticipant under conditions of confidentiality, and

22 “(C) for which the tax shelter organizers
23 may receive fees in excess of \$100,000 in the
24 aggregate.

1 “(2) CONDITIONS OF CONFIDENTIALITY.—For
2 purposes of paragraph (1)(C), an offer is under con-
3 ditions of confidentiality if—

4 “(A) the potential participant to whom the
5 offer is made (or any other person acting on be-
6 half of such participant) has an understanding
7 or agreement with or for the benefit of any pro-
8 moter of the tax shelter that such participant
9 (or other person) will limit disclosure of the tax
10 shelter or any significant tax features of the tax
11 shelter, or

12 “(B) any promoter of the tax shelter—

13 “(i) claims, knows, or has reason to
14 know,

15 “(ii) knows or has reason to know
16 that any other person (other than the po-
17 tential participant) claims, or

18 “(iii) causes another person to claim,
19 that the tax shelter (or any aspect thereof) is
20 proprietary to any person other than the poten-
21 tial participant or is otherwise protected from
22 disclosure to or use by others.

23 For purposes of this subsection, the term ‘promoter’
24 means any person who participates in the organiza-
25 tion, management, or sale of the tax shelter.

1 “(3) PERSONS OTHER THAN ORGANIZER RE-
2 QUIRED TO REGISTER IN CERTAIN CASES.—

3 “(A) IN GENERAL.—If—

4 “(i) the requirements of subsection (a)
5 are not met with respect to any tax shelter
6 (as defined in paragraph (1)) by any tax
7 shelter organizer, and

8 “(ii) no tax shelter organizer is a
9 United States person,
10 then each United States person who discussed
11 participation in such shelter shall register such
12 shelter under subsection (a).

13 “(B) EXCEPTION.—Subparagraph (A)
14 shall not apply to a United States person who
15 discussed participation in a tax shelter if—

16 “(i) such person notified the promoter
17 in writing (not later than the close of the
18 day on which such discussions began) that
19 such person would not participate in such
20 shelter, and

21 “(ii) such person does not participate
22 in such shelter.

23 “(4) OFFER TO PARTICIPATE TREATED AS
24 OFFER FOR SALE.—For purposes of subsections (a)
25 and (b), an offer to participate in a tax shelter (as

1 defined in paragraph (1)) shall be treated as an
2 offer for sale.”

3 (b) PENALTY.—Subsection (a) of section 6707 (relat-
4 ing to failure to furnish information regarding tax shel-
5 ters) is amended by adding at the end the following new
6 paragraph:

7 “(3) CONFIDENTIAL ARRANGEMENTS.—

8 “(A) IN GENERAL.—In the case of a tax
9 shelter (as defined in section 6111(d)), the pen-
10 alty imposed under paragraph (1) shall be an
11 amount equal to the greater of—

12 “(i) 50 percent of the fees paid to any
13 promoter of the tax shelter with respect to
14 offerings made before the date such shelter
15 is registered under section 6111, or

16 “(ii) \$10,000.

17 Clause (i) shall be applied by substituting ‘75
18 percent’ for ‘50 percent’ in the case of an inten-
19 tional failure or act described in paragraph (1).

20 “(B) SPECIAL RULE FOR PARTICIPANTS
21 REQUIRED TO REGISTER SHELTER.—In the
22 case of a person required to register such a tax
23 shelter by reason of section 6111(d)(3)—

24 “(i) such person shall be required to
25 pay the penalty under paragraph (1) only

1 if such person actually participated in such
2 shelter,

3 “(ii) the amount of such penalty shall
4 be determined by taking into account
5 under subparagraph (A)(i) only the fees
6 paid by such person, and

7 “(iii) such penalty shall be in addition
8 to the penalty imposed on any other person
9 for failing to register such shelter.”

10 (c) CONFORMING AMENDMENTS.—

11 (1) Paragraph (2) of section 6707(a) is amend-
12 ed by striking “The penalty” and inserting “Except
13 as provided in paragraph (3), the penalty”.

14 (2) Subparagraph (A) of section 6707(a)(1) is
15 amended by striking “paragraph (2)” and inserting
16 “paragraph (2) or (3), as the case may be”.

17 (d) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The amendments made by
19 this section shall apply to any tax shelter (as defined
20 in section 6111(d) of the Internal Revenue Code of
21 1986, as amended by this section) interests in which
22 are offered to potential participants after the date of
23 the enactment of this Act.

24 (2) DUE DATE FOR REGISTRATION.—The due
25 date for registering any tax shelter required to be

1 registered by reason of the amendments made by
2 this section shall be not earlier than the close of a
3 reasonable period after the Secretary of the Treas-
4 ury prescribes guidance with respect to meeting such
5 requirements.

6 **SEC. 13603. DENIAL OF DEDUCTION FOR INTEREST ON**
7 **LOANS WITH RESPECT TO COMPANY-OWNED**
8 **INSURANCE.**

9 (a) IN GENERAL.—Paragraph (4) of section 264(a)
10 is amended—

11 (1) by inserting “or endowment or annuity con-
12 tract” after “life insurance policies”, and

13 (2) by striking all that follows “carried on by
14 the taxpayer” and inserting a period.

15 (b) PHASEIN OF DISALLOWANCE.—Section 264 is
16 amended by adding at the end the following new sub-
17 section:

18 “(d) PHASEIN OF DISALLOWANCE UNDER SUB-
19 SECTION (a)(4).—In the case of calendar years after 1995
20 and before 2000—

21 “(1) IN GENERAL.—The amount of interest
22 paid or accrued during any period in any such cal-
23 endar year with respect to qualified indebtedness
24 which is disallowed by reason of the amendment
25 made by section 13603(a) of the Revenue Reconcili-

1 ation Act of 1995 (determined without regard to this
 2 subsection) shall not exceed the applicable percent-
 3 age of such interest which is so disallowed.

4 “(2) QUALIFIED INDEBTEDNESS.—For pur-
 5 poses of paragraph (1), the term ‘qualified indebted-
 6 ness’ means indebtedness incurred before September
 7 18, 1995, with respect to a life insurance policy cov-
 8 ering only the life of the individual who was insured
 9 under such policy on such date. Any increase on or
 10 after such date in the amount of such indebtedness
 11 shall be treated as indebtedness incurred after such
 12 date.

13 “(3) APPLICABLE PERCENTAGE.—For purposes
 14 of paragraph (1), the applicable percentage shall be
 15 determined in accordance with the following table:

“In the case of periods in calendar year:	The applicable percentage is:
1996	20 percent
1997	40 percent
1998	60 percent
1999	80 percent.”

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
 18 this section shall apply to interest paid or accrued
 19 after December 31, 1995.

20 (2) EXCEPTION.—The amendments made by
 21 this section shall not apply to contracts purchased
 22 on or before June 20, 1986.

1 (d) 4-YEAR SPREAD OF INCOME INCLUSION ON SUR-
2 RENDER, ETC. OF CONTRACTS.—

3 (1) IN GENERAL.—In the case of indebtedness
4 with respect to any life insurance policy described in
5 paragraph (4) of section 264(a) of the Internal Rev-
6 enue Code of 1986, if—

7 (A) the interest paid or accrued after De-
8 cember 31, 1995, on such indebtedness is not
9 allowed as a deduction under chapter 1 of such
10 Code by reason of such paragraph (4) (as
11 amended by this section), and

12 (B) the entire amount of interest paid or
13 accrued on or before such date on such indebt-
14 edness was allowed as a deduction under such
15 chapter 1,

16 then (in lieu of any other inclusion in gross income)
17 the qualified amount with respect to such policy
18 shall be includible in gross income ratably over the
19 4 taxable years beginning with the taxable year such
20 amount would (but for this paragraph) be includible.

21 (2) QUALIFIED AMOUNT.—For purposes of
22 paragraph (1), the term “qualified amount” means,
23 with respect to any policy, the amount received
24 under such policy—

1 (A) on the complete surrender, redemption,
2 or maturity of such policy during 1996, or

3 (B) in full discharge during 1996 of the
4 obligation under the policy which is in the na-
5 ture of a refund of the consideration paid for
6 the policy,

7 but only to the extent such amount is includible in
8 gross income for the taxable year in which the event
9 described in subparagraph (A) or (B) occurs.

10 (3) SPECIAL RULE.—A contract shall not be
11 treated as failing to meet the requirement of section
12 264(c)(1) of the Internal Revenue Code of 1986
13 solely by reason of an occurrence described in sub-
14 paragraph (A) or (B) of paragraph (2) of this sub-
15 section.

16 **SEC. 13604. TERMINATION OF SUSPENSE ACCOUNTS FOR**
17 **FAMILY CORPORATIONS REQUIRED TO USE**
18 **ACCRUAL METHOD OF ACCOUNTING.**

19 (a) IN GENERAL.—Subsection (i) of section 447 (re-
20 lating to method of accounting for corporations engaged
21 in farming) is amended by adding at the end the following
22 new paragraph:

23 “(7) TERMINATION.—

24 “(A) IN GENERAL.—No suspense account
25 may be established under this subsection by any

1 corporation required by this section to change
2 its method of accounting for any taxable year
3 ending after September 13, 1995.

4 “(B) 20-YEAR PHASEOUT OF EXISTING
5 SUSPENSE ACCOUNTS.—Each suspense account
6 under this subsection shall be reduced (but not
7 below zero) for each of the first 20 taxable
8 years beginning after September 13, 1995, by
9 an amount equal to the applicable portion of
10 such account. Any reduction in a suspense ac-
11 count under this paragraph shall be included in
12 gross income for the taxable year of the reduc-
13 tion. The amount of the reduction required
14 under this paragraph for any taxable year shall
15 be reduced (but not below zero) by the amount
16 of any reduction required for such taxable year
17 under any other provision of this subsection.

18 “(C) APPLICABLE PORTION.—For pur-
19 poses of subparagraph (B), the term ‘applicable
20 portion’ means, for any taxable year, the
21 amount which would ratably reduce the amount
22 in the account (after taking into account prior
23 reductions) to zero over the period consisting of
24 such taxable year and the remaining taxable
25 years in such first 20 taxable years.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years ending after Sep-
3 tember 13, 1995.

4 **SEC. 13605. TERMINATION OF PUERTO RICO AND POSSES-**
5 **SION TAX CREDIT.**

6 (a) IN GENERAL.—Section 936 is amended by adding
7 at the end the following new subsection:

8 “(j) TERMINATION.—

9 “(1) IN GENERAL.—This section shall not apply
10 to any taxable year beginning after December 31,
11 1995.

12 “(2) EXCEPTION FOR EXISTING CLAIMANTS.—

13 “(A) IN GENERAL.—Paragraph (1) shall
14 be applied by substituting ‘2005’ for ‘1995’ in
15 the case of an existing credit claimant.

16 “(B) EXCEPTION TERMINATES IF NEW
17 LINE OF BUSINESS ADDED.—If, after Septem-
18 ber 13, 1995, a corporation which would (but
19 for this subparagraph) be an existing credit
20 claimant adds a substantial new line of busi-
21 ness, such corporation shall cease to be treated
22 as an existing credit claimant as of the close of
23 the taxable year ending before the date of such
24 addition.

1 “(C) EXISTING CREDIT CLAIMANT.—For
2 purposes of this subsection, the term ‘existing
3 credit claimant’ means any corporation which
4 satisfied the conditions of both subparagraph
5 (A) and subparagraph (B) of subsection (a)(2)
6 for at least 1 base period year for which such
7 corporation elected the application of this sec-
8 tion.

9 “(3) LIMIT ON CREDIT OF EXISTING CLAIM-
10 ANTS.—

11 “(A) IN GENERAL.—In the case of an ex-
12 isting credit claimant, the aggregate amount of
13 income taken into account under subsection
14 (a)(1) for any taxable year beginning after De-
15 cember 31, 1995 (hereinafter in this subsection
16 referred to as the ‘current year’), shall not ex-
17 ceed the adjusted base period income of such
18 claimant.

19 “(B) COORDINATION WITH SUBSECTION
20 (a)(4).—The amount of income described in
21 subsection (a)(1)(A) which is taken into ac-
22 count in applying subsection (a)(4) shall be
23 such income as reduced under this paragraph.
24 In determining such reduction, any reduction
25 under subparagraph (A) in the amount which

1 would otherwise be taken into account under
2 subsection (a)(1) shall be allocated between the
3 income described in subparagraph (A) thereof
4 and the income described in subparagraph (B)
5 thereof in proportion to the respective amounts
6 of such incomes.

7 “(4) ADJUSTED BASE PERIOD INCOME.—For
8 purposes of paragraph (3)—

9 “(A) IN GENERAL.—The term ‘adjusted
10 base period income’ means the average of the
11 inflation-adjusted possession incomes of the cor-
12 poration for each base period year.

13 “(B) INFLATION-ADJUSTED POSSESSION
14 INCOME.—For purposes of subparagraph (A),
15 the inflation-adjusted possession income of any
16 corporation for any base period year shall be an
17 amount equal to the possession income of such
18 corporation for such base period year multiplied
19 by the inflation adjustment percentage for such
20 base period year.

21 “(C) INFLATION ADJUSTMENT PERCENT-
22 AGE.—For purposes of subparagraph (B), the
23 inflation adjustment percentage for any base
24 period year means, with respect to the current
25 year, the percentage (if any) by which—

1 “(i) the CPI for last calendar year
2 ending before the beginning of the current
3 year, exceeds

4 “(ii) the CPI for last calendar year
5 ending before the beginning of the base pe-
6 riod year.

7 For purposes of the preceding sentence, the
8 CPI for any calendar year is the CPI (as de-
9 fined in section 1(f)(5)) for such year under
10 section 1(f)(4).

11 “(D) INCREASE IN INFLATION ADJUST-
12 MENT PERCENTAGE FOR GROWTH DURING BASE
13 YEARS.—The inflation adjustment percentage
14 (determined under subparagraph (C) without
15 regard to this subparagraph) for each of the 5
16 taxable years referred to in paragraph (5)(A)
17 shall be increased by—

18 “(i) 5 percentage points in the case of
19 a taxable year ending during the 1-year pe-
20 riod ending on September 12, 1995;

21 “(ii) 10.25 percentage points in the
22 case of a taxable year ending during the 1-
23 year period ending on September 12, 1994;

1 “(iii) 15.76 percentage points in the
2 case of a taxable year ending during the 1-
3 year period ending on September 12, 1993;

4 “(iv) 21.55 percentage points in the
5 case of a taxable year ending during the 1-
6 year period ending on September 12, 1992;
7 and

8 “(v) 27.63 percentage points in the
9 case of a taxable year ending during the 1-
10 year period ending on September 12, 1991.

11 “(5) BASE PERIOD YEAR.—For purposes of this
12 subsection—

13 “(A) IN GENERAL.—The term ‘base period
14 year’ means each of 3 taxable years which are
15 among the 5 most recent taxable years of the
16 corporation ending before September 13, 1995,
17 determined by disregarding—

18 “(i) one taxable year for which the
19 corporation had the largest inflation-ad-
20 justed possession income, and

21 “(ii) one taxable year for which the
22 corporation had the smallest inflation-ad-
23 justed possession income.

1 “(B) CORPORATIONS NOT HAVING SIGNIFI-
2 CANT POSSESSION INCOME THROUGHOUT 5-
3 YEAR PERIOD.—

4 “(i) IN GENERAL.—If a corporation
5 does not have significant possession income
6 for each of the most recent 5 taxable years
7 ending before September 13, 1995, then,
8 in lieu of applying subparagraph (A), the
9 term ‘base period year’ means only those
10 taxable years (of such 5 taxable years) for
11 which the corporation has significant pos-
12 session income; except that, if such cor-
13 poration has significant possession income
14 for 4 of such 5 taxable years, the rule of
15 subparagraph (A)(ii) shall apply.

16 “(ii) SPECIAL RULE.—If there is no
17 year (of such 5 taxable years) for which a
18 corporation has significant possession in-
19 come—

20 “(I) the term ‘base period year’
21 means the first taxable year ending on
22 or after September 13, 1995, but

23 “(II) the amount of possession
24 income for such year which is taken
25 into account under paragraph (4)

1 shall be the amount which would be
2 determined if such year were a short
3 taxable year ending on August 31,
4 1995.

5 “(iii) SIGNIFICANT POSSESSION IN-
6 COME.—For purposes of this subpara-
7 graph, the term ‘significant possession in-
8 come’ means possession income which ex-
9 ceeds 2 percent of the possession income of
10 the taxpayer for the taxable year (of the
11 period of 6 taxable years ending with the
12 first taxable year ending on or after Sep-
13 tember 13, 1995) having the greatest pos-
14 session income.

15 “(C) ELECTION TO USE ONE BASE PERIOD
16 YEAR.—

17 “(i) IN GENERAL.—At the election of
18 the taxpayer, the term ‘base period year’
19 means only the last taxable year of the cor-
20 poration ending in calendar year 1992.

21 “(ii) ELECTION.—An election under
22 this subparagraph by any possession cor-
23 poration may be made only for the cor-
24 poration’s first taxable year beginning
25 after December 31, 1995, for which it is a

possession corporation. The rules of subclauses (II) and (III) of subsection (a)(4)(B)(iii) shall apply to the election under this subparagraph.

“(D) ACQUISITIONS AND DISPOSITIONS.—

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this subsection.

“(6) POSSESSION INCOME.—For purposes of

this subsection, the term ‘possession income’ means the sum of the income referred to in subsection (a)(1)(A) and the income referred to in subsection (a)(1)(B). In no event shall possession income be treated as being less than zero.

“(7) SHORT YEARS.—If the current year or a

base period year is a short taxable year, the application of this subsection shall be made with such annualizations as the Secretary shall prescribe.”

(b) EFFECTIVE DATE.—The amendment made by

this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13606. DEPRECIATION UNDER INCOME FORECAST METHOD.

(a) GENERAL RULE.—Section 167 (relating to depre-

ciation) is amended by redesignating subsection (g) as

1 subsection (h) and by inserting after subsection (f) the
2 following new subsection:

3 “(g) DEPRECIATION UNDER INCOME FORECAST
4 METHOD.—

5 “(1) IN GENERAL.—If the depreciation deduc-
6 tion allowable under this section to any taxpayer
7 with respect to any property is determined under the
8 income forecast method or any similar method—

9 “(A) in determining the amount of the de-
10 preciation deduction under such method, the es-
11 timated income from the property shall include
12 all estimated income from use of the property,

13 “(B) the adjusted basis of the property
14 shall only include amounts with respect to
15 which the requirements of section 461(h) are
16 satisfied,

17 “(C) the depreciation deduction under such
18 method for the 10th taxable year beginning
19 after the taxable year in which the property was
20 placed in service shall be equal to the adjusted
21 basis of such property as of the beginning of
22 such 10th taxable year, and

23 “(D) such taxpayer shall pay (or be enti-
24 tled to receive) interest computed under the

1 look-back method of paragraph (2) for any re-
2 computation year.

3 “(2) LOOK-BACK METHOD.—The interest com-
4 puted under the look-back method of this paragraph
5 for any recomputation year shall be determined by—

6 “(A) first determining the depreciation de-
7 ductions under this section with respect to such
8 property which would have been allowable for
9 prior taxable years if the determination of the
10 amounts so allowable had been made on the
11 basis of the sum of the following (instead of the
12 estimated income with respect to such prop-
13 erty)—

14 “(i) the actual income from such
15 property for periods before the close of the
16 recomputation year, and

17 “(ii) an estimate of the future income
18 with respect to such property for periods
19 after the recomputation year,

20 “(B) second, determining (solely for pur-
21 poses of computing such interest) the overpay-
22 ment or underpayment of tax for each such
23 prior taxable year which would result solely
24 from the application of subparagraph (A), and

1 “(C) then using the adjusted overpayment
2 rate (as defined in section 460(b)(7)),
3 compounded daily, on the overpayment or
4 underpayment determined under subparagraph
5 (B).

6 For purposes of the preceding sentence, any cost in-
7 curred after the property is placed in service (which
8 is not treated as a separate property under para-
9 graph (5)) shall be taken into account by discount-
10 ing (using the Federal mid-term rate determined
11 under section 1274(d) as of the time such cost is in-
12 curred) such cost to its value as of the date the
13 property is placed in service. The taxpayer may elect
14 with respect to any property to have the preceding
15 sentence not apply to such property.

16 “(3) EXCEPTION FROM LOOK-BACK METHOD.—
17 Paragraph (1)(D) shall not apply with respect to
18 any property which, when placed in service by the
19 taxpayer, had a basis of \$100,000 or less.

20 “(4) RECOMPUTATION YEAR.—For purposes of
21 this subsection, except as provided in regulations,
22 the term ‘recomputation year’ means, with respect to
23 any property, the third and the 10th taxable years
24 beginning after the taxable year in which the prop-
25 erty was placed in service, unless the actual income

1 from the property for such third or 10th taxable
2 year (as the case may be) and each prior taxable
3 year is within 10 percent of the estimated income
4 from the property for each such year which was
5 taken into account under paragraph (1)(A).

6 “(5) SPECIAL RULES.—

7 “(A) CERTAIN COSTS TREATED AS SEPA-
8 RATE PROPERTY.—For purposes of this section,
9 the following costs shall be treated as separate
10 properties:

11 “(i) Any costs incurred with respect
12 to any property after the 10th taxable year
13 beginning after the taxable year in which
14 the property was placed in service.

15 “(ii) Any costs incurred after the
16 property is placed in service and before the
17 close of such 10th taxable year if such
18 costs are significant and give rise to a sig-
19 nificant increase in the income from the
20 property which was not included in the es-
21 timated income from the property.

22 “(B) SYNDICATION INCOME FROM TELE-
23 VISION SERIES.—In the case of property which
24 is an episode in a television series, estimated in-
25 come from syndicating such series shall not be

1 required to be taken into account under this
2 subsection before the earlier of—

3 “(i) the 4th taxable year beginning
4 after the date the first episode in such se-
5 ries is placed in service, or

6 “(ii) the earliest taxable year in which
7 the taxpayer had a reasonable expectation
8 that there would be a future syndication
9 of such series.

10 “(C) COLLECTION OF INTEREST.—For
11 purposes of subtitle F (other than sections
12 6654 and 6655), any interest required to be
13 paid by the taxpayer under paragraph (1) for
14 any recomputation year shall be treated as an
15 increase in the tax imposed by this chapter for
16 such year.

17 “(D) DETERMINATIONS.—For purposes of
18 this subsection, determinations of the amount
19 of income from any property shall be deter-
20 mined in the same manner as for purposes of
21 applying the income forecast method; except
22 that any income from the disposition of such
23 property shall be taken into account.

24 “(E) TREATMENT OF PASS-THRU ENTI-
25 TIES.—Rules similar to the rules of section

1 460(b)(4) shall apply for purposes of this sub-
2 section.”

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendment made by
5 subsection (a) shall apply to property placed in serv-
6 ice after September 13, 1995.

7 (2) BINDING CONTRACTS.—The amendment
8 made by subsection (a) shall not apply to any prop-
9 erty produced or acquired by the taxpayer pursuant
10 to a written contract which was binding on Septem-
11 ber 13, 1995, and at all times thereafter before such
12 production or acquisition.

13 **SEC. 13607. TRANSFERS OF EXCESS PENSION ASSETS.**

14 (a) IN GENERAL.—Section 420 (relating to transfers
15 of excess pension assets to retiree health accounts) is
16 amended by adding at the end the following new sub-
17 section:

18 “(f) SIMILAR RULES TO APPLY TO OTHER TRANS-
19 FERS OF EXCESS PLAN ASSETS.—

20 “(1) IN GENERAL.—If there is a qualified unre-
21 stricted transfer of any excess pension assets of a
22 defined benefit plan (other than a multiemployer
23 plan) to an employer—

24 “(A) a trust which is part of such plan
25 shall not be treated as failing to meet the re-

1 quirements of section 401(a) or any other pro-
2 vision of law solely by reason of such transfer
3 (or any other action authorized under this sec-
4 tion), and

5 “(B) such transfer shall not be treated as
6 a prohibited transaction for purposes of section
7 4975.

8 The gross income of the employer shall include the
9 amount of any qualified transfer made during the
10 taxable year.

11 “(2) QUALIFIED UNRESTRICTED TRANSFER.—
12 For purposes of this section—

13 “(A) IN GENERAL.—The term ‘qualified
14 unrestricted transfer’ means a transfer—

15 “(i) of excess pension assets of a de-
16 fined benefit plan to the employer, and

17 “(ii) with respect to which the re-
18 quirements of subsection (c)(2)(A) are met
19 (determined by treating such transfer as a
20 qualified transfer).

21 “(B) COORDINATION WITH TRANSFERS TO
22 RETIREE HEALTH ACCOUNTS.—Such term shall
23 not include any qualified transfer (as defined in
24 subsection (b)).

1 “(C) EXPIRATION.—No transfer in any
2 taxable year beginning after December 31,
3 2000, shall be treated as a qualified unre-
4 stricted transfer.

5 “(3) DEFINITION AND SPECIAL RULE.—For
6 purposes of this subsection—

7 “(A) EXCESS PENSION ASSETS.—The term
8 ‘excess pension assets’ has the meaning given
9 such term by subsection (e)(2); except that the
10 amount thereof shall be the lesser of—

11 “(i) the amount determined as of the
12 most recent valuation date of the plan pre-
13 ceding the transfer, or

14 “(ii) the amount determined as of
15 January 1, 1995 (or, if January 1, 1995,
16 is not a valuation date, the most recent
17 prior valuation date).

18 “(B) COORDINATION WITH SECTION 412.—
19 In the case of a qualified unrestricted trans-
20 fer—

21 “(i) any assets transferred in a plan
22 year on or before the valuation date for
23 such year (and any income allocable there-
24 to) shall, for purposes of section 412, be

1 treated as assets in the plan as of the valu-
2 ation date for such year, and

3 “(ii) the plan shall be treated as hav-
4 ing a net experience loss under section
5 412(b)(2)(B)(iv) in an amount equal to the
6 amount of such transfer and for which am-
7 ortization charges begin for the first plan
8 year after the plan year in which such
9 transfer occurs, except that such section
10 shall be applied to such amount by sub-
11 stituting ‘10 plan years’ for ‘5 plan years’.

12 “(C) TREATMENT OF TRANSFERS.—Ex-
13 cept for purposes of this section, a qualified un-
14 restricted transfer shall be treated as a quali-
15 fied transfer to a health benefits account.”

16 (b) REVERSION TAX.—Section 4980 (relating to tax
17 on reversion of qualified plan assets to employers) is
18 amended by adding at the end the following new sub-
19 section:

20 “(e) SPECIAL RULES FOR QUALIFIED UNRE-
21 STRICTED TRANSFERS UNDER SECTION 420.—In the
22 case of a qualified unrestricted transfer to which section
23 420(f) applies—

24 “(1) no tax shall be imposed by subsection (a)
25 if such transfer occurs before July 1, 1996,

1 “(2) subsection (a) shall be applied by sub-
 2 stituting ‘6.5 percent’ for ‘20 percent’ if such trans-
 3 fer occurs after June 30, 1996, and

4 “(3) subsection (d) shall not apply.”

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall take effect on January 1, 1995.

7 **PART II—LEGAL REFORMS**

8 **SEC. 13611. REPEAL OF EXCLUSION FOR PUNITIVE DAM-**
 9 **AGES AND FOR DAMAGES NOT ATTRIB-**
 10 **UTABLE TO PHYSICAL INJURIES OR SICK-**
 11 **NESS.**

12 (a) IN GENERAL.—Paragraph (2) of section 104(a)
 13 (relating to compensation for injuries or sickness) is
 14 amended to read as follows:

15 “(2) the amount of any damages (other than
 16 punitive damages) received (whether by suit or
 17 agreement and whether as lump sums or as periodic
 18 payments) on account of personal physical injuries
 19 or physical sickness;”.

20 (b) EMOTIONAL DISTRESS AS SUCH TREATED AS
 21 NOT PHYSICAL INJURY OR PHYSICAL SICKNESS.—Sec-
 22 tion 104(a) is amended by striking the last sentence and
 23 inserting the following new sentence: “For purposes of
 24 paragraph (2), emotional distress shall not be treated as
 25 a physical injury or physical sickness. The preceding sen-

1 tence shall not apply to an amount of damages not in ex-
2 cess of the amount paid for medical care (described in sub-
3 paragraph (A) or (B) of section 213(d)(1)) attributable
4 to emotional distress.”

5 (c) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 shall apply to amounts received after December 31,
9 1995, in taxable years ending after such date.

10 (2) EXCEPTION.—The amendments made by
11 this section shall not apply to any amount received
12 under a written binding agreement, court decree, or
13 mediation award in effect on (or issued on or before)
14 September 13, 1995.

15 **SEC. 13612. REPORTING OF CERTAIN PAYMENTS MADE TO**
16 **ATTORNEYS.**

17 (a) IN GENERAL.—Section 6045 (relating to returns
18 of brokers) is amended by adding at the end the following
19 new subsection:

20 “(f) RETURN REQUIRED IN THE CASE OF PAY-
21 MENTS TO ATTORNEYS.—

22 “(1) IN GENERAL.—Any person engaged in a
23 trade or business and making a payment (in the
24 course of such trade or business) to which this sub-
25 section applies shall file a return under subsection

1 (a) and a statement under subsection (b) with re-
2 spect to such payment.

3 “(2) APPLICATION OF SUBSECTION.—

4 “(A) IN GENERAL.—This subsection shall
5 apply to any payment to an attorney in connec-
6 tion with legal services (whether or not such
7 services are performed for the payor).

8 “(B) EXCEPTION.—This subsection shall
9 not apply to the portion of any payment which
10 is required to be reported under section 6041(a)
11 (or would be so required but for the dollar limi-
12 tation contained therein) or section 6051.”

13 (b) REPORTING OF ATTORNEYS FEES PAYABLE TO
14 CORPORATIONS.—The regulations providing an exception
15 under section 6041 of the Internal Revenue Code of 1986
16 for payments made to corporations shall not apply to pay-
17 ments of attorneys fees.

18 (c) EFFECTIVE DATE.—The amendment made by
19 subsection (a), and subsection (b), shall apply to payments
20 made after December 31, 1995.

1 **PART III—TREATMENT OF INDIVIDUALS WHO**
2 **LOSE UNITED STATES CITIZENSHIP**

3 **SEC. 13616. REVISION OF INCOME, ESTATE, AND GIFT**
4 **TAXES ON INDIVIDUALS WHO LOSE UNITED**
5 **STATES CITIZENSHIP.**

6 (a) IN GENERAL.—Subsection (a) of section 877 is
7 amended to read as follows:

8 “(a) TREATMENT OF EXPATRIATES.—

9 “(1) IN GENERAL.—Every nonresident alien in-
10 dividual who, within the 10-year period immediately
11 preceding the close of the taxable year, lost United
12 States citizenship, unless such loss did not have for
13 1 of its principal purposes the avoidance of taxes
14 under this subtitle or subtitle B, shall be taxable for
15 such taxable year in the manner provided in sub-
16 section (b) if the tax imposed pursuant to such sub-
17 section exceeds the tax which, without regard to this
18 section, is imposed pursuant to section 871.

19 “(2) CERTAIN INDIVIDUALS TREATED AS HAV-
20 ING TAX AVOIDANCE PURPOSE.—For purposes of
21 paragraph (1), an individual shall be treated as hav-
22 ing a principal purpose to avoid such taxes if—

23 “(A) the average annual net income tax
24 (as defined in section 38(c)(1)) of such individ-
25 ual for the period of 5 taxable years ending be-

1 fore the date of the loss of United States citi-
2 zenship is greater than \$100,000, or

3 “(B) the net worth of the individual as of
4 such date is \$500,000 or more.

5 In the case of the loss of United States citizenship
6 in any calendar year after 1996, such \$100,000 and
7 \$500,000 amounts shall be increased by an amount
8 equal to such dollar amount multiplied by the cost-
9 of-living adjustment determined under section
10 1(f)(3) for such calendar year by substituting ‘1994’
11 for ‘1992’ in subparagraph (B) thereof. Any in-
12 crease under the preceding sentence shall be round-
13 ed to the nearest multiple of \$1,000.”

14 (b) EXCEPTIONS.—

15 (1) IN GENERAL.—Section 877 is amended by
16 striking subsection (d), by redesignating subsection
17 (c) as subsection (d), and by inserting after sub-
18 section (b) the following new subsection:

19 “(c) TAX AVOIDANCE NOT PRESUMED IN CERTAIN
20 CASES.—

21 “(1) IN GENERAL.—Subsection (a)(2) shall not
22 apply to an individual if—

23 “(A) such individual is described in a sub-
24 paragraph of paragraph (2) of this subsection,
25 and

1 “(B) within the 1-year period beginning on
2 the date of the loss of United States citizenship,
3 such individual submits a ruling request for the
4 Secretary’s determination as to whether such
5 loss has for 1 of its principal purposes the
6 avoidance of taxes under this subtitle or subtitle
7 B.

8 “(2) INDIVIDUALS DESCRIBED.—

9 “(A) DUAL CITIZENSHIP, ETC.—An indi-
10 vidual is described in this subparagraph if—

11 “(i) the individual became at birth a
12 citizen of the United States and a citizen
13 of another country and continues to be a
14 citizen of such other country, or

15 “(ii) the individual becomes (not later
16 than the close of a reasonable period after
17 loss of United States citizenship) a citizen
18 of the country in which—

19 “(I) such individual was born,

20 “(II) if such individual is mar-
21 ried, such individual’s spouse was
22 born, or

23 “(III) either of such individual’s
24 parents were born.

1 “(B) LONG-TERM FOREIGN RESIDENTS.—

2 An individual is described in this subparagraph
3 if, for each year in the 10-year period ending on
4 the date of loss of United States citizenship, the
5 individual was present in the United States for
6 30 days or less. The rule of section
7 7701(b)(3)(D)(ii) shall apply for purposes of
8 this subparagraph.

9 “(C) RENUNCIATION UPON REACHING AGE
10 OF MAJORITY.—An individual is described in
11 this subparagraph if the individual’s loss of
12 United States citizenship occurs before such in-
13 dividual attains age 18½.

14 “(D) INDIVIDUALS SPECIFIED IN REGULA-
15 TIONS.—An individual is described in this sub-
16 paragraph if the individual is described in a
17 category of individuals prescribed by regulation
18 by the Secretary.”

19 (2) TECHNICAL AMENDMENT.—Paragraph (1)
20 of section 877(b) of such Code is amended by strik-
21 ing “subsection (c)” and inserting “subsection (d)”.

22 (c) TREATMENT OF PROPERTY DISPOSED OF IN
23 NONRECOGNITION TRANSACTIONS; TREATMENT OF DIS-
24 TRIBUTIONS FROM CERTAIN CONTROLLED FOREIGN

1 CORPORATIONS.—Subsection (d) of section 877, as reded-
2 igned by subsection (b), is amended to read as follows:

3 “(d) SPECIAL RULES FOR SOURCE, ETC.—For pur-
4 poses of subsection (b)—

5 “(1) SOURCE RULES.—The following items of
6 gross income shall be treated as income from sources
7 within the United States:

8 “(A) SALE OF PROPERTY.—Gains on the
9 sale or exchange of property (other than stock
10 or debt obligations) located in the United
11 States.

12 “(B) STOCK OR DEBT OBLIGATIONS.—
13 Gains on the sale or exchange of stock issued
14 by a domestic corporation or debt obligations of
15 United States persons or of the United States,
16 a State or political subdivision thereof, or the
17 District of Columbia.

18 “(C) INCOME OR GAIN DERIVED FROM
19 CONTROLLED FOREIGN CORPORATION.—Any in-
20 come or gain derived from stock in a foreign
21 corporation but only—

22 “(i) if the individual losing United
23 States citizenship owned (within the mean-
24 ing of section 958(a)), or is considered as
25 owning (by applying the ownership rules of

1 section 958(b)), at any time during the 2-
2 year period ending on the date of the loss
3 of United States citizenship, more than 50
4 percent of—

5 “(I) the total combined voting
6 power of all classes of stock entitled
7 to vote of such corporation, or

8 “(II) the total value of the stock
9 of such corporation, and

10 “(ii) to the extent such income or gain
11 does not exceed the earnings and profits
12 attributable to such stock which were
13 earned or accumulated before the loss of
14 citizenship and during periods that the
15 ownership requirements of clause (i) are
16 met.

17 “(2) GAIN RECOGNITION ON CERTAIN EX-
18 CHANGES.—

19 “(A) IN GENERAL.—In the case of any ex-
20 change of property to which this paragraph ap-
21 plies, notwithstanding any other provision of
22 this title, such property shall be treated as sold
23 for its fair market value on the date of such ex-
24 change, and any gain shall be recognized for
25 the taxable year which includes such date.

1 “(B) EXCHANGES TO WHICH PARAGRAPH
2 APPLIES.—This paragraph shall apply to any
3 exchange during the 10-year period described in
4 subsection (a) if—

5 “(i) gain would not (but for this para-
6 graph) be recognized on such exchange in
7 whole or in part for purposes of this sub-
8 title,

9 “(ii) income derived from such prop-
10 erty was from sources within the United
11 States (or, if no income was so derived,
12 would have been from such sources), and

13 “(iii) income derived from the prop-
14 erty acquired in the exchange would be
15 from sources outside the United States.

16 “(C) EXCEPTION.—Subparagraph (A)
17 shall not apply if the individual enters into an
18 agreement with the Secretary which specifies
19 that any income or gain derived from the prop-
20 erty acquired in the exchange (or any other
21 property which has a basis determined in whole
22 or part by reference to such property) during
23 such 10-year period shall be treated as from
24 sources within the United States. If the prop-
25 erty transferred in the exchange is disposed of

1 by the person acquiring such property, such
2 agreement shall terminate and any gain which
3 was not recognized by reason of such agreement
4 shall be recognized as of the date of such dis-
5 position.

6 “(D) SECRETARY MAY EXTEND PERIOD.—

7 To the extent provided in regulations prescribed
8 by the Secretary, subparagraph (B) shall be ap-
9 plied by substituting the 15-year period begin-
10 ning 5 years before the loss of United States
11 citizenship for the 10-year period referred to
12 therein.

13 “(E) SECRETARY MAY REQUIRE RECOGNI-

14 TION OF GAIN IN CERTAIN CASES.—To the ex-
15 tent provided in regulations prescribed by the
16 Secretary—

17 “(i) the removal of appreciated tan-
18 gible personal property from the United
19 States, and

20 “(ii) any other occurrence which
21 (without recognition of gain) results in a
22 change in the source of the income or gain
23 from property from sources within the
24 United States to sources outside the Unit-
25 ed States,

1 shall be treated as an exchange to which this
2 paragraph applies.

3 “(3) SUBSTANTIAL DIMINISHING OF RISKS OF
4 OWNERSHIP.—For purposes of determining whether
5 this section applies to any gain on the sale or ex-
6 change of any property, the running of the 10-year
7 period described in subsection (a) shall be suspended
8 for any period during which the individual’s risk of
9 loss with respect to the property is substantially di-
10 minished by—

11 “(A) the holding of a put with respect to
12 such property (or similar property),

13 “(B) the holding by another person of a
14 right to acquire the property, or

15 “(C) a short sale or any other trans-
16 action.”

17 (d) CREDIT FOR FOREIGN TAXES IMPOSED ON UNIT-
18 ED STATES SOURCE INCOME.—

19 (1) Subsection (b) of section 877 is amended by
20 adding at the end the following new sentence: “The
21 tax imposed solely by reason of this section shall be
22 reduced (but not below zero) by the amount of any
23 income, war profits, and excess profits taxes (within
24 the meaning of section 903) paid to any foreign
25 country or possession of the United States on any

1 income of the taxpayer on which tax is imposed sole-
2 ly by reason of this section.”

3 (2) Subsection (a) of section 877, as amended
4 by subsection (a), is amended by inserting “(after
5 any reduction in such tax under the last sentence of
6 such subsection)” after “such subsection”.

7 (e) COMPARABLE ESTATE AND GIFT TAX TREAT-
8 MENT.—

9 (1) ESTATE TAX.—

10 (A) IN GENERAL.—Subsection (a) of sec-
11 tion 2107 is amended to read as follows:

12 “(a) TREATMENT OF EXPATRIATES.—

13 “(1) RATE OF TAX.—A tax computed in accord-
14 ance with the table contained in section 2001 is
15 hereby imposed on the transfer of the taxable estate,
16 determined as provided in section 2106, of every de-
17 cedent nonresident not a citizen of the United States
18 if, within the 10-year period ending with the date of
19 death, such decedent lost United States citizenship,
20 unless such loss did not have for 1 of its principal
21 purposes the avoidance of taxes under this subtitle
22 or subtitle A.

23 “(2) CERTAIN INDIVIDUALS TREATED AS HAV-
24 ING TAX AVOIDANCE PURPOSE.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (1), an individual shall be treated as hav-
3 ing a principal purpose to avoid such taxes if
4 such individual is so treated under section
5 877(a)(2).

6 “(B) EXCEPTION.—Subparagraph (A)
7 shall not apply to a decedent meeting the re-
8 quirements of section 877(c)(1).”

9 (B) CREDIT FOR FOREIGN DEATH
10 TAXES.—Subsection (c) of section 2107 is
11 amended by redesignating paragraph (2) as
12 paragraph (3) and by inserting after paragraph
13 (1) the following new paragraph:

14 “(2) CREDIT FOR FOREIGN DEATH TAXES.—

15 “(A) IN GENERAL.—The tax imposed by
16 subsection (a) shall be credited with the amount
17 of any estate, inheritance, legacy, or succession
18 taxes actually paid to any foreign country in re-
19 spect of any property which is included in the
20 gross estate solely by reason of subsection (b).

21 “(B) LIMITATION ON CREDIT.—The credit
22 allowed by subparagraph (A) for such taxes
23 paid to a foreign country shall not exceed the
24 lesser of—

1 “(i) the amount which bears the same
2 ratio to the amount of such taxes actually
3 paid to such foreign country in respect of
4 property included in the gross estate as the
5 value of the property included in the gross
6 estate solely by reason of subsection (b)
7 bears to the value of all property subjected
8 to such taxes by such foreign country, or

9 “(ii) such property’s proportionate
10 share of the excess of—

11 “(I) the tax imposed by sub-
12 section (a), over

13 “(II) the tax which would be im-
14 posed by section 2101 but for this
15 section.

16 “(C) PROPORTIONATE SHARE.—For pur-
17 poses of subparagraph (B), a property’s propor-
18 tionate share is the percentage which the value
19 of the property which is included in the gross
20 estate solely by reason of subsection (b) bears
21 to the total value of the gross estate.”

22 (C) EXPANSION OF INCLUSION IN GROSS
23 ESTATE OF STOCK OF FOREIGN CORPORA-
24 TIONS.—Paragraph (2) of section 2107(b) is
25 amended by striking “more than 50 percent of”

1 and all that follows and inserting “more than
2 50 percent of—

3 “(A) the total combined voting power of all
4 classes of stock entitled to vote of such corpora-
5 tion, or

6 “(B) the total value of the stock of such
7 corporation,”.

8 (2) GIFT TAX.—

9 (A) IN GENERAL.—Paragraph (3) of sec-
10 tion 2501(a) is amended to read as follows:

11 “(3) EXCEPTION.—

12 “(A) CERTAIN INDIVIDUALS.—Paragraph
13 (2) shall not apply in the case of a donor who,
14 within the 10-year period ending with the date
15 of transfer, lost United States citizenship, un-
16 less such loss did not have for 1 of its principal
17 purposes the avoidance of taxes under this sub-
18 title or subtitle A.

19 “(B) CERTAIN INDIVIDUALS TREATED AS
20 HAVING TAX AVOIDANCE PURPOSE.—For pur-
21 poses of subparagraph (A), an individual shall
22 be treated as having a principal purpose to
23 avoid such taxes if such individual is so treated
24 under section 877(a)(2).

1 “(C) EXCEPTION FOR CERTAIN INDIVID-
2 UALS.—Subparagraph (B) shall not apply to a
3 decedent meeting the requirements of section
4 877(c)(1).

5 “(D) CREDIT FOR FOREIGN GIFT TAXES.—
6 The tax imposed by this section solely by reason
7 of this paragraph shall be credited with the
8 amount of any gift tax actually paid to any for-
9 eign country in respect of any gift which is tax-
10 able under this section solely by reason of this
11 paragraph.”

12 (f) COMPARABLE TREATMENT OF LAWFUL PERMA-
13 NENT RESIDENTS WHO CEASE TO BE TAXED AS RESI-
14 DENTS.—

15 (1) IN GENERAL.—Section 877 is amended by
16 redesignating subsection (e) as subsection (f) and by
17 inserting after subsection (d) the following new sub-
18 section:

19 “(e) COMPARABLE TREATMENT OF LAWFUL PERMA-
20 NENT RESIDENTS WHO CEASE TO BE TAXED AS RESI-
21 DENTS.—

22 “(1) IN GENERAL.—Any long-term resident of
23 the United States who—

1 “(A) ceases to be a lawful permanent resi-
2 dent of the United States (within the meaning
3 of section 7701(b)(6)), or

4 “(B) commences to be treated as a resi-
5 dent of a foreign country under the provisions
6 of a tax treaty between the United States and
7 the foreign country and who does not waive the
8 benefits of such treaty applicable to residents of
9 the foreign country,

10 shall be treated for purposes of this section and sec-
11 tions 2107, 2501, and 6039F in the same manner
12 as if such resident were a citizen of the United
13 States who lost United States citizenship on the date
14 of such cessation or commencement.

15 “(2) LONG-TERM RESIDENT.—For purposes of
16 this subsection, the term ‘long-term resident’ means
17 any individual (other than a citizen of the United
18 States) who is a lawful permanent resident of the
19 United States in at least 8 taxable years during the
20 period of 15 taxable years ending with the taxable
21 year during which the event described in subpara-
22 graph (A) or (B) of paragraph (1) occurs. For pur-
23 poses of the preceding sentence, an individual shall
24 not be treated as a lawful permanent resident for
25 any taxable year if such individual is treated as a

1 resident of a foreign country for the taxable year
2 under the provisions of a tax treaty between the
3 United States and the foreign country and does not
4 waive the benefits of such treaty applicable to resi-
5 dents of the foreign country.

6 “(3) SPECIAL RULES.—

7 “(A) EXCEPTIONS NOT TO APPLY.—Sub-
8 section (c) shall not apply to an individual who
9 is treated as provided in paragraph (1).

10 “(B) STEP-UP IN BASIS.—Solely for pur-
11 poses of determining any tax imposed by reason
12 of this subsection, property which was held by
13 the long-term resident on the date the individ-
14 ual first became a resident of the United States
15 shall be treated as having a basis on such date
16 of not less than the fair market value of such
17 property on such date. The preceding sentence
18 shall not apply if the individual elects not to
19 have such sentence apply. Such an election,
20 once made, shall be irrevocable.

21 “(4) AUTHORITY TO EXEMPT INDIVIDUALS.—

22 This subsection shall not apply to an individual who
23 is described in a category of individuals prescribed
24 by regulation by the Secretary.

1 “(5) REGULATIONS.—The Secretary shall pre-
 2 scribe such regulations as may be appropriate to
 3 carry out this subsection, including regulations pro-
 4 viding for the application of this subsection in cases
 5 where an alien individual becomes a resident of the
 6 United States during the 10-year period after being
 7 treated as provided in paragraph (1).”

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 2107 is amended by striking
 10 subsection (d), by redesignating subsection (e)
 11 as subsection (d), and by inserting after sub-
 12 section (d) (as so redesignated) the following
 13 new subsection:

14 “(e) CROSS REFERENCE.—

**“For comparable treatment of long-term lawful
 permanent residents who ceased to be taxed as resi-
 dents, see section 877(e).”**

15 (B) Paragraph (3) of section 2501(a) (as
 16 amended by subsection (e)) is amended by add-
 17 ing at the end the following new subparagraph:

18 “(E) CROSS REFERENCE.—

**“For comparable treatment of long-term lawful
 permanent residents who ceased to be taxed as resi-
 dents, see section 877(e).”**

19 (g) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by
 21 this section shall apply to—

1 (A) individuals losing United States citi-
2 zenship (within the meaning of section 877 of
3 the Internal Revenue Code of 1986) on or after
4 February 6, 1995, and

5 (B) long-term residents of the United
6 States with respect to whom an event described
7 in subparagraph (A) or (B) of section 877(e)(1)
8 of such Code occurs on or after June 13, 1995.

9 (2) SPECIAL RULE.—

10 (A) IN GENERAL.—In the case of an indi-
11 vidual who performed an act of expatriation
12 specified in paragraph (1), (2), (3), or (4) of
13 section 349(a) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1481(a)(1)–(4)) before Feb-
15 ruary 6, 1995, but who did not, on or before
16 such date, furnish to the United States Depart-
17 ment of State a signed statement of voluntary
18 relinquishment of United States nationality con-
19 firming the performance of such act, the
20 amendments made by this section shall apply to
21 such individual except that—

22 (i) the 10-year period described in
23 section 877(a) of such Code shall not ex-
24 pire before the end of the 10-year period

1 beginning on the date such statement is so
2 furnished, and

3 (ii) the 1-year period referred to in
4 section 877(c) of such Code, as amended
5 by this section, shall not expire before the
6 date which is 1 year after the date of the
7 enactment of this Act.

8 (B) EXCEPTION.—Subparagraph (A) shall
9 not apply if the individual establishes to the
10 satisfaction of the Secretary of the Treasury
11 that such loss of United States citizenship oc-
12 curred before February 6, 1994.

13 **SEC. 13617. INFORMATION ON INDIVIDUALS LOSING UNIT-**
14 **ED STATES CITIZENSHIP.**

15 (a) IN GENERAL.—Subpart A of part III of sub-
16 chapter A of chapter 61 is amended by inserting after sec-
17 tion 6039E the following new section:

18 **“SEC. 6039F. INFORMATION ON INDIVIDUALS LOSING**
19 **UNITED STATES CITIZENSHIP.**

20 “(a) IN GENERAL.—Notwithstanding any other pro-
21 vision of law, any individual who loses United States citi-
22 zenship (within the meaning of section 877(a)) shall pro-
23 vide a statement which includes the information described
24 in subsection (b). Such statement shall be—

1 “(1) provided not later than the earliest date of
2 any act referred to in subsection (c), and

3 “(2) provided to the person or court referred to
4 in subsection (c) with respect to such act.

5 “(b) INFORMATION TO BE PROVIDED.—Information
6 required under subsection (a) shall include—

7 “(1) the taxpayer’s TIN,

8 “(2) the mailing address of such individual’s
9 principal foreign residence,

10 “(3) the foreign country in which such individ-
11 ual is residing,

12 “(4) the foreign country of which such individ-
13 ual is a citizen,

14 “(5) in the case of an individual having a net
15 worth of at least the dollar amount applicable under
16 section 877(a)(2)(B), information detailing the as-
17 sets and liabilities of such individual, and

18 “(6) such other information as the Secretary
19 may prescribe.

20 “(c) ACTS DESCRIBED.—For purposes of this sec-
21 tion, the acts referred to in this subsection are—

22 “(1) the individual’s renunciation of his United
23 States nationality before a diplomatic or consular of-
24 ficer of the United States pursuant to paragraph (5)

1 of section 349(a) of the Immigration and Nationality
2 Act (8 U.S.C. 1481(a)(5)),

3 “(2) the individual’s furnishing to the United
4 States Department of State a signed statement of
5 voluntary relinquishment of United States national-
6 ity confirming the performance of an act of expatria-
7 tion specified in paragraph (1), (2), (3), or (4) of
8 section 349(a) of the Immigration and Nationality
9 Act (8 U.S.C. 1481(a)(1)–(4)),

10 “(3) the issuance by the United States Depart-
11 ment of State of a certificate of loss of nationality
12 to the individual, or

13 “(4) the cancellation by a court of the United
14 States of a naturalized citizen’s certificate of natu-
15 ralization.

16 “(d) PENALTY.—Any individual failing to provide a
17 statement required under subsection (a) shall be subject
18 to a penalty for each year (of the 10-year period beginning
19 on the date of loss of United States citizenship) during
20 any portion of which such failure continues in an amount
21 equal to the greater of—

22 “(1) 5 percent of the tax required to be paid
23 under section 877 for the taxable year ending during
24 such year, or

25 “(2) \$1,000,

1 unless it is shown that such failure is due to reasonable
2 cause and not to willful neglect.

3 “(e) INFORMATION TO BE PROVIDED TO SEC-
4 RETARY.—Notwithstanding any other provision of law—

5 “(1) any Federal agency or court which collects
6 (or is required to collect) the statement under sub-
7 section (a) shall provide to the Secretary—

8 “(A) a copy of any such statement, and

9 “(B) the name (and any other identifying
10 information) of any individual refusing to com-
11 ply with the provisions of subsection (a),

12 “(2) the Secretary of State shall provide to the
13 Secretary a copy of each certificate as to the loss of
14 American nationality under section 358 of the Immi-
15 gration and Nationality Act which is approved by
16 the Secretary of State, and

17 “(3) the Federal agency primarily responsible
18 for administering the immigration laws shall provide
19 to the Secretary the name of each lawful permanent
20 resident of the United States (within the meaning of
21 section 7701(b)(6)) whose status as such has been
22 revoked or has been administratively or judicially de-
23 termined to have been abandoned.

24 Notwithstanding any other provision of law, not later than
25 30 days after the close of each calendar quarter, the Sec-

1 retary shall publish in the Federal Register the name of
2 each individual losing United States citizenship (within
3 the meaning of section 877(a)) with respect to whom the
4 Secretary receives information under the preceding sen-
5 tence during such quarter.

6 “(f) REPORTING BY LONG-TERM LAWFUL PERMA-
7 NENT RESIDENTS WHO CEASE TO BE TAXED AS RESI-
8 DENTS.—In lieu of applying the last sentence of sub-
9 section (a), any individual who is required to provide a
10 statement under this section by reason of section
11 877(e)(1) shall provide such statement with the return of
12 tax imposed by chapter 1 for the taxable year during
13 which the event described in such section occurs.

14 “(g) EXEMPTION.—The Secretary may by regula-
15 tions exempt any class of individuals from the require-
16 ments of this section if he determines that applying this
17 section to such individuals is not necessary to carry out
18 the purposes of this section.”

19 (b) CLERICAL AMENDMENT.—The table of sections
20 for such subpart A is amended by inserting after the item
21 relating to section 6039E the following new item:

“Sec. 6039F. Information on individuals losing United States citi-
zenship.”

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to—

1 (1) individuals losing United States citizenship
2 (within the meaning of section 877 of the Internal
3 Revenue Code of 1986) after the date of the enact-
4 ment of this Act, and

5 (2) long-term residents of the United States
6 with respect to whom an event described in subpara-
7 graph (A) or (B) of section 877(e)(1) of such Code
8 occurs after such date.

9 **SEC. 13618. REPORT ON TAX COMPLIANCE BY UNITED**
10 **STATES CITIZENS AND RESIDENTS LIVING**
11 **ABROAD.**

12 Not later than 90 days after the date of the enact-
13 ment of this Act, the Secretary of the Treasury shall pre-
14 pare and submit to the Committee on Ways and Means
15 of the House of Representatives and the Committee on
16 Finance of the Senate a report—

17 (1) describing the compliance with subtitle A of
18 the Internal Revenue Code of 1986 by citizens and
19 lawful permanent residents of the United States
20 (within the meaning of section 7701(b)(6) of such
21 Code) residing outside the United States, and

22 (2) recommending measures to improve such
23 compliance (including improved coordination be-
24 tween executive branch agencies).

1 **PART IV—REFORMS RELATING TO ENERGY**
2 **PROVISIONS**

3 **SEC. 13621. TERMINATION OF CREDIT FOR ELECTRICITY**
4 **PRODUCED FROM CERTAIN RENEWABLE RE-**
5 **SOURCES.**

6 (a) FACILITIES MUST BE PLACED IN SERVICE BE-
7 FORE SEPTEMBER 14, 1995.—Paragraph (3) of section
8 45(c) (defining qualified facility) is amended by striking
9 “July 1, 1999” and inserting “September 14, 1995”.

10 (b) EFFECTIVE DATE.—

11 (1) IN GENERAL.—The amendment made by
12 this section shall apply to taxable years ending after
13 September 13, 1995.

14 (2) BINDING CONTRACTS.—The amendment
15 made by this section shall not apply to any facility—

16 (A) which is constructed or acquired by the
17 taxpayer pursuant to a written contract which
18 was binding on September 13, 1995, and at all
19 times thereafter before such construction or ac-
20 quisition, and

21 (B) which is placed in service before Sep-
22 tember 14, 1996.

23 **SEC. 13622. REDUCTION OF INCENTIVES FOR ALCOHOL**
24 **FUELS.**

25 (a) DENIAL OF CREDIT FOR ALCOHOL USED TO
26 PRODUCE ETHER.—Subsection (b) of section 40 is

1 amended by adding at the end the following new para-
2 graph:

3 “(6) DENIAL OF CREDIT FOR ALCOHOL USED
4 TO PRODUCE ETHER.—No credit shall be allowed
5 under this section for alcohol used to produce any
6 ether.”

7 (b) LIMITATION ON ALCOHOL ELIGIBLE FOR CREDIT
8 FOR ALCOHOL USED AS FUEL—

9 (1) IN GENERAL.—Subparagraph (A) of section
10 40(d)(1) (defining alcohol) is amended by striking
11 “or” at the end of clause (i), by striking the period
12 at the end of clause (ii) and inserting “, or”, and
13 by adding at the end the following new clause:

14 “(iii) alcohol produced by a still (or
15 other distilling apparatus) placed in service
16 after September 13, 1995.”

17 (2) FUTURE CREDIT LIMITED TO AVERAGE HIS-
18 TORICAL PRODUCTION.—Section 40 is amended by
19 adding at the end the following new subsection:

20 “(i) EXPANDED PRODUCTION INELIGIBLE FOR
21 CREDIT.—

22 “(1) IN GENERAL.—Subsection (a) shall apply
23 to alcohol produced after December 31, 1995, only
24 if the alcohol is designated under this subsection by
25 a producer who is registered under section 4101.

1 “(2) DESIGNATION BASED ON HISTORICAL PRO-
2 DUCTION.—The amount of alcohol produced by a
3 producer during any calendar year which may be
4 designated under this subsection by any producer
5 other than an eligible small ethanol producer is the
6 amount equal to the average annual amount of alco-
7 hol (as defined in subsection (d)(1)(A) without re-
8 gard to clause (iii))—

9 “(A) which was produced by such producer
10 (other than casual off-farm production) during
11 the 3-year period ending on August 31, 1995,
12 and

13 “(B) which was sold or used by such pro-
14 ducer for any purpose described in clause (i) of
15 subsection (b)(4)(B).

16 For purposes of the preceding sentence, a rule simi-
17 lar to the rule of subsection (b)(4)(D) shall apply.

18 “(3) PRODUCTION FOR LESS THAN ENTIRE
19 BASE PERIOD.—

20 “(A) IN GENERAL.—If alcohol is produced
21 by a producer for less than the entire 3-year pe-
22 riod referred to in paragraph (2)(A), the aver-
23 age referred to in paragraph (2) shall be treat-
24 ed as being equal to 50 percent of the annual

1 productive capacity of such producer as of Sep-
2 tember 13, 1995.

3 “(B) PRODUCER MAY ESTABLISH HIGHER
4 AVERAGE PRODUCTION.—In the case of a pro-
5 ducer who produced alcohol during at least the
6 last 3 months of such 3-year period, subpara-
7 graph (A) shall be applied by substituting for
8 ‘50 percent’ the percentage established by such
9 producer to the satisfaction of the Secretary as
10 the percentage which such producer’s normal
11 alcohol production is of its productive capacity.

12 “(4) ACQUISITIONS AND DISPOSITIONS.—Rules
13 similar to the rules of subparagraphs (A) and (B) of
14 section 41(f)(3) shall apply for purposes of this sub-
15 section.”

16 (3) CONFORMING AMENDMENT.—Paragraph (1)
17 of section 40(g) is amended by striking “clauses (i)
18 and (ii)” and inserting “clauses (i), (ii), and (iii)”.

19 (c) REDUCTION OF CREDIT FOR ETHANOL BY REA-
20 SON OF CARBON DIOXIDE BYPRODUCT BENEFIT.—Sub-
21 section (h) of section 40 is amended—

22 (1) by striking “54 cents” each place it appears
23 and inserting “51 cents”, and

24 (2) by striking “40 cents” each place it appears
25 and inserting “38.25 cents”.

1 (d) CONFORMING REDUCTIONS OF OTHER INCEN-
2 TIVES FOR ETHANOL FUEL.—

3 (1) REPEAL OF REDUCED RATE ON ETHANOL
4 FUEL PRODUCED OTHER THAN FROM PETROLEUM
5 OR NATURAL GAS.—Subsection (b) of section 4041
6 is amended to read as follows:

7 “(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS
8 USE.—

9 “(1) IN GENERAL.—No tax shall be imposed by
10 subsection (a) or (d)(1) on liquids sold for use or
11 used in an off-highway business use.

12 “(2) TAX WHERE OTHER USE.—If a liquid on
13 which no tax was imposed by reason of paragraph
14 (1) is used otherwise than in an off-highway busi-
15 ness use, a tax shall be imposed by paragraph
16 (1)(B), (2)(B), or (3)(A)(ii) of subsection (a)
17 (whichever is appropriate) and by the corresponding
18 provision of subsection (d)(1) (if any).

19 “(3) OFF-HIGHWAY BUSINESS USE DEFINED.—
20 For purposes of this subsection, the term ‘off-high-
21 way business use’ has the meaning given to such
22 term by section 6421(e)(2); except that such term
23 shall not, for purposes of subsection (a)(1), include
24 use in a diesel-powered train.”

1 (2) REPEAL OF REDUCED RATE ON ETHANOL
2 FUEL PRODUCED FROM NATURAL GAS.—Subsection
3 (m) of section 4041 is amended—

4 (A) by striking “or ethanol” each place it
5 appears (including the heading of paragraph
6 (2)), and

7 (B) by striking “, ethanol, or other alco-
8 hol” in paragraph (2) and inserting “or other
9 alcohol (other than ethanol)”.

10 (e) CONFORMING AMENDMENTS TO EXCISE TAXES;
11 FUEL ALCOHOL TAXED IN SAME MANNER AS OTHER
12 MOTOR FUELS.—

13 (1) IN GENERAL.—Paragraph (1) of section
14 4083(a) (defining taxable fuel) is amended by strik-
15 ing “and” at the end of subparagraph (A), by strik-
16 ing the period at the end of subparagraph (B) and
17 inserting “, and”, and by adding at the end the fol-
18 lowing:

19 “(C) fuel alcohol.”

20 (2) FUEL ALCOHOL.—Subsection (a) of section
21 4083 is amended by adding at the end the following
22 new paragraph:

23 “(4) FUEL ALCOHOL.—The term ‘fuel alcohol’
24 means any alcohol (including ethanol and meth-
25 anol)—

1 “(A) which is produced other than from
2 petroleum, natural gas, or coal (including peat),
3 and

4 “(B) which is withdrawn from the distillery
5 where produced free of tax under chapter 51 by
6 reason of section 5181 or so much of section
7 5214(a)(1) as relates to fuel use.

8 Such term shall not include alcohol designated under
9 section 40(i).”

10 (3) RATE OF TAX.—Clause (i) of section
11 4081(a)(2)(A) is amended by inserting “or fuel alco-
12 hol” after “gasoline”.

13 (4) SPECIAL RULES FOR IMPOSITION OF TAX.—

14 (A) Paragraph (1) of section 4081(a) is
15 amended by adding at the end the following
16 new subparagraph:

17 “(C) SPECIAL RULES FOR FUEL ALCO-
18 HOL.—In the case of fuel alcohol—

19 “(i) the distillery where produced shall
20 be treated as a refinery, and

21 “(ii) subparagraph (B) shall be ap-
22 plied by including transfers by truck or rail
23 in excess of such minimum quantities as
24 the Secretary shall prescribe.”

1 (B) Paragraph (1) of section 4081(b) is
2 amended by inserting “(other than fuel alcohol
3 designated under section 40(i))” after “taxable
4 fuel”.

5 (5) REPEAL OF REDUCED RATES ON ALCOHOL
6 FUELS.—

7 (A) Section 4041 is amended by striking
8 subsection (k).

9 (B) Section 4081 is amended by striking
10 subsection (c).

11 (C) Section 4091 is amended by striking
12 subsection (c).

13 (6) CONFORMING AMENDMENTS.—

14 (A) Subsection (c) of section 40 is amend-
15 ed by striking all that follows “application of”
16 and inserting “the last sentence of section
17 4083(a)(4)”.

18 (B) Paragraph (4) of section 40(d) is
19 amended to read as follows:

20 “(4) VOLUME OF ALCOHOL.—For purposes of
21 determining under subsection (a) the number of gal-
22 lons of alcohol with respect to which a credit is al-
23 lowable under subsection (a), the volume of alcohol
24 shall include the volume of any denaturant (includ-
25 ing gasoline) which is added under any formulas ap-

1 proved by the Secretary to the extent that such de-
2 naturants do not exceed 5 percent of the volume of
3 such alcohol (including denaturants).”

4 (C) Paragraph (2) of section 4041(a) is
5 amended by adding at the end the following:
6 “No tax shall be imposed by this paragraph on
7 the sale or use of any liquid if tax was imposed
8 on such liquid under section 4081 and the tax
9 thereon was not credited or refunded.”

10 (D) Section 6427 is amended by striking
11 subsection (f).

12 (E) Subsection (i) of section 6427 is
13 amended by striking paragraph (3).

14 (F) Paragraph (2) of section 6427(k) is
15 amended by striking “(3)”.

16 (G)(i) Paragraph (1) of section 6427(l) is
17 amended by striking “or” at the end of sub-
18 paragraph (A), by redesignating subparagraph
19 (B) as subparagraph (C), and by inserting after
20 subparagraph (A) the following new subpara-
21 graph:

22 “(B) any fuel alcohol (as defined in section
23 4083) on which tax has been imposed by sec-
24 tion 4081, or”.

1 (ii) Paragraph (2) of section 6427(l) is
2 amended by striking “and” at the end of sub-
3 paragraph (A), by redesignating subparagraph
4 (B) as subparagraph (C), and by inserting after
5 subparagraph (A) the following new subpara-
6 graph:

7 “(B) in the case of fuel alcohol (as so de-
8 fined), any use which is exempt from the tax
9 imposed by section 4041(a)(2) other than by
10 reason of a prior imposition of tax, and”.

11 (iii) The heading of subsection (l) of sec-
12 tion 6427 is amended by inserting “, FUEL AL-
13 COHOL,” after “DIESEL FUEL”.

14 (H) Sections 9503(b)(1)(E) and
15 9508(b)(2) are each amended by striking “and
16 kerosene” and inserting “kerosene, and fuel al-
17 cohol”.

18 (I) Section 9502 is amended by striking
19 subsection (e) and by redesignating subsection
20 (f) as subsection (e).

21 (J) Subsection (e) of section 9502 (as re-
22 designated by subparagraph (I)) is amended by
23 striking paragraph (2) and by redesignating
24 paragraph (3) as paragraph (2).

1 (K) Subsection (b) of section 9503 is
2 amended by striking paragraph (5).

3 (L) Paragraph (3) of section 9503(f) is
4 amended to read as follows:

5 “(3) PARTIALLY EXEMPT METHANOL OR ETHA-
6 NOL FUEL.—In the case of a rate of tax determined
7 under section 4041(m), the Highway Trust Fund fi-
8 nancing rate is the excess (if any) of the rate so de-
9 termined over—

10 “(A) 5.55 cents per gallon after September
11 30, 1993, and before October 1, 1995, and

12 “(B) 4.3 cents per gallon after September
13 30, 1995.”

14 (f) INCREASE IN SMALL ETHANOL PRODUCER CRED-
15 IT.—Subparagraph (A) of section 40(b)(4) is amended by
16 striking “10 cents” and inserting “13 cents”.

17 (g) EFFECTIVE DATE.—

18 (1) AMENDMENTS RELATING TO CREDIT.—The
19 amendments made by subsections (a), (b), (c), and
20 (f) shall apply to alcohol produced after December
21 31, 1995, in taxable years ending after such date.

22 (2) AMENDMENTS RELATING TO EXCISE
23 TAXES.—The amendments made by subsections (d)
24 and (e) shall take effect on January 1, 1996.

1 (3) STILLS PLACED IN SERVICE PURSUANT TO
2 BINDING CONTRACTS.—For purposes of subsections
3 (d)(1)(A)(iii) and (i)(3)(A) of section 40 of the In-
4 ternal Revenue Code of 1986, as amended by this
5 section, a still (or other distilling apparatus) shall be
6 treated as placed in service before September 14,
7 1995, if such still (or other apparatus)—

8 (A) is constructed or acquired by the tax-
9 payer pursuant to a written contract which was
10 binding on September 13, 1995, and at all
11 times thereafter before such construction or ac-
12 quisition, and

13 (B) is placed in service before September
14 14, 1996.

15 (h) FLOOR STOCK TAXES.—

16 (1) IMPOSITION OF TAX.—In the case of fuel al-
17 cohol which is held on January 1, 1996, by any per-
18 son, there is hereby imposed a floor stocks tax of
19 18.4 cents per gallon.

20 (2) LIABILITY FOR TAX AND METHOD OF PAY-
21 MENT.—

22 (A) LIABILITY FOR TAX.—A person hold-
23 ing fuel alcohol on January 1, 1996, to which
24 the tax imposed by paragraph (1) applies shall
25 be liable for such tax.

1 (B) METHOD OF PAYMENT.—The tax im-
2 posed by paragraph (1) shall be paid in such
3 manner as the Secretary shall prescribe.

4 (C) TIME FOR PAYMENT.—The tax im-
5 posed by paragraph (1) shall be paid on or be-
6 fore June 30, 1996.

7 (3) DEFINITIONS.—For purposes of this sub-
8 section—

9 (A) FUEL ALCOHOL.—The term “fuel alco-
10 hol” has the meaning given such term by sec-
11 tion 4083 of the Internal Revenue Code of
12 1986, as amended by this section.

13 (B) HELD BY A PERSON.—Fuel alcohol
14 shall be considered as “held by a person” if
15 title thereto has passed to such person (whether
16 or not delivery to the person has been made).

17 (C) SECRETARY.—The term “Secretary”
18 means the Secretary of the Treasury or his del-
19 egate.

20 (4) EXCEPTION FOR EXEMPT USES.—The tax
21 imposed by paragraph (1) shall not apply to fuel al-
22 cohol held by any person exclusively for any use to
23 the extent a credit or refund of the tax imposed by
24 section 4081 of the Internal Revenue Code of 1986
25 is allowable for such use.

1 (5) EXCEPTION FOR FUEL HELD IN VEHICLE
2 TANK.—No tax shall be imposed by paragraph (1)
3 on fuel alcohol held in the tank of a motor vehicle
4 or motorboat.

5 (6) EXCEPTION FOR CERTAIN AMOUNTS OF
6 FUEL.—

7 (A) IN GENERAL.—No tax shall be im-
8 posed by paragraph (1) on fuel alcohol held on
9 January 1, 1996, by any person if the aggre-
10 gate amount of fuel alcohol held by such person
11 on such date does not exceed 2,000 gallons.
12 The preceding sentence shall apply only if such
13 person submits to the Secretary (at the time
14 and in the manner required by the Secretary)
15 such information as the Secretary shall require
16 for purposes of this paragraph.

17 (B) EXEMPT FUEL.—For purposes of sub-
18 paragraph (A), there shall not be taken into ac-
19 count fuel held by any person which is exempt
20 from the tax imposed by paragraph (1) by rea-
21 son of paragraph (4) or (5).

22 (C) CONTROLLED GROUPS.—For purposes
23 of this paragraph—

24 (i) CORPORATIONS.—

1 (I) IN GENERAL.—All persons
2 treated as a controlled group shall be
3 treated as 1 person.

4 (II) CONTROLLED GROUP.—The
5 term “controlled group” has the
6 meaning given to such term by sub-
7 section (a) of section 1563 of such
8 Code; except that for such purposes
9 the phrase “more than 50 percent”
10 shall be substituted for the phrase “at
11 least 80 percent” each place it ap-
12 pears in such subsection.

13 (ii) NONINCORPORATED PERSONS
14 UNDER COMMON CONTROL.—Under regula-
15 tions prescribed by the Secretary, prin-
16 ciples similar to the principles of clause (i)
17 shall apply to a group of persons under
18 common control where 1 or more of such
19 persons is not a corporation.

20 (7) OTHER LAWS APPLICABLE.—All provisions
21 of law, including penalties, applicable with respect to
22 the taxes imposed by section 4081 of such Code
23 shall, insofar as applicable and not inconsistent with
24 the provisions of this subsection, apply with respect
25 to the floor stock taxes imposed by paragraph (1) to

1 the same extent as if such taxes were imposed by
2 such section 4081.

3 **SEC. 13623. EXCLUSION FOR ENERGY CONSERVATION SUB-**
4 **SIDIES LIMITED TO SUBSIDIES WITH RE-**
5 **SPECT TO DWELLING UNITS.**

6 (a) IN GENERAL.—Paragraph (1) of section 136(c)
7 (defining energy conservation measure) is amended by
8 striking “energy demand—” and all that follows and in-
9 serting “energy demand with respect to a dwelling unit.”

10 (b) CONFORMING AMENDMENTS.—

11 (1) Subsection (a) of section 136 is amended to
12 read as follows:

13 “(a) EXCLUSION.—Gross income shall not include
14 the value of any subsidy provided (directly or indirectly)
15 by a public utility to a customer for the purchase or instal-
16 lation of any energy conservation measure.”

17 (2) Paragraph (2) of section 136(c) is amend-
18 ed—

19 (A) by striking subparagraph (A) and by
20 redesignating subparagraphs (B) and (C) as
21 subparagraphs (A) and (B), respectively, and

22 (B) by striking “AND SPECIAL RULES” in
23 the paragraph heading.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to amounts received after Septem-

ber 13, 1995, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter.

**PART V—REFORMS RELATING TO
NONRECOGNITION PROVISIONS**

**SEC. 13626. BASIS ADJUSTMENT TO PROPERTY HELD BY
CORPORATION WHERE STOCK IN CORPORATION IS REPLACEMENT PROPERTY UNDER
INVOLUNTARY CONVERSION RULES.**

(a) IN GENERAL.—Subsection (b) of section 1033 is amended to read as follows:

“(b) BASIS OF PROPERTY ACQUIRED THROUGH INVOLUNTARY CONVERSION.—

“(1) CONVERSIONS DESCRIBED IN SUBSECTION (a)(1).—If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1), the basis shall be the same as in the case of the property so converted—

“(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

1 “(B) increased in the amount of gain or
2 decreased in the amount of loss to the taxpayer
3 recognized upon such conversion under the law
4 applicable to the year in which such conversion
5 was made.

6 “(2) CONVERSIONS DESCRIBED IN SUBSECTION
7 (a)(2).—In the case of property purchased by the
8 taxpayer in a transaction described in subsection
9 (a)(2) which resulted in the nonrecognition of any
10 part of the gain realized as the result of a compul-
11 sory or involuntary conversion, the basis shall be the
12 cost of such property decreased in the amount of the
13 gain not so recognized; and if the property pur-
14 chased consists of more than 1 piece of property, the
15 basis determined under this sentence shall be allo-
16 cated to the purchased properties in proportion to
17 their respective costs.

18 “(3) PROPERTY HELD BY CORPORATION THE
19 STOCK OF WHICH IS REPLACEMENT PROPERTY.—

20 “(A) IN GENERAL.—If the basis of stock
21 in a corporation is decreased under paragraph
22 (2), an amount equal to such decrease shall also
23 be applied to reduce the basis of property held
24 by the corporation at the time the taxpayer ac-

1 quired control (as defined in subsection
2 (a)(2)(E)) of such corporation.

3 “(B) LIMITATION.—Subparagraph (A)
4 shall not apply to the extent that it would (but
5 for this subparagraph) require a reduction in
6 the aggregate adjusted bases of the property of
7 the corporation below the taxpayer’s adjusted
8 basis of the stock in the corporation (deter-
9 mined immediately after such basis is decreased
10 under paragraph (2)).

11 “(C) ALLOCATION OF BASIS REDUCTION.—
12 The decrease required under subparagraph (A)
13 shall be allocated—

14 “(i) first to property which is similar
15 or related in service or use to the converted
16 property,

17 “(ii) second to depreciable property
18 (as defined in section 1017(b)(3)(B)) not
19 described in clause (i), and

20 “(iii) then to other property.

21 “(D) SPECIAL RULES.—

22 “(i) REDUCTION NOT TO EXCEED AD-
23 JUSTED BASIS OF PROPERTY.—No reduc-
24 tion in the basis of any property under this
25 paragraph shall exceed the adjusted basis

1 of such property (determined without re-
2 gard to such reduction).

3 “(ii) ALLOCATION OF REDUCTION
4 AMONG PROPERTIES.—If more than 1
5 property is described in a clause of sub-
6 paragraph (C), the reduction under this
7 paragraph shall be allocated among such
8 property in proportion to the adjusted
9 bases of such property (determined without
10 regard to such reduction).”

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to involuntary conversions occur-
13 ring after September 13, 1995.

14 **SEC. 13627. EXPANSION OF REQUIREMENT THAT INVOLUN-**
15 **TARILY CONVERTED PROPERTY BE RE-**
16 **PLACED WITH PROPERTY ACQUIRED FROM**
17 **AN UNRELATED PERSON.**

18 (a) IN GENERAL.—Subsection (i) of section 1033 is
19 amended to read as follows:

20 “(i) REPLACEMENT PROPERTY MUST BE ACQUIRED
21 FROM UNRELATED PERSON IN CERTAIN CASES.—

22 “(1) IN GENERAL.—If the property which is in-
23 voluntarily converted is held by a taxpayer to which
24 this subsection applies, subsection (a) shall not apply
25 if the replacement property or stock is acquired from

1 a related person. The preceding sentence shall not
2 apply to the extent that the related person acquired
3 the replacement property or stock from an unrelated
4 person during the period applicable under subsection
5 (a)(2)(B).

6 “(2) TAXPAYERS TO WHICH SUBSECTION AP-
7 PLIES.—This subsection shall apply to—

8 “(A) a C corporation,

9 “(B) a partnership in which 1 or more C
10 corporations own, directly or indirectly (deter-
11 mined in accordance with section 707(b)(3)),
12 more than 50 percent of the capital interest, or
13 profits interest, in such partnership at the time
14 of the involuntary conversion, and

15 “(C) any other taxpayer if, with respect to
16 property which is involuntarily converted during
17 the taxable year, the aggregate of the amount
18 of realized gain on such property on which
19 there is realized gain exceeds \$100,000.

20 In the case of a partnership, subparagraph (C) shall
21 apply with respect to the partnership and with re-
22 spect to each partner. A similar rule shall apply in
23 the case of an S corporation and its shareholders.

24 “(3) RELATED PERSON.—For purposes of this
25 subsection, a person is related to another person if

1 the person bears a relationship to the other person
2 described in section 267(b) or 707(b)(1).”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to involuntary conversions occur-
5 ring after September 13, 1995.

6 **SEC. 13628. NO ROLLOVER OR EXCLUSION OF GAIN ON**
7 **SALE OF PRINCIPAL RESIDENCE WHICH IS**
8 **ATTRIBUTABLE TO DEPRECIATION DEDUC-**
9 **TIONS.**

10 (a) IN GENERAL.—Subsection (d) of section 1034
11 (relating to limitations) is amended by adding at the end
12 the following new paragraph:

13 “(3) RECOGNITION OF GAIN ATTRIBUTABLE TO
14 DEPRECIATION.—Subsection (a) shall not apply to
15 so much of the gain from the sale of any residence
16 as does not exceed the portion of the depreciation
17 adjustments (as defined in section 1250(b)(3)) at-
18 tributable to periods after December 31, 1995, in re-
19 spect of such residence.”

20 (b) COMPARABLE TREATMENT UNDER 1-TIME EX-
21 CLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE.—
22 Subsection (d) of section 121 is amended by adding at
23 the end the following new paragraph:

24 “(10) RECOGNITION OF GAIN ATTRIBUTABLE
25 TO DEPRECIATION.—

1 “(A) IN GENERAL.—Subsection (a) shall
2 not apply to so much of the gain from the sale
3 of any property as does not exceed the portion
4 of the depreciation adjustments (as defined in
5 section 1250(b)(3)) attributable to periods after
6 December 31, 1995, in respect of such prop-
7 erty.

8 “(B) COORDINATION WITH PARAGRAPH
9 (5).—If this section does not apply to gain at-
10 tributable to a portion of a residence by reason
11 of paragraph (5), subparagraph (A) shall not
12 apply to depreciation adjustments attributable
13 to such portion.”

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years ending after De-
16 cember 31, 1995.

17 **SEC. 13629. NONRECOGNITION OF GAIN ON SALE OF PRIN-**
18 **CIPAL RESIDENCE BY NONCITIZENS LIMITED**
19 **TO NEW RESIDENCES LOCATED IN THE UNIT-**
20 **ED STATES.**

21 (a) IN GENERAL.—Subsection (d) of section 1034
22 (relating to limitations) (as amended by section 13628)
23 is amended by adding at the end the following new para-
24 graph:

1 “(4) NEW RESIDENCE MUST BE LOCATED IN
2 UNITED STATES IN CERTAIN CASES.—

3 “(A) IN GENERAL.—In the case of a sale
4 of an old residence by a taxpayer—

5 “(i) who is not a citizen of the United
6 States at the time of sale, and

7 “(ii) who is not a citizen or resident
8 of the United States on the date which is
9 2 years after the date of the sale of such
10 old residence,

11 subsection (a) shall apply only if the new resi-
12 dence is located in the United States or a pos-
13 session of the United States.

14 “(B) PROPERTY HELD JOINTLY BY HUS-
15 BAND AND WIFE.—Subparagraph (A) shall not
16 apply if—

17 “(i) the old residence is held by a hus-
18 band and wife as joint tenants, tenants by
19 the entirety, or community property,

20 “(ii) such husband and wife make a
21 joint return for the taxable year of the sale
22 or exchange, and

23 “(iii) one spouse is a citizen of the
24 United States at the time of sale.”

25 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendment made by
2 this section shall apply to sales of old residences
3 after December 31, 1995.

4 (2) TREATMENT OF PURCHASES OF NEW RESI-
5 DENCES.—The amendment made by this section
6 shall not apply to new residences—

7 (A) purchased before September 13, 1995,
8 or

9 (B) purchased on or after such date pursu-
10 ant to a binding contract in effect on such date
11 and at all times thereafter before such pur-
12 chase.

13 (3) CERTAIN RULES TO APPLY.—For purposes
14 of this subsection, the rules of paragraphs (1), (2),
15 and (3) of section 1034(c) of the Internal Revenue
16 Code of 1986 shall apply.

17 **PART VI—REFORMS RELATING TO GAMING**
18 **ACTIVITIES**

19 **SEC. 13631. TREATMENT OF INDIAN GAMING ACTIVITIES**
20 **UNDER UNRELATED BUSINESS INCOME TAX.**

21 (a) IN GENERAL.—Paragraph (2) of section 511(a)
22 (relating to imposition of tax on unrelated business income
23 of charitable, etc., organizations) is amended by adding
24 at the end the following new subparagraph:

1 “(C) GAMING ACTIVITIES OF INDIAN
2 TRIBES.—

3 “(i) IN GENERAL.—The tax imposed
4 by paragraph (1) shall apply to any Indian
5 tribal organization; except that, notwith-
6 standing any other provision of this part,
7 in the case of such an organization, the
8 term ‘unrelated trade or business’ means
9 only a trade or business of conducting any
10 class II or class III gaming activity (as de-
11 fined in section 4 of the Indian Gaming
12 Regulatory Act (25 U.S.C. 2701 et seq.),
13 as in effect on the date of the enactment
14 of this subparagraph), including a gaming
15 activity described in section 513(a)(1).

16 “(ii) INDIAN TRIBAL ORGANIZA-
17 TION.—For purposes of clause (i), the
18 term ‘Indian tribal organization’ means
19 any Indian tribe and any organization
20 which is immune or exempt from tax under
21 this subtitle solely by reason of being
22 owned or controlled by an Indian tribe.”

23 (b) TREATMENT OF AMOUNTS PAID FOR CHARI-
24 TABLE PURPOSES, ETC., BY REASON OF STATE OR FED-

1 ERAL LAW.—Subsection (b) of section 512 is amended by
2 adding at the end the following new paragraph:

3 “(17) In the case of an Indian tribal organiza-
4 tion (as defined in section 511(a)(3)), if, by reason
5 of State or Federal law or of a contract with the
6 United States or with any State or political subdivi-
7 sion thereof, such organization is required to use
8 any portion of the net proceeds of any gaming activ-
9 ity for specified purposes, the deduction for so using
10 such proceeds shall be treated as allowed under sec-
11 tion 170 for purposes of applying paragraph (10).
12 The preceding sentence shall not apply to such pro-
13 ceeds which are paid as general revenues to the
14 United States or to any State or political subdivision
15 thereof.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on January 1, 1996.

18 (d) STUDY OF GAMBLING CONDUCTED BY TAX-EX-
19 EMPT ORGANIZATIONS.—The Secretary of the Treasury or
20 his delegate shall conduct a study on the nature and ex-
21 tent of gaming activities conducted by organizations ex-
22 empt from tax under section 501(a) of the Internal Reve-
23 nue Code of 1986, including an examination of—

24 (1) the types of gaming activities (including
25 bingo, pull tabs, and casino nights) engaged in by

1 charities and other nonprofit organizations and the
2 frequency of such activities;

3 (2) the dollar volume of such gaming activities;

4 (3) the nature and extent of the involvement of
5 for-profit entities and private parties in the manage-
6 ment or operation of gaming activities of such orga-
7 nizations;

8 (4) competition between taxable gaming activi-
9 ties and gaming activities that are exempt from Fed-
10 eral income tax; and

11 (5) an analysis of the present law tax treatment
12 of gaming activities of tax-exempt organizations.

13 The study may include any recommendations for change,
14 including examination of the South End decision and the
15 special exception for bingo games. The Secretary shall
16 submit the results of the study to the Committee on Ways
17 and Means of the House of Representatives and the Com-
18 mittee on Finance of the Senate not later than July 1,
19 1996.

20 **SEC. 13632. REPEAL OF TARGETED EXEMPTION FROM TAX**
21 **ON UNRELATED TRADE OR BUSINESS IN-**
22 **COME FROM GAMBLING IN CERTAIN STATES.**

23 (a) IN GENERAL.—Section 311 of the Tax Reform
24 Act of 1984 is hereby repealed.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to games of chance conducted
3 after December 31, 1995, in taxable years ending after
4 such date.

5 **SEC. 13633. EXTENSION OF WITHHOLDING TO CERTAIN**
6 **GAMBLING WINNINGS.**

7 (a) REPEAL OF EXEMPTION FOR BINGO AND
8 KENO.—Paragraph (5) of section 3402(q) is amended to
9 read as follows:

10 “(5) EXEMPTION FOR SLOT MACHINES.—The
11 tax imposed under paragraph (1) shall not apply to
12 winnings from a slot machine.”

13 (b) THRESHOLD AMOUNT.—Paragraph (3) of section
14 3402(q) is amended—

15 (1) by striking “(B) and (C)” in subparagraph
16 (A) and inserting “(B), (C), and (D)”, and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(D) BINGO AND KENO.—Proceeds of
20 more than \$5,000 from a wager placed in a
21 bingo or keno game.”

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on January 1, 1996.

1 **PART VII—OTHER REFORMS**

2 **SEC. 13636. SUNSET OF LOW-INCOME HOUSING CREDIT.**

3 (a) REPEAL OF REALLOCATION OF UNUSED CRED-
4 ITS AMONG STATES.—Subparagraph (D) of section
5 42(h)(3) is amended by adding at the end the following
6 new clause:

7 “(v) TERMINATION.—No amount may
8 be allocated under this paragraph for any
9 calendar year after 1995.”

10 (b) TERMINATION.—Section 42 is amended by add-
11 ing at the end the following new subsection:

12 “(o) TERMINATION.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2)—

15 “(A) clause (i) of subsection (h)(3)(C)
16 shall not apply to any amount allocated after
17 December 31, 1997, and

18 “(B) subsection (h)(4) shall not apply to
19 any building placed in service after such date.

20 “(2) EXCEPTION FOR BOND-FINANCED BUILD-
21 INGS IN PROGRESS.—For purposes of paragraph
22 (1)(B), a building shall be treated as placed in serv-
23 ice before January 1, 1998, if—

24 “(A) the bonds with respect to such build-
25 ing are issued before such date,

1 “(B) the taxpayer’s basis in the project (of
2 which the building is a part) as of December
3 31, 1997, is more than 10 percent of the tax-
4 payer’s reasonably expected basis in such
5 project as of December 31, 1999, and

6 “(C) such building is placed in service be-
7 fore January 1, 2000.”

8 **SEC. 13637. REPEAL OF CREDIT FOR CONTRIBUTIONS TO**
9 **COMMUNITY DEVELOPMENT CORPORATIONS.**

10 (a) IN GENERAL.—Section 13311 of the Revenue
11 Reconciliation Act of 1993 (relating to credit for contribu-
12 tions to certain community development corporations) is
13 hereby repealed.

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall apply to contributions made after the
16 date of the enactment of this Act (other than contributions
17 made pursuant to a legally enforceable agreement which
18 is effect on the date of the enactment of this Act).

19 **SEC. 13638. REPEAL OF DIESEL FUEL TAX REBATE TO PUR-**
20 **CHASERS OF DIESEL-POWERED AUTO-**
21 **MOBILES AND LIGHT TRUCKS.**

22 (a) IN GENERAL.—Section 6427 is amended by strik-
23 ing subsection (g).

24 (b) CONFORMING AMENDMENTS.—

1 (1) Paragraph (3) of section 34(a) is amended
2 to read as follows:

3 “(3) under section 6427 with respect to fuels
4 used for nontaxable purposes or resold during the
5 taxable year (determined without regard to section
6 6427(k)).”

7 (2) Paragraphs (1) and (2)(A) of section
8 6427(i) are each amended—

9 (A) by striking “(g),” and

10 (B) by striking “(or a qualified diesel pow-
11 ered highway vehicle purchased)” each place it
12 appears.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to vehicles purchased after Decem-
15 ber 31, 1995.

16 **SEC. 13639. APPLICATION OF FAILURE-TO-PAY PENALTY TO**
17 **SUBSTITUTE RETURNS.**

18 (a) GENERAL RULE.—Section 6651 (relating to fail-
19 ure to file tax return or to pay tax) is amended by adding
20 at the end the following new subsection:

21 “(g) TREATMENT OF RETURNS PREPARED BY SEC-
22 RETARY UNDER SECTION 6020(b).—In the case of any
23 return made by the Secretary under section 6020(b)—

1 “(1) such return shall be disregarded for pur-
 2 poses of determining the amount of the addition
 3 under paragraph (1) of subsection (a), but

4 “(2) such return shall be treated as the return
 5 filed by the taxpayer for purposes of determining the
 6 amount of the addition under paragraphs (2) and
 7 (3) of subsection (a).”

8 (b) EFFECTIVE DATE.—The amendment made by
 9 subsection (a) shall apply in the case of any return the
 10 due date for which (determined without regard to exten-
 11 sions) is after the date of the enactment of this Act.

12 **SEC. 13640. REPEAL OF SPECIAL RULE FOR RENTAL USE OF**
 13 **VACATION HOMES, ETC., FOR LESS THAN 15**
 14 **DAYS.**

15 (a) IN GENERAL.—Section 280A (relating to dis-
 16 allowance of certain expenses in connection with business
 17 use of home, rental of vacation homes, etc.) is amended
 18 by striking subsection (g).

19 (b) NO BASIS REDUCTION UNLESS DEPRECIATION
 20 CLAIMED.—Section 1016 is amended by redesignating
 21 subsection (e) as subsection (f) and by inserting after sub-
 22 section (d) the following new subsection:

23 “(e) SPECIAL RULE WHERE RENTAL USE OF VACA-
 24 TION HOME, ETC., FOR LESS THAN 15 DAYS.—If a dwell-
 25 ing unit is used during the taxable year by the taxpayer

1 as a residence and such dwelling unit is actually rented
2 for less than 15 days during the taxable year, the reduc-
3 tion under subsection (a)(2) by reason of such rental use
4 in any taxable year beginning after December 31, 1995,
5 shall not exceed the depreciation deduction allowed for
6 such rental use.”

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 1995.

10 **SEC. 13641. ELECTION TO CEASE STATUS AS QUALIFIED**
11 **SCHOLARSHIP FUNDING CORPORATION.**

12 (a) IN GENERAL.—Subsection (d) of section 150 (re-
13 lating to definitions and special rules) is amended by add-
14 ing at the end thereof the following new paragraph:

15 “(3) ELECTION TO CEASE STATUS AS QUALI-
16 FIED SCHOLARSHIP FUNDING CORPORATION.—

17 “(A) IN GENERAL.—Any qualified scholar-
18 ship funding bond, and qualified student loan
19 bond, outstanding on the date of the issuer’s
20 election under this paragraph (and any bond
21 (or series of bonds) issued to refund such a
22 bond) shall not fail to be a tax-exempt bond
23 solely because the issuer ceases to be described
24 in subparagraphs (A) and (B) of paragraph (2)

1 if the issuer meets the requirements of subpara-
2 graphs (B) and (C) of this paragraph.

3 “(B) ASSETS AND LIABILITIES OF ISSUER
4 TRANSFERRED TO TAXABLE SUBSIDIARY.—The
5 requirements of this subparagraph are met by
6 an issuer if—

7 “(i) all of the student loan notes of
8 the issuer and other assets pledged to se-
9 cure the repayment of qualified scholarship
10 funding bond indebtedness of the issuer
11 are transferred to another corporation
12 within a reasonable period after the elec-
13 tion is made under this paragraph;

14 “(ii) such transferee corporation as-
15 sumes or otherwise provides for the pay-
16 ment of all of the qualified scholarship
17 funding bond indebtedness of the issuer
18 within a reasonable period after the elec-
19 tion is made under this paragraph;

20 “(iii) to the extent permitted by law,
21 such transferee corporation assumes all of
22 the responsibilities, and succeeds to all of
23 the rights, of the issuer under the issuer’s
24 agreements with the Secretary of Edu-
25 cation in respect of student loans;

1 “(iv) immediately after such transfer,
2 the issuer, together with any other issuer
3 which has made an election under this
4 paragraph in respect of such transferee,
5 hold all of the senior stock in such trans-
6 feree corporation; and

7 “(v) such transferee corporation is not
8 exempt from tax under this chapter.

9 “(C) ISSUER TO OPERATE AS INDEPEND-
10 ENT ORGANIZATION DESCRIBED IN SECTION
11 501(c)(3).—The requirements of this subpara-
12 graph are met by an issuer if, within a reason-
13 able period after the transfer referred to in sub-
14 paragraph (B)—

15 “(i) the issuer is described in section
16 501(c)(3) and exempt from tax under sec-
17 tion 501(a);

18 “(ii) the issuer no longer is described
19 in subparagraphs (A) and (B) of para-
20 graph (2); and

21 “(iii) at least 80 percent of the mem-
22 bers of the board of directors of the issuer
23 are independent members.

1 “(D) SENIOR STOCK.—For purposes of
2 this paragraph, the term ‘senior stock’ means
3 stock—

4 “(i) which participates pro rata and
5 fully in the equity value of the corporation
6 with all other common stock of the cor-
7 poration but which has the right to pay-
8 ment of liquidation proceeds prior to pay-
9 ment of liquidation proceeds in respect of
10 other common stock of the corporation;

11 “(ii) which has a fixed right upon liq-
12 uidation and upon redemption to an
13 amount equal to the greater of—

14 “(I) the fair market value of such
15 stock on the date of liquidation or re-
16 demption (whichever is applicable); or

17 “(II) the fair market value of all
18 assets transferred in exchange for
19 such stock and reduced by the amount
20 of all liabilities of the corporation
21 which has made an election under this
22 paragraph assumed by the transferee
23 corporation in such transfer;

24 “(iii) the holder of which has the right
25 to require the transferee corporation to re-

1 deem on a date that is not later than 10
2 years after the date on which an election
3 under this paragraph was made and pursu-
4 ant to such election such stock was issued;
5 and

6 “(iv) in respect of which, during the
7 time such stock is outstanding, there is not
8 outstanding any equity interest in the cor-
9 poration having any liquidation, redemp-
10 tion or dividend rights in the corporation
11 which are superior to those of such stock.

12 “(E) INDEPENDENT MEMBER.—The term
13 ‘independent member’ means a member of the
14 board of directors of the issuer who (except for
15 services as a member of such board) receives no
16 compensation directly or indirectly—

17 “(i) for services performed in connec-
18 tion with such transferee corporation, or

19 “(ii) for services as a member of the
20 board of directors or as an officer of such
21 transferee corporation.

22 For purposes of clause (ii), the term ‘officer’ in-
23 cludes any individual having powers or respon-
24 sibilities similar to those of officers.

1 “(F) COORDINATION WITH CERTAIN PRI-
2 VATE FOUNDATION TAXES.—For purposes of
3 sections 4942 (relating to the excise tax on a
4 failure to distribute income) and 4943 (relating
5 to the excise tax on excess business holdings),
6 the transferee corporation referred to in sub-
7 paragraph (B) shall be treated as a functionally
8 related business (within the meaning of section
9 4942(j)(4)) with respect to the issuer during
10 the period commencing with the date on which
11 an election is made under this paragraph and
12 ending on the date that is the earlier of—

13 “(i) the last day of the last taxable
14 year for which more than 50 percent of the
15 gross income of such transferee corpora-
16 tion is derived from, or more than 50 per-
17 cent of the assets (by value) of such trans-
18 feree corporation consists of, student loan
19 notes incurred under the Higher Education
20 Act of 1965; or

21 “(ii) the last day of the taxable year
22 of the issuer during which occurs the date
23 which is 10 years after the date on which
24 the election under this paragraph is made.

1 “(G) ELECTION.—An election under this
2 paragraph may be revoked only with the con-
3 sent of the Secretary.”

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall take effect on the date of the enactment
6 of this Act.

7 **SEC. 13642. CERTAIN AMOUNTS DERIVED FROM FOREIGN**
8 **CORPORATIONS TREATED AS UNRELATED**
9 **BUSINESS TAXABLE INCOME.**

10 (a) GENERAL RULE.—Subsection (b) of section 512
11 (relating to modifications) is amended by adding at the
12 end thereof the following new paragraph:

13 “(18) TREATMENT OF CERTAIN AMOUNTS DE-
14 RIVED FROM FOREIGN CORPORATIONS.—

15 “(A) IN GENERAL.—Notwithstanding para-
16 graph (1), any amount included in gross income
17 under section 951(a)(1)(A) shall be included as
18 an item of gross income derived from an unre-
19 lated trade or business to the extent the
20 amount so included is attributable to insurance
21 income (as defined in section 953) which, if de-
22 rived directly by the organization, would be
23 treated as gross income from an unrelated
24 trade or business. There shall be allowed all de-
25 ductions directly connected with amounts in-

1 cluded in gross income under the preceding sen-
2 tence.

3 “(B) EXCEPTION.—Subparagraph (A)
4 shall not apply to income attributable to a pol-
5 icy of insurance or reinsurance with respect to
6 which the person (directly or indirectly) insured
7 is—

8 “(i) such organization,

9 “(ii) an affiliate of such organization
10 which is exempt from tax under section
11 501(a), or

12 “(iii) a director, officer, or employee
13 of such organization or affiliate but only if
14 the insurance covers solely risks associated
15 with the performance of services for the
16 benefit of such organization or affiliate.

17 “(C) REGULATIONS.—The Secretary shall
18 prescribe such regulations as may be necessary
19 or appropriate to carry out the purposes of this
20 paragraph, including regulations for the appli-
21 cation of this paragraph in the case of income
22 paid through 1 or more entities or between 2 or
23 more chains of entities.”

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply to amounts included in gross in-

1 come in any taxable year beginning after December 31,
2 1995.

3 **PART VIII—EXCISE TAX ON AMOUNTS OF**
4 **PRIVATE EXCESS BENEFITS**

5 **SEC. 13646. EXCISE TAXES FOR FAILURE BY CERTAIN**
6 **CHARITABLE ORGANIZATIONS TO MEET CER-**
7 **TAIN QUALIFICATION REQUIREMENTS.**

8 (a) IN GENERAL.—Chapter 42 (relating to private
9 foundations and certain other tax-exempt organizations)
10 is amended by redesignating subchapter D as subchapter
11 E and by inserting after subchapter C the following new
12 subchapter:

13 **“Subchapter D—Failure By Certain**
14 **Charitable Organizations To**
15 **Meet Certain Qualification Re-**
16 **quirements**

“Sec. 4958. Taxes on excess benefit transactions.

17 **“SEC. 4958. TAXES ON EXCESS BENEFIT TRANSACTIONS.**

18 “(a) INITIAL TAXES.—

19 “(1) ON THE DISQUALIFIED PERSON.—There is
20 hereby imposed on each excess benefit transaction a
21 tax equal to 25 percent of the excess benefit. The
22 tax imposed by this paragraph shall be paid by any
23 disqualified person referred to in subsection (f)(1)
24 with respect to such transaction.

1 “(2) ON THE MANAGEMENT.—In any case in
2 which a tax is imposed by paragraph (1), there is
3 hereby imposed on the participation of any organiza-
4 tion manager in the excess benefit transaction,
5 knowing that it is such a transaction, a tax equal to
6 10 percent of the excess benefit, unless such partici-
7 pation is not willful and is due to reasonable cause.
8 The tax imposed by this paragraph shall be paid by
9 any organization manager who participated in the
10 excess benefit transaction.

11 “(b) ADDITIONAL TAX ON THE DISQUALIFIED PER-
12 SON.—In any case in which an initial tax is imposed by
13 subsection (a)(1) on an excess benefit transaction and the
14 excess benefit involved in such transaction is not corrected
15 within the taxable period, there is hereby imposed a tax
16 equal to 200 percent of the excess benefit involved. The
17 tax imposed by this subsection shall be paid by any dis-
18 qualified person referred to in subsection (f)(1) with re-
19 spect to such transaction.

20 “(c) EXCESS BENEFIT TRANSACTION; EXCESS BEN-
21 EFIT.—For purposes of this section—

22 “(1) EXCESS BENEFIT TRANSACTION.—

23 “(A) IN GENERAL.—The term ‘excess ben-
24 efit transaction’ means any transaction in
25 which an economic benefit is provided by an ap-

1 plicable tax-exempt organization directly or in-
2 directly to or for the use of any disqualified
3 person if the value of the economic benefit pro-
4 vided exceeds the value of the consideration (in-
5 cluding the performance of services) received
6 for providing such benefit. For purposes of the
7 preceding sentence, an economic benefit shall
8 not be treated as consideration for the perform-
9 ance of services unless such organization clearly
10 indicated its intent to so treat such benefit.

11 “(B) EXCESS BENEFIT.—The term ‘excess
12 benefit’ means the excess referred to in sub-
13 paragraph (A).

14 “(2) AUTHORITY TO INCLUDE CERTAIN OTHER
15 PRIVATE INUREMENT.—To the extent provided in
16 regulations prescribed by the Secretary, the term
17 ‘excess benefit transaction’ includes any transaction
18 in which the amount of any economic benefit pro-
19 vided to or for the use of a disqualified person is de-
20 termined in whole or in part by the revenues of 1
21 or more activities of the organization but only if
22 such transaction results in inurement not permitted
23 under paragraph (3) or (4) of section 501(c), as the
24 case may be. In the case of any such transaction,

1 the excess benefit shall be the amount of the
2 inurement not so permitted.

3 “(d) SPECIAL RULES.—For purposes of this sec-
4 tion—

5 “(1) JOINT AND SEVERAL LIABILITY.—If more
6 than 1 person is liable for any tax imposed by sub-
7 section (a) or subsection (b), all such persons shall
8 be jointly and severally liable for such tax.

9 “(2) LIMIT FOR MANAGEMENT.—With respect
10 to any 1 excess benefit transaction, the maximum
11 amount of the tax imposed by subsection (a)(2) shall
12 not exceed \$10,000.

13 “(e) APPLICABLE TAX-EXEMPT ORGANIZATION.—
14 For purposes of this subchapter, the term ‘applicable tax-
15 exempt organization’ means any organization which (with-
16 out regard to any excess benefit) would be described in
17 paragraph (3) or (4) of section 501(c) and exempt from
18 tax under section 501(a). Such term shall not include a
19 private foundation (as defined in section 509(a)).

20 “(f) OTHER DEFINITIONS.—For purposes of this sec-
21 tion—

22 “(1) DISQUALIFIED PERSON.—The term ‘dis-
23 qualified person’ means, with respect to any trans-
24 action—

1 “(A) any person who was, at any time dur-
2 ing the 5-year period ending on the date of
3 such transaction—

4 “(i) an organization manager, or

5 “(ii) an individual (other than an or-
6 ganization manager) in a position to exer-
7 cise substantial influence over the affairs
8 of the organization,

9 “(B) a member of the family of an individ-
10 ual described in subparagraph (A), and

11 “(C) a 35-percent controlled entity.

12 “(2) ORGANIZATION MANAGER.—The term ‘or-
13 ganization manager’ means, with respect to any ap-
14 plicable tax-exempt organization, any officer, direc-
15 tor, or trustee of such organization (or any individ-
16 ual having powers or responsibilities similar to those
17 of officers, directors, or trustees of the organiza-
18 tion).

19 “(3) 35-PERCENT CONTROLLED ENTITY.—

20 “(A) IN GENERAL.—The term ‘35-percent
21 controlled entity’ means—

22 “(i) a corporation in which persons
23 described in subparagraph (A) or (B) of
24 paragraph (1) own more than 35 percent
25 of the total combined voting power,

1 “(ii) a partnership in which such per-
2 sons own more than 35 percent of the
3 profits interest, and

4 “(iii) a trust or estate in which such
5 persons own more than 35 percent of the
6 beneficial interest.

7 “(B) CONSTRUCTIVE OWNERSHIP
8 RULES.—Rules similar to the rules of para-
9 graphs (3) and (4) of section 4946(a) shall
10 apply for purposes of this paragraph.

11 “(4) FAMILY MEMBERS.—The members of an
12 individual’s family shall be determined under section
13 4946(d); except that such members also shall in-
14 clude the brothers and sisters (whether by the whole
15 or half blood) of the individual and their spouses.

16 “(5) TAXABLE PERIOD.—The term ‘taxable pe-
17 riod’ means, with respect to any excess benefit
18 transaction, the period beginning with the date on
19 which the transaction occurs and ending on the ear-
20 liest of—

21 “(A) the date of mailing a notice of defi-
22 ciency under section 6212 with respect to the
23 tax imposed by subsection (a)(1), or

24 “(B) the date on which the tax imposed by
25 subsection (a)(1) is assessed.

1 “(6) CORRECTION.—The terms ‘correction’ and
2 ‘correct’ mean, with respect to any excess benefit
3 transaction, undoing the excess benefit to the extent
4 possible, and where fully undoing the excess benefit
5 is not possible, such additional corrective action as
6 is prescribed by the Secretary by regulations.

7 “(g) TREATMENT OF PREVIOUSLY EXEMPT ORGANI-
8 ZATIONS.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the status of any organization as an applicable
11 tax-exempt organization shall be terminated only
12 if—

13 “(A)(i) such organization notifies the Sec-
14 retary (at such time and in such manner as the
15 Secretary may by regulations prescribe) of its
16 intent to accomplish such termination, or

17 “(ii) there is a final determination by the
18 Secretary that such status has terminated, and

19 “(B)(i) such organization pays the tax im-
20 posed by paragraph (2) (or any portion not
21 abated pursuant to paragraph (3)), or

22 “(ii) the entire amount of such tax is
23 abated pursuant to paragraph (3).

1 “(2) IMPOSITION OF TAX.—There is hereby im-
2 posed on each organization referred to in paragraph
3 (1) a tax equal to the lesser of—

4 “(A) the amount which the organization
5 substantiates by adequate records or other cor-
6 roborating evidence as the aggregate tax benefit
7 resulting from its exemption from tax under
8 section 501(a), or

9 “(B) the value of the net assets of such or-
10 ganization.

11 “(3) ABATEMENT OF TAX.—The Secretary may
12 abate the unpaid portion of the assessment of any
13 tax imposed by paragraph (2), or any liability in re-
14 spect thereof, if the applicable tax-exempt organiza-
15 tion distributes all of its net assets to 1 or more or-
16 ganizations each of which has been in existence, and
17 described in section 501(c)(3), for a continuous pe-
18 riod of at least 60 calendar months. If the distribut-
19 ing organization is described in section 501(c)(4),
20 the preceding sentence shall be applied by treating
21 the reference to section 501(c)(3) as including a ref-
22 erence to section 501(c)(4).

23 “(4) CERTAIN RULES MADE APPLICABLE.—
24 Rules similar to the rules of subsections (d), (e), and

1 (f) of section 507 shall apply for purposes of this
2 subsection.”

3 (b) APPLICATION OF PRIVATE INUREMENT RULE TO
4 TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION
5 501(c)(4).—Paragraph (4) of section 501(c) is amended
6 by inserting “(A)” after “(4)” and by adding at the end
7 the following:

8 “(B) Subparagraph (A) shall not apply to an
9 entity unless no part of the net earnings of such en-
10 tity inures to the benefit of any private shareholder
11 or individual.”

12 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) Subsection (e) of section 4955 is amend-
14 ed—

15 (A) by striking “SECTION 4945” in the
16 heading and inserting “SECTIONS 4945 and
17 4958”, and

18 (B) by inserting before the period “or an
19 excess benefit for purposes of section 4958”.

20 (2) Subsections (a), (b), and (c) of section 4963
21 are each amended by inserting “4958,” after
22 “4955,”.

23 (3) Subsection (e) of section 6213 is amended
24 by inserting “4958 (relating to private excess bene-
25 fit),” before “4971”.

1 (4) Paragraphs (2) and (3) of section 7422(g)
2 are each amended by inserting “4958,” after
3 “4955,”.

4 (5) Subsection (b) of section 7454 is amended
5 by inserting “or whether an organization manager
6 (as defined in section 4958(f)(2)) has ‘knowingly’
7 participated in an excess benefit transaction (as de-
8 fined in section 4958(c)),” after “section 4912(b),”.

9 (6) The table of subchapters for chapter 42 is
10 amended by striking the last item and inserting the
11 following:

 “Subchapter D. Failure by certain charitable organizations to
 meet certain qualification requirements.

 “Subchapter E. Abatement of first and second tier taxes in cer-
 tain cases.”

12 (d) EFFECTIVE DATES.—

13 (1) IN GENERAL.—The amendments made by
14 this section (other than subsection (b)) shall apply
15 to excess benefit transactions occurring on or after
16 September 14, 1995.

17 (2) BINDING CONTRACTS FOR PERSONAL SERV-
18 ICES.—The amendments referred to in paragraph
19 (1) shall not apply to any transaction pursuant to
20 any written contract for the performance of personal
21 services which was binding on September 13, 1995,
22 and at all times thereafter before such transaction
23 occurred.

1 (3) APPLICATION OF PRIVATE INUREMENT
2 RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED
3 IN SECTION 501(C)(4).—

4 (A) IN GENERAL.—The amendment made
5 by subsection (b) shall apply to inurement oc-
6 curring on or after September 14, 1995.

7 (B) BINDING CONTRACTS.—The amend-
8 ment made by subsection (b) shall not apply to
9 any inurement occurring before January 1,
10 1997, pursuant to a written contract which was
11 binding on September 13, 1995, and at all
12 times thereafter before such inurement oc-
13 curred.

14 **SEC. 13647. REPORTING OF CERTAIN EXCISE TAXES AND**
15 **OTHER INFORMATION.**

16 (a) REPORTING BY ORGANIZATIONS DESCRIBED IN
17 SECTION 501(c)(3).—Subsection (b) of section 6033 (re-
18 lating to certain organizations described in section
19 501(c)(3)) is amended by striking “and” at the end of
20 paragraph (9), by redesignating paragraph (10) as para-
21 graph (14), and by inserting after paragraph (9) the fol-
22 lowing new paragraphs:

23 “(10) the respective amounts (if any) of the
24 taxes paid by the organization during the taxable
25 year under the following provisions:

1 “(A) section 4911 (relating to tax on ex-
2 cess expenditures to influence legislation),

3 “(B) section 4912 (relating to tax on dis-
4 qualifying lobbying expenditures of certain or-
5 ganizations), and

6 “(C) section 4955 (relating to taxes on po-
7 litical expenditures of section 501(c)(3) organi-
8 zations),

9 “(11) the respective amounts (if any) of the
10 taxes paid by the organization or any disqualified
11 person during the taxable year under section 4958
12 (relating to taxes on private excess benefit from cer-
13 tain charitable organizations),

14 “(12) such information as the Secretary may
15 require with respect to any excess benefit trans-
16 action (as defined in section 4958),

17 “(13) the name of each disqualified person who
18 receives an economic benefit from an applicable tax-
19 exempt organization (as defined in section 4958(e))
20 and such other information as the Secretary may
21 prescribe with respect to such benefit, and”.

22 (b) ORGANIZATIONS DESCRIBED IN SECTION
23 501(c)(4).—Section 6033 is amended by redesignating
24 subsection (f) as subsection (g) and by inserting after sub-
25 section (e) the following new subsection:

1 “(f) CERTAIN ORGANIZATIONS DESCRIBED IN SEC-
2 TION 501(c)(4).—Every organization described in section
3 501(c)(4) which is subject to the requirements of sub-
4 section (a) shall include on the return required under sub-
5 section (a) the information referred to in paragraphs (10),
6 (11), (12) and (13) of subsection (b) with respect to such
7 organization.”

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to returns for taxable years begin-
10 ning after the date of the enactment of this Act.

11 **SEC. 13648. EXEMPT ORGANIZATIONS REQUIRED TO PRO-**

12 **VIDE COPY OF RETURN.**

13 (a) GENERAL RULE.—

14 (1) Subparagraph (A) of section 6104(e)(1) (re-
15 lating to public inspection of annual returns) is
16 amended to read as follows:

17 “(A) IN GENERAL.—During the 3-year pe-
18 riod beginning on the filing date—

19 “(i) a copy of the annual return filed
20 under section 6033 (relating to returns by
21 exempt organizations) by any organization
22 to which this paragraph applies shall be
23 made available by such organization for in-
24 spection during regular business hours by
25 any individual at the principal office of

1 such organization and, if such organization
2 regularly maintains 1 or more regional or
3 district offices having 3 or more employees,
4 at each such regional or district office, and
5 “(ii) upon request of an individual
6 made at such principal office or such a re-
7 gional or district office, a copy of such an-
8 nual return shall be provided to such indi-
9 vidual without charge other than a reason-
10 able fee for any reproduction and mailing
11 costs.

12 If the request under clause (ii) is made in per-
13 son, such copy shall be provided immediately
14 and, if made other than in person, shall be pro-
15 vided within 30 days.”

16 (2) Clause (ii) of section 6104(e)(2)(A) is
17 amended by inserting before the period at the end
18 thereof the following: “(and, upon request of an in-
19 dividual made at such principal office or such a re-
20 gional or district office, a copy of the material re-
21 quired to be available for inspection under this sub-
22 paragraph shall be provided (in accordance with the
23 last sentence of paragraph (1)(A)) to such individual
24 without charge other than a reasonable fee for any
25 reproduction and mailing costs)”.

1 (3) Subsection (e) of section 6104 is amended
2 by adding at the end the following new paragraph:

3 “(3) LIMITATION.—Paragraph (1)(A)(ii) (and
4 the corresponding provision of paragraph (2)) shall
5 not apply to any request if the Secretary determines,
6 upon application by an organization, that such re-
7 quest is part of a harassment campaign and that
8 compliance with such request is not in the public in-
9 terest.”

10 (b) ADVERTISEMENTS ETC., REQUIRED TO DIS-
11 CLOSE AVAILABILITY OF ANNUAL RETURN.—

12 (1) Paragraph (1) of section 6104(e) is amend-
13 ed by adding at the end thereof the following new
14 subparagraph:

15 “(E) ADVERTISEMENTS ETC., REQUIRED
16 TO DISCLOSE AVAILABILITY OF ANNUAL RE-
17 TURN.—In the case of an organization required
18 by subparagraph (A) to provide a copy of its
19 annual return under section 6033 upon request
20 to individuals, each written advertisement or so-
21 licitation by (or on behalf of) such organization
22 shall contain an express statement (in a con-
23 spicuous and easily recognizable format) that
24 such return shall be provided to individuals
25 upon request.”

1 (2) Section 6716, as added by section 13649 of
2 this title, is amended—

3 (A) by striking “section 6116” each place
4 it appears and inserting “section 6116 or sec-
5 tion 6104(e)(1)(E)”,

6 (B) by striking “\$1,000” in subsection (a)
7 and inserting “\$1,000 (\$100 in the case of a
8 failure to meet the requirements of
9 6104(e)(1)(E))”, and

10 (C) by inserting before the period at the
11 end of the section heading “; **FAILURE OF**
12 **CERTAIN EXEMPT ORGANIZATIONS TO DIS-**
13 **CLOSE AVAILABILITY OF ANNUAL RE-**
14 **TURN**”.

15 (3) Subparagraph (C) of section 6652(c)(1) is
16 amended by striking “(e)(1)” and inserting “(e)(1)
17 (other than subparagraph (E))”, by striking “\$10”
18 and inserting “\$20”, and by striking “\$5,000” and
19 inserting “\$10,000”.

20 (4) Subparagraph (D) of section 6652(c)(1) is
21 amended by striking “\$10” and inserting “\$20”.

22 (5) The item relating to section 6716 in the
23 table of sections for part I of subchapter B of chap-
24 ter 68 is amended by inserting before the period “;

1 failure of certain exempt organizations to disclose
2 availability of annual return”.

3 (c) INCREASE IN PENALTY FOR WILLFUL FAILURE
4 TO ALLOW PUBLIC INSPECTION OF CERTAIN RETURNS,
5 ETC.—Section 6685 is amended by striking “\$1,000” and
6 inserting “\$5,000”.

7 (d) COPIES OF RETURNS OF EXEMPT ORGANIZA-
8 TIONS AVAILABLE FROM SECRETARY IN CERTAIN
9 CASES.—Subsection (b) of section 6104 is amended to
10 read as follows:

11 “(b) INSPECTION OF ANNUAL INFORMATION RE-
12 TURNS.—

13 “(1) IN GENERAL.—The information required
14 to be furnished by sections 6033, 6034, and 6058,
15 together with the names and addresses of such orga-
16 nizations and trusts, shall be made available to the
17 public at such times and in such places as the Sec-
18 retary may prescribe. Nothing in this subsection
19 shall authorize the Secretary to disclose the name or
20 address of any contributor to any organization or
21 trust (other than a private foundation, as defined in
22 section 509(a)) which is required to furnish such in-
23 formation.

24 “(2) COPIES PROVIDED OF RETURNS FILED
25 UNDER SECTION 6033 AND APPLICATIONS FILED

1 UNDER SECTION 508 IN CERTAIN CASES.—The Sec-
2 retary shall provide copies of returns filed under sec-
3 tion 6033 and applications for exemption filed under
4 section 508 by any organization to which subsection
5 (d) or (e)(1) applies to any person who agrees (sub-
6 ject to such conditions as the Secretary shall pre-
7 scribe)—

8 “(A) to accept broad categories of such re-
9 turns and applications, and

10 “(B) to provide electronic access to the
11 provided returns and applications on an elec-
12 tronic network available to the general public.

13 Such copies shall be provided without charge if such
14 person agrees to provide such access without charge.
15 Otherwise, the Secretary may impose a reasonable
16 fee for any reproduction and mailing costs.

17 “(3) RETURNS AND APPLICATIONS FILED BE-
18 FORE 1996.—Paragraph (2) shall apply to returns
19 and applications filed before January 1, 1996, only
20 to the extent provided by the Secretary.”

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on January 1, 1996 (or, if
23 later, the 90th day after the date of the enactment of this
24 Act).

1 **SEC. 13649. CERTAIN ORGANIZATIONS REQUIRED TO DIS-**
2 **CLOSE NONEXEMPT STATUS.**

3 (a) GENERAL RULE.—Subchapter B of chapter 61
4 (relating to miscellaneous provisions) is amended by redes-
5 ignating section 6116 as section 6117 and by inserting
6 after section 6115 the following new section:

7 **“SEC. 6116. CERTAIN ORGANIZATIONS REQUIRED TO DIS-**
8 **CLOSE NONEXEMPT STATUS.**

9 “(a) IN GENERAL.—If—

10 “(1) in an advertisement or solicitation by (or
11 on behalf of) an organization, such organization is
12 referred to as being nonprofit, and

13 “(2) such organization is not exempt from tax
14 under subtitle A,

15 such advertisement or solicitation shall contain an express
16 statement (in a conspicuous and easily recognizable for-
17 mat) that such organization is not exempt from Federal
18 income taxes.

19 “(b) CROSS REFERENCE.—

**“For penalties for violation of subsection (a), see
section 6716.”**

20 (b) PENALTY.—Part I of subchapter B of chapter 68
21 is amended by adding at the end thereof the following new
22 section:

1 **“SEC. 6716. FAILURE TO DISCLOSE NONEXEMPT STATUS.**

2 “(a) IMPOSITION OF PENALTY.—If there is a failure
3 to meet the requirements of section 6116 with respect to
4 any advertisement or solicitation by (or on behalf of) an
5 organization, such organization shall pay a penalty of
6 \$1,000 for each day on which such a failure occurred. The
7 maximum penalty imposed under this subsection on fail-
8 ures by any organization during any calendar year shall
9 not exceed \$10,000.

10 “(b) REASONABLE CAUSE EXEMPTION.—No penalty
11 shall be imposed under this section with respect to any
12 failure if it is shown that such failure is due to reasonable
13 cause.

14 “(c) \$10,000 LIMITATION NOT TO APPLY WHERE
15 INTENTIONAL DISREGARD.—If any failure to which sub-
16 section (a) applies is due to intentional disregard of the
17 requirements of section 6116—

18 “(1) the penalty under subsection (a) for the
19 day on which failure occurred shall be the greater
20 of—

21 “(A) \$1,000, or

22 “(B) 50 percent of the aggregate cost of
23 the advertisements and solicitations which oc-
24 curred on such day and with respect to which
25 there was such failure,

7 “(d) DAY ON WHICH FAILURE OCCURS.—For pur-
8 poses of this section, rules similar to the rules of section
9 6710(d) shall apply in determining the day on which any
10 failure occurs.”

(1) The table of sections for subchapter B of chapter 61 is amended by striking the item relating to section 6116 and inserting the following:

“Sec. 6117. Cross reference.”

“Sec. 6716. Failure to disclose nonexempt status.”

•HR 2491 RH

1 **SEC. 13650. INCREASE IN PENALTIES ON EXEMPT ORGANI-**
2 **ZATIONS FOR FAILURE TO FILE COMPLETE**
3 **AND TIMELY ANNUAL RETURNS.**

4 (a) IN GENERAL.—Subparagraph (A) of section
5 6652(c)(1) (relating to annual returns under section
6 6033) is amended by striking “\$10” and inserting “\$20”
7 and by striking “\$5,000” and inserting “\$10,000”.

8 (b) LARGER PENALTY ON ORGANIZATIONS HAVING
9 GROSS RECEIPTS IN EXCESS OF \$1,000,000.—Subpara-
10 graph (A) of section 6652(c)(1) is amended by adding at
11 the end the following new sentence: “In the case of an
12 organization having gross receipts exceeding \$1,000,000
13 for any year, with respect to the return required under
14 section 6033 for such year, the first sentence of this sub-
15 paragraph shall be applied by substituting ‘\$100’ for ‘\$20’
16 and, in lieu of applying the second sentence of this sub-
17 paragraph, the maximum penalty under this subparagraph
18 shall not exceed \$50,000.”

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to returns for taxable years ending
21 on or after December 31, 1995.

22 **SEC. 13651. STUDIES.**

23 (a) IN GENERAL.—The Secretary of the Treasury or
24 his delegate shall conduct a study of—

25 (1) whether the statutory prohibition on private
26 inurement, and the provisions of section 4958 of the

1 Internal Revenue Code of 1986 (as added by this
2 part), should apply to other tax-exempt organiza-
3 tions,

4 (2) whether State officials responsible for
5 overseeing charitable organizations should be pro-
6 vided with Federal tax information in addition to the
7 information available under section 6103 of such
8 Code for purposes of such oversight, and

9 (3) whether the return required to be filed by
10 section 6033 of such Code should be modified to as-
11 sure the return's utility to such Secretary and to the
12 public and to reduce any unnecessary reporting bur-
13 dens.

14 (b) REPORT.—Not later than January 1, 1997, the
15 report of such study shall be submitted to the Committee
16 on Ways and Means of the House of Representatives and
17 the Committee on Finance of the Senate.

18 **Subtitle G—Reform of the Earned**
19 **Income Tax Credit**

20 **SEC. 13701. REPEAL OF EARNED INCOME CREDIT FOR INDIV-**
21 **VIDUALS WITHOUT QUALIFYING CHILDREN;**
22 **MODIFICATIONS TO CREDIT PHASEOUT.**

23 (a) REPEAL OF CREDIT FOR INDIVIDUALS WITHOUT
24 CHILDREN.—Subparagraph (A) of section 32(c)(1) (defin-
25 ing eligible individual) is amended to read as follows:

1 “(A) IN GENERAL.—The term ‘eligible in-
 2 dividual’ means any individual who has a quali-
 3 fying child for the taxable year.”

4 (b) MODIFICATIONS TO PHASEOUT.—

5 (1) Subsection (b) of section 32 is amended to
 6 read as follows:

7 “(b) PERCENTAGES.—

8 “(1) IN GENERAL.—The credit percentage and
 9 the phaseout percentage shall be determined as
 10 follows:

“In the case of an eligible individ- ual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	18
2 or more qualifying children ..	40	23

11 “(2) AMOUNTS.—The earned income amount
 12 and the phaseout amount shall be determined as
 13 follows:

“In the case of an eligible individ- ual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	\$6,340	\$11,630
2 or more qualifying children ..	\$8,910	\$11,630.”

14 (2) Subsection (j) of section 32 is amended—

15 (A) by striking “subsection (b)(2)(A)” and
 16 inserting “subsection (b)(2)”,

17 (B) by striking “1994” and inserting
 18 “1996”, and

19 (C) by striking “1993” and inserting
 20 “1995”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 1995.

4 **SEC. 13702. MODIFICATION OF ADJUSTED GROSS INCOME**
5 **USED FOR PHASEOUT.**

6 (a) IN GENERAL.—Subsections (a)(2)(B), (c)(1)(C),
7 and (f)(2)(B) of section 32 are each amended by striking
8 “adjusted gross income” each place it appears and insert-
9 ing “modified adjusted gross income”.

10 (b) MODIFIED ADJUSTED GROSS INCOME.—Sub-
11 section (c) of section 32 is amended by adding at the end
12 the following new paragraph:

13 “(5) MODIFIED ADJUSTED GROSS INCOME.—

14 For purposes of this section, the term ‘modified ad-
15 justed gross income’ means adjusted gross income
16 increased by—

17 “(A) any amount received as a pension or
18 annuity, and any distribution or payment re-
19 ceived from an individual retirement plan, by
20 the taxpayer during the taxable year to the ex-
21 tent not otherwise included in gross income,
22 and

23 “(B) the social security benefits (as de-
24 fined in section 86(d)) received by the taxpayer

1 during the taxable year to the extent not in-
2 cluded in gross income.

3 Any amount which is not includible in gross income
4 by reason of paragraph (3), (4), or (5) of section
5 408(d) or section 402(c), 403(a)(4), 403(b)(8), or
6 457(e)(10) shall be treated as not described in sub-
7 paragraph (A).”

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 1995.

11 **SEC. 13703. EARNED INCOME TAX CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.**

12
13
14 (a) IN GENERAL.—Section 32(c)(1) (relating to indi-
15 viduals eligible to claim the earned income tax credit) is
16 amended by adding at the end the following new subpara-
17 graph:

18 “(F) IDENTIFICATION NUMBER REQUIRE-
19 MENT.—The term ‘eligible individual’ does not
20 include any individual who does not include on
21 the return of tax for the taxable year—

22 “(i) such individual’s taxpayer identi-
23 fication number, and

24 “(ii) if the individual is married (with-
25 in the meaning of section 7703), the tax-

1 payer identification number of such indi-
2 vidual's spouse.”

3 (b) SPECIAL IDENTIFICATION NUMBER.—Section 32
4 is amended by adding at the end the following new sub-
5 section:

6 “(l) IDENTIFICATION NUMBERS.—Solely for pur-
7 poses of subsections (c)(1)(F) and (c)(3)(D), a taxpayer
8 identification number means a social security number is-
9 sued to an individual by the Social Security Administra-
10 tion (other than a social security number issued pursuant
11 to clause (II) (or that portion of clause (III) that relates
12 to clause (II)) of section 205(c)(2)(B)(i) of the Social Se-
13 curity Act).”

14 (c) EXTENSION OF PROCEDURES APPLICABLE TO
15 MATHEMATICAL OR CLERICAL ERRORS.—Section
16 6213(g)(2) (relating to the definition of mathematical or
17 clerical errors) is amended by striking “and” at the end
18 of subparagraph (D), by striking the period at the end
19 of subparagraph (E) and inserting a comma, and by in-
20 serting after subparagraph (E) the following new subpara-
21 graphs:

22 “(F) an omission of a correct taxpayer
23 identification number required under section 32
24 (relating to the earned income tax credit) to be
25 included on a return, and

1 “(G) an entry on a return claiming the
2 credit under section 32 with respect to net
3 earnings from self-employment described in sec-
4 tion 32(c)(2)(A) to the extent the tax imposed
5 by section 1401 (relating to self-employment
6 tax) on such net earnings has not been paid.”

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 1995.

10 **Subtitle H—Increase in Public** 11 **Debt Limit**

12 **SEC. 13801. INCREASE IN PUBLIC DEBT LIMIT.**

13 Subsection (b) of section 3101 of title 31, United
14 States Code, is amended by striking the dollar amount
15 contained therein and inserting “\$5,500,000,000,000”.

16 **Subtitle I—Coal Industry Retiree** 17 **Health Equity**

18 **SEC. 13901. REPEAL OF REACHBACK PROVISIONS OF COAL** 19 **INDUSTRY HEALTH BENEFIT SYSTEM.**

20 (a) AMENDMENTS RELATED TO DEFINITIONS.—

21 (1) AGREEMENTS.—

22 (A) IN GENERAL.—Paragraph (1) of sec-
23 tion 9701(b) (relating to agreements) is amend-
24 ed to read as follows:

25 “(1) COAL WAGE AGREEMENTS.—

1 “(A) 1988 AGREEMENT.—The term ‘1988
2 agreement’ means the collective bargaining
3 agreement between the settlors which became
4 effective on February 1, 1988.

5 “(B) COAL WAGE AGREEMENT.—The term
6 ‘coal wage agreement’ means any predecessor to
7 the 1988 agreement.”

8 (B) CONFORMING AMENDMENT.—Section
9 9701(b) is amended by striking paragraph (3).
10 (2) OPERATORS.—

11 (A) SIGNATORY OPERATOR.—Paragraph
12 (1) of section 9701(c) (relating to operators) is
13 amended to read as follows:

14 “(1) SIGNATORY OPERATOR.—The term ‘signa-
15 tory operator’ means a 1988 agreement operator.”

16 (B) 1988 AGREEMENT OPERATOR.—Para-
17 graph (3) of section 9701(c) is amended to read
18 as follows:

19 “(3) 1988 AGREEMENT OPERATOR.—The term
20 ‘1988 agreement operator’ means—

21 “(A) an operator which was a signatory to
22 the 1988 agreement, or

23 “(B) a person in business which, during
24 the term of the 1988 agreement, was a signa-
25 tory to an agreement (other than the National

1 Coal Mine Construction Agreement and the
2 Coal Haulers' Agreement) containing pension
3 and health care contribution and benefit provi-
4 sions which are the same as those contained in
5 the 1988 agreement.

6 Such term shall not include any operator who was
7 assessed, and did pay the full amount of, contractual
8 withdrawal liability to the 1950 UMWA Benefit
9 Plan, the 1974 UMWA Benefit Plan, or the Com-
10 bined Fund."

11 (C) LAST SIGNATORY OPERATOR.—Section
12 9701(c)(4) is amended by inserting "bitu-
13 minous" before "coal" each place it appears.

14 (b) COMBINED BENEFIT FUND.—Section 9702(b)(1)
15 is amended to read as follows:

16 "(b) BOARD OF TRUSTEES.—

17 "(1) IN GENERAL.—For purposes of subsection
18 (a), the board of trustees for the Combined Fund
19 shall be appointed as follows:

20 "(A) two individuals who represent employ-
21 ers in the coal mining industry shall be des-
22 ignated by the BCOA;

23 "(B) two individuals designated by the
24 United Mine Workers of America; and

1 “(C) three persons selected by the persons
2 appointed under subparagraphs (A) and (B).”

3 (c) ASSIGNMENT OF ELIGIBLE BENEFICIARIES.—

4 Subsection (a) of section 9706 is amended by adding at
5 the end the following new flush sentence:

6 “For purposes of assessing premiums on or after October
7 1, 1995, under this chapter, the Commissioner of Social
8 Security shall, effective October 1, 1995, revoke all assign-
9 ments previously made (and shall make no further assign-
10 ments and shall terminate all unpaid liabilities for any
11 pending assignments) to all persons other than signatory
12 operators and shall deem each affected coal industry re-
13 tiree who is an eligible beneficiary to be an unassigned
14 beneficiary under section 9706. The preceding sentence
15 shall not be construed to prevent any transfer, or any
16 treatment of a successor as an assigned operator, under
17 subsection (b)(2).”

18 (d) 1992 UMW BENEFIT PLAN.—Section 9712(d)
19 is amended—

20 (1) by striking paragraph (3) and by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively, and

23 (2) by striking “or last signatory operator described in paragraph (3),” in paragraph (3) (as redesignated under paragraph (1)).

1 (e) INFORMATION REQUIREMENTS.—

2 (1) IN GENERAL.—Subsection (h) of section
3 9704 is amended by adding at the end the following
4 new paragraph:

5 “(2) INFORMATION TO CONTRIBUTORS.—

6 “(A) IN GENERAL.—The trustees of the
7 Combined Fund shall, within 30 days of a writ-
8 ten request, make available to any person re-
9 quired to make contributions to the Combined
10 Fund, or their agent—

11 “(i) all documents which reflect its fi-
12 nancial and operational status, including
13 documents under which it is operated, and

14 “(ii) all documents prepared at the re-
15 quest of the trustees or staff of the Com-
16 bined Fund which form the basis for any
17 of its actions or reports, including the eli-
18 gibility of participants in predecessor
19 plans.

20 “(B) FEES.—The trustees may charge rea-
21 sonable fees (not in excess of actual expenses)
22 for providing documents under this paragraph.”

23 (2) CONFORMING AMENDMENT.—Subsection (h)
24 of section 9704 is amended by striking “(h) INFOR-
25 MATION.—The” and inserting the following:

1 “(h) INFORMATION.—

2 “(1) INFORMATION TO SECRETARY.—The”.

3 (f) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to plan years beginning after Sep-
5 tember 30, 1995.

6 **TITLE XIV—COMMITTEE ON**
7 **WAYS AND MEANS—TAX SIM-**
8 **PLIFICATION**

9 **SEC. 14001. SHORT TITLE; AMENDMENT TO 1986 CODE.**

10 (a) SHORT TITLE.—This title may be cited as the
11 “Tax Simplification Act of 1995”.

12 (b) AMENDMENT OF 1986 CODE.—Except as other-
13 wise expressly provided, whenever in this title an amend-
14 ment or repeal is expressed in terms of an amendment
15 to, or repeal of, a section or other provision, the reference
16 shall be considered to be made to a section or other provi-
17 sion of the Internal Revenue Code of 1986.

18 (c) TABLE OF CONTENTS.—The table of contents for
19 this title is as follows:

TITLE XIV—COMMITTEE ON WAYS AND MEANS—TAX
SIMPLIFICATION

Sec. 14001. Short title; amendment to 1986 Code.

Subtitle A—Provisions Relating to Individuals

PART I—PROVISIONS RELATING TO ROLLOVER OF GAIN ON SALE OF
PRINCIPAL RESIDENCE

Sec. 14101. Multiple sales within rollover period.

Sec. 14102. Special rules in case of divorce.

Sec. 14103. One-time exclusion of gain from sale of principal residence for cer-
tain spouses.

PART II—OTHER PROVISIONS

- Sec. 14111. Payment of tax by commercially acceptable means.
- Sec. 14112. Simplified foreign tax credit limitation for individuals.
- Sec. 14113. Treatment of personal transactions by individuals under foreign currency rules.
- Sec. 14114. Treatment of certain reimbursed expenses of rural mail carriers.
- Sec. 14115. Exclusion of combat pay from withholding limited to amount excludable from gross income.
- Sec. 14116. Treatment of traveling expenses of certain Federal employees engaged in criminal investigations.

Subtitle B—Pension Simplification

PART I—SIMPLIFIED DISTRIBUTION RULES

- Sec. 14201. Repeal of 5-year income averaging for lump-sum distributions.
- Sec. 14202. Repeal of \$5,000 exclusion of employees' death benefits.
- Sec. 14203. Simplified method for taxing annuity distributions under certain employer plans.
- Sec. 14204. Required distributions.

PART II—INCREASED ACCESS TO PENSION PLANS

- Sec. 14211. Modifications of simplified employee pensions.
- Sec. 14212. State and local governments and tax-exempt organizations eligible under section 401(k).

PART III—NONDISCRIMINATION PROVISIONS

- Sec. 14221. Definition of highly compensated employees.
- Sec. 14222. Repeal of family aggregation rules.
- Sec. 14223. Modification of additional participation requirements.
- Sec. 14224. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.

PART IV—MISCELLANEOUS SIMPLIFICATION

- Sec. 14231. Treatment of leased employees.
- Sec. 14232. Plans covering self-employed individuals.
- Sec. 14233. Elimination of special vesting rule for multiemployer plans.
- Sec. 14234. Distributions under rural cooperative plans.
- Sec. 14235. Treatment of governmental plans under section 415.
- Sec. 14236. Uniform retirement age.
- Sec. 14237. Uniform penalty provisions to apply to certain pension reporting requirements.
- Sec. 14238. Contributions on behalf of disabled employees.
- Sec. 14239. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations.
- Sec. 14240. Trust requirement for deferred compensation plans of State and local governments.
- Sec. 14241. Transition rule for computing maximum benefits under section 415 limitations.
- Sec. 14242. Multiple salary reduction agreements permitted under section 403(b).
- Sec. 14243. Waiver of minimum period for joint and survivor annuity explanation before annuity starting date.

- Sec. 14244. Repeal of limitation in case of defined benefit plan and defined contribution plan for same employee.
- Sec. 14245. Date for adoption of plan amendments.

Subtitle C—Treatment of Large Partnerships

PART I—GENERAL PROVISIONS

- Sec. 14301. Simplified flow-through for large partnerships.
- Sec. 14302. Simplified audit procedures for large partnerships.
- Sec. 14303. Due date for furnishing information to partners of large partnerships.
- Sec. 14304. Returns may be required on magnetic media.
- Sec. 14305. Treatment of partnership items of individual retirement accounts.
- Sec. 14306. Effective date.

PART II—PROVISIONS RELATED TO CERTAIN PARTNERSHIP PROCEEDINGS

- Sec. 14311. Treatment of partnership items in deficiency proceedings.
- Sec. 14312. Partnership return to be determinative of audit procedures to be followed.
- Sec. 14313. Provisions relating to statute of limitations.
- Sec. 14314. Expansion of small partnership exception.
- Sec. 14315. Exclusion of partial settlements from 1-year limitation on assessment.
- Sec. 14316. Extension of time for filing a request for administrative adjustment.
- Sec. 14317. Availability of innocent spouse relief in context of partnership proceedings.
- Sec. 14318. Determination of penalties at partnership level.
- Sec. 14319. Provisions relating to court jurisdiction, etc.
- Sec. 14320. Treatment of premature petitions filed by notice partners or 5-percent groups.
- Sec. 14321. Bonds in case of appeals from certain proceeding.
- Sec. 14322. Suspension of interest where delay in computational adjustment resulting from certain settlements.
- Sec. 14323. Special rules for administrative adjustment requests with respect to bad debts or worthless securities.

Subtitle D—Foreign Provisions

PART I—MODIFICATIONS TO TREATMENT OF PASSIVE FOREIGN INVESTMENT COMPANIES

- Sec. 14401. United States shareholders of controlled foreign corporations not subject to PFIC inclusion.
- Sec. 14402. Election of mark to market for marketable stock in passive foreign investment company.
- Sec. 14403. Modifications to definition of passive income.
- Sec. 14404. Effective date.

PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

- Sec. 14411. Gain on certain stock sales by controlled foreign corporations treated as dividends.
- Sec. 14412. Miscellaneous modifications to subpart F.
- Sec. 14413. Indirect foreign tax credit allowed for certain lower tier companies.

Sec. 14414. Repeal of inclusion of certain earnings invested in excess passive assets.

PART III—OTHER PROVISIONS

Sec. 14421. Exchange rate used in translating foreign taxes.

Sec. 14422. Election to use simplified section 904 limitation for alternative minimum tax.

Sec. 14423. Modification of section 1491.

Sec. 14424. Modification of section 367(b).

Sec. 14425. Increase in filing thresholds for returns as to organization of foreign corporations and acquisitions of stock in such corporations.

Sec. 14426. Application of uniform capitalization rules to foreign persons.

Sec. 14427. Certain prizes and awards.

Sec. 14428. Treatment for estate tax purposes of short-term obligations held by nonresident aliens.

Subtitle E—Other Income Tax Provisions

PART I—PROVISIONS RELATING TO S CORPORATIONS

Sec. 14501. S corporations permitted to have 75 shareholders.

Sec. 14502. Electing small business trusts.

Sec. 14503. Expansion of post-death qualification for certain trusts.

Sec. 14504. Financial institutions permitted to hold safe harbor debt.

Sec. 14505. Rules relating to inadvertent terminations and invalid elections.

Sec. 14506. Agreement to terminate year.

Sec. 14507. Expansion of post-termination transition period.

Sec. 14508. S corporations permitted to hold subsidiaries.

Sec. 14509. Treatment of distributions during loss years.

Sec. 14510. Treatment of S corporations under subchapter C.

Sec. 14511. Elimination of certain earnings and profits.

Sec. 14512. Carryover of disallowed losses and deductions under at-risk rules allowed.

Sec. 14513. Adjustments to basis of inherited S stock to reflect certain items of income.

Sec. 14514. S corporations eligible for rules applicable to real property subdivided for sale by noncorporate taxpayers.

Sec. 14515. Effective date.

PART II—PROVISIONS RELATING TO REGULATED INVESTMENT COMPANIES

Sec. 14521. Repeal of 30-percent gross income limitation.

PART III—PROVISIONS RELATING TO REAL ESTATE INVESTMENT TRUSTS

Sec. 14531. Clarification of limitation on maximum number of shareholders.

Sec. 14532. De minimis rule for tenant services income.

Sec. 14533. Attribution rules applicable to tenant ownership.

Sec. 14534. Credit for tax paid by REIT on retained capital gains.

Sec. 14535. Repeal of 30-percent gross income requirement.

Sec. 14536. Modification of earnings and profits rules for determining whether REIT has earnings and profits from non-REIT year.

Sec. 14537. Treatment of foreclosure property.

Sec. 14538. Payments under hedging instruments.

Sec. 14539. Excess noncash income.

- Sec. 14540. Prohibited transaction safe harbor.
- Sec. 14541. Shared appreciation mortgages.
- Sec. 14542. Wholly owned subsidiaries.
- Sec. 14543. Effective date.

PART IV—ACCOUNTING PROVISIONS

- Sec. 14551. Modifications to look-back method for long-term contracts.
- Sec. 14552. Application of mark to market accounting method to traders in securities.
- Sec. 14553. Modification of ruling amounts for nuclear decommissioning costs.
- Sec. 14554. Election of alternative taxable years by partnerships and S corporations.
- Sec. 14555. Special rule for crop insurance proceeds and disaster payments.

PART V—TAX-EXEMPT BOND PROVISIONS

- Sec. 14561. Repeal of \$100,000 limitation on unspent proceeds under 1-year exception from rebate.
- Sec. 14562. Exception from rebate for earnings on bona fide debt service fund under construction bond rules.
- Sec. 14563. Repeal of debt service-based limitation on investment in certain nonpurpose investments.
- Sec. 14564. Repeal of expired provisions.
- Sec. 14565. Effective dates.

PART VI—INSURANCE PROVISIONS

- Sec. 14571. Treatment of certain insurance contracts on retired lives.
- Sec. 14572. Treatment of modified guaranteed contracts.
- Sec. 14573. Minimum tax treatment of certain property and casualty insurance companies.

PART VII—OTHER PROVISIONS

- Sec. 14581. Closing of partnership taxable year with respect to deceased partner, etc.
- Sec. 14582. Credit for Social Security taxes paid with respect to employee cash tips.
- Sec. 14583. Due date for first quarter estimated tax payments by private foundations.
- Sec. 14584. Treatment of dues paid to agricultural or horticultural organizations.

Subtitle F—Estates and Trusts

PART I—INCOME TAX PROVISIONS

- Sec. 14601. Certain revocable trusts treated as part of estate.
- Sec. 14602. Distributions during first 65 days of taxable year of estate.
- Sec. 14603. Separate share rules available to estates.
- Sec. 14604. Executor of estate and beneficiaries treated as related persons for disallowance of losses, etc.
- Sec. 14605. Limitation on taxable year of estates.
- Sec. 14606. Repeal of certain throwback rules applicable to domestic trusts.
- Sec. 14607. Treatment of funeral trusts.

PART II—ESTATE AND GIFT TAX PROVISIONS

- Sec. 14611. Clarification of waiver of certain rights of recovery.
- Sec. 14612. Adjustments for gifts within 3 years of decedent's death.
- Sec. 14613. Clarification of qualified terminable interest rules.
- Sec. 14614. Transitional rule under section 2056A.
- Sec. 14615. Opportunity to correct certain failures under section 2032A.
- Sec. 14616. Unified credit of decedent increased by unified credit of spouse used on split gift included in decedent's gross estate.
- Sec. 14617. Reformation of defective bequests, etc. to spouse of decedent.
- Sec. 14618. Gifts may not be revalued for estate tax purposes after expiration of statute of limitations.
- Sec. 14619. Clarifications relating to disclaimers.
- Sec. 14620. Clarification of treatment of survivor annuities under qualified terminable interest rules.
- Sec. 14621. Treatment under qualified domestic trust rules of forms of ownership which are not trusts.
- Sec. 14622. Authority to waive requirement of United States trustee for qualified domestic trusts.

PART III—GENERATION-SKIPPING TAX PROVISIONS

- Sec. 14631. Severing of trusts holding property having an inclusion ratio of greater than zero.
- Sec. 14632. Clarification of who is transferor where subsequent gift by reason of power of appointment.
- Sec. 14633. Taxable termination not to include direct skips.
- Sec. 14634. Expansion of exception from generation-skipping transfer tax for transfers to individuals with deceased parents.

Subtitle G—Excise Tax Simplification

PART I—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

- Sec. 14701. Credit or refund for imported bottled distilled spirits returned to distilled spirits plant.
- Sec. 14702. Authority to cancel or credit export bonds without submission of records.
- Sec. 14703. Repeal of required maintenance of records on premises of distilled spirits plant.
- Sec. 14704. Fermented material from any brewery may be received at a distilled spirits plant.
- Sec. 14705. Repeal of requirement for wholesale dealers in liquors to post sign.
- Sec. 14706. Refund of tax on wine returned to bond not limited to unmerchantable wine.
- Sec. 14707. Use of additional ameliorating material in certain wines.
- Sec. 14708. Domestically produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.
- Sec. 14709. Beer may be withdrawn free of tax for destruction.
- Sec. 14710. Authority to allow drawback on exported beer without submission of records.
- Sec. 14711. Transfer to brewery of beer imported in bulk without payment of tax.

PART II—CONSOLIDATION OF TAXES ON AVIATION GASOLINE

- Sec. 14721. Consolidation of taxes on aviation gasoline.

PART III—OTHER EXCISE TAX PROVISIONS

- Sec. 14731. Authority to grant exemptions from registration requirements.
- Sec. 14732. Certain combinations not treated as manufacture under retail sales tax on heavy trucks.
- Sec. 14733. Exemption from diesel fuel dyeing requirements with respect to certain States.
- Sec. 14734. Repeal of expired provisions.

Subtitle H—Administrative Provisions

PART I—GENERAL PROVISIONS

- Sec. 14801. Repeal of authority to disclose whether prospective juror has been audited.
- Sec. 14802. Clarification of statute of limitations.
- Sec. 14803. Certain notices disregarded under provision increasing interest rate on large corporate underpayments.
- Sec. 14804. Clarification of authority to withhold Puerto Rico income taxes from salaries of Federal employees.

PART II—TAX COURT PROCEDURES

- Sec. 14811. Overpayment determinations of tax court.
- Sec. 14812. Awarding of administrative costs.
- Sec. 14813. Redetermination of interest pursuant to motion.
- Sec. 14814. Application of net worth requirement for awards of litigation costs.

PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS

- Sec. 14821. Cooperative agreements with State tax authorities.

1 **Subtitle A—Provisions Relating to** 2 **Individuals**

3 **PART I—PROVISIONS RELATING TO ROLLOVER** 4 **OF GAIN ON SALE OF PRINCIPAL RESIDENCE**

5 **SEC. 14101. MULTIPLE SALES WITHIN ROLLOVER PERIOD.**

6 (a) GENERAL RULE.—

7 (1) Section 1034 (relating to rollover of gain on
8 sale of principal residence) is amended by striking
9 subsection (d).

10 (2) Paragraph (4) of section 1034(c) is amend-
11 ed to read as follows:

1 “(4) If the taxpayer, during the period de-
2 scribed in subsection (a), purchases more than 1 res-
3 idence which is used by him as his principal resi-
4 dence at some time within 2 years after the date of
5 the sale of the old residence, only the first of such
6 residences so used by him after the date of such sale
7 shall constitute the new residence.”

8 (3) Subsections (h)(1) and (k) of section 1034
9 are each amended by striking “(other than the 2
10 years referred to in subsection (c)(4))”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 this section shall apply to sales of old residences (within
13 the meaning of section 1034 of the Internal Revenue Code
14 of 1986) after the date of the enactment of this Act.

15 **SEC. 14102. SPECIAL RULES IN CASE OF DIVORCE.**

16 (a) **IN GENERAL.**—Subsection (c) of section 1034 is
17 amended by adding at the end the following new para-
18 graph:

19 “(5) If—

20 “(A) a residence is sold by an individual
21 pursuant to a divorce or marital separation,
22 and

23 “(B) the taxpayer used such residence as
24 his principal residence at any time during the
25 2-year period ending on the date of such sale,

1 for purposes of this section, such residence shall be
2 treated as the taxpayer's principal residence at the
3 time of such sale."

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply to sales of old residences (within
6 the meaning of section 1034 of the Internal Revenue Code
7 of 1986) after the date of the enactment of this Act.

8 **SEC. 14103. ONE-TIME EXCLUSION OF GAIN FROM SALE OF**
9 **PRINCIPAL RESIDENCE FOR CERTAIN**
10 **SPOUSES.**

11 (a) IN GENERAL.—Paragraph (2) of section 121(b)
12 (relating to one-time exclusion of gain from sale of prin-
13 cipal residence by individual who has attained age 55) is
14 amended by adding at the end the following new sentence:
15 "For purposes of applying the preceding sentence to indi-
16 viduals who are married to each other, an election by one
17 individual with respect to a sale or exchange occurring be-
18 fore the marriage shall be disregarded for purposes of per-
19 mitting an election with respect to property owned and
20 used by the other individual as his principal residence
21 throughout the 3-year period ending on the date of the
22 marriage."

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply for purposes of determining
25 whether an election may be made under section 121 of

1 the Internal Revenue Code of 1986 with respect to a sale
2 or exchange occurring after September 13, 1995.

3 **PART II—OTHER PROVISIONS**

4 **SEC. 14111. PAYMENT OF TAX BY COMMERCIALY ACCEPT-**
5 **ABLE MEANS.**

6 (a) GENERAL RULE.—Section 6311 is amended to
7 read as follows:

8 **“SEC. 6311. PAYMENT OF TAX BY COMMERCIALY ACCEPT-**
9 **ABLE MEANS.**

10 “(a) AUTHORITY TO RECEIVE.—It shall be lawful for
11 the Secretary to receive for internal revenue taxes (or in
12 payment for internal revenue stamps) any commercially
13 acceptable means that the Secretary deems appropriate to
14 the extent and under the conditions provided in regula-
15 tions prescribed by the Secretary.

16 “(b) ULTIMATE LIABILITY.—If a check, money
17 order, or other method of payment, including payment by
18 credit card, debit card, or charge card so received is not
19 duly paid, or is paid and subsequently charged back to
20 the Secretary, the person by whom such check, or money
21 order, or other method of payment has been tendered shall
22 remain liable for the payment of the tax or for the stamps,
23 and for all legal penalties and additions, to the same ex-
24 tent as if such check, money order, or other method of
25 payment had not been tendered.

1 “(c) LIABILITY OF BANKS AND OTHERS.—If any cer-
2 tified, treasurer’s, or cashier’s check (or other guaranteed
3 draft), or any money order, or any other means of pay-
4 ment that has been guaranteed by a financial institution
5 (such as a credit card, debit card, or charge card trans-
6 action which has been guaranteed expressly by a financial
7 institution) so received is not duly paid, the United States
8 shall, in addition to its right to exact payment from the
9 party originally indebted therefor, have a lien for—

10 “(1) the amount of such check (or draft) upon
11 all assets of the financial institution on which
12 drawn,

13 “(2) the amount of such money order upon all
14 the assets of the issuer thereof, or

15 “(3) the guaranteed amount of any other trans-
16 action upon all the assets of the institution making
17 such guarantee,

18 and such amount shall be paid out of such assets in pref-
19 erence to any other claims whatsoever against such finan-
20 cial institution, issuer, or guaranteeing institution, except
21 the necessary costs and expenses of administration and
22 the reimbursement of the United States for the amount
23 expended in the redemption of the circulating notes of
24 such financial institution.

25 “(d) PAYMENT BY OTHER MEANS.—

1 “(1) AUTHORITY TO PRESCRIBE REGULA-
2 TIONS.—The Secretary shall prescribe such regula-
3 tions as the Secretary deems necessary to receive
4 payment by commercially acceptable means, includ-
5 ing regulations that—

6 “(A) specify which methods of payment by
7 commercially acceptable means will be accept-
8 able,

9 “(B) specify when payment by such means
10 will be considered received,

11 “(C) identify types of nontax matters re-
12 lated to payment by such means that are to be
13 resolved by persons ultimately liable for pay-
14 ment and financial intermediaries, without the
15 involvement of the Secretary, and

16 “(D) ensure that tax matters will be re-
17 solved by the Secretary, without the involve-
18 ment of financial intermediaries.

19 “(2) AUTHORITY TO ENTER INTO CON-
20 TRACTS.—Notwithstanding section 3718(f) of title
21 31, United States Code, the Secretary is authorized
22 to enter into contracts to obtain services related to
23 receiving payment by other means where cost bene-
24 ficial to the Government. The Secretary may not pay

1 any fee or provide any other consideration under
2 such contracts.

3 “(3) SPECIAL PROVISIONS FOR USE OF CREDIT
4 CARDS.—If use of credit cards is accepted as a
5 method of payment of taxes pursuant to subsection
6 (a)—

7 “(A) a payment of internal revenue taxes
8 (or a payment for internal revenue stamps) by
9 a person by use of a credit card shall not be
10 subject to section 161 of the Truth-in-Lending
11 Act (15 U.S.C. 1666), or to any similar provi-
12 sions of State law, if the error alleged by the
13 person is an error relating to the underlying tax
14 liability, rather than an error relating to the
15 credit card account such as a computational
16 error or numerical transposition in the credit
17 card transaction or an issue as to whether the
18 person authorized payment by use of the credit
19 card,

20 “(B) a payment of internal revenue taxes
21 (or a payment for internal revenue stamps)
22 shall not be subject to section 170 of the Truth-
23 in-Lending Act (15 U.S.C. 1666i), or to any
24 similar provisions of State law,

1 “(C) a payment of internal revenue taxes
2 (or a payment for internal revenue stamps) by
3 a person by use of a debit card shall not be
4 subject to section 908 of the Electronic Fund
5 Transfer Act (15 U.S.C. 1693f), or to any simi-
6 lar provisions of State law, if the error alleged
7 by the person is an error relating to the under-
8 lying tax liability, rather than an error relating
9 to the debit card account such as a computa-
10 tional error or numerical transposition in the
11 debit card transaction or an issue as to whether
12 the person authorized payment by use of the
13 debit card,

14 “(D) the term ‘creditor’ under section
15 103(f) of the Truth-in-Lending Act (15 U.S.C.
16 1602(f)) shall not include the Secretary with re-
17 spect to credit card transactions in payment of
18 internal revenue taxes (or payment for internal
19 revenue stamps), and

20 “(E) notwithstanding any other provision
21 of law to the contrary, in the case of payment
22 made by credit card or debit card transaction of
23 an amount owed to a person as the result of the
24 correction of an error under section 161 of the
25 Truth-in-Lending Act (15 U.S.C. 1666) or sec-

1 tion 908 of the Electronic Fund Transfer Act
2 (15 U.S.C. 1693f), the Secretary is authorized
3 to provide such amount to such person as a
4 credit to that person's credit card or debit card
5 account through the applicable credit card or
6 debit card system.

7 “(e) CONFIDENTIALITY OF INFORMATION.—

8 “(1) IN GENERAL.—Except as otherwise au-
9 thorized by this subsection, no person may use or
10 disclose any information relating to credit or debit
11 card transactions obtained pursuant to section
12 6103(k)(8) other than for purposes directly related
13 to the processing of such transactions, or the billing
14 or collection of amounts charged or debited pursuant
15 thereto.

16 “(2) EXCEPTIONS.—

17 “(A) Debit or credit card issuers or others
18 acting on behalf of such issuers may also use
19 and disclose such information for purposes di-
20 rectly related to servicing an issuer's accounts.

21 “(B) Debit or credit card issuers or others
22 directly involved in the processing of credit or
23 debit card transactions or the billing or collec-
24 tion of amounts charged or debited thereto may

1 also use and disclose such information for pur-
2 poses directly related to—

3 “(i) statistical risk and profitability
4 assessment;

5 “(ii) transferring receivables, ac-
6 counts, or interest therein;

7 “(iii) auditing the account informa-
8 tion;

9 “(iv) complying with Federal, State,
10 or local law; and

11 “(v) properly authorized civil, crimi-
12 nal, or regulatory investigation by Federal,
13 State, or local authorities.

14 “(3) PROCEDURES.—Use and disclosure of in-
15 formation under this paragraph shall be made only
16 to the extent authorized by written procedures pro-
17 mulgated by the Secretary.

18 “(4) CROSS REFERENCE.—

**“For provision providing for civil damages for vio-
 lation of paragraph (1), see section 7431.”**

19 (b) CLERICAL AMENDMENT.—The table of sections
20 for subchapter B of chapter 64 is amended by striking
21 the item relating to section 6311 and inserting the follow-
22 ing:

 “Sec. 6311. Payment of tax by commercially acceptable means.”

1 (c) AMENDMENTS TO SECTIONS 6103 AND 7431
2 WITH RESPECT TO DISCLOSURE AUTHORIZATION.—

3 (1) Subsection (k) of section 6103 (relating to
4 confidentiality and disclosure of returns and return
5 information) is amended by adding at the end the
6 following new paragraph:

7 “(8) DISCLOSURE OF INFORMATION TO ADMIN-
8 ISTER SECTION 6311.—The Secretary may disclose
9 returns or return information to financial institu-
10 tions and others to the extent the Secretary deems
11 necessary for the administration of section 6311.
12 Disclosures of information for purposes other than
13 to accept payments by checks or money orders shall
14 be made only to the extent authorized by written
15 procedures promulgated by the Secretary.”

16 (2) Section 7431 (relating to civil damages for
17 unauthorized disclosure of returns and return infor-
18 mation) is amended by adding at the end the follow-
19 ing new subsection:

20 “(g) SPECIAL RULE FOR INFORMATION OBTAINED
21 UNDER SECTION 6103(k)(8).—For purposes of this sec-
22 tion, any reference to section 6103 shall be treated as in-
23 cluding a reference to section 6311(e).”

24 (3) Section 6103(p)(3)(A) is amended by strik-
25 ing “or (6)” and inserting “(6), or (8)”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the day 9 months after
3 the date of the enactment of this Act.

4 **SEC. 14112. SIMPLIFIED FOREIGN TAX CREDIT LIMITATION**
5 **FOR INDIVIDUALS.**

6 (a) GENERAL RULE.—Section 904 (relating to limi-
7 tations on foreign tax credit) is amended by redesignating
8 subsection (j) as subsection (k) and by inserting after sub-
9 section (i) the following new subsection:

10 “(j) SIMPLIFIED LIMITATION FOR CERTAIN INDIVID-
11 UALS.—

12 “(1) IN GENERAL.—In the case of an individual
13 to whom this subsection applies for any taxable year,
14 the limitation of subsection (a) shall be the lesser
15 of—

16 “(A) 25 percent of such individual’s gross
17 income for the taxable year from sources with-
18 out the United States, or

19 “(B) the amount of the creditable foreign
20 taxes paid or accrued by the individual during
21 the taxable year (determined without regard to
22 subsection (c)).

23 No taxes paid or accrued by the individual during
24 such taxable year may be deemed paid or accrued in
25 any other taxable year under subsection (c).

1 “(2) INDIVIDUALS TO WHOM SUBSECTION AP-
2 PLIES.—This subsection shall apply to an individual
3 for any taxable year if—

4 “(A) the entire amount of such individual’s
5 gross income for the taxable year from sources
6 without the United States consists of qualified
7 passive income,

8 “(B) the amount of the creditable foreign
9 taxes paid or accrued by the individual during
10 the taxable year does not exceed \$200 (\$400 in
11 the case of a joint return), and

12 “(C) such individual elects to have this
13 subsection apply for the taxable year.

14 “(3) DEFINITIONS.—For purposes of this sub-
15 section—

16 “(A) QUALIFIED PASSIVE INCOME.—The
17 term ‘qualified passive income’ means any item
18 of gross income if—

19 “(i) such item of income is passive in-
20 come (as defined in subsection (d)(2)(A)
21 without regard to clause (iii) thereof), and

22 “(ii) such item of income is shown on
23 a payee statement furnished to the individ-
24 ual.

1 “(B) CREDITABLE FOREIGN TAXES.—The
2 term ‘creditable foreign taxes’ means any taxes
3 for which a credit is allowable under section
4 901; except that such term shall not include
5 any tax unless such tax is shown on a payee
6 statement furnished to such individual.

7 “(C) PAYEE STATEMENT.—The term
8 ‘payee statement’ has the meaning given to
9 such term by section 6724(d)(2).

10 “(D) ESTATES AND TRUSTS NOT ELIGI-
11 BLE.—This subsection shall not apply to any
12 estate or trust.”

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply to taxable years beginning after
15 December 31, 1995.

16 **SEC. 14113. TREATMENT OF PERSONAL TRANSACTIONS BY**
17 **INDIVIDUALS UNDER FOREIGN CURRENCY**
18 **RULES.**

19 (a) GENERAL RULE.—Subsection (e) of section 988
20 (relating to application to individuals) is amended to read
21 as follows:

22 “(e) APPLICATION TO INDIVIDUALS.—

23 “(1) IN GENERAL.—The preceding provisions of
24 this section shall not apply to any section 988 trans-

1 action entered into by an individual which is a per-
2 sonal transaction.

3 “(2) EXCLUSION FOR CERTAIN PERSONAL
4 TRANSACTIONS.—If—

5 “(A) nonfunctional currency is disposed of
6 by an individual in any transaction, and

7 “(B) such transaction is a personal trans-
8 action,

9 no gain shall be recognized for purposes of this sub-
10 title by reason of changes in exchange rates after
11 such currency was acquired by such individual and
12 before such disposition. The preceding sentence shall
13 not apply if the gain which would otherwise be rec-
14 ognized exceeds \$200.

15 “(3) PERSONAL TRANSACTIONS.—For purposes
16 of this subsection, the term ‘personal transaction’
17 means any transaction entered into by an individual,
18 except that such term shall not include any trans-
19 action to the extent that expenses properly allocable
20 to such transaction meet the requirements of section
21 162 or 212 (other than that part of section 212
22 dealing with expenses incurred in connection with
23 taxes).”

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 1995.

4 **SEC. 14114. TREATMENT OF CERTAIN REIMBURSED EX-**
5 **PENSES OF RURAL MAIL CARRIERS.**

6 (a) IN GENERAL.—Section 162 (relating to trade or
7 business expenses) is amended by redesignating subsection
8 (o) as subsection (p) and by inserting after subsection (n)
9 the following new subsection:

10 “(o) TREATMENT OF CERTAIN REIMBURSED EX-
11 PENSES OF RURAL MAIL CARRIERS.—

12 “(1) GENERAL RULE.—In the case of any em-
13 ployee of the United States Postal Service who per-
14 forms services involving the collection and delivery of
15 mail on a rural route and who receives qualified re-
16 imbursements for the expenses incurred by such em-
17 ployee for the use of a vehicle in performing such
18 services—

19 “(A) the amount allowable as a deduction
20 under this chapter for the use of a vehicle in
21 performing such services shall be equal to the
22 amount of such qualified reimbursements; and

23 “(B) such qualified reimbursements shall
24 be treated as paid under a reimbursement or
25 other expense allowance arrangement for pur-

1 poses of section 62(a)(2)(A) (and section 62(c)
2 shall not apply to such qualified reimburse-
3 ments).

4 “(2) DEFINITION OF QUALIFIED REIMBURSE-
5 MENTS.—For purposes of this subsection, the term
6 ‘qualified reimbursements’ means the amounts paid
7 by the United States Postal Service to employees as
8 an equipment maintenance allowance under the
9 1991 collective bargaining agreement between the
10 United States Postal Service and the National Rural
11 Letter Carriers’ Association. Amounts paid as an
12 equipment maintenance allowance by such Postal
13 Service under later collective bargaining agreements
14 that supersede the 1991 agreement shall be consid-
15 ered qualified reimbursements if such amounts do
16 not exceed the amounts that would have been paid
17 under the 1991 agreement, adjusted for changes in
18 the Consumer Price Index (as defined in section
19 1(f)(5)) since 1991.”

20 (b) TECHNICAL AMENDMENT.—Section 6008 of the
21 Technical and Miscellaneous Revenue Act of 1988 is here-
22 by repealed.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 1995.

1 **SEC. 14115. EXCLUSION OF COMBAT PAY FROM WITHHOLD-**
2 **ING LIMITED TO AMOUNT EXCLUDABLE**
3 **FROM GROSS INCOME.**

4 (a) **IN GENERAL.**—Paragraph (1) of section 3401(a)
5 (defining wages) is amended by inserting before the semi-
6 colon the following: “to the extent remuneration for such
7 service is excludable from gross income under such sec-
8 tion”.

9 (b) **EFFECTIVE DATE.**—The amendment made by
10 subsection (a) shall apply to remuneration paid after De-
11 cember 31, 1995.

12 **SEC. 14116. TREATMENT OF TRAVELING EXPENSES OF CER-**
13 **TAIN FEDERAL EMPLOYEES ENGAGED IN**
14 **CRIMINAL INVESTIGATIONS.**

15 (a) **IN GENERAL.**—Subsection (a) of section 162 is
16 amended by adding at the end the following new sentence:
17 “The preceding sentence shall not apply to any Federal
18 employee during any period for which such employee is
19 certified by the Attorney General (or the designee thereof)
20 as traveling on behalf of the United States in temporary
21 duty status to investigate, or provide support services for
22 the investigation of, a Federal crime.”

23 (b) **EFFECTIVE DATE.**—The amendment made by
24 subsection (a) shall apply to taxable years ending after
25 the date of the enactment of this Act.

1 **Subtitle B—Pension Simplification**

2 **PART I—SIMPLIFIED DISTRIBUTION RULES**

3 **SEC. 14201. REPEAL OF 5-YEAR INCOME AVERAGING FOR** 4 **LUMP-SUM DISTRIBUTIONS.**

5 (a) IN GENERAL.—Subsection (d) of section 402 (re-
6 lating to taxability of beneficiary of employees' trust) is
7 amended by adding at the end the following new para-
8 graph:

9 “(8) TERMINATION.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), this subsection shall not
12 apply to any taxable year beginning after De-
13 cember 31, 1995.

14 “(B) RETENTION OF CERTAIN TRANSITION
15 RULES.—Subparagraph (A) shall not apply to
16 any distribution for which the taxpayer elects
17 the benefits of section 1122 (h)(3) or (h)(5) of
18 the Tax Reform Act of 1986.”

19 **SEC. 14202. REPEAL OF \$5,000 EXCLUSION OF EMPLOYEES'** 20 **DEATH BENEFITS.**

21 (a) IN GENERAL.—Subsection (b) of section 101 is
22 hereby repealed.

23 (b) CONFORMING AMENDMENTS.—

1 (1) Subsection (c) of section 101 is amended by
2 striking “subsection (a) or (b)” and inserting “sub-
3 section (a)”.

4 (2) Sections 406(e) and 407(e) are each amend-
5 ed by striking paragraph (2) and by redesignating
6 paragraph (3) as paragraph (2).

7 (3) Section 7701(a)(20) is amended by striking
8 “, for the purposes of applying the provisions of sec-
9 tion 101(b) with respect to employees’ death bene-
10 fits”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 December 31, 1995.

14 **SEC. 14203. SIMPLIFIED METHOD FOR TAXING ANNUITY**
15 **DISTRIBUTIONS UNDER CERTAIN EMPLOYER**
16 **PLANS.**

17 (a) GENERAL RULE.—Subsection (d) of section 72
18 (relating to annuities; certain proceeds of endowment and
19 life insurance contracts) is amended to read as follows:

20 “(d) SPECIAL RULES FOR QUALIFIED EMPLOYER
21 RETIREMENT PLANS.—

22 “(1) SIMPLIFIED METHOD OF TAXING ANNUITY
23 PAYMENTS.—

1 “(A) IN GENERAL.—In the case of any
2 amount received as an annuity under a quali-
3 fied employer retirement plan—

4 “(i) subsection (b) shall not apply,
5 and

6 “(ii) the investment in the contract
7 shall be recovered as provided in this para-
8 graph.

9 “(B) METHOD OF RECOVERING INVEST-
10 MENT IN CONTRACT.—

11 “(i) IN GENERAL.—Gross income
12 shall not include so much of any monthly
13 annuity payment under a qualified em-
14 ployer retirement plan as does not exceed
15 the amount obtained by dividing—

16 “(I) the investment in the con-
17 tract (as of the annuity starting date),
18 by

19 “(II) the number of anticipated
20 payments determined under the table
21 contained in clause (iii) (or, in the
22 case of a contract to which subsection
23 (c)(3)(B) applies, the number of
24 monthly annuity payments under such
25 contract).

1 “(ii) CERTAIN RULES MADE APPLICA-
 2 BLE.—Rules similar to the rules of para-
 3 graphs (2) and (3) of subsection (b) shall
 4 apply for purposes of this paragraph.

5 “(iii) NUMBER OF ANTICIPATED PAY-
 6 MENTS.—

“If the age of the primary annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	300
More than 55 but not more than 60	260
More than 60 but not more than 65	240
More than 65 but not more than 70	170
More than 70	120

7 “(C) ADJUSTMENT FOR REFUND FEATURE
 8 NOT APPLICABLE.—For purposes of this para-
 9 graph, investment in the contract shall be de-
 10 termined under subsection (c)(1) without re-
 11 gard to subsection (c)(2).

12 “(D) SPECIAL RULE WHERE LUMP SUM
 13 PAID IN CONNECTION WITH COMMENCEMENT
 14 OF ANNUITY PAYMENTS.—If, in connection with
 15 the commencement of annuity payments under
 16 any qualified employer retirement plan, the tax-
 17 payer receives a lump sum payment—

18 “(i) such payment shall be taxable
 19 under subsection (e) as if received before
 20 the annuity starting date, and

1 “(ii) the investment in the contract
2 for purposes of this paragraph shall be de-
3 termined as if such payment had been so
4 received.

5 “(E) EXCEPTION.—This paragraph shall
6 not apply in any case where the primary annu-
7 itant has attained age 75 on the annuity start-
8 ing date unless there are fewer than 5 years of
9 guaranteed payments under the annuity.

10 “(F) ADJUSTMENT WHERE ANNUITY PAY-
11 MENTS NOT ON MONTHLY BASIS.—In any case
12 where the annuity payments are not made on a
13 monthly basis, appropriate adjustments in the
14 application of this paragraph shall be made to
15 take into account the period on the basis of
16 which such payments are made.

17 “(G) QUALIFIED EMPLOYER RETIREMENT
18 PLAN.—For purposes of this paragraph, the
19 term ‘qualified employer retirement plan’ means
20 any plan or contract described in paragraph
21 (1), (2), or (3) of section 4974(c).

22 “(2) TREATMENT OF EMPLOYEE CONTRIBU-
23 TIONS UNDER DEFINED CONTRIBUTION PLANS.—
24 For purposes of this section, employee contributions
25 (and any income allocable thereto) under a defined

1 contribution plan may be treated as a separate con-
2 tract.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply in cases where the annuity start-
5 ing date is after December 31, 1995.

6 **SEC. 14204. REQUIRED DISTRIBUTIONS.**

7 (a) IN GENERAL.—Section 401(a)(9)(C) (defining re-
8 quired beginning date) is amended to read as follows:

9 “(C) REQUIRED BEGINNING DATE.—For
10 purposes of this paragraph—

11 “(i) IN GENERAL.—The term ‘re-
12 quired beginning date’ means April 1 of
13 the calendar year following the later of—

14 “(I) the calendar year in which
15 the employee attains age 70½, or

16 “(II) the calendar year in which
17 the employee retires.

18 “(ii) EXCEPTION.—Subclause (II) of
19 clause (i) shall not apply—

20 “(I) except as provided in section
21 409(d), in the case of an employee
22 who is a 5-percent owner (as defined
23 in section 416) with respect to the
24 plan year ending in the calendar year

1 in which the employee attains age
2 70½, or

3 “(II) for purposes of section 408
4 (a)(6) or (b)(3).

5 “(iii) ACTUARIAL ADJUSTMENT.—In
6 the case of an employee to whom clause
7 (i)(II) applies who retires in a calendar
8 year after the calendar year in which the
9 employee attains age 70½, the employee’s
10 accrued benefit shall be actuarially in-
11 creased to take into account the period
12 after age 70½ in which the employee was
13 not receiving any benefits under the plan.

14 “(iv) EXCEPTION FOR GOVERN-
15 MENTAL AND CHURCH PLANS.—Clauses
16 (ii) and (iii) shall not apply in the case of
17 a governmental plan or church plan. For
18 purposes of this clause, the term ‘church
19 plan’ means a plan maintained by a church
20 for church employees, and the term
21 ‘church’ means any church (as defined in
22 section 3121(w)(3)(A)) or qualified church-
23 controlled organization (as defined in sec-
24 tion 3121(w)(3)(B)).”

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to years beginning after Decem-
3 ber 31, 1995.

4 **PART II—INCREASED ACCESS TO PENSION**
5 **PLANS**

6 **SEC. 14211. MODIFICATIONS OF SIMPLIFIED EMPLOYEE**
7 **PENSIONS.**

8 (a) INCREASE IN NUMBER OF ALLOWABLE PARTICI-
9 PANTS FOR SALARY REDUCTION ARRANGEMENTS.—Sec-
10 tion 408(k)(6)(B) is amended by striking “25” each place
11 it appears in the text and heading thereof and inserting
12 “100”.

13 (b) REPEAL OF PARTICIPATION REQUIREMENT.—

14 (1) IN GENERAL.—Section 408(k)(6)(A) is
15 amended by striking clause (ii) and by redesignating
16 clauses (iii) and (iv) as clauses (ii) and (iii), respec-
17 tively.

18 (2) CONFORMING AMENDMENTS.—Clause (ii) of
19 section 408(k)(6)(C) and clause (ii) of section
20 408(k)(6)(F) are each amended by striking “sub-
21 paragraph (A)(iii)” and inserting “subparagraph
22 (A)(ii)”.

23 (c) ALTERNATIVE TEST.—Clause (ii) of section
24 408(k)(6)(A), as redesignated by subsection (b)(1), is

1 amended by adding at the end the following new flush sen-
2 tence:

3 “The requirements of the preceding sen-
4 tence are met if the employer makes con-
5 tributions to the simplified employee pen-
6 sion meeting the requirements of sections
7 401(k)(11) (B) or (C), 401(k)(11)(D), and
8 401(m)(10)(B).”

9 (d) YEAR FOR COMPUTING NONHIGHLY COM-
10 PENSATED EMPLOYEE PERCENTAGE.—Clause (ii) of sec-
11 tion 408(k)(6)(A), as redesignated by subsection (b)(1),
12 is amended—

13 (1) by striking “such year” in subclause (I) and
14 inserting “the preceding year”, and

15 (2) by adding at the end the following new
16 flush sentence:

17 “In the case of the first plan year for
18 which an employer makes contributions to
19 a simplified employee pension, rules similar
20 to the rules of section 401(k)(3)(E) shall
21 apply.”

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to years beginning after December
24 31, 1995.

1 **SEC. 14212. STATE AND LOCAL GOVERNMENTS AND TAX-EX-**
2 **EMPT ORGANIZATIONS ELIGIBLE UNDER**
3 **SECTION 401(k).**

4 (a) IN GENERAL.—Subparagraph (B) of section
5 401(k)(4) is amended to read as follows:

6 “(B) ELIGIBILITY OF STATE AND LOCAL
7 GOVERNMENTS AND TAX-EXEMPT ORGANIZA-
8 TIONS.—Any—

9 “(i) State or local government or po-
10 litical subdivision thereof, or any agency or
11 instrumentality thereof, and

12 “(ii) any organization exempt from
13 tax under this subtitle,
14 may include a qualified cash or deferred ar-
15 rangement as part of a plan maintained by it
16 unless the entity maintains an eligible deferred
17 compensation plan (as defined in section
18 457(b)). This subparagraph shall not apply to
19 a rural cooperative plan.”

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to plan years beginning after De-
22 cember 31, 1996, but shall not apply to any cash or de-
23 ferred arrangement to which clause (i) or (ii) of section
24 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

1 **PART III—NONDISCRIMINATION PROVISIONS**

2 **SEC. 14221. DEFINITION OF HIGHLY COMPENSATED EM-**
 3 **PLOYEES.**

4 (a) IN GENERAL.—Paragraph (1) of section 414(q)
 5 (defining highly compensated employee) is amended to
 6 read as follows:

7 “(1) IN GENERAL.—The term ‘highly com-
 8 pensated employee’ means any employee who—

9 “(A) was a 5-percent owner at any time
 10 during the year or the preceding year, or

11 “(B) had compensation for the preceding
 12 year from the employer in excess of \$80,000.

13 The Secretary shall adjust the \$80,000 amount
 14 under subparagraph (B) at the same time and in the
 15 same manner as under section 415(d), except that
 16 the base period in applying such section for purposes
 17 of this paragraph shall be the calendar quarter end-
 18 ing September 30, 1995.”

19 (b) CONFORMING AMENDMENTS.—

20 (1)(A) Subsection (q) of section 414 is amended
 21 by striking paragraphs (2), (4), (5), (8), and (12)
 22 and by redesignating paragraphs (3), (6), (7), (9),
 23 (10), and (11) as paragraphs (2) through (7), re-
 24 spectively.

25 (B) Section 129(d)(8)(B), 401(a)(5)(D)(ii),
 26 408(k)(2)(C), and 416(i)(1)(D) are each amended

1 by striking “section 414(q)(7)” and inserting “sec-
2 tion 414(q)(4)”.

3 (C) Sections 401(a)(17) and 404(l) are each
4 amended by striking “section 414(q)(6)” and insert-
5 ing “section 414(q)(3)”.

6 (D) Section 416(i)(1)(A) is amended by strik-
7 ing “section 414(q)(8)” and inserting “section
8 414(r)(9)”.

9 (2)(A) Section 414(r) is amended by adding at
10 the end the following new paragraph:

11 “(9) EXCLUDED EMPLOYEES.—For purposes of
12 paragraph (2)(A), the following employees shall be
13 excluded:

14 “(A) Employees who have not completed 6
15 months of service.

16 “(B) Employees who normally work less
17 than 17½ hours per week.

18 “(C) Employees who normally work not
19 more than 6 months during any year.

20 “(D) Employees who have not attained the
21 age of 21.

22 “(E) Except to the extent provided in reg-
23 ulations, employees who are included in a unit
24 of employees covered by an agreement which
25 the Secretary of Labor finds to be a collective

1 bargaining agreement between employee rep-
2 resentatives and the employer.

3 Except as provided by the Secretary, the employer
4 may elect to apply subparagraph (A), (B), (C), or
5 (D) by substituting a shorter period of service,
6 smaller number of hours or months, or lower age for
7 the period of service, number of hours or months, or
8 age (as the case may be) specified in such subpara-
9 graph.”

10 (B) Subparagraph (A) of section 414(r)(2) is
11 amended by striking “subsection (q)(8)” and insert-
12 ing “paragraph (9)”.

13 (3) Section 1114(c)(4) of the Tax Reform Act
14 of 1986 is amended by adding at the end the follow-
15 ing new sentence: “Any reference in this paragraph
16 to section 414(q) shall be treated as a reference to
17 such section as in effect before the Tax Simplifica-
18 tion Act of 1995”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to years beginning after December
21 31, 1995.

22 **SEC. 14222. REPEAL OF FAMILY AGGREGATION RULES.**

23 (a) IN GENERAL.—Paragraph (6) of section 414(q)
24 is hereby repealed.

1 (b) COMPENSATION LIMIT.—Subparagraph (A) of
2 section 401(a)(17) is amended by striking the last sen-
3 tence.

4 (c) DEDUCTION.—Subsection (l) of section 404 is
5 amended by striking the last sentence.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to years beginning after December
8 31, 1995.

9 **SEC. 14223. MODIFICATION OF ADDITIONAL PARTICIPA-**
10 **TION REQUIREMENTS.**

11 (a) GENERAL RULE.—Section 401(a)(26)(A) (relat-
12 ing to additional participation requirements) is amended
13 to read as follows:

14 “(A) IN GENERAL.—In the case of a trust
15 which is a part of a defined benefit plan, such
16 trust shall not constitute a qualified trust under
17 this subsection unless on each day of the plan
18 year such trust benefits at least the lesser of—

19 “(i) 50 employees of the employer, or

20 “(ii) the greater of—

21 “(I) 40 percent of all employees
22 of the employer, or

23 “(II) 2 employees (or if there is
24 only 1 employee, such employee).”

1 (b) SEPARATE LINE OF BUSINESS TEST.—Section
 2 401(a)(26)(G) (relating to separate line of business) is
 3 amended by striking “paragraph (7)” and inserting “para-
 4 graph (2)(A) or (7)”.

5 (c) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to years beginning after December
 7 31, 1995.

8 **SEC. 14224. NONDISCRIMINATION RULES FOR QUALIFIED**
 9 **CASH OR DEFERRED ARRANGEMENTS AND**
 10 **MATCHING CONTRIBUTIONS.**

11 (a) ALTERNATIVE METHODS OF SATISFYING SEC-
 12 TION 401(k) NONDISCRIMINATION TESTS.—Section
 13 401(k) (relating to cash or deferred arrangements) is
 14 amended by adding at the end the following new para-
 15 graph:

16 “(11) ALTERNATIVE METHODS OF MEETING
 17 NONDISCRIMINATION REQUIREMENTS.—

18 “(A) IN GENERAL.—A cash or deferred ar-
 19 rangement shall be treated as meeting the re-
 20 quirements of paragraph (3)(A)(ii) if such ar-
 21 rangement—

22 “(i) meets the contribution require-
 23 ments of subparagraph (B) or (C), and

24 “(ii) meets the notice requirements of
 25 subparagraph (D).

1 “(B) MATCHING CONTRIBUTIONS.—

2 “(i) IN GENERAL.—The requirements
3 of this subparagraph are met if, under the
4 arrangement, the employer makes match-
5 ing contributions on behalf of each em-
6 ployee who is not a highly compensated
7 employee in an amount equal to—

8 “(I) 100 percent of the elective
9 contributions of the employee to the
10 extent such elective contributions do
11 not exceed 3 percent of the employee’s
12 compensation, and

13 “(II) 50 percent of the elective
14 contributions of the employee to the
15 extent that such elective contributions
16 exceed 3 percent but do not exceed 5
17 percent of the employee’s compensa-
18 tion.

19 “(ii) RATE FOR HIGHLY COM-
20 PENSATED EMPLOYEES.—The require-
21 ments of this subparagraph are not met if,
22 under the arrangement, the matching con-
23 tribution with respect to any elective con-
24 tribution of a highly compensated employee
25 at any level of compensation is greater

1 than that with respect to an employee who
2 is not a highly compensated employee.

3 “(iii) ALTERNATIVE PLAN DESIGNS.—
4 If the matching contribution with respect
5 to any elective contribution at any specific
6 level of compensation is not equal to the
7 percentage required under clause (i), an
8 arrangement shall not be treated as failing
9 to meet the requirements of clause (i) if—

10 “(I) the level of an employer’s
11 matching contribution does not in-
12 crease as an employee’s elective con-
13 tributions increase, and

14 “(II) the aggregate amount of
15 matching contributions with respect to
16 elective contributions not in excess of
17 such level of compensation is at least
18 equal to the amount of matching con-
19 tributions which would be made if
20 matching contributions were made on
21 the basis of the percentages described
22 in clause (i).

23 “(C) NONELECTIVE CONTRIBUTIONS.—

24 The requirements of this subparagraph are met
25 if, under the arrangement, the employer is re-

1 quired, without regard to whether the employee
2 makes an elective contribution or employee con-
3 tribution, to make a contribution to a defined
4 contribution plan on behalf of each employee
5 who is not a highly compensated employee and
6 who is eligible to participate in the arrangement
7 in an amount equal to at least 3 percent of the
8 employee's compensation.

9 “(D) NOTICE REQUIREMENT.—An ar-
10 rangement meets the requirements of this para-
11 graph if, under the arrangement, each employee
12 eligible to participate is, within a reasonable pe-
13 riod before any year, given written notice of the
14 employee's rights and obligations under the ar-
15 rangement which—

16 “(i) is sufficiently accurate and com-
17 prehensive to apprise the employee of such
18 rights and obligations, and

19 “(ii) is written in a manner calculated
20 to be understood by the average employee
21 eligible to participate.

22 “(E) OTHER REQUIREMENTS.—

23 “(i) WITHDRAWAL AND VESTING RE-
24 STRICTIONS.—An arrangement shall not be
25 treated as meeting the requirements of

1 subparagraph (B) or (C) unless the re-
2 quirements of subparagraphs (B) and (C)
3 of paragraph (2) are met with respect to
4 all employer contributions (including
5 matching contributions).

6 “(ii) SOCIAL SECURITY AND SIMILAR
7 CONTRIBUTIONS NOT TAKEN INTO AC-
8 COUNT.—An arrangement shall not be
9 treated as meeting the requirements of
10 subparagraph (B) or (C) unless such re-
11 quirements are met without regard to sub-
12 section (l), and, for purposes of subsection
13 (l), employer contributions under subpara-
14 graph (B) or (C) shall not be taken into
15 account.

16 “(F) OTHER PLANS.—An arrangement
17 shall be treated as meeting the requirements
18 under subparagraph (A)(i) if any other plan
19 maintained by the employer meets such require-
20 ments with respect to employees eligible under
21 the arrangement.”

22 (b) ALTERNATIVE METHODS OF SATISFYING SEC-
23 TION 401(m) NONDISCRIMINATION TESTS.—Section
24 401(m) (relating to nondiscrimination test for matching
25 contributions and employee contributions) is amended by

1 redesignating paragraph (10) as paragraph (11) and by
2 adding after paragraph (9) the following new paragraph:

3 “(10) ALTERNATIVE METHOD OF SATISFYING
4 TESTS.—

5 “(A) IN GENERAL.—A defined contribution
6 plan shall be treated as meeting the require-
7 ments of paragraph (2) with respect to match-
8 ing contributions if the plan—

9 “(i) meets the contribution require-
10 ments of subparagraph (B) or (C) of sub-
11 section (k)(11),

12 “(ii) meets the notice requirements of
13 subsection (k)(11)(D), and

14 “(iii) meets the requirements of sub-
15 paragraph (B).

16 “(B) LIMITATION ON MATCHING CON-
17 TRIBUTIONS.—The requirements of this sub-
18 paragraph are met if—

19 “(i) matching contributions on behalf
20 of any employee may not be made with re-
21 spect to an employee’s contributions or
22 elective deferrals in excess of 6 percent of
23 the employee’s compensation,

24 “(ii) the level of an employer’s match-
25 ing contribution does not increase as an

1 employee's contributions or elective defer-
2 rals increase, and

3 “(iii) the matching contribution with
4 respect to any highly compensated em-
5 ployee at a specific level of compensation is
6 not greater than that with respect to an
7 employee who is not a highly compensated
8 employee.”

9 (c) YEAR FOR COMPUTING NONHIGHLY COM-
10 PENSATED EMPLOYEE PERCENTAGE.—

11 (1) CASH OR DEFERRED ARRANGEMENTS.—

12 Clause (ii) of section 401(k)(3)(A) is amended—

13 (A) by striking “such year” and inserting
14 “the plan year”, and

15 (B) by striking “for such plan year” and
16 inserting “the preceding plan year”.

17 (2) MATCHING AND EMPLOYEE CONTRIBU-
18 TIONS.—Section 401(m)(2)(A) is amended—

19 (A) by inserting “for such plan year” after
20 “highly compensated employees”, and

21 (B) by inserting “for the preceding plan
22 year” after “eligible employees” each place it
23 appears in clause (i) and clause (ii).

24 (d) SPECIAL RULE FOR DETERMINING AVERAGE DE-
25 FERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

1 (1) Paragraph (3) of section 401(k) is amended
2 by adding at the end the following new subpara-
3 graph:

4 “(E) For purposes of this paragraph, in
5 the case of the first plan year of any plan, the
6 amount taken into account as the actual defer-
7 ral percentage of nonhighly compensated em-
8 ployees for the preceding plan year shall be—

9 “(i) 3 percent, or

10 “(ii) if the employer makes an election
11 under this subclause, the actual deferral
12 percentage of nonhighly compensated em-
13 ployees determined for such first plan
14 year.”

15 (2) Paragraph (3) of section 401(m) is amend-
16 ed by adding at the end the following: “Rules similar
17 to the rules of subsection (k)(3)(E) shall apply for
18 purposes of this subsection.”

19 (e) DISTRIBUTION OF EXCESS CONTRIBUTIONS.—

20 (1) Subparagraph (C) of section 401(k)(8) (re-
21 lating to arrangement not disqualified if excess con-
22 tributions distributed) is amended by striking “on
23 the basis of the respective portions of the excess con-
24 tributions attributable to each of such employees”
25 and inserting “on the basis of the amount of con-

1 tributions by, or on behalf of, each of such employ-
2 ees”.

3 (2) Subparagraph (C) of section 401(m)(6) (re-
4 lating to method of distributing excess aggregate
5 contributions) is amended by striking “on the basis
6 of the respective portions of such amounts attrib-
7 utable to each of such employees” and inserting “on
8 the basis of the amount of contributions on behalf
9 of, or by, each such employee”.

10 (f) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to years beginning after December
12 31, 1995.

13 **PART IV—MISCELLANEOUS SIMPLIFICATION**

14 **SEC. 14231. TREATMENT OF LEASED EMPLOYEES.**

15 (a) GENERAL RULE.—Subparagraph (C) of section
16 414(n)(2) (defining leased employee) is amended to read
17 as follows:

18 “(C) such services are performed under
19 significant direction or control by the recipi-
20 ent.”

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to years beginning after Decem-
23 ber 31, 1995, but shall not apply to any relationship deter-
24 mined under an Internal Revenue Service ruling issued be-
25 fore the date of the enactment of this Act pursuant to

1 section 414(n)(2)(C) of the Internal Revenue Code of
2 1986 (as in effect on the day before such date) not to
3 involve a leased employee.

4 **SEC. 14232. PLANS COVERING SELF-EMPLOYED INDIVID-**
5 **UALS.**

6 (a) **AGGREGATION RULES.**—Section 401(d) (relating
7 to additional requirements for qualification of trusts and
8 plans benefiting owner-employees) is amended to read as
9 follows:

10 “(d) **CONTRIBUTION LIMIT ON OWNER-EMPLOY-**
11 **EES.**—A trust forming part of a pension or profit-sharing
12 plan which provides contributions or benefits for employ-
13 ees some or all of whom are owner-employees shall con-
14 stitute a qualified trust under this section only if, in addi-
15 tion to meeting the requirements of subsection (a), the
16 plan provides that contributions on behalf of any owner-
17 employee may be made only with respect to the earned
18 income of such owner-employee which is derived from the
19 trade or business with respect to which such plan is
20 established.”

21 (b) **EFFECTIVE DATE.**—The amendments made by
22 this section shall apply to years beginning after December
23 31, 1995.

1 **SEC. 14233. ELIMINATION OF SPECIAL VESTING RULE FOR**
2 **MULTIEMPLOYER PLANS.**

3 (a) **IN GENERAL.**—Paragraph (2) of section 411(a)
4 (relating to minimum vesting standards) is amended—

5 (1) by striking “subparagraph (A), (B), or (C)”

6 and inserting “subparagraph (A) or (B)”; and

7 (2) by striking subparagraph (C).

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to plan years beginning on or after
10 the earlier of—

11 (1) the later of—

12 (A) January 1, 1996, or

13 (B) the date on which the last of the col-
14 lective bargaining agreements pursuant to
15 which the plan is maintained terminates (deter-
16 mined without regard to any extension thereof
17 after the date of the enactment of this Act), or

18 (2) January 1, 1998.

19 Such amendments shall not apply to any individual who
20 does not have more than 1 hour of service under the plan
21 on or after the 1st day of the 1st plan year to which such
22 amendments apply.

1 **SEC. 14234. DISTRIBUTIONS UNDER RURAL COOPERATIVE**
2 **PLANS.**

3 (a) DISTRIBUTIONS AFTER CERTAIN AGE.—Section
4 401(k)(7) is amended by adding at the end the following
5 new subparagraph:

6 “(C) SPECIAL RULE FOR CERTAIN DIS-
7 TRIBUTIONS.—A rural cooperative plan which
8 includes a qualified cash or deferred arrange-
9 ment shall not be treated as violating the re-
10 quirements of section 401(a) merely by reason
11 of a distribution to a participant after attain-
12 ment of age 59½.”

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to distributions after December 31,
15 1995.

16 **SEC. 14235. TREATMENT OF GOVERNMENTAL PLANS**
17 **UNDER SECTION 415.**

18 (a) DEFINITION OF COMPENSATION.—Subsection (k)
19 of section 415 (regarding limitations on benefits and con-
20 tributions under qualified plans) is amended by adding im-
21 mediately after paragraph (2) the following new para-
22 graph:

23 “(3) DEFINITION OF COMPENSATION FOR GOV-
24 ERNMENTAL PLANS.—For purposes of this section,
25 in the case of a governmental plan (as defined in
26 section 414(d)), the term ‘compensation’ includes, in

1 addition to the amounts described in subsection
2 (c)(3)—

3 “(A) any elective deferral (as defined in
4 section 402(g)(3)), and

5 “(B) any amount which is contributed by
6 the employer at the election of the employee
7 and which is not includible in the gross income
8 of an employee under section 125 or 457.”

9 (b) COMPENSATION LIMIT.—Subsection (b) of sec-
10 tion 415 is amended by adding immediately after para-
11 graph (10) the following new paragraph:

12 “(11) SPECIAL LIMITATION RULE FOR GOVERN-
13 MENTAL PLANS.—In the case of a governmental
14 plan (as defined in section 414(d)), subparagraph
15 (B) of paragraph (1) shall not apply.”

16 (c) TREATMENT OF CERTAIN EXCESS BENEFIT
17 PLANS.—

18 (1) IN GENERAL.—Section 415 is amended by
19 adding at the end the following new subsection:

20 “(m) TREATMENT OF QUALIFIED GOVERNMENTAL
21 EXCESS BENEFIT ARRANGEMENTS.—

22 “(1) GOVERNMENTAL PLAN NOT AFFECTED.—
23 In determining whether a governmental plan (as de-
24 fined in section 414(d)) meets the requirements of
25 this section, benefits provided under a qualified gov-

1 ernmental excess benefit arrangement shall not be
2 taken into account. Income accruing to a govern-
3 mental plan (or to a trust that is maintained solely
4 for the purpose of providing benefits under a quali-
5 fied governmental excess benefit arrangement) in re-
6 spect of a qualified governmental excess benefit ar-
7 rangement shall constitute income derived from the
8 exercise of an essential governmental function upon
9 which such governmental plan (or trust) shall be ex-
10 empt from tax under section 115.

11 “(2) TAXATION OF PARTICIPANT.—For pur-
12 poses of this chapter—

13 “(A) the taxable year or years for which
14 amounts in respect of a qualified governmental
15 excess benefit arrangement are includible in
16 gross income by a participant, and

17 “(B) the treatment of such amounts when
18 so includible by the participant,
19 shall be determined as if such qualified govern-
20 mental excess benefit arrangement were treated as a
21 plan for the deferral of compensation which is main-
22 tained by a corporation not exempt from tax under
23 this chapter and which does not meet the require-
24 ments for qualification under section 401.

1 “(3) QUALIFIED GOVERNMENTAL EXCESS BEN-
2 EFIT ARRANGEMENT.—For purposes of this sub-
3 section, the term ‘qualified governmental excess ben-
4 efit arrangement’ means a portion of a governmental
5 plan if—

6 “(A) such portion is maintained solely for
7 the purpose of providing to participants in the
8 plan that part of the participant’s annual bene-
9 fit otherwise payable under the terms of the
10 plan that exceeds the limitations on benefits im-
11 posed by this section,

12 “(B) under such portion no election is pro-
13 vided at any time to the participant (directly or
14 indirectly) to defer compensation, and

15 “(C) benefits described in subparagraph
16 (A) are not paid from a trust forming a part
17 of such governmental plan unless such trust is
18 maintained solely for the purpose of providing
19 such benefits.”

20 (2) COORDINATION WITH SECTION 457.—Sub-
21 section (e) of section 457 is amended by adding at
22 the end the following new paragraph:

23 “(15) TREATMENT OF QUALIFIED GOVERN-
24 MENTAL EXCESS BENEFIT ARRANGEMENTS.—Sub-
25 sections (b)(2) and (c)(1) shall not apply to any

1 qualified governmental excess benefit arrangement
2 (as defined in section 415(m)(3)), and benefits pro-
3 vided under such an arrangement shall not be taken
4 into account in determining whether any other plan
5 is an eligible deferred compensation plan.”

6 (3) CONFORMING AMENDMENT.—Paragraph (2)
7 of section 457(f) is amended by striking “and” at
8 the end of subparagraph (C), by striking the period
9 at the end of subparagraph (D) and inserting “,
10 and”, and by inserting immediately thereafter the
11 following new subparagraph:

12 “(E) a qualified governmental excess bene-
13 fit arrangement described in section 415(m).”

14 (d) EXEMPTION FOR SURVIVOR AND DISABILITY
15 BENEFITS.—Paragraph (2) of section 415(b) is amended
16 by adding at the end the following new subparagraph:

17 “(I) EXEMPTION FOR SURVIVOR AND DIS-
18 ABILITY BENEFITS PROVIDED UNDER GOVERN-
19 MENTAL PLANS.—Subparagraph (B) of para-
20 graph (1), subparagraph (C) of this paragraph,
21 and paragraph (5) shall not apply to—

22 “(i) income received from a govern-
23 mental plan (as defined in section 414(d))
24 as a pension, annuity, or similar allowance
25 as the result of the recipient becoming dis-

1 abled by reason of personal injuries or
2 sickness, or

3 “(ii) amounts received from a govern-
4 mental plan by the beneficiaries, survivors,
5 or the estate of an employee as the result
6 of the death of the employee.”

7 (e) REVOCATION OF GRANDFATHER ELECTION.—

8 (1) IN GENERAL.—Subparagraph (C) of section
9 415(b)(10) is amended by adding at the end the fol-
10 lowing new clause:

11 “(ii) REVOCATION OF ELECTION.—An
12 election under clause (i) may be revoked
13 not later than the last day of the third
14 plan year beginning after the date of the
15 enactment of this clause. The revocation
16 shall apply to all plan years to which the
17 election applied and to all subsequent plan
18 years. Any amount paid by a plan in a tax-
19 able year ending after the revocation shall
20 be includible in income in such taxable
21 year under the rules of this chapter in ef-
22 fect for such taxable year, except that, for
23 purposes of applying the limitations im-
24 posed by this section, any portion of such
25 amount which is attributable to any tax-

1 able year during which the election was in
2 effect shall be treated as received in such
3 taxable year.”

4 (2) CONFORMING AMENDMENT.—Subparagraph
5 (C) of section 415(b)(10) is amended by striking
6 “‘This’” and inserting:

7 “(i) IN GENERAL.—This”.

8 (f) EFFECTIVE DATE.—

9 (1) IN GENERAL.—The amendments made by
10 subsections (a), (b), (c), and (d) shall apply to tax-
11 able years beginning on or after the date of the en-
12 actment of this Act. The amendment made by sub-
13 section (e) shall apply with respect to election rev-
14 ocations adopted after the date of the enactment of
15 this Act.

16 (2) TREATMENT FOR YEARS BEGINNING BE-
17 FORE DATE OF ENACTMENT.—In the case of a gov-
18 ernmental plan (as defined in section 414(d) of the
19 Internal Revenue Code of 1986), such plan shall be
20 treated as satisfying the requirements of section 415
21 of such Code for all taxable years beginning before
22 the date of the enactment of this Act.

23 **SEC. 14236. UNIFORM RETIREMENT AGE.**

24 (a) DISCRIMINATION TESTING.—Paragraph (5) of
25 section 401(a) (relating to special rules relating to non

1 discrimination requirements) is amended by adding at the
2 end the following new subparagraph:

3 “(F) SOCIAL SECURITY RETIREMENT
4 AGE.—For purposes of testing for discrimina-
5 tion under paragraph (4)—

6 “(i) the social security retirement age
7 (as defined in section 415(b)(8)) shall be
8 treated as a uniform retirement age, and

9 “(ii) subsidized early retirement bene-
10 fits and joint and survivor annuities shall
11 not be treated as being unavailable to em-
12 ployees on the same terms merely because
13 such benefits or annuities are based in
14 whole or in part on an employee’s social
15 security retirement age (as so defined).”

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to years beginning after December
18 31, 1995.

19 **SEC. 14237. UNIFORM PENALTY PROVISIONS TO APPLY TO**
20 **CERTAIN PENSION REPORTING REQUIRE-**
21 **MENTS.**

22 (a) PENALTIES.—

23 (1) STATEMENTS.—Paragraph (1) of section
24 6724(d) is amended by striking “and” at the end of
25 subparagraph (A), by striking the period at the end

1 of subparagraph (B) and inserting “, and”, and by
2 inserting after subparagraph (B) the following new
3 subparagraph:

4 “(C) any statement of the amount of pay-
5 ments to another person required to be made to
6 the Secretary under—

7 “(i) section 408(i) (relating to reports
8 with respect to individual retirement ac-
9 counts or annuities), or

10 “(ii) section 6047(d) (relating to re-
11 ports by employers, plan administrators,
12 etc.).”

13 (2) REPORTS.—Paragraph (2) of section
14 6724(d) is amended by striking “or” at the end of
15 subparagraph (S), by striking the period at the end
16 of subparagraph (T) and inserting a comma, and by
17 inserting after subparagraph (T) the following new
18 subparagraphs:

19 “(U) section 408(i) (relating to reports
20 with respect to individual retirement plans) to
21 any person other than the Secretary with re-
22 spect to the amount of payments made to such
23 person, or

24 “(V) section 6047(d) (relating to reports
25 by plan administrators) to any person other

1 than the Secretary with respect to the amount
2 of payments made to such person.”

3 (b) MODIFICATION OF REPORTABLE DESIGNATED
4 DISTRIBUTIONS.—

5 (1) SECTION 408.—Subsection (i) of section 408
6 (relating to individual retirement account reports) is
7 amended by inserting “aggregating \$10 or more in
8 any calendar year” after “distributions”.

9 (2) SECTION 6047.—Paragraph (1) of section
10 6047(d) (relating to reports by employers, plan ad-
11 ministrators, etc.) is amended by adding at the end
12 the following new sentence: “No return or report
13 may be required under the preceding sentence with
14 respect to distributions to any person during any
15 year unless such distributions aggregate \$10 or
16 more.”

17 (c) QUALIFYING ROLLOVER DISTRIBUTIONS.—Sec-
18 tion 6652(i) is amended—

19 (1) by striking “the \$10” and inserting
20 “\$100”, and

21 (2) by striking “\$5,000” and inserting
22 “\$50,000”.

23 (d) CONFORMING AMENDMENTS.—

1 (1) Paragraph (1) of section 6047(f) is amend-
2 ed to read as follows:

**“(1) For provisions relating to penalties for fail-
ures to file returns and reports required under this
section, see sections 6652(e), 6721, and 6722.”**

3 (2) Subsection (e) of section 6652 is amended
4 by adding at the end the following new sentence:
5 “‘This subsection shall not apply to any return or
6 statement which is an information return described
7 in section 6724(d)(1)(C)(ii) or a payee statement de-
8 scribed in section 6724(d)(2)(U).’”

9 (3) Subsection (a) of section 6693 is amended
10 by adding at the end the following new sentence:
11 “‘This subsection shall not apply to any report which
12 is an information return described in section
13 6724(d)(1)(C)(i) or a payee statement described in
14 section 6724(d)(2)(T).’”

15 (e) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to returns, reports, and other
17 statements the due date for which (determined without re-
18 gard to extensions) is after December 31, 1995.

19 **SEC. 14238. CONTRIBUTIONS ON BEHALF OF DISABLED EM-**
20 **PLOYEES.**

21 (a) ALL DISABLED PARTICIPANTS RECEIVING CON-
22 TRIBUTIONS.—Section 415(c)(3)(C) is amended by adding
23 at the end the following: “If a defined contribution plan
24 provides for the continuation of contributions on behalf

1 of all participants described in clause (i) for a fixed or
2 determinable period, this subparagraph shall be applied
3 without regard to clauses (ii) and (iii).”

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to years beginning after December
6 31, 1995.

7 **SEC. 14239. TREATMENT OF DEFERRED COMPENSATION**
8 **PLANS OF STATE AND LOCAL GOVERNMENTS**
9 **AND TAX-EXEMPT ORGANIZATIONS.**

10 (a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—
11 Paragraph (9) of section 457(e) (relating to other defini-
12 tions and special rules) is amended to read as follows:

13 “(9) BENEFITS NOT TREATED AS MADE AVAIL-
14 ABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

15 “(A) TOTAL AMOUNT PAYABLE IS \$3,500
16 OR LESS.—The total amount payable to a par-
17 ticipant under the plan shall not be treated as
18 made available merely because the participant
19 may elect to receive such amount (or the plan
20 may distribute such amount without the partici-
21 pant’s consent) if—

22 “(i) such amount does not exceed
23 \$3,500, and

24 “(ii) such amount may be distributed
25 only if—

1 “(I) no amount has been deferred
2 under the plan with respect to such
3 participant during the 2-year period
4 ending on the date of the distribution,
5 and

6 “(II) there has been no prior dis-
7 tribution under the plan to such par-
8 ticipant to which this subparagraph
9 applied.

10 A plan shall not be treated as failing to meet
11 the distribution requirements of subsection (d)
12 by reason of a distribution to which this sub-
13 paragraph applies.

14 “(B) ELECTION TO DEFER COMMENCE-
15 MENT OF DISTRIBUTIONS.—The total amount
16 payable to a participant under the plan shall
17 not be treated as made available merely because
18 the participant may elect to defer commence-
19 ment of distributions under the plan if—

20 “(i) such election is made after
21 amounts may be available under the plan
22 in accordance with subsection (d)(1)(A)
23 and before commencement of such dis-
24 tributions, and

1 “(ii) the participant may make only 1
2 such election.”

3 (b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DE-
4 FERRAL AMOUNT.—Subsection (e) of section 457 is
5 amended by adding at the end the following new para-
6 graph:

7 “(14) COST-OF-LIVING ADJUSTMENT OF MAXI-
8 MUM DEFERRAL AMOUNT.—The Secretary shall ad-
9 just the \$7,500 amount specified in subsections
10 (b)(2) and (c)(1) at the same time and in the same
11 manner as under section 415(d) (determined without
12 regard to paragraph (4)), except that the base pe-
13 riod in applying such section for purposes of this
14 paragraph shall be the calendar quarter ending Sep-
15 tember 30, 1994.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 1995.

19 **SEC. 14240. TRUST REQUIREMENT FOR DEFERRED COM-**
20 **PENSATION PLANS OF STATE AND LOCAL**
21 **GOVERNMENTS.**

22 (a) IN GENERAL.—Section 457 is amended by adding
23 at the end the following new subsection:

24 “(g) GOVERNMENTAL PLANS MUST MAINTAIN SET
25 ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.—

1 “(1) IN GENERAL.—A plan maintained by an
2 eligible employer described in subsection (e)(1)(A)
3 shall not be treated as an eligible deferred com-
4 pensation plan unless all assets and income of the
5 plan described in subsection (b)(6) are held in trust
6 for the exclusive benefit of participants and their
7 beneficiaries.

8 “(2) TAXABILITY OF TRUSTS AND PARTICI-
9 PANTS.—For purposes of this title—

10 “(A) a trust described in paragraph (1)
11 shall be treated as an organization exempt from
12 taxation under section 501(a), and

13 “(B) notwithstanding any other provision
14 of this title, amounts in the trust shall be in-
15 cludible in the gross income of participants and
16 beneficiaries only to the extent, and at the time,
17 provided in this section.

18 “(3) CUSTODIAL ACCOUNTS AND CONTRACTS.—
19 For purposes of this subsection, custodial accounts
20 and contracts described in section 401(f) shall be
21 treated as trusts under rules similar to the rules
22 under section 401(f).”

23 (b) CONFORMING AMENDMENT.—Paragraph (6) of
24 section 457(b) is amended by inserting “except as pro-
25 vided in subsection (g),” before “which provides that”.

1 (c) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendments made by this section
4 shall apply to assets and income described in section
5 457(b)(6) of the Internal Revenue Code of 1986
6 held by a plan on and after the date of the enact-
7 ment of this Act.

8 (2) TRANSITION RULE.—In the case of assets
9 and income described in paragraph (1) held by a
10 plan before the 90th day after the date of the enact-
11 ment of this Act, a trust need not be established by
12 reason of the amendments made by this section be-
13 fore such 90th day.

14 **SEC. 14241. TRANSITION RULE FOR COMPUTING MAXIMUM**
15 **BENEFITS UNDER SECTION 415 LIMITATIONS.**

16 (a) IN GENERAL.—Subparagraph (A) of section
17 767(d)(3) of the Uruguay Round Agreements Act is
18 amended to read as follows:

19 “(A) EXCEPTION.—A plan that was adopt-
20 ed and in effect before December 8, 1994, shall
21 not be required to apply the amendments made
22 by subsection (b) with respect to benefits ac-
23 crued before the earlier of—

1 “(i) the later of the date a plan
2 amendment applying such amendment is
3 adopted or made effective, or

4 “(ii) the first day of the first limita-
5 tion year beginning after December 31,
6 1999.

7 Determinations under section 415(b)(2)(E) of
8 the Internal Revenue Code of 1986 shall be
9 made with respect to such benefits on the basis
10 of such section as in effect on December 7,
11 1994, and the provisions of the plan as in effect
12 on December 7, 1994, but only if such provi-
13 sions of the plan meet the requirements of such
14 section (as so in effect).”

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall take effect as if included in the provisions
17 of section 767 of the Uruguay Round Agreements Act.

18 (c) TRANSITIONAL RULE.—In the case of a plan that
19 was adopted and in effect before December 8, 1994, if—

20 (1) a plan amendment was adopted or made ef-
21 fective on or before the date of the enactment of this
22 Act applying the amendments made by section
23 767(b) of the Uruguay Round Agreements Act, and

24 (2) within 1 year after the date of the enact-
25 ment of this Act, a plan amendment is adopted

1 which repeals the amendment referred to in para-
2 graph (1),
3 the amendment referred to in paragraph (1) shall not be
4 taken into account in applying section 767(d)(3)(A) of the
5 Uruguay Round Agreements Act, as amended by sub-
6 section (a).

7 **SEC. 14242. MULTIPLE SALARY REDUCTION AGREEMENTS**
8 **PERMITTED UNDER SECTION 403(b).**

9 (a) **GENERAL RULE.**—For purposes of section 403(b)
10 of the Internal Revenue Code of 1986, the frequency that
11 an employee is permitted to enter into a salary reduction
12 agreement, the salary to which such an agreement may
13 apply, and the ability to revoke such an agreement shall
14 be determined under the rules applicable to cash or de-
15 ferred elections under section 401(k) of such Code.

16 (b) **EFFECTIVE DATE.**—Subsection (a) shall apply to
17 taxable years beginning after December 31, 1995.

18 **SEC. 14243. WAIVER OF MINIMUM PERIOD FOR JOINT AND**
19 **SURVIVOR ANNUITY EXPLANATION BEFORE**
20 **ANNUITY STARTING DATE.**

21 (a) **GENERAL RULE.**—For purposes of section
22 417(a)(3)(A) of the Internal Revenue Code of 1986 (relat-
23 ing to plan to provide written explanations), the minimum
24 period prescribed by the Secretary of the Treasury be-
25 tween the date that the explanation referred to in such

1 section is provided and the annuity starting date shall not
2 apply if waived by the participant and, if applicable, the
3 participant's spouse.

4 (b) EFFECTIVE DATE.—Subsection (a) shall apply to
5 plan years beginning after December 31, 1995.

6 **SEC. 14244. REPEAL OF LIMITATION IN CASE OF DEFINED**
7 **BENEFIT PLAN AND DEFINED CONTRIBUTION**
8 **PLAN FOR SAME EMPLOYEE.**

9 (a) IN GENERAL.—Section 415(e) is repealed.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Subparagraph (B) of section 415(b)(5) is
12 amended by striking “and subsection (e)”.

13 (2) Paragraph (1) of section 415(f) is amended
14 by striking “subsections (b), (c), and (e)” and in-
15 serting “subsections (b) and (c)”.

16 (3) Subsection (g) of section 415 is amended by
17 striking “subsections (e) and (f)” in the last sen-
18 tence and inserting “subsection (f)”.

19 (4) Clause (i) of section 415(k)(2)(A) is amend-
20 ed to read as follows:

21 “(i) any contribution made directly by
22 an employee under such an arrangement
23 shall not be treated as an annual addition
24 for purposes of subsection (c), and”.

1 (5) Clause (ii) of section 415(k)(2)(A) is
2 amended by striking “subsections (c) and (e)” and
3 inserting “subsection (c)”.

4 (6) Section 416 is amended by striking sub-
5 section (h).

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to limitation years beginning after
8 December 31, 1996.

9 **SEC. 14245. DATE FOR ADOPTION OF PLAN AMENDMENTS.**

10 If any amendment made by this title requires an
11 amendment to any plan, such plan amendment shall not
12 be required to be made before the first day of the first
13 plan year beginning on or after January 1, 1997, if—

14 (1) during the period after such amendment
15 takes effect and before such first plan year, the plan
16 is operated in accordance with the requirements of
17 such amendment, and

18 (2) such plan amendment applies retroactively
19 to such period.

1 **Subtitle C—Treatment of Large** 2 **Partnerships**

3 **PART I—GENERAL PROVISIONS**

4 **SEC. 14301. SIMPLIFIED FLOW-THROUGH FOR LARGE PART-** 5 **NERSHIPS.**

6 (a) GENERAL RULE.—Subchapter K (relating to
 7 partners and partnerships) is amended by adding at the
 8 end the following new part:

9 **“PART IV—SPECIAL RULES FOR LARGE** 10 **PARTNERSHIPS**

“Sec. 771. Application of subchapter to large partnerships.

“Sec. 772. Simplified flow-through.

“Sec. 773. Computations at partnership level.

“Sec. 774. Other modifications.

“Sec. 775. Large partnership defined.

“Sec. 776. Special rules for partnerships holding oil and gas prop-
 erties.

“Sec. 777. Regulations.

11 **“SEC. 771. APPLICATION OF SUBCHAPTER TO LARGE PART-** 12 **NERSHIPS.**

13 “The preceding provisions of this subchapter to the
 14 extent inconsistent with the provisions of this part shall
 15 not apply to a large partnership and its partners.

16 **“SEC. 772. SIMPLIFIED FLOW-THROUGH.**

17 “(a) GENERAL RULE.—In determining the income
 18 tax of a partner of a large partnership, such partner shall
 19 take into account separately such partner’s distributive
 20 share of the partnership’s—

1 “(1) taxable income or loss from passive loss
2 limitation activities,

3 “(2) taxable income or loss from other activi-
4 ties,

5 “(3) net capital gain (or net capital loss)—

6 “(A) to the extent allocable to passive loss
7 limitation activities, and

8 “(B) to the extent allocable to other activi-
9 ties,

10 “(4) tax-exempt interest,

11 “(5) applicable net AMT adjustment separately
12 computed for—

13 “(A) passive loss limitation activities, and

14 “(B) other activities,

15 “(6) general credits,

16 “(7) low-income housing credit determined
17 under section 42,

18 “(8) rehabilitation credit determined under sec-
19 tion 47,

20 “(9) foreign income taxes,

21 “(10) the credit allowable under section 29, and

22 “(11) other items to the extent that the Sec-
23 retary determines that the separate treatment of
24 such items is appropriate.

1 “(b) SEPARATE COMPUTATIONS.—In determining
2 the amounts required under subsection (a) to be sepa-
3 rately taken into account by any partner, this section and
4 section 773 shall be applied separately with respect to
5 such partner by taking into account such partner’s dis-
6 tributive share of the items of income, gain, loss, deduc-
7 tion, or credit of the partnership.

8 “(c) TREATMENT AT PARTNER LEVEL.—

9 “(1) IN GENERAL.—Except as provided in this
10 subsection, rules similar to the rules of section
11 702(b) shall apply to any partner’s distributive share
12 of the amounts referred to in subsection (a).

13 “(2) INCOME OR LOSS FROM PASSIVE LOSS LIM-
14 ITATION ACTIVITIES.—For purposes of this chapter,
15 any partner’s distributive share of any income or
16 loss described in subsection (a)(1) shall be treated as
17 an item of income or loss (as the case may be) from
18 the conduct of a trade or business which is a single
19 passive activity (as defined in section 469). A similar
20 rule shall apply to a partner’s distributive share of
21 amounts referred to in paragraphs (3)(A) and
22 (5)(A) of subsection (a).

23 “(3) INCOME OR LOSS FROM OTHER ACTIVI-
24 TIES.—

1 “(A) IN GENERAL.—For purposes of this
2 chapter, any partner’s distributive share of any
3 income or loss described in subsection (a)(2)
4 shall be treated as an item of income or expense
5 (as the case may be) with respect to property
6 held for investment.

7 “(B) DEDUCTIONS FOR LOSS NOT SUB-
8 JECT TO SECTION 67.—The deduction under
9 section 212 for any loss described in subpara-
10 graph (A) shall not be treated as a miscellane-
11 ous itemized deduction for purposes of section
12 67.

13 “(4) TREATMENT OF NET CAPITAL GAIN OR
14 LOSS.—For purposes of this chapter, any partner’s
15 distributive share of any gain or loss described in
16 subsection (a)(3) shall be treated as a long-term
17 capital gain or loss, as the case may be.

18 “(5) MINIMUM TAX TREATMENT.—In determin-
19 ing the alternative minimum taxable income of any
20 partner, such partner’s distributive share of any ap-
21 plicable net AMT adjustment shall be taken into ac-
22 count in lieu of making the separate adjustments
23 provided in sections 56, 57, and 58 with respect to
24 the items of the partnership. Except as provided in
25 regulations, the applicable net AMT adjustment

1 shall be treated, for purposes of section 53, as an
2 adjustment or item of tax preference not specified in
3 section 53(d)(1)(B)(ii).

4 “(6) GENERAL CREDITS.—A partner’s distribu-
5 tive share of the amount referred to in paragraph
6 (6) of subsection (a) shall be taken into account as
7 a current year business credit.

8 “(d) OPERATING RULES.—For purposes of this sec-
9 tion—

10 “(1) PASSIVE LOSS LIMITATION ACTIVITY.—

11 The term ‘passive loss limitation activity’ means—

12 “(A) any activity which involves the con-
13 duct of a trade or business, and

14 “(B) any rental activity.

15 For purposes of the preceding sentence, the term
16 ‘trade or business’ includes any activity treated as a
17 trade or business under paragraph (5) or (6) of sec-
18 tion 469(c).

19 “(2) TAX-EXEMPT INTEREST.—The term ‘tax-
20 exempt interest’ means interest excludable from
21 gross income under section 103.

22 “(3) APPLICABLE NET AMT ADJUSTMENT.—

23 “(A) IN GENERAL.—The applicable net
24 AMT adjustment is—

1 “(i) with respect to taxpayers other
2 than corporations, the net adjustment de-
3 termined by using the adjustments applica-
4 ble to individuals, and

5 “(ii) with respect to corporations, the
6 net adjustment determined by using the
7 adjustments applicable to corporations.

8 “(B) NET ADJUSTMENT.—The term ‘net
9 adjustment’ means the net adjustment in the
10 items attributable to passive loss activities or
11 other activities (as the case may be) which
12 would result if such items were determined with
13 the adjustments of sections 56, 57, and 58.

14 “(4) TREATMENT OF CERTAIN SEPARATELY
15 STATED ITEMS.—

16 “(A) EXCLUSION FOR CERTAIN PUR-
17 POSES.—In determining the amounts referred
18 to in paragraphs (1) and (2) of subsection (a),
19 any net capital gain or net capital loss (as the
20 case may be), and any item referred to in sub-
21 section (a)(11), shall be excluded.

22 “(B) ALLOCATION RULES.—The net cap-
23 ital gain shall be treated—

24 “(i) as allocable to passive loss limita-
25 tion activities to the extent the net capital

1 gain does not exceed the net capital gain
2 determined by only taking into account
3 gains and losses from sales and exchanges
4 of property used in connection with such
5 activities, and

6 “(ii) as allocable to other activities to
7 the extent such gain exceeds the amount
8 allocated under clause (i).

9 A similar rule shall apply for purposes of allo-
10 cating any net capital loss.

11 “(C) NET CAPITAL LOSS.—The term ‘net
12 capital loss’ means the excess of the losses from
13 sales or exchanges of capital assets over the
14 gains from sales or exchange of capital assets.

15 “(5) GENERAL CREDITS.—The term ‘general
16 credits’ means any credit other than the low-income
17 housing credit, the rehabilitation credit, the foreign
18 tax credit, and the credit allowable under section 29.

19 “(6) FOREIGN INCOME TAXES.—The term ‘for-
20 eign income taxes’ means taxes described in section
21 901 which are paid or accrued to foreign countries
22 and to possessions of the United States.

23 “(e) SPECIAL RULE FOR UNRELATED BUSINESS
24 TAX.—In the case of a partner which is an organization
25 subject to tax under section 511, such partner’s distribu-

1 tive share of any items shall be taken into account sepa-
2 rately to the extent necessary to comply with the provi-
3 sions of section 512(c)(1).

4 “(f) SPECIAL RULES FOR APPLYING PASSIVE LOSS
5 LIMITATIONS.—If any person holds an interest in a large
6 partnership other than as a limited partner—

7 “(1) paragraph (2) of subsection (c) shall not
8 apply to such partner, and

9 “(2) such partner’s distributive share of the
10 partnership items allocable to passive loss limitation
11 activities shall be taken into account separately to
12 the extent necessary to comply with the provisions of
13 section 469.

14 The preceding sentence shall not apply to any items alloca-
15 ble to an interest held as a limited partner.

16 **“SEC. 773. COMPUTATIONS AT PARTNERSHIP LEVEL.**

17 “(a) GENERAL RULE.—

18 “(1) TAXABLE INCOME.—The taxable income of
19 a large partnership shall be computed in the same
20 manner as in the case of an individual except that—

21 “(A) the items described in section 772(a)
22 shall be separately stated, and

23 “(B) the modifications of subsection (b)
24 shall apply.

1 “(2) ELECTIONS.—All elections affecting the
2 computation of the taxable income of a large part-
3 nership or the computation of any credit of a large
4 partnership shall be made by the partnership; except
5 that the election under section 901, and any election
6 under section 108, shall be made by each partner
7 separately.

8 “(3) LIMITATIONS, ETC.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), all limitations and other pro-
11 visions affecting the computation of the taxable
12 income of a large partnership or the computa-
13 tion of any credit of a large partnership shall
14 be applied at the partnership level (and not at
15 the partner level).

16 “(B) CERTAIN LIMITATIONS APPLIED AT
17 PARTNER LEVEL.—The following provisions
18 shall be applied at the partner level (and not at
19 the partnership level):

20 “(i) Section 68 (relating to overall
21 limitation on itemized deductions).

22 “(ii) Sections 49 and 465 (relating to
23 at risk limitations).

24 “(iii) Section 469 (relating to limita-
25 tion on passive activity losses and credits).

1 “(iv) Any other provision specified in
2 regulations.

3 “(4) COORDINATION WITH OTHER PROVI-
4 SIONS.—Paragraphs (2) and (3) shall apply notwith-
5 standing any other provision of this chapter other
6 than this part.

7 “(b) MODIFICATIONS TO DETERMINATION OF TAX-
8 ABLE INCOME.—In determining the taxable income of a
9 large partnership—

10 “(1) CERTAIN DEDUCTIONS NOT ALLOWED.—
11 The following deductions shall not be allowed:

12 “(A) The deduction for personal exemp-
13 tions provided in section 151.

14 “(B) The net operating loss deduction pro-
15 vided in section 172.

16 “(C) The additional itemized deductions
17 for individuals provided in part VII of sub-
18 chapter B (other than section 212 thereof).

19 “(2) CHARITABLE DEDUCTIONS.—In determin-
20 ing the amount allowable under section 170, the lim-
21 itation of section 170(b)(2) shall apply.

22 “(3) COORDINATION WITH SECTION 67.—In lieu
23 of applying section 67, 70 percent of the amount of
24 the miscellaneous itemized deductions shall be dis-
25 allowed.

1 “(c) SPECIAL RULES FOR INCOME FROM DISCHARGE
2 OF INDEBTEDNESS.—If a large partnership has income
3 from the discharge of any indebtedness—

4 “(1) such income shall be excluded in determin-
5 ing the amounts referred to in section 772(a), and

6 “(2) in determining the income tax of any part-
7 ner of such partnership—

8 “(A) such income shall be treated as an
9 item required to be separately taken into ac-
10 count under section 772(a), and

11 “(B) the provisions of section 108 shall be
12 applied without regard to this part.

13 **“SEC. 774. OTHER MODIFICATIONS.**

14 “(a) TREATMENT OF CERTAIN OPTIONAL ADJUST-
15 MENTS, ETC.—In the case of a large partnership—

16 “(1) computations under section 773 shall be
17 made without regard to any adjustment under sec-
18 tion 743(b) or 108(b), but

19 “(2) a partner’s distributive share of any
20 amount referred to in section 772(a) shall be appro-
21 priately adjusted to take into account any adjust-
22 ment under section 743(b) or 108(b) with respect to
23 such partner.

24 “(b) CREDIT RECAPTURE DETERMINED AT PART-
25 NERSHIP LEVEL.—

1 “(1) IN GENERAL.—In the case of a large part-
2 nership—

3 “(A) any credit recapture shall be taken
4 into account by the partnership, and

5 “(B) the amount of such recapture shall be
6 determined as if the credit with respect to
7 which the recapture is made had been fully uti-
8 lized to reduce tax.

9 “(2) METHOD OF TAKING RECAPTURE INTO AC-
10 COUNT.—A large partnership shall take into account
11 a credit recapture by reducing the amount of the ap-
12 propriate current year credit to the extent thereof,
13 and if such recapture exceeds the amount of such
14 current year credit, the partnership shall be liable to
15 pay such excess.

16 “(3) DISPOSITIONS NOT TO TRIGGER RECAP-
17 TURE.—No credit recapture shall be required by rea-
18 son of any transfer of an interest in a large partner-
19 ship.

20 “(4) CREDIT RECAPTURE.—For purposes of
21 this subsection, the term ‘credit recapture’ means
22 any increase in tax under section 42(j) or 50(a).

23 “(C) PARTNERSHIP NOT TERMINATED BY REASON
24 OF CHANGE IN OWNERSHIP.—Subparagraph (B) of sec-
25 tion 708(b)(1) shall not apply to a large partnership.

1 “(d) PARTNERSHIP ENTITLED TO CERTAIN CRED-
2 ITS.—The following shall be allowed to a large partnership
3 and shall not be taken into account by the partners of
4 such partnership:

5 “(1) The credit provided by section 34.

6 “(2) Any credit or refund under section
7 852(b)(3)(D).

8 “(e) TREATMENT OF REMIC RESIDUALS.—For pur-
9 poses of applying section 860E(e)(6) to any large partner-
10 ship—

11 “(1) all interests in such partnership shall be
12 treated as held by disqualified organizations,

13 “(2) in lieu of applying subparagraph (C) of
14 section 860E(e)(6), the amount subject to tax under
15 section 860E(e)(6) shall be excluded from the gross
16 income of such partnership, and

17 “(3) subparagraph (D) of section 860E(e)(6)
18 shall not apply.

19 “(f) SPECIAL RULES FOR APPLYING CERTAIN IN-
20 STALLMENT SALE RULES.—In the case of a large partner-
21 ship—

22 “(1) the provisions of sections 453(l)(3) and
23 453A shall be applied at the partnership level, and

24 “(2) in determining the amount of interest pay-
25 able under such sections, such partnership shall be

1 treated as subject to tax under this chapter at the
2 highest rate of tax in effect under section 1 or 11.

3 **“SEC. 775. LARGE PARTNERSHIP DEFINED.**

4 **“(a) GENERAL RULE.—**For purposes of this part—

5 **“(1) IN GENERAL.—**Except as otherwise pro-
6 vided in this section or section 776, the term ‘large
7 partnership’ means, with respect to any partnership
8 taxable year, any partnership if the number of per-
9 sons who were partners in such partnership in any
10 preceding partnership taxable year beginning after
11 December 31, 1995, equaled or exceeded 250. To
12 the extent provided in regulations, a partnership
13 shall cease to be treated as a large partnership for
14 any partnership taxable year if in such taxable year
15 fewer than 100 persons were partners in such part-
16 nership.

17 **“(2) ELECTION FOR PARTNERSHIPS WITH AT**
18 **LEAST 100 PARTNERS.—**If a partnership makes an
19 election under this paragraph, paragraph (1) shall
20 be applied by substituting ‘100’ for ‘250’. Such an
21 election shall apply to the taxable year for which
22 made and all subsequent taxable years unless re-
23 voked with the consent of the Secretary.

24 **“(b) SPECIAL RULES FOR CERTAIN SERVICE PART-**
25 **nerships.—**

1 “(1) CERTAIN PARTNERS NOT COUNTED.—For
2 purposes of this section, the term ‘partner’ does not
3 include any individual performing substantial serv-
4 ices in connection with the activities of the partner-
5 ship and holding an interest in such partnership, or
6 an individual who formerly performed substantial
7 services in connection with such activities and who
8 held an interest in such partnership at the time the
9 individual performed such services.

10 “(2) EXCLUSION.—For purposes of this part,
11 the term ‘large partnership’ does not include any
12 partnership if substantially all the partners of such
13 partnership—

14 “(A) are individuals performing substantial
15 services in connection with the activities of such
16 partnership or are personal service corporations
17 (as defined in section 269A(b)) the owner-em-
18 ployees (as defined in section 269A(b)) of which
19 perform such substantial services,

20 “(B) are retired partners who had per-
21 formed such substantial services, or

22 “(C) are spouses of partners who are per-
23 forming (or had previously performed) such
24 substantial services.

1 “(3) SPECIAL RULE FOR LOWER TIER PART-
2 NERSHIPS.—For purposes of this subsection, the ac-
3 tivities of a partnership shall include the activities of
4 any other partnership in which the partnership owns
5 directly an interest in the capital and profits of at
6 least 80 percent.

7 “(c) EXCLUSION OF COMMODITY POOLS.—For pur-
8 poses of this part, the term ‘large partnership’ does not
9 include any partnership the principal activity of which is
10 the buying and selling of commodities (not described in
11 section 1221(1)), or options, futures, or forwards with re-
12 spect to such commodities.

13 “(d) SECRETARY MAY RELY ON TREATMENT ON RE-
14 TURN.—If, on the partnership return of any partnership,
15 such partnership is treated as a large partnership, such
16 treatment shall be binding on such partnership and all
17 partners of such partnership but not on the Secretary.

18 **“SEC. 776. SPECIAL RULES FOR PARTNERSHIPS HOLDING**
19 **OIL AND GAS PROPERTIES.**

20 “(a) EXCEPTION FOR PARTNERSHIPS HOLDING SIG-
21 NIFICANT OIL AND GAS PROPERTIES.—

22 “(1) IN GENERAL.—For purposes of this part,
23 the term ‘large partnership’ shall not include any
24 partnership if the average percentage of assets (by
25 value) held by such partnership during the taxable

1 year which are oil or gas properties is at least 25
2 percent. For purposes of the preceding sentence, any
3 interest held by a partnership in another partnership
4 shall be disregarded, except that the partnership
5 shall be treated as holding its proportionate share of
6 the assets of such other partnership.

7 “(2) ELECTION TO WAIVE EXCEPTION.—Any
8 partnership may elect to have paragraph (1) not
9 apply. Such an election shall apply to the partner-
10 ship taxable year for which made and all subsequent
11 partnership taxable years unless revoked with the
12 consent of the Secretary.

13 “(b) SPECIAL RULES WHERE PART APPLIES.—

14 “(1) COMPUTATION OF PERCENTAGE DEPLE-
15 TION.—In the case of a large partnership, except as
16 provided in paragraph (2)—

17 “(A) the allowance for depletion under sec-
18 tion 611 with respect to any partnership oil or
19 gas property shall be computed at the partner-
20 ship level without regard to any provision of
21 section 613A requiring such allowance to be
22 computed separately by each partner,

23 “(B) such allowance shall be determined
24 without regard to the provisions of section
25 613A(c) limiting the amount of production for

1 which percentage depletion is allowable and
2 without regard to paragraph (1) of section
3 613A(d), and

4 “(C) paragraph (3) of section 705(a) shall
5 not apply.

6 “(2) TREATMENT OF CERTAIN PARTNERS.—

7 “(A) IN GENERAL.—In the case of a dis-
8 qualified person, the treatment under this chap-
9 ter of such person’s distributive share of any
10 item of income, gain, loss, deduction, or credit
11 attributable to any partnership oil or gas prop-
12 erty shall be determined without regard to this
13 part. Such person’s distributive share of any
14 such items shall be excluded for purposes of
15 making determinations under sections 772 and
16 773.

17 “(B) DISQUALIFIED PERSON.—For pur-
18 poses of subparagraph (A), the term ‘disquali-
19 fied person’ means, with respect to any partner-
20 ship taxable year—

21 “(i) any person referred to in para-
22 graph (2) or (4) of section 613A(d) for
23 such person’s taxable year in which such
24 partnership taxable year ends, and

1 “(ii) any other person if such person’s
2 average daily production of domestic crude
3 oil and natural gas for such person’s tax-
4 able year in which such partnership tax-
5 able year ends exceeds 500 barrels.

6 “(C) AVERAGE DAILY PRODUCTION.—For
7 purposes of subparagraph (B), a person’s aver-
8 age daily production of domestic crude oil and
9 natural gas for any taxable year shall be com-
10 puted as provided in section 613A(c)(2)—

11 “(i) by taking into account all produc-
12 tion of domestic crude oil and natural gas
13 (including such person’s proportionate
14 share of any production of a partnership),

15 “(ii) by treating 6,000 cubic feet of
16 natural gas as a barrel of crude oil, and

17 “(iii) by treating as 1 person all per-
18 sons treated as 1 taxpayer under section
19 613A(c)(8) or among whom allocations are
20 required under such section.

21 **“SEC. 777. REGULATIONS.**

22 “The Secretary shall prescribe such regulations as
23 may be appropriate to carry out the purposes of this
24 part.”

1 (b) CLERICAL AMENDMENT.—The table of parts for
 2 subchapter K of chapter 1 is amended by adding at the
 3 end the following new item:

“Part IV. Special rules for large partnerships.”

4 **SEC. 14302. SIMPLIFIED AUDIT PROCEDURES FOR LARGE**
 5 **PARTNERSHIPS.**

6 (a) GENERAL RULE.—Chapter 63 is amended by
 7 adding at the end the following new subchapter:

8 **“Subchapter D—Treatment of Large**
 9 **Partnerships**

“Part I. Treatment of partnership items and adjustments.

“Part II. Partnership level adjustments.

“Part III. Definitions and special rules.

10 **“PART I—TREATMENT OF PARTNERSHIP ITEMS**
 11 **AND ADJUSTMENTS**

“Sec. 6240. Application of subchapter.

“Sec. 6241. Partner’s return must be consistent with partnership
 return.

“Sec. 6242. Procedures for taking partnership adjustments into
 account.

12 **“SEC. 6240. APPLICATION OF SUBCHAPTER.**

13 “(a) GENERAL RULE.—This subchapter shall only
 14 apply to large partnerships and partners in such partner-
 15 ships.

16 “(b) COORDINATION WITH OTHER PARTNERSHIP
 17 AUDIT PROCEDURES.—

18 “(1) IN GENERAL.—Subchapter C of this chap-
 19 ter shall not apply to any large partnership other

1 than in its capacity as a partner in another partner-
2 ship which is not a large partnership.

3 “(2) TREATMENT WHERE PARTNER IN OTHER
4 PARTNERSHIP.—If a large partnership is a partner
5 in another partnership which is not a large partner-
6 ship—

7 “(A) subchapter C of this chapter shall
8 apply to items of such large partnership which
9 are partnership items with respect to such other
10 partnership, but

11 “(B) any adjustment under such sub-
12 chapter C shall be taken into account in the
13 manner provided by section 6242.

14 **“SEC. 6241. PARTNER’S RETURN MUST BE CONSISTENT**
15 **WITH PARTNERSHIP RETURN.**

16 “(a) GENERAL RULE.—A partner of any large part-
17 nership shall, on the partner’s return, treat each partner-
18 ship item attributable to such partnership in a manner
19 which is consistent with the treatment of such partnership
20 item on the partnership return.

21 “(b) UNDERPAYMENT DUE TO INCONSISTENT
22 TREATMENT ASSESSED AS MATH ERROR.—Any
23 underpayment of tax by a partner by reason of failing to
24 comply with the requirements of subsection (a) shall be
25 assessed and collected in the same manner as if such

1 underpayment were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

5 “(C) ADJUSTMENTS NOT TO AFFECT PRIOR YEAR OF PARTNERS.—

7 “(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard to any adjustment to the partnership item under part II.

11 “(2) CERTAIN CHANGES IN DISTRIBUTIVE SHARE TAKEN INTO ACCOUNT BY PARTNER.—

13 “(A) IN GENERAL.—To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

22 “(B) COORDINATION WITH DEFICIENCY PROCEDURES.—

24 “(i) IN GENERAL.—Subchapter B shall not apply to the assessment or collec-

tion of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

“(ii) ADJUSTMENT NOT PRECLUDED.—Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

“(C) PERIOD OF LIMITATIONS.—The period for—

“(i) assessing any underpayment of tax, or

“(ii) filing a claim for credit or refund of any overpayment of tax,

attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of the period prescribed by section 6248

1 for making adjustments with respect to the
2 partnership taxable year involved.

3 “(D) TIERED STRUCTURES.—If the part-
4 ner referred to in subparagraph (A) is another
5 partnership or an S corporation, the rules of
6 this paragraph shall also apply to persons hold-
7 ing interests in such partnership or S corpora-
8 tion (as the case may be); except that, if such
9 partner is a large partnership, the adjustment
10 referred to in subparagraph (A) shall be taken
11 into account in the manner provided by section
12 6242.

13 “(d) ADDITION TO TAX FOR FAILURE TO COMPLY
14 WITH SECTION.—

“For addition to tax in case of partner’s disregard
of requirements of this section, see part II of sub-
chapter A of chapter 68.

15 “SEC. 6242. PROCEDURES FOR TAKING PARTNERSHIP AD-
16 JUSTMENTS INTO ACCOUNT.

17 “(a) ADJUSTMENTS FLOW THROUGH TO PARTNERS
18 FOR YEAR IN WHICH ADJUSTMENT TAKES EFFECT.—

19 “(1) IN GENERAL.—If any partnership adjust-
20 ment with respect to any partnership item takes ef-
21 fect (within the meaning of subsection (d)(2)) during
22 any partnership taxable year and if an election
23 under paragraph (2) does not apply to such adjust-
24 ment, such adjustment shall be taken into account

1 in determining the amount of such item for the part-
2 nership taxable year in which such adjustment takes
3 effect. In applying this title to any person who is
4 (directly or indirectly) a partner in such partnership
5 during such partnership taxable year, such adjust-
6 ment shall be treated as an item actually arising
7 during such taxable year.

8 “(2) PARTNERSHIP LIABLE IN CERTAIN
9 CASES.—If—

10 “(A) a partnership elects under this para-
11 graph to not take an adjustment into account
12 under paragraph (1),

13 “(B) a partnership does not make such an
14 election but in filing its return for any partner-
15 ship taxable year fails to take fully into account
16 any partnership adjustment as required under
17 paragraph (1), or

18 “(C) any partnership adjustment involves a
19 reduction in a credit which exceeds the
20 amount of such credit determined for the
21 partnership taxable year in which the adjust-
22 ment takes effect,

23 the partnership shall pay to the Secretary an
24 amount determined by applying the rules of sub-
25 section (b)(4) to the adjustments not so taken into

1 account and any excess referred to in subparagraph
2 (C). A partnership may make an election under sub-
3 paragraph (A) only if such partnership meets such
4 requirements as the Secretary may prescribe to as-
5 sure payment of such amount.

6 “(3) OFFSETTING ADJUSTMENTS TAKEN INTO
7 ACCOUNT.—If a partnership adjustment requires an-
8 other adjustment in a taxable year after the ad-
9 justed year and before the partnership taxable year
10 in which such partnership adjustment takes effect,
11 such other adjustment shall be taken into account
12 under this subsection for the partnership taxable
13 year in which such partnership adjustment takes ef-
14 fect.

15 “(4) COORDINATION WITH PART II.—Amounts
16 taken into account under this subsection for any
17 partnership taxable year shall continue to be treated
18 as adjustments for the adjusted year for purposes of
19 determining whether such amounts may be read-
20 justed under part II.

21 “(b) PARTNERSHIP LIABLE FOR INTEREST AND
22 PENALTIES.—

23 “(1) IN GENERAL.—If a partnership adjust-
24 ment takes effect during any partnership taxable
25 year and such adjustment results in an imputed

1 underpayment for the adjusted year, the partner-
2 ship—

3 “(A) shall pay to the Secretary interest
4 computed under paragraph (2), and

5 “(B) shall be liable for any penalty, addi-
6 tion to tax, or additional amount as provided in
7 paragraph (3).

8 “(2) DETERMINATION OF AMOUNT OF INTER-
9 EST.—The interest computed under this paragraph
10 with respect to any partnership adjustment is the in-
11 terest which would be determined under chapter
12 67—

13 “(A) on the imputed underpayment deter-
14 mined under paragraph (4) with respect to such
15 adjustment,

16 “(B) for the period beginning on the day
17 after the return due date for the adjusted year
18 and ending on the return due date for the part-
19 nership taxable year in which such adjustment
20 takes effect (or, if earlier, in the case of any ad-
21 justment to which subsection (a)(2) applies, the
22 date on which the payment under subsection
23 (a)(2) is made).

24 Proper adjustments in the amount determined under
25 the preceding sentence shall be made for adjust-

1 ments required for partnership taxable years after
2 the adjusted year and before the year in which the
3 partnership adjustment takes effect by reason of
4 such partnership adjustment.

5 “(3) PENALTIES.—A partnership shall be liable
6 for any penalty, addition to tax, or additional
7 amount for which it would have been liable if such
8 partnership had been an individual subject to tax
9 under chapter 1 for the adjusted year and the im-
10 puted underpayment determined under paragraph
11 (4) were an actual underpayment (or understate-
12 ment) for such year.

13 “(4) IMPUTED UNDERPAYMENT.—For purposes
14 of this subsection, the imputed underpayment deter-
15 mined under this paragraph with respect to any
16 partnership adjustment is the underpayment (if any)
17 which would result—

18 “(A) by netting all adjustments to items of
19 income, gain, loss, or deduction and by treating
20 any net increase in income as an underpayment
21 equal to the amount of such net increase multi-
22 plied by the highest rate of tax in effect under
23 section 1 or 11 for the adjusted year, and

1 “(B) by taking adjustments to credits into
2 account as increases or decreases (whichever is
3 appropriate) in the amount of tax.

4 For purposes of the preceding sentence, any net de-
5 crease in a loss shall be treated as an increase in in-
6 come and a similar rule shall apply to a net increase
7 in a loss.

8 “(C) ADMINISTRATIVE PROVISIONS.—

9 “(1) IN GENERAL.—Any payment required by
10 subsection (a)(2) or (b)(1)(A)—

11 “(A) shall be assessed and collected in the
12 same manner as if it were a tax imposed by
13 subtitle C, and

14 “(B) shall be paid on or before the return
15 due date for the partnership taxable year in
16 which the partnership adjustment takes effect.

17 “(2) INTEREST.—For purposes of determining
18 interest, any payment required by subsection (a)(2)
19 or (b)(1)(A) shall be treated as an underpayment
20 of tax.

21 “(3) PENALTIES.—

22 “(A) IN GENERAL.—In the case of any
23 failure by any partnership to pay on the date
24 prescribed therefor any amount required by
25 subsection (a)(2) or (b)(1)(A), there is hereby

1 imposed on such partnership a penalty of 10
2 percent of the underpayment. For purposes of
3 the preceding sentence, the term
4 ‘underpayment’ means the excess of any pay-
5 ment required under this section over the
6 amount (if any) paid on or before the date pre-
7 scribed therefor.

8 “(B) ACCURACY-RELATED AND FRAUD
9 PENALTIES MADE APPLICABLE.—For purposes
10 of part II of subchapter A of chapter 68, any
11 payment required by subsection (a)(2) shall be
12 treated as an underpayment of tax.

13 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
14 poses of this section—

15 “(1) PARTNERSHIP ADJUSTMENT.—The term
16 ‘partnership adjustment’ means any adjustment in
17 the amount of any partnership item of a large part-
18 nership.

19 “(2) WHEN ADJUSTMENT TAKES EFFECT.—A
20 partnership adjustment takes effect—

21 “(A) in the case of an adjustment pursu-
22 ant to the decision of a court in a proceeding
23 brought under part II, when such decision be-
24 comes final,

1 “(B) in the case of an adjustment pursu-
 2 ant to any administrative adjustment request
 3 under section 6251, when such adjustment is
 4 allowed by the Secretary, or

5 “(C) in any other case, when such adjust-
 6 ment is made.

7 “(3) ADJUSTED YEAR.—The term ‘adjusted
 8 year’ means the partnership taxable year to which
 9 the item being adjusted relates.

10 “(4) RETURN DUE DATE.—The term ‘return
 11 due date’ means, with respect to any taxable year,
 12 the date prescribed for filing the partnership return
 13 for such taxable year (determined without regard to
 14 extensions).

15 “(5) ADJUSTMENTS INVOLVING CHANGES IN
 16 CHARACTER.—Under regulations, appropriate ad-
 17 justments in the application of this section shall be
 18 made for purposes of taking into account partner-
 19 ship adjustments which involve a change in the char-
 20 acter of any item of income, gain, loss, or deduction.

21 “(e) PAYMENTS NONDEDUCTIBLE.—No deduction
 22 shall be allowed under subtitle A for any payment required
 23 to be made by a large partnership under this section.

24 **“PART II—PARTNERSHIP LEVEL ADJUSTMENTS**

 “Subpart A. Adjustments by Secretary.

 “Subpart B. Claims for adjustments by partnership.

1 **“Subpart A—Adjustments by Secretary**

 “Sec. 6245. Secretarial authority.

 “Sec. 6246. Restrictions on partnership adjustments.

 “Sec. 6247. Judicial review of partnership adjustment.

 “Sec. 6248. Period of limitations for making adjustments.

2 **“SEC. 6245. SECRETARIAL AUTHORITY.**

3 “(a) GENERAL RULE.—The Secretary is authorized
4 and directed to make adjustments at the partnership level
5 in any partnership item to the extent necessary to have
6 such item be treated in the manner required.

7 “(b) NOTICE OF PARTNERSHIP ADJUSTMENT.—

8 “(1) IN GENERAL.—If the Secretary determines
9 that a partnership adjustment is required, the Sec-
10 retary is authorized to send notice of such adjust-
11 ment to the partnership by certified mail or reg-
12 istered mail. Such notice shall be sufficient if mailed
13 to the partnership at its last known address even if
14 the partnership has terminated its existence.

15 “(2) FURTHER NOTICES RESTRICTED.—If the
16 Secretary mails a notice of a partnership adjustment
17 to any partnership for any partnership taxable year
18 and the partnership files a petition under section
19 6247 with respect to such notice, in the absence of
20 a showing of fraud, malfeasance, or misrepresenta-
21 tion of a material fact, the Secretary shall not mail
22 another such notice to such partnership with respect
23 to such taxable year.

1 “(3) AUTHORITY TO RESCIND NOTICE WITH
2 PARTNERSHIP CONSENT.—The Secretary may, with
3 the consent of the partnership, rescind any notice of
4 a partnership adjustment mailed to such partner-
5 ship. Any notice so rescinded shall not be treated as
6 a notice of a partnership adjustment, for purposes of
7 this section, section 6246, and section 6247, and the
8 taxpayer shall have no right to bring a proceeding
9 under section 6247 with respect to such notice.
10 Nothing in this subsection shall affect any suspen-
11 sion of the running of any period of limitations dur-
12 ing any period during which the rescinded notice
13 was outstanding.

14 **“SEC. 6246. RESTRICTIONS ON PARTNERSHIP ADJUST-**
15 **MENTS.**

16 “(a) GENERAL RULE.—Except as otherwise provided
17 in this chapter, no adjustment to any partnership item
18 may be made (and no levy or proceeding in any court for
19 the collection of any amount resulting from such adjust-
20 ment may be made, begun or prosecuted) before—

21 “(1) the close of the 90th day after the day on
22 which a notice of a partnership adjustment was
23 mailed to the partnership, and

1 “(2) if a petition is filed under section 6247
2 with respect to such notice, the decision of the court
3 has become final.

4 “(b) PREMATURE ACTION MAY BE ENJOINED.—
5 Notwithstanding section 7421(a), any action which vio-
6 lates subsection (a) may be enjoined in the proper court,
7 including the Tax Court. The Tax Court shall have no ju-
8 risdiction to enjoin any action under this subsection unless
9 a timely petition has been filed under section 6247 and
10 then only in respect of the adjustments that are the sub-
11 ject of such petition.

12 “(c) EXCEPTIONS TO RESTRICTIONS ON ADJUST-
13 MENTS.—

14 “(1) ADJUSTMENTS ARISING OUT OF MATH OR
15 CLERICAL ERRORS.—

16 “(A) IN GENERAL.—If the partnership is
17 notified that, on account of a mathematical or
18 clerical error appearing on the partnership re-
19 turn, an adjustment to a partnership item is re-
20 quired, rules similar to the rules of paragraphs
21 (1) and (2) of section 6213(b) shall apply to
22 such adjustment.

23 “(B) SPECIAL RULE.—If a large partner-
24 ship is a partner in another large partnership,
25 any adjustment on account of such partner-

1 ship's failure to comply with the requirements
2 of section 6241(a) with respect to its interest in
3 such other partnership shall be treated as an
4 adjustment referred to in subparagraph (A), ex-
5 cept that paragraph (2) of section 6213(b) shall
6 not apply to such adjustment.

7 “(2) PARTNERSHIP MAY WAIVE RESTRIC-
8 TIONS.—The partnership shall at any time (whether
9 or not a notice of partnership adjustment has been
10 issued) have the right, by a signed notice in writing
11 filed with the Secretary, to waive the restrictions
12 provided in subsection (a) on the making of any
13 partnership adjustment.

14 “(d) LIMIT WHERE NO PROCEEDING BEGUN.—If no
15 proceeding under section 6247 is begun with respect to
16 any notice of a partnership adjustment during the 90-day
17 period described in subsection (a), the amount for which
18 the partnership is liable under section 6242 (and any in-
19 crease in any partner's liability for tax under chapter 1
20 by reason of any adjustment under section 6242(a)) shall
21 not exceed the amount determined in accordance with such
22 notice.

1 **“SEC. 6247. JUDICIAL REVIEW OF PARTNERSHIP ADJUST-**
2 **MENT.**

3 “(a) GENERAL RULE.—Within 90 days after the date
4 on which a notice of a partnership adjustment is mailed
5 to the partnership with respect to any partnership taxable
6 year, the partnership may file a petition for a readjust-
7 ment of the partnership items for such taxable year with—

8 “(1) the Tax Court,

9 “(2) the district court of the United States for
10 the district in which the partnership’s principal place
11 of business is located, or

12 “(3) the Claims Court.

13 “(b) JURISDICTIONAL REQUIREMENT FOR BRINGING
14 ACTION IN DISTRICT COURT OR CLAIMS COURT.—

15 “(1) IN GENERAL.—A readjustment petition
16 under this section may be filed in a district court of
17 the United States or the Claims Court only if the
18 partnership filing the petition deposits with the Sec-
19 retary, on or before the date the petition is filed, the
20 amount for which the partnership would be liable
21 under section 6242(b) (as of the date of the filing
22 of the petition) if the partnership items were ad-
23 justed as provided by the notice of partnership ad-
24 justment. The court may by order provide that the
25 jurisdictional requirements of this paragraph are
26 satisfied where there has been a good faith attempt

1 to satisfy such requirement and any shortfall of the
2 amount required to be deposited is timely corrected.

3 “(2) INTEREST PAYABLE.—Any amount depos-
4 ited under paragraph (1), while deposited, shall not
5 be treated as a payment of tax for purposes of this
6 title (other than chapter 67).

7 “(c) SCOPE OF JUDICIAL REVIEW.—A court with
8 which a petition is filed in accordance with this section
9 shall have jurisdiction to determine all partnership items
10 of the partnership for the partnership taxable year to
11 which the notice of partnership adjustment relates and the
12 proper allocation of such items among the partners (and
13 the applicability of any penalty, addition to tax, or addi-
14 tional amount for which the partnership may be liable
15 under section 6242(b)).

16 “(d) DETERMINATION OF COURT REVIEWABLE.—
17 Any determination by a court under this section shall have
18 the force and effect of a decision of the Tax Court or a
19 final judgment or decree of the district court or the Claims
20 Court, as the case may be, and shall be reviewable as such.
21 The date of any such determination shall be treated as
22 being the date of the court’s order entering the decision.

23 “(e) EFFECT OF DECISION DISMISSING ACTION.—If
24 an action brought under this section is dismissed other
25 than by reason of a rescission under section 6245(b)(3),

1 the decision of the court dismissing the action shall be con-
2 sidered as its decision that the notice of partnership ad-
3 justment is correct, and an appropriate order shall be en-
4 tered in the records of the court.

5 **“SEC. 6248. PERIOD OF LIMITATIONS FOR MAKING ADJUST-**
6 **MENTS.**

7 “(a) GENERAL RULE.—Except as otherwise provided
8 in this section, no adjustment under this subpart to any
9 partnership item for any partnership taxable year may be
10 made after the date which is 3 years after the later of—

11 “(1) the date on which the partnership return
12 for such taxable year was filed, or

13 “(2) the last day for filing such return for such
14 year (determined without regard to extensions).

15 “(b) EXTENSION BY AGREEMENT.—The period de-
16 scribed in subsection (a) (including an extension period
17 under this subsection) may be extended by an agreement
18 entered into by the Secretary and the partnership before
19 the expiration of such period.

20 “(c) SPECIAL RULE IN CASE OF FRAUD, ETC.—

21 “(1) FALSE RETURN.—In the case of a false or
22 fraudulent partnership return with intent to evade
23 tax, the adjustment may be made at any time.

24 “(2) SUBSTANTIAL OMISSION OF INCOME.—If
25 any partnership omits from gross income an amount

1 properly includible therein which is in excess of 25
 2 percent of the amount of gross income stated in its
 3 return, subsection (a) shall be applied by substitut-
 4 ing ‘6 years’ for ‘3 years’.

5 “(3) NO RETURN.—In the case of a failure by
 6 a partnership to file a return for any taxable year,
 7 the adjustment may be made at any time.

8 “(4) RETURN FILED BY SECRETARY.—For pur-
 9 poses of this section, a return executed by the Sec-
 10 retary under subsection (b) of section 6020 on be-
 11 half of the partnership shall not be treated as a re-
 12 turn of the partnership.

13 “(d) SUSPENSION WHEN SECRETARY MAILES NOTICE
 14 OF ADJUSTMENT.—If notice of a partnership adjustment
 15 with respect to any taxable year is mailed to the partner-
 16 ship, the running of the period specified in subsection (a)
 17 (as modified by the other provisions of this section) shall
 18 be suspended—

19 “(1) for the period during which an action may
 20 be brought under section 6247 (and, if a petition is
 21 filed under section 6247 with respect to such notice,
 22 until the decision of the court becomes final), and

23 “(2) for 1 year thereafter.

24 **“Subpart B—Claims for Adjustments by Partnership**

“Sec. 6251. Administrative adjustment requests.

“Sec. 6252. Judicial review where administrative adjustment re-
 quest is not allowed in full.

1 **“SEC. 6251. ADMINISTRATIVE ADJUSTMENT REQUESTS.**

2 “(a) GENERAL RULE.—A partnership may file a re-
3 quest for an administrative adjustment of partnership
4 items for any partnership taxable year at any time which
5 is—

6 “(1) within 3 years after the later of—

7 “(A) the date on which the partnership re-
8 turn for such year is filed, or

9 “(B) the last day for filing the partnership
10 return for such year (determined without re-
11 gard to extensions), and

12 “(2) before the mailing to the partnership of a
13 notice of a partnership adjustment with respect to
14 such taxable year.

15 “(b) SECRETARIAL ACTION.—If a partnership files
16 an administrative adjustment request under subsection
17 (a), the Secretary may allow any part of the requested
18 adjustments.

19 “(c) SPECIAL RULE IN CASE OF EXTENSION UNDER
20 SECTION 6248.—If the period described in section
21 6248(a) is extended pursuant to an agreement under sec-
22 tion 6248(b), the period prescribed by subsection (a)(1)
23 shall not expire before the date 6 months after the expira-
24 tion of the extension under section 6248(b).

1 **“SEC. 6252. JUDICIAL REVIEW WHERE ADMINISTRATIVE AD-**
2 **JUSTMENT REQUEST IS NOT ALLOWED IN**
3 **FULL.**

4 “(a) IN GENERAL.—If any part of an administrative
5 adjustment request filed under section 6251 is not allowed
6 by the Secretary, the partnership may file a petition for
7 an adjustment with respect to the partnership items to
8 which such part of the request relates with—

9 “(1) the Tax Court,

10 “(2) the district court of the United States for
11 the district in which the principal place of business
12 of the partnership is located, or

13 “(3) the Claims Court.

14 “(b) PERIOD FOR FILING PETITION.—A petition may
15 be filed under subsection (a) with respect to partnership
16 items for a partnership taxable year only—

17 “(1) after the expiration of 6 months from the
18 date of filing of the request under section 6251, and

19 “(2) before the date which is 2 years after the
20 date of such request.

21 The 2-year period set forth in paragraph (2) shall be ex-
22 tended for such period as may be agreed upon in writing
23 by the partnership and the Secretary.

24 “(c) COORDINATION WITH SUBPART A.—

25 “(1) NOTICE OF PARTNERSHIP ADJUSTMENT
26 BEFORE FILING OF PETITION.—No petition may be

1 filed under this section after the Secretary mails to
2 the partnership a notice of a partnership adjustment
3 for the partnership taxable year to which the request
4 under section 6251 relates.

5 “(2) NOTICE OF PARTNERSHIP ADJUSTMENT
6 AFTER FILING BUT BEFORE HEARING OF PETI-
7 TION.—If the Secretary mails to the partnership a
8 notice of a partnership adjustment for the partner-
9 ship taxable year to which the request under section
10 6251 relates after the filing of a petition under this
11 subsection but before the hearing of such petition,
12 such petition shall be treated as an action brought
13 under section 6247 with respect to such notice, ex-
14 cept that subsection (b) of section 6247 shall not
15 apply.

16 “(3) NOTICE MUST BE BEFORE EXPIRATION OF
17 STATUTE OF LIMITATIONS.—A notice of a partner-
18 ship adjustment for the partnership taxable year
19 shall be taken into account under paragraphs (1)
20 and (2) only if such notice is mailed before the expi-
21 ration of the period prescribed by section 6248 for
22 making adjustments to partnership items for such
23 taxable year.

24 “(d) SCOPE OF JUDICIAL REVIEW.—Except in the
25 case described in paragraph (2) of subsection (c), a court

1 with which a petition is filed in accordance with this sec-
2 tion shall have jurisdiction to determine only those part-
3 nership items to which the part of the request under sec-
4 tion 6251 not allowed by the Secretary relates and those
5 items with respect to which the Secretary asserts adjust-
6 ments as offsets to the adjustments requested by the part-
7 nership.

8 “(e) DETERMINATION OF COURT REVIEWABLE.—
9 Any determination by a court under this subsection shall
10 have the force and effect of a decision of the Tax Court
11 or a final judgment or decree of the district court or the
12 Claims Court, as the case may be, and shall be reviewable
13 as such. The date of any such determination shall be
14 treated as being the date of the court’s order entering the
15 decision.

16 **“PART III—DEFINITIONS AND SPECIAL RULES**

“Sec. 6255. Definitions and special rules.

17 **“SEC. 6255. DEFINITIONS AND SPECIAL RULES.**

18 “(a) DEFINITIONS.—For purposes of this sub-
19 chapter—

20 “(1) LARGE PARTNERSHIP.—The term ‘large
21 partnership’ has the meaning given to such term by
22 section 775 without regard to section 776(a).

1 “(2) PARTNERSHIP ITEM.—The term ‘partner-
2 ship item’ has the meaning given to such term by
3 section 6231(a)(3).

4 “(b) PARTNERS BOUND BY ACTIONS OF PARTNER-
5 SHIP, ETC.—

6 “(1) DESIGNATION OF PARTNER.—Each large
7 partnership shall designate (in the manner pre-
8 scribed by the Secretary) a partner (or other person)
9 who shall have the sole authority to act on behalf of
10 such partnership under this subchapter. In any case
11 in which such a designation is not in effect, the Sec-
12 retary may select any partner as the partner with
13 such authority.

14 “(2) BINDING EFFECT.—A large partnership
15 and all partners of such partnership shall be
16 bound—

17 “(A) by actions taken under this sub-
18 chapter by the partnership, and

19 “(B) by any decision in a proceeding
20 brought under this subchapter.

21 “(c) PARTNERSHIPS HAVING PRINCIPAL PLACE OF
22 BUSINESS OUTSIDE THE UNITED STATES.—For purposes
23 of sections 6247 and 6252, a principal place of business
24 located outside the United States shall be treated as lo-
25 cated in the District of Columbia.

1 “(d) TREATMENT WHERE PARTNERSHIP CEASES TO
2 EXIST.—If a partnership ceases to exist before a partner-
3 ship adjustment under this subchapter takes effect, such
4 adjustment shall be taken into account by the former part-
5 ners of such partnership under regulations prescribed by
6 the Secretary.

7 “(e) DATE DECISION BECOMES FINAL.—For pur-
8 poses of this subchapter, the principles of section 7481(a)
9 shall be applied in determining the date on which a deci-
10 sion of a district court or the Claims Court becomes final.

11 “(f) PARTNERSHIPS IN CASES UNDER TITLE 11 OF
12 THE UNITED STATES CODE.—The running of any period
13 of limitations provided in this subchapter on making a
14 partnership adjustment (or provided by section 6501 or
15 6502 on the assessment or collection of any amount re-
16 quired to be paid under section 6242) shall, in a case
17 under title 11 of the United States Code, be suspended
18 during the period during which the Secretary is prohibited
19 by reason of such case from making the adjustment (or
20 assessment or collection) and—

21 “(1) for adjustment or assessment, 60 days
22 thereafter, and

23 “(2) for collection, 6 months thereafter.

1 “(g) REGULATIONS.—The Secretary shall prescribe
 2 such regulations as may be necessary to carry out the pro-
 3 visions of this subchapter, including regulations—

4 “(1) to prevent abuse through manipulation of
 5 the provisions of this subchapter, and

6 “(2) providing that this subchapter shall not
 7 apply to any case described in section 6231(c)(1) (or
 8 the regulations prescribed thereunder) where the ap-
 9 plication of this subchapter to such a case would
 10 interfere with the effective and efficient enforcement
 11 of this title.

12 In any case to which this subchapter does not apply by
 13 reason of paragraph (2), rules similar to the rules of sec-
 14 tions 6229(f) and 6255(f) shall apply.”

15 (b) CLERICAL AMENDMENT.—The table of sub-
 16 chapters for chapter 63 is amended by adding at the end
 17 the following new item:

“SUBCHAPTER D. Treatment of large partnerships.”

18 **SEC. 14303. DUE DATE FOR FURNISHING INFORMATION TO**
 19 **PARTNERS OF LARGE PARTNERSHIPS.**

20 (a) GENERAL RULE.—Subsection (b) of section 6031
 21 (relating to copies to partners) is amended by adding at
 22 the end the following new sentence: “In the case of a large
 23 partnership (as defined in sections 775 and 776(a)), such
 24 information shall be furnished on or before the first March
 25 15 following the close of such taxable year.”

1 (b) TREATMENT AS INFORMATION RETURN.—Sec-
2 tion 6724 is amended by adding at the end the following
3 new subsection:

4 “(e) SPECIAL RULE FOR CERTAIN PARTNERSHIP RE-
5 TURNS.—If any partnership return under section 6031(a)
6 is required under section 6011(e) to be filed on magnetic
7 media or in other machine-readable form, for purposes of
8 this part, each schedule required to be included with such
9 return with respect to each partner shall be treated as a
10 separate information return.”

11 **SEC. 14304. RETURNS MAY BE REQUIRED ON MAGNETIC**
12 **MEDIA.**

13 Paragraph (2) of section 6011(e) (relating to returns
14 on magnetic media) is amended by adding at the end the
15 following new sentence:

16 “Notwithstanding the preceding sentence, the Sec-
17 retary shall require partnerships having more than
18 100 partners to file returns on magnetic media.”

19 **SEC. 14305. TREATMENT OF PARTNERSHIP ITEMS OF INDIV-**
20 **IDUAL RETIREMENT ACCOUNTS.**

21 Subsection (b) of section 6012 is amended by adding
22 at the end the following new paragraph:

23 “(6) IRA SHARE OF PARTNERSHIP INCOME.—
24 In the case of a trust which is exempt from taxation
25 under section 408(e), for purposes of this section,

1 the trust's distributive share of items of gross in-
2 come and gain of any partnership to which sub-
3 chapter C or D of chapter 63 applies shall be treat-
4 ed as equal to the trust's distributive share of the
5 taxable income of such partnership."

6 **SEC. 14306. EFFECTIVE DATE.**

7 The amendments made by this part shall apply to
8 partnership taxable years beginning after December 31,
9 1995.

10 **PART II—PROVISIONS RELATED TO CERTAIN**
11 **PARTNERSHIP PROCEEDINGS**

12 **SEC. 14311. TREATMENT OF PARTNERSHIP ITEMS IN DEFICI-
13 CIENCY PROCEEDINGS.**

14 (a) IN GENERAL.—Subchapter C of chapter 63 is
15 amended by adding at the end the following new section:

16 **"SEC. 6234. DECLARATORY JUDGMENT RELATING TO**
17 **TREATMENT OF ITEMS OTHER THAN PART-**
18 **NERSHIP ITEMS WITH RESPECT TO AN**
19 **OVERSHELTERED RETURN.**

20 "(a) GENERAL RULE.—If—

21 "(1) a taxpayer files an oversheltered return for
22 a taxable year,

23 "(2) the Secretary makes a determination with
24 respect to the treatment of items (other than part-

1 nership items) of such taxpayer for such taxable
2 year, and

3 “(3) the adjustments resulting from such deter-
4 mination do not give rise to a deficiency (as defined
5 in section 6211) but would give rise to a deficiency
6 if there were no net loss from partnership items,
7 the Secretary is authorized to send a notice of adjustment
8 reflecting such determination to the taxpayer by certified
9 or registered mail.

10 “(b) OVERSHELTERED RETURN.—For purposes of
11 this section, the term ‘oversheltered return’ means an in-
12 come tax return which—

13 “(1) shows no taxable income for the taxable
14 year, and

15 “(2) shows a net loss from partnership items.

16 “(c) JUDICIAL REVIEW IN THE TAX COURT.—Within
17 90 days, or 150 days if the notice is addressed to a person
18 outside the United States, after the day on which the no-
19 tice of adjustment authorized in subsection (a) is mailed
20 to the taxpayer, the taxpayer may file a petition with the
21 Tax Court for redetermination of the adjustments. Upon
22 the filing of such a petition, the Tax Court shall have ju-
23 risdiction to make a declaration with respect to all items
24 (other than partnership items and affected items which
25 require partner level determinations as described in sec-

1 tion 6230(a)(2)(A)(i)) for the taxable year to which the
2 notice of adjustment relates, in accordance with the prin-
3 ciples of section 6214(a). Any such declaration shall have
4 the force and effect of a decision of the Tax Court and
5 shall be reviewable as such.

6 “(d) FAILURE TO FILE PETITION.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), if the taxpayer does not file a petition
9 with the Tax Court within the time prescribed in
10 subsection (c), the determination of the Secretary
11 set forth in the notice of adjustment that was mailed
12 to the taxpayer shall be deemed to be correct.

13 “(2) EXCEPTION.—Paragraph (1) shall not
14 apply after the date that the taxpayer—

15 “(A) files a petition with the Tax Court
16 within the time prescribed in subsection (c)
17 with respect to a subsequent notice of adjust-
18 ment relating to the same taxable year, or

19 “(B) files a claim for refund of an overpay-
20 ment of tax under section 6511 for the taxable
21 year involved.

22 If a claim for refund is filed by the taxpayer, then
23 solely for purposes of determining (for the taxable
24 year involved) the amount of any computational ad-
25 justment in connection with a partnership proceed-

1 ing under this subchapter (other than under this
2 section) or the amount of any deficiency attributable
3 to affected items in a proceeding under section
4 6230(a)(2), the items that are the subject of the no-
5 tice of adjustment shall be presumed to have been
6 correctly reported on the taxpayer's return during
7 the pendency of the refund claim (and, if within the
8 time prescribed by section 6532 the taxpayer com-
9 mences a civil action for refund under section 7422,
10 until the decision in the refund action becomes
11 final).

12 “(e) LIMITATIONS PERIOD.—

13 “(1) IN GENERAL.—Any notice to a taxpayer
14 under subsection (a) shall be mailed before the expi-
15 ration of the period prescribed by section 6501 (re-
16 lating to the period of limitations on assessment).

17 “(2) SUSPENSION WHEN SECRETARY MAILES NO-
18 TICE OF ADJUSTMENT.—If the Secretary mails a no-
19 tice of adjustment to the taxpayer for a taxable year,
20 the period of limitations on the making of assess-
21 ments shall be suspended for the period during
22 which the Secretary is prohibited from making the
23 assessment (and, in any event, if a proceeding in re-
24 spect of the notice of adjustment is placed on the
25 docket of the Tax Court, until the decision of the

1 Tax Court becomes final), and for 60 days there-
2 after.

3 “(3) RESTRICTIONS ON ASSESSMENT.—Except
4 as otherwise provided in section 6851, 6852, or
5 6861, no assessment of a deficiency with respect to
6 any tax imposed by subtitle A attributable to any
7 item (other than a partnership item or any item af-
8 fected by a partnership item) shall be made—

9 “(A) until the expiration of the applicable
10 90-day or 150-day period set forth in sub-
11 section (c) for filing a petition with the Tax
12 Court, or

13 “(B) if a petition has been filed with the
14 Tax Court, until the decision of the Tax Court
15 has become final.

16 “(f) FURTHER NOTICES OF ADJUSTMENT RE-
17 STRICTED.—If the Secretary mails a notice of adjustment
18 to the taxpayer for a taxable year and the taxpayer files
19 a petition with the Tax Court within the time prescribed
20 in subsection (c), the Secretary may not mail another such
21 notice to the taxpayer with respect to the same taxable
22 year in the absence of a showing of fraud, malfeasance,
23 or misrepresentation of a material fact.

24 “(g) COORDINATION WITH OTHER PROCEEDINGS
25 UNDER THIS SUBCHAPTER.—

1 “(1) IN GENERAL.—The treatment of any item
2 that has been determined pursuant to subsection (c)
3 or (d) shall be taken into account in determining the
4 amount of any computational adjustment that is
5 made in connection with a partnership proceeding
6 under this subchapter (other than under this sec-
7 tion), or the amount of any deficiency attributable to
8 affected items in a proceeding under section
9 6230(a)(2), for the taxable year involved. Notwith-
10 standing any other law or rule of law pertaining to
11 the period of limitations on the making of assess-
12 ments, for purposes of the preceding sentence, any
13 adjustment made in accordance with this section
14 shall be taken into account regardless of whether
15 any assessment has been made with respect to such
16 adjustment.

17 “(2) SPECIAL RULE IN CASE OF COMPUTA-
18 TIONAL ADJUSTMENT.—In the case of a computa-
19 tional adjustment that is made in connection with a
20 partnership proceeding under this subchapter (other
21 than under this section), the provisions of paragraph
22 (1) shall apply only if the computational adjustment
23 is made within the period prescribed by section 6229
24 for assessing any tax under subtitle A which is at-

1 tributable to any partnership item or affected item
2 for the taxable year involved.

3 “(3) CONVERSION TO DEFICIENCY PROCEED-
4 ING.—If—

5 “(A) after the notice referred to in sub-
6 section (a) is mailed to a taxpayer for a taxable
7 year but before the expiration of the period for
8 filing a petition with the Tax Court under sub-
9 section (c) (or, if a petition is filed with the Tax
10 Court, before the Tax Court makes a declara-
11 tion for that taxable year), the treatment of any
12 partnership item for the taxable year is finally
13 determined, or any such item ceases to be a
14 partnership item pursuant to section 6231(b),
15 and

16 “(B) as a result of that final determination
17 or cessation, a deficiency can be determined
18 with respect to the items that are the subject
19 of the notice of adjustment,
20 the notice of adjustment shall be treated as a notice
21 of deficiency under section 6212 and any petition
22 filed in respect of the notice shall be treated as an
23 action brought under section 6213.

1 “(4) FINALLY DETERMINED.—For purposes of
2 this subsection, the treatment of partnership items
3 shall be treated as finally determined if—

4 “(A) the Secretary enters into a settlement
5 agreement (within the meaning of section 6224)
6 with the taxpayer regarding such items,

7 “(B) a notice of final partnership adminis-
8 trative adjustment has been issued and—

9 “(i) no petition has been filed under
10 section 6226 and the time for doing so has
11 expired, or

12 “(ii) a petition has been filed under
13 section 6226 and the decision of the court
14 has become final, or

15 “(C) the period within which any tax at-
16 tributable to such items may be assessed
17 against the taxpayer has expired.

18 “(h) SPECIAL RULES IF SECRETARY INCORRECTLY
19 DETERMINES APPLICABLE PROCEDURE.—

20 “(1) SPECIAL RULE IF SECRETARY ERRO-
21 NEOUSLY MAILES NOTICE OF ADJUSTMENT.—If the
22 Secretary erroneously determines that subchapter B
23 does not apply to a taxable year of a taxpayer and
24 consistent with that determination timely mails a no-
25 tice of adjustment to the taxpayer pursuant to sub-

1 section (a) of this section, the notice of adjustment
2 shall be treated as a notice of deficiency under sec-
3 tion 6212 and any petition that is filed in respect of
4 the notice shall be treated as an action brought
5 under section 6213.

6 “(2) SPECIAL RULE IF SECRETARY ERRO-
7 NEOUSLY MAILES NOTICE OF DEFICIENCY.—If the
8 Secretary erroneously determines that subchapter B
9 applies to a taxable year of a taxpayer and consist-
10 ent with that determination timely mails a notice of
11 deficiency to the taxpayer pursuant to section 6212,
12 the notice of deficiency shall be treated as a notice
13 of adjustment under subsection (a) and any petition
14 that is filed in respect of the notice shall be treated
15 as an action brought under subsection (c).”

16 (b) TREATMENT OF PARTNERSHIP ITEMS IN DEFICI-
17 CIENCY PROCEEDINGS.—Section 6211 (defining defi-
18 ciency) is amended by adding at the end the following new
19 subsection:

20 “(c) COORDINATION WITH SUBCHAPTER C.—In de-
21 termining the amount of any deficiency for purposes of
22 this subchapter, adjustments to partnership items shall be
23 made only as provided in subchapter C.”

1 (c) CLERICAL AMENDMENT.—The table of sections
 2 for subchapter C of chapter 63 is amended by adding at
 3 the end the following new item:

“Sec. 6234. Declaratory judgment relating to treatment of items
 other than partnership items with respect to an
 oversheltered return.”

4 (d) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to partnership taxable years ending
 6 after the date of the enactment of this Act.

7 **SEC. 14312. PARTNERSHIP RETURN TO BE DETERMINATIVE**
 8 **OF AUDIT PROCEDURES TO BE FOLLOWED.**

9 (a) IN GENERAL.—Section 6231 (relating to defini-
 10 tions and special rules) is amended by adding at the end
 11 the following new subsection:

12 “(g) PARTNERSHIP RETURN TO BE DETERMINATIVE
 13 OF WHETHER SUBCHAPTER APPLIES.—

14 “(1) DETERMINATION THAT SUBCHAPTER AP-
 15 PLIES.—If, on the basis of a partnership return for
 16 a taxable year, the Secretary reasonably determines
 17 that this subchapter applies to such partnership for
 18 such year but such determination is erroneous, then
 19 the provisions of this subchapter are hereby ex-
 20 tended to such partnership (and its items) for such
 21 taxable year and to partners of such partnership.

22 “(2) DETERMINATION THAT SUBCHAPTER DOES
 23 NOT APPLY.—If, on the basis of a partnership re-
 24 turn for a taxable year, the Secretary reasonably de-

1 termines that this subchapter does not apply to such
2 partnership for such year but such determination is
3 erroneous, then the provisions of this subchapter
4 shall not apply to such partnership (and its items)
5 for such taxable year or to partners of such partner-
6 ship.”

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to partnership taxable years ending
9 after the date of the enactment of this Act.

10 **SEC. 14313. PROVISIONS RELATING TO STATUTE OF LIMITA-**
11 **TIONS.**

12 (a) SUSPENSION OF STATUTE WHERE UNTIMELY
13 PETITION FILED.—Paragraph (1) of section 6229(d) (re-
14 lating to suspension where Secretary makes administrative
15 adjustment) is amended by striking all that follows “sec-
16 tion 6226” and inserting the following: “(and, if a petition
17 is filed under section 6226 with respect to such adminis-
18 trative adjustment, until the decision of the court becomes
19 final), and”.

20 (b) SUSPENSION OF STATUTE DURING BANKRUPTCY
21 PROCEEDING.—Section 6229 is amended by adding at the
22 end the following new subsection:

23 “(h) SUSPENSION DURING PENDENCY OF BANK-
24 RUPTCY PROCEEDING.—If a petition is filed naming a
25 partner as a debtor in a bankruptcy proceeding under title

1 11 of the United States Code, the running of the period
2 of limitations provided in this section with respect to such
3 partner shall be suspended—

4 “(1) for the period during which the Secretary
5 is prohibited by reason of such bankruptcy proceed-
6 ing from making an assessment, and

7 “(2) for 60 days thereafter.”

8 (c) TAX MATTERS PARTNER IN BANKRUPTCY.—Sec-
9 tion 6229(b) is amended by redesignating paragraph (2)
10 as paragraph (3) and by inserting after paragraph (1) the
11 following new paragraph:

12 “(2) SPECIAL RULE WITH RESPECT TO DEBT-
13 ORS IN TITLE 11 CASES.—Notwithstanding any other
14 law or rule of law, if an agreement is entered into
15 under paragraph (1)(B) and the agreement is signed
16 by a person who would be the tax matters partner
17 but for the fact that, at the time that the agreement
18 is executed, the person is a debtor in a bankruptcy
19 proceeding under title 11 of the United States Code,
20 such agreement shall be binding on all partners in
21 the partnership unless the Secretary has been noti-
22 fied of the bankruptcy proceeding in accordance with
23 regulations prescribed by the Secretary.”

24 (d) EFFECTIVE DATES.—

1 (1) SUBSECTIONS (a) AND (b).—The amend-
2 ments made by subsections (a) and (b) shall apply
3 to partnership taxable years with respect to which
4 the period under section 6229 of the Internal Reve-
5 nue Code of 1986 for assessing tax has not expired
6 on or before the date of the enactment of this Act.

7 (2) SUBSECTION (c).—The amendment made
8 by subsection (c) shall apply to agreements entered
9 into after the date of the enactment of this Act.

10 **SEC. 14314. EXPANSION OF SMALL PARTNERSHIP EXCEP-**
11 **TION.**

12 (a) IN GENERAL.—Clause (i) of section
13 6231(a)(1)(B) (relating to exception for small partner-
14 ships) is amended to read as follows:

15 “(i) IN GENERAL.—The term ‘part-
16 nership’ shall not include any partnership
17 having 10 or fewer partners each of whom
18 is an individual (other than a nonresident
19 alien), a C corporation, or an estate of a
20 deceased partner. For purposes of the pre-
21 ceding sentence, a husband and wife (and
22 their estates) shall be treated as 1 part-
23 ner.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to partnership taxable years ending
3 after the date of the enactment of this Act.

4 **SEC. 14315. EXCLUSION OF PARTIAL SETTLEMENTS FROM**
5 **1-YEAR LIMITATION ON ASSESSMENT.**

6 (a) IN GENERAL.—Subsection (f) of section 6229 (re-
7 lating to items becoming nonpartnership items) is amend-
8 ed—

9 (1) by striking “(f) ITEMS BECOMING
10 NONPARTNERSHIP ITEMS.—If” and inserting the
11 following:

12 “(f) SPECIAL RULES.—

13 “(1) ITEMS BECOMING NONPARTNERSHIP
14 ITEMS.—If”,

15 (2) by moving the text of such subsection 2 ems
16 to the right, and

17 (3) by adding at the end the following new
18 paragraph:

19 “(2) SPECIAL RULE FOR PARTIAL SETTLEMENT
20 AGREEMENTS.—If a partner enters into a settlement
21 agreement with the Secretary with respect to the
22 treatment of some of the partnership items in dis-
23 pute for a partnership taxable year but other part-
24 nership items for such year remain in dispute, the
25 period of limitations for assessing any tax attrib-

1 utable to the settled items shall be determined as if
2 such agreement had not been entered into.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to settlements entered into after
5 the date of the enactment of this Act.

6 **SEC. 14316. EXTENSION OF TIME FOR FILING A REQUEST**
7 **FOR ADMINISTRATIVE ADJUSTMENT.**

8 (a) IN GENERAL.—Section 6227 (relating to admin-
9 istrative adjustment requests) is amended by redesignat-
10 ing subsections (b) and (c) as subsections (c) and (d), re-
11 spectively, and by inserting after subsection (a) the follow-
12 ing new subsection:

13 “(b) SPECIAL RULE IN CASE OF EXTENSION OF PE-
14 RIOD OF LIMITATIONS UNDER SECTION 6229.—The pe-
15 riod prescribed by subsection (a)(1) for filing of a request
16 for an administrative adjustment shall be extended—

17 “(1) for the period within which an assessment
18 may be made pursuant to an agreement (or any ex-
19 tension thereof) under section 6229(b), and

20 “(2) for 6 months thereafter.”

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall take effect as if included in the amend-
23 ments made by section 402 of the Tax Equity and Fiscal
24 Responsibility Act of 1982.

1 **SEC. 14317. AVAILABILITY OF INNOCENT SPOUSE RELIEF IN**
2 **CONTEXT OF PARTNERSHIP PROCEEDINGS.**

3 (a) IN GENERAL.—Subsection (a) of section 6230 is
4 amended by adding at the end the following new para-
5 graph:

6 “(3) SPECIAL RULE IN CASE OF ASSERTION BY
7 PARTNER’S SPOUSE OF INNOCENT SPOUSE RE-
8 LIEF.—

9 “(A) Notwithstanding section 6404(b), if
10 the spouse of a partner asserts that section
11 6013(e) applies with respect to a liability that
12 is attributable to any adjustment to a partner-
13 ship item, then such spouse may file with the
14 Secretary within 60 days after the notice of
15 computational adjustment is mailed to the
16 spouse a request for abatement of the assess-
17 ment specified in such notice. Upon receipt of
18 such request, the Secretary shall abate the as-
19 sessment. Any reassessment of the tax with re-
20 spect to which an abatement is made under this
21 subparagraph shall be subject to the deficiency
22 procedures prescribed by subchapter B. The pe-
23 riod for making any such reassessment shall
24 not expire before the expiration of 60 days after
25 the date of such abatement.

1 “(B) If the spouse files a petition with the
2 Tax Court pursuant to section 6213 with re-
3 spect to the request for abatement described in
4 subparagraph (A), the Tax Court shall only
5 have jurisdiction pursuant to this section to de-
6 termine whether the requirements of section
7 6013(e) have been satisfied. For purposes of
8 such determination, the treatment of partner-
9 ship items under the settlement, the final part-
10 nership administrative adjustment, or the deci-
11 sion of the court (whichever is appropriate) that
12 gave rise to the liability in question shall be
13 conclusive.

14 “(C) Rules similar to the rules contained
15 in subparagraphs (B) and (C) of paragraph (2)
16 shall apply for purposes of this paragraph.”

17 (b) CLAIMS FOR REFUND.—Subsection (c) of section
18 6230 is amended by adding at the end the following new
19 paragraph:

20 “(5) RULES FOR SEEKING INNOCENT SPOUSE
21 RELIEF.—

22 “(A) IN GENERAL.—The spouse of a part-
23 ner may file a claim for refund on the ground
24 that the Secretary failed to relieve the spouse
25 under section 6013(e) from a liability that is at-

1 tributable to an adjustment to a partnership
2 item.

3 “(B) TIME FOR FILING CLAIM.—Any claim
4 under subparagraph (A) shall be filed within 6
5 months after the day on which the Secretary
6 mails to the spouse the notice of computational
7 adjustment referred to in subsection (a)(3)(A).

8 “(C) SUIT IF CLAIM NOT ALLOWED.—If
9 the claim under subparagraph (B) is not al-
10 lowed, the spouse may bring suit with respect
11 to the claim within the period specified in para-
12 graph (3).

13 “(D) PRIOR DETERMINATIONS ARE BIND-
14 ING.—For purposes of any claim or suit under
15 this paragraph, the treatment of partnership
16 items under the settlement, the final partner-
17 ship administrative adjustment, or the decision
18 of the court (whichever is appropriate) that
19 gave rise to the liability in question shall be
20 conclusive.”

21 (c) TECHNICAL AMENDMENTS.—

22 (1) Paragraph (1) of section 6230(a) is amend-
23 ed by striking “paragraph (2)” and inserting “para-
24 graph (2) or (3)”.

1 (2) Subsection (a) of section 6503 is amended
2 by striking “section 6230(a)(2)(A)” and inserting
3 “paragraph (2)(A) or (3) of section 6230(a)”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect as if included in the amend-
6 ments made by section 402 of the Tax Equity and Fiscal
7 Responsibility Act of 1982.

8 **SEC. 14318. DETERMINATION OF PENALTIES AT PARTNER-**
9 **SHIP LEVEL.**

10 (a) IN GENERAL.—Section 6221 (relating to tax
11 treatment determined at partnership level) is amended by
12 striking “item” and inserting “item (and the applicability
13 of any penalty, addition to tax, or additional amount which
14 relates to an adjustment to a partnership item)”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Subsection (f) of section 6226 is amended—

17 (A) by striking “relates and” and inserting
18 “relates,”, and

19 (B) by inserting before the period “, and
20 the applicability of any penalty, addition to tax,
21 or additional amount which relates to an ad-
22 justment to a partnership item”.

23 (2) Clause (i) of section 6230(a)(2)(A) is
24 amended to read as follows:

1 “(i) affected items which require part-
2 ner level determinations (other than pen-
3 alties, additions to tax, and additional
4 amounts that relate to adjustments to
5 partnership items), or”.

6 (3)(A) Subparagraph (A) of section 6230(a)(3),
7 as added by section 14317, is amended by inserting
8 “(including any liability for any penalty, addition to
9 tax, or additional amount relating to such adjust-
10 ment)” after “partnership item”.

11 (B) Subparagraph (B) of such section is
12 amended by inserting “(and the applicability of any
13 penalties, additions to tax, or additional amounts)”
14 after “partnership items”.

15 (C) Subparagraph (A) of section 6230(c)(5), as
16 added by section 14317, is amended by inserting be-
17 fore the period “(including any liability for any pen-
18 alties, additions to tax, or additional amounts relat-
19 ing to such adjustment)”.

20 (D) Subparagraph (D) of section 6230(c)(5), as
21 added by section 14317, is amended by inserting
22 “(and the applicability of any penalties, additions to
23 tax, or additional amounts)” after “partnership
24 items”.

1 (4) Paragraph (1) of section 6230(c) is amend-
2 ed by striking “or” at the end of subparagraph (A),
3 by striking the period at the end of subparagraph
4 (B) and inserting “, or”, and by adding at the end
5 the following new subparagraph:

6 “(C) the Secretary erroneously imposed
7 any penalty, addition to tax, or additional
8 amount which relates to an adjustment to a
9 partnership item.”

10 (5) So much of subparagraph (A) of section
11 6230(c)(2) as precedes “shall be filed” is amended
12 to read as follows:

13 “(A) UNDER PARAGRAPH (1) (A) OR (C).—
14 Any claim under subparagraph (A) or (C) of
15 paragraph (1)”.
16

17 (6) Paragraph (4) of section 6230(c) is amend-
18 ed by adding at the end the following: “In addition,
19 the determination under the final partnership ad-
20 ministrative adjustment or under the decision of the
21 court (whichever is appropriate) concerning the ap-
22 plicability of any penalty, addition to tax, or addi-
23 tional amount which relates to an adjustment to a
24 partnership item shall also be conclusive. Notwith-
25 standing the preceding sentence, the partner shall be
 allowed to assert any partner level defenses that may

1 apply or to challenge the amount of the computa-
2 tional adjustment.”

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to partnership taxable years ending
5 after the date of the enactment of this Act.

6 **SEC. 14319. PROVISIONS RELATING TO COURT JURISDIC-**
7 **TION, ETC.**

8 (a) TAX COURT JURISDICTION TO ENJOIN PRE-
9 MATURE ASSESSMENTS OF DEFICIENCIES ATTRIBUTABLE
10 TO PARTNERSHIP ITEMS.—Subsection (b) of section 6225
11 is amended by striking “the proper court.” and inserting
12 “the proper court, including the Tax Court. The Tax
13 Court shall have no jurisdiction to enjoin any action or
14 proceeding under this subsection unless a timely petition
15 for a readjustment of the partnership items for the taxable
16 year has been filed and then only in respect of the adjust-
17 ments that are the subject of such petition.”

18 (b) JURISDICTION TO CONSIDER STATUTE OF LIMI-
19 TATIONS WITH RESPECT TO PARTNERS.—Paragraph (1)
20 of section 6226(d) is amended by adding at the end the
21 following new sentence:

22 “Notwithstanding subparagraph (B), any person
23 treated under subsection (c) as a party to an action
24 shall be permitted to participate in such action (or
25 file a readjustment petition under subsection (b) or

1 paragraph (2) of this subsection) solely for the pur-
2 pose of asserting that the period of limitations for
3 assessing any tax attributable to partnership items
4 has expired with respect to such person, and the
5 court having jurisdiction of such action shall have
6 jurisdiction to consider such assertion.”

7 (c) TAX COURT JURISDICTION TO DETERMINE
8 OVERPAYMENTS ATTRIBUTABLE TO AFFECTED ITEMS.—

9 (1) Paragraph (6) of section 6230(d) is amend-
10 ed by striking “(or an affected item)”.

11 (2) Paragraph (3) of section 6512(b) is amend-
12 ed by adding at the end the following new sentence:
13 “In the case of a credit or refund relating to an af-
14 fected item (within the meaning of section
15 6231(a)(5)), the preceding sentence shall be applied
16 by substituting the periods under sections 6229 and
17 6230(d) for the periods under section 6511(b)(2),
18 (c), and (d).”

19 (d) VENUE ON APPEAL.—

20 (1) Paragraph (1) of section 7482(b) is amend-
21 ed by striking “or” at the end of subparagraph (D),
22 by striking the period at the end of subparagraph
23 (E) and inserting “, or”, and by inserting after sub-
24 paragraph (E) the following new subparagraph:

1 “(F) in the case of a petition under section
2 6234(c)—

3 “(i) the legal residence of the peti-
4 tioner if the petitioner is not a corporation,
5 and

6 “(ii) the place or office applicable
7 under subparagraph (B) if the petitioner is
8 a corporation.”

9 (2) The last sentence of section 7482(b)(1) is
10 amended by striking “or 6228(a)” and inserting “,
11 6228(a), or 6234(c)”.

12 (e) OTHER PROVISIONS.—

13 (1) Subsection (c) of section 7459 is amended
14 by striking “or section 6228(a)” and inserting “,
15 6228(a), or 6234(c)”.

16 (2) Subsection (o) of section 6501 is amended
17 by adding at the end the following new paragraph:

18 “(3) For declaratory judgment relating to treat-
19 ment of items other than partnership items with re-
20 spect to an oversheltered return, see section 6234.”

21 (f) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to partnership taxable years ending
23 after the date of the enactment of this Act.

1 **SEC. 14320. TREATMENT OF PREMATURE PETITIONS FILED**
2 **BY NOTICE PARTNERS OR 5-PERCENT**
3 **GROUPS.**

4 (a) IN GENERAL.—Subsection (b) of section 6226
5 (relating to judicial review of final partnership administra-
6 tive adjustments) is amended by redesignating paragraph
7 (5) as paragraph (6) and by inserting after paragraph (4)
8 the following new paragraph:

9 “(5) TREATMENT OF PREMATURE PETI-
10 TIONS.—If—

11 “(A) a petition for a readjustment of part-
12 nership items for the taxable year involved is
13 filed by a notice partner (or a 5-percent group)
14 during the 90-day period described in sub-
15 section (a), and

16 “(B) no action is brought under paragraph
17 (1) during the 60-day period described therein
18 with respect to such taxable year which is not
19 dismissed,

20 such petition shall be treated for purposes of para-
21 graph (1) as filed on the last day of such 60-day
22 period.”

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to petitions filed after the date of
25 the enactment of this Act.

1 **SEC. 14321. BONDS IN CASE OF APPEALS FROM CERTAIN**
2 **PROCEEDING.**

3 (a) IN GENERAL.—Subsection (b) of section 7485
4 (relating to bonds to stay assessment of collection) is
5 amended—

6 (1) by inserting “penalties,” after “any inter-
7 est,” and

8 (2) by striking “aggregate of such deficiencies”
9 and inserting “aggregate liability of the parties to
10 the action”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall take effect as if included in the amend-
13 ments made by section 402 of the Tax Equity and Fiscal
14 Responsibility Act of 1982.

15 **SEC. 14322. SUSPENSION OF INTEREST WHERE DELAY IN**
16 **COMPUTATIONAL ADJUSTMENT RESULTING**
17 **FROM CERTAIN SETTLEMENTS.**

18 (a) IN GENERAL.—Subsection (c) of section 6601
19 (relating to interest on underpayment, nonpayment, or ex-
20 tension of time for payment, of tax) is amended by adding
21 at the end the following new sentence: “In the case of a
22 settlement under section 6224(c) which results in the con-
23 version of partnership items to nonpartnership items pur-
24 suant to section 6231(b)(1)(C), the preceding sentence
25 shall apply to a computational adjustment resulting from
26 such settlement in the same manner as if such adjustment

1 were a deficiency and such settlement were a waiver re-
2 ferred to in the preceding sentence.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to adjustments with respect to
5 partnership taxable years beginning after the date of the
6 enactment of this Act.

7 **SEC. 14323. SPECIAL RULES FOR ADMINISTRATIVE ADJUST-**
8 **MENT REQUESTS WITH RESPECT TO BAD**
9 **DEBTS OR WORTHLESS SECURITIES.**

10 (a) GENERAL RULE.—Section 6227 (relating to ad-
11 ministrative adjustment requests) is amended by adding
12 at the end the following new subsection:

13 “(e) REQUESTS WITH RESPECT TO BAD DEBTS OR
14 WORTHLESS SECURITIES.—In the case of that portion of
15 any request for an administrative adjustment which re-
16 lates to the deductibility by the partnership under section
17 166 of a debt as a debt which became worthless, or under
18 section 165(g) of a loss from worthlessness of a security,
19 the period prescribed in subsection (a)(1) shall be 7 years
20 from the last day for filing the partnership return for the
21 year with respect to which such request is made (deter-
22 mined without regard to extensions).”

23 (b) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendment made by
25 subsection (a) shall take effect as if included in the

1 amendments made by section 402 of the Tax Equity
2 and Fiscal Responsibility Act of 1982.

3 (2) TREATMENT OF REQUESTS FILED BEFORE
4 DATE OF ENACTMENT.—In the case of that portion
5 of any request (filed before the date of the enact-
6 ment of this Act) for an administrative adjustment
7 which relates to the deductibility of a debt as a debt
8 which became worthless or the deductibility of a loss
9 from the worthlessness of a security—

10 (A) paragraph (2) of section 6227(a) of
11 the Internal Revenue Code of 1986 shall not
12 apply,

13 (B) the period for filing a petition under
14 section 6228 of the Internal Revenue Code of
15 1986 with respect to such request shall not ex-
16 pire before the date 6 months after the date of
17 the enactment of this Act, and

18 (C) such a petition may be filed without
19 regard to whether there was a notice of the be-
20 ginning of an administrative proceeding or a
21 final partnership administrative adjustment.

1 **Subtitle D—Foreign Provisions**

2 **PART I—MODIFICATIONS TO TREATMENT OF**

3 **PASSIVE FOREIGN INVESTMENT COMPANIES**

4 **SEC. 14401. UNITED STATES SHAREHOLDERS OF CON-**

5 **TROLLED FOREIGN CORPORATIONS NOT**

6 **SUBJECT TO PFIC INCLUSION.**

7 Section 1296 is amended by adding at the end the
8 following new subsection:

9 “(e) EXCEPTION FOR UNITED STATES SHAREHOLD-
10 ERS OF CONTROLLED FOREIGN CORPORATIONS.—

11 “(1) IN GENERAL.—For purposes of this part,
12 a corporation shall not be treated with respect to a
13 shareholder as a passive foreign investment company
14 during the qualified portion of such shareholder’s
15 holding period with respect to stock in such corpora-
16 tion.

17 “(2) QUALIFIED PORTION.—For purposes of
18 this subsection, the term ‘qualified portion’ means
19 the portion of the shareholder’s holding period—

20 “(A) which is after December 31, 1995,
21 and

22 “(B) during which the shareholder is a
23 United States shareholder (as defined in section
24 951(b)) of the corporation and the corporation
25 is a controlled foreign corporation.

1 “(3) NEW HOLDING PERIOD IF QUALIFIED POR-
2 TION ENDS.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), if the qualified portion of a
5 shareholder’s holding period with respect to any
6 stock ends after December 31, 1995, solely for
7 purposes of this part, the shareholder’s holding
8 period with respect to such stock shall be treat-
9 ed as beginning as of the first day following
10 such period.

11 “(B) EXCEPTION.—Subparagraph (A)
12 shall not apply if such stock was, with respect
13 to such shareholder, stock in a passive foreign
14 investment company at any time before the
15 qualified portion of the shareholder’s holding
16 period with respect to such stock and no elec-
17 tion under section 1298(b)(1) is made.”

18 **SEC. 14402. ELECTION OF MARK TO MARKET FOR MARKET-**
19 **ABLE STOCK IN PASSIVE FOREIGN INVEST-**
20 **MENT COMPANY.**

21 (a) IN GENERAL.—Part VI of subchapter P of chap-
22 ter 1 is amended by redesignating subpart C as subpart
23 D, by redesignating sections 1296 and 1297 as sections
24 1297 and 1298, respectively, and by inserting after sub-
25 part B the following new subpart:

1 **“Subpart C—Election of Mark to Market For**
2 **Marketable Stock**

“Sec. 1296. Election of mark to market for marketable stock.

3 **“SEC. 1296. ELECTION OF MARK TO MARKET FOR MARKET-**
4 **ABLE STOCK.**

5 “(a) GENERAL RULE.—In the case of marketable
6 stock in a passive foreign investment company which is
7 owned (or treated under subsection (g) as owned) by a
8 United States person at the close of any taxable year of
9 such person, at the election of such person—

10 “(1) If the fair market value of such stock as
11 of the close of such taxable year exceeds its adjusted
12 basis, such United States person shall include in
13 gross income for such taxable year an amount equal
14 to the amount of such excess.

15 “(2) If the adjusted basis of such stock exceeds
16 the fair market value of such stock as of the close
17 of such taxable year, such United States person
18 shall be allowed a deduction for such taxable year
19 equal to the lesser of—

20 “(A) the amount of such excess, or

21 “(B) the unreversed inclusions with respect
22 to such stock.

23 “(b) BASIS ADJUSTMENTS.—

1 “(1) IN GENERAL.—The adjusted basis of stock
2 in a passive foreign investment company—

3 “(A) shall be increased by the amount in-
4 cluded in the gross income of the United States
5 person under subsection (a)(1) with respect to
6 such stock, and

7 “(B) shall be decreased by the amount al-
8 lowed as a deduction to the United States per-
9 son under subsection (a)(2) with respect to
10 such stock.

11 “(2) SPECIAL RULE FOR STOCK CONSTRUC-
12 TIVELY OWNED.—In the case of stock in a passive
13 foreign investment company which the United States
14 person is treated as owning under subsection (g)—

15 “(A) the adjustments under paragraph (1)
16 shall apply to such stock in the hands of the
17 person actually holding such stock but only for
18 purposes of determining the subsequent treat-
19 ment under this chapter of the United States
20 person with respect to such stock, and

21 “(B) similar adjustments shall be made to
22 the adjusted basis of the property by reason of
23 which the United States person is treated as
24 owning such stock.

25 “(c) CHARACTER AND SOURCE RULES.—

1 “(1) ORDINARY TREATMENT.—

2 “(A) GAIN.—Any amount included in gross
3 income under subsection (a)(1), and any gain
4 on the sale or other disposition of marketable
5 stock in a passive foreign investment company
6 (with respect to which an election under this
7 section is in effect), shall be treated as ordinary
8 income.

9 “(B) LOSS.—Any—

10 “(i) amount allowed as a deduction
11 under subsection (a)(2), and

12 “(ii) loss on the sale or other disposi-
13 tion of marketable stock in a passive for-
14 eign investment company (with respect to
15 which an election under this section is in
16 effect) to the extent that the amount of
17 such loss does not exceed the unreversed
18 inclusions with respect to such stock,

19 shall be treated as an ordinary loss. The
20 amount so treated shall be treated as a deduc-
21 tion allowable in computing adjusted gross in-
22 come.

23 “(2) SOURCE.—The source of any amount in-
24 cluded in gross income under subsection (a)(1) (or
25 allowed as a deduction under subsection (a)(2)) shall

1 be determined in the same manner as if such
2 amount were gain or loss (as the case may be) from
3 the sale of stock in the passive foreign investment
4 company.

5 “(d) UNREVERSED INCLUSIONS.—For purposes of
6 this section, the term ‘unreversed inclusions’ means, with
7 respect to any stock in a passive foreign investment com-
8 pany, the excess (if any) of—

9 “(1) the amount included in gross income of
10 the taxpayer under subsection (a)(1) with respect to
11 such stock for prior taxable years, over

12 “(2) the amount allowed as a deduction under
13 subsection (a)(2) with respect to such stock for prior
14 taxable years.

15 The amount referred to in paragraph (1) shall include any
16 amount which would have been included in gross income
17 under subsection (a)(1) with respect to such stock for any
18 prior taxable year but for section 1291.

19 “(e) MARKETABLE STOCK.—For purposes of this
20 section—

21 “(1) IN GENERAL.—The term ‘marketable
22 stock’ means—

23 “(A) any stock which is regularly traded
24 on—

1 “(i) a national securities exchange
2 which is registered with the Securities and
3 Exchange Commission or the national mar-
4 ket system established pursuant to section
5 11A of the Securities and Exchange Act of
6 1934, or

7 “(ii) any exchange or other market
8 which the Secretary determines has rules
9 adequate to carry out the purposes of this
10 part,

11 “(B) to the extent provided in regulations,
12 stock in any foreign corporation which is com-
13 parable to a regulated investment company and
14 which offers for sale or has outstanding any
15 stock of which it is the issuer and which is re-
16 deemable at its net asset value, and

17 “(C) to the extent provided in regulations,
18 any option on stock described in subparagraph
19 (A) or (B).

20 “(2) SPECIAL RULE FOR REGULATED INVEST-
21 MENT COMPANIES.—In the case of any regulated in-
22 vestment company which is offering for sale or has
23 outstanding any stock of which it is the issuer and
24 which is redeemable at its net asset value, all stock
25 in a passive foreign investment company which it

1 owns directly or indirectly shall be treated as mar-
2 ketable stock for purposes of this section. Except as
3 provided in regulations, similar treatment as mar-
4 ketable stock shall apply in the case of any other
5 regulated investment company which publishes net
6 asset valuations at least annually.

7 “(f) TREATMENT OF CONTROLLED FOREIGN COR-
8 PORATIONS WHICH ARE SHAREHOLDERS IN PASSIVE
9 FOREIGN INVESTMENT COMPANIES.—In the case of a for-
10 eign corporation which is a controlled foreign corporation
11 and which owns (or is treated under subsection (g) as own-
12 ing) stock in a passive foreign investment company—

13 “(1) this section (other than subsection (c)(2))
14 shall apply to such foreign corporation in the same
15 manner as if such corporation were a United States
16 person, and

17 “(2) for purposes of subpart F of part III of
18 subchapter N—

19 “(A) any amount included in gross income
20 under subsection (a)(1) shall be treated as for-
21 eign personal holding company income de-
22 scribed in section 954(c)(1)(A), and

23 “(B) any amount allowed as a deduction
24 under subsection (a)(2) shall be treated as a de-

1 duction allocable to foreign personal holding
2 company income so described.

3 “(g) STOCK OWNED THROUGH CERTAIN FOREIGN
4 ENTITIES.—Except as provided in regulations—

5 “(1) IN GENERAL.—For purposes of this sec-
6 tion, stock owned, directly or indirectly, by or for a
7 foreign partnership or foreign trust or foreign estate
8 shall be considered as being owned proportionately
9 by its partners or beneficiaries. Stock considered to
10 be owned by a person by reason of the application
11 of the preceding sentence shall, for purposes of ap-
12 plying such sentence, be treated as actually owned
13 by such person.

14 “(2) TREATMENT OF CERTAIN DISPOSITIONS.—
15 In any case in which a United States person is
16 treated as owning stock in a passive foreign invest-
17 ment company by reason of paragraph (1)—

18 “(A) any disposition by the United States
19 person or by any other person which results in
20 the United States person being treated as no
21 longer owning such stock, and

22 “(B) any disposition by the person owning
23 such stock,

1 shall be treated as a disposition by the United
2 States person of the stock in the passive foreign in-
3 vestment company.

4 “(h) COORDINATION WITH SECTION 851(b).—For
5 purposes of paragraphs (2) and (3) of section 851(b), any
6 amount included in gross income under subsection (a)
7 shall be treated as a dividend.

8 “(i) STOCK ACQUIRED FROM A DECEDENT.—In the
9 case of stock of a passive foreign investment company
10 which is acquired by bequest, devise, or inheritance (or
11 by the decedent’s estate) and with respect to which an
12 election under this section was in effect as of the date of
13 the decedent’s death, notwithstanding section 1014, the
14 basis of such stock in the hands of the person so acquiring
15 it shall be the adjusted basis of such stock in the hands
16 of the decedent immediately before his death (or, if lesser,
17 the basis which would have been determined under section
18 1014 without regard to this subsection).

19 “(j) COORDINATION WITH SECTION 1291 FOR FIRST
20 YEAR OF ELECTION.—

21 “(1) TAXPAYERS OTHER THAN REGULATED IN-
22 VESTMENT COMPANIES.—

23 “(A) IN GENERAL.—If the taxpayer elects
24 the application of this section with respect to
25 any marketable stock in a corporation after the

1 beginning of the taxpayer's holding period in
2 such stock, and if the requirements of subpara-
3 graph (B) are not satisfied, section 1291 shall
4 apply to—

5 “(i) any distributions with respect to,
6 or disposition of, such stock in the first
7 taxable year of the taxpayer for which such
8 election is made, and

9 “(ii) any amount which, but for sec-
10 tion 1291, would have been included in
11 gross income under subsection (a) with re-
12 spect to such stock for such taxable year in
13 the same manner as if such amount were
14 gain on the disposition of such stock.

15 “(B) REQUIREMENTS.—The requirements
16 of this subparagraph are met if, with respect to
17 each of such corporation's taxable years for
18 which such corporation was a passive foreign
19 investment company and which begin after De-
20 cember 31, 1986, and included any portion of
21 the taxpayer's holding period in such stock,
22 such corporation was treated as a qualified
23 electing fund under this part with respect to the
24 taxpayer.

1 “(2) SPECIAL RULES FOR REGULATED INVEST-
2 MENT COMPANIES.—

3 “(A) IN GENERAL.—If a regulated invest-
4 ment company elects the application of this sec-
5 tion with respect to any marketable stock in a
6 corporation after the beginning of the tax-
7 payer’s holding period in such stock, then, with
8 respect to such company’s first taxable year for
9 which such company elects the application of
10 this section with respect to such stock—

11 “(i) section 1291 shall not apply to
12 such stock with respect to any distribution
13 or disposition during, or amount included
14 in gross income under this section for,
15 such first taxable year, but

16 “(ii) such regulated investment com-
17 pany’s tax under this chapter for such first
18 taxable year shall be increased by the ag-
19 gregate amount of interest which would
20 have been determined under section
21 1291(c)(3) if section 1291 were applied
22 without regard to this subparagraph.

23 Clause (ii) shall not apply if for the preceding
24 taxable year the company elected to mark to

1 market the stock held by such company as of
2 the last day of such preceding taxable year.

3 “(B) DISALLOWANCE OF DEDUCTION.—No
4 deduction shall be allowed to any regulated in-
5 vestment company for the increase in tax under
6 subparagraph (A)(ii).

7 “(k) ELECTION.—This section shall apply to market-
8 able stock in a passive foreign investment company which
9 is held by a United States person only if such person elects
10 to apply this section with respect to such stock. Such an
11 election shall apply to the taxable year for which made
12 and all subsequent taxable years unless—

13 “(1) such stock ceases to be marketable stock,
14 or

15 “(2) the Secretary consents to the revocation of
16 such election.

17 “(l) TRANSITION RULE FOR INDIVIDUALS BECOMING
18 SUBJECT TO UNITED STATES TAX.—If any individual be-
19 comes a United States person in a taxable year beginning
20 after December 31, 1995, solely for purposes of this sec-
21 tion, the adjusted basis (before adjustments under sub-
22 section (b)) of any marketable stock in a passive foreign
23 investment company owned by such individual on the first
24 day of such taxable year shall be treated as being the

1 greater of its fair market value on such first day or its
2 adjusted basis on such first day.”

3 (b) COORDINATION WITH INTEREST CHARGE,
4 ETC.—

5 (1) Paragraph (1) of section 1291(d) is amend-
6 ed by adding at the end the following new flush sen-
7 tence:

8 “Except as provided in section 1296(j), this section
9 also shall not apply if an election under section
10 1296(k) is in effect for the taxpayer’s taxable year.”

11 (2) The subsection heading for subsection (d) of
12 section 1291 is amended by striking “SUBPART B”
13 and inserting “SUBPARTS B AND C”.

14 (3) Subparagraph (A) of section 1291(a)(3) is
15 amended to read as follows:

16 “(A) HOLDING PERIOD.—The taxpayer’s
17 holding period shall be determined under sec-
18 tion 1223; except that—

19 “(i) for purposes of applying this sec-
20 tion to an excess distribution, such holding
21 period shall be treated as ending on the
22 date of such distribution, and

23 “(ii) if section 1296 applied to such
24 stock with respect to the taxpayer for any
25 prior taxable year, such holding period

1 shall be treated as beginning on the first
2 day of the first taxable year beginning
3 after the last taxable year for which sec-
4 tion 1296 so applied.”

5 (c) CONFORMING AMENDMENTS.—

6 (1) Sections 532(b)(4) and 542(c)(10) are each
7 amended by striking “section 1296” and inserting
8 “section 1297”.

9 (2) Subsection (f) of section 551 is amended by
10 striking “section 1297(b)(5)” and inserting “section
11 1298(b)(5)”

12 (3) Subsections (a)(1) and (d) of section 1293
13 are each amended by striking “section 1297(a)” and
14 inserting “section 1298(a)”.

15 (4) Paragraph (3) of section 1297(b), as redes-
16 ignated by subsection (a), is hereby repealed.

17 (5) The table of sections for subpart D of part
18 VI of subchapter P of chapter 1, as redesignated by
19 subsection (a), is amended to read as follows:

 “Sec. 1297. Passive foreign investment company.
 “Sec. 1298. Special rules.”

20 (6) The table of subparts for part VI of sub-
21 chapter P of chapter 1 is amended by striking the
22 last item and inserting the following new items:

 “Subpart C. Election of mark to market for marketable stock.
 “Subpart D. General provisions.”

1 (d) CLARIFICATION OF GAIN RECOGNITION ELEC-
2 TION.—The last sentence of section 1298(b)(1), as so re-
3 designated, is amended by inserting “(determined without
4 regard to the preceding sentence)” after “investment com-
5 pany”.

6 **SEC. 14403. MODIFICATIONS TO DEFINITION OF PASSIVE**
7 **INCOME.**

8 (a) EXCEPTION FOR SAME COUNTRY INCOME NOT
9 TO APPLY.—Paragraph (1) of section 1297(b) (defining
10 passive income), as redesignated by section 14402, is
11 amended by inserting before the period “without regard
12 to paragraph (3) thereof”.

13 (b) PASSIVE INCOME NOT TO INCLUDE FSC IN-
14 COME.—Paragraph (2) of section 1297(b), as so redesign-
15 nated, is amended by striking “or” at the end of subpara-
16 graph (B), by striking the period at the end of subpara-
17 graph (C) and inserting “, or”, and by inserting after sub-
18 paragraph (C) the following new subparagraph:

19 “(D) any foreign trade income of a FSC.”

20 **SEC. 14404. EFFECTIVE DATE.**

21 The amendments made by this part shall apply to—

22 (1) taxable years of United States persons be-
23 ginning after December 31, 1995, and

1 (2) taxable years of foreign corporations ending
2 with or within such taxable years of United States
3 persons.

4 **PART II—TREATMENT OF CONTROLLED FOREIGN**
5 **CORPORATIONS**

6 **SEC. 14411. GAIN ON CERTAIN STOCK SALES BY CON-**
7 **TROLLED FOREIGN CORPORATIONS TREAT-**
8 **ED AS DIVIDENDS.**

9 (a) GENERAL RULE.—Section 964 (relating to mis-
10 cellaneous provisions) is amended by adding at the end
11 the following new subsection:

12 “(e) GAIN ON CERTAIN STOCK SALES BY CON-
13 TROLLED FOREIGN CORPORATIONS TREATED AS DIVI-
14 DENDS.—

15 “(1) IN GENERAL.—If a controlled foreign cor-
16 poration sells or exchanges stock in any other for-
17 eign corporation, gain recognized on such sale or ex-
18 change shall be included in the gross income of such
19 controlled foreign corporation as a dividend to the
20 same extent that it would have been so included
21 under section 1248(a) if such controlled foreign cor-
22 poration were a United States person. For purposes
23 of determining the amount which would have been so
24 includible, the determination of whether such other
25 foreign corporation was a controlled foreign corpora-

1 tion shall be made without regard to the preceding
2 sentence.

3 “(2) SAME COUNTRY EXCEPTION NOT APPLICA-
4 BLE.—Clause (i) of section 954(c)(3)(A) shall not
5 apply to any amount treated as a dividend by reason
6 of paragraph (1).

7 “(3) CLARIFICATION OF DEEMED SALES.—For
8 purposes of this subsection, a controlled foreign cor-
9 poration shall be treated as having sold or ex-
10 changed any stock if, under any provision of this
11 subtitle, such controlled foreign corporation is treat-
12 ed as having gain from the sale or exchange of such
13 stock.”

14 (b) AMENDMENT OF SECTION 904(d).—Clause (i) of
15 section 904(d)(2)(E) is amended by striking “and except
16 as provided in regulations, the taxpayer was a United
17 States shareholder in such corporation”.

18 (c) EFFECTIVE DATES.—

19 (1) The amendment made by subsection (a)
20 shall apply to gain recognized on transactions occur-
21 ring after the date of the enactment of this Act.

22 (2) The amendment made by subsection (b)
23 shall apply to distributions after the date of the en-
24 actment of this Act.

1 **SEC. 14412. MISCELLANEOUS MODIFICATIONS TO SUBPART**

2 **F.**

3 (a) **SECTION 1248 GAIN TAKEN INTO ACCOUNT IN**
4 **DETERMINING PRO RATA SHARE.—**

5 (1) **IN GENERAL.**—Paragraph (2) of section
6 951(a) (defining pro rata share of subpart F in-
7 come) is amended by adding at the end the following
8 new sentence: “For purposes of subparagraph (B),
9 any gain included in the gross income of any person
10 as a dividend under section 1248 shall be treated as
11 a distribution received by such person with respect
12 to the stock involved.”

13 (2) **EFFECTIVE DATE.**—The amendment made
14 by paragraph (1) shall apply to dispositions after the
15 date of the enactment of this Act.

16 (b) **BASIS ADJUSTMENTS IN STOCK HELD BY FOR-**
17 **EIGN CORPORATION.—**

18 (1) **IN GENERAL.**—Section 961 (relating to ad-
19 justments to basis of stock in controlled foreign cor-
20 porations and of other property) is amended by add-
21 ing at the end the following new subsection:

22 “(c) **BASIS ADJUSTMENTS IN STOCK HELD BY FOR-**
23 **EIGN CORPORATION.**—Under regulations prescribed by
24 the Secretary, if a United States shareholder is treated
25 under section 958(a)(2) as owning any stock in a con-
26 trolled foreign corporation which is actually owned by an-

1 other controlled foreign corporation, adjustments similar
2 to the adjustments provided by subsections (a) and (b)
3 shall be made to the basis of such stock in the hands of
4 such other controlled foreign corporation, but only for the
5 purposes of determining the amount included under sec-
6 tion 951 in the gross income of such United States share-
7 holder (or any other United States shareholder who ac-
8 quires from any person any portion of the interest of such
9 United States shareholder by reason of which such share-
10 holder was treated as owning such stock, but only to the
11 extent of such portion, and subject to such proof of iden-
12 tity of such interest as the Secretary may prescribe by reg-
13 ulations).”

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall apply for purposes of deter-
16 mining inclusions for taxable years of United States
17 shareholders beginning after December 31, 1995.

18 (c) DETERMINATION OF PREVIOUSLY TAXED IN-
19 COME IN SECTION 304 DISTRIBUTIONS, ETC.—

20 (1) IN GENERAL.—Section 959 (relating to ex-
21 clusion from gross income of previously taxed earn-
22 ings and profits) is amended by adding at the end
23 the following new subsection:

24 “(g) ADJUSTMENTS FOR CERTAIN TRANSACTIONS.—
25 If by reason of—

1 “(1) a transaction to which section 304 applies,

2 “(2) the structure of a United States sharehold-

3 er’s holdings in controlled foreign corporations, or

4 “(3) other circumstances,

5 there would be a multiple inclusion of any item in income

6 (or an inclusion or exclusion without an appropriate basis

7 adjustment) by reason of this subpart, the Secretary may

8 prescribe regulations providing such modifications in the

9 application of this subpart as may be necessary to elimi-

10 nate such multiple inclusion or provide such basis adjust-

11 ment, as the case may be.”

12 (2) EFFECTIVE DATE.—The amendment made

13 by paragraph (1) shall take effect on the date of the

14 enactment of this Act.

15 (d) CLARIFICATION OF TREATMENT OF BRANCH TAX

16 EXEMPTIONS OR REDUCTIONS.—

17 (1) IN GENERAL.—Subsection (b) of section

18 952 is amended by adding at the end the following

19 new sentence: “For purposes of this subsection, any

20 exemption (or reduction) with respect to the tax im-

21 posed by section 884 shall not be taken into ac-

22 count.”.

23 (2) EFFECTIVE DATE.—The amendment made

24 by paragraph (1) shall apply to taxable years begin-

25 ning after December 31, 1986.

1 **SEC. 14413. INDIRECT FOREIGN TAX CREDIT ALLOWED**
2 **FOR CERTAIN LOWER TIER COMPANIES.**

3 (a) SECTION 902 CREDIT.—

4 (1) IN GENERAL.—Subsection (b) of section
5 902 (relating to deemed taxes increased in case of
6 certain 2nd and 3rd tier foreign corporations) is
7 amended to read as follows:

8 “(b) DEEMED TAXES INCREASED IN CASE OF CER-
9 TAIN LOWER TIER CORPORATIONS.—

10 “(1) IN GENERAL.—If—

11 “(A) any foreign corporation is a member
12 of a qualified group, and

13 “(B) such foreign corporation owns 10 per-
14 cent or more of the voting stock of another
15 member of such group from which it receives
16 dividends in any taxable year,

17 such foreign corporation shall be deemed to have
18 paid the same proportion of such other member’s
19 post-1986 foreign income taxes as would be deter-
20 mined under subsection (a) if such foreign corpora-
21 tion were a domestic corporation.

22 “(2) QUALIFIED GROUP.—For purposes of
23 paragraph (1), the term ‘qualified group’ means—

24 “(A) the foreign corporation described in
25 subsection (a), and

26 “(B) any other foreign corporation if—

1 “(i) the domestic corporation owns at
2 least 5 percent of the voting stock of such
3 other foreign corporation indirectly
4 through a chain of foreign corporations
5 connected through stock ownership of at
6 least 10 percent of their voting stock,

7 “(ii) the foreign corporation described
8 in subsection (a) is the first tier corpora-
9 tion in such chain, and

10 “(iii) such other corporation is not
11 below the sixth tier in such chain.

12 The term ‘qualified group’ shall not include any for-
13 eign corporation below the third tier in the chain re-
14 ferred to in clause (i) unless such foreign corpora-
15 tion is a controlled foreign corporation (as defined in
16 section 957) and the domestic corporation is a Unit-
17 ed States shareholder (as defined in section 951(b))
18 in such foreign corporation. Paragraph (1) shall
19 apply to those taxes paid by a member of the quali-
20 fied group below the third tier only with respect to
21 periods during which it was a controlled foreign cor-
22 poration.”

23 (2) CONFORMING AMENDMENTS.—

24 (A) Subparagraph (B) of section 902(c)(3)
25 is amended by adding “or” at the end of clause

1 (i) and by striking clauses (ii) and (iii) and in-
2 serting the following new clause:

3 “(ii) the requirements of subsection
4 (b)(2) are met with respect to such foreign
5 corporation.”

6 (B) Subparagraph (B) of section 902(c)(4)
7 is amended by striking “3rd foreign corpora-
8 tion” and inserting “sixth tier foreign corpora-
9 tion”.

10 (C) The heading for paragraph (3) of sec-
11 tion 902(c) is amended by striking “WHERE DO-
12 MESTIC CORPORATION ACQUIRES 10 PERCENT
13 OF FOREIGN CORPORATION” and inserting
14 “WHERE FOREIGN CORPORATION FIRST QUALI-
15 FIES”.

16 (D) Paragraph (3) of section 902(c) is
17 amended by striking “ownership” each place it
18 appears.

19 (b) SECTION 960 CREDIT.—Paragraph (1) of section
20 960(a) (relating to special rules for foreign tax credits)
21 is amended to read as follows:

22 “(1) DEEMED PAID CREDIT.—For purposes of
23 subpart A of this part, if there is included under
24 section 951(a) in the gross income of a domestic cor-
25 poration any amount attributable to earnings and

1 profits of a foreign corporation which is a member
2 of a qualified group (as defined in section 902(b))
3 with respect to the domestic corporation, then, ex-
4 cept to the extent provided in regulations, section
5 902 shall be applied as if the amount so included
6 were a dividend paid by such foreign corporation
7 (determined by applying section 902(c) in accord-
8 ance with section 904(d)(3)(B)).”

9 (c) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to taxes of foreign corpora-
12 tions for taxable years of such corporations begin-
13 ning after the date of enactment of this Act.

14 (2) SPECIAL RULE.—In the case of any chain
15 of foreign corporations described in clauses (i) and
16 (ii) of section 902(b)(2)(B) of the Internal Revenue
17 Code of 1986 (as amended by this section), no liq-
18 uidation, reorganization, or similar transaction in a
19 taxable year beginning after the date of the enact-
20 ment of this Act shall have the effect of permitting
21 taxes to be taken into account under section 902 of
22 the Internal Revenue Code of 1986 which could not
23 have been taken into account under such section but
24 for such transaction.

1 **SEC. 14414. REPEAL OF INCLUSION OF CERTAIN EARNINGS**
2 **INVESTED IN EXCESS PASSIVE ASSETS.**

3 (a) IN GENERAL.—

4 (1) REPEAL OF INCLUSION.—Paragraph (1) of
5 section 951(a) (relating to amounts included in
6 gross income of United States shareholders) is
7 amended by striking subparagraph (C), by striking
8 “; and” at the end of subparagraph (B) and insert-
9 ing a period, and by adding “and” at the end of
10 subparagraph (A).

11 (2) REPEAL OF INCLUSION AMOUNT.—Section
12 956A (relating to earnings invested in excess passive
13 assets) is repealed.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Subparagraph (G) of section 904(d)(3) is
16 amended by striking “subparagraph (B) or (C) of
17 section 951(a)(1)” and inserting “section
18 951(a)(1)(B)”.

19 (2) Paragraph (1) of section 956(b) is amended
20 to read as follows:

21 “(1) APPLICABLE EARNINGS.—For purposes of
22 this section, the term ‘applicable earnings’ means,
23 with respect to any controlled foreign corporation,
24 the sum of—

25 “(A) the amount (not including a deficit)
26 referred to in section 316(a)(1), and

1 “(B) the amount referred to in section
2 316(a)(2),
3 but reduced by distributions made during the tax-
4 able year.”

5 (3) Paragraph (3) of section 956(b) is amended
6 to read as follows:

7 “(3) SPECIAL RULE WHERE CORPORATION
8 CEASES TO BE CONTROLLED FOREIGN CORPORA-
9 TION.—If any foreign corporation ceases to be a
10 controlled foreign corporation during any taxable
11 year—

12 “(A) the determination of any United
13 States shareholder’s pro rata share shall be
14 made on the basis of stock owned (within the
15 meaning of section 958(a)) by such shareholder
16 on the last day during the taxable year on
17 which the foreign corporation is a controlled
18 foreign corporation,

19 “(B) the average referred to in subsection
20 (a)(1)(A) for such taxable year shall be deter-
21 mined by only taking into account quarters end-
22 ing on or before such last day, and

23 “(C) in determining applicable earnings,
24 the amount taken into account by reason of
25 being described in paragraph (2) of section

1 316(a) shall be the portion of the amount so
2 described which is allocable (on a pro rata
3 basis) to the part of such year during which the
4 corporation is a controlled foreign corporation.”

5 (4) Subsection (a) of section 959 (relating to
6 exclusion from gross income of previously taxed
7 earnings and profits) is amended by adding “or” at
8 the end of paragraph (1), by striking “or” at the
9 end of paragraph (2), and by striking paragraph (3).

10 (5) Subsection (a) of section 959 is amended by
11 striking “paragraphs (2) and (3)” in the last sen-
12 tence and inserting “paragraph (2)”.

13 (6) Subsection (c) of section 959 is amended by
14 adding at the end the following flush sentence:
15 “References in this subsection to section 951(a)(1)(C) and
16 subsection (a)(3) shall be treated as references to such
17 provisions as in effect on the day before the date of the
18 enactment of the Tax Simplification Act of 1995.”

19 (7) Paragraph (1) of section 959(f) is amended
20 to read as follows:

21 “(1) IN GENERAL.—For purposes of this sec-
22 tion, amounts that would be included under subpara-
23 graph (B) of section 951(a)(1) (determined without
24 regard to this section) shall be treated as attrib-
25 utable first to earnings described in subsection

1 (c)(2), and then to earnings described in subsection
2 (c)(3).”

3 (8) Paragraph (2) of section 959(f) is amended
4 by striking “subparagraphs (B) and (C) of section
5 951(a)(1)” and inserting “section 951(a)(1)(B)”.

6 (9) Subsection (b) of section 989 is amended by
7 striking “subparagraph (B) or (C) of section
8 951(a)(1)” and inserting “section 951(a)(1)(B)”.

9 (10) Paragraph (9) of section 1298(b), as re-
10 designated by section 14402, is amended by striking
11 “subparagraph (B) or (C) of section 951(a)(1)” and
12 inserting “section 951(a)(1)(B)”.

13 (11) Subsections (d)(3)(B) and (e)(2)(B)(ii) of
14 section 1298, as redesignated by section 14402, are
15 each amended by striking “or section 956A”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 for subpart F of part III of subchapter N of chapter 1
18 is amended by striking the item relating to section 956A.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years of foreign corpora-
21 tions beginning after September 30, 1995, and to taxable
22 years of United States shareholders within which or with
23 which such taxable years of foreign corporations end.

PART III—OTHER PROVISIONS

SEC. 14421. EXCHANGE RATE USED IN TRANSLATING FOREIGN TAXES.

(a) ACCRUED TAXES TRANSLATED BY USING AVERAGE RATE FOR YEAR TO WHICH TAXES RELATE.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to translation of foreign taxes) is amended to read as follows:

“(a) FOREIGN INCOME TAXES.—

“(1) TRANSLATION OF ACCRUED TAXES.—

“(A) IN GENERAL.—For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

“(B) EXCEPTION FOR TAXES NOT PAID WITHIN FOLLOWING 2 YEARS.—

“(i) Subparagraph (A) shall not apply to any foreign income taxes paid after the date 2 years after the close of the taxable year to which such taxes relate.

1 “(ii) Subparagraph (A) shall not
2 apply to taxes paid before the beginning of
3 the taxable year to which such taxes relate.

4 “(C) EXCEPTION FOR INFLATIONARY CUR-
5 RENCIES.—Subparagraph (A) shall not apply to
6 any foreign income taxes the liability for which
7 is denominated in any currency determined to
8 be an inflationary currency under regulations
9 prescribed by the Secretary.

10 “(D) CROSS REFERENCE.—

**“For adjustments where tax is not paid within 2
years, see section 905(c).**

11 “(2) TRANSLATION OF TAXES TO WHICH PARA-
12 GRAPH (1) DOES NOT APPLY.—For purposes of de-
13 termining the amount of the foreign tax credit, in
14 the case of any foreign income taxes to which sub-
15 paragraph (A) of paragraph (1) does not apply—

16 “(A) such taxes shall be translated into
17 dollars using the exchange rates as of the time
18 such taxes were paid to the foreign country or
19 possession of the United States, and

20 “(B) any adjustment to the amount of
21 such taxes shall be translated into dollars
22 using—

23 “(i) except as provided in clause (ii),
24 the exchange rate as of the time when such

1 adjustment is paid to the foreign country
2 or possession, or

3 “(ii) in the case of any refund or cred-
4 it of foreign income taxes, using the ex-
5 change rate as of the time of the original
6 payment of such foreign income taxes.

7 “(3) FOREIGN INCOME TAXES.—For purposes
8 of this subsection, the term ‘foreign income taxes’
9 means any income, war profits, or excess profits
10 taxes paid or accrued to any foreign country or to
11 any possession of the United States.”

12 (2) ADJUSTMENT WHEN NOT PAID WITHIN 2
13 YEARS AFTER YEAR TO WHICH TAXES RELATE.—
14 Subsection (c) of section 905 is amended to read as
15 follows:

16 “(c) ADJUSTMENTS TO ACCRUED TAXES.—

17 “(1) IN GENERAL.—If—

18 “(A) accrued taxes when paid differ from
19 the amounts claimed as credits by the taxpayer,

20 “(B) accrued taxes are not paid before the
21 date 2 years after the close of the taxable year
22 to which such taxes relate, or

23 “(C) any tax paid is refunded in whole or
24 in part,

1 the taxpayer shall notify the Secretary, who shall re-
2 determine the amount of the tax for the year or
3 years affected.

4 “(2) SPECIAL RULE FOR TAXES NOT PAID
5 WITHIN 2 YEARS.—In making the redetermination
6 under paragraph (1), no credit shall be allowed for
7 accrued taxes not paid before the date referred to in
8 subparagraph (B) of paragraph (1). Any such taxes
9 if subsequently paid shall be taken into account for
10 the taxable year in which paid and no redetermina-
11 tion under this section shall be made on account of
12 such payment.

13 “(3) ADJUSTMENTS.—The amount of tax due
14 on any redetermination under paragraph (1) (if any)
15 shall be paid by the taxpayer on notice and demand
16 by the Secretary, and the amount of tax overpaid (if
17 any) shall be credited or refunded to the taxpayer in
18 accordance with subchapter B of chapter 66 (section
19 6511 et seq.).

20 “(4) BOND REQUIREMENTS.—In the case of
21 any tax accrued but not paid, the Secretary, as a
22 condition precedent to the allowance of the credit
23 provided in this subpart, may require the taxpayer
24 to give a bond, with sureties satisfactory to and ap-
25 proved by the Secretary, in such sum as the Sec-

1 retary may require, conditioned on the payment by
2 the taxpayer of any amount of tax found due on any
3 such redetermination. Any such bond shall contain
4 such further conditions as the Secretary may re-
5 quire.

6 “(5) OTHER SPECIAL RULES.—In any redeter-
7 mination under paragraph (1) by the Secretary of
8 the amount of tax due from the taxpayer for the
9 year or years affected by a refund, the amount of
10 the taxes refunded for which credit has been allowed
11 under this section shall be reduced by the amount of
12 any tax described in section 901 imposed by the for-
13 eign country or possession of the United States with
14 respect to such refund; but no credit under this sub-
15 part, or deduction under section 164, shall be al-
16 lowed for any taxable year with respect to any such
17 tax imposed on the refund. No interest shall be as-
18 sessed or collected on any amount of tax due on any
19 redetermination by the Secretary, resulting from a
20 refund to the taxpayer, for any period before the re-
21 ceipt of such refund, except to the extent interest
22 was paid by the foreign country or possession of the
23 United States on such refund for such period.”

24 (b) AUTHORITY TO USE AVERAGE RATES.—

1 (1) IN GENERAL.—Subsection (a) of section
2 986 (as amended by subsection (a)) is amended by
3 redesignating paragraph (3) as paragraph (4) and
4 inserting after paragraph (2) the following new
5 paragraph:

6 “(3) AUTHORITY TO PERMIT USE OF AVERAGE
7 RATES.—To the extent prescribed in regulations, the
8 average exchange rate for the period (specified in
9 such regulations) during which the taxes or adjust-
10 ment is paid may be used instead of the exchange
11 rate as of the time of such payment.”

12 (2) DETERMINATION OF AVERAGE RATES.—
13 Subsection (c) of section 989 is amended by striking
14 “and” at the end of paragraph (4), by striking the
15 period at the end of paragraph (5) and inserting “,
16 and”, and by adding at the end the following new
17 paragraph:

18 “(6) setting forth procedures for determining
19 the average exchange rate for any period.”

20 (3) CONFORMING AMENDMENTS.—Subsection
21 (b) of section 989 is amended by striking “weight-
22 ed” each place it appears.

23 (c) EFFECTIVE DATES.—

24 (1) IN GENERAL.—The amendments made by
25 subsections (a)(1) and (b) shall apply to taxes paid

1 or accrued in taxable years beginning after Decem-
 2 ber 31, 1995.

3 (2) SUBSECTION (a)(2).—The amendment made
 4 by subsection (a)(2) shall apply to taxes which relate
 5 to taxable years beginning after December 31, 1995.

6 **SEC. 14422. ELECTION TO USE SIMPLIFIED SECTION 904**
 7 **LIMITATION FOR ALTERNATIVE MINIMUM**
 8 **TAX.**

9 (a) GENERAL RULE.—Subsection (a) of section 59
 10 (relating to alternative minimum tax foreign tax credit)
 11 is amended by adding at the end the following new para-
 12 graph:

13 “(3) ELECTION TO USE SIMPLIFIED SECTION
 14 904 LIMITATION.—

15 “(A) IN GENERAL.—In determining the al-
 16 ternative minimum tax foreign tax credit for
 17 any taxable year to which an election under this
 18 paragraph applies—

19 “(i) subparagraph (B) of paragraph
 20 (1) shall not apply, and

21 “(ii) the limitation of section 904
 22 shall be based on the proportion which—

23 “(I) the taxpayer’s taxable in-
 24 come (as determined for purposes of
 25 the regular tax) from sources without

1 the United States (but not in excess
2 of the taxpayer's entire alternative
3 minimum taxable income), bears to

4 “(II) the taxpayer's entire alter-
5 native minimum taxable income for
6 the taxable year.

7 “(B) ELECTION.—

8 “(i) IN GENERAL.—An election under
9 this paragraph may be made only for the
10 taxpayer's first taxable year which begins
11 after December 31, 1995, and for which
12 the taxpayer claims an alternative mini-
13 mum tax foreign tax credit.

14 “(ii) ELECTION REVOCABLE ONLY
15 WITH CONSENT.—An election under this
16 paragraph, once made, shall apply to the
17 taxable year for which made and all subse-
18 quent taxable years unless revoked with
19 the consent of the Secretary.”

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 December 31, 1995.

1 **SEC. 14423. MODIFICATION OF SECTION 1491.**

2 (a) GENERAL RULE.—So much of chapter 5 (relating
3 to tax on transfers to avoid income tax) as precedes sec-
4 tion 1492 is amended to read as follows:

5 **“CHAPTER 5—TREATMENT OF TRANSFERS**
6 **TO AVOID INCOME TAX**

“Sec. 1491. Recognition of gain.

“Sec. 1492. Exceptions.

7 **“SEC. 1491. RECOGNITION OF GAIN.**

8 “In the case of any transfer of property by a United
9 States person to a foreign corporation as paid-in surplus
10 or as a contribution to capital, to a foreign estate or trust,
11 or to a foreign partnership, for purposes of this subtitle
12 (other than for purposes of section 679), such transfer
13 shall be treated as a sale or exchange for an amount equal
14 to the fair market value of the property transferred, and
15 the transferor shall recognize as gain the excess of—

16 “(1) the fair market value of the property so
17 transferred, over

18 “(2) the adjusted basis (for purposes of deter-
19 mining gain) of such property in the hands of the
20 transferor.”

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 1057 is hereby repealed.

23 (2) Section 1492 is amended to read as follows:

1 **“SEC. 1492. EXCEPTIONS.**

2 “The provisions of section 1491 shall not apply—

3 “(1) If the transferee is an organization exempt
4 from income tax under part I of subchapter F of
5 chapter 1 (other than an organization described in
6 section 401(a)),

7 “(2) To a transfer described in section 367, or

8 “(3) To any other transfer, to the extent pro-
9 vided in regulations in accordance with principles
10 similar to the principles of section 367 or otherwise
11 consistent with the purpose of section 1491.”

12 (3) Section 1494 is hereby repealed.

13 (4) Paragraph (8) of section 6501(c) is amend-
14 ed by inserting “or on any transfer by reason of sec-
15 tion 1491” after “section 367”.

16 (5) Subsection (a) of section 6038B is amended
17 by striking “or” at the end of paragraph (1), by
18 adding “or” at the end of paragraph (2), and by in-
19 serting after paragraph (2) the following new para-
20 graph:

21 “(3) makes any transfer described in section
22 1491,”.

23 (6) The table of sections for part IV of sub-
24 chapter O of chapter 1 is amended by striking the
25 item relating to section 1057.

1 (7) The table of chapters for subtitle A is
2 amended by striking “Tax on” in the item relating
3 to chapter 5 and inserting “Treatment of”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to transfers after December 31,
6 1995.

7 **SEC. 14424. MODIFICATION OF SECTION 367(b).**

8 (a) GENERAL RULE.—Paragraph (1) of section
9 367(b) is amended to read as follows:

10 “(1) IN GENERAL.—In the case of any trans-
11 action described in section 332, 351, 354, 355, 356,
12 or 361 in which the status of a foreign corporation
13 as a corporation is a general condition for non-
14 recognition by 1 or more of the parties to the trans-
15 action, income shall be required to be recognized to
16 the extent provided in regulations prescribed by the
17 Secretary which are necessary or appropriate to pre-
18 vent the avoidance of Federal income taxes. This
19 subsection shall not apply to a transaction in which
20 the foreign corporation is not treated as a corpora-
21 tion under subsection (a)(1).”

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply to transfers after December 31,
24 1995.

1 **SEC. 14425. INCREASE IN FILING THRESHOLDS FOR RE-**
2 **TURNS AS TO ORGANIZATION OF FOREIGN**
3 **CORPORATIONS AND ACQUISITIONS OF**
4 **STOCK IN SUCH CORPORATIONS.**

5 (a) IN GENERAL.—Subsection (a) of section 6046
6 (relating to returns as to organization or reorganization
7 of foreign corporations and as to acquisitions of their
8 stock) is amended to read as follows:

9 “(a) REQUIREMENT OF RETURN.—

10 “(1) IN GENERAL.—A return complying with
11 the requirements of subsection (b) shall be made
12 by—

13 “(A) each United States citizen or resident
14 who becomes an officer or director of a foreign
15 corporation if a United States person (as de-
16 fined in section 7701(a)(30)) meets the stock
17 ownership requirements of paragraph (2) with
18 respect to such corporation,

19 “(B) each United States person—

20 “(i) who acquires stock which, when
21 added to any stock owned on the date of
22 such acquisition, meets the stock owner-
23 ship requirements of paragraph (2) with
24 respect to a foreign corporation, or

25 “(ii) who acquires stock which, with-
26 out regard to stock owned on the date of

1 such acquisition, meets the stock owner-
2 ship requirements of paragraph (2) with
3 respect to a foreign corporation,

4 “(C) each person (not described in sub-
5 paragraph (B)) who is treated as a United
6 States shareholder under section 953(c) with
7 respect to a foreign corporation, and

8 “(D) each person who becomes a United
9 States person while meeting the stock owner-
10 ship requirements of paragraph (2) with respect
11 to stock of a foreign corporation.

12 In the case of a foreign corporation with respect to
13 which any person is treated as a United States
14 shareholder under section 953(c), subparagraph (A)
15 shall be treated as including a reference to each
16 United States person who is an officer or director of
17 such corporation.

18 “(2) STOCK OWNERSHIP REQUIREMENTS.—A
19 person meets the stock ownership requirements of
20 this paragraph with respect to any corporation if
21 such person owns 10 percent or more of—

22 “(A) the total combined voting power of all
23 classes of stock of such corporation entitled to
24 vote, or

1 “(B) the total value of the stock of such
2 corporation.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall take effect on January 1, 1996.

5 **SEC. 14426. APPLICATION OF UNIFORM CAPITALIZATION**
6 **RULES TO FOREIGN PERSONS.**

7 (a) IN GENERAL.—Section 263A(c) (relating to ex-
8 ceptions) is amended by adding at the end the following
9 new paragraph:

10 “(7) FOREIGN PERSONS.—This section shall
11 apply to any taxpayer who is not a United States
12 person only for purposes of—

13 “(A) tax liability with respect to income
14 which is effectively connected with the conduct
15 of a trade or business in the United States, and

16 “(B) tax liability of a United States share-
17 holder (as defined in section 951(b)) with re-
18 spect to amounts includible in gross income
19 under section 951(a).”

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to taxable years beginning after
22 December 31, 1995. Section 481 of the Internal Revenue
23 Code of 1986 shall not apply to any change in a method
24 of accounting by reason of such amendment.

1 **SEC. 14427. CERTAIN PRIZES AND AWARDS.**

2 (a) IN GENERAL.—Section 863 (relating to special
3 rules for determining source) is amended by adding at the
4 end the following new subsection:

5 “(f) CERTAIN PRIZES AND AWARDS ASSOCIATED
6 WITH AMATEUR SPORTS COMPETITIONS.—

7 “(1) IN GENERAL.—A prize or award received
8 by a nonresident alien by reason of participating in
9 an amateur sports competition in the United States
10 shall not be treated as derived from sources within
11 the United States if such alien performs no services
12 for such prize or award.

13 “(2) AMATEUR SPORTS COMPETITION.—For
14 purposes of paragraph (1), the term ‘amateur sports
15 competition’ means any competition in which the
16 only prizes awarded by the sponsors of the competi-
17 tion are of nominal value.”

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to prizes and awards granted
20 after the date of the enactment of this Act.

21 **SEC. 14428. TREATMENT FOR ESTATE TAX PURPOSES OF**
22 **SHORT-TERM OBLIGATIONS HELD BY NON-**
23 **RESIDENT ALIENS.**

24 (a) IN GENERAL.—Subsection (b) of section 2105 is
25 amended by striking “and” at the end of paragraph (2),
26 by striking the period at the end of paragraph (3) and

1 inserting “, and”, and by inserting after paragraph (3)
 2 the following new paragraph:

3 “(4) obligations which would be original issue
 4 discount obligations as defined in section 871(g)(1)
 5 but for subparagraph (B)(i) thereof, if any interest
 6 thereon (were such interest received by the decedent
 7 at the time of his death) would not be effectively
 8 connected with the conduct of a trade or business
 9 within the United States.”

10 (b) EFFECTIVE DATE.—The amendment made by
 11 this section shall apply to estates of decedents dying after
 12 the date of the enactment of this Act.

13 **Subtitle E—Other Income Tax** 14 **Provisions**

15 **PART I—PROVISIONS RELATING TO S** 16 **CORPORATIONS**

17 **SEC. 14501. S CORPORATIONS PERMITTED TO HAVE 75** 18 **SHAREHOLDERS.**

19 Subparagraph (A) of section 1361(b)(1) (defining
 20 small business corporation) is amended by striking “35
 21 shareholders” and inserting “75 shareholders”.

22 **SEC. 14502. ELECTING SMALL BUSINESS TRUSTS.**

23 (a) GENERAL RULE.—Subparagraph (A) of section
 24 1361(c)(2) (relating to certain trusts permitted as share-

1 holders) is amended by inserting after clause (iv) the fol-
2 lowing new clause:

3 “(v) An electing small business trust.”

4 (b) CURRENT BENEFICIARIES TREATED AS SHARE-
5 HOLDERS.—Subparagraph (B) of section 1361(c)(2) is
6 amended by adding at the end the following new clause:

7 “(v) In the case of a trust described
8 in clause (v) of subparagraph (A), each po-
9 tential current beneficiary of such trust
10 shall be treated as a shareholder; except
11 that, if for any period there is no potential
12 current beneficiary of such trust, such
13 trust shall be treated as the shareholder
14 during such period.”

15 (c) ELECTING SMALL BUSINESS TRUST DEFINED.—
16 Section 1361 (defining S corporation) is amended by add-
17 ing at the end the following new subsection:

18 “(e) ELECTING SMALL BUSINESS TRUST DE-
19 FINED.—

20 “(1) ELECTING SMALL BUSINESS TRUST.—For
21 purposes of this section—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the term ‘electing small
24 business trust’ means any trust if—

1 “(i) such trust does not have as a
2 beneficiary any person other than (I) an
3 individual, (II) an estate, or (III) an orga-
4 nization described in paragraph (2), (3),
5 (4), or (5) of section 170(c) which holds a
6 contingent interest and is not a potential
7 current beneficiary,

8 “(ii) no interest in such trust was ac-
9 quired by purchase, and

10 “(iii) an election under this subsection
11 applies to such trust.

12 “(B) CERTAIN TRUSTS NOT ELIGIBLE.—

13 The term ‘electing small business trust’ shall
14 not include—

15 “(i) any qualified subchapter S trust
16 (as defined in subsection (d)(3)) if an elec-
17 tion under subsection (d)(2) applies to any
18 corporation the stock of which is held by
19 such trust, and

20 “(ii) any trust exempt from tax under
21 this subtitle.

22 “(C) PURCHASE.—For purposes of sub-
23 paragraph (A), the term ‘purchase’ means any
24 acquisition if the basis of the property acquired
25 is determined under section 1012.

1 “(2) POTENTIAL CURRENT BENEFICIARY.—For
2 purposes of this section, the term ‘potential current
3 beneficiary’ means, with respect to any period, any
4 person who at any time during such period is enti-
5 tled to, or at the discretion of any person may re-
6 ceive, a distribution from the principal or income of
7 the trust. If a trust disposes of all of the stock which
8 it holds in an S corporation, then, with respect to
9 such corporation, the term ‘potential current bene-
10 ficiary’ does not include any person who first met
11 the requirements of the preceding sentence during
12 the 60-day period ending on the date of such dis-
13 position.

14 “(3) ELECTION.—An election under this sub-
15 section shall be made by the trustee. Any such elec-
16 tion shall apply to the taxable year of the trust for
17 which made and all subsequent taxable years of such
18 trust unless revoked with the consent of the Sec-
19 retary.

20 “(4) CROSS REFERENCE.—

**“For special treatment of electing small business
 trusts, see section 641(d).”**

21 (d) TAXATION OF ELECTING SMALL BUSINESS
22 TRUSTS.—Section 641 (relating to imposition of tax on
23 trusts) is amended by adding at the end the following new
24 subsection:

1 “(d) SPECIAL RULES FOR TAXATION OF ELECTING
2 SMALL BUSINESS TRUSTS.—

3 “(1) IN GENERAL.—For purposes of this chap-
4 ter—

5 “(A) the portion of any electing small busi-
6 ness trust which consists of stock in 1 or more
7 S corporations shall be treated as a separate
8 trust, and

9 “(B) the amount of the tax imposed by
10 this chapter on such separate trust shall be de-
11 termined with the modifications of paragraph
12 (2).

13 “(2) MODIFICATIONS.—For purposes of para-
14 graph (1), the modifications of this paragraph are
15 the following:

16 “(A) Except as provided in section 1(h),
17 the amount of the tax imposed by section 1(e)
18 shall be determined by using the highest rate of
19 tax set forth in section 1(e).

20 “(B) The exemption amount under section
21 55(d) shall be zero.

22 “(C) The only items of income, loss, deduc-
23 tion, or credit to be taken into account are the
24 following:

1 “(i) The items required to be taken
2 into account under section 1366.

3 “(ii) Any gain or loss from the dis-
4 position of stock in an S corporation.

5 “(iii) To the extent provided in regu-
6 lations, State or local income taxes or ad-
7 ministrative expenses to the extent alloca-
8 ble to items described in clauses (i) and
9 (ii).

10 No deduction or credit shall be allowed for any
11 amount not described in this paragraph, and no
12 item described in this paragraph shall be appor-
13 tioned to any beneficiary.

14 “(D) No amount shall be allowed under
15 paragraph (1) or (2) of section 1211(b).

16 “(3) TREATMENT OF REMAINDER OF TRUST
17 AND DISTRIBUTIONS.—For purposes of determin-
18 ing—

19 “(A) the amount of the tax imposed by
20 this chapter on the portion of any electing small
21 business trust not treated as a separate trust
22 under paragraph (1), and

23 “(B) the distributable net income of the
24 entire trust,

1 the items referred to in paragraph (2)(C) shall be
2 excluded. Except as provided in the preceding sen-
3 tence, this subsection shall not affect the taxation of
4 any distribution from the trust.

5 “(4) TREATMENT OF UNUSED DEDUCTIONS
6 WHERE TERMINATION OF SEPARATE TRUST.—If a
7 portion of an electing small business trust ceases to
8 be treated as a separate trust under paragraph (1),
9 any carryover or excess deduction of the separate
10 trust which is referred to in section 642(h) shall be
11 taken into account by the entire trust.

12 “(5) ELECTING SMALL BUSINESS TRUST.—For
13 purposes of this subsection, the term ‘electing small
14 business trust’ has the meaning given such term by
15 section 1361(e)(1).”

16 (e) TECHNICAL AMENDMENT.—Paragraph (1) of sec-
17 tion 1366(a) is amended by inserting “, or of a trust or
18 estate which terminates,” after “who dies”.

19 **SEC. 14503. EXPANSION OF POST-DEATH QUALIFICATION**
20 **FOR CERTAIN TRUSTS.**

21 Subparagraph (A) of section 1361(c)(2) (relating to
22 certain trusts permitted as shareholders) is amended—

23 (1) by striking “60-day period” each place it
24 appears in clauses (ii) and (iii) and inserting “2-year
25 period”, and

1 (2) by striking the last sentence in clause (ii).

2 **SEC. 14504. FINANCIAL INSTITUTIONS PERMITTED TO**
3 **HOLD SAFE HARBOR DEBT.**

4 Clause (iii) of section 1361(c)(5)(B) (defining
5 straight debt) is amended by striking “or a trust described
6 in paragraph (2)” and inserting “a trust described in
7 paragraph (2), or a person which is actively and regularly
8 engaged in the business of lending money.”

9 **SEC. 14505. RULES RELATING TO INADVERTENT TERMI-**
10 **NATIONS AND INVALID ELECTIONS.**

11 (a) GENERAL RULE.—Subsection (f) of section 1362
12 (relating to inadvertent terminations) is amended to read
13 as follows:

14 “(f) INADVERTENT INVALID ELECTIONS OR TERMI-
15 NATIONS.—If—

16 “(1) an election under subsection (a) by any
17 corporation—

18 “(A) was not effective for the taxable year
19 for which made (determined without regard to
20 subsection (b)(2)) by reason of a failure to meet
21 the requirements of section 1361(b) or to ob-
22 tain shareholder consents, or

23 “(B) was terminated under paragraph (2)
24 of subsection (d),

1 “(2) the Secretary determines that the cir-
2 cumstances resulting in such ineffectiveness or ter-
3 mination were inadvertent,

4 “(3) no later than a reasonable period of time
5 after discovery of the circumstances resulting in
6 such ineffectiveness or termination, steps were
7 taken—

8 “(A) so that the corporation is a small
9 business corporation, or

10 “(B) to acquire the required shareholder
11 consents, and

12 “(4) the corporation, and each person who was
13 a shareholder in the corporation at any time during
14 the period specified pursuant to this subsection,
15 agrees to make such adjustments (consistent with
16 the treatment of the corporation as an S corpora-
17 tion) as may be required by the Secretary with re-
18 spect to such period,

19 then, notwithstanding the circumstances resulting in such
20 ineffectiveness or termination, such corporation shall be
21 treated as an S corporation during the period specified
22 by the Secretary.”

23 (b) LATE ELECTIONS.—Subsection (b) of section
24 1362 is amended by adding at the end the following new
25 paragraph:

1 “(5) AUTHORITY TO TREAT LATE ELECTIONS
2 AS TIMELY.—If—

3 “(A) an election under subsection (a) is
4 made for any taxable year (determined without
5 regard to paragraph (3)) after the date pre-
6 scribed by this subsection for making such elec-
7 tion for such taxable year, and

8 “(B) the Secretary determines that there
9 was reasonable cause for the failure to timely
10 make such election,

11 the Secretary may treat such election as timely
12 made for such taxable year (and paragraph (3) shall
13 not apply).”

14 (c) EFFECTIVE DATE.—The amendments made by
15 subsection (a) and (b) shall apply with respect to elections
16 for taxable years beginning after December 31, 1982.

17 **SEC. 14506. AGREEMENT TO TERMINATE YEAR.**

18 Paragraph (2) of section 1377(a) (relating to pro
19 rata share) is amended to read as follows:

20 “(2) ELECTION TO TERMINATE YEAR.—

21 “(A) IN GENERAL.—Under regulations
22 prescribed by the Secretary, if any shareholder
23 terminates the shareholder’s interest in the cor-
24 poration during the taxable year and all af-
25 fected shareholders and the corporation agree

1 to the application of this paragraph, paragraph
2 (1) shall be applied to the affected shareholders
3 as if the taxable year consisted of 2 taxable
4 years the first of which ends on the date of the
5 termination.

6 “(B) AFFECTED SHAREHOLDERS.—For
7 purposes of subparagraph (A), the term ‘af-
8 fected shareholders’ means the shareholder
9 whose interest is terminated and all sharehold-
10 ers to whom such shareholder has transferred
11 shares during the taxable year. If such share-
12 holder has transferred shares to the corpora-
13 tion, the term ‘affected shareholders’ shall in-
14 clude all persons who are shareholders during
15 the taxable year.”

16 **SEC. 14507. EXPANSION OF POST-TERMINATION TRANSI-**
17 **TION PERIOD.**

18 (a) IN GENERAL.—Paragraph (1) of section 1377(b)
19 (relating to post-termination transition period) is amended
20 by striking “and” at the end of subparagraph (A), by re-
21 designating subparagraph (B) as subparagraph (C), and
22 by inserting after subparagraph (A) the following new sub-
23 paragraph:

24 “(B) the 120-day period beginning on the
25 date of any determination pursuant to an audit

1 of the taxpayer which follows the termination of
2 the corporation's election and which adjusts a
3 subchapter S item of income, loss, or deduction
4 of the corporation arising during the S period
5 (as defined in section 1368(e)(2)), and”.

6 (b) DETERMINATION DEFINED.—Paragraph (2) of
7 section 1377(b) is amended by striking subparagraphs (A)
8 and (B), by redesignating subparagraph (C) as subpara-
9 graph (B), and by inserting before subparagraph (B) (as
10 so redesignated) the following new subparagraph:

11 “(A) a determination as defined in section
12 1313(a), or”.

13 (c) REPEAL OF SPECIAL AUDIT PROVISIONS FOR
14 SUBCHAPTER S ITEMS.—

15 (1) GENERAL RULE.—Subchapter D of chapter
16 63 (relating to tax treatment of subchapter S items)
17 is hereby repealed.

18 (2) CONSISTENT TREATMENT REQUIRED.—Sec-
19 tion 6037 (relating to return of S corporation) is
20 amended by adding at the end the following new
21 subsection:

22 “(c) SHAREHOLDER’S RETURN MUST BE CONSIST-
23 ENT WITH CORPORATE RETURN OR SECRETARY NOTI-
24 FIED OF INCONSISTENCY.—

1 “(1) IN GENERAL.—A shareholder of an S cor-
2 poration shall, on such shareholder’s return, treat a
3 subchapter S item in a manner which is consistent
4 with the treatment of such item on the corporate re-
5 turn.

6 “(2) NOTIFICATION OF INCONSISTENT TREAT-
7 MENT.—

8 “(A) IN GENERAL.—In the case of any
9 subchapter S item, if—

10 “(i)(I) the corporation has filed a re-
11 turn but the shareholder’s treatment on
12 his return is (or may be) inconsistent with
13 the treatment of the item on the corporate
14 return, or

15 “(II) the corporation has not filed a
16 return, and

17 “(ii) the shareholder files with the
18 Secretary a statement identifying the in-
19 consistency,

20 paragraph (1) shall not apply to such item.

21 “(B) SHAREHOLDER RECEIVING INCOR-
22 RECT INFORMATION.—A shareholder shall be
23 treated as having complied with clause (ii) of
24 subparagraph (A) with respect to a subchapter
25 S item if the shareholder—

1 “(i) demonstrates to the satisfaction
2 of the Secretary that the treatment of the
3 subchapter S item on the shareholder’s re-
4 turn is consistent with the treatment of the
5 item on the schedule furnished to the
6 shareholder by the corporation, and

7 “(ii) elects to have this paragraph
8 apply with respect to that item.

9 “(3) EFFECT OF FAILURE TO NOTIFY.—In any
10 case—

11 “(A) described in subparagraph (A)(i)(I)
12 of paragraph (2), and

13 “(B) in which the shareholder does not
14 comply with subparagraph (A)(ii) of paragraph
15 (2),

16 any adjustment required to make the treatment of
17 the items by such shareholder consistent with the
18 treatment of the items on the corporate return shall
19 be treated as arising out of mathematical or clerical
20 errors and assessed according to section 6213(b)(1).
21 Paragraph (2) of section 6213(b) shall not apply to
22 any assessment referred to in the preceding sen-
23 tence.

24 “(4) SUBCHAPTER S ITEM.—For purposes of
25 this subsection, the term ‘subchapter S item’ means

1 any item of an S corporation to the extent that reg-
2 ulations prescribed by the Secretary provide that, for
3 purposes of this subtitle, such item is more appro-
4 priately determined at the corporation level than at
5 the shareholder level.

6 “(5) ADDITION TO TAX FOR FAILURE TO COM-
7 PLY WITH SECTION.—

“For addition to tax in the case of a shareholder’s
negligence in connection with, or disregard of, the
requirements of this section, see part II of sub-
chapter A of chapter 68.”

8 (3) CONFORMING AMENDMENTS.—

9 (A) Section 1366 is amended by striking
10 subsection (g).

11 (B) Subsection (b) of section 6233 is
12 amended to read as follows:

13 “(b) SIMILAR RULES IN CERTAIN CASES.—If a part-
14 nership return is filed for any taxable year but it is deter-
15 mined that there is no entity for such taxable year, to the
16 extent provided in regulations, rules similar to the rules
17 of subsection (a) shall apply.”

18 (C) The table of subchapters for chapter
19 63 is amended by striking the item relating to
20 subchapter D.

1 **SEC. 14508. S CORPORATIONS PERMITTED TO HOLD SUB-**
2 **SIDIARIES.**

3 (a) IN GENERAL.—Paragraph (2) of section 1361(b)
4 (defining ineligible corporation) is amended by striking
5 subparagraph (A) and by redesignating subparagraphs
6 (B), (C), (D), and (E) as subparagraphs (A), (B), (C),
7 and (D), respectively.

8 (b) TREATMENT OF CERTAIN WHOLLY OWNED S
9 CORPORATION SUBSIDIARIES.—Section 1361(b) (defining
10 small business corporation) is amended by adding at the
11 end the following new paragraph:

12 “(3) TREATMENT OF CERTAIN WHOLLY OWNED
13 SUBSIDIARIES.—

14 “(A) IN GENERAL.—For purposes of this
15 title—

16 “(i) a corporation which is a qualified
17 subchapter S subsidiary shall not be treat-
18 ed as a separate corporation, and

19 “(ii) all assets, liabilities, and items of
20 income, deduction, and credit of a qualified
21 subchapter S subsidiary shall be treated as
22 assets, liabilities, and such items (as the
23 case may be) of the S corporation.

24 “(B) QUALIFIED SUBCHAPTER S SUBSIDI-
25 ARY.—For purposes of this paragraph, the term
26 ‘qualified subchapter S subsidiary’ means any

1 domestic corporation which is not an ineligible
2 corporation (as defined in paragraph (2)), if—

3 “(i) 100 percent of the stock of such
4 corporation is held by the S corporation,
5 and

6 “(ii) the S corporation elects to treat
7 such corporation as a qualified subchapter
8 S subsidiary.

9 “(C) TREATMENT OF TERMINATIONS OF
10 QUALIFIED SUBCHAPTER S SUBSIDIARY STA-
11 TUS.—For purposes of this title, if any corpora-
12 tion which was a qualified subchapter S subsidi-
13 ary ceases to meet the requirements of subpara-
14 graph (B), such corporation shall be treated as
15 a new corporation acquiring all of its assets
16 (and assuming all of its liabilities) immediately
17 before such cessation from the S corporation in
18 exchange for its stock.”

19 (c) CERTAIN DIVIDENDS NOT TREATED AS PASSIVE
20 INVESTMENT INCOME.—Paragraph (3) of section 1362(d)
21 is amended by adding at the end the following new sub-
22 paragraph:

23 “(F) TREATMENT OF CERTAIN DIVI-
24 DENDS.—If an S corporation holds stock in a
25 C corporation meeting the requirements of sec-

1 tion 1504(a)(2), the term ‘passive investment
2 income’ shall not include dividends from such C
3 corporation to the extent such dividends are at-
4 tributable to the earnings and profits of such C
5 corporation derived from the active conduct of
6 a trade or business.”

7 (d) CONFORMING AMENDMENTS.—

8 (1) Subsection (c) of section 1361 is amended
9 by striking paragraph (6).

10 (2) Subsection (b) of section 1504 (defining in-
11 cludible corporation) is amended by adding at the
12 end the following new paragraph:

13 “(8) An S corporation.”

14 **SEC. 14509. TREATMENT OF DISTRIBUTIONS DURING LOSS**
15 **YEARS.**

16 (a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO
17 ACCOUNT BEFORE LOSSES.—

18 (1) Subparagraph (A) of section 1366(d)(1)
19 (relating to losses and deductions cannot exceed
20 shareholder’s basis in stock and debt) is amended by
21 striking “paragraph (1)” and inserting “paragraphs
22 (1) and (2)(A)”.

23 (2) Subsection (d) of section 1368 (relating to
24 certain adjustments taken into account) is amended
25 by adding at the end the following new sentence:

1 “In the case of any distribution made during any taxable
2 year, the adjusted basis of the stock shall be determined
3 with regard to the adjustments provided in paragraph (1)
4 of section 1367(a) for the taxable year.”

5 (b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Para-
6 graph (1) of section 1368(e) (relating to accumulated ad-
7 justments account) is amended by adding at the end the
8 following new subparagraph:

9 “(C) NET LOSS FOR YEAR DISREGARDED.—

10 “(i) IN GENERAL.—In applying this section
11 to distributions made during any taxable year,
12 the amount in the accumulated adjustments ac-
13 count as of the close of such taxable year shall
14 be determined without regard to any net nega-
15 tive adjustment for such taxable year.

16 “(ii) NET NEGATIVE ADJUSTMENT.—For
17 purposes of clause (i), the term ‘net negative
18 adjustment’ means, with respect to any taxable
19 year, the excess (if any) of—

20 “(I) the reductions in the account for
21 the taxable year (other than for distribu-
22 tions), over

23 “(II) the increases in such account for
24 such taxable year.”

1 (c) CONFORMING AMENDMENTS.—Subparagraph (A)
2 of section 1368(e)(1) is amended—

3 (1) by striking “as provided in subparagraph
4 (B)” and inserting “as otherwise provided in this
5 paragraph”, and

6 (2) by striking “section 1367(b)(2)(A)” and in-
7 serting “section 1367(a)(2)”.

8 **SEC. 14510. TREATMENT OF S CORPORATIONS UNDER SUB-**
9 **CHAPTER C.**

10 Subsection (a) of section 1371 (relating to applica-
11 tion of subchapter C rules) is amended to read as follows:

12 “(a) APPLICATION OF SUBCHAPTER C RULES.—Ex-
13 cept as otherwise provided in this title, and except to the
14 extent inconsistent with this subchapter, subchapter C
15 shall apply to an S corporation and its shareholders.”

16 **SEC. 14511. ELIMINATION OF CERTAIN EARNINGS AND**
17 **PROFITS.**

18 (a) IN GENERAL.—If—

19 (1) a corporation was an electing small business
20 corporation under subchapter S of chapter 1 of the
21 Internal Revenue Code of 1986 for any taxable year
22 beginning before January 1, 1983, and

23 (2) such corporation is an S corporation under
24 subchapter S of chapter 1 of such Code for its first
25 taxable year beginning after December 31, 1995,

1 the amount of such corporation's accumulated earnings
2 and profits (as of the beginning of such first taxable year)
3 shall be reduced by an amount equal to the portion (if
4 any) of such accumulated earnings and profits which were
5 accumulated in any taxable year beginning before January
6 1, 1983, for which such corporation was an electing small
7 business corporation under such subchapter S.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Paragraph (3) of section 1362(d) is amend-
10 ed—

11 (A) by striking “SUBCHAPTER C” in the
12 paragraph heading and inserting “ACCUMU-
13 LATED”,

14 (B) by striking “subchapter C” in sub-
15 paragraph (A)(i)(I) and inserting “accumu-
16 lated”, and

17 (C) by striking subparagraph (B) and re-
18 designating the following subparagraphs accord-
19 ingly.

20 (2)(A) Subsection (a) of section 1375 is amend-
21 ed by striking “subchapter C” in paragraph (1) and
22 inserting “accumulated”.

23 (B) Paragraph (3) of section 1375(b) is amend-
24 ed to read as follows:

1 “(3) PASSIVE INVESTMENT INCOME, ETC.—The
 2 terms ‘passive investment income’ and ‘gross re-
 3 ceipts’ have the same respective meanings as when
 4 used in paragraph (3) of section 1362(d).”

5 (C) The section heading for section 1375 is
 6 amended by striking “**SUBCHAPTER C**” and insert-
 7 ing “**ACCUMULATED**”.

8 (D) The table of sections for part III of sub-
 9 chapter S of chapter 1 is amended by striking “sub-
 10 chapter C” in the item relating to section 1375 and
 11 inserting “accumulated”.

12 (3) Clause (i) of section 1042(c)(4)(A) is
 13 amended by striking “section 1362(d)(3)(D)” and
 14 inserting “section 1362(d)(3)(C)”.

15 **SEC. 14512. CARRYOVER OF DISALLOWED LOSSES AND DE-**
 16 **DUCTIONS UNDER AT-RISK RULES ALLOWED.**

17 Paragraph (3) of section 1366(d) (relating to carry-
 18 over of disallowed losses and deductions to post-termi-
 19 nation transition period) is amended by adding at the end
 20 the following new subparagraph:

21 “(D) AT-RISK LIMITATIONS.—To the ex-
 22 tent that any increase in adjusted basis de-
 23 scribed in subparagraph (B) would have in-
 24 creased the shareholder’s amount at risk under
 25 section 465 if such increase had occurred on

1 S6201 the day preceding the commencement of the
2 post-termination transition period, rules similar
3 to the rules described in subparagraphs (A)
4 through (C) shall apply to any losses disallowed
5 by reason of section 465(a).”

6 **SEC. 14513. ADJUSTMENTS TO BASIS OF INHERITED S**
7 **STOCK TO REFLECT CERTAIN ITEMS OF IN-**
8 **COME.**

9 (a) IN GENERAL.—Subsection (b) of section 1367
10 (relating to adjustments to basis of stock of shareholders,
11 etc.) is amended by adding at the end the following new
12 paragraph:

13 “(4) ADJUSTMENTS IN CASE OF INHERITED
14 STOCK.—

15 “(A) IN GENERAL.—If any person acquires
16 stock in an S corporation by reason of the
17 death of a decedent or by bequest, devise, or in-
18 heritance, section 691 shall be applied with re-
19 spect to any item of income of the S corpora-
20 tion in the same manner as if the decedent had
21 held directly his pro rata share of such item.

22 “(B) ADJUSTMENTS TO BASIS.—The basis
23 determined under section 1014 of any stock in
24 an S corporation shall be reduced by the por-
25 tion of the value of the stock which is attrib-

1 utable to items constituting income in respect
2 of the decedent.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply in the case of decedents dying
5 after the date of the enactment of this Act.

6 **SEC. 14514. S CORPORATIONS ELIGIBLE FOR RULES APPLI-**
7 **CABLE TO REAL PROPERTY SUBDIVIDED FOR**
8 **SALE BY NONCORPORATE TAXPAYERS.**

9 (a) IN GENERAL.—Subsection (a) of section 1237
10 (relating to real property subdivided for sale) is amended
11 by striking “other than a corporation” in the material pre-
12 ceding paragraph (1) and inserting “other than a C cor-
13 poration”.

14 (b) CONFORMING AMENDMENT.—Subparagraph (A)
15 of section 1237(a)(2) is amended by inserting “an S cor-
16 poration which included the taxpayer as a shareholder,”
17 after “controlled by the taxpayer,”.

18 **SEC. 14515. EFFECTIVE DATE.**

19 (a) IN GENERAL.—Except as otherwise provided in
20 this part, the amendments made by this part shall apply
21 to taxable years beginning after December 31, 1995.

22 (b) TREATMENT OF CERTAIN ELECTIONS UNDER
23 PRIOR LAW.—For purposes of section 1362(g) of the In-
24 ternal Revenue Code of 1986 (relating to election after
25 termination), any termination under section 1362(d) of

1 such Code in a taxable year beginning before January 1,
2 1996, shall not be taken into account.

3 **PART II—PROVISIONS RELATING TO REGULATED**
4 **INVESTMENT COMPANIES**

5 **SEC. 14521. REPEAL OF 30-PERCENT GROSS INCOME LIMI-**
6 **TATION.**

7 (a) GENERAL RULE.—Subsection (b) of section 851
8 (relating to limitations) is amended by striking paragraph
9 (3), by adding “and” at the end of paragraph (2), and
10 by redesignating paragraph (4) as paragraph (3).

11 (b) TECHNICAL AMENDMENTS.—

12 (1) The material following paragraph (3) of sec-
13 tion 851(b) (as redesignated by subsection (a)) is
14 amended—

15 (A) by striking out “paragraphs (2) and
16 (3)” and inserting “paragraph (2)”, and

17 (B) by striking out the last sentence there-
18 of.

19 (2) Subsection (c) of section 851 is amended by
20 striking “subsection (b)(4)” each place it appears
21 (including the heading) and inserting “subsection
22 (b)(3)”.

23 (3) Subsection (d) of section 851 is amended by
24 striking “subsections (b)(4)” and inserting “sub-
25 sections (b)(3)”.

1 (4) Paragraph (1) of section 851(e) is amended
2 by striking “subsection (b)(4)” and inserting “sub-
3 section (b)(3)”.

4 (5) Paragraph (4) of section 851(e) is amended
5 by striking “subsections (b)(4)” and inserting “sub-
6 sections (b)(3)”.

7 (6) Section 851 is amended by striking sub-
8 section (g) and redesignating subsection (h) as sub-
9 section (g).

10 (7) Subsection (g) of section 851 (as redesign-
11 nated by paragraph (6)) is amended by striking
12 paragraph (3).

13 (8) Section 817(h)(2) is amended—

14 (A) by striking “851(b)(4)” in subpara-
15 graph (A) and inserting “851(b)(3)”, and

16 (B) by striking “851(b)(4)(A)(i)” in sub-
17 paragraph (B) and inserting “851(b)(3)(A)(i)”.

18 (9) Section 1092(f)(2) is amended by striking
19 “Except for purposes of section 851(b)(3), the” and
20 inserting “The”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years ending after the
23 date of the enactment of this Act.

1 **PART III—PROVISIONS RELATING TO REAL**

2 **ESTATE INVESTMENT TRUSTS**

3 **SEC. 14531. CLARIFICATION OF LIMITATION ON MAXIMUM**

4 **NUMBER OF SHAREHOLDERS.**

5 (a) RULES RELATING TO DETERMINATION OF OWN-
6 ERSHIP.—

7 (1) FAILURE TO ISSUE SHAREHOLDER DEMAND
8 LETTER NOT TO DISQUALIFY REIT.—Section 857(a)
9 (relating to requirements applicable to real estate in-
10 vestment trusts) is amended by striking paragraph
11 (2) and by redesignating paragraph (3) as para-
12 graph (2).

13 (2) SHAREHOLDER DEMAND LETTER REQUIRE-
14 MENT; PENALTY.—Section 857 (relating to taxation
15 of real estate investment trusts and their bene-
16 ficiaries) is amended by redesignating subsection (f)
17 as subsection (g) and by inserting after subsection
18 (e) the following new subsection:

19 “(f) REAL ESTATE INVESTMENT TRUSTS TO ASCER-
20 TAIN OWNERSHIP.—

21 “(1) IN GENERAL.—Each real estate invest-
22 ment trust shall each taxable year comply with regu-
23 lations prescribed by the Secretary for the purposes
24 of ascertaining the actual ownership of the outstand-
25 ing shares, or certificates of beneficial interest, of
26 such trust.

1 “(2) FAILURE TO COMPLY.—

2 “(A) IN GENERAL.—If a real estate invest-
3 ment trust fails to comply with the require-
4 ments of paragraph (1) for a taxable year, such
5 trust shall pay (on notice and demand by the
6 Secretary and in the same manner as tax) a
7 penalty of \$25,000.

8 “(B) INTENTIONAL DISREGARD.—If any
9 failure under paragraph (1) is due to inten-
10 tional disregard of the requirement under para-
11 graph (1), the penalty under subparagraph (A)
12 shall be \$50,000.

13 “(C) FAILURE TO COMPLY AFTER NO-
14 TICE.—The Secretary may require a real estate
15 investment trust to take such actions as the
16 Secretary determines appropriate to ascertain
17 actual ownership if the trust fails to meet the
18 requirements of paragraph (1). If the trust fails
19 to take such actions, the trust shall pay (on no-
20 tice and demand by the Secretary and in the
21 same manner as tax) an additional penalty
22 equal to the penalty determined under subpara-
23 graph (A) or (B), whichever is applicable.

24 “(D) REASONABLE CAUSE.—No penalty
25 shall be imposed under this paragraph with re-

1 spect to any failure if it is shown that such fail-
2 ure is due to reasonable cause and not to willful
3 neglect.”

4 (b) COMPLIANCE WITH CLOSELY HELD PROHIBI-
5 TION.—

6 (1) IN GENERAL.—Section 856 (defining real
7 estate investment trust) is amended by adding at the
8 end the following new subsection:

9 “(k) REQUIREMENT THAT ENTITY NOT BE CLOSELY
10 HELD TREATED AS MET IN CERTAIN CASES.—A corpora-
11 tion, trust, or association—

12 “(1) which for a taxable year meets the require-
13 ments of section 857(f)(1), and

14 “(2) which does not know, or exercising reason-
15 able diligence would not have known, whether the
16 entity failed to meet the requirement of subsection
17 (a)(6),

18 shall be treated as having met the requirement of sub-
19 section (a)(6) for the taxable year.”

20 (2) CONFORMING AMENDMENT.—Paragraph (6)
21 of section 856(a) is amended by inserting “subject
22 to the provisions of subsection (k),” before “which
23 is not”.

1 **SEC. 14532. DE MINIMIS RULE FOR TENANT SERVICES IN-**
2 **COME.**

3 (a) IN GENERAL.—Paragraph (2) of section 856(d)
4 (defining rents from real property) is amended by striking
5 subparagraph (C) and the last sentence and inserting:

6 “(C) any impermissible tenant service in-
7 come (as defined in paragraph (7)).”

8 (b) IMPERMISSIBLE TENANT SERVICE INCOME.—
9 Section 856(d) is amended by adding at the end the fol-
10 lowing new paragraph:

11 “(7) IMPERMISSIBLE TENANT SERVICE IN-
12 COME.—For purposes of paragraph (2)(C)—

13 “(A) IN GENERAL.—The term ‘impermis-
14 sible tenant service income’ means, with respect
15 to any real or personal property, any amount
16 received or accrued directly or indirectly by the
17 real estate investment trust for—

18 “(i) services furnished or rendered by
19 the trust to the tenants of such property,
20 or

21 “(ii) managing or operating such
22 property.

23 “(B) DISQUALIFICATION OF ALL AMOUNTS
24 WHERE MORE THAN DE MINIMIS AMOUNT.—If
25 the amount described in subparagraph (A) with
26 respect to a property for any taxable year ex-

ceeds 1 percent of all amounts received or accrued during such taxable year directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

“(C) EXCEPTIONS.—For purposes of subparagraph (A)—

“(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income shall not be treated as furnished, rendered, or provided by the trust, and

“(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

“(D) AMOUNT ATTRIBUTABLE TO IMPERMISSIBLE SERVICES.—For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall

1 not be less than 150 percent of the direct cost
2 of the trust in furnishing or rendering the serv-
3 ice (or providing the management or operation).

4 “(E) COORDINATION WITH LIMITA-
5 TIONS.—For purposes of paragraphs (2) and
6 (3) of subsection (c), amounts described in sub-
7 paragraph (A) shall be included in the gross in-
8 come of the corporation, trust, or association.”

9 **SEC. 14533. ATTRIBUTION RULES APPLICABLE TO TENANT**
10 **OWNERSHIP.**

11 Section 856(d)(5) (relating to constructive ownership
12 of stock) is amended by adding at the end the following:
13 “For purposes of paragraph (2)(B), section 318(a)(3)(A)
14 shall be applied under the preceding sentence in the case
15 of a partnership by taking into account only partners who
16 own (directly or indirectly) 25 percent or more of the cap-
17 ital interest, or the profits interest, in the partnership.”

18 **SEC. 14534. CREDIT FOR TAX PAID BY REIT ON RETAINED**
19 **CAPITAL GAINS.**

20 (a) **GENERAL RULE.**—Paragraph (3) of section
21 857(b) (relating to capital gains) is amended by redesi-
22 gnating subparagraph (D) as subparagraph (E) and by in-
23 serting after subparagraph (C) the following new subpara-
24 graph:

1 “(D) TREATMENT BY SHAREHOLDERS OF
2 UNDISTRIBUTED CAPITAL GAINS.—

3 “(i) Every shareholder of a real estate
4 investment trust at the close of the trust’s
5 taxable year shall include, in computing his
6 long-term capital gains in his return for
7 his taxable year in which the last day of
8 the trust’s taxable year falls, such amount
9 as the trust shall designate in respect of
10 such shares in a written notice mailed to
11 its shareholders at any time prior to the
12 expiration of 60 days after the close of its
13 taxable year (or mailed to its shareholders
14 or holders of beneficial interests with its
15 annual report for the taxable year), but the
16 amount so includible by any shareholder
17 shall not exceed that part of the amount
18 subjected to tax in subparagraph (A)(ii)
19 which he would have received if all of such
20 amount had been distributed as capital
21 gain dividends by the trust to the holders
22 of such shares at the close of its taxable
23 year.

24 “(ii) For purposes of this title, every
25 such shareholder shall be deemed to have

1 paid, for his taxable year under clause (i),
2 the tax imposed by subparagraph (A)(ii)
3 on the amounts required by this subpara-
4 graph to be included in respect of such
5 shares in computing his long-term capital
6 gains for that year; and such shareholders
7 shall be allowed credit or refund as the
8 case may be, for the tax so deemed to have
9 been paid by him.

10 “(iii) The adjusted basis of such
11 shares in the hands of the holder shall be
12 increased with respect to the amounts re-
13 quired by this subparagraph to be included
14 in computing his long-term capital gains,
15 by the difference between the amount of
16 such includible gains and the tax deemed
17 paid by such shareholder in respect of such
18 shares under clause (ii).

19 “(iv) In the event of such designation,
20 the tax imposed by subparagraph (A)(ii)
21 shall be paid by the real estate investment
22 trust within 30 days after the close of its
23 taxable year.

24 “(v) The earnings and profits of such
25 real estate investment trust, and the earn-

1 ings and profits of any such shareholder
2 which is a corporation, shall be appro-
3 priately adjusted in accordance with regu-
4 lations prescribed by the Secretary.

5 “(vi) As used in this subparagraph,
6 the terms ‘shares’ and ‘shareholders’ shall
7 include beneficial interests and holders of
8 beneficial interests, respectively.”

9 (b) CONFORMING AMENDMENTS.—

10 (1) Clause (i) of section 857(b)(7)(A) is amend-
11 ed by striking “subparagraph (B)” and inserting
12 “subparagraph (B) or (D)”.

13 (2) Clause (iii) of section 852(b)(3)(D) is
14 amended by striking “by 65 percent” and all that
15 follows and inserting “by the difference between the
16 amount of such includible gains and the tax deemed
17 paid by such shareholder in respect of such shares
18 under clause (ii).”

19 **SEC. 14535. REPEAL OF 30-PERCENT GROSS INCOME RE-**
20 **QUIREMENT.**

21 (a) GENERAL RULE.—Subsection (c) of section 856
22 (relating to limitations) is amended—

23 (1) by adding “and” at the end of paragraph

24 (3),

25 (2) by striking paragraphs (4) and (8), and

1 (3) by redesignating paragraphs (5), (6), and
2 (7) as paragraphs (4), (5), and (6), respectively.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Subparagraph (G) of section 856(c)(5), as
5 redesignated by subsection (a), is amended by strik-
6 ing “and such agreement shall be treated as a secu-
7 rity for purposes of paragraph (4)(A)”.

8 (2) Paragraph (5) of section 857(b) is amended
9 by striking “section 856(c)(7)” and inserting “sec-
10 tion 856(c)(6)”.

11 (3) Subparagraph (C) of section 857(b)(6) is
12 amended by striking “section 856(c)(6)(B)” and in-
13 serting “section 856(c)(5)(B)”.

14 **SEC. 14536. MODIFICATION OF EARNINGS AND PROFITS**
15 **RULES FOR DETERMINING WHETHER REIT**
16 **HAS EARNINGS AND PROFITS FROM NON-**
17 **REIT YEAR.**

18 Subsection (d) of section 857 is amended by adding
19 at the end the following new paragraph:

20 “(3) DISTRIBUTIONS TO MEET REQUIREMENTS
21 OF SUBSECTION (a)(2)(B).—Any distribution which
22 is made in order to comply with the requirements of
23 subsection (a)(2)(B)—

24 “(A) shall be treated for purposes of this
25 subsection and subsection (a)(2)(B) as made

1 from the earliest accumulated earnings and
2 profits (other than earnings and profits to
3 which subsection (a)(2)(A) applies) rather than
4 the most recently accumulated earnings and
5 profits, and

6 “(B) to the extent treated under subpara-
7 graph (A) as made from accumulated earnings
8 and profits, shall not be treated as a distribu-
9 tion for purposes of subsection (b)(2)(B).”

10 **SEC. 14537. TREATMENT OF FORECLOSURE PROPERTY.**

11 (a) GRACE PERIODS.—

12 (1) INITIAL PERIOD.—Paragraph (2) of section
13 856(e) (relating to special rules for foreclosure prop-
14 erty) is amended by striking “on the date which is
15 2 years after the date the trust acquired such prop-
16 erty” and inserting “as of the close of the 3d taxable
17 year following the taxable year in which the trust ac-
18 quired such property”.

19 (2) EXTENSION.—Paragraph (3) of section
20 856(e) is amended—

21 (A) by striking “or more extensions” and
22 inserting “extension”, and

23 (B) by striking the last sentence and in-
24 serting: “Any such extension shall not extend
25 the grace period beyond the close of the 3d tax-

1 able year following the last taxable year in the
2 period under paragraph (2).”

3 (b) REVOCATION OF ELECTION.—Paragraph (5) of
4 section 856(e) is amended by striking the last sentence
5 and inserting: “A real estate investment trust may revoke
6 any such election for a taxable year by filing the revocation
7 (in the manner provided by the Secretary) on or before
8 the due date (including any extension of time) for filing
9 its return of tax under this chapter for the taxable year.
10 If a trust revokes an election for any property, no election
11 may be made by the trust under this paragraph with re-
12 spect to the property for any subsequent taxable year.”

13 (c) CERTAIN ACTIVITIES NOT TO DISQUALIFY PROP-
14 erty.—Paragraph (4) of section 856(e) is amended by
15 adding at the end the following new flush sentence:

16 “For purposes of subparagraph (C), property shall
17 not be treated as used in a trade or business by rea-
18 son of any activities of the real estate investment
19 trust with respect to such property to the extent
20 that such activities would not result in amounts re-
21 ceived or accrued, directly or indirectly, with respect
22 to such property being treated as other than rents
23 from real property.”

1 **SEC. 14538. PAYMENTS UNDER HEDGING INSTRUMENTS.**

2 Section 856(c)(5)(G) (relating to treatment of certain
3 interest rate agreements), as redesignated by section
4 14535, is amended to read as follows:

5 “(G) TREATMENT OF CERTAIN HEDGING
6 INSTRUMENTS.—Except to the extent provided
7 by regulations, any—

8 “(i) payment to a real estate invest-
9 ment trust under an interest rate swap or
10 cap agreement, option, futures contract,
11 forward rate agreement, or any similar fi-
12 nancial instrument, entered into by the
13 trust in a transaction to reduce the inter-
14 est rate risks with respect to any indebted-
15 ness incurred or to be incurred by the
16 trust to acquire or carry real estate assets,
17 and

18 “(ii) gain from the sale or other dis-
19 position of any such investment,
20 shall be treated as income qualifying under
21 paragraph (2).”

22 **SEC. 14539. EXCESS NONCASH INCOME.**

23 Section 857(e)(2) (relating to determination of
24 amount of excess noncash income) is amended—

25 (1) by striking subparagraph (B),

1 (2) by striking the period at the end of sub-
2 paragraph (C) and inserting a comma,

3 (3) by redesignating subparagraph (C) (as
4 amended by paragraph (2)) as subparagraph (B),
5 and

6 (4) by adding at the end the following new sub-
7 paragraphs:

8 “(C) the amount (if any) by which—

9 “(i) the amounts includible in gross
10 income with respect to instruments to
11 which section 860E(a) or 1272 applies, ex-
12 ceed

13 “(ii) the amount of money and the
14 fair market value of other property re-
15 ceived during the taxable year under such
16 instruments, and

17 “(D) amounts includible in income by rea-
18 son of cancellation of indebtedness.”

19 **SEC. 14540. PROHIBITED TRANSACTION SAFE HARBOR.**

20 Clause (iii) of section 857(b)(6)(C) (relating to cer-
21 tain sales not to constitute prohibited transactions) is
22 amended by striking “(other than foreclosure property)”
23 in subclauses (I) and (II) and inserting “(other than sales
24 of foreclosure property or sales to which section 1033 ap-
25 plies)”.

1 **SEC. 14541. SHARED APPRECIATION MORTGAGES.**

2 (a) **BANKRUPTCY SAFE HARBOR.**—Section 856(j)
3 (relating to treatment of shared appreciation mortgages)
4 is amended by redesignating paragraph (4) as paragraph
5 (5) and by inserting after paragraph (3) the following new
6 paragraph:

7 “(4) **COORDINATION WITH 4-YEAR HOLDING PE-**
8 **RIOD.**—

9 “(A) **IN GENERAL.**—For purposes of sec-
10 tion 857(b)(6)(C), if a real estate investment
11 trust is treated as having sold secured property
12 under paragraph (3)(A), the trust shall be
13 treated as having held such property for at
14 least 4 years if—

15 “(i) the secured property is sold or
16 otherwise disposed of pursuant to a case
17 under title 11 of the United States Code,

18 “(ii) the seller is under the jurisdic-
19 tion of the court in such case, and

20 “(iii) the disposition is required by the
21 court or is pursuant to a plan approved by
22 the court.

23 “(B) **EXCEPTION.**—Subparagraph (A)
24 shall not apply if—

1 “(i) the secured property was acquired
2 by the trust with the intent to evict or
3 foreclose, or

4 “(ii) the trust knew or had reason to
5 know that default on the obligation de-
6 scribed in paragraph (5)(A) would occur.”

7 (b) CLARIFICATION OF DEFINITION OF SHARED AP-
8 PRECIATION PROVISION.—Clause (ii) of section
9 856(j)(5)(A) is amended by inserting before the period “or
10 appreciation in value as of any specified date”.

11 **SEC. 14542. WHOLLY OWNED SUBSIDIARIES.**

12 Section 856(i)(2) (defining qualified REIT subsidi-
13 ary) is amended by striking “at all times during the period
14 such corporation was in existence”.

15 **SEC. 14543. EFFECTIVE DATE.**

16 The amendments made by this part shall apply to
17 taxable years beginning after the date of the enactment
18 of this Act.

19 **PART IV—ACCOUNTING PROVISIONS**

20 **SEC. 14551. MODIFICATIONS TO LOOK-BACK METHOD FOR**
21 **LONG-TERM CONTRACTS.**

22 (a) LOOK-BACK METHOD NOT TO APPLY IN CER-
23 TAIN CASES.—Subsection (b) of section 460 (relating to
24 percentage of completion method) is amended by adding
25 at the end the following new paragraph:

1 “(6) ELECTION TO HAVE LOOK-BACK METHOD
2 NOT APPLY IN DE MINIMIS CASES.—

3 “(A) AMOUNTS TAKEN INTO ACCOUNT
4 AFTER COMPLETION OF CONTRACT.—Para-
5 graph (1)(B) shall not apply with respect to
6 any taxable year (beginning after the taxable
7 year in which the contract is completed) if—

8 “(i) the cumulative taxable income (or
9 loss) under the contract as of the close of
10 such taxable year, is within

11 “(ii) 10 percent of the cumulative
12 look-back taxable income (or loss) under
13 the contract as of the close of the most re-
14 cent taxable year to which paragraph
15 (1)(B) applied (or would have applied but
16 for subparagraph (B)).

17 “(B) DE MINIMIS DISCREPANCIES.—Para-
18 graph (1)(B) shall not apply in any case to
19 which it would otherwise apply if—

20 “(i) the cumulative taxable income (or
21 loss) under the contract as of the close of
22 each prior contract year, is within

23 “(ii) 10 percent of the cumulative
24 look-back income (or loss) under the con-

1 tract as of the close of such prior contract
2 year.

3 “(C) DEFINITIONS.—For purposes of this
4 paragraph—

5 “(i) CONTRACT YEAR.—The term
6 ‘contract year’ means any taxable year for
7 which income is taken into account under
8 the contract.

9 “(ii) LOOK-BACK INCOME OR LOSS.—
10 The look-back income (or loss) is the
11 amount which would be the taxable income
12 (or loss) under the contract if the alloca-
13 tion method set forth in paragraph (2)(A)
14 were used in determining taxable income.

15 “(iii) DISCOUNTING NOT APPLICA-
16 BLE.—The amounts taken into account
17 after the completion of the contract shall
18 be determined without regard to any dis-
19 counting under the 2nd sentence of para-
20 graph (2).

21 “(D) CONTRACTS TO WHICH PARAGRAPH
22 APPLIES.—This paragraph shall only apply if
23 the taxpayer makes an election under this sub-
24 paragraph. Unless revoked with the consent of
25 the Secretary, such an election shall apply to all

1 long-term contracts completed during the tax-
2 able year for which election is made or during
3 any subsequent taxable year.”

4 (b) MODIFICATION OF INTEREST RATE.—

5 (1) IN GENERAL.—Subparagraph (C) of section
6 460(b)(2) is amended by striking “the overpayment
7 rate established by section 6621” and inserting “the
8 adjusted overpayment rate (as defined in paragraph
9 (7))”.

10 (2) ADJUSTED OVERPAYMENT RATE.—Sub-
11 section (b) of section 460 is amended by adding at
12 the end the following new paragraph:

13 “(7) ADJUSTED OVERPAYMENT RATE.—

14 “(A) IN GENERAL.—The adjusted overpay-
15 ment rate for any interest accrual period is the
16 overpayment rate in effect under section 6621
17 for the calendar quarter in which such interest
18 accrual period begins.

19 “(B) INTEREST ACCRUAL PERIOD.—For
20 purposes of subparagraph (A), the term ‘inter-
21 est accrual period’ means the period—

22 “(i) beginning on the day after the re-
23 turn due date for any taxable year of the
24 taxpayer, and

1 “(ii) ending on the return due date
2 for the following taxable year.

3 For purposes of the preceding sentence, the
4 term ‘return due date’ means the date pre-
5 scribed for filing the return of the tax imposed
6 by this chapter (determined without regard to
7 extensions).’

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to contracts completed in taxable
10 years ending after the date of the enactment of this Act.

11 **SEC. 14552. APPLICATION OF MARK TO MARKET ACCOUNT-**
12 **ING METHOD TO TRADERS IN SECURITIES.**

13 (a) IN GENERAL.—Section 475 (relating to mark to
14 market accounting method for dealers in securities) is
15 amended by redesignating subsection (e) as subsection (f)
16 and by inserting after subsection (d) the following new
17 subsection:

18 “(e) AUTHORITY TO EXTEND METHOD TO TRADERS
19 IN SECURITIES.—

20 “(1) IN GENERAL.—A trader in securities may
21 elect to have the provisions of this section (other
22 than subsection (d)(3)) apply to securities held by
23 the trader. Such election may be made only with the
24 consent of the Secretary.

1 “(2) TRADER IN SECURITIES.—For purposes of
2 this subsection, the term ‘trader in securities’ means
3 a taxpayer who is regularly engaged in trading secu-
4 rities.”

5 (b) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years ending on and
7 after December 31, 1995.

8 **SEC. 14553. MODIFICATION OF RULING AMOUNTS FOR NU-**
9 **CLEAR DECOMMISSIONING COSTS.**

10 (a) IN GENERAL.—Section 468A(d) (relating to rul-
11 ing amount) is amended by adding at the end the following
12 new paragraph:

13 “(4) NONSUBSTANTIAL MODIFICATIONS.—
14 A taxpayer may modify a schedule of ruling
15 amounts under paragraph (1) without a review
16 under paragraph (3) if such modification does
17 not substantially modify the ruling amount. The
18 taxpayer shall notify the Secretary of any such
19 modification.”

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to modifications after the date of
22 the enactment of this Act.

1 **SEC. 14554. ELECTION OF ALTERNATIVE TAXABLE YEARS**
2 **BY PARTNERSHIPS AND S CORPORATIONS.**

3 (a) REPEAL OF LIMITATION ON WHAT TAXABLE
4 YEAR MAY BE ELECTED.—

5 (1) IN GENERAL.—Section 444(b) (relating to
6 limitations on taxable years which may be elected) is
7 amended by adding at the end the following new
8 paragraph:

9 “(5) LIMITATIONS NOT TO APPLY TO CERTAIN
10 PARTNERSHIPS AND S CORPORATIONS.—

11 “(A) IN GENERAL.—In the case of a part-
12 nership or an S corporation, this subsection
13 shall not apply to an election under subsection
14 (a) for a taxable year beginning after December
15 31, 1996.

16 “(B) SPECIAL RULE FOR EXISTING ELEC-
17 TIONS.—

18 “(i) IN GENERAL.—If a partnership
19 or S corporation has an election in effect
20 for its last taxable year beginning before
21 January 1, 1997, the partnership or S cor-
22 poration may elect to have this paragraph
23 apply beginning with any taxable year be-
24 ginning after December 31, 1996. Such an
25 election may be made without the consent
26 of the Secretary and shall not be treated

1 as a termination of an election for pur-
2 poses of subsection (d).

3 “(ii) TREATMENT OF REQUIRED PAY-
4 MENTS.—A partnership or S corporation
5 making an election under clause (i) may
6 elect to have its net required payment bal-
7 ance (within the meaning of section
8 7519(e)(4))—

9 “(I) credited against its first esti-
10 mated tax payment under section
11 6654A for its first full taxable year
12 for which such section applies, or

13 “(II) refunded to it at the time
14 provided in section 7519(c)(3).”

15 (2) EFFECT OF ELECTION.—Paragraph (1) of
16 section 444(c) (relating to effect of election) is
17 amended to read as follows:

18 “(1) in the case of a partnership or S corpora-
19 tion, such entity shall—

20 “(A) make the payments required by sec-
21 tion 7519, or

22 “(B) if subsection (b)(5) applies to the
23 election, make the estimated tax payments de-
24 scribed in section 6654A, and”.

1 (b) ESTIMATED TAX FOR PARTNERSHIPS AND S
2 CORPORATIONS MAKING TAXABLE YEAR ELECTIONS.—

3 Part I of subchapter A of chapter 68 (relating to additions
4 to tax and additional amounts) is amended by inserting
5 after section 6654 the following new section:

6 **“SEC. 6654A. FAILURE BY ELECTING PARTNERSHIP OR S**
7 **CORPORATION TO PAY ESTIMATED TAX.**

8 “(a) PENALTY.—Except as otherwise provided in this
9 section, in the case of a partnership or S corporation with
10 respect to which an election to which section 444(b)(5)
11 applies is in effect (hereafter referred to as ‘the entity’),
12 there is hereby imposed a penalty for each quarter for
13 which there is an underpayment in an amount determined
14 by applying—

15 “(1) the underpayment rate established under
16 section 6621,

17 “(2) to the amount of the underpayment,

18 “(3) for the period of the underpayment.

19 “(b) AMOUNT OF UNDERPAYMENT; PERIOD OF
20 UNDERPAYMENT.—For purposes of subsection (a)—

21 “(1) AMOUNT.—The amount of the
22 underpayment shall be the excess of—

23 “(A) the required installment, over

1 “(B) the amount (if any) of the install-
2 ment paid on or before the due date for the in-
3 stallment.

4 “(2) PERIOD OF UNDERPAYMENT.—The period
5 of the underpayment shall run from the due date for
6 the installment to the earlier of—

7 “(A) the first April 15 more than 3
8 months after the close of the taxable year, or

9 “(B) with respect to any portion of the
10 underpayment, the date on which such portion
11 is paid.

12 “(3) ORDER OF CREDITING PAYMENTS.—For
13 purposes of paragraph (2)(B), a payment of esti-
14 mated tax shall be credited against unpaid required
15 installments in the order in which the installments
16 are required to be paid.

17 “(C) REQUIRED INSTALLMENTS.—For purposes of
18 this section—

19 “(1) NUMBER AND DATES.—An entity shall
20 make 4 required installments which shall be due on
21 the 15th day of the 3d, 5th, 8th, and 12th months
22 of the taxable year.

23 “(2) NO REQUIRED PAYMENTS WHERE ENTI-
24 TY’S LIABILITY IS LESS THAN \$5,000.—An entity
25 shall not be required to make estimated payments

1 under this section for any taxable year for which
2 (but for this paragraph) its aggregate liability under
3 this section would be less than \$5,000.

4 “(3) AMOUNT.—The amount of each required
5 installment shall be 25 percent of the product of—

6 “(A) the entity’s applicable income deter-
7 mined under its applicable method for the quar-
8 ter for which the installment is being made, and

9 “(B) the applicable rate.

10 “(4) APPLICABLE RATE.—

11 “(A) IN GENERAL.—The term ‘applicable
12 rate’ means 34 percent (39.6 percent in the
13 case of an entity described in subparagraph
14 (B)).

15 “(B) HIGH AVERAGE INCOME ENTITY.—

16 “(i) IN GENERAL.—An entity is de-
17 scribed in this subparagraph if—

18 “(I) the average applicable in-
19 come of 2-percent owners of the entity
20 for its base year is \$250,000 or more,
21 or

22 “(II) in the case of a partner-
23 ship, its applicable income for the
24 base year is \$10,000,000 or more.

1 An entity shall not be treated as so de-
2 scribed if it has no base year.

3 “(ii) 2-PERCENT OWNER.—The term
4 ‘2-percent owner’ means—

5 “(I) in the case of a partnership,
6 any person who owns (or is considered
7 as owning within the meaning of sec-
8 tion 318) on any day during the base
9 year more than 2 percent of the cap-
10 ital interests of the partnerships, and

11 “(II) in the case of an S corpora-
12 tion, a 2-percent shareholder (as de-
13 fined in section 1372(b)).

14 “(5) ADJUSTMENTS UNDER ANNUALIZED IN-
15 COME METHOD.—An entity using the annualized in-
16 come method shall adjust its required installment for
17 any quarter to reflect any change in its required in-
18 stallment for any prior quarter in the taxable year
19 which would have been required if the annualized
20 applicable income for the current quarter had been
21 used for the prior quarter.

22 “(d) APPLICABLE METHOD.—For purposes of this
23 section—

1 “(1) IN GENERAL.—An entity shall determine
2 its applicable income on the basis of the 100-percent
3 method.

4 “(2) EXCEPTIONS.—

5 “(A) ELECTIONS.—An entity may deter-
6 mine its applicable income—

7 “(i) for all quarters in a taxable year
8 on the basis of the 110-percent method if
9 it elects such method on or before the due
10 date for the first quarterly installment, or

11 “(ii) for any quarter in a taxable year
12 on the basis of the annualized income
13 method if it elects such method on or be-
14 fore the due date for the quarterly install-
15 ment for such quarter.

16 An election under clause (ii) shall apply for the
17 quarter for which made and all subsequent
18 quarters during the taxable year.

19 “(B) LARGE INCREASE IN INCOME.—If an
20 entity’s applicable income for the taxable year
21 exceeds its applicable income for the base year
22 by more than \$750,000, the entity may not use
23 the 110-percent method for the taxable year.

24 “(3) METHODS.—

1 “(A) 100-PERCENT METHOD.—Under the
2 100-percent method, an entity’s applicable in-
3 come shall be its applicable income for the tax-
4 able year.

5 “(B) 110-PERCENT METHOD.—Under the
6 110-percent method, an entity’s applicable in-
7 come shall be 110 percent of its applicable in-
8 come for the base year.

9 “(C) ANNUALIZED INCOME METHOD.—
10 Under the annualized income method, the enti-
11 ty’s applicable income for purposes of determin-
12 ing the required installment for any quarter
13 shall be an amount equal to the product of—

14 “(i) its applicable income for the pe-
15 riod consisting of the months in the tax-
16 able year ending before the due date for
17 the quarter, and

18 “(ii) a percentage equal to 12 divided
19 by the number of such months.

20 “(e) APPLICABLE INCOME.—

21 “(1) IN GENERAL.—For purposes of this sec-
22 tion, the applicable income for any taxable year shall
23 be the net amount (not less than zero) determined—

24 “(A) by taking into account the entity’s
25 items in the manner and with the exceptions

1 provided in section 703(a) or 1363(b), as the
2 case may be, and

3 “(B) by making the further adjustments
4 provided in paragraphs (2), (3), (4), and (5) of
5 this subsection.

6 “(2) CERTAIN DEDUCTIONS ALLOWED.—In de-
7 termining applicable income, the following amounts
8 shall be allowed as deductions:

9 “(A) The deduction allowable under section
10 170 for charitable contributions of the entity.

11 “(B) The deduction allowable under sec-
12 tion 901 for taxes described in section 901(c)
13 paid or accrued to foreign countries or posses-
14 sions of the United States.

15 “(3) CERTAIN LIMITATIONS DISREGARDED.—
16 For purposes of paragraphs (1) and (2), any limita-
17 tion on the amount of any item which may be taken
18 into account for purposes of computing the taxable
19 income of a partner or shareholder shall be dis-
20 regarded.

21 “(4) GUARANTEED PAYMENTS TO PARTNERS
22 NOT DEDUCTED.—In determining applicable income,
23 a guaranteed payment to a partner shall not be
24 treated as an item of deduction.

1 “(5) DISPROPORTIONATE APPLICABLE PAY-
2 MENTS DURING DEFERRAL PERIOD.—

3 “(A) DEDUCTION NOT ALLOWED.—In de-
4 termining applicable income, no deduction shall
5 be allowed for disproportionate deferral period
6 applicable payments.

7 “(B) DISPROPORTIONATE DEFERRAL PE-
8 RIOD APPLICABLE PAYMENTS.—For purposes of
9 subparagraph (A), the term ‘disproportionate
10 deferral period applicable payments’ means the
11 excess (if any) of—

12 “(i) the product of the deferral ratio
13 and the aggregate applicable payments
14 made to owners during the entity’s entire
15 taxable year, over

16 “(ii) the aggregate applicable pay-
17 ments made to owners during the deferral
18 period.

19 “(C) DEFINITIONS.—For purposes of this
20 paragraph—

21 “(i) the term ‘applicable payments’
22 has the meaning given to such term by sec-
23 tion 7519(d)(3), except that in the case of
24 an S corporation only payments to 2-per-

1 cent shareholders (as defined in section
2 1372(b)) shall be taken into account,

3 “(ii) the term ‘deferral period’ means
4 the months in the period beginning with
5 the first day of the entity’s taxable year
6 and ending on December 31, and

7 “(iii) the term ‘deferral ratio’ means
8 the ratio which the number of months in
9 the deferral period bears to the total num-
10 ber of months in the taxable year.

11 “(6) SPECIAL RULE WHERE C CORPORATION
12 FOR BASE YEAR.—In applying the 110-percent
13 method, if an S corporation was a C corporation for
14 the base year, the S corporation’s applicable income
15 shall be the taxable income of the C corporation for
16 the base year.

17 “(f) COORDINATION BETWEEN ENTITY AND OWN-
18 ERS.—

19 “(1) TREATMENT OF PAYMENTS OF REQUIRED
20 INSTALLMENTS.—

21 “(A) IN GENERAL.—For purposes of this
22 title, an owner in an entity shall be treated as
23 having paid, for the owner’s first taxable year
24 ending with or after the close of the entity’s
25 taxable year, an amount of tax imposed by sec-

tion 1 equal to the owner's allocable share of the entity's payments of required installments under this section (determined without regard to excess payments described in subparagraph (C)(ii)(II) or amounts the entity is treated as paying under paragraph (2)).

“(B) COORDINATION WITH OWNER’S ESTIMATED TAX.—For purposes of section 6654, an individual shall be treated as having paid on the due date for the estimated tax installment for each quarter of the individual’s taxable year described in subparagraph (A)—

“(i) except as provided in clause (ii), 25 percent of the tax deemed paid under subparagraph (A), or

“(ii) if the annualized income method was used by the entity for any quarter of the entity’s taxable year described in subparagraph (A), an amount for the corresponding quarter in the individual’s taxable year equal to the portion of such tax attributable to the individual’s allocable share of the entity’s applicable income for the entity’s quarter.

1 In no event shall the aggregate estimated tax
2 payments treated as paid under this subpara-
3 graph exceed the amount of tax determined
4 under subparagraph (A).

5 “(C) AMOUNTS DETERMINED ON BASIS OF
6 RETURN.—

7 “(i) IN GENERAL.—The determination
8 of the amount of tax payments under sub-
9 paragraph (A) shall be made on the basis
10 of amounts shown on the entity’s return
11 for the taxable year.

12 “(ii) RECONCILIATION OF DIF-
13 FERENCES.—If, as of the first April 15
14 more than 3 months after the close of the
15 entity’s taxable year, the aggregate
16 amounts paid as required installments
17 under this section are less or more than
18 the aggregate amounts described in clause
19 (i) shown on the entity’s return of tax for
20 the taxable year, then—

21 “(I) subject to paragraph (2),
22 there is hereby imposed on the entity
23 under chapter 1 an additional tax
24 equal to the amount of the shortfall,

1 the due date for which is such April
2 15, or

3 “(II) the entity shall be treated
4 as having made a payment of tax
5 under chapter 1 on such April 15 in
6 an amount equal to the excess.

7 “(2) TREATMENT OF PAYMENTS BY OWNERS.—
8 For purposes of subsection (b)(2)(B) and paragraph
9 (1)(C), an entity shall be treated as paying any por-
10 tion of an underpayment attributable to an owner’s
11 allocable share of applicable income at the time the
12 tax imposed by chapter 1 on the owner with respect
13 to such income is paid.

14 “(3) ALLOCABLE SHARE.—For purposes of this
15 subsection—

16 “(A) IN GENERAL.—An owner’s allocable
17 share of an item for a taxable year shall be an
18 amount which bears the same ratio to the
19 amount of such item as the owner’s applicable
20 income for the taxable year bears to the sum of
21 the applicable incomes of all owners. For pur-
22 poses of this subparagraph, applicable income
23 of an owner shall be determined in the same
24 manner as subsection (e).

1 “(B) APPLICATION OTHER THAN ON TAX-
2 ABLE YEAR BASIS.—If—

3 “(i) the entity elects the annualized
4 income method for any quarter, subpara-
5 graph (A) shall be applied on a quarter-by-
6 quarter basis, or

7 “(ii) there is an interim closing of the
8 books of an entity under this title, sub-
9 paragraph (A) shall be applied separately
10 for the periods before and after the clos-
11 ing.

12 “(g) SPECIAL RULES FOR SHORT YEAR CREATED BY
13 ELECTION.—

14 “(1) ADDITIONAL REQUIRED INSTALLMENT.—
15 If, by reason of an election under this section, an en-
16 tity has a taxable year of less than 12 months, the
17 entity shall make a required installment under this
18 section for such taxable year—

19 “(A) which shall be in an amount equal to
20 the applicable rate multiplied by the lesser of—

21 “(i) the entity’s applicable income for
22 such taxable year as determined under
23 subsection (e), or

24 “(ii) 110 percent of the entity’s appli-
25 cable income for the base year (as so de-

1 terminated but ratably reduced to reflect the
2 period of such taxable year), and

3 “(B) the due date for which shall be the
4 last day for which an election under this section
5 could be made for the taxable year.

6 “(2) TREATMENT OF LOSSES.—Any net operat-
7 ing loss arising in the taxable year described in
8 paragraph (1) shall be treated as arising one-third
9 in such taxable year and each of the 2 following tax-
10 able years. This paragraph shall not apply to an en-
11 tity not in existence before such taxable year unless
12 more than one-half of the equity interests in the en-
13 tity are held by persons who owned another entity
14 carrying on the same business before such taxable
15 year.

16 “(h) OTHER DEFINITIONS AND SPECIAL RULES.—
17 For purposes of this section—

18 “(1) BASE YEAR.—The term ‘base year’ means
19 the most recent preceding taxable year containing 12
20 months.

21 “(2) EQUITY INTEREST.—The term ‘equity in-
22 terest’ means—

23 “(A) in the case of a partnership, the cap-
24 ital interests, and

1 “(B) in the case of an S corporation, the
2 shares of stock in the corporation (whether vot-
3 ing or nonvoting).

4 “(3) OWNER.—The term ‘owner’ means a part-
5 ner in a partnership or a shareholder in an S cor-
6 poration, whichever is applicable.

7 “(4) COMMON CONTROL.—

8 “(A) IN GENERAL.—For purposes of sub-
9 sections (c)(2), (c)(4)(B), and (d)(2)(B), enti-
10 ties under common control shall be treated as
11 1 entity.

12 “(B) COMMON CONTROL.—Entities shall
13 be treated as under common control under sub-
14 paragraph (A) if they are treated as a single
15 employee under subsection (a) or (b) of section
16 52.

17 “(5) WAIVER.—No penalty shall be imposed
18 under subsection (a) with respect to any
19 underpayment to the extent the Secretary deter-
20 mines that by reason of casualty, disaster, or other
21 unusual circumstances the imposition of the penalty
22 would be against equity and good conscience.”

23 (c) MODIFICATION OF ELECTIONS.—

24 (1) TIME FOR MAKING.—Paragraph (1) of sec-
25 tion 444(d) is amended by adding at the end the fol-

1 lowing new sentence: “Such election may be made at
2 any time on or before the 15th day of the 3d month
3 of the first taxable year of 12 months under the
4 election.”

5 (2) TERMINATIONS.—Paragraph (2) of section
6 444(d) is amended by striking subparagraph (B)
7 and inserting:

8 “(B) TERMINATIONS.—

9 “(i) REVOCATION.—An election under
10 subsection (a) may be terminated by rev-
11 ocation but only if owners of more than
12 one-half of the equity interests in the en-
13 tity on the date of the revocation consent
14 to it.

15 “(ii) ENTITY TERMINATIONS.—In the
16 case of a partnership or S corporation, an
17 election under subsection (a) terminates
18 when the partnership terminates under
19 section 708(b)(1) or the corporation ceases
20 to be an S corporation.

21 “(C) SUBSEQUENT ELECTIONS.—If an
22 election under subsection (a) has been termi-
23 nated, no such election may be made with re-
24 spect to such entity or any successor entity for
25 any taxable year before its 5th taxable year be-

1 ginning after the 1st taxable year for which the
2 termination was effective, unless the Secretary
3 consents to the election.”

4 (d) CONFORMING AMENDMENTS.—

5 (1) Section 6665(b) is amended—

6 (A) by inserting “6654A,” after “6654,”
7 and

8 (B) by striking “6654 or” and inserting
9 “6654, 6654A, or”.

10 (2) The table of sections for part I of sub-
11 chapter A of chapter 68 is amended by inserting
12 after the item relating to section 6654 the following
13 new item:

 “Sec. 6654A. Failure by electing partnership or S corporation to
 pay estimated tax.”

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 1996.

17 **SEC. 14555. SPECIAL RULE FOR CROP INSURANCE PRO-**
18 **CEEDS AND DISASTER PAYMENTS.**

19 (a) IN GENERAL.—Section 451(d) of the Internal
20 Revenue Code of 1986 (relating to special rule for crop
21 insurance proceeds and disaster payments) is amended to
22 read as follows:

23 “(d) SPECIAL RULE FOR CROP INSURANCE PRO-
24 CEEDS AND DISASTER PAYMENTS.—

1 “(1) GENERAL RULE.—In the case of any pay-
2 ment described in paragraph (2), a taxpayer report-
3 ing on the cash receipts and disbursements method
4 of accounting—

5 “(A) may elect to treat any such payment
6 received in the taxable year of destruction or
7 damage of crops as having been received in the
8 following taxable year if the taxpayer estab-
9 lishes that, under the taxpayer’s practice, in-
10 come from such crops involved would have been
11 reported in a following taxable year, or

12 “(B) may elect to treat any such payment
13 received in a taxable year following the taxable
14 year of the destruction or damage of crops as
15 having been received in the taxable year of de-
16 struction or damage, if the taxpayer establishes
17 that, under the taxpayer’s practice, income
18 from such crops involved would have been re-
19 ported in the taxable year of destruction or
20 damage.

21 “(2) PAYMENTS DESCRIBED.—For purposes of
22 this subsection, a payment is described in this para-
23 graph if such payment—

24 “(A) is insurance proceeds received on ac-
25 count of destruction or damage to crops, or

1 “(B) is disaster assistance received under
2 any Federal law as a result of—

3 “(i) destruction or damage to crops
4 caused by drought, flood, or other natural
5 disaster, or

6 “(ii) inability to plant crops because
7 of such a disaster.”.

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 subsection (a) applies to payments received after Decem-
10 ber 31, 1995, as a result of destruction or damage occur-
11 ring after such date.

12 **PART V—TAX-EXEMPT BOND PROVISIONS**

13 **SEC. 14561. REPEAL OF \$100,000 LIMITATION ON UNSPENT**
14 **PROCEEDS UNDER 1-YEAR EXCEPTION FROM**
15 **REBATE.**

16 Subclause (I) of section 148(f)(4)(B)(ii) (relating to
17 additional period for certain bonds) is amended by striking
18 “the lesser of 5 percent of the proceeds of the issue or
19 \$100,000” and inserting “5 percent of the proceeds of the
20 issue”.

21 **SEC. 14562. EXCEPTION FROM REBATE FOR EARNINGS ON**
22 **BONA FIDE DEBT SERVICE FUND UNDER**
23 **CONSTRUCTION BOND RULES.**

24 Subparagraph (C) of section 148(f)(4) is amended by
25 adding at the end the following new clause:

1 “(xvii) TREATMENT OF BONA FIDE
2 DEBT SERVICE FUNDS.—If the spending
3 requirements of clause (ii) are met with re-
4 spect to the available construction proceeds
5 of a construction issue, then paragraph (2)
6 shall not apply to earnings on a bona fide
7 debt service fund for such issue.”

8 **SEC. 14563. REPEAL OF DEBT SERVICE-BASED LIMITATION**
9 **ON INVESTMENT IN CERTAIN NONPURPOSE**
10 **INVESTMENTS.**

11 Subsection (d) of section 148 (relating to special
12 rules for reasonably required reserve or replacement fund)
13 is amended by striking paragraph (3).

14 **SEC. 14564. REPEAL OF EXPIRED PROVISIONS.**

15 (a) Paragraph (2) of section 148(c) is amended by
16 striking subparagraph (B) and by redesignating subpara-
17 graphs (C), (D), and (E) as subparagraphs (B), (C), and
18 (D), respectively.

19 (b) Paragraph (4) of section 148(f) is amended by
20 striking subparagraph (E).

21 **SEC. 14565. EFFECTIVE DATES.**

22 The amendments made by this part shall apply to
23 bonds issued after the date of the enactment of this Act.

PART VI—INSURANCE PROVISIONS

SEC. 14571. TREATMENT OF CERTAIN INSURANCE CONTRACTS ON RETIRED LIVES.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 817(d) (defining variable contract) is amended by striking “or” at the end of subparagraph (A), by striking “and” at the end of subparagraph (B) and inserting “or”, and by inserting after subparagraph (B) the following new subparagraph:

“(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and”.

(2) Paragraph (3) of section 817(d) is amended by striking “or” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, or”, and by inserting after subparagraph (B) the following new subparagraph:

“(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

1 **SEC. 14572. TREATMENT OF MODIFIED GUARANTEED CON-**
2 **TRACTS.**

3 (a) **GENERAL RULE.**—Subpart E of part I of sub-
4 chapter L of chapter 1 (relating to definitions and special
5 rules) is amended by inserting after section 817 the follow-
6 ing new section:

7 **“SEC. 817A. SPECIAL RULES FOR MODIFIED GUARANTEED**
8 **CONTRACTS.**

9 “(a) **COMPUTATION OF RESERVES.**—In the case of
10 a modified guaranteed contract, clause (ii) of section
11 807(e)(1)(A) shall not apply.

12 “(b) **SEGREGATED ASSETS UNDER MODIFIED GUAR-**
13 **ANTEED CONTRACTS MARKED TO MARKET.**—

14 “(1) **IN GENERAL.**—In the case of any life in-
15 surance company, for purposes of this subtitle—

16 “(A) Any gain or loss with respect to a
17 segregated asset shall be treated as ordinary in-
18 come or loss, as the case may be.

19 “(B) If any segregated asset is held by
20 such company as of the close of any taxable
21 year—

22 “(i) such company shall recognize
23 gain or loss as if such asset were sold for
24 its fair market value on the last business
25 day of such taxable year, and

1 “(ii) any such gain or loss shall be
2 taken into account for such taxable year.

3 Proper adjustment shall be made in the amount
4 of any gain or loss subsequently realized for
5 gain or loss taken into account under the pre-
6 ceding sentence. The Secretary may provide by
7 regulations for the application of this subpara-
8 graph at times other than the times provided in
9 this subparagraph.

10 “(2) SEGREGATED ASSET.—For purposes of
11 paragraph (1), the term ‘segregated asset’ means
12 any asset held as part of a segregated account re-
13 ferred to in subsection (d)(1) under a modified guar-
14 anteed contract.

15 “(c) SPECIAL RULE IN COMPUTING LIFE INSURANCE
16 RESERVES.—For purposes of applying section
17 816(b)(1)(A) to any modified guaranteed contract, an as-
18 sumed rate of interest shall include a rate of interest de-
19 termined, from time to time, with reference to a market
20 rate of interest.

21 “(d) MODIFIED GUARANTEED CONTRACT DE-
22 FINED.—For purposes of this section, the term ‘modified
23 guaranteed contract’ means a contract not described in
24 section 817—

1 “(1) all or part of the amounts received under
2 which are allocated to an account which, pursuant to
3 State law or regulation, is segregated from the gen-
4 eral asset accounts of the company and is valued
5 from time to time with reference to market values,

6 “(2) which—

7 “(A) provides for the payment of annuities,

8 “(B) is a life insurance contract, or

9 “(C) is a pension plan contract which is
10 not a life, accident, or health, property, cas-
11 ualty, or liability contract,

12 “(3) for which reserves are valued at market for
13 annual statement purposes, and

14 “(4) which provides for a net surrender value or
15 a policyholder’s fund (as defined in section
16 807(e)(1)).

17 If only a portion of a contract is not described in section
18 817, such portion shall be treated for purposes of this sec-
19 tion as a separate contract.

20 “(e) REGULATIONS.—The Secretary may prescribe
21 regulations—

22 “(1) to provide for the treatment of market
23 value adjustments under sections 72, 7702, 7702A,
24 and 807(e)(1)(B),

1 “(2) to determine the interest rates applicable
2 under sections 807(c)(3), 807(d)(2)(B), and 812
3 with respect to a modified guaranteed contract an-
4 nually, in a manner appropriate for modified guar-
5 anteed contracts and, to the extent appropriate for
6 such a contract, to modify or waive the applicability
7 of section 811(d),

8 “(3) to provide rules to limit ordinary gain or
9 loss treatment to assets constituting reserves for
10 modified guaranteed contracts (and not other assets)
11 of the company,

12 “(4) to provide appropriate treatment of trans-
13 fers of assets to and from the segregated account,
14 and

15 “(5) as may be necessary or appropriate to
16 carry out the purposes of this section.”

17 (b) CLERICAL AMENDMENT.—The table of sections
18 for subpart E of part I of subchapter L of chapter 1 is
19 amended by inserting after the item relating to section
20 817 the following new item:

 “Sec. 817A. Special rules for modified guaranteed contracts.”

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by
23 this section shall apply to taxable years beginning
24 after December 31, 1995.

1 (2) TREATMENT OF NET ADJUSTMENTS.—In
2 the case of any taxpayer required by the amend-
3 ments made by this section to change its calculation
4 of reserves to take into account market value adjust-
5 ments and to mark segregated assets to market for
6 any taxable year—

7 (A) such changes shall be treated as a
8 change in method of accounting initiated by the
9 taxpayer,

10 (B) such changes shall be treated as made
11 with the consent of the Secretary, and

12 (C) the adjustments required by reason of
13 section 481 of the Internal Revenue Code of
14 1986 shall be taken into account as ordinary in-
15 come or loss by the taxpayer for the taxpayer's
16 first taxable year beginning after December 31,
17 1995.

18 **SEC. 14573. MINIMUM TAX TREATMENT OF CERTAIN PROP-**
19 **ERTY AND CASUALTY INSURANCE COMPA-**
20 **NIES.**

21 (a) IN GENERAL.—Clause (i) of section 56(g)(4)(B)
22 (relating to inclusion of items included for purposes of
23 computing earnings and profits) is amended by adding at
24 the end the following new sentence: “In the case of any
25 insurance company taxable under section 831(b), this

1 clause shall not apply to any amount not described in sec-
2 tion 834(b).”

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to taxable years beginning after
5 December 31, 1995.

6 **PART VII—OTHER PROVISIONS**

7 **SEC. 14581. CLOSING OF PARTNERSHIP TAXABLE YEAR**
8 **WITH RESPECT TO DECEASED PARTNER, ETC.**

9 (a) GENERAL RULE.—Subparagraph (A) of section
10 706(c)(2) (relating to disposition of entire interest) is
11 amended to read as follows:

12 “(A) DISPOSITION OF ENTIRE INTER-
13 EST.—The taxable year of a partnership shall
14 close with respect to a partner whose entire in-
15 terest in the partnership terminates (whether
16 by reason of death, liquidation, or otherwise).”

17 (b) CLERICAL AMENDMENT.—The paragraph head-
18 ing for paragraph (2) of section 706(c) is amended to read
19 as follows:

20 “(2) TREATMENT OF DISPOSITIONS.—”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to partnership taxable years begin-
23 ning after December 31, 1995.

1 **SEC. 14582. CREDIT FOR SOCIAL SECURITY TAXES PAID**
2 **WITH RESPECT TO EMPLOYEE CASH TIPS.**

3 (a) REPORTING REQUIREMENT NOT CONSIDERED.—
4 Subparagraph (A) of section 45B(b)(1) (relating to excess
5 employer social security tax) is amended by inserting
6 “(without regard to whether such tips are reported under
7 section 6053)” after “section 3121(q)”.

8 (b) TAXES PAID.—Subsection (d) of section 13443 of
9 the Revenue Reconciliation Act of 1993 is amended by in-
10 serting “, with respect to services performed before, on,
11 or after such date” after “1993”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect as if included in the amend-
14 ments made by, and the provisions of, section 13443 of
15 the Revenue Reconciliation Act of 1993.

16 **SEC. 14583. DUE DATE FOR FIRST QUARTER ESTIMATED**
17 **TAX PAYMENTS BY PRIVATE FOUNDATIONS.**

18 (a) IN GENERAL.—Paragraph (3) of section 6655(g)
19 is amended by inserting after subparagraph (C) the follow-
20 ing new subparagraph:

21 “(D) In the case of any private foundation,
22 subsection (c)(2) shall be applied by substitut-
23 ing ‘May 15’ for ‘April 15’ ”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to taxable years beginning after
26 December 31, 1995.

1 **SEC. 14584. TREATMENT OF DUES PAID TO AGRICULTURAL**
2 **OR HORTICULTURAL ORGANIZATIONS.**

3 (a) **GENERAL RULE.**—Section 512 (defining unre-
4 lated business taxable income) is amended by adding at
5 the end thereof the following new subsection:

6 “(d) **TREATMENT OF DUES OF AGRICULTURAL OR**
7 **HORTICULTURAL ORGANIZATIONS.**—

8 “(1) **IN GENERAL.**—If—

9 “(A) an agricultural or horticultural orga-
10 nization described in section 501(c)(5) requires
11 annual dues to be paid in order to be a member
12 of such organization, and

13 “(B) the amount of such required annual
14 dues does not exceed \$100,

15 in no event shall any portion of such dues be treated
16 as derived by such organization from an unrelated
17 trade or business by reason of any benefits or privi-
18 leges to which members of such organization are en-
19 titled.

20 “(2) **INDEXATION OF \$100 AMOUNT.**—In the
21 case of any taxable year beginning in a calendar
22 year after 1995, the \$100 amount in paragraph (1)
23 shall be increased by an amount equal to—

24 “(A) \$100, multiplied by

25 “(B) the cost-of-living adjustment deter-
26 mined under section 1(f)(3) for the calendar

1 year in which the taxable year begins, by sub-
 2 stituting ‘calendar year 1994’ for ‘calendar year
 3 1992’ in subparagraph (B) thereof.

4 “(3) DUES.—For purposes of this subsection,
 5 the term ‘dues’ includes any payment required to be
 6 made in order to be recognized by the organization
 7 as a member of the organization.”

8 (b) EFFECTIVE DATE.—The amendment made by
 9 subsection (a) shall apply to taxable years beginning after
 10 December 31, 1994.

11 **Subtitle F—Estates and Trusts**

12 **PART I—INCOME TAX PROVISIONS**

13 **SEC. 14601. CERTAIN REVOCABLE TRUSTS TREATED AS** 14 **PART OF ESTATE.**

15 (a) IN GENERAL.—Subpart A of part I of subchapter
 16 J (relating to estates, trusts, beneficiaries, and decedents)
 17 is amended by adding at the end the following new section:

18 **“SEC. 646. CERTAIN REVOCABLE TRUSTS TREATED AS** 19 **PART OF ESTATE.**

20 “(a) GENERAL RULE.—For purposes of this subtitle,
 21 if both the executor of an estate and the trustee of a quali-
 22 fied revocable trust elect the treatment provided in this
 23 section, such trust shall be treated and taxed as part of
 24 such estate (and not as a separate trust) for all taxable

1 years of the estate ending after the date of the decedent's
2 death and before the applicable date.

3 “(b) DEFINITIONS.—For purposes of subsection
4 (a)—

5 “(1) QUALIFIED REVOCABLE TRUST.—The
6 term ‘qualified revocable trust’ means any trust all
7 of which was treated under section 676 as owned by
8 the decedent of the estate referred to in subsection
9 (a).

10 “(2) APPLICABLE DATE.—The term ‘applicable
11 date’ means—

12 “(A) if no return of tax imposed by chap-
13 ter 11 is required to be filed, the date which is
14 2 years after the date of the decedent's death,
15 and

16 “(B) if such a return is required to be
17 filed, the date which is 6 months after the date
18 of the final determination of the liability for tax
19 imposed by chapter 11.

20 “(c) ELECTION.—The election under subsection (a)
21 shall be made not later than the time prescribed for filing
22 the return of tax imposed by this chapter for the first tax-
23 able year of the estate (determined with regard to exten-
24 sions) and, once made, shall be irrevocable.”

1 (b) COMPARABLE TREATMENT UNDER GENERATION-
 2 SKIPPING TAX.—Paragraph (1) of section 2652(b) is
 3 amended by adding at the end the following new sentence:
 4 “Such term shall not include any trust during any period
 5 the trust is treated as part of an estate under section
 6 646.”

7 (c) CLERICAL AMENDMENT.—The table of sections
 8 for such subpart A is amended by adding at the end the
 9 following new item:

“Sec. 646. Certain revocable trusts treated as part of estate.”

10 (d) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply with respect to estates of decedents
 12 dying after the date of the enactment of this Act.

13 **SEC. 14602. DISTRIBUTIONS DURING FIRST 65 DAYS OF TAX-**
 14 **ABLE YEAR OF ESTATE.**

15 (a) IN GENERAL.—Subsection (b) of section 663 (re-
 16 lating to distributions in first 65 days of taxable year) is
 17 amended by inserting “an estate or” before “a trust” each
 18 place it appears.

19 (b) CONFORMING AMENDMENT.—Paragraph (2) of
 20 section 663(b) is amended by striking “the fiduciary of
 21 such trust” and inserting “the executor of such estate or
 22 the fiduciary of such trust (as the case may be)”.

23 (c) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to taxable years beginning after
 25 the date of the enactment of this Act.

1 **SEC. 14603. SEPARATE SHARE RULES AVAILABLE TO ES-**
2 **TATES.**

3 (a) IN GENERAL.—Subsection (c) of section 663 (re-
4 lating to separate shares treated as separate trusts) is
5 amended—

6 (1) by inserting before the last sentence the fol-
7 lowing new sentence: “Rules similar to the rules of
8 the preceding provisions of this subsection shall
9 apply to treat substantially separate and independ-
10 ent shares of different beneficiaries in an estate hav-
11 ing more than 1 beneficiary as separate estates.”,
12 and

13 (2) by inserting “or estates” after “trusts” in
14 the last sentence.

15 (b) CONFORMING AMENDMENT.—The subsection
16 heading of section 663(c) is amended by inserting “Es-
17 TATES OR” before “TRUSTS”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to estates of decedents dying after
20 the date of the enactment of this Act.

21 **SEC. 14604. EXECUTOR OF ESTATE AND BENEFICIARIES**
22 **TREATED AS RELATED PERSONS FOR DIS-**
23 **ALLOWANCE OF LOSSES, ETC.**

24 (a) DISALLOWANCE OF LOSSES.—Subsection (b) of
25 section 267 (relating to losses, expenses, and interest with
26 respect to transactions between related taxpayers) is

1 amended by striking “or” at the end of paragraph (11),
2 by striking the period at the end of paragraph (12) and
3 inserting “; or”, and by adding at the end the following
4 new paragraph:

5 “(13) Except in the case of a sale or exchange
6 in satisfaction of a pecuniary bequest, an executor of
7 an estate and a beneficiary of such estate.”

8 (b) ORDINARY INCOME FROM GAIN FROM SALE OF
9 DEPRECIABLE PROPERTY.—Subsection (b) of section
10 1239 is amended by striking the period at the end of para-
11 graph (2) and inserting “, and” and by adding at the end
12 the following new paragraph:

13 “(3) except in the case of a sale or exchange in
14 satisfaction of a pecuniary bequest, an executor of
15 an estate and a beneficiary of such estate.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 the date of the enactment of this Act.

19 **SEC. 14605. LIMITATION ON TAXABLE YEAR OF ESTATES.**

20 (a) IN GENERAL.—Section 645 (relating to taxable
21 year of trusts) is amended to read as follows:

22 **“SEC. 645. TAXABLE YEAR OF ESTATES AND TRUSTS.**

23 “(a) ESTATES.—For purposes of this subtitle, the
24 taxable year of an estate shall be a year ending on October
25 31, November 30, or December 31.

1 “(b) TRUSTS.—

2 “(1) IN GENERAL.—For purposes of this sub-
3 title, the taxable year of any trust shall be the cal-
4 endar year.

5 “(2) EXCEPTION FOR TRUSTS EXEMPT FROM
6 TAX AND CHARITABLE TRUSTS.—Paragraph (1)
7 shall not apply to a trust exempt from taxation
8 under section 501(a) or to a trust described in sec-
9 tion 4947(a)(1).”

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for subpart A of part I of subchapter J of chapter 1 is
12 amended by striking the item relating to section 645 and
13 inserting the following new item:

“Sec. 645. Taxable year of estates and trusts.”

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to estates of decedents dying after
16 the date of the enactment of this Act.

17 **SEC. 14606. REPEAL OF CERTAIN THROWBACK RULES AP-**
18 **PLICABLE TO DOMESTIC TRUSTS.**

19 (a) ACCUMULATION DISTRIBUTIONS.—

20 (1) IN GENERAL.—Section 665 is amended by
21 adding at the end the following new subsection:

22 “(f) ACCUMULATION DISTRIBUTIONS AFTER 1995.—
23 For purposes of this subpart, in the case of a trust other
24 than a foreign trust, any distribution in any taxable year

1 beginning after December 31, 1995, shall be computed
2 without regard to any undistributed net income.”

3 (2) CONFORMING AMENDMENT.—Subsection (b)
4 of section 665 is amended by inserting “except as
5 provided in subsection (f),” after “subpart,”

6 (b) PROPERTY TRANSFERRED TO TRUSTS.—Sub-
7 section (e) of section 644 is amended by striking “or” at
8 the end of paragraph (3), by striking the period at the
9 end of paragraph (4) and inserting “, or ”, and by adding
10 at the end the following new paragraph:

11 “(5) in the case of a trust other than a foreign
12 trust, any sale or exchange of property after Decem-
13 ber 31, 1995.”

14 (c) EFFECTIVE DATES.—

15 (1) ACCUMULATION DISTRIBUTION.—The
16 amendments made by subsection (a) shall apply to
17 distributions in taxable years beginning after De-
18 cember 31, 1995.

19 (2) TRANSFERRED PROPERTY.—The amend-
20 ments made by subsection (b) shall apply to sales or
21 exchanges after December 31, 1995.

22 **SEC. 14607. TREATMENT OF FUNERAL TRUSTS.**

23 (a) IN GENERAL.—Subpart F of part I of subchapter
24 J of chapter 1 is amended by adding at the end the follow-
25 ing new section:

1 **“SEC. 684. TREATMENT OF FUNERAL TRUSTS.**

2 “(a) IN GENERAL.—In the case of a qualified funeral
3 trust—

4 “(1) subparts B, C, D, and E shall not apply,
5 and

6 “(2) no deduction shall be allowed by section
7 642(b).

8 “(b) QUALIFIED FUNERAL TRUST.—For purposes of
9 this subsection, the term ‘qualified funeral trust’ means
10 any trust (other than a foreign trust) if—

11 “(1) the trust arises as a result of a contract
12 with a person engaged in the trade or business of
13 providing funeral or burial services or property nec-
14 essary to provide such services,

15 “(2) the sole purpose of the trust is to hold, in-
16 vest, and reinvest funds in the trust and to use such
17 funds solely to make payments for such services or
18 property for the benefit of the beneficiaries of the
19 trust,

20 “(3) the only beneficiaries of such trust are in-
21 dividuals who have entered into contracts described
22 in paragraph (1) to have such services or property
23 provided at their death,

24 “(4) the only contributions to the trust are con-
25 tributions by or for the benefit of such beneficiaries,

1 “(5) the trustee elects the application of this
2 subsection, and

3 “(6) the trust would (but for the election de-
4 scribed in paragraph (5)) be treated as owned by the
5 beneficiaries under subpart E.

6 “(c) DOLLAR LIMITATION ON CONTRIBUTIONS.—

7 “(1) IN GENERAL.—The term ‘qualified funeral
8 trust’ shall not include any trust which accepts con-
9 tributions by or for the benefit of an individual in
10 excess of \$5,000.

11 “(2) RELATED TRUSTS.—For purposes of para-
12 graph (1), all trusts having trustees which are relat-
13 ed persons shall be treated as 1 trust. For purposes
14 of the preceding sentence, persons are related if—

15 “(A) the relationship between such persons
16 would result in the disallowance of losses under
17 section 267 or 707(b),

18 “(B) such persons are treated as a single
19 employer under subsection (a) or (b) of section
20 52, or

21 “(C) the Secretary determines that treat-
22 ing such persons as related is necessary to pre-
23 vent avoidance of the purposes of this section.

24 “(3) INFLATION ADJUSTMENT.—In the case of
25 any contract referred to in subsection (b)(1) which

1 is entered into during any calendar year after 1996,
2 the dollar amount referred to paragraph (1) shall be
3 increased by an amount equal to—

4 “(A) such dollar amount, multiplied by

5 “(B) the cost-of-living adjustment deter-
6 mined under section 1(f)(3) for such calendar
7 year, by substituting ‘calendar year 1995’ for
8 ‘calendar year 1992’ in subparagraph (B)
9 thereof.

10 If any dollar amount after being increased under the
11 preceding sentence is not a multiple of \$100, such
12 dollar amount shall be rounded to the nearest mul-
13 tiple of \$100.

14 “(d) APPLICATION OF RATE SCHEDULE.—Section
15 1(e) shall be applied to each qualified funeral trust by
16 treating each beneficiary’s interest in each such trust as
17 a separate trust.

18 “(e) TREATMENT OF AMOUNTS REFUNDED TO BEN-
19 EFICIARY ON CANCELLATION.—No gain or loss shall be
20 recognized to a beneficiary described in subsection (b)(3)
21 of any qualified funeral trust by reason of any payment
22 from such trust to such beneficiary by reason of cancella-
23 tion of a contract referred to in subsection (b)(1). If any
24 payment referred to in the preceding sentence consists of
25 property other than money, the basis of such property in

1 the hands of such beneficiary shall be the same as the
2 trust's basis in such property immediately before the pay-
3 ment.

4 “(f) SIMPLIFIED REPORTING.—The Secretary may
5 prescribe rules for simplified reporting of all trusts having
6 a single trustee.”

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for subpart F of part I of subchapter J of chapter 1 is
9 amended by adding at the end the following new item:

“Sec. 684. Treatment of funeral trusts.”

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years beginning after
12 the date of the enactment of this Act.

13 **PART II—ESTATE AND GIFT TAX PROVISIONS**

14 **SEC. 14611. CLARIFICATION OF WAIVER OF CERTAIN**
15 **RIGHTS OF RECOVERY.**

16 (a) AMENDMENT TO SECTION 2207A.—Paragraph
17 (2) of section 2207A(a) (relating to right of recovery in
18 the case of certain marital deduction property) is amended
19 to read as follows:

20 “(2) DECEDENT MAY OTHERWISE DIRECT.—
21 Paragraph (1) shall not apply with respect to any
22 property to the extent that the decedent in his will
23 (or a revocable trust) specifically indicates an intent
24 to waive any right of recovery under this subchapter
25 with respect to such property.”

1 (b) AMENDMENT TO SECTION 2207B.—Paragraph
2 (2) of section 2207B(a) (relating to right of recovery
3 where decedent retained interest) is amended to read as
4 follows:

5 “(2) DECEDENT MAY OTHERWISE DIRECT.—
6 Paragraph (1) shall not apply with respect to any
7 property to the extent that the decedent in his will
8 (or a revocable trust) specifically indicates an intent
9 to waive any right of recovery under this subchapter
10 with respect to such property.”

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply with respect to the estates of dece-
13 dents dying after the date of the enactment of this Act.

14 **SEC. 14612. ADJUSTMENTS FOR GIFTS WITHIN 3 YEARS OF**
15 **DECEDENT’S DEATH.**

16 (a) GENERAL RULE.—Section 2035 is amended to
17 read as follows:

18 **“SEC. 2035. ADJUSTMENTS FOR CERTAIN GIFTS MADE**
19 **WITHIN 3 YEARS OF DECEDENT’S DEATH.**

20 “(a) INCLUSION OF CERTAIN PROPERTY IN GROSS
21 ESTATE.—If—

22 “(1) the decedent made a transfer (by trust or
23 otherwise) of an interest in any property, or relin-
24 quished a power with respect to any property, during

1 the 3-year period ending on the date of the dece-
2 dent's death, and

3 “(2) the value of such property (or an interest
4 therein) would have been included in the decedent's
5 gross estate under section 2036, 2037, 2038, or
6 2042 if such transferred interest or relinquished
7 power had been retained by the decedent on the date
8 of his death,

9 the value of the gross estate shall include the value of any
10 property (or interest therein) which would have been so
11 included.

12 “(b) INCLUSION OF GIFT TAX ON GIFTS MADE DUR-
13 ING 3 YEARS BEFORE DECEDENT'S DEATH.—The
14 amount of the gross estate (determined without regard to
15 this subsection) shall be increased by the amount of any
16 tax paid under chapter 12 by the decedent or his estate
17 on any gift made by the decedent or his spouse during
18 the 3-year period ending on the date of the decedent's
19 death.

20 “(c) OTHER RULES RELATING TO TRANSFERS
21 WITHIN 3 YEARS OF DEATH.—

22 “(1) IN GENERAL.—For purposes of—

23 “(A) section 303(b) (relating to distribu-
24 tions in redemption of stock to pay death
25 taxes),

1 “(B) section 2032A (relating to special
2 valuation of certain farms, etc., real property),
3 and

4 “(C) subchapter C of chapter 64 (relating
5 to lien for taxes),
6 the value of the gross estate shall include the value
7 of all property to the extent of any interest therein
8 of which the decedent has at any time made a trans-
9 fer, by trust or otherwise, during the 3-year period
10 ending on the date of the decedent’s death.

11 “(2) COORDINATION WITH SECTION 6166.—An
12 estate shall be treated as meeting the 35 percent of
13 adjusted gross estate requirement of section
14 6166(a)(1) only if the estate meets such requirement
15 both with and without the application of paragraph
16 (1).

17 “(3) MARITAL AND SMALL TRANSFERS.—Para-
18 graph (1) shall not apply to any transfer (other than
19 a transfer with respect to a life insurance policy)
20 made during a calendar year to any donee if the de-
21 cedent was not required by section 6019 (other than
22 by reason of section 6019(2)) to file any gift tax re-
23 turn for such year with respect to transfers to such
24 donee.

1 “(d) EXCEPTION.—Subsection (a) shall not apply to
2 any bona fide sale for an adequate and full consideration
3 in money or money’s worth.

4 “(e) TREATMENT OF CERTAIN TRANSFERS FROM
5 REVOCABLE TRUSTS.—For purposes of this section and
6 section 2038, any transfer from any portion of a trust dur-
7 ing any period that such portion was treated under section
8 676 as owned by the decedent shall be treated as a trans-
9 fer made directly by the decedent.”

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for part III of subchapter A of chapter 11 is amended
12 by striking “gifts” in the item relating to section 2035
13 and inserting “certain gifts”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to the estates of decedents dying
16 after the date of the enactment of this Act.

17 **SEC. 14613. CLARIFICATION OF QUALIFIED TERMINABLE**
18 **INTEREST RULES.**

19 (a) GENERAL RULE.—

20 (1) ESTATE TAX.—Subparagraph (B) of section
21 2056(b)(7) (defining qualified terminable interest
22 property) is amended by adding at the end the fol-
23 lowing new clause:

24 “(vi) TREATMENT OF CERTAIN IN-
25 COME DISTRIBUTIONS.—An income inter-

1 est shall not fail to qualify as a qualified
2 income interest for life solely because in-
3 come for the period after the last distribu-
4 tion date and on or before the date of the
5 surviving spouse's death is not required to
6 be distributed to the surviving spouse or to
7 the estate of the surviving spouse."

8 (2) GIFT TAX.—Paragraph (3) of section
9 2523(f) is amended by striking "and (iv)" and in-
10 serting "(iv), and (vi)".

11 (b) CLARIFICATION OF SUBSEQUENT INCLUSIONS.—
12 Section 2044 is amended by adding at the end the follow-
13 ing new subsection:

14 “(d) CLARIFICATION OF INCLUSION OF CERTAIN IN-
15 COME.—The amount included in the gross estate under
16 subsection (a) shall include the amount of any income
17 from the property to which this section applies for the pe-
18 riod after the last distribution date and on or before the
19 date of the decedent's death if such income is not other-
20 wise included in the decedent's gross estate.”

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by
23 this section shall apply with respect to the estates of
24 decedents dying, and gifts made, after the date of
25 the enactment of this Act.

1 (2) APPLICATION OF SECTION 2044 TO TRANS-
2 FERS BEFORE DATE OF ENACTMENT.—In the case
3 of the estate of any decedent dying after the date of
4 the enactment of this Act, if there was a transfer of
5 property on or before such date—

6 (A) such property shall not be included in
7 the gross estate of the decedent under section
8 2044 of the Internal Revenue Code of 1986 if
9 no prior marital deduction was allowed with re-
10 spect to such a transfer of such property to the
11 decedent, but

12 (B) such property shall be so included if
13 such a deduction was allowed.

14 **SEC. 14614. TRANSITIONAL RULE UNDER SECTION 2056A.**

15 (a) GENERAL RULE.—In the case of any trust cre-
16 ated under an instrument executed before the date of the
17 enactment of the Revenue Reconciliation Act of 1990,
18 such trust shall be treated as meeting the requirements
19 of paragraph (1) of section 2056A(a) of the Internal Reve-
20 nue Code of 1986 if the trust instrument requires that
21 all trustees of the trust be individual citizens of the United
22 States or domestic corporations.

23 (b) EFFECTIVE DATE.—The provisions of subsection
24 (a) shall take effect as if included in the provisions of sec-
25 tion 11702(g) of the Revenue Reconciliation Act of 1990.

1 **SEC. 14615. OPPORTUNITY TO CORRECT CERTAIN FAIL-**
2 **URES UNDER SECTION 2032A.**

3 (a) **GENERAL RULE.**—Paragraph (3) of section
4 2032A(d) (relating to modification of election and agree-
5 ment to be permitted) is amended to read as follows:

6 “(3) **MODIFICATION OF ELECTION AND AGREE-**
7 **MENT TO BE PERMITTED.**—The Secretary shall pre-
8 scribe procedures which provide that in any case in
9 which the executor makes an election under para-
10 graph (1) (and submits the agreement referred to in
11 paragraph (2)) within the time prescribed therefor,
12 but—

13 “(A) the notice of election, as filed, does
14 not contain all required information, or

15 “(B) signatures of 1 or more persons re-
16 quired to enter into the agreement described in
17 paragraph (2) are not included on the agree-
18 ment as filed, or the agreement does not con-
19 tain all required information,

20 the executor will have a reasonable period of time
21 (not exceeding 90 days) after notification of such
22 failures to provide such information or signatures.”

23 (b) **EFFECTIVE DATE.**—The amendment made by
24 subsection (a) shall apply to the estates of decedents dying
25 after the date of the enactment of this Act.

1 **SEC. 14616. UNIFIED CREDIT OF DECEDENT INCREASED BY**
2 **UNIFIED CREDIT OF SPOUSE USED ON SPLIT**
3 **GIFT INCLUDED IN DECEDENT'S GROSS ES-**
4 **TATE.**

5 (a) IN GENERAL.—Section 2010 (relating to unified
6 credit against estate tax) is amended by adding at the end
7 the following new subsection:

8 “(d) TREATMENT OF UNIFIED CREDIT USED BY
9 SPOUSE ON SPLIT-GIFT INCLUDED IN DECEDENT’S
10 GROSS ESTATE.—If—

11 “(1) the decedent was the donor of any gift
12 one-half of which was considered under section 2513
13 as made by the decedent’s spouse, and

14 “(2) the amount of such gift is includible in the
15 gross estate of the decedent by reason of section
16 2035, 2036, 2037, or 2038,

17 the amount of the credit allowable by subsection (a) to
18 the estate of the decedent shall be increased by the amount
19 of the unified credit allowed against the tax imposed by
20 section 2501 on the amount of such gift considered under
21 section 2513 as made by such spouse.”

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply to gifts made after the date of
24 the enactment of this Act.

1 **SEC. 14617. REFORMATION OF DEFECTIVE BEQUESTS, ETC.**

2 **TO SPOUSE OF DECEDENT.**

3 (a) IN GENERAL.—Subsection (b) of section 2056
4 (relating to bequests, etc., to surviving spouse) is amended
5 by adding at the end the following new paragraph:

6 “(11) REFORMATIONS PERMITTED.—

7 “(A) IN GENERAL.—In the case of any in-
8 terest in property with respect to which a de-
9 duction would be allowable under subsection (a)
10 but for a provision of this subsection, if—

11 “(i) the surviving spouse is entitled to
12 all of the income from the property for life,

13 “(ii) no person other than such spouse
14 is entitled to any distribution of such prop-
15 erty during such spouse’s life, and

16 “(iii) there is a change of a governing
17 instrument (by reformation, amendment,
18 construction, or otherwise) as of the appli-
19 cable date which results in the satisfaction
20 of the requirements of such provision as of
21 the date of the decedent’s death,

22 the determination of whether such deduction is
23 allowable shall be made as of the applicable
24 date.

25 “(B) SPECIAL RULE WHERE TIMELY COM-
26 MENCEMENT OF REFORMATION.—Clauses (i)

1 and (ii) of subparagraph (A) shall not apply to
2 any interest if, not later than the date described
3 in subparagraph (C)(i), a judicial proceeding is
4 commenced to change such interest into an in-
5 terest which satisfies the requirements of the
6 provision by reason of which (but for this para-
7 graph) a deduction would not be allowable
8 under subsection (a) for such interest.

9 “(C) APPLICABLE DATE.—For purposes of
10 subparagraph (A), the term ‘applicable date’
11 means—

12 “(i) the last date (including exten-
13 sions) for filing the return of tax imposed
14 by this chapter, or

15 “(ii) if a judicial proceeding is com-
16 menced to comply with such provision, the
17 time when the changes pursuant to such
18 proceeding are made.

19 “(D) SPECIAL RULE.—If the change re-
20 ferred to in subparagraph (A)(iii) is to qualify
21 the passage of the interest under paragraph
22 (7), subparagraph (A) shall apply only if the
23 election under subparagraph (B) thereof is
24 made.

1 “(E) STATUTE OF LIMITATIONS.—If a ju-
2 dicial proceeding described in subparagraph
3 (C)(ii) is commenced with respect to any inter-
4 est, the period for assessing any deficiency of
5 tax attributable to such interest shall not expire
6 before the date 1 year after the date on which
7 the Secretary is notified that such provision has
8 been complied with or that such proceeding has
9 been terminated.”

10 (b) COMPARABLE RULE FOR GIFT TAX.—Section
11 2523 (relating to gift to spouse) is amended by adding
12 at the end the following new subsection:

13 “(j) REFORMATIONS PERMITTED.—Rules similar to
14 the rules of section 2056(b)(11) shall apply for purposes
15 of this section.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to estates of decedents dying, and
18 gifts made, after the date of the enactment of this Act.

19 **SEC. 14618. GIFTS MAY NOT BE REVALUED FOR ESTATE TAX**
20 **PURPOSES AFTER EXPIRATION OF STATUTE**
21 **OF LIMITATIONS.**

22 (a) IN GENERAL.—Section 2001 (relating to imposi-
23 tion and rate of estate tax) is amended by adding at the
24 end the following new subsection:

25 “(f) VALUATION OF GIFTS.—If—

1 “(1) the time has expired within which a tax
2 may be assessed under chapter 12 (or under cor-
3 responding provisions of prior laws) on the transfer
4 of property by gift made during a preceding cal-
5 endar period (as defined in section 2502(b)), and

6 “(2) the value of such gift is shown on the re-
7 turn for such preceding calendar period or is dis-
8 closed in such return, or in a statement attached to
9 the return, in a manner adequate to apprise the Sec-
10 retary of the nature of such gift,
11 the value of such gift shall, for purposes of computing the
12 tax under this chapter, be the value of such gift as finally
13 determined for purposes of chapter 12.”

14 (b) MODIFICATION OF APPLICATION OF STATUTE OF
15 LIMITATIONS.—Paragraph (9) of section 6501(c) is
16 amended to read as follows:

17 “(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN
18 ON RETURN.—If any gift of property the value of
19 which (or any increase in taxable gifts required
20 under section 2701(d)) is required to be shown on
21 a return of tax imposed by chapter 12 (without re-
22 gard to section 2503(b)), and is not shown on such
23 return, any tax imposed by chapter 12 on such gift
24 may be assessed, or a proceeding in court for the
25 collection of such tax may be begun without assess-

1 ment, at any time. The preceding sentence shall not
2 apply to any item which is disclosed in such return,
3 or in a statement attached to the return, in a man-
4 ner adequate to apprise the Secretary of the nature
5 of such item. The value of any item which is so dis-
6 closed may not be redetermined by the Secretary
7 after the expiration of the period under subsection
8 (a).”

9 (c) DECLARATORY JUDGMENT PROCEDURE FOR DE-
10 TERMINING VALUE OF GIFT.—

11 (1) IN GENERAL.—Part IV of subchapter C of
12 chapter 76 is amended by inserting after section
13 7476 the following new section:

14 “**SEC. 7477. DECLARATORY JUDGMENTS RELATING TO**
15 **VALUE OF CERTAIN GIFTS.**”

16 “(a) CREATION OF REMEDY.—In a case of an actual
17 controversy involving a determination by the Secretary of
18 the value of any gift shown on the return of tax imposed
19 by chapter 12 or disclosed on such return or in any state-
20 ment attached to such return, upon the filing of an appro-
21 priate pleading, the Tax Court may make a declaration
22 of the value of such gift. Any such declaration shall have
23 the force and effect of a decision of the Tax Court and
24 shall be reviewable as such.

25 “(b) LIMITATIONS.—

1 “(1) PETITIONER.—A pleading may be filed
2 under this section only by the donor.

3 “(2) EXHAUSTION OF ADMINISTRATIVE REM-
4 EDIES.—The court shall not issue a declaratory
5 judgment or decree under this section in any pro-
6 ceeding unless it determines that the petitioner has
7 exhausted all available administrative remedies with-
8 in the Internal Revenue Service.

9 “(3) TIME FOR BRINGING ACTION.—If the Sec-
10 retary sends by certified or registered mail notice of
11 his determination as described in subsection (a) to
12 the petitioner, no proceeding may be initiated under
13 this section unless the pleading is filed before the
14 91st day after the date of such mailing.”

(2) CLERICAL AMENDMENT.—The table of sections for such part IV is amended by inserting after the item relating to section 7476 the following new item:

“Sec. 7477. Declaratory judgments relating to value of certain gifts.”

(d) CONFORMING AMENDMENT.—Subsection (c) of section 2504 is amended by striking “, and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period”.

24 (e) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 subsections (a) and (c) shall apply to gifts made
3 after the date of the enactment of this Act.

4 (2) SUBSECTION (b).—The amendment made by
5 subsection (b) shall apply to gifts made in calendar
6 years ending after the date of the enactment of this
7 Act.

8 **SEC. 14619. CLARIFICATIONS RELATING TO DISCLAIMERS.**

9 (a) PARTIAL TRANSFER-TYPE DISCLAIMERS PER-
10 MITTED.—Paragraph (3) of section 2518(c) (relating to
11 certain transfers treated as disclaimers) is amended by in-
12 serting “(or an undivided portion of such interest)” after
13 “entire interest in the property”.

14 (b) RETENTION OF INTEREST BY DECEDENT’S
15 SPOUSE PERMITTED IN TRANSFER-TYPE DISCLAIM-
16 ERS.—Paragraph (3) of section 2518(c) is amended by
17 adding at the end the following new flush sentence:

18 “For purposes of the preceding sentence, a written
19 transfer by the spouse of the decedent of property
20 to a trust shall not fail to be treated as a transfer
21 of such spouse’s interest in such property by reason
22 of such spouse having an interest in such trust.”

23 (c) DISCLAIMERS ARE EFFECTIVE FOR INCOME TAX
24 PURPOSES.—Subsection (a) of section 2518 is amended

1 by inserting “and subtitle A” after “this subtitle” each
2 place it appears.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to transfers creating an interest
5 in the person disclaiming, and disclaimers, made after the
6 date of the enactment of this Act.

7 **SEC. 14620. CLARIFICATION OF TREATMENT OF SURVIVOR**
8 **ANNUITIES UNDER QUALIFIED TERMINABLE**
9 **INTEREST RULES.**

10 (a) IN GENERAL.—Subparagraph (C) of section
11 2056(b)(7) is amended by inserting “(or, in the case of
12 an interest in an annuity arising under the community
13 property laws of a State, included in the gross estate of
14 the decedent under section 2033)” after “section 2039”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to estates of decedents dying after
17 the date of the enactment of this Act.

18 **SEC. 14621. TREATMENT UNDER QUALIFIED DOMESTIC**
19 **TRUST RULES OF FORMS OF OWNERSHIP**
20 **WHICH ARE NOT TRUSTS.**

21 (a) IN GENERAL.—Subsection (c) of section 2056A
22 (defining qualified domestic trust) is amended by adding
23 at the end the following new paragraph:

24 “(3) TRUST.—To the extent provided in regula-
25 tions prescribed by the Secretary, the term ‘trust’

1 includes other arrangements which have substan-
2 tially the same effect as a trust.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to estates of decedents dying after
5 the date of the enactment of this Act.

6 **SEC. 14622. AUTHORITY TO WAIVE REQUIREMENT OF UNIT-**
7 **ED STATES TRUSTEE FOR QUALIFIED DOMES-**
8 **TIC TRUSTS.**

9 (a) IN GENERAL.—Subparagraph (A) of section
10 2056A(a)(1) is amended by inserting “except as provided
11 in regulations prescribed by the Secretary,” before “re-
12 quires”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to estates of decedents dying after
15 the date of the enactment of this Act.

16 **PART III—GENERATION-SKIPPING TAX**
17 **PROVISIONS**

18 **SEC. 14631. SEVERING OF TRUSTS HOLDING PROPERTY**
19 **HAVING AN INCLUSION RATIO OF GREATER**
20 **THAN ZERO.**

21 (a) IN GENERAL.—Subsection (a) of section 2642
22 (relating to inclusion ratio) is amended by adding at the
23 end the following new paragraph:

1 “(3) SEVERING OF TRUSTS HOLDING PROPERTY
2 HAVING AN INCLUSION RATIO OF GREATER THAN
3 ZERO.—

4 “(A) IN GENERAL.—If a trust holding
5 property having an inclusion ratio of greater
6 than zero is severed in a qualified severance, at
7 the election of the trustee of such trust, the
8 trusts resulting from such severance shall be
9 treated as separate trusts for purposes of this
10 chapter.

11 “(B) QUALIFIED SEVERANCE.—For pur-
12 poses of subparagraph (A), the term ‘qualified
13 severance’ means the creation of 2 trusts from
14 a single trust if each property held by the single
15 trust was divided between the 2 created trusts
16 such that one trust received an interest in each
17 such property equal to the applicable fraction of
18 the single trust. Such term includes any other
19 severance permitted under regulations pre-
20 scribed by the Secretary.

21 “(C) ELECTION.—The election under this
22 paragraph shall be made at the time prescribed
23 by the Secretary. Such an election, once made,
24 shall be irrevocable.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to severances after the date of
3 the enactment of this Act.

4 **SEC. 14632. CLARIFICATION OF WHO IS TRANSFEROR**
5 **WHERE SUBSEQUENT GIFT BY REASON OF**
6 **POWER OF APPOINTMENT.**

7 (a) IN GENERAL.—Paragraph (1) of section 2652(a)
8 (defining transferor) is amended by adding at the end the
9 following new sentence: “A transferor described in sub-
10 paragraph (A) shall not be treated as the transferor of
11 any property if another individual is treated as the trans-
12 feror of such property under subparagraph (B) by reason
13 of the exercise, release, or lapse of a general power of ap-
14 pointment with respect to such property.”

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall apply to the exercise, release, or lapse
17 of a general power of appointment after the date of the
18 enactment of this Act.

19 **SEC. 14633. TAXABLE TERMINATION NOT TO INCLUDE DI-**
20 **RECT SKIPS.**

21 (a) IN GENERAL.—Paragraph (1) of section 2612(a)
22 (defining taxable termination) is amended by adding at
23 the end the following new flush sentence:

24 “Such term shall not include a direct skip.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to generation-skipping transfers
3 (as defined in section 2611 of the Internal Revenue Code
4 of 1986) after the date of the enactment of this Act.

5 **SEC. 14634. EXPANSION OF EXCEPTION FROM GENERA-**
6 **TION-SKIPPING TRANSFER TAX FOR TRANS-**
7 **FERS TO INDIVIDUALS WITH DECEASED PAR-**
8 **ENTS.**

9 (a) IN GENERAL.—Section 2651 (relating to genera-
10 tion assignment) is amended by redesignating subsection
11 (e) as subsection (f), and by inserting after subsection (d)
12 the following new subsection:

13 “(e) SPECIAL RULE FOR PERSONS WITH A DE-
14 CEASED PARENT.—

15 “(1) IN GENERAL.—For purposes of determin-
16 ing whether any transfer is a generation-skipping
17 transfer, if—

18 “(A) an individual is a descendant of a
19 parent of the transferor (or the transferor’s
20 spouse or former spouse), and

21 “(B) such individual’s parent who is a lin-
22 eal descendant of the parent of the transferor
23 (or the transferor’s spouse or former spouse) is
24 dead at the time the transfer (from which an
25 interest of such individual is established or de-

1 rived) is subject to a tax imposed by chapter 11
2 or 12 upon the transferor (and if there shall be
3 more than 1 such time, then at the earliest
4 such time),

5 such individual shall be treated as if such individual
6 were a member of the generation which is 1 genera-
7 tion below the lower of the transferor's generation or
8 the generation assignment of the youngest living an-
9 cestor of such individual who is also a descendant of
10 the parent of the transferor (or the transferor's
11 spouse or former spouse), and the generation assign-
12 ment of any descendant of such individual shall be
13 adjusted accordingly.

14 “(2) LIMITED APPLICATION OF SUBSECTION TO
15 COLLATERAL HEIRS.—This subsection shall not
16 apply with respect to a transfer to any individual
17 who is not a lineal descendant of the transferor (or
18 the transferor's spouse or former spouse) if, at the
19 time of the transfer, such transferor has any living
20 lineal descendant.”

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 2612(c) (defining direct skip) is
23 amended by striking paragraph (2) and by redesign-
24 ating paragraph (3) as paragraph (2).

1 (2) Section 2612(c)(2) (as so redesignated) is
2 amended by striking “section 2651(e)(2)” and in-
3 serting “section 2651(f)(2)”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to terminations, distributions, and
6 transfers occurring after the date of the enactment of this
7 Act.

8 **Subtitle G—Excise Tax**

9 **Simplification**

10 **PART I—PROVISIONS RELATED TO DISTILLED**

11 **SPIRITS, WINES, AND BEER**

12 **SEC. 14701. CREDIT OR REFUND FOR IMPORTED BOTTLED**

13 **DISTILLED SPIRITS RETURNED TO DIS-**

14 **TILLED SPIRITS PLANT.**

15 (a) IN GENERAL.—Paragraph (1) of section 5008(c)
16 (relating to distilled spirits returned to bonded premises)
17 is amended by striking “withdrawn from bonded premises
18 on payment or determination of tax” and inserting “on
19 which tax has been determined or paid”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect at the beginning of the first
22 calendar quarter beginning more than 180 days after the
23 date of the enactment of this Act.

1 **SEC. 14702. AUTHORITY TO CANCEL OR CREDIT EXPORT**
2 **BONDS WITHOUT SUBMISSION OF RECORDS.**

3 (a) **IN GENERAL.**—Subsection (c) of section 5175
4 (relating to export bonds) is amended by striking “on the
5 submission of” and all that follows and inserting “if there
6 is such proof of exportation as the Secretary may by regu-
7 lations require.”

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 subsection (a) shall take effect at the beginning of the first
10 calendar quarter beginning more than 180 days after the
11 date of the enactment of this Act.

12 **SEC. 14703. REPEAL OF REQUIRED MAINTENANCE OF**
13 **RECORDS ON PREMISES OF DISTILLED SPIR-**
14 **ITS PLANT.**

15 (a) **IN GENERAL.**—Subsection (c) of section 5207
16 (relating to records and reports) is amended by striking
17 “shall be kept on the premises where the operations cov-
18 ered by the record are carried on and”.

19 (b) **EFFECTIVE DATE.**—The amendment made by
20 subsection (a) shall take effect at the beginning of the first
21 calendar quarter beginning more than 180 days after the
22 date of the enactment of this Act.

1 **SEC. 14704. FERMENTED MATERIAL FROM ANY BREWERY**
2 **MAY BE RECEIVED AT A DISTILLED SPIRITS**
3 **PLANT.**

4 (a) IN GENERAL.—Paragraph (2) of section 5222(b)
5 (relating to production, receipt, removal, and use of distill-
6 ing materials) is amended to read as follows:

7 “(2) beer conveyed without payment of tax
8 from brewery premises, beer which has been lawfully
9 removed from brewery premises upon determination
10 of tax, or”.

11 (b) CLARIFICATION OF AUTHORITY TO PERMIT RE-
12 MOVAL OF BEER WITHOUT PAYMENT OF TAX FOR USE
13 AS DISTILLING MATERIAL.—Section 5053 (relating to ex-
14 emptions) is amended by redesignating subsection (f) as
15 subsection (i) and by inserting after subsection (e) the fol-
16 lowing new subsection:

17 “(f) REMOVAL FOR USE AS DISTILLING MATE-
18 RIAL.—Subject to such regulations as the Secretary may
19 prescribe, beer may be removed from a brewery without
20 payment of tax to any distilled spirits plant for use as
21 distilling material.”

22 (c) CLARIFICATION OF REFUND AND CREDIT OF
23 TAX.—Section 5056 (relating to refund and credit of tax,
24 or relief from liability) is amended—

1 (1) by redesignating subsection (c) as sub-
2 section (d) and by inserting after subsection (b) the
3 following new subsection:

4 “(c) BEER RECEIVED AT A DISTILLED SPIRITS
5 PLANT.—Any tax paid by any brewer on beer produced
6 in the United States may be refunded or credited to the
7 brewer, without interest, or if the tax has not been paid,
8 the brewer may be relieved of liability therefor, under reg-
9 ulations as the Secretary may prescribe, if such beer is
10 received on the bonded premises of a distilled spirits plant
11 pursuant to the provisions of section 5222(b)(2), for use
12 in the production of distilled spirits.”, and

13 (2) by striking “or rendering unmerchantable”
14 in subsection (d) (as so redesignated) and inserting
15 “rendering unmerchantable, or receipt on the bond-
16 ed premises of a distilled spirits plant”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect at the beginning of the first
19 calendar quarter beginning more than 180 days after the
20 date of the enactment of this Act.

21 **SEC. 14705. REPEAL OF REQUIREMENT FOR WHOLESALE**
22 **DEALERS IN LIQUORS TO POST SIGN.**

23 (a) IN GENERAL.—Section 5115 (relating to sign re-
24 quired on premises) is hereby repealed.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Subsection (a) of section 5681 is amended
2 by striking “, and every wholesale dealer in liquors,”
3 and by striking “section 5115(a) or”.

4 (2) Subsection (c) of section 5681 is amend-
5 ed—

6 (A) by striking “or wholesale liquor estab-
7 lishment, on which no sign required by section
8 5115(a) or” and inserting “on which no sign
9 required by”, and

10 (B) by striking “or wholesale liquor estab-
11 lishment, or who” and inserting “or who”.

12 (3) The table of sections for subpart D of part
13 II of subchapter A of chapter 51 is amended by
14 striking the item relating to section 5115.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the date of the enactment
17 of this Act.

18 **SEC. 14706. REFUND OF TAX ON WINE RETURNED TO BOND**

19 **NOT LIMITED TO UNMERCHANTABLE WINE.**

20 (a) IN GENERAL.—Subsection (a) of section 5044
21 (relating to refund of tax on unmerchantable wine) is
22 amended by striking “as unmerchantable”.

23 (b) CONFORMING AMENDMENTS.—

24 (1) Section 5361 is amended by striking
25 “unmerchantable”.

1 (2) The section heading for section 5044 is
2 amended by striking “**UNMERCHANTABLE**”.

3 (3) The item relating to section 5044 in the
4 table of sections for subpart C of part I of sub-
5 chapter A of chapter 51 is amended by striking
6 “unmerchantable”.

7 (c) **EFFECTIVE DATE.**—The amendments made by
8 this section shall take effect at the beginning of the first
9 calendar quarter beginning more than 180 days after the
10 date of the enactment of this Act.

11 **SEC. 14707. USE OF ADDITIONAL AMELIORATING MATERIAL**
12 **IN CERTAIN WINES.**

13 (a) **IN GENERAL.**—Subparagraph (D) of section
14 5384(b)(2) (relating to ameliorated fruit and berry wines)
15 is amended by striking “loganberries, currants, or goose-
16 berries,” and inserting “any fruit or berry with a natural
17 fixed acid of 20 parts per thousand or more (before any
18 correction of such fruit or berry)”.

19 (b) **EFFECTIVE DATE.**—The amendment made by
20 this section shall take effect at the beginning of the first
21 calendar quarter beginning more than 180 days after the
22 date of the enactment of this Act.

1 **SEC. 14708. DOMESTICALLY PRODUCED BEER MAY BE**
2 **WITHDRAWN FREE OF TAX FOR USE OF FOR-**
3 **EIGN EMBASSIES, LEGATIONS, ETC.**

4 (a) IN GENERAL.—Section 5053 (relating to exemp-
5 tions) is amended by inserting after subsection (f) the fol-
6 lowing new subsection:

7 “(g) REMOVALS FOR USE OF FOREIGN EMBASSIES,
8 LEGATIONS, ETC.—

9 “(1) IN GENERAL.—Subject to such regulations
10 as the Secretary may prescribe—

11 “(A) beer may be withdrawn from the
12 brewery without payment of tax for transfer to
13 any customs bonded warehouse for entry pend-
14 ing withdrawal therefrom as provided in sub-
15 paragraph (B), and

16 “(B) beer entered into any customs bonded
17 warehouse under subparagraph (A) may be
18 withdrawn for consumption in the United
19 States by, and for the official and family use of,
20 such foreign governments, organizations, and
21 individuals as are entitled to withdraw imported
22 beer from such warehouses free of tax.

23 Beer transferred to any customs bonded warehouse
24 under subparagraph (A) shall be entered, stored,
25 and accounted for in such warehouse under such
26 regulations and bonds as the Secretary may pre-

1 scribe, and may be withdrawn therefrom by such
2 governments, organizations, and individuals free of
3 tax under the same conditions and procedures as im-
4 ported beer.

5 “(2) OTHER RULES TO APPLY.—Rules similar
6 to the rules of paragraphs (2) and (3) of section
7 5362(e) of such section shall apply for purposes of
8 this subsection.”

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall take effect at the beginning of the first
11 calendar quarter beginning more than 180 days after the
12 date of the enactment of this Act.

13 **SEC. 14709. BEER MAY BE WITHDRAWN FREE OF TAX FOR**
14 **DESTRUCTION.**

15 (a) IN GENERAL.—Section 5053 is amended by in-
16 serting after subsection (g) the following new subsection:

17 “(h) REMOVALS FOR DESTRUCTION.—Subject to
18 such regulations as the Secretary may prescribe, beer may
19 be removed from the brewery without payment of tax for
20 destruction.”

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect at the beginning of the first
23 calendar quarter beginning more than 180 days after the
24 date of the enactment of this Act.

1 **SEC. 14710. AUTHORITY TO ALLOW DRAWBACK ON EX-**
2 **PORTED BEER WITHOUT SUBMISSION OF**
3 **RECORDS.**

4 (a) **IN GENERAL.**—The first sentence of section 5055
5 (relating to drawback of tax on beer) is amended by strik-
6 ing “found to have been paid” and all that follows and
7 inserting “paid on such beer if there is such proof of ex-
8 portation as the Secretary may by regulations require.”

9 (b) **EFFECTIVE DATE.**—The amendment made by
10 subsection (a) shall take effect at the beginning of the first
11 calendar quarter beginning more than 180 days after the
12 date of the enactment of this Act.

13 **SEC. 14711. TRANSFER TO BREWERY OF BEER IMPORTED**
14 **IN BULK WITHOUT PAYMENT OF TAX.**

15 (a) **IN GENERAL.**—Part II of subchapter G of chap-
16 ter 51 is amended by adding at the end the following new
17 section:

18 **“SEC. 5418. BEER IMPORTED IN BULK.**

19 “Beer imported or brought into the United States in
20 bulk containers may, under such regulations as the Sec-
21 retary may prescribe, be withdrawn from customs custody
22 and transferred in such bulk containers to the premises
23 of a brewery without payment of the internal revenue tax
24 imposed on such beer. The proprietor of a brewery to
25 which such beer is transferred shall become liable for the
26 tax on the beer withdrawn from customs custody under

1 this section upon release of the beer from customs custody,
2 and the importer, or the person bringing such beer into
3 the United States, shall thereupon be relieved of the liabil-
4 ity for such tax.”

5 (b) CLERICAL AMENDMENT.—The table of sections
6 for such part II is amended by adding at the end the fol-
7 lowing new item:

“Sec. 5418. Beer imported in bulk.”

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect at the beginning of the first
10 calendar quarter beginning more than 180 days after the
11 date of the enactment of this Act.

12 **PART II—CONSOLIDATION OF TAXES ON**
13 **AVIATION GASOLINE**

14 **SEC. 14721. CONSOLIDATION OF TAXES ON AVIATION GASO-**
15 **LINE.**

16 (a) IN GENERAL.—Subparagraph (A) of section
17 4081(a)(2) (relating to imposition of tax on gasoline and
18 diesel fuel) is amended by redesignating clause (ii) as
19 clause (iii) and by striking clause (i) and inserting the fol-
20 lowing:

21 “(i) in the case of gasoline other than
22 aviation gasoline, 18.3 cents per gallon,

23 “(ii) in the case of aviation gasoline,
24 19.3 cents per gallon, and”.

1 (b) TERMINATION.—Subsection (d) of section 4081
2 is amended by redesignating paragraph (2) as paragraph
3 (3) and by inserting after paragraph (1) the following new
4 paragraph:

5 “(2) AVIATION GASOLINE.—On and after Janu-
6 ary 1, 1996, the rate specified in subsection
7 (a)(2)(A)(ii) shall be 4.3 cents per gallon.”

8 (c) REPEAL OF RETAIL LEVEL TAX.—

9 (1) Subsection (c) of section 4041 is amended
10 by striking paragraphs (2) and (3) and by redesign-
11 ating paragraphs (4) and (5) as paragraphs (2)
12 and (3), respectively.

13 (2) Paragraph (3) of section 4041(c), as redes-
14 ignated by paragraph (1), is amended by striking
15 “paragraphs (1) and (2)” and inserting “paragraph
16 (1)”.

17 (d) CONFORMING AMENDMENTS.—

18 (1) Paragraph (1) of section 4041(k) is amend-
19 ed by adding “and” at the end of subparagraph (A),
20 by striking “, and” at the end of subparagraph (B)
21 and inserting a period, and by striking subparagraph
22 (C).

23 (2) Paragraph (1) of section 4081(d) is amend-
24 ed by striking “each rate of tax specified in sub-
25 section (a)(2)(A)” and inserting “the rates of tax

1 specified in clauses (i) and (iii) of subsection
2 (a)(2)(A)’’.

3 (3) Sections 6421(f)(2)(A) and 9502(f)(1)(A)
4 are each amended by striking “section 4041(c)(4)”
5 and inserting “section 4041(c)(2)”.

6 (4) Paragraph (2) of section 9502(b) is amend-
7 ed by striking “14 cents” and inserting “15 cents”.

8 (e) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect on January 1, 1996.

10 (f) FLOOR STOCKS TAX.—

11 (1) IMPOSITION OF TAX.—In the case of avia-
12 tion gasoline on which tax was imposed under sec-
13 tion 4081 of the Internal Revenue Code of 1986 be-
14 fore January 1, 1996, and which is held on such
15 date by any person, there is hereby imposed a floor
16 stocks tax of 1 cent per gallon of such gasoline.

17 (2) LIABILITY FOR TAX AND METHOD OF PAY-
18 MENT.—

19 (A) LIABILITY FOR TAX.—A person hold-
20 ing aviation gasoline on January 1, 1996, to
21 which the tax imposed by paragraph (1) applies
22 shall be liable for such tax.

23 (B) METHOD OF PAYMENT.—The tax im-
24 posed by paragraph (1) shall be paid in such
25 manner as the Secretary shall prescribe.

1 (C) TIME FOR PAYMENT.—The tax im-
2 posed by paragraph (1) shall be paid on or be-
3 fore June 30, 1996.

4 (3) DEFINITIONS.—For purposes of this sub-
5 section:

6 (A) HELD BY A PERSON.—Gasoline shall
7 be considered as “held by a person” if title
8 thereto has passed to such person (whether or
9 not delivery to the person has been made).

10 (B) SECRETARY.—The term “Secretary”
11 means the Secretary of the Treasury or his del-
12 egate.

13 (4) EXCEPTION FOR EXEMPT USES.—The tax
14 imposed by paragraph (1) shall not apply to gasoline
15 held by any person exclusively for any use to the ex-
16 tent a credit or refund of the tax imposed by section
17 4081 of such Code is allowable for such use.

18 (5) EXCEPTION FOR FUEL HELD IN AIRCRAFT
19 TANK.—No tax shall be imposed by paragraph (1)
20 on aviation gasoline held in the tank of an aircraft.

21 (6) EXCEPTION FOR CERTAIN AMOUNTS OF
22 FUEL.—

23 (A) IN GENERAL.—No tax shall be im-
24 posed by paragraph (1) on aviation gasoline
25 held on January 1, 1996, by any person if the

1 aggregate amount of aviation gasoline held by
2 such person on such date does not exceed 6,000
3 gallons. The preceding sentence shall apply only
4 if such person submits to the Secretary (at the
5 time and in the manner required by the Sec-
6 retary) such information as the Secretary shall
7 require for purposes of this paragraph.

8 (B) EXEMPT FUEL.—For purposes of sub-
9 paragraph (A), there shall not be taken into ac-
10 count fuel held by any person which is exempt
11 from the tax imposed by paragraph (1) by rea-
12 son of paragraph (4) or (5).

13 (C) CONTROLLED GROUPS.—

14 (i) CORPORATIONS.—In the case of a
15 controlled group, the 6,000 gallon amount
16 in subparagraph (A) shall be apportioned
17 among the component members of such
18 group in such manner as the Secretary
19 shall by regulations prescribe. For pur-
20 poses of the preceding sentence, the term
21 “controlled group” has the meaning given
22 to such term by subsection (a) of section
23 1563 of such Code; except that for such
24 purposes the phrase “more than 50 per-
25 cent” shall be substituted for the phrase

1 “at least 80 percent” each place it appears
2 in such subsection.

3 (ii) NONINCORPORATED PERSONS
4 UNDER COMMON CONTROL.—Under regula-
5 tions prescribed by the Secretary, prin-
6 ciples similar to the principles of clause (i)
7 shall apply to a group under common con-
8 trol where 1 or more of the members is not
9 a corporation.

10 (7) OTHER LAWS APPLICABLE.—All provisions
11 of law, including penalties, applicable with respect to
12 the taxes imposed by section 4081 of such Code
13 shall, insofar as applicable and not inconsistent with
14 the provisions of this subsection, apply with respect
15 to the floor stock taxes imposed by paragraph (1) to
16 the same extent as if such taxes were imposed by
17 such section 4081.

18 **PART III—OTHER EXCISE TAX PROVISIONS**

19 **SEC. 14731. AUTHORITY TO GRANT EXEMPTIONS FROM**
20 **REGISTRATION REQUIREMENTS.**

21 (a) IN GENERAL.—The first sentence of section 4222
22 (relating to registration) is amended to read as follows:
23 “Except as provided in subsection (b), section 4221 shall
24 not apply with respect to the sale of any article by or to

1 any person who is required by the Secretary to be reg-
2 istered under this section and who is not so registered.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to sales after the 180th day
5 after the date of the enactment of this Act.

6 **SEC. 14732. CERTAIN COMBINATIONS NOT TREATED AS**
7 **MANUFACTURE UNDER RETAIL SALES TAX**
8 **ON HEAVY TRUCKS.**

9 (a) IN GENERAL.—Paragraph (2) of section 4052(c)
10 (relating to certain combinations not treated as manufac-
11 ture) is amended by striking “or wood or metal floor” and
12 inserting “wood or metal floor, or a power take-off and
13 dump body”.

14 (b) REMOVAL OF FIFTH WHEEL.—Paragraph (1) of
15 section 4052(c) is amended by inserting before the period
16 “or the removal of any coupling device (including any fifth
17 wheel)”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the date of the enactment
20 of this Act.

21 **SEC. 14733. EXEMPTION FROM DIESEL FUEL DYEING RE-**
22 **QUIREMENTS WITH RESPECT TO CERTAIN**
23 **STATES.**

24 (a) IN GENERAL.—Section 4082 (relating to exemp-
25 tions for diesel fuel) is amended by redesignating sub-

1 sections (c) and (d) as subsections (d) and (e), respec-
2 tively, and by inserting after subsection (b) the following
3 new subsection:

4 “(c) EXCEPTION TO DYEING REQUIREMENTS.—
5 Paragraph (2) of subsection (a) shall not apply with re-
6 spect to any diesel fuel—

7 “(1) removed, entered, or sold in a State for ul-
8 timate sale or use in an area of such State which
9 is exempted from the fuel dyeing requirements under
10 subsection (i) of section 211 of the Clean Air Act (as
11 in effect on the date of the enactment of this sub-
12 section) by the Administrator of the Environmental
13 Protection Agency under paragraph (4) of such sub-
14 section, and

15 “(2) the use of which is certified pursuant to
16 regulations issued by the Secretary.”

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect on the first day of the first
19 calendar quarter beginning after the date of the enactment
20 of this Act.

21 **SEC. 14734. REPEAL OF EXPIRED PROVISIONS.**

22 (a) PIGGY-BACK TRAILERS.—Section 4051 is amend-
23 ed by striking subsection (d) and by redesignating sub-
24 section (e) as subsection (d).

25 (b) DEEP SEABED MINING.—

1 (1) Subchapter F of chapter 36 (relating to tax
2 on removal of hard mineral resources from deep sea-
3 bed) is hereby repealed.

4 (2) The table of subchapters for chapter 36 is
5 amended by striking the item relating to subchapter
6 F.

7 **Subtitle H—Administrative** 8 **Provisions**

9 **PART I—GENERAL PROVISIONS**

10 **SEC. 14801. REPEAL OF AUTHORITY TO DISCLOSE WHETH-**
11 **ER PROSPECTIVE JUROR HAS BEEN AU-**
12 **DITED.**

13 (a) IN GENERAL.—Subsection (h) of section 6103
14 (relating to disclosure to certain Federal officers and em-
15 ployees for purposes of tax administration, etc.) is amend-
16 ed by striking paragraph (5) and by redesignating para-
17 graph (6) as paragraph (5).

18 (b) CONFORMING AMENDMENT.—Paragraph (4) of
19 section 6103(p) is amended by striking “(h)(6)” each
20 place it appears and inserting “(h)(5)”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to judicial proceedings pending on,
23 or commenced after, the date of the enactment of this Act.

1 **SEC. 14802. CLARIFICATION OF STATUTE OF LIMITATIONS.**

2 (a) IN GENERAL.—Subsection (a) of section 6501
3 (relating to limitations on assessment and collection) is
4 amended by adding at the end the following new sentence:
5 “For purposes of this chapter, the term ‘return’ means
6 the return required to be filed by the taxpayer (and does
7 not include a return of any person from whom the tax-
8 payer has received an item of income, gain, loss, deduc-
9 tion, or credit).”

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to taxable years beginning after
12 the date of the enactment of this Act.

13 **SEC. 14803. CERTAIN NOTICES DISREGARDED UNDER PRO-**
14 **VISION INCREASING INTEREST RATE ON**
15 **LARGE CORPORATE UNDERPAYMENTS.**

16 (a) GENERAL RULE.—Subparagraph (B) of section
17 6621(c)(2) (defining applicable date) is amended by add-
18 ing at the end the following new clause:

19 “(iii) EXCEPTION FOR LETTERS OR
20 NOTICES INVOLVING SMALL AMOUNTS.—
21 For purposes of this paragraph, any letter
22 or notice shall be disregarded if the
23 amount of the deficiency or proposed defi-
24 ciency (or the assessment or proposed as-
25 sessment) set forth in such letter or notice
26 is not greater than \$100,000 (determined

1 by not taking into account any interest,
2 penalties, or additions to tax).”

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply for purposes of determining in-
5 terest for periods after December 31, 1995.

6 **SEC. 14804. CLARIFICATION OF AUTHORITY TO WITHHOLD**
7 **PUERTO RICO INCOME TAXES FROM SALA-**
8 **RIES OF FEDERAL EMPLOYEES.**

9 (a) IN GENERAL.—Subsection (c) of section 5517 of
10 title 5, United States Code, is amended by striking “or
11 territory or possession” and inserting “, territory, posses-
12 sion, or commonwealth”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall take effect on the date of the enact-
15 ment of this Act.

16 **PART II—TAX COURT PROCEDURES**

17 **SEC. 14811. OVERPAYMENT DETERMINATIONS OF TAX**
18 **COURT.**

19 (a) APPEAL OF ORDER.—Paragraph (2) of section
20 6512(b) (relating to jurisdiction to enforce) is amended
21 by adding at the end the following new sentence: “An
22 order of the Tax Court disposing of a motion under this
23 paragraph shall be reviewable in the same manner as a
24 decision of the Tax Court, but only with respect to the
25 matters determined in such order.”

1 (b) DENIAL OF JURISDICTION REGARDING CERTAIN
2 CREDITS AND REDUCTIONS.—Subsection (b) of section
3 6512 (relating to overpayment determined by Tax Court)
4 is amended by adding at the end the following new
5 paragraph:

6 “(4) DENIAL OF JURISDICTION REGARDING
7 CERTAIN CREDITS AND REDUCTIONS.—The Tax
8 Court shall have no jurisdiction under this sub-
9 section to restrain or review any credit or reduction
10 made by the Secretary under section 6402.”

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date of the enactment
13 of this Act.

14 **SEC. 14812. AWARDING OF ADMINISTRATIVE COSTS.**

15 (a) RIGHT TO APPEAL TAX COURT DECISION.—Sub-
16 section (f) of section 7430 (relating to right of appeal)
17 is amended by adding at the end the following new
18 paragraph:

19 “(3) APPEAL OF TAX COURT DECISION.—An
20 order of the Tax Court disposing of a petition under
21 paragraph (2) shall be reviewable in the same man-
22 ner as a decision of the Tax Court, but only with re-
23 spect to the matters determined in such order.”

24 (b) PERIOD FOR APPLYING TO IRS FOR COSTS.—
25 Subsection (b) of section 7430 (relating to limitations) is

1 amended by adding at the end the following new
2 paragraph:

3 “(5) PERIOD FOR APPLYING TO IRS FOR AD-
4 MINISTRATIVE COSTS.—An award may be made
5 under subsection (a) by the Internal Revenue Serv-
6 ice for reasonable administrative costs only if the
7 prevailing party files an application with the Inter-
8 nal Revenue Service for such costs before the 91st
9 day after the date on which the final decision of the
10 Internal Revenue Service as to the determination of
11 the tax, interest, or penalty is mailed to such party.”

12 (c) PERIOD FOR PETITIONING OF TAX COURT FOR
13 REVIEW OF DENIAL OF COSTS.—Paragraph (2) of section
14 7430(f) (relating to right of appeal) is amended—

15 (1) by striking “appeal to” and inserting “the
16 filing of a petition for review with”, and

17 (2) by adding at the end the following new sen-
18 tence: “If the Secretary sends by certified or reg-
19 istered mail a notice of such decision to the peti-
20 tioner, no proceeding in the Tax Court may be initi-
21 ated under this paragraph unless such petition is
22 filed before the 91st day after the date of such
23 mailing.”

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to civil actions or proceedings com-
3 menced after the date of the enactment of this Act.

4 **SEC. 14813. REDETERMINATION OF INTEREST PURSUANT**
5 **TO MOTION.**

6 (a) IN GENERAL.—Paragraph (3) of section 7481(c)
7 (relating to jurisdiction over interest determinations) is
8 amended by striking “petition” and inserting “motion”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall take effect on the date of the enactment
11 of this Act.

12 **SEC. 14814. APPLICATION OF NET WORTH REQUIREMENT**
13 **FOR AWARDS OF LITIGATION COSTS.**

14 (a) IN GENERAL.—Paragraph (4) of section 7430(c)
15 (defining prevailing party) is amended by adding at the
16 end the following new subparagraph:

17 “(C) SPECIAL RULES FOR APPLYING NET
18 WORTH REQUIREMENT.—In applying the re-
19 quirements of section 2412(d)(2)(B) of title 28,
20 United States Code, for purposes of subpara-
21 graph (A)(iii) of this paragraph—

22 “(i) the net worth limitation in clause
23 (i) of such section shall apply to—

1 “(I) an estate but shall be deter-
2 mined as of the date of the decedent’s
3 death, and

4 “(II) a trust but shall be deter-
5 mined as of the last day of the taxable
6 year involved in the proceeding, and

7 “(ii) individuals filing a joint return
8 shall be treated as 1 individual for pur-
9 poses of clause (i) of such section, except
10 in the case of a spouse relieved of liability
11 under section 6013(e).”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to proceedings commenced after
14 the date of the enactment of this Act.

15 **PART III—AUTHORITY FOR CERTAIN**
16 **COOPERATIVE AGREEMENTS**

17 **SEC. 14821. COOPERATIVE AGREEMENTS WITH STATE TAX**
18 **AUTHORITIES.**

19 (a) GENERAL RULE.—Chapter 77 (relating to mis-
20 cellaneous provisions) is amended by adding at the end
21 the following new section:

22 **“SEC. 7524. COOPERATIVE AGREEMENTS WITH STATE TAX**
23 **AUTHORITIES.**

24 “(a) AUTHORIZATION OF AGREEMENTS.—The Sec-
25 retary is hereby authorized to enter into cooperative agree-

1 ments with State tax authorities for purposes of enhancing
2 joint tax administration. Such agreements may provide
3 for—

4 “(1) joint filing of Federal and State income
5 tax returns,

6 “(2) single processing of such returns,

7 “(3) joint collection of taxes (other than Fed-
8 eral income taxes), and

9 “(4) such other provisions as may enhance joint
10 tax administration.

11 “(b) SERVICES ON REIMBURSABLE BASIS.—Any
12 agreement under subsection (a) may require reimburse-
13 ment for services provided by either party to the agree-
14 ment.

15 “(c) AVAILABILITY OF FUNDS.—Any funds appro-
16 priated for purposes of the administration of this title
17 shall be available for purposes of carrying out the Sec-
18 retary’s responsibility under an agreement entered into
19 under subsection (a). Any reimbursement received pursu-
20 ant to such an agreement shall be credited to the amount
21 so appropriated.

22 “(d) STATE TAX AUTHORITY.—For purposes of this
23 section, the term ‘State tax authority’ means agency,
24 body, or commission referred to in section 6103(d)(1).”

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for chapter 77 is amended by adding at the end the follow-
 3 ing new item:

“Sec. 7524. Cooperative agreements with State tax authorities.”

4 **TITLE XV—MEDICARE**

[Text to be supplied.]

5 **TITLE XVI—TRANSFORMATION** 6 **OF THE MEDICAID PROGRAM**

7 **SEC. 16000. SHORT TITLE.**

8 This title may be cited as the “Medicaid Trans-
 9 formation Act of 1995”.

10 **SEC. 16001. TRANSFORMATION OF MEDICAID PROGRAM.**

11 The Social Security Act is amended by adding at the
 12 end the following new title:

13 **“TITLE XXI—MEDIGRANT PROGRAM FOR LOW-** 14 **INCOME INDIVIDUALS AND FAMILIES**

“TABLE OF CONTENTS OF TITLE

“Sec. 2100. Purpose; State MediGrant plans.

“PART A—OBJECTIVES, GOALS, AND PERFORMANCE UNDER STATE PLANS

“Sec. 2101. Description of strategic objectives and performance goals.

“Sec. 2102. Annual reports.

“Sec. 2103. Periodic, independent evaluations.

“Sec. 2104. Description of process for MediGrant plan development.

“Sec. 2105. Consultation in MediGrant plan development.

“Sec. 2106. MediGrant Task Force.

“PART B—ELIGIBILITY, BENEFITS, AND SET-ASIDES

“Sec. 2111. General description of eligibility and benefits.

“Sec. 2112. Set-asides of funds for population groups.

“Sec. 2113. Premiums and cost-sharing.

“Sec. 2114. Description of process for developing capitation payment rates.

“Sec. 2115. Construction.

“Sec. 2116. Limitations on causes of action.

“PART C—PAYMENTS TO STATES

“Sec. 2121. Allotment of funds among States.

“Sec. 2122. Payments to States.

“Sec. 2123. Limitation on use of funds; disallowance.

“PART D—PROGRAM INTEGRITY AND QUALITY

“Sec. 2131. Use of audits to achieve fiscal integrity.

“Sec. 2132. Fraud prevention program.

“Sec. 2133. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers.

“Sec. 2134. State MediGrant fraud control units.

“Sec. 2135. Recoveries from third parties and others.

“Sec. 2136. Assignment of rights of payment.

“Sec. 2137. Quality assurance standards for nursing facilities.

“Sec. 2138. Other provisions promoting program integrity.

“PART E—ESTABLISHMENT AND AMENDMENT OF STATE MEDIGRANT PLANS

“Sec. 2151. Submittal and approval of MediGrant plans.

“Sec. 2152. Submittal and approval of plan amendments.

“Sec. 2153. Process for State withdrawal from program.

“Sec. 2154. Sanctions for substantial noncompliance.

“Sec. 2155. Secretarial authority.

“PART F—GENERAL PROVISIONS

“Sec. 2171. Definitions.

“Sec. 2172. Treatment of territories.

“Sec. 2173. Description of treatment of Indian Health Service facilities.

“Sec. 2174. Application of certain general provisions.

“Sec. 2175. MediGrant master drug rebate agreements.

1 **“SEC. 2100. PURPOSE; STATE MEDIGRANT PLANS.**

2 “(a) **PURPOSE.**—The purpose of this title is to pro-
3 vide block grants to States to enable them to provide medi-
4 cal assistance to low-income individuals and families in a
5 more effective, efficient, and responsive manner.

6 “(b) **STATE PLAN REQUIRED.**—A State is not eligible
7 for payment under section 2122 of this title unless the
8 State has submitted to the Secretary under part E a plan
9 (in this title referred to as a ‘MediGrant plan’) that—

1 “(1) sets forth how the State intends to use the
2 funds provided under this title to provide medical as-
3 sistance to needy individuals and families consistent
4 with the provisions of this title, and

5 “(2) is approved under such part.

6 “(c) CONTINUED APPROVAL.—An approved
7 MediGrant plan shall continue in effect unless and until—

8 “(1) the State amends the plan under section
9 2152,

10 “(2) the State terminates participation under
11 this title under section 2153, or

12 “(3) the Secretary finds substantial noncompli-
13 ance of the plan with the requirements of this title
14 under section 2154.

15 “(d) STATE ENTITLEMENT.—This title constitutes
16 budget authority in advance of appropriations Acts, and
17 represents the obligation of the Federal Government to
18 provide for the payment to States of amounts provided
19 under part C.

20 “PART A—OBJECTIVES, GOALS, AND PERFORMANCE
21 UNDER STATE PLANS

22 “SEC. 2101. DESCRIPTION OF STRATEGIC OBJECTIVES AND
23 PERFORMANCE GOALS.

24 “(a) DESCRIPTION.—A MediGrant plan shall include
25 a description of the strategic objectives and performance

1 goals the State has established for providing health care
2 services to low-income populations under this title, includ-
3 ing a general description of the manner in which the plan
4 is designed to meet these objectives and goals.

5 “(b) CERTAIN OBJECTIVES AND GOALS RE-
6 QUIRED.—A MediGrant plan shall include strategic objec-
7 tives and performance goals relating to rates of childhood
8 immunizations and reductions in infant mortality and
9 morbidity.

10 “(c) CONSIDERATIONS.—In specifying these objec-
11 tives and goals the State may consider factors such as the
12 following:

13 “(1) The State’s priorities with respect to such
14 areas as providing assistance to low-income popu-
15 lations.

16 “(2) The State’s priorities with respect to the
17 general public health and the health status of indi-
18 viduals eligible for assistance under the MediGrant
19 plan.

20 “(3) The State’s financial resources, the par-
21 ticular economic conditions in the State, and relative
22 adequacy of the health care infrastructure in dif-
23 ferent regions of the State.

24 “(d) PERFORMANCE MEASURES.—To the extent
25 practicable—

1 “(1) one or more performance goals shall be es-
2 tablished by the State for each strategic objective
3 identified in the MediGrant plan; and

4 “(2) the MediGrant plan shall describe, how
5 program performance will be—

6 “(A) measured through objective, inde-
7 pendently verifiable means, and

8 “(B) compared against performance goals,
9 in order to determine the State’s performance
10 under this title.

11 “(e) PERIOD COVERED.—

12 “(1) STRATEGIC OBJECTIVES.—The strategic
13 objectives shall cover a period of not less than 5
14 years and shall be updated and revised at least every
15 3 years.

16 “(2) PERFORMANCE GOALS.—The performance
17 goals shall be established for dates that are not more
18 than 3 years apart.

19 **“SEC. 2102. ANNUAL REPORTS.**

20 “(a) IN GENERAL.—In the case of a State with a
21 MediGrant plan that is in effect for part or all of a fiscal
22 year, no later than March 31 following such fiscal year
23 (or March 31, 1998, in the case of fiscal year 1996) the
24 State shall prepare and submit to the Secretary and the

1 Congress a report on program activities and performance
2 under this title for such fiscal year.

3 “(b) CONTENTS.—Each annual report under this sec-
4 tion for a fiscal year shall include the following:

5 “(1) EXPENDITURE AND BENEFICIARY SUM-
6 MARY.—

7 “(A) INITIAL SUMMARY.—For the report
8 for fiscal year 1997 (and, if applicable, fiscal
9 year 1996), a summary of all expenditures
10 under the MediGrant plan during the fiscal
11 year (and during any portions of fiscal year
12 1996 during which the MediGrant plan was in
13 effect under this title) as follows:

14 “(i) Aggregate medical assistance ex-
15 penditures, disaggregated to the extent re-
16 quired to determine compliance with the
17 set-aside requirements of subsections (a)
18 through (c) section 2112 and to compute
19 the case mix index under section
20 2121(d)(3).

21 “(ii) For each general category of eli-
22 gible individuals (specified in subsection
23 (c)(1), aggregate medical assistance ex-
24 penditures and the total and average num-

1 ber of eligible individuals under the
2 MediGrant plan.

3 “(iii) By each general category of eli-
4 gible individuals, total expenditures for
5 each of the categories of health care items
6 and services (specified in subsection (c)(2))
7 which are covered under the MediGrant
8 plan and provided on a fee-for-service
9 basis.

10 “(iv) By each general category of eli-
11 gible individuals, total expenditures for
12 payments to capitated health care organi-
13 zations (as defined in section 2114(c)(1)).

14 “(v) Total administrative expendi-
15 tures.

16 “(B) SUBSEQUENT SUMMARIES.—For re-
17 ports for each succeeding fiscal year, a sum-
18 mary of—

19 “(i) all expenditures under the
20 MediGrant plan consistent with the report-
21 ing format specified by the MediGrant
22 Task Force under section 2106(d)(1), and

23 “(ii) the total and average number of
24 eligible individuals under the MediGrant

1 plan for each general category of eligible
2 individuals..

3 “(2) UTILIZATION SUMMARY.—

4 “(A) INITIAL SUMMARY.—For the report
5 for fiscal year 1997 (and, if applicable, fiscal
6 year 1996), summary statistics on the utiliza-
7 tion of health care services under the
8 MediGrant plan during the year (and during
9 any portions of fiscal year 1996 during which
10 the MediGrant plan was in effect under this
11 title) as follows:

12 “(i) For each general category of eli-
13 gible individuals and for each of the cat-
14 egories of health care items and services
15 which are covered under the MediGrant
16 plan and provided on a fee-for-service
17 basis, the number and percentage of per-
18 sons who received such a type of service or
19 item during the period covered by the re-
20 port.

21 “(ii) Summary of health care utiliza-
22 tion data reported to the State by
23 capitated health care organizations.

24 “(B) SUBSEQUENT SUMMARIES.—For re-
25 ports for each succeeding fiscal year, summary

1 statistics on the utilization of health care serv-
2 ices under the MediGrant plan consistent with
3 the reporting format specified by the
4 MediGrant Task Force under section
5 2106(d)(1).

6 “(3) ACHIEVEMENT OF PERFORMANCE
7 GOALS.—With respect to each performance goal es-
8 tablished under section 2101 and applicable to the
9 year involved—

10 “(A) a brief description of the goal;

11 “(B) data on the actual performance with
12 respect to the goal;

13 “(C) a review of the extent to which the
14 goal was achieved, based on such data; and

15 “(D) where a performance goal has not
16 been met—

17 “(i) why the goal was not met, and

18 “(ii) actions to be taken in response
19 to such performance (including adjust-
20 ments in performance goals or program ac-
21 tivities for subsequent years).

22 “(4) PROGRAM EVALUATIONS.—A summary of
23 the findings of evaluations under section 2103 com-
24 pleted during the fiscal year covered by the report.

1 “(5) FRAUD AND ABUSE AND QUALITY CON-
2 TROL ACTIVITIES.—A general description of the
3 State’s activities under part D to detect and deter
4 fraud and abuse and to assure quality of services
5 provided under the program.

6 “(6) PLAN ADMINISTRATION.—

7 “(A) A description of the administrative
8 roles and responsibilities of entities in the State
9 responsible for administration of this title.

10 “(B) Organizational charts for each entity
11 in the State primarily responsible for activities
12 under this title.

13 “(C) A brief description of each interstate
14 compact (if any) the State has entered into
15 with other States with respect to activities
16 under this title.

17 “(D) General citations to the State stat-
18 utes and administrative rules governing the
19 State’s activities under this title.

20 “(7) INPATIENT HOSPITAL PAYMENTS.—With
21 respect to inpatient hospital services provided under
22 the MediGrant plan on a fee-for-service basis, a de-
23 scription of the average amount paid per discharge
24 in the fiscal year compared either to the average
25 charge for such services or to the State’s estimate

1 of the average amount paid per discharge by com-
2 mercial health insurers in the State.

3 “(c) DEFINITIONS.—In this section:

4 “(1) Each of the following is a general category
5 of eligible individuals:

6 “(A) Children.

7 “(B) Blind or disabled adults under 65
8 years of age.

9 “(C) Persons 65 years of age or older.

10 “(D) Other adults.

11 “(2) The health care items and services de-
12 scribed in each subparagraph of section 2171(a)(1)
13 shall be considered a separate category of health
14 care items and services.

15 **“SEC. 2103. PERIODIC, INDEPENDENT EVALUATIONS.**

16 “(a) IN GENERAL.—During fiscal year 1998 and
17 every third fiscal year thereafter, each State shall provide
18 for an evaluation of the operation of its MediGrant plan
19 under this title.

20 “(b) INDEPENDENT.—Each such evaluation with re-
21 spect to an activity under the MediGrant plan shall be con-
22 ducted by an entity that is neither responsible under State
23 law for the submission of the State plan (or part thereof)
24 nor responsible for administering (or supervising the ad-
25 ministration of) the activity. If consistent with the pre-

1 vious sentence, such an entity may be a college or univer-
2 sity, a State agency, a legislative branch agency in a State,
3 or an independent contractor.

4 “(c) RESEARCH DESIGN.—Each such evaluation
5 shall be conducted in accordance with a research design
6 that is based on generally accepted models of survey de-
7 sign and sampling and statistical analysis.

8 **“SEC. 2104. DESCRIPTION OF PROCESS FOR MEDIGRANT**
9 **PLAN DEVELOPMENT.**

10 “Each MediGrant plan shall include a description of
11 the process under which the plan shall be developed and
12 implemented in the State (consistent with section 2105).

13 **“SEC. 2105. CONSULTATION IN MEDIGRANT PLAN DEVELOP-**
14 **MENT.**

15 “(a) PUBLIC NOTICE PROCESS.—

16 “(1) IN GENERAL.—Before submitting a
17 MediGrant plan or a plan amendment described in
18 paragraph (3) to the Secretary under part E, a
19 State shall provide—

20 “(A) public notice respecting the submittal
21 of the proposed plan or amendment, including
22 a general description of the plan or amendment;

23 “(B) a means for the public to inspect or
24 obtain a copy (at reasonable charge) of the pro-
25 posed plan or amendment; and

1 “(C) an opportunity for submittal and con-
2 sideration of public comments on the proposed
3 plan or amendment.

4 The previous sentence shall not apply to a revision
5 of a MediGrant plan (or revision of an amendment
6 to a plan) made by a State under section 2154(c)(1)
7 or to a plan amendment withdrawal described in sec-
8 tion 2152(c)(4).

9 “(2) CONTENTS OF NOTICE.—A notice under
10 paragraph (1)(A) for a proposed plan or amendment
11 shall include a description of—

12 “(A) the general purpose of the proposed
13 plan or amendment (including applicable effec-
14 tive dates),

15 “(B) where the public may inspect the pro-
16 posed plan or amendment,

17 “(C) how the public may obtain a copy of
18 the proposed plan or amendment and the appli-
19 cable charge (if any) for the copy, and

20 “(D) how the public may submit comments
21 on the proposed plan or amendment, including
22 any deadlines applicable to consideration of
23 such comments.

24 “(3) AMENDMENTS DESCRIBED.—An amend-
25 ment to a MediGrant plan described in this para-

1 graph is an amendment which makes a material and
2 substantial change in eligibility under the MediGrant
3 plan or the benefits provided under the plan.

4 “(4) PUBLICATION.—Notices under this sub-
5 section may be published (as selected by the State)
6 in one or more daily newspapers of general circula-
7 tion in the State or in any publication used by the
8 State to publish State statutes or rules.

9 “(5) COMPARABLE PROCESS.—A separate no-
10 tice, or notices, shall not be required under this sub-
11 section for a State if notice of the MediGrant plan
12 or an amendment to the plan will be provided under
13 a process specified in State law that is substantially
14 equivalent to the notice process specified in this sub-
15 section.

16 “(b) ADVISORY COMMITTEE.—

17 “(1) IN GENERAL.—Each State with a
18 MediGrant plan shall establish and maintain an ad-
19 visory committee.

20 “(2) CONSULTATION.—The State shall periodi-
21 cally consult with the advisory committee in the de-
22 velopment, revision, and monitoring the performance
23 of the MediGrant plan, including—

1 “(A) the development of strategic objec-
2 tives and performance goals under section
3 2101,

4 “(B) the annual report under section
5 2102, and

6 “(C) the research design under section
7 2103(c).

8 “(3) GEOGRAPHIC DIVERSITY.—The composi-
9 tion of the advisory committee shall be chosen in a
10 manner that assures some representation on the ad-
11 visory committee of the different general geographic
12 regions of the State. Nothing in the previous sen-
13 tence shall be construed as requiring proportional
14 representation of geographic areas in a State.

15 “(4) CONSTRUCTION.—Nothing in this title
16 shall be construed as preventing a State from estab-
17 lishing more than one advisory committee, including
18 specialized advisory committees that represent the
19 interests of specific population groups, provider
20 groups, or geographic areas.

21 **“SEC. 2106. MEDIGRANT TASK FORCE.**

22 “(a) IN GENERAL.—The Secretary shall provide for
23 the establishment of a MediGrant Task Force (in this sec-
24 tion referred to as the ‘Task Force’).

1 “(b) COMPOSITION.—The Task Force shall consist of
2 6 members appointed by the chair of the National Gov-
3 ernors Association and 6 members appointed by the vice
4 chair of the National Governors Association.

5 “(c) ADVISORY GROUP FOR TASK FORCE.—The Sec-
6 retary shall provide for the establishment of an advisory
7 group to assist the Task Force in carrying out its duties
8 under this section, consisting of one representative ap-
9 pointed by each of the following associations:

10 “(1) National Committee for Quality Assur-
11 ance.

12 “(2) Joint Commission for the Accreditation of
13 Healthcare Organizations.

14 “(3) Group Health Association of America.

15 “(4) American Managed Care and Review Asso-
16 ciation.

17 “(5) Association of State and Territorial Health
18 Officers.

19 “(6) American Medical Association.

20 “(7) American Hospital Association.

21 “(8) American Dental Association.

22 “(9) American College of Gerontology.

23 “(10) American Health Care Association.

24 “(11) An association identified by the Secretary
25 as representing the interests of disabled individuals.

1 “(12) An association identified by the Secretary
2 as representing the interests of children.

3 “(13) An association identified by the Secretary
4 as representing the interests of the elderly.

5 “(14) An association identified by the Secretary
6 as representing the interests of mentally ill individ-
7 uals.

8 Any reference in this subsection to a particular group shall
9 be deemed a reference to any successor to such group.

10 “(d) DUTIES.—

11 “(1) FORMAT FOR EXPENDITURE AND UTILIZA-
12 TION SUMMARIES.—The Task Force shall specify, by
13 not later than December 31, 1996, the format of ex-
14 penditure summaries and utilization summaries re-
15 quired under section 2102. Such format may provide
16 for the reporting of different information from that
17 required under section 2102(a), but shall include the
18 reporting of at least the information described in
19 section 2102(b)(1)(A)(i).

20 “(2) MODELS AND SUGGESTIONS.—The Task
21 Force shall study and report to Congress and the
22 States, by not later than April 1, 1997, rec-
23 ommendations on the following:

24 “(A) Recommended models for strategic
25 objectives and performance goals for consider-

1 ation by States in the development of such ob-
2 jectives and goals under section 2102, including
3 alternative models for each of the objectives and
4 goals described in section 2101(b).

5 “(B) For each suggested model for a stra-
6 tegic objective or performance goal suggested
7 methodologies for States to consider in measur-
8 ing and verifying the objective or goal.

9 “(C) An assessment of the potential useful-
10 ness to States of quality assurance safeguards,
11 utilization data sets, and accreditation pro-
12 grams that are used or under development in
13 the private sector.

14 “(D) Recommended designs and evaluation
15 methodologies for consideration by States in
16 providing for independent evaluations under
17 section 2103.

18 “(3) CONSTRUCTION.—Nothing in this sub-
19 section shall be construed as requiring a State to
20 adopt any of the strategic objectives or performance
21 goals suggested under paragraph (2).

22 “(e) ADMINISTRATIVE ASSISTANCE.—Administrative
23 support for the Task Force shall be provided by the Agen-
24 cy for Health Care Policy and Research (or, in the absence
25 of such Agency, the Secretary).

1 “PART B—ELIGIBILITY, BENEFITS, AND SET-ASIDES

2 “SEC. 2111. GENERAL DESCRIPTION OF ELIGIBILITY AND
3 BENEFITS.

4 “(a) IN GENERAL.—Each MediGrant plan shall in-
5 clude a description (consistent with this title) of the fol-
6 lowing:

7 “(1) ELIGIBLE POPULATION.—The population
8 eligible for medical assistance under the plan, in-
9 cluding—

10 “(A) any limitations on categories of such
11 individuals;

12 “(B) any limitations as to the duration of
13 eligibility;

14 “(C) any eligibility standards relating to
15 age, income (including any standards relating
16 to spenddowns), residency, resources, disability
17 status, immigration status, or employment sta-
18 tus of individuals;

19 “(D) methods of establishing (and continu-
20 ing) eligibility and enrollment (including the
21 methodology for computing family income);

22 “(E) the eligibility standards in the plan
23 that protect the income and resources of a mar-
24 ried individual who is living in the community
25 and whose spouse is residing in an institution

1 in order to prevent the impoverishment of the
2 community spouse; and

3 “(F) any other standards relating to eligi-
4 bility for medical assistance under the plan.

5 “(2) SCOPE OF ASSISTANCE.—The amount, du-
6 ration, and scope of health care services and items
7 covered under the plan, including differences among
8 different eligible population groups.

9 “(3) DELIVERY METHOD.—The State’s ap-
10 proach to delivery of medical assistance, including a
11 general description of—

12 “(A) the use (or intended use) of vouchers,
13 fee-for-service, or managed care arrangements
14 (such as capitated health care plans, case man-
15 agement, and case coordination), and

16 “(B) utilization control systems.

17 “(4) FEE-FOR-SERVICE BENEFITS.—To the ex-
18 tent that medical assistance is furnished on a fee-
19 for-service basis—

20 “(A) how the State determines the quali-
21 fications of health care providers eligible to pro-
22 vide such assistance, and

23 “(B) how the State determines rates of re-
24 imbursement for providing such assistance.

1 “(5) COST-SHARING.—Beneficiary cost-sharing
2 (if any), including variations in such cost-sharing by
3 population group or type of service and financial re-
4 sponsibilities of parents of recipients under 21 years
5 of age and the spouses of recipients.

6 “(6) UTILIZATION INCENTIVES.—Incentives or
7 requirements (if any) to encourage the appropriate
8 utilization of services.

9 “(7) TREATMENT OF HEALTH CENTERS.—

10 “(A) IN GENERAL.—In the case of a State
11 in which one or more health centers is located,
12 the MediGrant plan shall include a description
13 of—

14 “(i) what provision (if any) has been
15 made for payment for items and services
16 furnished by health centers, and

17 “(ii) the manner in which medical as-
18 sistance for low-income eligible individuals
19 who received health care services at health
20 centers on or before the date of the enact-
21 ment of this title may be provided, as de-
22 termined by the State in consultation with
23 the health centers in the State.

1 “(B) HEALTH CENTER DEFINED.—For
2 purposes of subparagraph (A), the term ‘health
3 center’ means an entity that—

4 “(i) is receiving a grant under section
5 329, 330, 340, or 340A of the Public
6 Health Service Act; or

7 “(ii) based on the recommendation of
8 the Health Resources and Services Admin-
9 istration within the Public Health Service,
10 was determined by the Secretary to meet
11 the requirements to receive such a grant.

12 “(8) SUPPORT FOR CERTAIN HOSPITALS.—

13 “(A) IN GENERAL.—With respect to hos-
14 pitals described in subparagraph (B) located in
15 the State, the MediGrant plan shall includes a
16 description—

17 “(i) of the extent to which provisions
18 have been made for expenditures for items
19 and services furnished by such hospitals
20 and covered under the plan, and

21 “(ii) for individuals who (I) are en-
22 rolled for benefits for covered services
23 under the MediGrant plan and (II) were
24 previously receiving benefits for such serv-
25 ices under the medicaid program by or

1 through such hospitals, where or how they
2 will receive benefits for such services under
3 the MediGrant plan if the MediGrant plan
4 does not permit such individuals to obtain
5 benefits for those services by or through
6 such hospitals.

7 “(B) HOSPITALS DESCRIBED.—For pur-
8 poses of subparagraph (A), a hospital described
9 in this subparagraph is a subsection (d) hos-
10 pital (as defined in section 1886(d)(1)(B)) that
11 is described in clauses (i) and (ii) of section
12 340B(a)(4)(L) of the Public Health Service
13 Act.

14 “(b) IMMUNIZATIONS FOR CHILDREN.—The
15 MediGrant plan shall provide medical assistance for im-
16 munizations for children eligible for any medical assist-
17 ance under the MediGrant plan, in accordance with a
18 schedule for immunizations established by the Health De-
19 partment of the State in consultation with the individuals
20 and entities in the State responsible for the administration
21 of the plan.

22 “(c) EQUAL PAYMENT RATES FOR RURAL PROVID-
23 ERS.—A State with a MediGrant plan shall establish pay-
24 ment rates for all services of rural providers that are com-
25 parable to the payment rates established for like services

1 of such type of providers not in rural areas; except that
2 a State may provide for incentive payments to attract and
3 retain providers to medically underserved areas.

4 “(d) PREEXISTING CONDITION EXCLUSIONS.—Not-
5 withstanding any other provision of this title—

6 “(1) a MediGrant plan may not deny or exclude
7 coverage of any item or service for an eligible indi-
8 vidual for benefits under the MediGrant plan for
9 such item or service on the basis of a preexisting
10 condition; and

11 “(2) if a State contracts or makes other ar-
12 rangements (through the eligible individual or
13 through another entity) with a capitated health care
14 organization, insurer, or other entity, for the provi-
15 sion of items or services to eligible individuals under
16 the MediGrant plan and the State permits such or-
17 ganization, insurer, or other entity to exclude cov-
18 erage of a covered item or service on the basis of a
19 preexisting condition, the State shall provide,
20 through its MediGrant plan, for such coverage
21 (through direct payment or otherwise) for any such
22 covered item or service denied or excluded on the
23 basis of a preexisting condition.

1 **“SEC. 2112. SET-ASIDES OF FUNDS FOR POPULATION**
2 **GROUPS.**

3 “(a) FOR TARGETED LOW-INCOME FAMILIES.—

4 “(1) IN GENERAL.—Subject to subsection (e), a
5 MediGrant plan shall provide that the amount of
6 funds expended under the plan for medical assist-
7 ance for targeted low-income families (as defined in
8 paragraph (3)) for a fiscal year shall be not less
9 than the minimum low-income-family percentage
10 specified in paragraph (2) of the total funds ex-
11 pended under the plan for all medical assistance for
12 the fiscal year.

13 “(2) MINIMUM LOW-INCOME-FAMILY PERCENT-
14 AGE.—The minimum low-income-family percentage
15 specified in this paragraph for a State is equal to 85
16 percent of the average percentage of the expendi-
17 tures under title XIX for medical assistance in the
18 State during Federal fiscal years 1992 through 1994
19 which were attributable to expenditures for medical
20 assistance for mandated benefits (as defined in sub-
21 section (h)) furnished to individuals—

22 “(A) who (at the time of furnishing the as-
23 sistance) were under 65 years of age,

24 “(B) whose coverage (at such time) under
25 a State plan under title XIX was required
26 under Federal law, and

1 “(C) whose eligibility for such coverage (at
2 such time) was not on a basis directly related
3 to disability status (including being blind).

4 “(3) TARGETED LOW-INCOME FAMILY DE-
5 FINED.—In this subsection, the term ‘targeted low-
6 income family’ means a family (which may be an in-
7 dividual)—

8 “(A) which includes a child or a pregnant
9 woman, and

10 “(B) the income of which does not exceed
11 185 percent of the poverty line applicable to a
12 family of the size involved.

13 “(b) FOR LOW-INCOME ELDERLY.—

14 “(1) SET-ASIDES.—Subject to subsection (e)—

15 “(A) GENERAL SET-ASIDE.—A MediGrant
16 plan shall provide that the amount of funds ex-
17 pended under the plan for medical assistance
18 for eligible low-income individuals 65 years of
19 age or older for a fiscal year shall be not less
20 than the minimum low-income-elderly percent-
21 age specified in paragraph (2)(A) of the total
22 funds expended under the plan for all medical
23 assistance for the fiscal year.

24 “(B) SET-ASIDE FOR MEDICARE PREMIUM
25 ASSISTANCE.—A MediGrant plan shall provide

1 that the amount of funds expended under the
2 plan for medical assistance for medicare cost-
3 sharing described in section 2171(c)(1) for a
4 fiscal year shall be not less than the minimum
5 medicare premium assistance percentage speci-
6 fied in paragraph (2)(B) of the total funds ex-
7 pended under the plan for all medical assistance
8 for the fiscal year.

9 “(2) MINIMUM PERCENTAGES.—

10 “(A) FOR GENERAL SET-ASIDE.—The min-
11 imum low-income-elderly percentage specified in
12 this subparagraph for a State is equal to 85
13 percent of the average percentage of the ex-
14 penditures under title XIX for medical assist-
15 ance in the State during Federal fiscal years
16 1992 through 1994 which was attributable to
17 expenditures for medical assistance for man-
18 dated benefits furnished to individuals—

19 “(i) whose eligibility for such assist-
20 ance was based on their being 65 years of
21 age or older; and

22 “(ii)(I) whose coverage (at such time)
23 under a State plan under title XIX was re-
24 quired under Federal law, or (II) who (at

1 such time) were residents of a nursing fa-
2 cility.

3 “(B) FOR SET-ASIDE FOR MEDICARE PRE-
4 MIUM ASSISTANCE.—The minimum medicare
5 premium assistance percentage specified in this
6 subparagraph for a State is equal to 85 percent
7 of the average percentage of the expenditures
8 under title XIX for medical assistance in the
9 State during Federal fiscal years 1992 through
10 1994 which was attributable to expenditures for
11 medical assistance for medicare premiums de-
12 scribed in section 1905(p)(3)(A) for individuals
13 whose coverage (at such time) for such assist-
14 ance for such premiums under a State plan
15 under title XIX was required under Federal
16 law.

17 “(C) FOR LOW-INCOME DISABLED PERSONS.—

18 “(1) IN GENERAL.—Subject to subsection (e), a
19 MediGrant plan shall provide that the percentage of
20 funds expended under the plan for medical assist-
21 ance for eligible low-income individuals who are
22 under 65 years of age and are eligible for such as-
23 sistance on the basis of a disability (including being
24 blind) for a fiscal year is not less than the minimum
25 low-income-disabled percentage specified in para-

graph (2) of the total funds expended under the plan for medical assistance for the fiscal year.

“(2) MINIMUM LOW-INCOME-DISABLED PERCENTAGE.—The minimum low-income-disabled percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

“(A) whose coverage (at such time) under a State plan under title XIX was required under Federal law, and

“(B) whose coverage (at such time) was on a basis directly related to disability status (including being blind).

“(d) USE OF RESIDUAL FUNDS.—

“(1) IN GENERAL.—Subject to limitations on payment under section 2123, any funds not required to be expended under the set-asides under the previous subsections may be expended under the MediGrant plan for any of the following:

“(A) ADDITIONAL MEDICAL ASSISTANCE.—

Medical assistance for eligible low-income indi-

1 viduals (as defined in section 2171(b)), in addi-
2 tion to any medical assistance made available
3 under a previous subsection.

4 “(B) MEDICALLY-RELATED SERVICES.—
5 Payment for medically-related services (as de-
6 fined in paragraph (2)).

7 “(C) ADMINISTRATION.—Payment for the
8 administration of the MediGrant plan.

9 “(2) MEDICALLY-RELATED SERVICES DE-
10 FINED.—In this title, the term ‘medically-related
11 services’ means services reasonably related to, or in
12 direct support of, the State’s attainment of one or
13 more of the strategic objectives and performance
14 goals established under section 2101, but does not
15 include items and services included on the list under
16 section 2171(a)(1) (relating to the definition of med-
17 ical assistance).

18 “(e) EXCEPTIONS TO MINIMUM SET-ASIDES.—

19 “(1) ALTERNATIVE MINIMUM SET-ASIDES.—

20 “(A) IN GENERAL.—A State may provide
21 in its MediGrant plan (through an amendment
22 to the plan) for a lower dollar amount of ex-
23 penditures than the minimum amounts specified
24 in any (or all) of paragraphs (2) of subsections

1 (a), (b), and (c) if State determines (and cer-
2 tifies to the Secretary) that—

3 “(i) the health care needs of the low-
4 income populations described in paragraph
5 (1) of the respective subsection who are eli-
6 gible for medical assistance under the plan
7 during the previous fiscal year (or medi-
8 care premium assistance needs described in
9 subsection (b)(1)(B)) can be reasonably
10 met without the expenditure of the
11 amounts otherwise required to be ex-
12 pended, and

13 “(ii) the performance goals estab-
14 lished under section 2101 relating to the
15 respective population can reasonably be
16 met with such lower amount of funds ex-
17 pended.

18 “(B) PERIOD OF APPLICATION.—The de-
19 termination and certification under subpara-
20 graph (A) shall be made for such period as a
21 State may request, but may not be made for a
22 period of more than 3 consecutive Federal fiscal
23 years (beginning with the first fiscal year for
24 which the lower amount is sought). A new de-
25 termination and certification must be made

1 under such paragraph for any subsequent pe-
2 riod.

3 “(C) NO EXCEPTION PERMITTED BEFORE
4 FISCAL YEAR 1998.—This paragraph may not
5 apply with respect to a State for a fiscal year
6 before fiscal year 1998.

7 “(2) INDEPENDENT CERTIFICATION OF COMPLI-
8 ANCE WITH GOALS.—

9 “(A) IN GENERAL.—For purposes of sec-
10 tion 2151(c), a MediGrant plan shall not be
11 considered to be in substantial violation of the
12 requirements of this section if the amount of
13 actual State expenditures specified in any (or
14 all) of paragraphs (1) of subsections (a), (b),
15 and (c) is lower than the minimum amounts
16 specified in any (or all) of paragraphs (2) of
17 subsections (a), (b), and (c) if an independent
18 actuary determines and certifies to the State
19 that the MediGrant plan is reasonably designed
20 to result in a level of expenditures which is con-
21 sistent with the requirements of such sub-
22 sections.

23 “(B) LIMIT ON VARIATION.—Subpara-
24 graph (A) shall not apply in the case of a
25 MediGrant plan for which the actual State ex-

penditures described in any (or all) of paragraphs (1) of subsections (a), (b), and (c) are less than 95 percent of the expenditures which would be made if the amount of State expenditures specified in any (or all) of such paragraphs was equal to the applicable minimum amount specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c).

“(3) TREATMENT OF STATES WITH NO OPTIONAL BENEFITS.—In the case of a State for which all expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 were expenditures for medical assistance for mandated benefits, ‘75 percent’ shall be substituted for ‘85 percent’ each place it appears in paragraphs (2) of subsections (a), (b), and (c).

“(f) COMPUTATIONS.—

“(1) MINIMUM PERCENTAGES.—States shall calculate the minimum percentages under subsections (a)(2), (b)(2), and (c)(2) in a reasonable manner consistent with reports submitted to the Secretary for the fiscal years involved.

“(2) EXCLUSION OF PAYMENTS FOR CERTAIN ALIENS.—For purposes of this section, medical assistance attributable to the exception provided under

1 section 1903(v)(2) shall not be considered to be ex-
2 penditures for medical assistance.

3 “(g) BENEFITS INCLUDED FOR PURPOSES OF COM-
4 PUTING SET ASIDES.—In this section, the term ‘man-
5 dated benefits’—

6 “(1) means medical assistance for items and
7 services described in section 1905(a) to the extent
8 such assistance with respect to such items and serv-
9 ices was required to be provided under title XIX,

10 “(2) includes medical assistance for medicare
11 cost-sharing only to the extent such assistance was
12 required to be provided under section
13 1902(a)(10)(E), and

14 “(3) does not include medical assistance attrib-
15 utable to disproportionate share payment adjust-
16 ments described in section 1923.

17 **“SEC. 2113. PREMIUMS AND COST-SHARING.**

18 “(a) IN GENERAL.—Subject to subsection (b), if any
19 charges are imposed under the MediGrant plan for cost-
20 sharing (as defined in subsection (d)), such cost-sharing
21 shall be pursuant to a public cost-sharing schedule.

22 “(b) LIMITATION ON PREMIUM AND CERTAIN COST-
23 SHARING FOR LOW-INCOME FAMILIES INCLUDING CHIL-
24 DREN OR PREGNANT WOMEN.—

1 “(1) IN GENERAL.—In the case of a family de-
2 scribed in paragraph (2)—

3 “(A) the plan shall not impose any pre-
4 mium, and

5 “(B) the plan shall not (except as provided
6 in subsection (c)(1)) impose any cost-sharing
7 with respect to primary and preventive care
8 services (as defined by the State) covered under
9 the MediGrant plan for children or pregnant
10 women unless such cost-sharing is nominal in
11 nature.

12 “(2) FAMILY DESCRIBED.—A family described
13 in this paragraph is a family (which may be an indi-
14 vidual) which—

15 “(A) includes a child or a pregnant
16 woman,

17 “(B) is made eligible for medical assistance
18 under the MediGrant plan, and

19 “(C) the income of which does not exceed
20 100 percent of the poverty line applicable to a
21 family of the size involved.

22 “(c) CERTAIN COST-SHARING PERMITTED.—Nothing
23 in this section shall be construed as preventing a
24 MediGrant plan (consistent with subsection (b))—

1 “(1) from imposing cost-sharing to discourage
2 the inappropriate use of emergency medical services
3 (delivered through a hospital emergency room, a
4 medical transportation provider, or otherwise);

5 “(2) from imposing premiums and cost-sharing
6 differentially in order to encourage the use of pri-
7 mary and preventive care and discourage unneces-
8 sary or less economical care;

9 “(3) from scaling cost-sharing in a manner that
10 reflects economic factors, employment status, and
11 family size;

12 “(4) from scaling cost-sharing based on the
13 availability to the individual or family of other
14 health insurance coverage; or

15 “(5) from scaling cost-sharing based on partici-
16 pation in employment training program, drug or al-
17 cohol abuse treatment, counseling programs, or
18 other programs promoting personal responsibility.

19 “(d) COST-SHARING DEFINED.—In this section, the
20 term ‘cost-sharing’ includes copayments, deductibles, coin-
21 surance, and other charges for the provision of health care
22 services.

1 **“SEC. 2114. DESCRIPTION OF PROCESS FOR DEVELOPING**
2 **CAPITATION PAYMENT RATES.**

3 “(a) IN GENERAL.—If a State contracts (or intends
4 to contract) with a capitated health care organization (as
5 defined in subsection (c)(1)) under which the State makes
6 a capitation payment (as defined in subsection (c)(2)) to
7 the organization for providing or arranging for the provi-
8 sion of medical assistance under the MediGrant plan for
9 a group of services (including at least inpatient hospital
10 services and physicians’ services), the plan shall include
11 a description of the following:

12 “(1) USE OF ACTUARIAL SCIENCE.—The extent
13 and manner in which the State uses actuarial
14 science—

15 “(A) to analyze and project health care ex-
16 penditures and utilization for individuals en-
17 rolled (or to be enrolled) in such an organiza-
18 tion under the MediGrant plan, and

19 “(B) to develop capitation payment rates,
20 including a brief description of the general
21 methodologies used by actuaries.

22 “(2) QUALIFICATIONS OF ORGANIZATIONS.—
23 The general qualifications (including any accredita-
24 tion, State licensure or certification, or provider net-
25 work standards) required by the State for participa-

1 tion of capitated health care organizations under the
2 MediGrant plan.

3 “(3) DISSEMINATION PROCESS.—The process
4 used by the State under subsection (b) and other-
5 wise to disseminate, before entering into contracts
6 with capitated health care organizations, actuarial
7 information to such organizations on the historical
8 fee-for-service costs (or, if not available, other recent
9 financial data associated with providing covered
10 services) and utilization associated with individuals
11 described in paragraph (1)(A).

12 “(b) PUBLIC NOTICE AND COMMENT.—Under the
13 MediGrant plan the State shall provide a process for pro-
14 viding, before the beginning of each contract year—

15 “(1) public notice of—

16 “(A) the amounts of the capitation pay-
17 ments (if any) made under the plan for the con-
18 tract year preceding the public notice, and

19 “(B)(i) the information described under
20 subsection (a)(1) with respect to capitation pay-
21 ments for the contract year involved or (ii) the
22 amounts of the capitation payments the State
23 expects to make for the contract year involved,

1 unless such information is designated as proprietary
2 and not subject to public disclosure under State law;
3 and

4 “(2) an opportunity for receiving public com-
5 ment on the amounts and information for which no-
6 tice is provided under paragraph (1).

7 “(c) DEFINITIONS.—In this title:

8 “(1) CAPITATED HEALTH CARE ORGANIZA-
9 TION.—The term ‘capitated health care organiza-
10 tion’ means a health maintenance organization or
11 any other entity (including a health insuring organi-
12 zation, managed care organization, prepaid health
13 plan, integrated service network, or similar entity)
14 which under State law is permitted to accept capita-
15 tion payments for providing (or arranging for the
16 provision of) a group of items and services including
17 at least inpatient hospital services and physicians’
18 services.

19 “(2) CAPITATION PAYMENT.—The term ‘capita-
20 tion payment’ means, with respect to payment, pay-
21 ment on a prepaid capitation basis or any other risk
22 basis to an entity for the entity’s provision (or ar-
23 ranging for the provision) of a group of items and
24 services (including at least inpatient hospital services
25 and physicians’ services).

1 **“SEC. 2115. CONSTRUCTION.**

2 “(a) NO FEDERAL ENTITLEMENT.—Nothing in this
3 title (including section 2112) shall be construed as creat-
4 ing an entitlement under Federal law in any individual
5 or category of individuals for medical assistance under a
6 MediGrant plan.

7 “(b) STATE FLEXIBILITY IN BENEFITS, PROVIDER
8 PAYMENTS, GEOGRAPHICAL COVERAGE AREA, AND SE-
9 LECTION OF PROVIDERS.—Nothing in this title (other
10 than section 2111(b)) shall be construed as requiring a
11 State—

12 “(1) to provide medical assistance for any par-
13 ticular items or services;

14 “(2) subject to section 2111(c), to provide for
15 any payments with respect to any specific health
16 care providers or any level of payments for any serv-
17 ices;

18 “(3) to provide for the same medical assistance
19 in all geographical areas or political subdivisions of
20 the State;

21 “(4) to provide that the medical assistance
22 made available to any individual eligible for medical
23 assistance must not be less in amount, duration, or
24 scope than the medical assistance made available to
25 any other such individual; or

1 “(5) to provide that any individual eligible for
2 medical assistance with respect to an item or service
3 may choose to obtain such assistance from any insti-
4 tution, agency, or person qualified to provide the
5 item or service.

6 “(c) STATE FLEXIBILITY WITH RESPECT TO MAN-
7 AGED CARE.—Nothing in this title shall be construed—

8 “(1) to limit a State’s ability to contract with,
9 on a capitated basis or otherwise, health care plans
10 or individual health care providers for the provision
11 or arrangement of medical assistance;

12 “(2) to limit a State’s ability to contract with
13 health care plans or other entities for case manage-
14 ment services or for coordination of medical assist-
15 ance; or

16 “(3) to restrict a State from establishing capi-
17 tation rates on the basis of competition among
18 health care plans or negotiations between the State
19 and one or more health care plans.

20 **“SEC. 2116. LIMITATIONS ON CAUSES OF ACTION.**

21 “(a) IN GENERAL.—Notwithstanding any other pro-
22 vision of this Act (including section 1130A), no person (in-
23 cluding an applicant, beneficiary, provider, or health plan)
24 shall have a cause of action under Federal law against
25 a State in relation to a State’s compliance (or failure to

1 comply) with the provisions of this title or of a MediGrant
2 plan.

3 “(b) NO EFFECT ON STATE LAW.—Nothing in sub-
4 section (a) may be construed as affecting any actions
5 brought under State law.

6 “PART C—PAYMENTS TO STATES

7 “SEC. 2121. ALLOTMENT OF FUNDS AMONG STATES.

8 “(a) ALLOTMENTS.—

9 “(1) COMPUTATION.—The Secretary shall pro-
10 vide for the computation of State obligation and out-
11 lay allotments in accordance with this section for
12 each fiscal year beginning with fiscal year 1996.

13 “(2) LIMITATION ON OBLIGATIONS.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graph (B), the Secretary shall not enter into
16 obligations with any State under this title for a
17 fiscal year in excess of the obligation allotment
18 for that State for the fiscal year under para-
19 graph (4). The sum of such obligation allot-
20 ments for all States in any fiscal year (exclud-
21 ing amounts carried over under subparagraph
22 (B) and excluding changes in allotments ef-
23 fected under paragraph (4)(D)) shall not exceed
24 the aggregate limit on new obligation authority
25 specified in paragraph (3) for that fiscal year.

1 “(B) ADJUSTMENTS.—

2 “(i) CARRYOVER OF ALLOTMENT PER-
3 MITTED.—If the amount of obligations en-
4 tered into under this part with a State for
5 quarters in a fiscal year is less than the
6 amount of the obligation allotment under
7 this section to the State for the fiscal year,
8 the amount of the difference shall be added
9 to the amount of the State obligation allot-
10 ment otherwise provided under this section
11 for the succeeding fiscal year.

12 “(ii) REDUCTION FOR POST-ENACT-
13 MENT NEW OBLIGATIONS UNDER TITLE
14 XIX IN FISCAL YEAR 1996.—The amount of
15 the obligation allotment otherwise provided
16 under this section for fiscal year 1996 for
17 a State shall be reduced by the amount of
18 the obligations entered into with respect to
19 the State under section 1903(a) after the
20 date of the enactment of this Act.

21 “(3) AGGREGATE LIMIT ON NEW OBLIGATION
22 AUTHORITY.—

23 “(A) IN GENERAL.—For purposes of this
24 subsection, subject to subparagraph (C), the
25 ‘aggregate limit on new obligation authority’,

1 for a fiscal year, is the pool amount under sub-
2 section (b) for the fiscal year, divided by the
3 payout adjustment factor (described in subpara-
4 graph (B)) for the fiscal year.

5 “(B) PAYOUT ADJUSTMENT FACTOR.—For
6 purposes of this subsection, the ‘payout adjust-
7 ment factor’—

8 “(i) for fiscal year 1996 is .950,

9 “(ii) for fiscal year 1997 is .986, and

10 “(iii) for a subsequent fiscal year is
11 .998.

12 “(C) TRANSITIONAL ADJUSTMENT FOR
13 PRE-ENACTMENT-OBLIGATION OUTLAYS.—In
14 order to account for pre-enactment-obligation
15 outlays described in paragraph (4)(C)(iv), in
16 determining the aggregate limit on new obliga-
17 tion authority under subparagraph (A) for fis-
18 cal year 1996, the pool amount for such fiscal
19 year is equal to—

20 “(i) the pool amount for such year,
21 reduced by

22 “(ii) \$24.624 billion.

23 “(4) OBLIGATION ALLOTMENTS.—

24 “(A) GENERAL RULE FOR 50 STATES AND
25 THE DISTRICT OF COLUMBIA.—Except as pro-

1 vided in this paragraph, the ‘obligation allot-
2 ment’ for any of the 50 States or the District
3 of Columbia for a fiscal year (beginning with
4 fiscal year 1997) is an amount that bears the
5 same ratio to the outlay allotment under sub-
6 section (c)(2) for such State or District (not
7 taking into account any adjustment due to an
8 election under paragraph (4)) for the fiscal year
9 as the ratio of—

10 “(i) the aggregate limit on new obliga-
11 tion authority (less the total of the obliga-
12 tion allotments under subparagraph (B))
13 for the fiscal year, to

14 “(ii) the pool amount (less the sum of
15 the outlay allotments for the territories)
16 for such fiscal year.

17 “(B) TERRITORIES.—The obligation allot-
18 ment for each of the Commonwealths and terri-
19 tories for a fiscal year is the outlay allotment
20 for such Commonwealth or territory (as deter-
21 mined under subsection (c)(5)) for the fiscal
22 year divided by the payout adjustment factor
23 for the fiscal year (as defined in paragraph
24 (3)(B)).

1 “(C) TRANSITIONAL RULE FOR FISCAL
2 YEAR 1996.—

3 “(i) IN GENERAL.—The obligation
4 amount for fiscal year 1996 for any State
5 (including the District, a Commonwealth,
6 or territory) is determined according to the
7 formula: $A = (B - C) / D$, where—

8 “(I) ‘A’ is the obligation amount
9 for such State;

10 “(II) ‘B’ is the outlay allotment
11 of such State for fiscal year 1996, as
12 determined under subsection (c);

13 “(III) ‘C’ is the amount of the
14 pre-enactment-obligation outlays (as
15 established for such State under
16 clause (ii)); and

17 “(IV) ‘D’ is the payout adjust-
18 ment factor for such fiscal year (as
19 defined in paragraph (3)(B)).

20 “(ii) PRE-ENACTMENT-OBLIGATION
21 OUTLAY AMOUNTS.—Within 30 days after
22 the date of the enactment of this title, the
23 Secretary shall estimate (based on the best
24 data available) and publish in the Federal
25 Register the amount of the pre-enactment-

1 obligation outlays (as defined in clause
2 (iv)) for each State (including the District,
3 Commonwealths, and territories). The total
4 of such amounts shall equal the dollar
5 amount specified in paragraph (3)(C)(ii).

6 “(iii) AGREEMENT.—The submission
7 of a MediGrant plan by a State under this
8 title is deemed to constitute the State’s ac-
9 ceptance of the obligation allotment limita-
10 tions under this subsection (including the
11 formula for computing the amount of such
12 obligation allotment).

13 “(iv) PRE-ENACTMENT-OBLIGATION
14 OUTLAYS DEFINED.—In this subsection,
15 the term ‘pre-enactment-obligation outlays’
16 means, for a State, the outlays of the Fed-
17 eral Government that result from obliga-
18 tions that have been incurred under title
19 XIX with respect to the State before the
20 date of the enactment of this title, but for
21 which payments to States have not been
22 made as of such date of enactment.

23 “(D) ADJUSTMENT TO REFLECT ADOPTION
24 OF ALTERNATIVE GROWTH FORMULA.—Any
25 State that has elected an alternative growth

1 formula under subsection (c)(4) which increases
2 or decreases the dollar amount of an outlay al-
3 lotment for a fiscal year is deemed to have in-
4 creased or decreased, respectively, its obligation
5 amount for such fiscal year by the amount of
6 such increase or decrease.

7 “(b) POOL OF AVAILABLE FUNDS.—

8 “(1) IN GENERAL.—For purposes of this sec-
9 tion, the ‘pool amount’ under this subsection for—

10 “(A) fiscal year 1996 is \$95.673 billion;

11 “(B) fiscal year 1997 is \$102.135 billion;

12 “(C) fiscal year 1998 is \$106.221 billion;

13 “(D) fiscal year 1999 is \$110.469 billion;

14 “(E) fiscal year 2000 is \$114.888 billion;

15 “(F) fiscal year 2001 is \$119.483 billion;

16 “(G) fiscal year 2002 is \$124.263 billion;

17 and

18 “(H) each subsequent fiscal year is the
19 pool amount under this paragraph for the pre-
20 vious fiscal year increased by the lesser of 4
21 percent or the annual percentage increase in
22 the consumer price index for all urban consum-
23 ers (U.S. city average) for the 12-month period
24 ending in June before the beginning of that
25 subsequent fiscal year.

1 “(2) NATIONAL MEDIGRANT GROWTH PERCENT-
2 AGE.—For purposes of this section for a fiscal year
3 (beginning with fiscal year 1997), the ‘national
4 MediGrant growth percentage’ is the percentage by
5 which—

6 “(A) the pool amount under paragraph (1)
7 for the fiscal year, exceeds

8 “(B) such pool amount for the previous
9 fiscal year.

10 “(c) STATE OUTLAY ALLOTMENTS.—

11 “(1) FISCAL YEAR 1996.—

12 “(A) IN GENERAL.—For each of the 50
13 States and the District of Columbia, the
14 amount of the State outlay allotment under this
15 subsection for fiscal year 1996 is, subject to
16 paragraph (4), equal to—

17 “(i) the total amount of Federal ex-
18 penditures made to the State under title
19 XIX for the 4 quarters in fiscal year 1994,
20 increased by

21 “(ii) the percentage by which (I)
22 \$95,529,490,500 (which represents the
23 total amount of outlay allotments for such
24 States and District for fiscal year 1996),
25 exceeds (II) \$83,213,431,458 (which rep-

1 resents Federal medicaid expenditures for
2 such States and District for fiscal year
3 1994).

4 “(B) COMPUTATION OF EXPENDITURES.—
5 The amount of Federal expenditures described
6 in subparagraph (A)(i) shall be computed, using
7 data reported on the HCFA Form 64 as of
8 September 1, 1995, based on—

9 “(i) the amount reported on line 11,
10 or

11 “(ii) on the amount reported on line 6
12 multiplied by the ratio of (I) the sum of
13 the amounts so reported on line 11 of such
14 Form for fiscal year 1994 for the 50
15 States and the District of Columbia, to
16 (II) the sum of the amounts so reported on
17 line 6 of such Form for fiscal year 1994
18 for such States and District,

19 whichever is greater.

20 “(C) LIMITATION ON ADJUSTMENT.—The
21 amount computed under subparagraph (B)
22 shall not be subject to adjustment (based on
23 any subsequent disallowances or otherwise).

24 “(2) COMPUTATION OF STATE OUTLAY ALLOT-
25 MENTS.—

1 “(A) IN GENERAL.—Subject to the suc-
2 ceeding provisions of this subsection, the
3 amount of the State outlay allotment under this
4 subsection for one of the 50 States and the Dis-
5 trict of Columbia for a fiscal year (beginning
6 with fiscal year 1997) is equal to the product
7 of—

8 “(i) the needs-based amount deter-
9 mined under subparagraph (B) for the
10 State for the fiscal year, and

11 “(ii) the scalar factor described in
12 subparagraph (C) for the fiscal year.

13 “(B) NEEDS-BASED AMOUNT.—The needs-
14 based amount under this subparagraph for a
15 State for a fiscal year is equal to the product
16 of—

17 “(i) the State’s aggregate expenditure
18 need for the fiscal year (as determined
19 under subsection (d)), and

20 “(ii) the State’s old Federal medical
21 assistance percentage (as defined in section
22 2122(d)) for the previous fiscal year (or, in
23 the case of fiscal year 1997, the Federal
24 medical assistance percentage determined

1 under section 1905(b) for fiscal year
2 1996).

3 “(C) SCALAR FACTOR.—The scalar factor
4 under this subparagraph for a fiscal year is
5 such proportion so that, when it is applied
6 under subparagraph (A)(ii) for the fiscal year
7 (taking into account the floors and ceilings
8 under paragraph (3)), the total of the outlay al-
9 lotments under this subsection for all the 50
10 States and the District of Columbia for the fis-
11 cal year (not taking into account any increase
12 in an outlay allotment for a fiscal year attrib-
13 utable to the election of an alternative growth
14 formula under paragraph (4)) is equal to the
15 amount by which (i) the pool amount for the
16 fiscal year (as determined under subsection
17 (b)), exceeds (ii) the sum of the outlay allot-
18 ments provided under paragraph (5) for the
19 Commonwealths and territories for the fiscal
20 year.

21 “(3) FLOORS AND CEILINGS.—

22 “(A) FLOORS.—In no case shall the
23 amount of the State outlay allotment under
24 paragraph (2) for a fiscal year be less than the
25 following:

1 “(i) FLOOR BASED ON PREVIOUS
2 YEAR’S OUTLAY ALLOTMENT.—102 percent
3 of the amount of the State outlay allot-
4 ment under this subsection for the pre-
5 vious fiscal year.

6 “(ii) FLOOR BASED ON OUTLAY AL-
7 LOTMENT GROWTH RATE IN FIRST
8 YEAR.—Beginning with fiscal year 1998,
9 in the case of a State for which the outlay
10 allotment under this subsection for fiscal
11 year 1997 exceeded its outlay allotment
12 under this subsection for the previous fis-
13 cal year by—

14 “(I) more than 125 percent of
15 the national MediGrant growth per-
16 centage for fiscal year 1997, 104 per-
17 cent of the amount of the State outlay
18 allotment under this subsection for
19 the previous fiscal year; or

20 “(II) less than 125 percent (but
21 more than 75 percent) of the national
22 MediGrant growth percentage for fis-
23 cal year 1997, 103 percent of the
24 amount of the State outlay allotment

1 under this subsection for the previous
2 fiscal year.

3 “(B) CEILING.—

4 “(i) IN GENERAL.—Subject to clause
5 (ii), in no case shall the amount of the
6 State outlay allotment under paragraph
7 (2) for a fiscal year be greater than the
8 product of—

9 “(I) the State outlay allotment
10 under this subsection for the State for
11 the preceding fiscal year, and

12 “(II) 133 percent of the national
13 MediGrant growth percentage (as de-
14 termined under subsection (b)(2)) for
15 the fiscal year involved.

16 “(ii) SPECIAL RULE.—For a fiscal
17 year after fiscal year 1997, in the case of
18 a State (among the 50 States and the Dis-
19 trict of Columbia) that is one of the 10
20 States with the lowest Federal MediGrant
21 spending per resident-in-poverty rates (as
22 determined under clause (iii)) for the fiscal
23 year, the reference in clause (i)(II) to ‘133
24 percent’ is deemed a reference to ‘150 per-
25 cent’.

1 “(iii) DETERMINATION OF FEDERAL
2 MEDIGRANT SPENDING PER RESIDENT-IN-
3 POVERTY RATE.—For purposes of clause
4 (ii), the ‘Federal MediGrant spending per
5 resident-in-poverty rate’ for a State for a
6 fiscal year is equal to—

7 “(I) the State’s outlay allotment
8 under this subsection for the previous
9 fiscal year (determined without regard
10 to paragraph (4)), divided by

11 “(II) the average annual number
12 of residents of the State in poverty
13 (as defined in subsection (d)(2)) with
14 respect to the fiscal year.

15 “(4) ELECTION OF ALTERNATIVE GROWTH
16 FORMULA.—

17 “(A) ELECTION.—In order to reduce vari-
18 ations in increases in outlay allotments over
19 time, any of the 50 States or the District of Co-
20 lumbia may elect (by notice provided to the Sec-
21 retary by not later than April 1, 1996) to adopt
22 an alternative growth rate formula under this
23 paragraph for the determination of the State’s
24 outlay allotment in fiscal year 1996 and for the

1 increase in the amount of such allotment in
2 subsequent fiscal years.

3 “(B) FORMULA.—The alternative growth
4 formula under this paragraph may be any for-
5 mula under which a portion of the State outlay
6 allotment for fiscal year 1996 under paragraph
7 (1) is deferred and applied to increase the
8 amount of its outlay allotment for one or more
9 subsequent fiscal years, so long as the total
10 amount of such increases for all such subse-
11 quent fiscal years does not exceed the amount
12 of the outlay allotment deferred from fiscal year
13 1996.

14 “(5) COMMONWEALTHS AND TERRITORIES.—
15 The outlay allotment for each of the Commonwealths
16 and territories for a fiscal year is the maximum
17 amount that could have been certified under section
18 1108(c) with respect to the Commonwealth or terri-
19 tory for the fiscal year with respect to title XIX, if
20 the national MediGrant growth percentage (as deter-
21 mined under subsection (b)(2)) for the fiscal year
22 had been substituted (beginning with fiscal year
23 1997) for the percentage increase referred to in sec-
24 tion 1108(c)(1)(B).

1 “(d) STATE AGGREGATE EXPENDITURE NEED DE-
2 TERMINED.—

3 “(1) IN GENERAL.—For purposes of subsection
4 (c), the ‘State aggregate expenditure need’ for a
5 State for a fiscal year is equal to the product of the
6 following 4 factors:

7 “(A) RESIDENTS IN POVERTY.—The aver-
8 age annual number of residents in poverty of
9 the State with respect to the fiscal year (as de-
10 termined under paragraph (2)).

11 “(B) CASE MIX INDEX.—The average of
12 the case mix indexes for the State (as deter-
13 mined under paragraph (3)) for the 3 most re-
14 cent fiscal years for which data are available,
15 but in no case less than .9 or greater than 1.15.

16 “(C) INPUT COST INDEX.—The average of
17 the input cost indexes for the State (as deter-
18 mined under paragraph (4)) for the 3 most re-
19 cent fiscal years for which data are available.

20 “(D) NATIONAL AVERAGE SPENDING PER
21 RESIDENT IN POVERTY.—The national average
22 spending per resident in poverty (as determined
23 under paragraph (5)).

24 “(2) RESIDENTS IN POVERTY.—In this sec-
25 tion—

1 “(A) IN GENERAL.—The term ‘average an-
2 nual number of residents in poverty’ means,
3 with respect to a State and a fiscal year, the
4 average annual number of residents in poverty
5 (as defined in subparagraph (B)) in the State
6 (based on data made generally available by the
7 Bureau of the Census from the Current Popu-
8 lation Survey) for the most recent 3-calendar-
9 year period (ending before the fiscal year) for
10 which such data are available.

11 “(B) RESIDENT IN POVERTY DEFINED.—
12 The term ‘resident in poverty’ means an indi-
13 vidual whose family income does not exceed the
14 poverty threshold (as such terms are defined by
15 the Office of Management and Budget and are
16 generally interpreted and applied by the Bureau
17 of the Census for the year involved).

18 “(3) CASE MIX INDEX.—

19 “(A) IN GENERAL.—In this subsection, the
20 ‘case mix index’ for a State for a fiscal year is
21 equal to—

22 “(i) the sum of—

23 “(I) the projected per recipient
24 expenditures with respect to elderly
25 individuals in the State for the fiscal

1 year (determined under subparagraph
2 (B)),

3 “(II) the projected per recipient
4 expenditures with respect to the blind
5 and disabled individuals in the State
6 for the fiscal year (determined under
7 subparagraph (C)), and

8 “(III) the projected per recipient
9 expenditures with respect to other in-
10 dividuals in the State (determined
11 under subparagraph (D));

12 divided by—

13 “(ii) the national average spending
14 per recipient determined under subpara-
15 graph (E) for the fiscal year involved.

16 “(B) PROJECTED PER RECIPIENT EXPEND-
17 ITURES FOR THE ELDERLY.—For purposes of
18 subparagraph (A)(I)(i), the ‘projected per recip-
19 ient expenditures with respect to elderly individ-
20 uals’ in a State for a fiscal year is equal to the
21 product of—

22 “(i) the national average per recipient
23 expenditures under this title in the 50
24 States and the District of Columbia for the
25 most recent fiscal year for which data are

1 available for individuals who are 65 years
2 of age or older, and

3 “(ii) the proportion, of all individuals
4 who received medical assistance under this
5 title in the State in the most recent fiscal
6 year referred to in clause (i), that were in-
7 dividuals described in such clause.

8 “(C) PROJECTED PER RECIPIENT EXPEND-
9 ITURES FOR THE BLIND AND DISABLED.—For
10 purposes of subparagraph (A)(i)(II), the ‘pro-
11 jected per recipient expenditures with respect to
12 blind and disabled individuals’ in a State for a
13 fiscal year is equal to the product of—

14 “(i) the national average per recipient
15 expenditures under this title in the 50
16 States and the District of Columbia for the
17 most recent fiscal year for which data are
18 available for individuals who are eligible
19 for medical assistance because they are
20 blind or disabled and under 65 years of
21 age, and

22 “(ii) the proportion, of all individuals
23 who received medical assistance under this
24 title in the State in the most recent fiscal

1 year referred to in clause (i), that were in-
2 dividuals described in such clause.

3 “(D) PROJECTED PER RECIPIENT EX-
4 PENDITURES FOR OTHER INDIVIDUALS.—For
5 purposes of subparagraph (A)(i)(III), the ‘pro-
6 jected per recipient expenditures with respect to
7 other individuals’ in a State for a fiscal year is
8 equal to the product of—

9 “(i) the national average per recipient
10 expenditures under this title in the 50
11 States and the District of Columbia for the
12 most recent fiscal year for which data are
13 available for individuals who are not de-
14 scribed in subparagraph (B)(i) or (C)(i),
15 and

16 “(ii) the proportion, of all individuals
17 who received medical assistance under this
18 title in the State in the most recent fiscal
19 year referred to in clause (i), that were in-
20 dividuals described in such clause.

21 “(E) NATIONAL AVERAGE SPENDING PER
22 RECIPIENT.—For purposes of this paragraph,
23 the ‘national average expenditures per recipient’
24 for a fiscal year is equal to the sum of—

1 “(i) the product of (I) the national av-
2 erage described in subparagraph (B)(i),
3 and (II) the proportion, of all individuals
4 who received medical assistance under this
5 title in any of the 50 States or the District
6 of Columbia in the fiscal year referred to
7 in such subparagraph, who are described
8 in such subparagraph;

9 “(ii) the product of (I) the national
10 average described in subparagraph (C)(i),
11 and (II) the proportion, of all individuals
12 who received medical assistance under this
13 title in any of the 50 States or the District
14 of Columbia in the fiscal year referred to
15 in such subparagraph, who are described
16 in such subparagraph; and

17 “(iii) the product of (I) the national
18 average described in subparagraph (D)(i),
19 and (II) the proportion, of all individuals
20 who received medical assistance under this
21 title in any of the 50 States or the District
22 of Columbia in the fiscal year referred to
23 in such subparagraph, who are described
24 in such subparagraph.

1 “(F) DETERMINATION OF NATIONAL AVER-
2 AGES AND PROPORTIONS.—

3 “(i) IN GENERAL.—The national aver-
4 ages per recipient and the proportions re-
5 ferred to in clauses (i) and (ii), respec-
6 tively, of subparagraphs (B), (C), and (D)
7 and subparagraph (E) shall be determined
8 by the Secretary using the most recent
9 data available.

10 “(ii) USE OF MEDICAID DATA.—If for
11 a fiscal year there is inadequate data to
12 compute such averages and proportions
13 based on expenditures and numbers of in-
14 dividuals receiving medical assistance
15 under this title, the Secretary may com-
16 pute such averages based on expenditures
17 and numbers of such individuals under
18 title XIX for the most recent fiscal year
19 for which data are available and, for this
20 purpose—

21 “(I) any reference in subpara-
22 graph (B)(i) to ‘individuals 65 years
23 of age or older’ is deemed a reference
24 to ‘individuals whose eligibility for

1 medical assistance is based on being
2 65 years of age or older’,

3 “(II) the reference in subpara-
4 graph (C)(i) to ‘and under 65 years of
5 age’ shall be considered to be deleted,
6 and

7 “(III) individuals whose basis for
8 eligibility for medical assistance was
9 reported as unknown shall not be
10 counted as individuals under subpara-
11 graph (D)(i).

12 “(4) INPUT COST INDEX.—

13 “(A) IN GENERAL.—In this section, the
14 ‘input cost index’ for a State for a fiscal year
15 is the sum of—

16 “(i) 0.15, and

17 “(ii) 0.85 multiplied by the ratio of
18 (I) the annual average wages for hospital
19 employees in the State for the fiscal year
20 (as determined under subparagraph (B)),
21 to (II) the annual average wages for hos-
22 pital employees in the 50 States and the
23 District of Columbia for such year (as de-
24 termined under such subparagraph).

1 “(B) DETERMINATION OF ANNUAL AVER-
2 AGE WAGES OF HOSPITAL EMPLOYEES.—The
3 Secretary shall provide for the determination of
4 annual average wages for hospital employees in
5 a State and, collectively, in the 50 States and
6 the District of Columbia for a fiscal year based
7 on the area wage index applicable to hospitals
8 under 1886(d)(2)(E) (or, if such index no
9 longer exists, a comparable index of hospital
10 wages) for discharges occurring during the fis-
11 cal year involved.

12 “(5) NATIONAL AVERAGE SPENDING PER RESI-
13 DENT IN POVERTY.—For purposes of this sub-
14 section, the ‘national average spending per resident
15 in poverty’—

16 “(A) for fiscal year 1997 is equal to—

17 “(i) the sum (for each of the 50
18 States and the District of Columbia) of the
19 total of the Federal and State expenditures
20 under title XIX for calendar quarters in
21 fiscal year 1994, increased by the percent-
22 age specified in subsection (c)(1)(A)(ii), di-
23 vided by

24 “(ii) the sum of the number of resi-
25 dents in poverty (as defined in paragraph

1 (2)(A)) for all of the 50 States and the
2 District of Columbia for fiscal year 1994;
3 “(B) for a succeeding fiscal year is equal
4 to the national average spending per resident in
5 poverty under this paragraph for the preceding
6 fiscal year increased by the national MediGrant
7 growth percentage (as defined in subsection
8 (b)(2)) for the fiscal year involved.

9 “(e) PUBLICATION OF OBLIGATION AND OUTLAY AL-
10 LOTMENTS.—

11 “(1) NOTICE OF PRELIMINARY ALLOTMENTS.—
12 Not later than April 1 before the beginning of each
13 fiscal year (beginning with fiscal year 1997), the
14 Secretary shall initially compute, after consultation
15 with the Comptroller General, and publish in the
16 Federal Register notice of the proposed obligation
17 and outlay allotments for each State under this sec-
18 tion (not taking into account subsection (a)(2)(B))
19 for the fiscal year. The Secretary shall include in the
20 notice a description of the methodology and data
21 used in deriving such allotments for the year.

22 “(2) REVIEW BY GAO.—The Comptroller Gen-
23 eral shall submit to Congress by not later than May
24 15 of each such fiscal year, a report analyzing such

1 allotments and the extent to which they comply with
2 the precise requirements of this section.

3 “(3) NOTICE OF FINAL ALLOTMENTS.—Not
4 later than July 1 before the beginning of each such
5 fiscal year, the Secretary, taking into consideration
6 the analysis contained in the report of the Comptrol-
7 ler General under paragraph (2), shall compute and
8 publish in the Federal Register notice of the final al-
9 lotments under this section (both taking into ac-
10 count and not taking into account subsection
11 (a)(2)(B)) for the fiscal year. The Secretary shall in-
12 clude in the notice a description of any changes in
13 such allotments from the initial allotments published
14 under paragraph (1) for the fiscal year and the rea-
15 sons for such changes. Once published under this
16 paragraph, the Secretary is not authorized to change
17 such allotments.

18 “(4) GAO REPORT ON FINAL ALLOTMENTS.—
19 The Comptroller General shall submit to Congress
20 by not later than August 1 of each such fiscal year,
21 a report analyzing the final allotments under para-
22 graph (3) and the extent to which they comply with
23 the precise requirements of this section.

1 **“SEC. 2122. PAYMENTS TO STATES.**

2 “(a) AMOUNT OF PAYMENT.—From the allotment of
3 a State under section 2121 for a fiscal year, subject to
4 the succeeding provisions of this title, the Secretary shall
5 pay to each State which has a MediGrant plan approved
6 under part E, for each quarter in the fiscal year—

7 “(1) an amount equal to the applicable Federal
8 medical assistance percentage (as defined in sub-
9 section (c)) of the total amount expended during
10 such quarter as medical assistance under the plan;
11 plus

12 “(2) an amount equal to the applicable Federal
13 medical assistance percentage of the total amount
14 expended during such quarter for medically-related
15 services (as defined in section 2112(e)(2)); plus

16 “(3) subject to section 2123(c)—

17 “(A) an amount equal to 90 percent of the
18 amounts expended during such quarter for the
19 design, development, and installation of infor-
20 mation systems and for providing incentives to
21 promote the enforcement of medical support or-
22 ders, plus

23 “(B) an amount equal to 75 percent of the
24 amounts expended during such quarter for
25 medical personnel, administrative support of
26 medical personnel, operation and maintenance

1 of information systems, modification of infor-
2 mation systems, quality assurance activities,
3 utilization review, medical and peer review,
4 anti-fraud activities, independent evaluations,
5 coordination of benefits, and meeting reporting
6 requirements under this title, plus

7 “(C) an amount equal to 50 percent of so
8 much of the remainder of the amounts ex-
9 pended during such quarter as are expended by
10 the State in the administration of the State
11 plan.

12 “(b) PAYMENT PROCESS.—

13 “(1) QUARTERLY ESTIMATES.—Prior to the be-
14 ginning of each quarter, the Secretary shall estimate
15 the amount to which a State will be entitled under
16 subsection (a) for such quarter, such estimates to be
17 based on (A) a report filed by the State containing
18 its estimate of the total sum to be expended in such
19 quarter in accordance with the provisions of such
20 subsections, and stating the amount appropriated or
21 made available by the State and its political subdivi-
22 sions for such expenditures in such quarter, and if
23 such amount is less than the State’s proportionate
24 share of the total sum of such estimated expendi-
25 tures, the source or sources from which the dif-

1 ference is expected to be derived, and (B) such other
2 investigation as the Secretary may find necessary.

3 “(2) PAYMENT.—

4 “(A) IN GENERAL.—The Secretary shall
5 then pay to the State, in such installments as
6 the Secretary may determine and in accordance
7 with section 6503(a) of title 31, United States
8 Code, the amount so estimated, reduced or in-
9 creased to the extent of any overpayment or
10 underpayment which the Secretary determines
11 was made under this section (or section 1903)
12 to such State for any prior quarter and with re-
13 spect to which adjustment has not already been
14 made under this subsection (or under section
15 1903(d)).

16 “(B) TREATMENT AS OVERPAYMENTS.—

17 Expenditures for which payments were made to
18 the State under subsection (a) shall be treated
19 as an overpayment to the extent that the State
20 or local agency administering such plan has
21 been reimbursed for such expenditures by a
22 third party pursuant to the provisions of its
23 plan in compliance with section 2135.

24 “(C) RECOVERY OF OVERPAYMENTS.—For

25 purposes of this subsection, when an overpay-

1 ment is discovered, which was made by a State
2 to a person or other entity, the State shall have
3 a period of 60 days in which to recover or at-
4 tempt to recover such overpayment before ad-
5 justment is made in the Federal payment to
6 such State on account of such overpayment.
7 Except as otherwise provided in subparagraph
8 (D), the adjustment in the Federal payment
9 shall be made at the end of the 60 days, wheth-
10 er or not recovery was made.

11 “(D) No ADJUSTMENT FOR
12 UNCOLLECTABLES.—In any case where the
13 State is unable to recover a debt which rep-
14 resents an overpayment (or any portion thereof)
15 made to a person or other entity on account of
16 such debt having been discharged in bankruptcy
17 or otherwise being uncollectable, no adjustment
18 shall be made in the Federal payment to such
19 State on account of such overpayment (or por-
20 tion thereof).

21 “(3) FEDERAL SHARE OF RECOVERIES.—The
22 pro rata share to which the United States is equi-
23 tably entitled, as determined by the Secretary, of the
24 net amount recovered during any quarter by the
25 State or any political subdivision thereof with re-

1 spect to medical assistance furnished under the
2 State plan shall be considered an overpayment to be
3 adjusted under this subsection.

4 “(4) TIMING OF OBLIGATION OF FUNDS.—
5 Upon the making of any estimate by the Secretary
6 under this subsection, any appropriations available
7 for payments under this section shall be deemed ob-
8 ligated.

9 “(5) DISALLOWANCES.—In any case in which
10 the Secretary estimates that there has been an over-
11 payment under this section to a State on the basis
12 of a claim by such State that has been disallowed by
13 the Secretary under section 1116(d), and such State
14 disputes such disallowance, the amount of the Fed-
15 eral payment in controversy shall, at the option of
16 the State, be retained by such State or recovered by
17 the Secretary pending a final determination with re-
18 spect to such payment amount. If such final deter-
19 mination is to the effect that any amount was prop-
20 erly disallowed, and the State chose to retain pay-
21 ment of the amount in controversy, the Secretary
22 shall offset, from any subsequent payments made to
23 such State under this title, an amount equal to the
24 proper amount of the disallowance plus interest on
25 such amount disallowed for the period beginning on

1 the date such amount was disallowed and ending on
2 the date of such final determination at a rate (deter-
3 mined by the Secretary) based on the average of the
4 bond equivalent of the weekly 90-day treasury bill
5 auction rates during such period.

6 “(c) APPLICABLE FEDERAL MEDICAL ASSISTANCE
7 PERCENTAGE DEFINED.—In this section, except as pro-
8 vided in subsection (f), the term ‘applicable Federal medi-
9 cal assistance percentage’ means, with respect to one of
10 the 50 States or the District of Columbia, at the State’s
11 or District’s option—

12 “(1) the old Federal medical assistance percent-
13 age (as determined in subsection (d)), or

14 “(2) the new Federal medical assistance per-
15 centage (as determined under subsection (e)) or, if
16 less, the old Federal medical assistance percentage
17 plus 10 percentage points.

18 “(d) OLD FEDERAL MEDICAL ASSISTANCE PER-
19 CENTAGE.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2) and subsection (f), the term ‘old Federal
22 medical assistance percentage’ for any State is 100
23 percent less the State percentage; and the State per-
24 centage is that percentage which bears the same
25 ratio to 45 percent as the square of the per capita

1 income of such State bears to the square of the per
2 capita income of the continental United States (in-
3 cluding Alaska) and Hawaii.

4 “(2) LIMITATION ON RANGE.—In no case shall
5 the old Federal medical assistance percentage be less
6 than 50 percent or more than 83 percent.

7 “(3) PROMULGATION.—The old Federal medical
8 assistance percentage for any State shall be deter-
9 mined and promulgated in accordance with the pro-
10 visions of section 1101(a)(8)(B).

11 “(e) NEW FEDERAL MEDICAL ASSISTANCE PER-
12 CENTAGE DEFINED.—

13 “(1) IN GENERAL.—

14 “(A) TERM DEFINED.—Except as provided
15 in paragraph (3) and subsection (f), the term
16 ‘new Federal medical assistance percentage’
17 means, for each of the 50 States and the Dis-
18 trict of Columbia, 100 percent reduced by the
19 product 0.39 and the ratio of—

20 “(i)(I) for each of the 50 States, the
21 total taxable resources (TTR) ratio of the
22 State specified in subparagraph (B), or

23 “(II) for the District of Columbia, the
24 per capita income ratio specified in sub-
25 paragraph (C),

1 to—

2 “(ii) the aggregate expenditure need
3 ratio of the State or District, as described
4 in subparagraph (D).

5 “(B) TOTAL TAXABLE RESOURCES (TTR)
6 RATIO.—For purposes of subparagraph
7 (A)(i)(I), the total taxable resources (TTR)
8 ratio for each of the 50 States is—

9 “(i) an amount equal to the most re-
10 cent 3-year average of the total taxable re-
11 sources (TTR) of the State, as determined
12 by the Secretary of the Treasury, divided
13 by

14 “(ii) an amount equal to the sum of
15 the 3-year averages determined under
16 clause (i) for each of the 50 States.

17 “(C) PER CAPITA INCOME RATIO.—For
18 purposes of subparagraph (A)(i)(II), the per
19 capita income ratio of the District of Columbia
20 is—

21 “(i) an amount equal to the most re-
22 cent 3-year average of the total personal
23 income of the District of Columbia, as de-
24 termined in accordance with the provisions
25 of section 1101(a)(8)(B), divided by

1 “(ii) an amount equal to the total per-
2 sonal income of the continental United
3 States (including Alaska) and Hawaii, as
4 determined under section 1101(a)(8)(B).

5 “(D) AGGREGATE EXPENDITURE NEED
6 RATIO.—For purposes of subparagraph (A),
7 with respect to each of the 50 States and the
8 District of Columbia for a fiscal year, the ag-
9 gregate expenditure need ratio is—

10 “(i) the State aggregate expenditure
11 need (as defined in section 2121(d)) for
12 the State for the fiscal year, divided by

13 “(ii) the such of such State aggregate
14 expenditure needs for the 50 States and
15 the District of Columbia for the fiscal year.

16 “(2) LIMITATION ON RANGE.—Except as pro-
17 vided in subsection (f), the new Federal medical as-
18 sistance percentage shall in no case be less than 40
19 percent or greater than 83 percent.

20 “(3) PROMULGATION.—The new Federal medi-
21 cal assistance percentage for any State shall be pro-
22 mulgated in a timely manner consistent with the
23 promulgation of the old Federal medical assistance
24 percentage under section 1101(a)(8)(B).

25 “(f) SPECIAL RULES.—For purposes of this title—

1 “(1) COMMONWEALTHS AND TERRITORIES.—In
2 the case of Puerto Rico, the Virgin Islands, Guam,
3 the Northern Mariana Islands, and American
4 Samoa, the old and new Federal medical assistance
5 percentages are 50 percent.

6 “(2) INDIAN HEALTH SERVICE FACILITIES.—

7 “(A) IN GENERAL.—The old and new Fed-
8 eral medical assistance percentages shall be 100
9 percent with respect to the amounts expended
10 as medical assistance for services which are re-
11 ceived through a facility described in subpara-
12 graph (B) of an Indian tribe or tribal organiza-
13 tion or through an Indian Health Service facil-
14 ity whether operated by the Indian Health
15 Service or by an Indian tribe or tribal organiza-
16 tion (as defined in section 4 of the Indian
17 Health Care Improvement Act).

18 “(B) FACILITY DESCRIBED.—For purposes
19 of subparagraph (A), a facility described in this
20 subparagraph is a facility of an Indian tribe
21 if—

22 “(i) the facility is located in a State
23 which, as of the date of the enactment of
24 this title, was not operating its State plan

1 under title XIX pursuant to a Statewide
2 waiver approved under section 1115,

3 “(ii) the facility is not an Indian
4 Health Service facility,

5 “(iii) the tribe owns at least 2 such
6 facilities, and

7 “(iv) the tribe has at least 50,000
8 members (as of the date of the enactment
9 of this title).

10 “(3) NO STATE MATCHING REQUIRED FOR CER-
11 TAIN EXPENDITURES.—In applying subsection (a)(1)
12 with respect to medical assistance provided to unlaw-
13 ful aliens pursuant to the exception specified in sec-
14 tion 2123(e)(2), payment shall be made for the
15 amount of such assistance without regard to any
16 need for a State match.

17 **“SEC. 2123. LIMITATION ON USE OF FUNDS; DISALLOW-**
18 **ANCE.**

19 “(a) IN GENERAL.—Funds provided to a State under
20 this title shall only be used to carry out the purposes of
21 this title.

22 “(b) DISALLOWANCES FOR EXCLUDED PROVID-
23 ERS.—

1 “(1) IN GENERAL.—Payment shall not be made
2 to a State under this part for expenditures for items
3 and services furnished—

4 “(A) by a provider who was excluded from
5 participation under title V, XVIII, or XX or
6 under this title pursuant to section 1128,
7 1128A, 1156, or 1842(j)(2), or

8 “(B) under the medical direction or on the
9 prescription of a physician who was so excluded,
10 if the provider of the services knew or had rea-
11 son to know of the exclusion.

12 “(2) EXCEPTION FOR EMERGENCY SERVICES.—
13 Paragraph (1) shall not apply to emergency items or
14 services, not including hospital emergency room serv-
15 ices.

16 “(c) LIMITATIONS.—

17 “(1) IN GENERAL.—No Federal financial assist-
18 ance is available for expenditures under the
19 MediGrant plan for—

20 “(A) medically-related services for a quar-
21 ter to the extent such expenditures exceed 5
22 percent of the total expenditures under the plan
23 for the quarter; or

24 “(B) total administrative expenses (other
25 than expenses described in paragraph (2) dur-

1 ing the first 8 quarters in which the plan is in
2 effect under this title) for quarters in a fiscal
3 year to the extent such expenditures exceed the
4 sum of \$20,000,000 plus 10 percent of the total
5 expenditures under the plan for the year.

6 “(2) ADMINISTRATIVE EXPENSES NOT SUBJECT
7 TO LIMITATION.—The administrative expenses re-
8 ferred to in this paragraph are expenditures under
9 the MediGrant plan for the following activities:

10 “(A) Quality assurance.

11 “(B) The development and operation of the
12 certification program for nursing facilities and
13 intermediate care facilities for the mentally re-
14 tarded under section 2137(a)(2).

15 “(C) Utilization review activities, including
16 medical activities and activities of peer review
17 organizations.

18 “(D) Inspection and oversight of providers
19 and capitated health care organizations.

20 “(E) Anti-fraud activities.

21 “(F) Independent evaluations.

22 “(G) Activities required to meet reporting
23 requirements under this title.

24 “(d) TREATMENT OF THIRD PARTY LIABILITY.—No
25 payment shall be made to a State under this part for ex-

1 penditures for medical assistance provided for an individ-
2 ual under its MediGrant plan to the extent that a private
3 insurer (as defined by the Secretary by regulation and in-
4 cluding a group health plan (as defined in section 607(1)
5 of the Employee Retirement Income Security Act of
6 1974), a service benefit plan, and a health maintenance
7 organization) would have been obligated to provide such
8 assistance but for a provision of its insurance contract
9 which has the effect of limiting or excluding such obliga-
10 tion because the individual is eligible for or is provided
11 medical assistance under the plan.

12 “(e) LIMITATION ON PAYMENTS TO EMERGENCY
13 SERVICES FOR NONLAWFUL ALIENS.—

14 “(1) IN GENERAL.—Notwithstanding the pre-
15 ceding provisions of this section, except as provided
16 in paragraph (2), no payment may be made to a
17 State under this part for medical assistance fur-
18 nished to an alien who is not lawfully admitted for
19 permanent residence or otherwise permanently resid-
20 ing in the United States under color of law.

21 “(2) EXCEPTION FOR EMERGENCY SERVICES.—
22 Payment may be made under this section for care
23 and services that are furnished to an alien described
24 in paragraph (1) only if—

1 “(A) such care and services are necessary
2 for the treatment of an emergency medical con-
3 dition of the alien,

4 “(B) such alien otherwise meets the eligi-
5 bility requirements for medical assistance under
6 the MediGrant plan (other than a requirement
7 of the receipt of aid or assistance under title
8 IV, supplemental security income benefits under
9 title XVI, or a State supplementary payment),
10 and

11 “(C) such care and services are not related
12 to an organ transplant procedure.

13 “(3) EMERGENCY MEDICAL CONDITION DE-
14 FINED.—For purposes of this subsection, the term
15 ‘emergency medical condition’ means a medical con-
16 dition (including emergency labor and delivery)
17 manifesting itself by acute symptoms of sufficient
18 severity (including severe pain) such that the ab-
19 sence of immediate medical attention could reason-
20 ably be expected to result in—

21 “(A) placing the patient’s health in serious
22 jeopardy,

23 “(B) serious impairment to bodily func-
24 tions, or

1 “(C) serious dysfunction of any bodily
2 organ or part.

3 “(f) LIMITATION ON PAYMENT FOR CERTAIN OUT-
4 PATIENT PRESCRIPTION DRUGS.—

5 “(1) IN GENERAL.—No payment may be made
6 to a State under this part for medical assistance for
7 covered outpatient drugs (as defined in section
8 2175(i)(2)) of a manufacturer provided under the
9 MediGrant plan unless the manufacturer (as defined
10 in section 2175(i)(4)) of the drug—

11 “(A) has entered into a MediGrant master
12 rebate agreement with the Secretary under sec-
13 tion 2175; and

14 “(B) is complying with the provisions of
15 section 8126 of title 38, United States Code, in-
16 cluding the requirement of entering into a mas-
17 ter agreement with the Secretary of Veterans
18 Affairs under such section.

19 “(2) CONSTRUCTION.—Nothing in this sub-
20 section shall be construed as requiring a State to
21 participate in the MediGrant master rebate agree-
22 ment under section 2175.

23 “(3) EFFECT OF SUBSEQUENT AMEND-
24 MENTS.—For purposes of paragraph (1)(B), in de-
25 termining whether a manufacturer is in compliance

1 with the requirements of section 8126 of title 38,
2 United States Code—

3 “(A) the Secretary shall not take into ac-
4 count any amendments to such section that are
5 enacted after the enactment of title VI of the
6 Veterans Health Care Act of 1992; and

7 “(B) a manufacturer is deemed to meet
8 such requirements if the manufacturer estab-
9 lishes to the satisfaction of the Secretary that
10 the manufacturer would comply (and has of-
11 fered to comply) with the provisions of section
12 8126 of title 38, United States Code (as in ef-
13 fect immediately after the enactment of the
14 Veterans Health Care Act of 1992) and would
15 have entered into an agreement under such sec-
16 tion (as such section was in effect at such
17 time), but for a legislative change in such sec-
18 tion after the date of the enactment of the Vet-
19 erans Health Care Act of 1992.

20 “(g) LIMITATION ON PAYMENT FOR ABORTIONS.—

21 “(1) IN GENERAL.—Payment shall not be made
22 to a State under this part for any amount expended
23 under the MediGrant plan to pay for any abortion
24 or to assist in the purchase, in whole or in part, of

1 health benefit coverage that includes coverage of
2 abortion.

3 “(2) EXCEPTION.—Paragraph (1) shall not
4 apply to an abortion—

5 “(A) if the pregnancy is the result of an
6 act of rape or incest, or

7 “(B) in the case where a woman suffers
8 from a physical disorder, illness, or injury that
9 would, as certified by a physician, place the
10 woman in danger of death unless an abortion is
11 performed.

12 “(h) LIMITATION ON PAYMENT FOR ASSISTING
13 DEATHS.—Payment shall not be made to a State under
14 this part for amounts expended under the MediGrant plan
15 to pay for, or to assist in the purchase, in whole or in
16 part, of health benefit coverage that includes payment for
17 any drug, biological product, or service which was fur-
18 nished for the purpose of causing, or assisting in causing,
19 the death, suicide, euthanasia, or mercy killing of a per-
20 son.

21 “PART D—PROGRAM INTEGRITY AND QUALITY

22 “SEC. 2131. USE OF AUDITS TO ACHIEVE FISCAL INTEGRITY.

23 “(a) FINANCIAL AUDITS OF PROGRAM.—

24 “(1) IN GENERAL.—Each MediGrant plan shall
25 provide for an annual audit of the State’s expendi-

1 tures from amounts received under this title, in com-
2 pliance with chapter 75 of title 31, United States
3 Code.

4 “(2) VERIFICATION AUDITS.—If, after consulta-
5 tion with the State and the Comptroller General and
6 after a fair hearing, the Secretary determines that
7 a State’s audit under paragraph (1) was performed
8 in substantial violation of chapter 75 of title 31,
9 United States Code, the Secretary may—

10 “(A) require that the State provide for a
11 verification audit in compliance with such chap-
12 ter, or

13 “(B) conduct such a verification audit.

14 “(3) AVAILABILITY OF AUDIT REPORTS.—With-
15 in 30 days after completion of each audit or verifica-
16 tion audit under this subsection, the State shall—

17 “(A) provide the Secretary with a copy of
18 the audit report, including the State’s response
19 to any recommendations of the auditor, and

20 “(B) make the audit report available for
21 public inspection in the same manner as pro-
22 posed MediGrant plan amendments are made
23 available under section 2105.

24 “(b) FISCAL CONTROLS.—

1 “(1) IN GENERAL.—With respect to the ac-
2 counting and expenditure of funds under this title,
3 each State shall adopt and maintain such fiscal con-
4 trols, accounting procedures, and data processing
5 safeguards as the State deems reasonably necessary
6 to assure the fiscal integrity of the State’s activities
7 under this title.

8 “(2) CONSISTENCY WITH GENERALLY ACCEPT-
9 ED ACCOUNTING PRINCIPLES.—Such controls and
10 procedures shall be generally consistent with gen-
11 erally accepted accounting principles as recognized
12 by the Governmental Accounting Standards Board
13 or the Comptroller General.

14 “(c) AUDITS OF PROVIDERS.—Each MediGrant plan
15 shall provide that the records of any entity providing items
16 or services for which payment may be made under the plan
17 may be audited as necessary to ensure that proper pay-
18 ments are made under the plan.

19 **“SEC. 2132. FRAUD PREVENTION PROGRAM.**

20 “(a) ESTABLISHMENT.—Each MediGrant plan shall
21 provide for the establishment and maintenance of an effec-
22 tive program for the detection and prevention of fraud and
23 abuse by beneficiaries, providers, and others in connection
24 with the operation of the program.

1 “(b) PROGRAM REQUIREMENTS.—The program es-
2 tablished pursuant to subsection (a) shall include at least
3 the following requirements:

4 “(1) DISCLOSURE OF INFORMATION.—Any dis-
5 closing entity (as defined in section 1124(a)) receiv-
6 ing payments under the MediGrant plan shall com-
7 ply with the requirements of section 1124.

8 “(2) SUPPLY OF INFORMATION.—An entity
9 (other than an individual practitioner or a group of
10 practitioners) that furnishes, or arranges for the fur-
11 nishing of, an item or service under the MediGrant
12 plan shall supply upon request specifically addressed
13 to the entity by the Secretary or the State agency
14 the information described in section 1128(b)(9).

15 “(3) EXCLUSION.—

16 “(A) IN GENERAL.—The MediGrant plan
17 shall exclude any specified individual or entity
18 from participation in the plan for the period
19 specified by the Secretary when required by the
20 Secretary to do so pursuant to section 1128 or
21 section 1128A, and provide that no payment
22 may be made under the plan with respect to
23 any item or service furnished by such individual
24 or entity during such period.

1 “(B) AUTHORITY.—In addition to any
2 other authority, a State may exclude any indi-
3 vidual or entity for purposes of participating
4 under the MediGrant plan for any reason for
5 which the Secretary could exclude the individual
6 or entity from participation in a program under
7 title XVIII or under section 1128, 1128A, or
8 1866(b)(2).

9 “(4) NOTICE.—The MediGrant plan shall pro-
10 vide that whenever a provider of services or any
11 other person is terminated, suspended, or otherwise
12 sanctioned or prohibited from participating under
13 the plan, the State agency responsible for admin-
14 istering the plan shall promptly notify the Secretary
15 and, in the case of a physician, the State medical li-
16 censing board of such action.

17 “(5) ACCESS TO INFORMATION.—The
18 MediGrant plan shall provide that the State will pro-
19 vide information and access to certain information
20 respecting sanctions taken against health care prac-
21 titioners and providers by State licensing authorities
22 in accordance with section 2133.

1 **“SEC. 2133. INFORMATION CONCERNING SANCTIONS TAKEN**
2 **BY STATE LICENSING AUTHORITIES AGAINST**
3 **HEALTH CARE PRACTITIONERS AND PROVID-**
4 **ERS.**

5 “(a) INFORMATION REPORTING REQUIREMENT.—
6 The requirement referred to in section 2132(b)(5) is that
7 the State must provide for the following:

8 “(1) INFORMATION REPORTING SYSTEM.—The
9 State must have in effect a system of reporting the
10 following information with respect to formal proceed-
11 ings (as defined by the Secretary in regulations)
12 concluded against a health care practitioner or entity
13 by any authority of the State (or of a political sub-
14 division thereof) responsible for the licensing of
15 health care practitioners (or any peer review organi-
16 zation or private accreditation entity reviewing the
17 services provided by health care practitioners) or en-
18 tities:

19 “(A) Any adverse action taken by such li-
20 censing authority as a result of the proceeding,
21 including any revocation or suspension of a li-
22 cense (and the length of any such suspension),
23 reprimand, censure, or probation.

24 “(B) Any dismissal or closure of the pro-
25 ceedings by reason of the practitioner or entity

1 surrendering the license or leaving the State or
2 jurisdiction.

3 “(C) Any other loss of the license of the
4 practitioner or entity, whether by operation of
5 law, voluntary surrender, or otherwise.

6 “(D) Any negative action or finding by
7 such authority, organization, or entity regard-
8 ing the practitioner or entity.

9 “(2) ACCESS TO DOCUMENTS.—The State must
10 provide the Secretary (or an entity designated by the
11 Secretary) with access to such documents of the au-
12 thority described in paragraph (1) as may be nec-
13 essary for the Secretary to determine the facts and
14 circumstances concerning the actions and determina-
15 tions described in such paragraph for the purpose of
16 carrying out this Act.

17 “(b) FORM OF INFORMATION.—The information de-
18 scribed in subsection (a)(1) shall be provided to the Sec-
19 retary (or to an appropriate private or public agency,
20 under suitable arrangements made by the Secretary with
21 respect to receipt, storage, protection of confidentiality,
22 and dissemination of information) in such a form and
23 manner as the Secretary determines to be appropriate in
24 order to provide for activities of the Secretary under this

1 Act and in order to provide, directly or through suitable
2 arrangements made by the Secretary, information—

3 “(1) to agencies administering Federal health
4 care programs, including private entities administer-
5 ing such programs under contract,

6 “(2) to licensing authorities described in sub-
7 section (a)(1),

8 “(3) to State agencies administering or super-
9 vising the administration of State health care pro-
10 grams (as defined in section 1128(h)),

11 “(4) to utilization and quality control peer re-
12 view organizations described in part B of title XI
13 and to appropriate entities with contracts under sec-
14 tion 1154(a)(4)(C) with respect to eligible organiza-
15 tions reviewed under the contracts,

16 “(5) to State MediGrant fraud control units (as
17 defined in section 2134),

18 “(6) to hospitals and other health care entities
19 (as defined in section 431 of the Health Care Qual-
20 ity Improvement Act of 1986), with respect to physi-
21 cians or other licensed health care practitioners that
22 have entered (or may be entering) into an employ-
23 ment or affiliation relationship with, or have applied
24 for clinical privileges or appointments to the medical
25 staff of, such hospitals or other health care entities

1 (and such information shall be deemed to be dis-
2 closed pursuant to section 427 of, and be subject to
3 the provisions of, that Act),

4 “(7) to the Attorney General and such other
5 law enforcement officials as the Secretary deems ap-
6 propriate, and

7 “(8) upon request, to the Comptroller General,
8 in order for such authorities to determine the fitness
9 of individuals to provide health care services, to pro-
10 tect the health and safety of individuals receiving
11 health care through such programs, and to protect
12 the fiscal integrity of such programs.

13 “(c) CONFIDENTIALITY OF INFORMATION PRO-
14 VIDED.—The Secretary shall provide for suitable safe-
15 guards for the confidentiality of the information furnished
16 under subsection (a). Nothing in this subsection shall pre-
17 vent the disclosure of such information by a party which
18 is otherwise authorized, under applicable State law, to
19 make such disclosure.

20 “(d) APPROPRIATE COORDINATION.—The Secretary
21 shall provide for the maximum appropriate coordination
22 in the implementation of subsection (a) of this section and
23 section 422 of the Health Care Quality Improvement Act
24 of 1986.

1 **“SEC. 2134. STATE MEDIGRANT FRAUD CONTROL UNITS.**

2 “(a) IN GENERAL.—Each MediGrant plan shall pro-
3 vide for a State MediGrant fraud control unit described
4 in subsection (b) that effectively carries out the functions
5 and requirements described in such subsection, unless the
6 State demonstrates to the satisfaction of the Secretary
7 that the effective operation of such a unit in the State
8 would not be cost-effective because minimal fraud exists
9 in connection with the provision of covered services to eli-
10 gible individuals under the plan, and that beneficiaries
11 under the plan will be protected from abuse and neglect
12 in connection with the provision of medical assistance
13 under the plan without the existence of such a unit

14 “(b) UNITS DESCRIBED.—For purposes of this sub-
15 section, the term ‘State MediGrant fraud control unit’
16 means a single identifiable entity of the State government
17 which meets the following requirements:

18 “(1) ORGANIZATION.—The entity—

19 “(A) is a unit of the office of the State At-
20 torney General or of another department of
21 State government which possesses statewide au-
22 thority to prosecute individuals for criminal vio-
23 lations;

24 “(B) is in a State the constitution of which
25 does not provide for the criminal prosecution of

1 individuals by a statewide authority and has
2 formal procedures that—

3 “(i) assure its referral of suspected
4 criminal violations relating to the program
5 under this title to the appropriate author-
6 ity or authorities in the State for prosecu-
7 tion, and

8 “(ii) assure its assistance of, and co-
9 ordination with, such authority or authori-
10 ties in such prosecutions; or

11 “(C) has a formal working relationship
12 with the office of the State Attorney General
13 and has formal procedures (including proce-
14 dures for its referral of suspected criminal vio-
15 lations to such office) which provide effective
16 coordination of activities between the entity and
17 such office with respect to the detection, inves-
18 tigation, and prosecution of suspected criminal
19 violations relating to the program under this
20 title.

21 “(2) INDEPENDENCE.—The entity is separate
22 and distinct from any State agency that has prin-
23 cipal responsibilities for administering or supervising
24 the administration of the MediGrant plan.

1 “(3) FUNCTION.—The entity’s function is con-
2 ducting a statewide program for the investigation
3 and prosecution of violations of all applicable State
4 laws regarding any and all aspects of fraud in con-
5 nection with any aspect of the provision of medical
6 assistance and the activities of providers of such as-
7 sistance under the MediGrant plan.

8 “(4) REVIEW OF COMPLAINTS.—The entity has
9 procedures for reviewing complaints of the abuse
10 and neglect of patients of health care facilities which
11 receive payments under the MediGrant plan under
12 this title, and, where appropriate, for acting upon
13 such complaints under the criminal laws of the State
14 or for referring them to other State agencies for ac-
15 tion.

16 “(5) OVERPAYMENTS.—The entity provides for
17 the collection, or referral for collection to a single
18 State agency, of overpayments that are made under
19 the MediGrant plan to health care providers and
20 that are discovered by the entity in carrying out its
21 activities.

22 “(6) PERSONNEL.—The entity employs such
23 auditors, attorneys, investigators, and other nec-
24 essary personnel and is organized in such a manner

1 as is necessary to promote the effective and efficient
2 conduct of the entity's activities.

3 **“SEC. 2135. RECOVERIES FROM THIRD PARTIES AND OTH-**
4 **ERS.**

5 “(a) THIRD PARTY LIABILITY.—Each MediGrant
6 plan shall provide for reasonable steps—

7 “(1) to ascertain the legal liability of third par-
8 ties to pay for care and services available under the
9 plan, including the collection of sufficient informa-
10 tion to enable States to pursue claims against third
11 parties; and

12 “(2) to seek reimbursement for medical assist-
13 ance provided to the extent legal liability is estab-
14 lished where the amount expected to be recovered ex-
15 ceeds the costs of the recovery.

16 “(b) BENEFICIARY PROTECTION.—

17 “(1) IN GENERAL.—Each MediGrant plan shall
18 provide that in the case of a person furnishing serv-
19 ices under the plan for which a third party may be
20 liable for payment—

21 “(A) the person may not seek to collect
22 from the individual (or financially responsible
23 relative) payment of an amount for the service
24 more than could be collected under the plan in
25 the absence of such third party liability, and

1 “(B) may not refuse to furnish services to
2 such an individual because of a third party’s
3 potential liability for payment for the service.

4 “(2) PENALTY.—A MediGrant plan may pro-
5 vide for a reduction of any payment amount other-
6 wise due with respect to a person who furnishes
7 services under the plan in an amount equal to up to
8 three times the amount of any payment sought to be
9 collected by that person in violation of paragraph
10 (1)(A).

11 “(C) GENERAL LIABILITY.—The State shall prohibit
12 any health insurer (including a group health plan as de-
13 fined in section 607 of the Employee Retirement Income
14 Security Act of 1974, a service benefit plan, or a health
15 maintenance organization), in enrolling an individual or
16 in making any payments for benefits to the individual or
17 on the individual’s behalf, from taking into account that
18 the individual is eligible for or is provided medical assist-
19 ance under a MediGrant plan for any State.

20 “(d) ACQUISITION OF RIGHTS OF BENEFICIARIES.—
21 To the extent that payment has been made under a
22 MediGrant plan in any case where a third party has a
23 legal liability to make payment for such assistance, the
24 State shall have in effect laws under which, to the extent
25 that payment has been made under the plan for health

1 care items or services furnished to an individual, the State
2 is considered to have acquired the rights of such individual
3 to payment by any other party for such health care items
4 or services.

5 “(e) ASSIGNMENT OF MEDICAL SUPPORT RIGHTS.—
6 The MediGrant plan shall provide for mandatory assign-
7 ment of rights of payment for medical support and other
8 medical care owed to recipients in accordance with section
9 2136.

10 “(f) REQUIRED LAWS RELATING TO MEDICAL CHILD
11 SUPPORT.—

12 “(1) IN GENERAL.— Each State with a
13 MediGrant plan shall have in effect the following
14 laws:

15 “(A) A law that prohibits an insurer from
16 denying enrollment of a child under the health
17 coverage of the child’s parent on the ground
18 that—

19 “(i) the child was born out of wedlock,

20 “(ii) the child is not claimed as a de-
21 pendent on the parent’s Federal income
22 tax return, or

23 “(iii) the child does not reside with
24 the parent or in the insurer’s service area.

1 “(B) In any case in which a parent is re-
2 quired by a court or administrative order to
3 provide health coverage for a child and the par-
4 ent is eligible for family health coverage
5 through an insurer, a law that requires such in-
6 surer—

7 “(i) to permit such parent to enroll
8 under such family coverage any such child
9 who is otherwise eligible for such coverage
10 (without regard to any enrollment season
11 restrictions);

12 “(ii) if such a parent is enrolled but
13 fails to make application to obtain cov-
14 erage of such child, to enroll such child
15 under such family coverage upon applica-
16 tion by the child’s other parent or by the
17 State agency administering the program
18 under this title or part D of title IV; and

19 “(iii) not to disenroll (or eliminate
20 coverage of) such a child unless the insurer
21 is provided satisfactory written evidence
22 that—

23 “(I) such court or administrative
24 order is no longer in effect, or

1 “(II) the child is or will be en-
2 rolled in comparable health coverage
3 through another insurer which will
4 take effect not later than the effective
5 date of such disenrollment.

6 “(C) In any case in which a parent is re-
7 quired by a court or administrative order to
8 provide health coverage for a child and the par-
9 ent is eligible for family health coverage
10 through an employer doing business in the
11 State, a law that requires such employer—

12 “(i) to permit such parent to enroll
13 under such family coverage any such child
14 who is otherwise eligible for such coverage
15 (without regard to any enrollment season
16 restrictions);

17 “(ii) if such a parent is enrolled but
18 fails to make application to obtain cov-
19 erage of such child, to enroll such child
20 under such family coverage upon applica-
21 tion by the child’s other parent or by the
22 State agency administering the program
23 under this title or part D of title IV; and

24 “(iii) not to disenroll (or eliminate
25 coverage of) any such child unless—

1 “(I) the employer is provided sat-
2 isfactory written evidence that such
3 court or administrative order is no
4 longer in effect, or the child is or will
5 be enrolled in comparable health cov-
6 erage which will take effect not later
7 than the effective date of such
8 disenrollment, or

9 “(II) the employer has eliminated
10 family health coverage for all of its
11 employees; and

12 “(iv) to withhold from such employ-
13 ee’s compensation the employee’s share (if
14 any) of premiums for health coverage (ex-
15 cept that the amount so withheld may not
16 exceed the maximum amount permitted to
17 be withheld under section 303(b) of the
18 Consumer Credit Protection Act), and to
19 pay such share of premiums to the insurer,
20 except that the Secretary may provide by
21 regulation for appropriate circumstances
22 under which an employer may withhold
23 less than such employee’s share of such
24 premiums.

1 “(D) A law that prohibits an insurer from
2 imposing requirements on a State agency,
3 which has been assigned the rights of an indi-
4 vidual eligible for medical assistance under this
5 title and covered for health benefits from the
6 insurer, that are different from requirements
7 applicable to an agent or assignee of any other
8 individual so covered.

9 “(E) A law that requires an insurer, in
10 any case in which a child has health coverage
11 through the insurer of a noncustodial parent—

12 “(i) to provide such information to the
13 custodial parent as may be necessary for
14 the child to obtain benefits through such
15 coverage;

16 “(ii) to permit the custodial parent
17 (or provider, with the custodial parent’s
18 approval) to submit claims for covered
19 services without the approval of the
20 noncustodial parent; and

21 “(iii) to make payment on claims sub-
22 mitted in accordance with clause (ii) di-
23 rectly to such custodial parent, the pro-
24 vider, or the State agency.

1 “(F) A law that permits the State agency
2 under this title to garnish the wages, salary, or
3 other employment income of, and requires with-
4 holding amounts from State tax refunds to, any
5 person who—

6 “(i) is required by court or adminis-
7 trative order to provide coverage of the
8 costs of health services to a child who is el-
9 igible for medical assistance under this
10 title,

11 “(ii) has received payment from a
12 third party for the costs of such services to
13 such child, but

14 “(iii) has not used such payments to
15 reimburse, as appropriate, either the other
16 parent or guardian of such child or the
17 provider of such services,

18 to the extent necessary to reimburse the State
19 agency for expenditures for such costs under its
20 plan under this title, but any claims for current
21 or past-due child support shall take priority
22 over any such claims for the costs of such serv-
23 ices.

24 “(2) DEFINITION.—For purposes of this sub-
25 section, the term ‘insurer’ includes a group health

1 plan, as defined in section 607(1) of the Employee
2 Retirement Income Security Act of 1974, a health
3 maintenance organization, and an entity offering a
4 service benefit plan.

5 “(g) ESTATE RECOVERIES AND LIENS PER-
6 MITTED.—A State may take such actions as it considers
7 appropriate to adjust or recover from the individual or the
8 individual’s estate any amounts paid as medical assistance
9 to or on behalf of the individual under the MediGrant
10 plan, including through the imposition of liens against the
11 property or estate of the individual.

12 **“SEC. 2136. ASSIGNMENT OF RIGHTS OF PAYMENT.**

13 “(a) IN GENERAL.—For the purpose of assisting in
14 the collection of medical support payments and other pay-
15 ments for medical care owed to recipients of medical as-
16 sistance under the MediGrant plan, each MediGrant plan
17 shall—

18 “(1) provide that, as a condition of eligibility
19 for medical assistance under the plan to an individ-
20 ual who has the legal capacity to execute an assign-
21 ment for himself, the individual is required—

22 “(A) to assign the State any rights, of the
23 individual or of any other person who is eligible
24 for medical assistance under the plan and on
25 whose behalf the individual has the legal au-

1 thority to execute an assignment of such rights,
2 to support (specified as support for the purpose
3 of medical care by a court or administrative
4 order) and to payment for medical care from
5 any third party,

6 “(B) to cooperate with the State (i) in es-
7 tablishing the paternity of such person (referred
8 to in subparagraph (A)) if the person is a child
9 born out of wedlock, and (ii) in obtaining sup-
10 port and payments (described in subparagraph
11 (A)) for himself and for such person, unless (in
12 either case) the individual is pregnant woman
13 or the individual is found to have good cause
14 for refusing to cooperate as determined by the
15 State, and

16 “(C) to cooperate with the State in identi-
17 fying, and providing information to assist the
18 State in pursuing, any third party who may be
19 liable to pay for care and services available
20 under the plan, unless such individual has good
21 cause for refusing to cooperate as determined
22 by the State; and

23 “(2) provide for entering into cooperative ar-
24 rangements (including financial arrangements), with
25 any appropriate agency of any State (including, with

1 respect to the enforcement and collection of rights of
2 payment for medical care by or through a parent,
3 with a State’s agency established or designated
4 under section 454(3)) and with appropriate courts
5 and law enforcement officials, to assist the agency or
6 agencies administering the plan with respect to—

7 “(A) the enforcement and collection of
8 rights to support or payment assigned under
9 this section, and

10 “(B) any other matters of common con-
11 cern.

12 “(b) USE OF AMOUNTS COLLECTED.—Such part of
13 any amount collected by the State under an assignment
14 made under the provisions of this section shall be retained
15 by the State as is necessary to reimburse it for medical
16 assistance payments made on behalf of an individual with
17 respect to whom such assignment was executed (with ap-
18 propriate reimbursement of the Federal Government to
19 the extent of its participation in the financing of such
20 medical assistance), and the remainder of such amount
21 collected shall be paid to such individual.

22 **“SEC. 2137. QUALITY ASSURANCE STANDARDS FOR NURS-**
23 **ING FACILITIES.**

24 “(a) STANDARDS FOR AND CERTIFICATION OF CER-
25 TAIN FACILITIES.—

1 “(1) STANDARDS FOR FACILITIES.—

2 “(A) IN GENERAL.—Each MediGrant plan
3 shall provide for the establishment and mainte-
4 nance of standards consistent with the contents
5 described in subparagraph (B) for nursing fa-
6 cilities which furnish services under the plan.

7 “(B) CONTENTS OF STANDARDS.—The
8 standards established for facilities under this
9 paragraph shall contain provisions relating to
10 the following items:

11 “(i) The treatment of resident medical
12 records.

13 “(ii) Policies, procedures, and bylaws
14 for operation.

15 “(iii) Quality assurance systems.

16 “(iv) Resident assessment procedures,
17 including care planning and outcome eval-
18 uation.

19 “(v) The assurance of a safe and ade-
20 quate physical plant for the facility.

21 “(vi) Qualifications for staff sufficient
22 to provide adequate care, as defined by the
23 State.

24 “(vii) Utilization review.

1 “(viii) The protection and enforce-
2 ment of resident rights described in sub-
3 paragraph (C).

4 “(C) RESIDENT RIGHTS DESCRIBED.—The
5 resident rights described in this subparagraph
6 are the rights of residents to the following:

7 “(i) To exercise the individual’s rights
8 as a resident of the facility and as a citizen
9 or resident of the United States.

10 “(ii) To receive notice of rights and
11 services.

12 “(iii) To be protected against the mis-
13 use of resident funds.

14 “(iv) To be provided privacy and con-
15 fidentiality.

16 “(v) To voice grievances.

17 “(vi) To examine the results of State
18 certification program inspections.

19 “(vii) To refuse to perform services
20 for the facility.

21 “(viii) To be provided privacy in com-
22 munications and to receive mail.

23 “(ix) To have the facility provide im-
24 mediate access to any resident by any rep-
25 resentative of the certification program,

1 the resident's individual physician, the
2 State long term care ombudsman, and any
3 person the resident has designated as a
4 visitor.

5 “(x) To retain and use personal prop-
6 erty.

7 “(xi) To be free from abuse, including
8 verbal, sexual, physical and mental abuse,
9 corporal punishment, and involuntary se-
10 clusion.

11 “(xii) To be provided with prior writ-
12 ten notice of a pending transfer or dis-
13 charge.

14 “(D) PROCESS FOR ESTABLISHMENT.—
15 The standards established by the State for fa-
16 cilities under this paragraph shall be promul-
17 gated either through the State's legislative, reg-
18 ulatory, or other process, and may only take ef-
19 fect after the State has provided the public with
20 notice and an opportunity for comment.

21 “(2) CERTIFICATION PROGRAM.—

22 “(A) IN GENERAL.—Each MediGrant plan
23 shall provide for the establishment and oper-
24 ation of a program consistent with the require-
25 ments of subparagraph (B) for the certification

1 of nursing facilities which meet the standards
2 established under paragraph (1) and the decer-
3 tification of facilities which fail to meet such
4 standards.

5 “(B) REQUIREMENTS FOR PROGRAM.—In
6 addition to any other requirements the State
7 may impose, in establishing and operating the
8 certification program under subparagraph (A),
9 the State shall ensure the following:

10 “(i) The State shall ensure public ac-
11 cess (as defined by the State) to the cer-
12 tification program’s evaluations of partici-
13 pating facilities, including compliance
14 records and enforcement actions and other
15 reports by the State regarding the owner-
16 ship, compliance histories, and services
17 provided by certified facilities.

18 “(ii) Not less often than every 4
19 years, the State shall audit its expendi-
20 tures under the program, through an en-
21 tity designated by the State which is not
22 affiliated with the program, as designated
23 by the State.

24 “(b) INTERMEDIATE SANCTION AUTHORITY.—

1 “(1) AUTHORITY.—In addition to any other au-
2 thority under State law, where a State determines
3 that a nursing facility which is certified for partici-
4 pation under the MediGrant plan no longer substan-
5 tially meets the requirements for such a facility
6 under this title and further determines that the fa-
7 cility’s deficiencies—

8 “(A) immediately jeopardize the health and
9 safety of its residents, the State shall at least
10 provide for the termination of the facility’s cer-
11 tification for participation under the plan, or

12 “(B) do not immediately jeopardize the
13 health and safety of its residents, the State
14 may, in lieu of providing for terminating the fa-
15 cility’s certification for participation under the
16 plan, provide lesser sanctions including one that
17 provides that no payment will be made under
18 the plan with respect to any individual admitted
19 to such facility after a date specified by the
20 State.

21 “(2) NOTICE.—The State shall not make such
22 a decision with respect to a facility until the facility
23 has had a reasonable opportunity, following the ini-
24 tial determination that it no longer substantially
25 meets the requirements for such a facility under the

1 plan, to correct its deficiencies, and, following this
2 period, has been given reasonable notice and oppor-
3 tunity for a hearing.

4 “(3) EFFECTIVENESS.—The State’s decision to
5 deny payment may be made effective only after such
6 notice to the public and to the facility as may be
7 provided for by the State, and its effectiveness shall
8 terminate (A) when the State finds that the facility
9 is in substantial compliance (or is making good faith
10 efforts to achieve substantial compliance) with the
11 requirements for such a facility under this title, or
12 (B) in the case described in paragraph (1)(B), with
13 the end of the eleventh month following the month
14 such decision is made effective, whichever occurs
15 first. If a facility to which clause (B) of the previous
16 sentence applies still fails to substantially meet the
17 provisions of the respective section on the date speci-
18 fied in such clause, the State shall terminate such
19 facility’s certification for participation under the
20 MediGrant plan effective with the first day of the
21 first month following the month specified in such
22 clause.

1 **“SEC. 2138. OTHER PROVISIONS PROMOTING PROGRAM IN-**
2 **TEGRITY.**

3 “(a) PUBLIC ACCESS TO SURVEY RESULTS.—Each
4 MediGrant plan shall provide that upon completion of a
5 survey of any health care facility or organization by a
6 State agency to carry out the plan, the agency shall make
7 public in readily available form and place the pertinent
8 findings of the survey relating to the compliance of the
9 facility or organization with requirements of law.

10 “(b) RECORD KEEPING.—Each MediGrant plan shall
11 provide for agreements with persons or institutions provid-
12 ing services under the plan under which the person or in-
13 stitution agrees—

14 “(1) to keep such records (including ledgers,
15 books, and original evidence of costs) as are nec-
16 essary to fully disclose the extent of the services pro-
17 vided to individuals receiving assistance under the
18 plan; and

19 “(2) to furnish the State agency with such in-
20 formation regarding any payments claimed by such
21 person or institution for providing services under the
22 plan, as the State agency may from time to time re-
23 quest.

9 “(b) APPROVAL.—Except as the Secretary may pro-
10 vide under section 2154, a MediGrant plan submitted
11 under subsection (a)—

“(2) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than the first calendar quarter that begins at least 60 days after the date the plan is submitted.

•HR 2491 RH

1 **“SEC. 2152. SUBMITTAL AND APPROVAL OF PLAN AMEND-**
2 **MENTS.**

3 “(a) SUBMITTAL OF AMENDMENTS.—A State may
4 amend, in whole or in part, its MediGrant plan at any
5 time through transmittal of a plan amendment under this
6 section.

7 “(b) APPROVAL.—Except as the Secretary may pro-
8 vide under section 2154, an amendment to a MediGrant
9 plan submitted under subsection (a)—

10 “(1) shall be approved for purposes of this title,
11 and

12 “(2) shall be effective as provided in subsection
13 (c).

14 “(c) EFFECTIVE DATES FOR AMENDMENTS.—

15 “(1) IN GENERAL.—Subject to the succeeding
16 provisions of this subsection, an amendment to
17 MediGrant plan shall take effect on one or more ef-
18 fective dates specified in the amendment.

19 “(2) AMENDMENTS RELATING TO ELIGIBILITY
20 OR BENEFITS.—Except as provided in paragraph
21 (4)—

22 “(A) NOTICE REQUIREMENT.—Any plan
23 amendment that eliminates or restricts eligi-
24 bility or benefits under the plan may not take
25 effect unless the State certifies that it has pro-
26 vided prior or contemporaneous public notice of

1 the change, in a form and manner provided
2 under applicable State law.

3 “(B) TIMELY TRANSMITTAL.—Any plan
4 amendment that eliminates or restricts eligi-
5 bility or benefits under the plan shall not be ef-
6 fective for longer than a 60 day period unless
7 the amendment has been transmitted to the
8 Secretary before the end of such period.

9 “(3) OTHER AMENDMENTS.—Subject to para-
10 graph (4), any plan amendment that is not described
11 in paragraph (2) becomes effective in a State fiscal
12 year may not remain in effect after the end of such
13 fiscal year (or, if later, the end of the 90-day period
14 on which it becomes effective) unless the amendment
15 has been transmitted to the Secretary.

16 “(4) EXCEPTION.—The requirements of para-
17 graphs (2) and (3) shall not apply to a plan amend-
18 ment that is submitted on a timely basis pursuant
19 to a court order or an order of the Secretary.

20 **“SEC. 2153. PROCESS FOR STATE WITHDRAWAL FROM PRO-**
21 **GRAM.**

22 “(a) IN GENERAL.—A State may rescind its
23 MediGrant plan and discontinue participation in the pro-
24 gram under this title at any time after providing—

8 “(b) **EFFECTIVE DATE.**—Such discontinuation shall
9 not apply to payments under part C for expenditures made
10 for items and services furnished under the MediGrant plan
11 before the effective date of the discontinuation.

18 "SEC. 2154. SANCTIONS FOR SUBSTANTIAL NONCOMPLI-
19 ANCE.

•HR 2491 RH

1 “(b) DETERMINATIONS OF SUBSTANTIAL NON-
2 COMPLIANCE.—

3 “(1) AT TIME OF PLAN OR AMENDMENT SUB-
4 MITTAL.—

5 “(A) IN GENERAL.—If the Secretary, dur-
6 ing the 30-day period beginning on the date of
7 submittal of a MediGrant plan or plan amend-
8 ment—

9 “(i) determines that the plan or
10 amendment substantially violates (within
11 the meaning of subsection (c)) a require-
12 ment of this title, and

13 “(ii) provides written notice of such
14 determination to the State,
15 the Secretary shall issue an order specifying
16 that the plan or amendment, insofar as it is in
17 substantial violation of such a requirement,
18 shall not be effective, except as provided in sub-
19 section (c), beginning at the end of a period of
20 not less than 30 days, or 120 days in the case
21 of the initial submission of the MediGrant plan)
22 specified in the order beginning on the date of
23 the notice of the determination.

24 “(B) EXTENSION OF TIME PERIODS.—The
25 time periods specified in subparagraph (A) may

1 be extended by written agreement of the Sec-
2 retary and the State involved.

3 “(2) VIOLATIONS IN ADMINISTRATION OF
4 PLAN.—

5 “(A) IN GENERAL.—If the Secretary deter-
6 mines, after reasonable notice and opportunity
7 for a hearing for the State, that in the adminis-
8 tration of a MediGrant plan there is a substan-
9 tial violation of a requirement of this title, the
10 Secretary shall provide the State with written
11 notice of the determination and with an order
12 to remedy such violation. Such an order shall
13 become effective prospectively, as specified in
14 the order, after the date of receipt of such writ-
15 ten notice. Such an order may include the with-
16 holding of funds, consistent with subsection (f),
17 for parts of the MediGrant plan affected by
18 such violation, until the Secretary is satisfied
19 that the violation has been corrected.

20 “(B) EFFECTIVENESS.—If the Secretary
21 issues an order under paragraph (1), the order
22 shall become effective, except as provided in
23 subsection (c), beginning at the end of a period
24 (of not less than 30 days) specified in the order

1 beginning on the date of the notice of the deter-
2 mination to the State.

3 “(C) TIMELINESS OF DETERMINATIONS
4 RELATING TO REPORT-BASED COMPLIANCE.—

5 The Secretary shall make determinations under
6 this paragraph respecting violations relating to
7 information contained in an annual report
8 under section 2102, an independent evaluation
9 under section 2103, or an audit report under
10 section 2131 not later than 30 days after the
11 date of transmittal of the report or evaluation
12 to the Secretary.

13 “(3) CONSULTATION WITH STATE.—Before
14 making a determination adverse to a State under
15 this section, the Secretary shall (within any time pe-
16 riods provided under this section)—

17 “(A) reasonably consult with the State in-
18 volved,

19 “(B) offer the State a reasonable oppor-
20 tunity to clarify the submission and submit fur-
21 ther information to substantiate compliance
22 with the requirements of this title, and

23 “(C) reasonably consider any such clari-
24 fications and information submitted.

1 “(4) JUSTIFICATION OF ANY INCONSISTENCIES
2 IN DETERMINATIONS.—If the Secretary makes a de-
3 termination under this section that is, in whole or in
4 part, inconsistent with any previous determination
5 issued by the Secretary under this title, the Sec-
6 retary shall include in the determination a detailed
7 explanation and justification for any such difference.

8 “(5) SUBSTANTIAL VIOLATION DEFINED.—For
9 purposes of this title, a MediGrant plan (or amend-
10 ment to such a plan) or the administration of the
11 MediGrant plan is considered to ‘substantially vio-
12 late’ a requirement of this title if a provision of the
13 plan or amendment (or an omission from the plan
14 or amendment) or the administration of the plan—

15 “(A) is material and substantial in nature
16 and effect, and

17 “(B) is inconsistent with an express re-
18 quirement of this title.

19 A failure to meet a strategic objective or perform-
20 ance goal (as described in section 2101) shall not be
21 considered to substantially violate a requirement of
22 this title.

23 “(C) STATE RESPONSE TO ORDERS.—

24 “(1) STATE RESPONSE BY REVISING PLAN.—

1 “(A) IN GENERAL.—Insofar as an order
2 under subsection (b)(1) relates to a substantial
3 violation by a MediGrant plan or plan amend-
4 ment, a State may respond (before the date the
5 order becomes effective) to such an order by
6 submitting a written revision of the plan or
7 plan amendment to substantially comply with
8 the requirements of this part.

9 “(B) REVIEW OF REVISION.—In the case
10 of submission of such a revision, the Secretary
11 shall promptly review the submission and shall
12 withhold any action on the order during the pe-
13 riod of such review.

14 “(C) SECRETARIAL RESPONSE.—The revi-
15 sion shall be considered to have corrected the
16 deficiency (and the order rescinded insofar as it
17 relates to such deficiency) unless the Secretary
18 determines and notifies the State in writing,
19 within 15 days after the date the Secretary re-
20 ceives the revision, that the plan or amendment,
21 as proposed to be revised, still substantially vio-
22 lates a requirement of this title. In such case
23 the State may respond by seeking reconsider-
24 ation or a hearing under paragraph (2).

1 “(D) REVISION RETROACTIVE.—If the re-
2 vision provides for substantial compliance, the
3 revision may be treated, at the option of the
4 State, as being effective either as of the effec-
5 tive date of the provision to which it relates or
6 such later date as the State and Secretary may
7 agree.

8 “(2) STATE RESPONSE BY SEEKING RECONSID-
9 ERATION OR AN ADMINISTRATIVE HEARING.—A
10 State may respond to an order under subsection (b)
11 by filing a request with the Secretary for—

12 “(A) a reconsideration of the determina-
13 tion, pursuant to subsection (d)(1), or

14 “(B) a review of the determination through
15 an administrative hearing, pursuant to sub-
16 section (d)(2).

17 In such case, the order shall not take effect before
18 the completion of the reconsideration or hearing.

19 “(3) STATE RESPONSE BY CORRECTIVE ACTION
20 PLAN.—

21 “(A) IN GENERAL.—In the case of an
22 order described in subsection (b)(2) that relates
23 to a substantial violation in the administration
24 of the MediGrant plan, a State may respond to
25 such an order by submitting a corrective action

1 plan with the Secretary to correct deficiencies
2 in the administration of the plan which are the
3 subject of the order.

4 “(B) REVIEW OF CORRECTIVE ACTION
5 PLAN.—In such case, the Secretary shall with-
6 hold any action on the order for a period (not
7 to exceed 30 days) during which the Secretary
8 reviews the corrective action plan.

9 “(C) SECRETARIAL RESPONSE.—The cor-
10 rective action plan shall be considered to have
11 corrected the deficiency (and the order re-
12 scinded insofar as it relates to such deficiency)
13 unless the Secretary determines and notifies the
14 State in writing, within 15 days after the date
15 the Secretary receives the corrective action
16 plan, that the State’s administration of the
17 MediGrant plan, as proposed to be corrected in
18 the plan, will still substantially violate a re-
19 quirement of this title. In such case the State
20 may respond by seeking reconsideration or a
21 hearing under paragraph (2).

22 “(4) STATE RESPONSE BY WITHDRAWAL OF
23 PLAN AMENDMENT; FAILURE TO RESPOND.—Insofar
24 as an order relates to a substantial violation in a
25 plan amendment submitted, a State may respond to

1 such an order by withdrawing the plan amendment
2 and the MediGrant plan shall be treated as though
3 the amendment had not been made.

4 “(d) ADMINISTRATIVE REVIEW AND HEARING.—

5 “(1) RECONSIDERATION.—Within 30 days after
6 the date of receipt of a request under subsection
7 (b)(2)(A), the Secretary shall notify the State of the
8 time and place at which a hearing will be held for
9 the purpose of reconsidering the Secretary’s deter-
10 mination. The hearing shall be held not less than 20
11 days nor more than 60 days after the date notice of
12 the hearing is furnished to the State, unless the Sec-
13 retary and the State agree in writing to holding the
14 hearing at another time. The Secretary shall affirm,
15 modify, or reverse the original determination within
16 60 days of the conclusion of the hearing.

17 “(2) ADMINISTRATIVE HEARING.—Within 30
18 days after the date of receipt of a request under
19 subsection (b)(2)(B), an administrative law judge
20 shall schedule a hearing for the purpose of reviewing
21 the Secretary’s determination. The hearing shall be
22 held not less than 20 days nor more than 60 days
23 after the date notice of the hearing is furnished to
24 the State, unless the Secretary and the State agree
25 in writing to holding the hearing at another time.

1 The administrative law judge shall affirm, modify, or
2 reverse the determination within 60 days of the con-
3 clusion of the hearing.

4 “(e) JUDICIAL REVIEW.—

5 “(1) IN GENERAL.—A State which is dissatis-
6 fied with a final determination made by the Sec-
7 retary under subsection (d)(1) or a final determina-
8 tion of an administrative law judge under subsection
9 (d)(2) may, within 60 days after it has been notified
10 of such determination, file with the United States
11 court of appeals for the circuit in which the State
12 is located a petition for review of such determina-
13 tion. A copy of the petition shall be forthwith trans-
14 mitted by the clerk of the court to the Secretary
15 and, in the case of a determination under subsection
16 (d)(2), to the administrative law judge involved. The
17 Secretary (or judge involved) thereupon shall file in
18 the court the record of the proceedings on which the
19 final determination was based, as provided in section
20 2112 of title 28, United States Code.

21 “(2) STANDARD FOR REVIEW.—The findings of
22 fact by the Secretary or administrative law judge, if
23 supported by substantial evidence, shall be conclu-
24 sive, but the court, for good cause shown, may re-
25 mand the case to the Secretary or judge to take fur-

1 ther evidence, and the Secretary or judge may there-
2 upon make new or modified findings of fact and may
3 modify a previous determination, and shall certify to
4 the court the transcript and record of the further
5 proceedings. Such new or modified findings of fact
6 shall likewise be conclusive if supported by substan-
7 tial evidence.

8 “(3) JURISDICTION OF APPELLATE COURT.—

9 The court shall have jurisdiction to affirm the action
10 of the Secretary or judge or to set it aside, in whole
11 or in part. The judgment of the court shall be sub-
12 ject to review by the Supreme Court of the United
13 States upon certiorari or certification as provided in
14 section 1254 of title 28, United States Code.

15 “(f) WITHHOLDING OF FUNDS.—

16 “(1) IN GENERAL.—Any order under this sec-
17 tion relating to the withholding of funds shall be ef-
18 fective not earlier than the effective date of the
19 order and shall only relate to the portions of a
20 MediGrant plan or administration thereof which sub-
21 stantially violate a requirement of this title. In the
22 case of a failure to meet a set-aside requirement
23 under section 2112, any withholding shall only apply
24 to the extent of such failure.

1 “(2) SUSPENSION OF WITHHOLDING.—The Sec-
2 retary may suspend withholding of funds under
3 paragraph (1) during the period reconsideration or
4 administrative and judicial review is pending under
5 subsection (d) or (e).

6 “(3) RESTORATION OF FUNDS.—Any funds
7 withheld under this subsection under an order shall
8 be immediately restored to a State—

9 “(A) to the extent and at the time the
10 order is—

11 “(i) modified or withdrawn by the
12 Secretary upon reconsideration,

13 “(ii) modified or reversed by an ad-
14 ministrative law judge, or

15 “(iii) set aside (in whole or in part) by
16 an appellate court; or

17 “(B) when the Secretary determines that
18 the deficiency which was the basis for the order
19 is corrected;

20 “(C) when the Secretary determines that
21 violation which was the basis for the order is
22 resolved or the amendment which was the basis
23 for the order is withdrawn; or

24 “(D) at any time upon the initiative of the
25 Secretary.

1 **“SEC. 2155. SECRETARIAL AUTHORITY.**

2 “(a) NEGOTIATED AGREEMENT AND DISPUTE RESO-
3 LUTION.—

4 “(1) NEGOTIATIONS.—Nothing in this part
5 shall be construed as preventing the Secretary and
6 a State from at any time negotiating a satisfactory
7 resolution to any dispute concerning the approval of
8 a MediGrant plan (or amendments to a MediGrant
9 plan) or the compliance of a MediGrant plan (in-
10 cluding its administration) with requirements of this
11 title.

12 “(2) COOPERATION.—The Secretary shall act in
13 a cooperative manner with the States in carrying out
14 this title. In the event of a dispute between a State
15 and the Secretary, the Secretary shall, whenever
16 practicable, engage in informal dispute resolution ac-
17 tivities in lieu of formal enforcement or sanctions
18 under section 2154.

19 “(b) LIMITATIONS ON DELEGATION OF DECISION-
20 MAKING AUTHORITY.—The Secretary may not delegate
21 (other than to the Administrator of the Health Care Fi-
22 nancing Administration) the authority to make determina-
23 tions or reconsiderations respecting the approval of
24 MediGrant plans (or amendments to such plans) or the
25 compliance of a MediGrant plan (including its administra-
26 tion) with requirements of this title. Such Administrator

1 may not further delegate such authority to any individual,
2 including any regional official of such Administration.

3 “(c) REQUIRING FORMAL RULEMAKING FOR
4 CHANGES IN SECRETARIAL ADMINISTRATION.—The Sec-
5 retary shall carry out the administration of the program
6 under this title only through a prospective formal rule-
7 making process, including issuing notices of proposed rule
8 making, publishing proposed rules or modifications to
9 rules in the Federal Register, and soliciting public com-
10 ment.

11 “PART F—GENERAL PROVISIONS

12 “SEC. 2171. DEFINITIONS.

13 “(a) MEDICAL ASSISTANCE.—

14 “(1) IN GENERAL.—For purposes of this title,
15 except as provided in paragraph (2), the term ‘medi-
16 cal assistance’ means payment of part or all the cost
17 of any of the following for eligible low-income indi-
18 viduals (as defined in subsection (b)) as specified
19 under the MediGrant plan:

20 “(A) Inpatient hospital services.

21 “(B) Outpatient hospital services.

22 “(C) Physician services.

23 “(D) Surgical services.

24 “(E) Clinic services and other ambulatory
25 health care services.

1 “(F) Nursing facility services.

2 “(G) Intermediate care facility services for
3 the mentally retarded.

4 “(H) Prescription drugs and biologicals.

5 “(I) Over-the-counter medications.

6 “(J) Laboratory and radiological services.

7 “(K) Family planning services and sup-
8 plies.

9 “(L) Inpatient mental health services, in-
10 cluding services furnished in a State-operated
11 mental hospital and including residential or
12 other 24-hour therapeutically planned struc-
13 tured services in the case of a child.

14 “(M) Outpatient mental health services, in-
15 cluding services furnished in a State-operated
16 mental hospital and including community-based
17 services in the case of a child.

18 “(N) Durable medical equipment and other
19 medically-related or remedial devices (such as
20 prosthetic devices, implants, eyeglasses, hearing
21 aids, dental devices, and adaptive devices).

22 “(O) Disposable medical supplies.

23 “(P) Home and community-based health
24 care services and related supportive services
25 (such as home health nursing services, home

1 health aide services, personal care, assistance
2 with activities of daily living, chore services, day
3 care services, respite care services, and training
4 for family members).

5 “(Q) Community supported living arrange-
6 ments.

7 “(R) Nursing care services (such as private
8 duty nursing care, nurse midwife services, res-
9 piratory care services, pediatric nurse services,
10 and advanced practice nurse services) in a
11 home, school, or other setting.

12 “(S) Dental services.

13 “(T) Inpatient substance abuse treatment
14 services and residential substance abuse treat-
15 ment services.

16 “(U) Outpatient substance abuse treat-
17 ment services.

18 “(V) Case management services.

19 “(W) Care coordination services.

20 “(X) Physical therapy, occupational ther-
21 apy, and services for individuals with speech,
22 hearing, and language disorders.

23 “(Y) Hospice care.

24 “(Z) Any other medical, diagnostic, screen-
25 ing, preventive, restorative, remedial, thera-

1 peutic, or rehabilitative services (whether in a
2 facility, home, school, or other setting) if recog-
3 nized by State law and if the service is—

4 “(i) prescribed by or furnished by a
5 physician or other licensed or registered
6 practitioner within the scope of practice as
7 defined by State law,

8 “(ii) performed under the general su-
9 pervision or at the direction of a physician,
10 or

11 “(iii) furnished by a health care facil-
12 ity that is operated by a State or local gov-
13 ernment or is licensed under State law and
14 operating within the scope of the license.

15 “(AA) Premiums for private health care
16 insurance coverage, including private long-term
17 care insurance coverage.

18 “(BB) Medical transportation.

19 “(CC) Medicare cost-sharing (as defined in
20 subsection (c)).

21 “(DD) Enabling services (such as trans-
22 portation, translation, and outreach services)
23 designed to increase the accessibility of primary
24 and preventive health care services for eligible
25 low-income individuals.

1 “(EE) Any other health care services or
2 items specified by the Secretary.

3 “(2) EXCLUSION OF CERTAIN PAYMENTS.—

4 Such term does not include the payment with re-
5 spect to care or services for—

6 “(A) any individual who is an inmate of a
7 public institution (except as a patient in a State
8 psychiatric hospital); and

9 “(B) any individual who is not an eligible
10 low-income individual.

11 “(b) ELIGIBLE LOW-INCOME INDIVIDUAL.—The
12 term ‘eligible low-income individual’ means an individual
13 who has been determined eligible by the State for medical
14 assistance under the MediGrant plan and whose family in-
15 come (as determined under the plan) does not exceed a
16 percentage (specified in the MediGrant plan and not to
17 exceed 300 percent) of the poverty line for a family of
18 the size involved. In determining the amount of income
19 under the previous sentence, a State may exclude costs
20 incurred for medical care or other types of remedial care
21 recognized by the State.

22 “(c) MEDICARE COST-SHARING.—For purposes of
23 this title, the term ‘medicare cost-sharing’ means any of
24 the following:

25 “(1)(A) Premiums under section 1839.

1 “(B) Premiums under section 1818 or 1818A.

2 “(2) Coinsurance under title XVIII (including
3 coinsurance described in section 1813).

4 “(3) Deductibles established under title XVIII
5 (including those described in section 1813 and sec-
6 tion 1833(b)).

7 “(4) The difference between the amount that is
8 paid under section 1833(a) and the amount that
9 would be paid under such section if any reference to
10 ‘80 percent’ therein were deemed a reference to ‘100
11 percent’.

12 “(5) Premiums for enrollment of an individual
13 with an eligible organization under section 1876 or
14 with a MedicarePlus organization under part C of
15 title XVIII.

16 “(d) ADDITIONAL DEFINITIONS.—For purposes of
17 this title:

18 “(1) CHILD.—The term ‘child’ means an indi-
19 vidual under 19 years of age.

20 “(2) POVERTY LINE DEFINED.—The term ‘pov-
21 erty line’ means the income official poverty line (as
22 defined by the Office of Management and Budget
23 and revised annually in accordance with section
24 673(2) of the Omnibus Budget Reconciliation Act of
25 1981).

1 “(3) PREGNANT WOMAN.—The term ‘pregnant
2 woman’ includes a woman during the 60-day period
3 beginning on the last day of the pregnancy.

4 **“SEC. 2172. TREATMENT OF TERRITORIES.**

5 “Notwithstanding any other requirement of this title,
6 the Secretary may waive or modify any requirement of this
7 title with respect to the medical assistance program a
8 State other than the 50 States and the District of Colum-
9 bia, other than a waiver of—

10 “(1) the applicable Federal medical assistance
11 percentage,

12 “(2) the limitation on total payments in a fiscal
13 year to the amount of the allotment under section
14 2121(c), or

15 “(3) the requirement that payment may be
16 made for medical assistance only with respect to
17 amounts expended by the State for care and services
18 described in paragraph (1) of section 2171(a) and
19 medically-related services (as defined in section
20 2112(e)(2)).

21 **“SEC. 2173. DESCRIPTION OF TREATMENT OF INDIAN**
22 **HEALTH SERVICE FACILITIES.**

23 “In the case of a State in which one or more facilities
24 of the Indian Health Service are located, the MediGrant
25 plan shall include a description of—

1 “(1) what provision (if any) has been made for
2 payment for items and services furnished by such fa-
3 cilities, and

4 “(2) the manner in which medical assistance for
5 low-income eligible individuals who are Indians will
6 be provided, as determined by the State in consulta-
7 tion with the appropriate Indian tribes and tribal or-
8 ganizations.

9 **“SEC. 2174. APPLICATION OF CERTAIN GENERAL PROVI-**
10 **SIONS.**

11 “The following sections in part A of title XI shall
12 apply to States under this title in the same manner as
13 they applied to a State under title XIX:

14 “(1) Section 1101(a)(1) (relating to definition
15 of State).

16 “(2) Section 1116 (relating to administrative
17 and judicial review), but only insofar as consistent
18 with the provisions of part C.

19 “(3) Section 1124 (relating to disclosure of
20 ownership and related information).

21 “(4) Section 1126 (relating to disclosure of in-
22 formation about certain convicted individuals).

23 “(5) Section 1132 (relating to periods within
24 which claims must be filed).

1 **“SEC. 2175. MEDIGRANT MASTER DRUG REBATE AGREE-**
2 **MENTS.**

3 “(a) REQUIREMENT FOR MANUFACTURER TO ENTER
4 INTO AGREEMENT.—

5 “(1) IN GENERAL.—Pursuant to section
6 2123(f), in order for payment to be made to a State
7 under part C for medical assistance for covered out-
8 patient drugs of a manufacturer, the manufacturer
9 shall enter into and have in effect an MediGrant
10 master rebate agreement described in subsection (b)
11 with the Secretary on behalf of States electing to
12 participate in the agreement.

13 “(2) STATE PARTICIPATION IN MASTER AGREE-
14 MENT OPTIONAL.—Nothing in this section shall be
15 construed to—

16 “(A) require a State to participate in an
17 MediGrant master rebate agreement under this
18 section; or

19 “(B) prohibit a State from entering into
20 an agreement with a manufacturer of covered
21 outpatient drugs (under such terms as the
22 State and manufacturer may agree upon) re-
23 garding the amount of payment for such drugs
24 under the MediGrant plan.

25 “(3) COVERAGE OF DRUGS NOT COVERED
26 UNDER REBATE AGREEMENTS.—Nothing in this sec-

1 tion shall be construed to prohibit a State in its dis-
2 cretion from providing coverage under its MediGrant
3 plan of a covered outpatient drug for which no re-
4 bate agreement is in effect under this section.

5 “(4) EFFECT ON EXISTING AGREEMENTS.—If a
6 State has a rebate agreement in effect with a manu-
7 facturer on the date of the enactment of this section
8 which provides for a minimum aggregate rebate
9 equal to or greater than the minimum aggregate re-
10 bate which would otherwise be paid under the
11 MediGrant master agreement under this section, at
12 the option of the State—

13 “(A) such agreement shall be considered to
14 meet the requirements of the MediGrant master
15 rebate agreement; and

16 “(B) the State shall be considered to have
17 elected to participate in the MediGrant master
18 rebate agreement.

19 “(b) TERMS OF REBATE AGREEMENT.—

20 “(1) PERIODIC REBATES.—The MediGrant
21 master rebate agreement under this section shall re-
22 quire the manufacturer to provide, to the MediGrant
23 plan of each State participating in the agreement, a
24 rebate for a rebate period in an amount specified in
25 subsection (c) for covered outpatient drugs of the

1 manufacturer dispensed after the effective date of
2 the agreement, for which payment was made under
3 the plan for such period. Such rebate shall be paid
4 by the manufacturer not later than 30 days after the
5 date of receipt of the information described in para-
6 graph (2) for the period involved.

7 “(2) STATE PROVISION OF INFORMATION.—

8 “(A) STATE RESPONSIBILITY.—Each State
9 participating in the MediGrant master rebate
10 agreement shall report to each manufacturer
11 not later than 60 days after the end of each re-
12 bate period and in a form consistent with a
13 standard reporting format established by the
14 Secretary, information on the total number of
15 units of each dosage form and strength and
16 package size of each covered outpatient drug,
17 for which payment was made under the
18 MediGrant plan for the period, and shall
19 promptly transmit a copy of such report to the
20 Secretary.

21 “(B) AUDITS.—A manufacturer may audit
22 the information provided (or required to be pro-
23 vided) under subparagraph (A). Adjustments to
24 rebates shall be made to the extent that infor-

1 mation indicates that utilization was greater or
2 less than the amount previously specified.

3 “(3) MANUFACTURER PROVISION OF PRICE IN-
4 FORMATION.—

5 “(A) IN GENERAL.—Each manufacturer
6 which is subject to the MediGrant master re-
7 bate agreement under this section shall report
8 to the Secretary—

9 “(i) not later than 30 days after the
10 last day of each rebate period under the
11 agreement (beginning on or after January
12 1, 1991), on the average manufacturer
13 price (as defined in subsection (i)(1)) and,
14 for single source drugs and innovator mul-
15 tiple source drugs, the manufacturer’s best
16 price (as defined in subsection (c)(1)(C))
17 for each covered outpatient drug for the
18 rebate period under the agreement, and

19 “(ii) not later than 30 days after the
20 date of entering into an agreement under
21 this section, on the average manufacturer
22 price (as defined in subsection (i)(1)) as of
23 October 1, 1990, for each of the manufac-
24 turer’s covered outpatient drugs.

1 “(B) VERIFICATION SURVEYS OF AVERAGE
2 MANUFACTURER PRICE.—The Secretary may
3 survey wholesalers and manufacturers that di-
4 rectly distribute their covered outpatient drugs,
5 when necessary, to verify manufacturer prices
6 reported under subparagraph (A). The Sec-
7 retary may impose a civil monetary penalty in
8 an amount not to exceed \$10,000 on a whole-
9 saler, manufacturer, or direct seller, if the
10 wholesaler, manufacturer, or direct seller of a
11 covered outpatient drug refuses a request for
12 information by the Secretary in connection with
13 a survey under this subparagraph. The provi-
14 sions of section 1128A (other than subsections
15 (a) (with respect to amounts of penalties or ad-
16 ditional assessments) and (b)) shall apply to a
17 civil money penalty under this subparagraph in
18 the same manner as such provisions apply to a
19 penalty or proceeding under section 1128A(a).

20 “(C) PENALTIES.—

21 “(i) FAILURE TO PROVIDE TIMELY IN-
22 FORMATION.—In the case of a manufac-
23 turer which is subject to the MediGrant
24 master rebate agreement that fails to pro-
25 vide information required under subpara-

1 graph (A) on a timely basis, the amount of
2 the penalty shall be \$10,000 for each day
3 in which such information has not been
4 provided and such amount shall be paid to
5 the Treasury. If such information is not
6 reported within 90 days of the deadline im-
7 posed, the agreement shall be suspended
8 for services furnished after the end of such
9 90-day period and until the date such in-
10 formation is reported (but in no case shall
11 such suspension be for a period of less
12 than 30 days).

13 “(ii) FALSE INFORMATION.—Any
14 manufacturer which is subject to the
15 MediGrant master rebate agreement, or a
16 wholesaler or direct seller, that knowingly
17 provides false information under subpara-
18 graph (A) or (B) is subject to a civil
19 money penalty in an amount not to exceed
20 \$100,000 for each item of false informa-
21 tion. Any such civil money penalty shall be
22 in addition to other penalties as may be
23 prescribed by law. The provisions of sec-
24 tion 1128A (other than subsections (a) and
25 (b)) shall apply to a civil money penalty

1 under this subparagraph in the same man-
2 ner as such provisions apply to a penalty
3 or proceeding under section 1128A(a).

4 “(D) CONFIDENTIALITY OF INFORMA-
5 TION.—Notwithstanding any other provision of
6 law, information disclosed by manufacturers or
7 wholesalers under this paragraph or under an
8 agreement with the Secretary of Veterans Af-
9 fairs described in section 2123(f) is confidential
10 and shall not be disclosed by the Secretary or
11 the Secretary of Veterans Affairs or a State
12 agency (or contractor therewith) in a form
13 which discloses the identity of a specific manu-
14 facturer or wholesaler or the prices charged for
15 drugs by such manufacturer or wholesaler, ex-
16 cept—

17 “(i) as the Secretary determines to be
18 necessary to carry out this section,

19 “(ii) to permit the Comptroller Gen-
20 eral to review the information provided,
21 and

22 “(iii) to permit the Director of the
23 Congressional Budget Office to review the
24 information provided.

25 “(4) LENGTH OF AGREEMENT.—

1 “(A) IN GENERAL.—The MediGrant mas-
2 ter rebate agreement under this section shall be
3 effective for an initial period of not less than 1
4 year and shall be automatically renewed for a
5 period of not less than one year unless termi-
6 nated under subparagraph (B).

7 “(B) TERMINATION.—

8 “(i) BY THE SECRETARY.—The Sec-
9 retary may provide for termination of the
10 MediGrant master rebate agreement with
11 respect to a manufacturer for violation of
12 the requirements of the agreement or other
13 good cause shown. Such termination shall
14 not be effective earlier than 60 days after
15 the date of notice of such termination. The
16 Secretary shall provide, upon request, a
17 manufacturer with a hearing concerning
18 such a termination, but such hearing shall
19 not delay the effective date of the termi-
20 nation. Failure of a State to provide any
21 advance notice of such a termination as re-
22 quired by regulation shall not affect the
23 State’s right to terminate coverage of the
24 drugs affected by such termination as of
25 the effective date of such termination.

1 “(ii) BY A MANUFACTURER.—A man-
2 ufacturer may terminate its participation
3 in the MediGrant master rebate agreement
4 under this section for any reason. Any
5 such termination shall not be effective
6 until the calendar quarter beginning at
7 least 60 days after the date the manufac-
8 turer provides notice to the Secretary.

9 “(iii) EFFECTIVENESS OF TERMI-
10 NATION.—Any termination under this sub-
11 paragraph shall not affect rebates due
12 under the agreement before the effective
13 date of its termination.

14 “(iv) NOTICE TO STATES.—In the
15 case of a termination under this subpara-
16 graph, the Secretary shall provide notice of
17 such termination to the States within not
18 less than 30 days before the effective date
19 of such termination.

20 “(v) APPLICATION TO TERMINATIONS
21 OF OTHER AGREEMENTS.—The provisions
22 of this subparagraph shall apply to the ter-
23 minations of master agreements described
24 in section 8126(a) of title 38, United
25 States Code.

1 “(C) DELAY BEFORE REENTRY.—In the
2 case of any rebate agreement with a manufac-
3 turer under this section which is terminated,
4 another such agreement with the manufacturer
5 (or a successor manufacturer) may not be en-
6 tered into until a period of 1 calendar quarter
7 has elapsed since the date of the termination,
8 unless the Secretary finds good cause for an
9 earlier reinstatement of such an agreement.

10 “(c) DETERMINATION OF AMOUNT OF REBATE.—

11 “(1) BASIC REBATE FOR SINGLE SOURCE
12 DRUGS AND INNOVATOR MULTIPLE SOURCE
13 DRUGS.—

14 “(A) IN GENERAL.—Except as provided in
15 paragraph (2), the amount of the rebate speci-
16 fied in this subsection with respect to a State
17 participating in the MediGrant master rebate
18 agreement for a rebate period (as defined in
19 subsection (i)(8)) with respect to each dosage
20 form and strength of a single source drug or an
21 innovator multiple source drug shall be equal to
22 the product of—

23 “(i) the total number of units of each
24 dosage form and strength paid for under

1 the State plan in the rebate period (as re-
2 ported by the State); and

3 “(ii) the greater of—

4 “(I) the difference between the
5 average manufacturer price and the
6 best price (as defined in subparagraph
7 (C)) for the dosage form and strength
8 of the drug, or

9 “(II) the minimum rebate per-
10 centage (specified in subparagraph
11 (B)) of such average manufacturer
12 price,
13 for the rebate period.

14 “(B) MINIMUM REBATE PERCENTAGE.—
15 For purposes of subparagraph (A)(ii)(II), the
16 ‘minimum rebate percentage’ is 15.1 percent.

17 “(C) BEST PRICE DEFINED.—For pur-
18 poses of this section—

19 “(i) IN GENERAL.—The term ‘best
20 price’ means, with respect to a single
21 source drug or innovator multiple source
22 drug of a manufacturer, the lowest price
23 available from the manufacturer during the
24 rebate period to any wholesaler, retailer,
25 provider, health maintenance organization,

1 nonprofit entity, or governmental entity
2 within the United States, excluding—

3 “(I) any prices charged on or
4 after October 1, 1992, to the Indian
5 Health Service, the Department of
6 Veterans Affairs, a State home receiv-
7 ing funds under section 1741 of title
8 38, United States Code, the Depart-
9 ment of Defense, the Public Health
10 Service, or a covered entity described
11 in section 340B(a)(4) of the Public
12 Health Service Act;

13 “(II) any prices charged under
14 the Federal Supply Schedule of the
15 General Services Administration;

16 “(III) any prices used under a
17 State pharmaceutical assistance pro-
18 gram; and

19 “(IV) any depot prices and single
20 award contract prices, as defined by
21 the Secretary, of any agency of the
22 Federal Government.

23 “(ii) SPECIAL RULES.—The term ‘best
24 price’—

1 “(I) shall be inclusive of cash dis-
2 counts, free goods that are contingent
3 on any purchase requirement, volume
4 discounts, and rebates (other than re-
5 bates under this section);

6 “(II) shall be determined without
7 regard to special packaging, labeling,
8 or identifiers on the dosage form or
9 product or package;

10 “(III) shall not take into account
11 prices that are merely nominal in
12 amount; and

13 “(IV) shall exclude rebates paid
14 under this section or any other re-
15 bates paid to a State participating in
16 the MediGrant master rebate agree-
17 ment.

18 “(2) ADDITIONAL REBATE FOR SINGLE SOURCE
19 AND INNOVATOR MULTIPLE SOURCE DRUGS.—

20 “(A) IN GENERAL.—The amount of the re-
21 bate specified in this subsection with respect to
22 a State participating in the MediGrant master
23 rebate agreement for a rebate period, with re-
24 spect to each dosage form and strength of a
25 single source drug or an innovator multiple

1 source drug, shall be increased by an amount
2 equal to the product of—

3 “(i) the total number of units of such
4 dosage form and strength dispensed after
5 December 31, 1990, for which payment
6 was made under the MediGrant plan for
7 the rebate period; and

8 “(ii) the amount (if any) by which—

9 “(I) the average manufacturer
10 price for the dosage form and
11 strength of the drug for the period,
12 exceeds

13 “(II) the average manufacturer
14 price for such dosage form and
15 strength for the calendar quarter be-
16 ginning July 1, 1990 (without regard
17 to whether or not the drug has been
18 sold or transferred to an entity, in-
19 cluding a division or subsidiary of the
20 manufacturer, after the first day of
21 such quarter), increased by the per-
22 centage by which the consumer price
23 index for all urban consumers (United
24 States city average) for the month be-
25 fore the month in which the rebate pe-

1 riod begins exceeds such index for
2 September 1990.

3 “(B) TREATMENT OF SUBSEQUENTLY AP-
4 PROVED DRUGS.—In the case of a covered out-
5 patient drug approved by the Food and Drug
6 Administration after October 1, 1990, clause
7 (ii)(II) of subparagraph (A) shall be applied by
8 substituting ‘the first full calendar quarter after
9 the day on which the drug was first marketed’
10 for ‘the calendar quarter beginning July 1,
11 1990’ and ‘the month prior to the first month
12 of the first full calendar quarter after the day
13 on which the drug was first marketed’ for ‘Sep-
14 tember 1990’.

15 “(3) REBATE FOR OTHER DRUGS.—

16 “(A) IN GENERAL.—The amount of the re-
17 bate paid to a State participating in the
18 MediGrant master rebate agreement for a re-
19 bate period with respect to each dosage form
20 and strength of covered outpatient drugs (other
21 than single source drugs and innovator multiple
22 source drugs) shall be equal to the product of—

23 “(i) the applicable percentage (as de-
24 scribed in subparagraph (B)) of the aver-
25 age manufacturer price for the dosage

1 form and strength for the rebate period,
2 and

3 “(ii) the total number of units of such
4 dosage form and strength dispensed after
5 December 31, 1990, for which payment
6 was made under the MediGrant plan for
7 the rebate period.

8 “(B) APPLICABLE PERCENTAGE DE-
9 FINED.—For purposes of subparagraph (A)(i),
10 the ‘applicable percentage’ is 11 percent.

11 “(4) LIMITATION ON AMOUNT OF REBATE TO
12 AMOUNTS PAID FOR CERTAIN DRUGS.—Upon request
13 of a manufacturer of a covered outpatient drug for
14 which a majority of the estimated number of units
15 of such dosage form and strength that are subject
16 to rebates under this section were dispensed to inpa-
17 tients of nursing facilities (including drugs which are
18 exempt from the requirements of the MediGrant
19 master rebate agreement under this section under
20 subsection (h)(1)(B)), the Secretary shall limit the
21 amount of the rebate under this subsection with re-
22 spect to a dosage form and strength of the drug for
23 a rebate period to the amount paid under the
24 MediGrant plan with respect to such dosage form

1 and strength of the drug in the rebate period (with-
2 out consideration of any dispensing fees paid).

3 “(d) LIMITATIONS ON COVERAGE OF DRUGS BY
4 STATES PARTICIPATING IN MASTER AGREEMENT.—

5 “(1) PERMISSIBLE RESTRICTIONS.—A State
6 participating in the MediGrant master rebate agree-
7 ment under this section may—

8 “(A) subject to prior authorization under
9 its MediGrant plan any covered outpatient drug
10 so long as any such prior authorization pro-
11 gram complies with the requirements of para-
12 graph (5); and

13 “(B) exclude or otherwise restrict coverage
14 under its plan of a covered outpatient drug if—

15 “(i) the prescribed use is not for a
16 medically accepted indication (as defined in
17 subsection (i)(5));

18 “(ii) the drug is contained in the list
19 referred to in paragraph (2);

20 “(iii) the drug is subject to such re-
21 strictions pursuant to the MediGrant mas-
22 ter rebate agreement or any agreement de-
23 scribed in subsection (a)(4); or

1 “(iv) the State has excluded coverage
2 of the drug from its formulary established
3 in accordance with paragraph (4).

4 “(2) LIST OF DRUGS SUBJECT TO RESTRIC-
5 TION.—The following drugs or classes of drugs, or
6 their medical uses, may be excluded from coverage
7 or otherwise restricted by a State participating in
8 the MediGrant master rebate agreement:

9 “(A) Agents when used for anorexia,
10 weight loss, or weight gain.

11 “(B) Agents when used to promote fertil-
12 ity.

13 “(C) Agents when used for cosmetic pur-
14 poses or hair growth.

15 “(D) Agents when used for the sympto-
16 matic relief of cough and colds.

17 “(E) Agents when used to promote smok-
18 ing cessation.

19 “(F) Prescription vitamins and mineral
20 products, except prenatal vitamins and fluoride
21 preparations.

22 “(G) Nonprescription drugs.

23 “(H) Covered outpatient drugs which the
24 manufacturer seeks to require as a condition of
25 sale that associated tests or monitoring services

1 be purchased exclusively from the manufacturer
2 or its designee.

3 “(I) Barbiturates.

4 “(J) Benzodiazepines.

5 “(3) ADDITIONS TO DRUG LISTINGS.—The Sec-
6 retary shall, by regulation, periodically update the
7 list of drugs or classes of drugs described in para-
8 graph (2), or their medical uses, which the Secretary
9 has determined to be subject to clinical abuse or in-
10 appropriate use.

11 “(4) REQUIREMENTS FOR FORMULARIES.—A
12 State participating in the MediGrant master rebate
13 agreement may establish a formulary if the for-
14 mulary meets the following requirements:

15 “(A) The formulary is developed by a com-
16 mittee consisting of physicians, pharmacists,
17 and other appropriate individuals appointed by
18 the Governor of the State.

19 “(B) Except as provided in subparagraph
20 (C), the formulary includes the covered out-
21 patient drugs of any manufacturer which has
22 entered into and complies with the agreement
23 under subsection (a) (other than any drug ex-
24 cluded from coverage or otherwise restricted
25 under paragraph (2)).

1 “(C) A covered outpatient drug may be ex-
2 cluded with respect to the treatment of a spe-
3 cific disease or condition for an identified popu-
4 lation (if any) only if, based on the drug’s label-
5 ing (or, in the case of a drug the prescribed use
6 of which is not approved under the Federal
7 Food, Drug, and Cosmetic Act but is a medi-
8 cally accepted indication, based on information
9 from the appropriate compendia described in
10 subsection (i)(5)), the excluded drug does not
11 have a significant, clinically meaningful thera-
12 peutic advantage in terms of safety, effective-
13 ness, or clinical outcome of such treatment for
14 such population over other drugs included in
15 the formulary and there is a written expla-
16 nation (available to the public) of the basis for
17 the exclusion.

18 “(D) The State plan permits coverage of a
19 drug excluded from the formulary (other than
20 any drug excluded from coverage or otherwise
21 restricted under paragraph (2)) pursuant to a
22 prior authorization program that is consistent
23 with paragraph (5).

24 “(E) The formulary meets such other re-
25 quirements as the Secretary may impose in

1 order to achieve program savings consistent
2 with protecting the health of program bene-
3 ficiaries.

4 A prior authorization program established by a State
5 under paragraph (5) is not a formulary subject to
6 the requirements of this paragraph.

7 “(5) REQUIREMENTS OF PRIOR AUTHORIZATION
8 PROGRAMS.—The MediGrant plan of a State partici-
9 pating in the MediGrant master rebate agreement
10 may require, as a condition of coverage or payment
11 for a covered outpatient drug for which Federal fi-
12 nancial participation is available in accordance with
13 this section the approval of the drug before its dis-
14 pensing for any medically accepted indication (as de-
15 fined in subsection (i)(5)) only if the system provid-
16 ing for such approval—

17 “(A) provides response by telephone or
18 other telecommunication device within 24 hours
19 of a request for prior authorization; and

20 “(B) except with respect to the drugs on
21 the list referred to in paragraph (2), provides
22 for the dispensing of at least 72-hour supply of
23 a covered outpatient prescription drug in an
24 emergency situation (as defined by the Sec-
25 retary).

1 “(6) OTHER PERMISSIBLE RESTRICTIONS.—A
2 State participating in the MediGrant master rebate
3 agreement may impose limitations, with respect to
4 all such drugs in a therapeutic class, on the mini-
5 mum or maximum quantities per prescription or on
6 the number of refills, if such limitations are nec-
7 essary to discourage waste, and may address in-
8 stances of fraud or abuse by individuals in any man-
9 ner authorized under this Act.

10 “(e) DRUG USE REVIEW.—

11 “(1) IN GENERAL.—A State participating in the
12 MediGrant master rebate agreement may provide for
13 a drug use review program to educate physicians
14 and pharmacists to identify and reduce the fre-
15 quency of patterns of fraud, abuse, gross overuse, or
16 inappropriate or medically unnecessary care, among
17 physicians, pharmacists, and patients, or associated
18 with specific drugs or groups of drugs, as well as po-
19 tential and actual severe adverse reactions to drugs.

20 “(2) APPLICATION OF STATE STANDARDS.—A
21 State with a drug use review program under this
22 subsection shall establish and operate the program
23 under such standards as it may establish.

24 “(f) ELECTRONIC CLAIMS MANAGEMENT.—In ac-
25 cordance with chapter 35 of title 44, United States Code

1 (relating to coordination of Federal information policy),
2 the Secretary shall encourage each State to establish, as
3 its principal means of processing claims for covered out-
4 patient drugs under its MediGrant plan, a point-of-sale
5 electronic claims management system, for the purpose of
6 performing on-line, real time eligibility verifications,
7 claims data capture, adjudication of claims, and assisting
8 pharmacists (and other authorized persons) in applying
9 for and receiving payment.

10 “(g) ANNUAL REPORT.—

11 “(1) IN GENERAL.—Not later than May 1 of
12 each year, the Secretary shall transmit to the Com-
13 mittee on Finance of the Senate, the Committee on
14 Commerce of the House of Representatives, and the
15 Committee on Aging of the Senate a report on the
16 operation of this section in the preceding fiscal year.

17 “(2) DETAILS.—Each report shall include infor-
18 mation on—

19 “(A) ingredient costs paid under this title
20 for single source drugs, multiple source drugs,
21 and nonprescription covered outpatient drugs;

22 “(B) the total value of rebates received
23 and number of manufacturers providing such
24 rebates;

1 “(C) the effect of inflation on the value of
2 rebates required under this section;

3 “(D) trends in prices paid under this title
4 for covered outpatient drugs; and

5 “(E) Federal and State administrative
6 costs associated with compliance with the provi-
7 sions of this title.

8 “(h) EXEMPTION FOR CAPITATED HEALTH CARE
9 ORGANIZATIONS, HOSPITALS, AND NURSING FACILI-
10 TIES.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), the requirements of the MediGrant mas-
13 ter rebate agreement under this section shall not
14 apply with respect to covered outpatient drugs dis-
15 pensed by or through—

16 “(A) a capitated health care organization
17 (as defined in section 2114(c)(1)); or

18 “(B) a hospital or nursing facility that dis-
19 penses covered outpatient drugs using a drug
20 formulary system and bills the State no more
21 than the hospital’s purchasing costs for covered
22 outpatient drugs.

23 “(2) CONSTRUCTION IN DETERMINING BEST
24 PRICE.—Nothing in paragraph (1) shall be con-
25 strued as excluding amounts paid by the entities de-

1 scribed in such paragraph for covered outpatient
2 drugs from the determination of the best price (as
3 defined in subsection (c)(1)(C)) for such drugs.

4 “(i) DEFINITIONS.—In the section—

5 “(1) AVERAGE MANUFACTURER PRICE.—The
6 term ‘average manufacturer price’ means, with re-
7 spect to a covered outpatient drug of a manufacturer
8 for a rebate period, the average price paid to the
9 manufacturer for the drug in the United States by
10 wholesalers for drugs distributed to the retail phar-
11 macy class of trade, after deducting customary
12 prompt pay discounts.

13 “(2) COVERED OUTPATIENT DRUG.—Subject to
14 the exceptions in subparagraph (D), the term ‘cov-
15 ered outpatient drug’ means—

16 “(A) of those drugs which are treated as
17 prescribed drugs for purposes of section
18 2171(a)(1)(H), a drug which may be dispensed
19 only upon prescription (except as provided in
20 paragraph (7)), and—

21 “(i) which is approved as a prescrip-
22 tion drug under section 505 or 507 of the
23 Federal Food, Drug, and Cosmetic Act;

24 “(ii)(I) which was commercially used
25 or sold in the United States before the

1 date of the enactment of the Drug Amend-
2 ments of 1962 or which is identical, simi-
3 lar, or related (within the meaning of sec-
4 tion 310.6(b)(1) of title 21 of the Code of
5 Federal Regulations) to such a drug, and
6 (II) which has not been the subject of a
7 final determination by the Secretary that it
8 is a ‘new drug’ (within the meaning of sec-
9 tion 201(p) of the Federal Food, Drug,
10 and Cosmetic Act) or an action brought by
11 the Secretary under section 301, 302(a),
12 or 304(a) of such Act to enforce section
13 502(f) or 505(a) of such Act; or

14 “(iii)(I) which is described in section
15 107(c)(3) of the Drug Amendments of
16 1962 and for which the Secretary has de-
17 termined there is a compelling justification
18 for its medical need, or is identical, simi-
19 lar, or related (within the meaning of sec-
20 tion 310.6(b)(1) of title 21 of the Code of
21 Federal Regulations) to such a drug, and
22 (II) for which the Secretary has not issued
23 a notice of an opportunity for a hearing
24 under section 505(e) of the Federal Food,
25 Drug, and Cosmetic Act on a proposed

1 order of the Secretary to withdraw ap-
2 proval of an application for such drug
3 under such section because the Secretary
4 has determined that the drug is less than
5 effective for some or all conditions of use
6 prescribed, recommended, or suggested in
7 its labeling;

8 “(B) a biological product, other than a
9 vaccine which—

10 “(i) may only be dispensed upon pre-
11 scription,

12 “(ii) is licensed under section 351 of
13 the Public Health Service Act, and

14 “(iii) is produced at an establishment
15 licensed under such section to produce
16 such product;

17 “(C) insulin certified under section 506 of
18 the Federal Food, Drug, and Cosmetic Act; and

19 “(D) a drug which may be sold without a
20 prescription (commonly referred to as an ‘over-
21 the-counter drug’), if the drug is prescribed by
22 a physician (or other person authorized to pre-
23 scribe under State law).

24 “(3) LIMITING DEFINITION.—The term ‘covered
25 outpatient drug’ does not include any drug, biologi-

1 cal product, or insulin provided as part of, or as in-
2 cident to and in the same setting as, any of the fol-
3 lowing (and for which payment may be made under
4 a MediGrant plan as part of payment for the follow-
5 ing and not as direct reimbursement for the drug):

6 “(A) Inpatient hospital services.

7 “(B) Hospice services.

8 “(C) Dental services, except that drugs for
9 which the MediGrant plan authorizes direct re-
10 imbursement to the dispensing dentist are cov-
11 ered outpatient drugs.

12 “(D) Physicians’ services.

13 “(E) Outpatient hospital services.

14 “(F) Nursing facility services and services
15 provided by an intermediate care facility for the
16 mentally retarded.

17 “(G) Other laboratory and x-ray services.

18 “(H) Renal dialysis services.

19 Such term also does not include any such drug or
20 product for which a National Drug Code number is
21 not required by the Food and Drug Administration
22 or a drug or biological used for a medical indication
23 which is not a medically accepted indication. Any
24 drug, biological product, or insulin excluded from the
25 definition of such term as a result of this paragraph

1 shall be treated as a covered outpatient drug for
2 purposes of determining the best price (as defined in
3 subsection (c)(1)(C)) for such drug, biological prod-
4 uct, or insulin.

5 “(4) MANUFACTURER.—The term ‘manufac-
6 turer’ means, with respect to a covered outpatient
7 drug, the entity holding legal title to or possession
8 of the National Drug Code number for such drug.

9 “(5) MEDICALLY ACCEPTED INDICATION.—The
10 term ‘medically accepted indication’ means any use
11 for a covered outpatient drug which is approved
12 under the Federal Food, Drug, and Cosmetic Act, or
13 the use of which is supported by one or more cita-
14 tions included or approved for inclusion in any of the
15 following compendia:

16 “(A) American Hospital Formulary Service
17 Drug Information.

18 “(B) United States Pharmacopeia-Drug
19 Information.

20 “(C) American Medical Association Drug
21 Evaluations.

22 “(D) The peer-reviewed medical literature.

23 “(6) MULTIPLE SOURCE DRUG; INNOVATOR
24 MULTIPLE SOURCE DRUG; NONINNOVATOR MUL-
25 TIPLE SOURCE DRUG; SINGLE SOURCE DRUG.—

1 “(A) DEFINED.—

2 “(i) MULTIPLE SOURCE DRUG.—The
3 term ‘multiple source drug’ means, with
4 respect to a rebate period, a covered out-
5 patient drug (not including any drug de-
6 scribed in paragraph (2)(D)) for which
7 there are 2 or more drug products which—

8 “(I) are rated as therapeutically
9 equivalent (under the Food and Drug
10 Administration’s most recent publica-
11 tion of ‘Approved Drug Products with
12 Therapeutic Equivalence Evalua-
13 tions’),

14 “(II) except as provided in sub-
15 paragraph (B), are pharmaceutically
16 equivalent and bioequivalent, as de-
17 fined in subparagraph (C) and as de-
18 termined by the Food and Drug Ad-
19 ministration, and

20 “(III) are sold or marketed in
21 the State during the period.

22 “(ii) INNOVATOR MULTIPLE SOURCE
23 DRUG.—The term ‘innovator multiple
24 source drug’ means a multiple source drug
25 that was originally marketed under an

1 original new drug application or product li-
2 censing application approved by the Food
3 and Drug Administration.

4 “(iii) NONINNOVATOR MULTIPLE
5 SOURCE DRUG.—The term ‘noninnovator
6 multiple source drug’ means a multiple
7 source drug that is not an innovator mul-
8 tiple source drug.

9 “(iv) SINGLE SOURCE DRUG.—The
10 term ‘single source drug’ means a covered
11 outpatient drug which is produced or dis-
12 tributed under an original new drug appli-
13 cation approved by the Food and Drug Ad-
14 ministration, including a drug product
15 marketed by any cross-licensed producers
16 or distributors operating under the new
17 drug application or product licensing appli-
18 cation.

19 “(B) EXCEPTION.—Subparagraph
20 (A)(i)(II) shall not apply if the Food and Drug
21 Administration changes by regulation the re-
22 quirement that, for purposes of the publication
23 described in subparagraph (A)(i)(I), in order
24 for drug products to be rated as therapeutically
25 equivalent, they must be pharmaceutically

1 equivalent and bioequivalent, as defined in sub-
2 paragraph (C).

3 “(C) DEFINITIONS.—For purposes of this
4 paragraph—

5 “(i) drug products are pharmaceuti-
6 cally equivalent if the products contain
7 identical amounts of the same active drug
8 ingredient in the same dosage form and
9 meet compendial or other applicable stand-
10 ards of strength, quality, purity, and iden-
11 tity;

12 “(ii) drugs are bioequivalent if they do
13 not present a known or potential
14 bioequivalence problem, or, if they do
15 present such a problem, they are shown to
16 meet an appropriate standard of
17 bioequivalence; and

18 “(iii) a drug product is considered to
19 be sold or marketed in a State if it appears
20 in a published national listing of average
21 wholesale prices selected by the Secretary,
22 if the listed product is generally available
23 to the public through retail pharmacies in
24 that State.

1 “(7) NONPRESCRIPTION DRUGS.—If the
2 MediGrant plan of a State participating in the
3 MediGrant master rebate agreement under this sec-
4 tion includes coverage of prescribed drugs as de-
5 scribed in section 2171(a)(1)(H) and permits cov-
6 erage of drugs which may be sold without a prescrip-
7 tion (commonly referred to as ‘over-the-counter’
8 drugs), if they are prescribed by a physician (or
9 other person authorized to prescribe under State
10 law), such a drug shall be regarded as a covered out-
11 patient drug for purposes of the State’s participation
12 in the agreement.

13 “(8) REBATE PERIOD.—The term ‘rebate pe-
14 riod’ means, with respect to an agreement under
15 subsection (a), a calendar quarter or other period
16 specified by the Secretary with respect to the pay-
17 ment of rebates under such agreement.”.

18 **SEC. 16002. TERMINATION OF CURRENT PROGRAM AND**
19 **TRANSITION.**

20 (a) TERMINATION OF CURRENT PROGRAM; LIMITA-
21 TION ON MEDICAID PAYMENTS IN FISCAL YEAR 1996.—

22 Title XIX of the Social Security Act is amended—

23 (1) by redesignating section 1931 as section
24 1932; and

1 (2) by inserting after section 1930 the following
2 new section:

3 “TERMINATION OF MEDICAID PROGRAM; LIMITATION ON
4 NEW OBLIGATION AUTHORITY

5 “SEC. 1931. (a) ELIMINATION OF INDIVIDUAL ENTI-
6 TLEMENT.—Effective on the date of the enactment of this
7 section—

8 “(1) except as provided in subsection (b), the
9 Federal Government has no obligation to provide
10 payment with respect to items and services provided
11 under this title, and

12 “(2) this title shall not be construed as provid-
13 ing for an entitlement, under Federal law in relation
14 to the Federal Government, in an individual or per-
15 son (including any provider) at the time of provision
16 or receipt of services.

17 “(b) LIMITATION ON OBLIGATION AUTHORITY.—
18 Notwithstanding any other provision of this title—

19 “(1) POST-ENACTMENT, PRE-MEDIGRANT.—
20 Subject to paragraph (2), the Secretary is author-
21 ized to enter into obligations with any State under
22 this title for expenses incurred after the date of the
23 enactment of this Act and during fiscal year 1996,
24 but not in excess of the obligation allotment for that
25 State for fiscal year 1996 under section 2121(b)(4).

1 “(2) NONE AFTER MEDIGRANT.—The Secretary
2 is not authorized to enter into any obligation with
3 any State under this title for expenses incurred on
4 or after the earlier of—

5 “(A) October 1, 1996; or

6 “(B) the first day of the first quarter on
7 which the State plan under title XXI is first ef-
8 fective.

9 “(3) AGREEMENT.—A State’s submission of
10 claims for payment under section 1903 after the
11 date of the enactment of this title with respect to
12 which the limitation described in paragraph (1) ap-
13 plies is deemed to constitute the State’s acceptance
14 of the obligation limitation under such paragraph
15 (including the formula for computing the amount of
16 such obligation limitation).

17 “(c) REQUIREMENT FOR TIMELY SUBMITTAL OF
18 CLAIMS.—No payment shall be made to a State under this
19 title with respect to an obligation incurred before the date
20 of the enactment of this section, unless the State has sub-
21 mitted to the Secretary, by not later than June 30, 1996,
22 a claim for Federal financial participation for expenses
23 paid by the State with respect to such obligations. Nothing
24 in subsection (a) or (b) shall be construed as affecting the

1 obligation of the Federal Government to pay claims de-
2 scribed in the previous sentence.”.

3 (b) MEDICAID TRANSITION.—

4 (1) TREATMENT OF CERTAIN CAUSES OF AC-
5 TION.—No cause of action under title XIX of the
6 Social Security Act which seeks to require a State
7 to establish or maintain minimum payment rates
8 under such title and which has not become final as
9 of the date of the enactment of this Act shall be
10 brought or continued.

11 (2) TREATMENT OF CERTAIN DISALLOW-
12 ANCES.—Notwithstanding any provision of law, in
13 the case where payment has been made under sec-
14 tion 1903(a) of the Social Security Act to a State
15 before October 1, 1995, and for which a disallow-
16 ance has not been taken as of such date (or, if so
17 taken, has not been completed by such date), the
18 Secretary of Health and Human Services shall dis-
19 continue the disallowance proceeding and, if such
20 disallowance has been taken as of the date of the en-
21 actment of this Act, any payment reductions effected
22 shall be rescinded and the payments returned to the
23 State.

24 (3) EXTENSION OF MORATORIUM.—Section
25 6408(a)(3) of the Omnibus Budget Reconciliation

1 Act of 1989, as amended by section 13642 of the
2 Omnibus Budget Reconciliation Act of 1993, is
3 amended by striking “December 31, 1995” and in-
4 serting “the first day of the first quarter on which
5 the MediGrant plan for the State of Michigan is
6 first effective under title XXI of such Act”.

7 (c) NO APPLICATION OF PRIOR MEDICAID JUDG-
8 MENTS TO MEDIGRANT PROGRAM.—No judicial or admin-
9 istrative decision rendered regarding requirements im-
10 posed under title XIX of the Social Security Act with re-
11 spect to a State shall have any application to the
12 MediGrant plan of the State title XXI of such Act. A
13 State may, pursuant to the previous sentence, seek the
14 abrogation or modification of any such decision after the
15 date of termination of the State plan under title XIX of
16 such Act.

17 (d) TERMINATION OF PROGRAM FOR DISTRIBUTION
18 OF PEDIATRIC VACCINES

19 (1) IN GENERAL.—Subject to paragraph (2),
20 section 1928 of the Social Security Act (42 U.S.C.
21 1396s) is repealed, effective on the date of the en-
22 actment of this Act.

23 (2) TRANSITION.—(A) Such repeal shall not af-
24 fect the distribution of vaccines purchased and deliv-

1 ered to the States before the date of the enactment
2 of this Act.

3 (B) No vaccine may be purchased after such
4 date by the Federal Government or any State under
5 any contract under section 1928(d) of the Social Se-
6 curity Act.

7 (e) ANTI-FRAUD PROVISIONS.—

8 (1) IN GENERAL.—Section 1128(h)(1) of the
9 Social Security Act (42 U.S.C. 1320a–7(h)(1)) is
10 amended by inserting “or a MediGrant plan under
11 title XXI” after “title XIX”.

12 (2) CONTINUED ROLE OF INSPECTOR GEN-
13 ERAL.—The Inspector General in the Department of
14 Health and Human Services shall have the same re-
15 sponsibilities and duties in relation to fraud and
16 abuse and related matters under the MediGrant pro-
17 gram under title XXI of the Social Security Act as
18 such Inspector General has had in relation to the
19 medicaid program under title XIX of such Act be-
20 fore the date of the enactment of this Act.

21 **TITLE XVII—DEPARTMENT OF** 22 **COMMERCE ABOLITION**

23 **SEC. 17001. SHORT TITLE; TABLE OF CONTENTS.**

24 (a) SHORT TITLE.—This title may be cited as the
25 “Department of Commerce Dismantling Act”.

- 1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this title is as follows:

TITLE XVII—DEPARTMENT OF COMMERCE ABOLITION

Sec. 17001. Short title; table of contents.

Subtitle A—Abolishment of Department of Commerce

- Sec. 17101. Reestablishment of Department as Commerce Programs Resolution Agency.
 Sec. 17102. Functions.
 Sec. 17103. Deputy Administrator.
 Sec. 17104. Continuation of service of Department officers.
 Sec. 17105. Reorganization.
 Sec. 17106. Abolishment of Commerce Programs Resolution Agency.
 Sec. 17107. GAO report.
 Sec. 17108. Conforming amendments.
 Sec. 17109. Effective date.

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

- Sec. 17201. Economic development.
 Sec. 17202. Technology Administration.
 Sec. 17203. Terminated functions of NTIA.
 Sec. 17204. Transfer of National Telecommunications and Information Administration.
 Sec. 17205. National Oceanic and Atmospheric Administration.
 Sec. 17206. Miscellaneous abolishments.
 Sec. 17207. Privatization of travel functions.
 Sec. 17208. Effective date.
 Sec. 17209. Sense of Congress regarding user fees.

Subtitle C—Consolidation of Statistical Functions

- Sec. 17301. Short title.
 Sec. 17302. Definitions.

CHAPTER 1—ESTABLISHMENT OF FEDERAL STATISTICS AGENCY

- Sec. 17311. Establishment.
 Sec. 17312. Principal officers.
 Sec. 17313. Transfers of functions and offices.

CHAPTER 2—ADMINISTRATIVE PROVISIONS

- Sec. 17321. Personnel provisions.
 Sec. 17322. General administrative provisions.
 Sec. 17323. Contracts.
 Sec. 17324. Regulations.
 Sec. 17325. Seal.
 Sec. 17326. Annual report.

CHAPTER 3—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

- Sec. 17331. Transfer and allocation of appropriations and personnel.

- Sec. 17332. Effect on personnel.
- Sec. 17333. Incidental transfers.
- Sec. 17334. Savings provisions.
- Sec. 17335. References.
- Sec. 17336. Conforming amendments.
- Sec. 17337. Transition.
- Sec. 17338. Interim appointments.

Subtitle D—United States Trade Administration

CHAPTER 1—GENERAL PROVISIONS

- Sec. 17401. Findings.
- Sec. 17402. Definitions.

CHAPTER 2—UNITED STATES TRADE ADMINISTRATION

- Sec. 17411. Establishment of the Administration.
- Sec. 17412. Functions of the USTR.
- Sec. 17413. Deputy Administrator of the United States Trade Administration.
- Sec. 17414. Deputy United States Trade Representatives.
- Sec. 17415. Assistant Administrators.
- Sec. 17416. General Counsel.
- Sec. 17417. Inspector General.
- Sec. 17418. Chief Financial Officer.

CHAPTER 3—TRANSFERS TO THE ADMINISTRATION

- Sec. 17431. Office of the United States Trade Representative.
- Sec. 17432. Transfers from the Department of Commerce.
- Sec. 17433. Trade and Development Agency.
- Sec. 17434. Functions with respect to textile agreements.
- Sec. 17435. Plan for consolidation of trade activities.

CHAPTER 4—ADMINISTRATIVE PROVISIONS

- Sec. 17441. Personnel provisions.
- Sec. 17442. Delegation and assignment.
- Sec. 17443. Succession.
- Sec. 17444. Reorganization.
- Sec. 17445. Rules.
- Sec. 17446. Funds transfer.
- Sec. 17447. Contracts, grants, and cooperative agreements.
- Sec. 17448. Use of facilities.
- Sec. 17449. Gifts and bequests.
- Sec. 17450. Working capital fund.
- Sec. 17451. Service charges.
- Sec. 17452. Seal of department.

CHAPTER 5—RELATED AGENCIES

- Sec. 17461. Interagency trade organization.
- Sec. 17462. National Security Council.
- Sec. 17463. International Monetary Fund.

CHAPTER 6—CONFORMING AMENDMENTS

- Sec. 17471. Amendments to general provisions.

- Sec. 17472. Repeals.
- Sec. 17473. Conforming amendments relating to Executive Schedule positions.

CHAPTER 7—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

- Sec. 17481. Additional transfers.
- Sec. 17482. Incidental transfers.
- Sec. 17483. Effect on personnel.
- Sec. 17484. Savings provisions.
- Sec. 17485. Reference.
- Sec. 17486. Transition.

CHAPTER 8—MISCELLANEOUS

- Sec. 17491. Effective date.
- Sec. 17492. Interim appointments.
- Sec. 17493. Funding reductions resulting from reorganization.
- Sec. 17494. Authorization of appropriations.

Subtitle E—Patent And Trademark Office Corporation

- Sec. 17501. Short title.

CHAPTER 1—PATENT AND TRADEMARK OFFICE

- Sec. 17511. Establishment of Patent and Trademark Office as a corporation.
- Sec. 17512. Powers and duties.
- Sec. 17513. Organization and management.
- Sec. 17514. Management Advisory Board.
- Sec. 17515. Independence from Department of Commerce.
- Sec. 17516. Trademark Trial and Appeal Board.
- Sec. 17517. Board of Patent Appeals and Interferences.
- Sec. 17518. Suits by and against the Corporation.
- Sec. 17519. Annual report of Commissioner.
- Sec. 17520. Suspension or exclusion from practice.
- Sec. 17521. Funding.
- Sec. 17522. Audits.
- Sec. 17523. Transfer.

CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

- Sec. 17531. Effective date.
- Sec. 17532. Technical and conforming amendments.

Subtitle F—Miscellaneous Provisions

- Sec. 17601. References.
- Sec. 17602. Exercise of authorities.
- Sec. 17603. Savings provisions.
- Sec. 17604. Transfer of assets.
- Sec. 17605. Delegation and assignment.
- Sec. 17606. Authority of Administrator with respect to functions transferred.
- Sec. 17607. Proposed changes in law.
- Sec. 17608. Certain vesting of functions considered transfers.
- Sec. 17609. Definitions.
- Sec. 17610. Limitation on annual expenditures for continued functions.
- Sec. 17611. User fees.

Sec. 17612. Unobligated balances returned to Treasury.

Sec. 17613. Annual GAO report.

Subtitle A—Abolishment of Department of Commerce

SEC. 17101. REESTABLISHMENT OF DEPARTMENT AS COM- MERCE PROGRAMS RESOLUTION AGENCY.

(a) REESTABLISHMENT.—The Department of Commerce is hereby redesignated as the Commerce Programs Resolution Agency, which shall be a free-standing agency in the executive branch of the Government.

(b) ADMINISTRATOR.—

(1) IN GENERAL.—There shall be at the head of the Agency an Administrator of the Agency, who shall be appointed by the President, by and with the advice and consent of the Senate. The Agency shall be administered under the supervision and direction of the Administrator. The Administrator shall receive compensation at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(2) INITIAL APPOINTMENT OF ADMINISTRATOR.—Notwithstanding any other provision of this title or any other law, the President may, at any time after the date of the enactment of this title, appoint an individual to serve as Administrator of the Commerce Programs Resolution Agency (who

1 may be the Secretary of Commerce), as such posi-
2 tion is established under paragraph (1). An appoint-
3 ment under this paragraph may not be construed to
4 affect the position of Secretary of Commerce or the
5 authority of the Secretary before the effective date
6 specified in section 17109(a).

7 (c) DUTIES.—The Administrator shall be responsible
8 for—

9 (1) the administration and wind-up, during the
10 wind-up period, of all functions of the Administrator
11 pursuant to section 17102 and the other provisions
12 of this title;

13 (2) the administration and wind-up, during the
14 wind-up period, of any outstanding obligations of the
15 Federal Government under any programs terminated
16 or repealed by this title; and

17 (3) taking such other actions as may be nec-
18 essary, before the termination date specified in sec-
19 tion 17106(d), to wind up any outstanding affairs of
20 the Department of Commerce.

21 **SEC. 17102. FUNCTIONS.**

22 Except to the extent a function is abolished or vested
23 in another official or agency by this title, the Adminis-
24 trator shall perform all functions that, immediately before
25 the effective date specified in section 17109(a), were func-

1 tions of the Department of Commerce (or any office of
2 the Department) or were authorized to be performed by
3 the Secretary of Commerce or any other officer or em-
4 ployee of the Department in the capacity as such officer
5 or employee.

6 **SEC. 17103. DEPUTY ADMINISTRATOR.**

7 The Agency shall have a Deputy Administrator, who
8 shall—

9 (1) be appointed by and report to the Adminis-
10 trator; and

11 (2) shall perform such functions as may be del-
12 egated by the Administrator.

13 **SEC. 17104. CONTINUATION OF SERVICE OF DEPARTMENT**
14 **OFFICERS.**

15 (a) CONTINUATION OF SERVICE OF SECRETARY.—

16 The individual serving on the effective date specified in
17 section 17109(a) as the Secretary of Commerce may serve
18 and act as Administrator until the date an individual is
19 appointed under this title to the position of Administrator,
20 or until the end of the 120-day period provided for in sec-
21 tion 3348 of title 5, United States Code (relating to limita-
22 tions on the period of time a vacancy may be filled tempo-
23 rarily), whichever is earlier.

24 (b) CONTINUATION OF SERVICE OF OTHER OFFI-
25 CERS.—An individual serving on the effective date speci-

1 fied in section 17109(a) as an officer of the Department
2 of Commerce other than the Secretary of Commerce may
3 continue to serve and act in an equivalent capacity in the
4 Agency until the date an individual is appointed under this
5 title to the position of Administrator, or until the end of
6 the 120-day period provided for in section 3348 of title
7 5, United States Code (relating to limitations on the pe-
8 riod of time a vacancy may be filled temporarily) with re-
9 spect to that appointment, whichever is earlier.

10 (c) COMPENSATION FOR CONTINUED SERVICE.—Any
11 person—

12 (1) who serves as the Administrator under sub-
13 section (a), or

14 (2) who serves under subsection (b),
15 after the effective date specified in section 17109(a) and
16 before the first appointment of a person as Administrator
17 shall continue to be compensated for so serving at the rate
18 at which such person was compensated before such effec-
19 tive date.

20 **SEC. 17105. REORGANIZATION.**

21 The Administrator may allocate or reallocate any
22 function of the Agency pursuant to this title among the
23 officers of the Agency, and may establish, consolidate,
24 alter, or discontinue in the Commerce Programs Resolu-
25 tion Agency any organizational entities that were entities

1 of the Department of Commerce, as the Administrator
2 considers necessary or appropriate.

3 **SEC. 17106. ABOLISHMENT OF COMMERCE PROGRAMS RES-**
4 **OLUTION AGENCY.**

5 (a) IN GENERAL.—Effective on the termination date
6 specified in subsection (d), the Commerce Programs Reso-
7 lution Agency is abolished.

8 (b) ABOLITION OF FUNCTIONS.—Except for func-
9 tions transferred or otherwise continued by this title, all
10 functions that, immediately before the termination date
11 specified in subsection (d), were functions of the Com-
12 merce Programs Resolution Agency are abolished effective
13 on that termination date.

14 (c) PLAN FOR WINDING UP AFFAIRS.—Not later
15 than the effective date specified in section 17109(a), the
16 President shall submit to the Congress a plan for winding
17 up the affairs of the Agency in accordance with this title
18 and by not later than the termination date specified in
19 subsection (d).

20 (d) TERMINATION DATE.—The termination date
21 under this subsection is the date that is 3 years after the
22 date of the enactment of this title.

23 **SEC. 17107. GAO REPORT.**

24 Not later than 180 days after the date of enactment
25 of this title, the Comptroller General of the United States

1 shall submit to the Congress a report which shall include
2 recommendations for the most efficient means of achiev-
3 ing, in accordance with this title—

4 (1) the complete abolishment of the Depart-
5 ment of Commerce; and

6 (2) the termination or transfer or other con-
7 tinuation of the functions of the Department of
8 Commerce.

9 **SEC. 17108. CONFORMING AMENDMENTS.**

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

13 (b) **EXECUTIVE DEPARTMENTS.**—Section 101 of title
14 5, United States Code, is amended by striking the follow-
15 ing item:

16 “The Department of Commerce.”.

17 (c) **SECRETARY’S COMPENSATION.**—Section 5312 of
18 title 5, United States Code, is amended by striking the
19 following item:

20 “Secretary of Commerce.”.

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

23 (1) by striking the following item:

24 “Under Secretary of Commerce, Under Sec-
25 retary of Commerce for Economic Affairs, Under

1 Secretary of Commerce for Export Administration
2 and Under Secretary of Commerce for Travel and
3 Tourism.”;

4 (2) by striking the following item:

5 “Under Secretary of Commerce for Oceans and
6 Atmosphere, the incumbent of which also serves as
7 Administrator of the National Oceanic and Atmos-
8 pheric Administration.”; and

9 (3) by striking the following item:

10 “Under Secretary of Commerce for Tech-
11 nology.”.

12 (e) COMPENSATION FOR POSITIONS AT LEVEL IV.—

13 Section 5315 of title 5, United States Code, is amended—

14 (1) by striking the following item:

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

16 (2) by striking the following item:

17 “General Counsel of the Department of Com-
18 merce.”;

19 (3) by striking the following item:

20 “Assistant Secretary of Commerce for Oceans
21 and Atmosphere, the incumbent of which also serves
22 as Deputy Administrator of the National Oceanic
23 and Atmospheric Administration.”;

24 (4) by striking the following item:

1 “Director, National Institute of Standards and
2 Technology, Department of Commerce.”;

3 (5) by striking the following item:

4 “Inspector General, Department of Com-
5 merce.”;

6 (6) by striking the following item:

7 “Chief Financial Officer, Department of Com-
8 merce.”; and

9 (7) by striking the following item:

10 “Director, Bureau of the Census, Department
11 of Commerce.”.

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

14 (1) by striking the following item:

15 “Director, United States Travel Service, De-
16 partment of Commerce.”; and

17 (2) by striking the following item:

18 “National Export Expansion Coordinator, De-
19 partment of Commerce.”.

20 (g) INSPECTOR GENERAL ACT OF 1978.—The In-
21 specter General Act of 1978 (5 U.S.C. App.) is amend-
22 ed—

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

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

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

4 **SEC. 17109. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Except as provided in subsection
6 (b), this subtitle shall take effect on the date that is 6
7 months after the date of the enactment of this subtitle.

8 (b) PROVISIONS EFFECTIVE ON DATE OF ENACT-
9 MENT.—The following provisions of this subtitle shall take
10 effect on the date of the enactment of this subtitle:

11 (1) Section 17101(b).

12 (2) Section 17106(c).

13 (3) Section 17107.

14 **Subtitle B—Disposition of Particu-**
15 **lar Programs, Functions, and**
16 **Agencies of Department of Com-**
17 **merce**

18 **SEC. 17201. ECONOMIC DEVELOPMENT.**

19 (a) TERMINATED FUNCTIONS.—The Public Works
20 and Economic Development Act of 1965 (42 U.S.C. 3121
21 et seq.) is repealed.

22 (b) TRANSFER OF FINANCIAL OBLIGATIONS OWED
23 TO THE DEPARTMENT.—There are transferred to the Sec-
24 retary of the Treasury the loans, notes, bonds, debentures,
25 securities, and other financial obligations owned by the

1 Department of Commerce under the Public Works and
2 Economic Development Act of 1965, together with all as-
3 sets or other rights (including security interests) incident
4 thereto, and all liabilities related thereto. There are as-
5 signed to the Secretary of the Treasury the functions,
6 powers, and abilities vested in or delegated to the Sec-
7 retary of Commerce or the Department of Commerce to
8 manage, service, collect, sell, dispose of, or otherwise real-
9 ize proceeds on obligations owed to the Department of
10 Commerce under authority of such Act with respect to any
11 loans, obligations, or guarantees made or issued by the
12 Department of Commerce pursuant to such Act.

13 (c) SALE OF LOANS.—The Secretary of the Treasury
14 shall take such actions as may be necessary to ensure that
15 to the maximum extent practicable loans transferred to
16 the Secretary under subsection (b) are sold to the public.
17 The Secretary shall prescribe terms for the sale of such
18 loans to ensure that such sale will bring the highest pos-
19 sible rate of return to the Federal Government.

20 (d) AUDIT.—Not later than 18 months after the date
21 of the enactment of this title, the Comptroller General
22 shall conduct an audit of all grants made or issued by
23 the Department of Commerce under the Public Works and
24 Economic Development Act of 1965 in fiscal year 1995

1 and all loans, obligations, and guarantees and shall trans-
2 mit to Congress a report on the results of such audit.

3 **SEC. 17202. TECHNOLOGY ADMINISTRATION.**

4 (a) TECHNOLOGY ADMINISTRATION.—

5 (1) GENERAL RULE.—Except as otherwise pro-
6 vided in this section, the Technology Administration
7 shall be terminated on the effective date specified in
8 section 17208(a).

9 (2) OFFICE OF TECHNOLOGY POLICY.—The Of-
10 fice of Technology Policy is hereby terminated.

11 (b) NATIONAL INSTITUTE OF STANDARDS AND
12 TECHNOLOGY.—

13 (1) GENERAL RULE.—Except as otherwise pro-
14 vided in this subsection, the National Institute of
15 Standards and Technology (in this subsection re-
16 ferred to as the “Institute”) shall be transferred to
17 the United States Trade Administration.

18 (2) FUNCTIONS OF DIRECTOR.—Except as oth-
19 erwise provided in this subsection, upon the transfer
20 under paragraph (1), the Director of the Institute
21 shall perform all functions relating to the Institute
22 that, immediately before the effective date specified
23 in section 17208(a), were functions of the Secretary
24 of Commerce or the Under Secretary of Commerce
25 for Technology, including the administration of sec-

1 tion 17 of the Stevenson-Wydler Technology Innova-
2 tion Act of 1980.

3 (3) LABORATORIES.—(A) The laboratories of
4 the Institute shall be transferred to the United
5 States Trade Administration.

6 (B) The United States Trade Administration
7 shall attempt to sell the property of the laboratories
8 of the Institute, within 18 months after the effective
9 date specified in section 17208(a), to a private sec-
10 tor entity intending to perform substantially the
11 same functions as were performed by the labora-
12 tories of the Institute immediately before such effec-
13 tive date.

14 (C) If no offer to purchase property under sub-
15 paragraph (B) is received within the 18-month pe-
16 riod described in such subparagraph, the United
17 States Trade Administration shall submit a report to
18 the Congress containing recommendations on the ap-
19 propriate disposition of the property and functions
20 of the laboratories of the Institute.

21 (4) PROVISION OF SERVICES BY PRIVATE SEC-
22 TOR.—The Director of the Institute shall consider
23 proposals from experienced and qualified private-sec-
24 tor entities to provide services that, immediately be-
25 fore the effective date specified in section 17208(a),

1 were performed by the Technology Administration,
2 particularly foreign competitive technology assess-
3 ments. The Director shall require that proposals to
4 provide a service that are accepted under this para-
5 graph satisfy user needs better than, and provide
6 such service at a lower cost than, the service could
7 be provided by the Federal Government.

8 (c) NATIONAL TECHNICAL INFORMATION SERV-
9 ICE.—

10 (1) SALE OF PROPERTY.—The Commerce Pro-
11 grams Resolution Agency shall attempt to sell the
12 property of the National Technical Information
13 Service, within 18 months after the effective date
14 specified in section 17208(a), to a private sector en-
15 tity intending to perform substantially the same
16 functions as were performed by the National Tech-
17 nical Information Service immediately before such
18 effective date.

19 (2) RECOMMENDATIONS.—If no offer to pur-
20 chase property under paragraph (1) is received with-
21 in the 18-month period described in such paragraph,
22 the Commerce Programs Resolution Agency shall
23 submit a report to the Congress containing rec-
24 ommendations on the appropriate disposition of the

1 property and functions of the National Technical In-
2 formation Service.

3 (3) FUNDING.—No Federal funds may be ap-
4 propriated for the National Technical Information
5 Service for any fiscal year after fiscal year 1995.

6 (4) ELECTRONIC REPORTING.—Each Federal
7 research report that is required to be submitted to
8 the National Technical Information Service after the
9 date of the enactment of this Act shall be submitted
10 in an electronic, standardized format in order to fa-
11 cilitate the availability of Federal research reports
12 on the Internet and the World Wide Web.

13 (d) AMENDMENTS.—

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

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

22 (B) in section 2(d), by striking “, including
23 the programs established under sections 25, 26,
24 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.—(A) The Stevenson-Wydler
9 Technology Innovation Act of 1980 (15 U.S.C. 3701
10 et seq.) is amended—

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

14 (ii) 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 (iii) by striking sections 5, 6, 7, 8, 9, and
20 10; and

21 (iv) 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).

9 (B) Section 17 of the Stevenson-Wydler Tech-
10 nology Innovation Act of 1980 (15 U.S.C. 3711a,
11 relating to the Malcolm Baldrige National Quality
12 Award) is repealed. It is the sense of the Congress
13 that a private-sector entity should continue the na-
14 tional quality award program established by such
15 section.

16 **SEC. 17203. TERMINATED FUNCTIONS OF NTIA.**

17 (a) REPEALS.—The following provisions of law are
18 repealed:

19 (1) Subpart A of part IV of title III of the
20 Communications Act of 1934 (47 U.S.C. 390 et
21 seq.), relating to assistance for public telecommuni-
22 cations facilities.

23 (2) Subpart B of part IV of title III of the
24 Communications Act of 1934 (47 U.S.C. 394 et

1 seq.), relating to the Endowment for Children's
2 Educational Television.

3 (3) Subpart C of part IV of title III of the
4 Communications Act of 1934 (47 U.S.C. 395 et
5 seq.), relating to Telecommunications Demonstration
6 grants.

7 (b) DISPOSAL OF NTIA LABORATORIES.—

8 (1) TRANSFER TO RESOLUTION AGENCY.—The
9 laboratories of the National Telecommunications and
10 Information Administration shall be transferred to
11 the Commerce Programs Resolution Agency.

12 (2) SALE OF LABORATORIES.—The Commerce
13 Programs Resolution Agency shall attempt to sell
14 the property of such laboratories, within 18 months
15 after the effective date specified in section 17208(a),
16 to a private sector entity intending to perform sub-
17 stantially the same functions as were performed by
18 such laboratories immediately before such effective
19 date.

20 (3) REPORT ON DISPOSITION.—If no offer to
21 purchase property under subparagraph (B) is re-
22 ceived within the 18-month period described in such
23 subparagraph, the Commerce Programs Resolution
24 Agency shall submit a report to the Congress con-
25 taining recommendations on the appropriate disposi-

1 tion of the property and functions of such labora-
2 tories.

3 **SEC. 17204. TRANSFER OF NATIONAL TELECOMMUNI-**
4 **CATIONS AND INFORMATION ADMINISTRA-**
5 **TION.**

6 (a) **TRANSFER TO USTA.**—The National Tele-
7 communications and Information Administration shall be
8 transferred to the United States Trade Administration.

9 (b) **ADMINISTRATOR.**—The head of the National
10 Telecommunications and Information Administration shall
11 be an Administrator who shall be appointed by the Presi-
12 dent, by and with the advice and consent of the Senate.
13 The functions of the National Telecommunications and In-
14 formation Administration, and of the Secretary of Com-
15 merce and the Assistant Secretary for Communications
16 and Information of the Department of Commerce with re-
17 spect to the National Telecommunications and Informa-
18 tion Administration, are transferred to the Administrator.

19 (c) **REFERENCES.**—References in any provision of
20 law (including to the National Telecommunications and
21 Information Administration Organization Act) to the Sec-
22 retary of Commerce or the Assistant Secretary for Com-
23 munications and Information of the Department of Com-
24 merce with respect to a function vested pursuant to this
25 section in the Administrator of the National Telecommuni-

1 cations and Information Administration shall be deemed
2 to refer to the Administrator of the National Tele-
3 communications and Information Administration.

4 **SEC. 17205. NATIONAL OCEANIC AND ATMOSPHERIC AD-**
5 **MINISTRATION.**

6 (a) **TRANSFER TO DEPARTMENT OF AGRI-**
7 **CULTURE.**—The National Oceanic and Atmospheric Ad-
8 ministration shall be transferred to the Department of Ag-
9 riculture.

10 (b) **DEFINITIONS.**—For the purposes of this section,
11 the term—

12 (1) “Act of 1890” means the Act entitled “An
13 Act to increase the efficiency and reduce the ex-
14 penses of the Signal Corps of the Army, and to
15 transfer the Weather Bureau to the Department of
16 Agriculture”, approved October 1, 1890 (26 Stat.
17 653);

18 (2) “Act of 1947” means the Act entitled “An
19 Act to define the functions and duties of the Coast
20 and Geodetic Survey, and for other purposes”, ap-
21 proved August 6, 1947 (33 U.S.C. 883a et seq.);

22 (3) “Act of 1970” means the Act entitled “An
23 Act to clarify the status and benefits of commis-
24 sioned officers of the National Oceanic and Atmos-
25 pheric Administration, and for other purposes”, ap-

1 proved December 31, 1970 (33 U.S.C. 857–1 et
2 seq.);

3 (4) “Administrator” means the Administrator
4 of the National Oceanic and Atmospheric Adminis-
5 tration; and

6 (5) “Secretary” means the Secretary of Agri-
7 culture.

8 (c) LEASING AND CONTRACTING.—

9 (1) CONTRACTING AUTHORITY.—Notwithstand-
10 ing any other provision of law, the Secretary of Agri-
11 culture is authorized to enter into contracts for data
12 or days-at-sea to fulfill the National Oceanic and At-
13 mospheric Administration missions of marine re-
14 search, climate research, fisheries research, hurri-
15 cane tracking, and mapping and charting services.

16 (2) UNOLS VESSEL AGREEMENTS.—In fulfill-
17 ing the National Oceanic and Atmospheric Adminis-
18 tration mission requirements described in paragraph
19 (1), the Secretary of Agriculture shall use excess ca-
20 pacity of University National Oceanographic Labora-
21 tory System vessels where appropriate, and may
22 enter into memoranda of agreement with operators
23 of those vessels to carry out those mission require-
24 ments.

1 (d) ABOLITIONS.—The National Ocean Service and
2 the Office of Oceanic and Atmospheric Research are abol-
3 ished.

4 (e) TERMINATION OF THE NATIONAL OCEANIC AND
5 ATMOSPHERIC ADMINISTRATION CORPS OF COMMIS-
6 SIONED OFFICERS.—

7 (1) NUMBER OF OFFICERS.—Notwithstanding
8 section 8 of the Act of June 3, 1948 (33 U.S.C.
9 853g), no commissioned officers are authorized for
10 the National Oceanic and Atmospheric Administra-
11 tion for any fiscal year after fiscal year 1996.

12 (2) SEPARATION PAY.—The Secretary of Agri-
13 culture may separate commissioned officers from the
14 active list of the National Oceanic and Atmospheric
15 Administration, and may do so without providing
16 separation pay.

17 (3) TRANSFER.—(A) Subject to the approval of
18 the Secretary of Defense and under terms and con-
19 ditions specified by the Secretary, commissioned offi-
20 cers subject to paragraph (1) may transfer to the
21 armed services under section 716 of title 10, United
22 States Code.

23 (B) Subject to the approval of the Secretary of
24 Transportation and under terms and conditions
25 specified by the Secretary, commissioned officers

1 subject to paragraph (1) may transfer to the United
2 States Coast Guard under section 716 of title 10,
3 United States Code.

4 (C) Subject to the approval of the Adminis-
5 trator and under terms and conditions specified by
6 the Administrator, commissioned officers subject to
7 paragraph (1) who on the date of enactment of this
8 section have been assigned for a period of one year
9 or more to the programs transferred to the Adminis-
10 tration by this Act (other than those associated with
11 the modernization of the National Oceanic and At-
12 mospheric Administration fleet or the operations of
13 the National Oceanic and Atmospheric Administra-
14 tion Corps of Commissioned Officers) may transfer
15 to the Administration as members of the civil serv-
16 ice.

17 (4) REPEALS.—(A) The following provisions of
18 law are repealed:

19 (i) The Coast and Geodetic Survey Com-
20 missioned Officers' Act of 1948 (33 U.S.C.
21 853a–853o, 853p–853u).

22 (ii) The Act of February 16, 1929 (Chap-
23 ter 221, section 5; 45 Stat. 1187; 33 U.S.C.
24 852a).

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

3 (iv) Section 9 of Public Law 87–649 (76
4 Stat. 495).

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

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

9 (vii) Sections 1 through 5 of Public Law
10 91–621 (84 Stat. 1863; 33 U.S.C. 857–1 et
11 seq.).

12 (viii) The Act of August 10, 1956 (Chapter
13 1041, section 3; 70A Stat. 619; 33 U.S.C.
14 857a).

15 (ix) The Act of May 18, 1920 (Chapter
16 190, section 11; 41 Stat. 603; 33 U.S.C. 864).

17 (x) The Act of July 22, 1947 (Chapter
18 286; 61 Stat. 400; 33 U.S.C. 873, 874).

19 (xi) The Act of August 3, 1956 (Chapter
20 932; 70 Stat. 988; 33 U.S.C. 875, 876).

21 (xii) All other Acts inconsistent with this
22 subsection.

23 (B) The effective date of the repeals under sub-
24 paragraph (A) shall be September 30, 1997.

1 (5) UNEXPENDED BALANCES.—Unexpended
2 balances of appropriations, allocations, and other
3 funds available or made available in connection with
4 the National Oceanic and Atmospheric Administra-
5 tion Corps of Commissioned officers may be used by
6 the Secretary for payments under section 8 of the
7 Act of June 3, 1948 (33 U.S.C. 853g).

8 (6) ABOLITION.—The Office of the National
9 Oceanic and Atmospheric Administration Corps of
10 Operations and the Commissioned Personnel Center
11 are abolished effective September 30, 1997.

12 (f) OTHER TERMINATIONS.—The following programs
13 of the National Oceanic and Atmospheric Administration
14 are terminated:

15 (1) The National Undersea Research Program.

16 (2) The Fleet Modernization, Shipbuilding, and
17 Construction Account.

18 (3) The Charleston, South Carolina, Special
19 Management Plan.

20 (4) Chesapeake Bay Observation Buoys.

21 (5) Federal/State Weather Modification Grants.

22 (6) The Southeast Storm Research Account.

23 (7) The Southeast United States Caribbean
24 Fisheries Oceanographic Coordinated Investigations
25 Program.

1 (8) National Institute for Environmental Re-
2 newal.

3 (9) The Lake Champlain Study.

4 (10) The Maine Marine Research Center.

5 (11) The South Carolina Cooperative Geodetic
6 Survey Account.

7 (12) Pacific Island Technical Assistance.

8 (13) Sea Grant/Oyster Disease Account.

9 (14) National Coastal Research and Develop-
10 ment Institute Account.

11 (15) VENTS program.

12 (16) National Weather Service non-Federal,
13 non-wildfire Fire Weather Service.

14 (17) National Weather Service Regional Cli-
15 mate Centers.

16 (18) National Weather Service Samoa Weather
17 Forecast Office Repair and Upgrade Account.

18 (19) Dissemination of Weather Charts (Marine
19 Facsimile Service).

20 (20) The global climate change program.

21 (21) The Global Learning and Observations to
22 Benefit the Environment Program.

23 Any unobligated balances appropriated to carry out any
24 program referred to in this subsection shall be transferred
25 to the general fund of the Treasury.

1 (g) REPEALS.—The following provisions of law are
2 repealed effective on the date of enactment of this Act:

3 (1) The Ocean Thermal Conversion Act of 1980
4 (42 U.S.C. 9101 et seq.).

5 (2) Title IV of the Marine Protection, Research,
6 and Sanctuaries Act of 1972 (16 U.S.C. 1447 et
7 seq.).

8 (3) Title V of the Marine Protection, Research,
9 and Sanctuaries Act of 1972 (33 U.S.C. 2801 et
10 seq.).

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

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

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

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

24 (h) TRANSFER OF FISHERIES PROGRAMS TO
25 MARAD.—

1 (1) OPERATING DIFFERENTIAL SUBSIDY PRO-
2 GRAM.—Section 607(k)(9) of the Merchant Marine
3 Act, 1936 (46 App. U.S.C. 1177(k)(9)) is amended
4 to read as follows:

5 “(9) The term ‘Secretary’ means the Secretary of
6 Transportation.”.

7 (2) SHIP MORTGAGE INSURANCE.—Section
8 1101(n) of the Merchant Marine Act, 1936 (46 App.
9 U.S.C. 1177(k)(9)) is amended to read as follows:

10 “(n) The term ‘Secretary’ means the Secretary of
11 Transportation.”.

12 (3) OUTER CONTINENTAL SHELF.—Section
13 401(8) of the Outer Continental Shelf Lands Act
14 Amendments of 1978 (43 U.S.C. 1841 et seq.) is
15 amended to read as follows:

16 “(8) ‘Secretary’ means the Secretary of Trans-
17 portation.”.

18 (4) FISHERMEN’S PROTECTIVE ACT OF 1967.—
19 Section 10(a) of the Fishermen’s Protective Act of
20 1967 (22 U.S.C 1980(a)) is amended—

21 (A) by amending paragraph (1) to read as
22 follows:

23 “(1) The terms ‘fishery’, ‘fishery conservation
24 zone’, ‘fishing’, ‘fishing vessel’, and ‘vessel of the
25 United States’ have the same meaning given to each

1 of such terms in section 3 of the Magnuson Fishery
2 Conservation and Management Act (16 U.S.C.
3 1802).”; and

4 (B) by adding at the end the following new
5 paragraph:

6 “(5) The term ‘Secretary’ means the Secretary
7 of Transportation.”.

8 (i) TRANSFER OF MAPPING, CHARTING, AND GEOD-
9 ESY FUNCTIONS TO THE UNITED STATES GEOLOGICAL
10 SURVEY.—There are hereby transferred to the Director
11 of the United States Geological Survey the functions relat-
12 ing to mapping, charting, geodesy, observation, and pre-
13 diction of tides and sea level authorized under the Act of
14 August 7, 1947 (61 Stat. 787; 33 U.S.C. 883a).

15 (j) REPORT ON TERMINATION OF PROGRAMS.—Not
16 later than 60 days after the date of the enactment of this
17 Act, the Secretary shall submit to the Committee on
18 Science of the House of Representatives and the Commit-
19 tee on Commerce, Science, and Transportation of the Sen-
20 ate a report certifying that all the programs listed in sub-
21 section (f) will be terminated no later than September 30,
22 1995.

23 (k) COMPETITION WITH PRIVATE SECTOR.—The
24 National Weather Service shall not compete, or assist
25 other entities to compete, with the private sector when a

1 service is currently provided or can be provided by com-
2 mercial enterprise, unless—

3 (1) the Secretary of Agriculture finds that the
4 private sector is unwilling or unable to provide the
5 services; and

6 (2) the service provides vital weather warnings
7 and forecasts for the protection of lives and property
8 of the general public.

9 (l) AMENDMENTS.—The Act of 1890 is amended—

10 (1) by striking section 3 (15 U.S.C. 313); and

11 (2) in section 9 (15 U.S.C. 317), by striking all
12 after “Department of Agriculture” and inserting in
13 lieu thereof a period.

14 (m) NWS REPORT.—Not later than 60 days after the
15 date of the enactment of this Act, the Secretary of Agri-
16 culture shall submit to the Committee on Science of the
17 House of Representatives and the Committee on Com-
18 merce, Science, and Transportation of the Senate a report
19 detailing all National Weather Service activities which do
20 not conform to the requirements of this section and outlin-
21 ing a timetable for their termination.

22 (n) PROHIBITION OF LOBBYING ACTIVITIES.—None
23 of the funds authorized by this section shall be available
24 for any activity whose purpose is to influence legislation
25 pending before the Congress, provided that this shall not

1 prevent officers or employees of the United States or of
2 its departments or agencies from communicating to Mem-
3 bers of Congress on the request of any Member or to Con-
4 gress, through the proper channels, requests for legislation
5 or appropriations which they deem necessary for the effi-
6 cient conduct of the public business.

7 (o) REPORT ON LABORATORIES.—

8 (1) IN GENERAL.—No later than 120 days after
9 the date of the enactment of this Act, the Secretary
10 of Agriculture shall conduct a review of the labora-
11 tories operated by the National Oceanic and Atmos-
12 pheric Administration and submit a report to the
13 Committee on Science of the House of Representa-
14 tives and the Committee on Commerce, Science, and
15 Transportation of the Senate.

16 (2) REQUIREMENTS.—The report required by
17 paragraph (1) shall—

18 (A) address potential efficiencies and sav-
19 ings which could be achieved through closing or
20 consolidating laboratory facilities; and

21 (B) review each laboratory's—

22 (i) mission and activities and their
23 correlation to the mission priorities of the
24 National Oceanic and Atmospheric Admin-
25 istration;

- 1 (ii) physical assets, equipment, condi-
2 tion, and personnel resources;
3 (iii) organization and program man-
4 agement; and
5 (iv) address other issues the Inspector
6 General considers relevant.

7 (p) LIMITATION ON NOAA ANNUAL EXPENDI-
8 TURES.—Notwithstanding section 17610, the amount ex-
9 pended by the United States each fiscal year for the Na-
10 tional Oceanic and Atmospheric Administration may not
11 exceed 75 percent of the total amount expended by the
12 United States for the National Oceanic and Atmospheric
13 Administration during fiscal year 1994.

14 **SEC. 17206. MISCELLANEOUS ABOLISHMENTS.**

15 (a) ABOLISHMENTS.—The following agencies and
16 programs of the Department of Commerce are abolished,
17 and the functions of those agencies or programs are abol-
18 ished except to the extent otherwise provided in this title:

- 19 (1) The Economic Development Administration.
20 (2) The Minority Business Development Admin-
21 istration.
22 (3) The National Telecommunications and In-
23 formation Administration.

1 (4) The Advanced Technology Program under
2 section 28 of the National Institute of Standards
3 and Technology Act (15 U.S.C. 278n).

4 (5) The Manufacturing Extension Programs
5 under sections 25 and 26 of the National Institute
6 of Standards and Technology Act (15 U.S.C. 278k
7 and 278l).

8 (b) SENSE OF THE CONGRESS.—It is the sense of
9 the Congress that the Congress should continue to explore
10 the prospects for the private sector to assume responsibil-
11 ity for many of the functions and responsibilities of the
12 Minority Business Development Administration.

13 **SEC. 17207. PRIVATIZATION OF TRAVEL FUNCTIONS.**

14 The Administrator shall abolish the United States
15 Travel and Tourism Administration effective August 1,
16 1996. Prior to this date the Administrator shall submit
17 to the Congress a recommendation for the privatization
18 of the functions of the United States Travel and Tourism
19 Administration. In making such a recommendation the
20 Administrator shall consider the results of the national re-
21 view conducted by the White House Conference on Travel
22 and Tourism, including the consideration of fees to sup-
23 port such functions.

1 **SEC. 17208. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), this subtitle shall take effect on the effective date
4 specified in section 17109(a).

5 (b) PROVISIONS EFFECTIVE ON DATE OF ENACT-
6 MENT.—The following provisions of this subtitle shall take
7 effect on the date of the enactment of this title:

8 (1) section 17201.

9 (2) section 17206.

10 **SEC. 17209. SENSE OF CONGRESS REGARDING USER FEES.**

11 It is the sense of the Congress that the head of each
12 agency that performs a function vested in the agency by
13 this title should, wherever feasible, explore and implement
14 user fees for the provision of services in the performance
15 of that function, to offset operating costs.

16 **Subtitle C—Consolidation of**
17 **Statistical Functions**

18 **SEC. 17301. SHORT TITLE.**

19 This subtitle may be cited as the “Federal Statistics
20 Agency Establishment Act”.

21 **SEC. 17302. DEFINITIONS.**

22 As used in this subtitle:

23 (1) The term “Agency” means the Federal Sta-
24 tistics Agency.

25 (2) The term “Administrator” means the Ad-
26 ministrator of the Federal Statistics Agency.

1 (3) The term “Deputy Administrator” means
2 the Deputy Administrator of the Federal Statistics
3 Agency.

4 (4) The term “function” includes any duty, ob-
5 ligation, power, authority, responsibility, right, privi-
6 lege, activity, or program.

7 (5) The term “office” includes any office, bu-
8 reau, institute, council, unit, or organizational en-
9 tity, or any component thereof.

10 **CHAPTER 1—ESTABLISHMENT OF**
11 **FEDERAL STATISTICS AGENCY**

12 **SEC. 17311. ESTABLISHMENT.**

13 The Federal Statistics Agency is hereby established
14 as a free-standing establishment in the executive branch
15 of the Government.

16 **SEC. 17312. PRINCIPAL OFFICERS.**

17 (a) ADMINISTRATOR.—(1) There shall be at the head
18 of the Agency an Administrator of the Agency, who shall
19 be appointed by the President, by and with the advice and
20 consent of the Senate.

21 (2) The Agency, including all functions and offices
22 transferred to it under this subtitle, shall be administered,
23 in accordance with the provisions of this subtitle, under
24 the supervision and direction of the Administrator.

1 (3) The Administrator shall receive basic pay at the
2 rate payable for level II of the Executive Schedule under
3 section 5313 of title 5, United States Code.

4 (b) DEPUTY ADMINISTRATOR.—(1) There shall be in
5 the Agency a Deputy Administrator of the Agency who
6 shall be appointed by the President, by and with the advice
7 and consent of the Senate.

8 (2) During the absence or disability of the Adminis-
9 trator, or in the event of a vacancy in the office of the
10 Administrator, the Deputy Administrator shall act as Ad-
11 ministrator. The Deputy Administrator shall perform such
12 other duties and exercise such powers as the Adminis-
13 trator may from time to time prescribe.

14 (3) The Deputy Administrator shall receive basic pay
15 at the rate payable for level III of the Executive Schedule
16 under section 5314 of title 5, United States Code.

17 (c) AGENCY DIRECTORS.—(1) There shall be in the
18 Agency—

19 (A) a Director of the Census who shall, on the
20 transfer of functions and offices under section
21 17313, serve as the head of the Bureau of the Cen-
22 sus; and

23 (B) a Director of the Bureau of Economic
24 Analysis who shall, on the transfer of functions and

1 offices under section 17313, serve as the head of the
2 Bureau of Economic Analysis.

3 (2) Each of the Directors shall be appointed by the
4 President, by and with the advice and consent of the Sen-
5 ate. The Director of the Census shall receive basic pay
6 at the rate payable for level IV of the Executive Schedule
7 under section 5315 of title 5, United States Code. The
8 Director of the Bureau of Economic Analysis shall receive
9 basic pay at the rate payable for level V of the Executive
10 Schedule under section 5316 of title 5, United States
11 Code.

12 (d) GENERAL COUNSEL.—There shall be in the
13 Agency a General Counsel who shall administer the Office
14 of General Counsel of the Agency. The General Counsel
15 shall be appointed by the President, by and with the advice
16 and consent of the Senate. The General Counsel shall re-
17 ceive basic pay at the rate payable for level V of the Exec-
18 utive Schedule under section 5316 of title 5, United States
19 Code.

20 **SEC. 17313. TRANSFERS OF FUNCTIONS AND OFFICES.**

21 (a) TRANSFER OF THE BUREAU OF THE CENSUS.—
22 There is transferred to the Agency the Bureau of the Cen-
23 sus of the Department of Commerce, along with all of its
24 functions and offices.

1 (b) TRANSFER OF THE BUREAU OF ECONOMIC
2 ANALYSIS.—There is transferred to the Agency the Bu-
3 reau of Economic Analysis of the Department of Com-
4 merce, along with all of its functions and offices.

5 (c) TRANSFER OF STATISTICAL MANAGEMENT
6 FUNCTIONS OF OMB.—There are transferred to the Ad-
7 ministrator the functions of the Director of the Office of
8 Management and Budget relating to statistical policy and
9 coordination under chapter 35 of title 44, United States
10 Code (as in effect immediately before such transfer), in-
11 cluding such functions under sections 3504(a) and (d) and
12 3514(a)(10) of such chapter.

13 (d) TRANSFER DATE.—The transfers of functions
14 and offices under this section shall be effective 90 days
15 after the date of the enactment of this Act.

16 **CHAPTER 2—ADMINISTRATIVE** 17 **PROVISIONS**

18 **SEC. 17321. PERSONNEL PROVISIONS.**

19 (a) OFFICERS AND EMPLOYEES.—The Administrator
20 may appoint and fix the compensation of such officers and
21 employees as may be necessary to carry out the functions
22 of the Administrator and the Agency. Except as otherwise
23 provided by law, such officers and employees shall be ap-
24 pointed in accordance with the civil service laws and their

1 compensation shall be fixed in accordance with title 5,
2 United States Code.

3 (b) EXPERTS AND CONSULTANTS.—The Adminis-
4 trator may as provided in appropriation Acts obtain the
5 services of experts and consultants in accordance with sec-
6 tion 3109 of title 5, United States Code, and may com-
7 pensate such experts and consultants at rates not to ex-
8 ceed the daily rate prescribed for level V of the Executive
9 Schedule under section 5316 of title 5, United States
10 Code.

11 (c) ACCEPTANCE OF VOLUNTARY SERVICES.—(1)
12 Notwithstanding section 1342 of title 31, United States
13 Code, the Administrator may accept, subject to regula-
14 tions issued by the Office of Personnel Management, vol-
15 untary services if the services—

16 (A) are to be uncompensated; and

17 (B) will not be used to displace any employee.

18 (2) Any individual who provides voluntary services
19 under this subsection shall not be considered a Federal
20 employee for any purpose other than for purposes of chap-
21 ter 81 of title 5, United States Code (relating to com-
22 pensation for injury) and sections 2671 through 2680 of
23 title 28, United States Code (relating to tort claims).

1 **SEC. 17322. GENERAL ADMINISTRATIVE PROVISIONS.**

2 (a) GENERAL AUTHORITY.—In carrying out any
3 function transferred by this subtitle, the Administrator,
4 or any officer or employee of the Agency, may exercise
5 any authority available by law with respect to such func-
6 tion to the official or agency from which such function
7 is transferred, and the actions of the Administrator in ex-
8 ercising such authority shall have the same force and ef-
9 fect as when exercised by such official or agency.

10 (b) DELEGATION.—Except as otherwise provided in
11 this subtitle, the Administrator may delegate any function
12 to such officers and employees of the Agency as the Ad-
13 ministrator may designate, and may authorize such suc-
14 cessive redelegations of such functions within the Agency
15 as may be necessary or appropriate. No delegation of func-
16 tions by the Administrator under this section or under any
17 other provision of this Act shall relieve the Administrator
18 of responsibility for the administration of such functions.

19 (c) REORGANIZATION.—(1) Except as provided in
20 paragraph (2), the Administrator may allocate or reallo-
21 cate functions among the officers of the Agency, and may
22 establish, consolidate, alter, or abolish such offices or posi-
23 tions within the Agency as may be necessary or appro-
24 priate.

25 (2) The Administrator may not—

1 (A) abolish any office or position transferred to
2 the Agency and established by statute, or any func-
3 tion vested by statute in such an office or an officer
4 of such an office;

5 (B) abolish any office or position established by
6 this subtitle; or

7 (C) alter the delegation of functions to any spe-
8 cific office or position required by this subtitle.

9 **SEC. 17323. CONTRACTS.**

10 (a) IN GENERAL.—Subject to the Federal Property
11 and Administrative Services Act of 1949 and other appli-
12 cable Federal law, the Administrator may make, enter
13 into, and perform such contracts, grants, leases, coopera-
14 tive agreements, and other similar transactions with Fed-
15 eral or other public agencies (including State and local
16 governments) and private organizations and persons, and
17 to make such payments, by way of advance or reimburse-
18 ment, as the Administrator may determine necessary or
19 appropriate to carry out functions of the Administrator
20 or the Agency.

21 (b) APPROPRIATION AUTHORITY REQUIRED.—No
22 authority to enter into contracts or to make payments
23 under this subtitle shall be effective except to such extent
24 or in such amounts as are provided in advance under ap-
25 propriation Acts.

1 **SEC. 17324. REGULATIONS.**

2 The Administrator may prescribe such rules and reg-
3 ulations as the Administrator considers necessary or ap-
4 propriate to administer and manage the functions of the
5 Administrator or the Agency, in accordance with chapter
6 5 of title 5, United States Code.

7 **SEC. 17325. SEAL.**

8 The Administrator shall cause a seal of office to be
9 made for the Agency of such design as the Administrator
10 shall approve. Judicial notice shall be taken of such seal.

11 **SEC. 17326. ANNUAL REPORT.**

12 The Administrator shall, as soon as practicable after
13 the close of each fiscal year, make a single, comprehensive
14 report to the President for transmission to the Congress
15 on the activities of the Agency during such fiscal year.

16 **CHAPTER 3—TRANSITIONAL, SAVINGS,**
17 **AND CONFORMING PROVISIONS**

18 **SEC. 17331. TRANSFER AND ALLOCATION OF APPROPRIA-**
19 **TIONS AND PERSONNEL.**

20 Except as otherwise provided in this subtitle, the per-
21 sonnel employed in connection with, and the assets, liabil-
22 ities, contracts, property, records, and unexpended balance
23 of appropriations, authorizations, allocations, and other
24 funds employed, held, used, arising from, available to, or
25 to be made available in connection with, the functions and
26 offices, or portions thereof, transferred by this subtitle,

1 subject to section 1531 of title 31, United States Code,
2 shall be transferred to the Administrator for appropriate
3 allocation. Unexpended funds transferred pursuant to this
4 subsection shall be used only for the purposes for which
5 the funds were originally authorized and appropriated.

6 **SEC. 17332. EFFECT ON PERSONNEL.**

7 (a) **PRESERVATION OF GRADE AND COMPENSATION**
8 **FOR 1 YEAR.**—Except as otherwise provided in this sub-
9 title, the transfer pursuant to this Act of full-time person-
10 nel (except special Government employees) and part-time
11 personnel holding permanent positions shall not cause any
12 such employee to be separated or reduced in grade or com-
13 pensation for 1 year after the date of transfer to the Agen-
14 cy.

15 (b) **PRESERVATION OF COMPENSATION FOR EXECU-**
16 **TIVE SCHEDULE APPOINTEES.**—Any person who, on the
17 day preceding the date of the transfer of functions and
18 offices under section 17313, held a position compensated
19 in accordance with the Executive Schedule prescribed in
20 chapter 53 of title 5, United States Code, and who, with-
21 out a break in service, is appointed in the Agency to a
22 position having duties comparable to the duties performed
23 immediately preceding such appointment shall continue to
24 be compensated in the new position at not less than the

1 rate provided for the previous position, for the duration
2 of the service of such person in the new position.

3 **SEC. 17333. INCIDENTAL TRANSFERS.**

4 (a) IN GENERAL.—The Director of the Office of
5 Management and Budget, in conjunction with the Admin-
6 istrator, shall make such determinations as may be nec-
7 essary with regard to the functions, offices, or portions
8 thereof transferred by this subtitle, and make such addi-
9 tional incidental dispositions of personnel, assets, liabil-
10 ities, grants, contracts, property, records, and unexpended
11 balances of appropriations, authorizations, allocations,
12 and other funds held, used, arising from, available to, or
13 to be made available in connection with such functions,
14 offices, or portions thereof, as may be necessary to carry
15 out this subtitle. The Director of the Office of Manage-
16 ment and Budget shall provide for the termination of the
17 affairs of all entities terminated by this subtitle and, in
18 conjunction with the Administrator, for such further
19 measures and dispositions as may be necessary to effec-
20 tuate the purposes of this subtitle.

21 (b) ALLOCATION OF SES POSITIONS.—After con-
22 sultation with the Director of the Office of Personnel Man-
23 agement, the Director of the Office of Management and
24 Budget may make such determinations as may be nec-
25 essary with regard to the transfer of positions within the

1 Senior Executive Service in connection with functions and
2 offices transferred by this subtitle.

3 **SEC. 17334. SAVINGS PROVISIONS.**

4 (a) CONTINUITY OF LEGAL FORCE AND EFFECT.—

5 All orders, determinations, rules, regulations, permits,
6 grants, contracts, certificates, licenses, and privileges—

7 (1) which have been issued, made, granted, or
8 allowed to become effective by the President, by any
9 Federal department or agency or official thereof, or
10 by a court of competent jurisdiction, in the perform-
11 ance of functions which are transferred under this
12 subtitle to the Administrator or the Agency; and

13 (2) which are in effect at the time of such
14 transfer,

15 shall continue in effect according to their terms until
16 modified, terminated, superseded, set aside, or revoked by
17 the President, the Administrator, or the authorized offi-
18 cial, a court of competent jurisdiction, or by operation of
19 law.

20 (b) PENDING PROCEEDINGS.—(1) This subtitle shall
21 not affect any proceedings, including notices of proposed
22 rulemaking, pending on the date of the transfer of func-
23 tions and offices under section 17313 before any depart-
24 ment, agency, commission, or component thereof, func-
25 tions of which are transferred by this subtitle. Such pro-

1 ceedings, to the extent that they relate to functions so
2 transferred, shall be continued, except as provided in para-
3 graph (3).

4 (2) Orders may be issued in such proceedings, ap-
5 peals may be taken therefrom, and payments may be made
6 pursuant to such orders, as if this subtitle had not been
7 enacted. Orders issued in any such proceedings shall con-
8 tinue in effect until modified, terminated, superseded, or
9 revoked by the Secretary, by a court of competent jurisdic-
10 tion, or by operation of law.

11 (3) Nothing in this subsection shall be considered to
12 prohibit the discontinuance or modification of any such
13 proceeding under the same terms and conditions and to
14 the same extent that such proceeding could have been dis-
15 continued or modified if this subtitle had not been enacted.

16 (4) The Administrator may prescribe regulations pro-
17 viding for the orderly transfer of proceedings continued
18 under this subsection to the Agency.

19 (c) NO EFFECT ON JUDICIAL PROCEEDINGS.—Ex-
20 cept as provided in subsection (e)—

21 (1) the transfer of functions and offices under
22 section 17313 shall not affect suits commenced prior
23 to the date of such transfer; and

24 (2) in all such suits, proceedings shall be had,
25 appeals taken, and judgments rendered in the same

1 manner and effect as if this subtitle had not been
2 enacted.

3 (d) NONABATEMENT OF PROCEEDINGS.—No suit,
4 action, or other proceeding commenced by or against any
5 officer in the official capacity of such individual as an offi-
6 cer of any department or agency, functions of which are
7 transferred by this subtitle, shall abate by reason of the
8 enactment of this subtitle. No cause of action by or
9 against any department or agency, functions of which are
10 transferred by this subtitle, or by or against any officer
11 thereof in the official capacity of such officer shall abate
12 by reason of the enactment of this subtitle.

13 (e) CONTINUATION OF PROCEEDING WITH SUBSTI-
14 TUTION OF PARTIES.—If, before the date of the transfer
15 of functions and offices under section 17313, any depart-
16 ment or agency, or officer thereof in the official capacity
17 of such officer, is a party to a suit, and under this subtitle
18 any function of such department, agency, or officer is
19 transferred to the Administrator or any other official of
20 the Agency, then such suit shall be continued with the Ad-
21 ministrator or other appropriate official of the Agency
22 substituted or added as a party.

23 (f) REVIEWABILITY OF ORDERS AND ACTIONS
24 UNDER TRANSFERRED FUNCTIONS.—Orders and actions
25 of the Administrator in the exercise of functions trans-

1 ferred under this subtitle shall be subject to judicial review
2 to the same extent and in the same manner as if such
3 orders and actions had been by the agency or office, or
4 part thereof, exercising such functions immediately pre-
5 ceding their transfer. Any statutory requirements relating
6 to notice, hearings, action upon the record, or administra-
7 tive review that apply to any function transferred by this
8 subtitle shall apply to the exercise of such function by the
9 Administrator.

10 **SEC. 17335. REFERENCES.**

11 With respect to any function transferred by this sub-
12 title and exercised on or after the date of such transfer,
13 any reference in any other Federal law to any department,
14 commission, or agency or to any officer or office the func-
15 tions of which are so transferred is deemed to refer to
16 the Administrator, other official, or component of the
17 Agency to which this subtitle transfers such functions.

18 **SEC. 17336. CONFORMING AMENDMENTS.**

19 Chapter 35 of title 44, United States Code, is amend-
20 ed—

21 (1) in section 3504—

22 (A) in subsection (a) by striking “Federal
23 statistical activities,”; and

24 (B) by striking subsection (d); and

25 (2) in section 3514(a)—

1 (A) by adding “and” after the semicolon at
2 the end of paragraph (8);

3 (B) by striking “; and” at the end of para-
4 graph (9)(C) and inserting a period; and

5 (C) by striking paragraph (10).

6 **SEC. 17337. TRANSITION.**

7 (a) **USE OF FUNDS.**—Funds available to any depart-
8 ment or agency (or any official or component thereof), the
9 functions or offices of which are transferred to the Admin-
10 istrator or the Agency by this subtitle, may, with the ap-
11 proval of the Director of the Office of Management and
12 Budget, be used to pay the compensation and expenses
13 of any officer appointed pursuant to this subtitle and other
14 transitional and planning expenses associated with the es-
15 tablishment of the Agency or transfer of functions or of-
16 fices thereto until such time as funds for such purposes
17 are otherwise available.

18 (b) **USE OF PERSONNEL.**—With the consent of the
19 appropriate department or agency head concerned, the Ad-
20 ministrator may utilize the services of such officers, em-
21 ployees, and other personnel of the departments and agen-
22 cies from which functions or offices have been transferred
23 to the Administrator or the Agency, for such period of
24 time as may reasonably be needed to facilitate the orderly
25 implementation of this subtitle.

1 **SEC. 17338. INTERIM APPOINTMENTS.**

2 (a) **AUTHORITY TO APPOINT.**—Notwithstanding any
3 other provision of law, in the event that one or more offi-
4 cers required by this subtitle to be appointed by and with
5 the advice and consent of the Senate shall not have en-
6 tered upon office on the date of the transfer of functions
7 and offices under section 17313, the President may des-
8 ignate an officer in the executive branch to act in such
9 office for 120 days or until the office is filled as provided
10 in this subtitle, whichever occurs first.

11 (b) **COMPENSATION.**—Any officer acting in an office
12 pursuant to subsection (a) shall receive compensation at
13 the rate prescribed for such office under this subtitle.

14 **Subtitle D—United States Trade**
15 **Administration**

16 **CHAPTER 1—GENERAL PROVISIONS**

17 **SEC. 17401. FINDINGS.**

18 The Congress finds that—

19 (1) principal national goals of the United States
20 are to—

21 (A) maintain United States leadership in
22 international trade liberalization and expansion
23 efforts;

24 (B) reinvigorate the ability of the United
25 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 American products
6 and services;

7 (2) the economy of the United States is so inex-
8 tricably linked with the international economic sys-
9 tem that all domestic economic sectors are influ-
10 enced by the dynamics of global trade and invest-
11 ment;

12 (3) the expansion of United States participation
13 in international trade will improve the general wel-
14 fare of the people of the United States by increasing
15 demand for American products and services, creat-
16 ing jobs, and increasing the gross national product;

17 (4) business, labor, and all levels of government
18 must place the highest priority on developing meth-
19 ods and policies to achieve the goals described in
20 paragraph (1), and the achievement of such goals is
21 dependent on a marked improvement in the capabil-
22 ity of United States businesses to compete in foreign
23 markets;

1 (5) the Federal Government can enhance the
2 capability of United States businesses to compete in
3 foreign markets by acting to—

4 (A) reduce trade barriers to sales and in-
5 vestments by such businesses;

6 (B) promote American goods and services
7 in foreign countries and encourage aggressive
8 participation by the private sector in the inter-
9 national marketplace; and

10 (C) promote and maintain an international
11 trade system that establishes open, transparent,
12 and fair trade rules and leads to the expansion
13 of United States trade;

14 (6) effective and efficient Government action to
15 enhance the capability of United States businesses
16 to compete in foreign markets requires coordination
17 of the development and implementation of Govern-
18 ment policies relating to the international trade in-
19 terests of the United States;

20 (7) effective and efficient Government action
21 with respect to international trade further requires
22 the employment of personnel consisting of individ-
23 uals who, like the personnel of the governments of
24 United States trading partners, are highly experi-

1 enced and educated in international trade operations
2 and negotiations;

3 (8) the present organizational structure of Gov-
4 ernment administration of international trade activi-
5 ties is too diffuse and leads to inconsistent and con-
6 flicting policies and actions;

7 (9) such inconsistent and contradictory policies
8 and actions inhibit domestic trade interests, create
9 trade opportunities for our international competi-
10 tors, and discourage experienced Government per-
11 sonnel from career service in international trade ac-
12 tivities;

13 (10) United States performance in international
14 trade is fundamentally linked to the competitiveness
15 of American industry in the world economy;

16 (11) improvements in the competitiveness of
17 United States industry, products, and services can
18 be aided by reducing traditional antagonisms among
19 government, industry, labor, and the public;

20 (12) a lack of analytical capability and knowl-
21 edge concerning the competitive position of Amer-
22 ican industries and foreign industries greatly ham-
23 pers or delays the ability of the United States to for-
24 mulate responsible trade policies and policies that

1 affect the international competitiveness of domestic
2 industries;

3 (13) the consolidation of Government functions
4 relating to international trade, including functions
5 relating to technical analysis, policymaking, inter-
6 national negotiation, and operational responsibilities,
7 into the United States Trade Administration shall
8 provide the needed elevation and coordination of
9 Government activity in international trade;

10 (14) the continued prosperity and overall com-
11 petitive posture of the United States calls for a deci-
12 sive and unified trade policy that vigorously pro-
13 motes an equitable international trade environment
14 in which the United States is able to compete fully
15 and fairly;

16 (15) continued United States leadership in the
17 world economy requires the formulation and imple-
18 mentation of a trade policy that is delineated and
19 understood by the rest of the world; and

20 (16) establishing a decisive and unified trade
21 policy has become a number one priority of the Unit-
22 ed States;

23 (17) enhancing the process of consultation and
24 advice between the executive branch, the Congress,
25 and the private sector will assist in developing the

1 consensus on and support for the trade policy of the
2 United States;

3 (18) there is no one single agency or depart-
4 ment within the executive branch with overall re-
5 sponsibility for the development, coordination, imple-
6 mentation, and administration of the United States
7 trade policy, and the proliferation and division of
8 agencies within the executive branch have weakened
9 the overall leadership of the United States in inter-
10 national trade matters; and

11 (19) the economic well-being of the American
12 people will be substantially enhanced through the es-
13 tablishment of the United States Trade Administra-
14 tion.

15 **SEC. 17402. DEFINITIONS.**

16 For purposes of this subtitle, unless otherwise pro-
17 vided or indicated by the context—

18 (1) the term “Administration” means the Unit-
19 ed States Trade Administration;

20 (2) the term “Federal agency” has the meaning
21 given to the term “agency” by section 551(1) of title
22 5, United States Code;

23 (3) the term “function” means any duty, obli-
24 gation, power, authority, responsibility, right, privi-
25 lege, activity, or program;

1 (4) the term “office” includes any office, ad-
2 ministration, agency, institute, unit, organizational
3 entity, or component thereof; and

4 (5) the term “USTR” means the United States
5 Trade Representative as provided for under section
6 17411.

7 **CHAPTER 2—UNITED STATES TRADE**
8 **ADMINISTRATION**

9 **SEC. 17411. ESTABLISHMENT OF THE ADMINISTRATION.**

10 (a) IN GENERAL.—There is established the United
11 States Trade Administration which shall be a free-stand-
12 ing establishment in the executive branch of Government
13 as defined under section 104 of title 5, United States
14 Code. The United States Trade Representative shall be
15 the Administrator of the United States Trade Administra-
16 tion and shall be appointed by the President, by and with
17 the advice and consent of the Senate.

18 (b) AMBASSADOR STATUS.—The USTR shall have
19 the rank and status of Ambassador and shall represent
20 the United States in all trade negotiations conducted by
21 the Administration.

22 (c) SUCCESSOR TO DEPARTMENT OF COMMERCE.—
23 The Administration shall be deemed to be the successor
24 to the Department of Commerce for the purposes of proto-
25 col in any trade-related matter.

1 **SEC. 17412. 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 the goals de-
20 scribed in section 17401(1) as the primary mandate
21 of the Administration;

22 (3) exercise lead responsibility for the conduct
23 of international trade negotiations, including inter-
24 national negotiations relating to commodity matters,
25 intellectual property rights, services, and direct in-

1 vestment negotiations, in which the United States
2 participates;

3 (4) exercise lead responsibility for the establish-
4 ment of a national export strategy, including policies
5 designed to implement such strategy;

6 (5) with the advice of the interagency organiza-
7 tion established under section 242 of the Trade Ex-
8 pansion Act of 1962, issue policy guidance to other
9 Federal agencies on international trade, commodity,
10 and direct investment functions to the extent nec-
11 essary to assure the coordination of international
12 trade policy;

13 (6) have general operational responsibility for
14 major nonagricultural international trade functions
15 under Reorganization Plan No. 3 of 1979;

16 (7) seek and promote new opportunities for
17 United States products and services to compete in
18 the world marketplace;

19 (8) assist small businesses in developing export
20 markets;

21 (9) enforce the laws of the United States relat-
22 ing to trade;

23 (10) analyze international economic trends and
24 developments;

1 (11) report directly to the Congress on the ad-
2 ministration of, and matters pertaining to, the trade
3 agreements program under the Omnibus Trade and
4 Competitiveness Act of 1988, the Trade Act of
5 1974, the Trade Expansion Act of 1962, and section
6 350 of the Tariff Act of 1930;

7 (12) report directly to the Congress, on an an-
8 nual basis—

9 (A) the status of enforcement of inter-
10 national agreements to which the United States
11 is a party that provide for the protection of in-
12 tellectual property rights;

13 (B) analyses of the impact on United
14 States citizens and businesses of piracy of intel-
15 lectual property by foreign entities; and

16 (C) any recommendations for new inter-
17 national agreements to provide for the protec-
18 tion of intellectual property rights;

19 (13) keep each official adviser to the United
20 States delegations to international conferences,
21 meetings, and negotiation sessions relating to trade
22 agreements who is appointed by a committee of the
23 Senate or the House of Representatives under sec-
24 tion 161 of the Trade Act of 1974 currently in-
25 formed on United States negotiating objectives with

1 respect to trade agreements, the status of negotia-
2 tions in progress with respect to such agreements,
3 and the nature of any changes in domestic law or
4 the administration thereof which the USTR may
5 recommend to the Congress to carry out any trade
6 agreement;

7 (14) consult and cooperate with State and local
8 governments and other interested parties on inter-
9 national trade matters of interest to such govern-
10 ments and parties, and to the extent related to inter-
11 national trade matters, on investment matters, and,
12 when appropriate, hold informal public hearings;

13 (15) serve as the principal advisor to the Presi-
14 dent in identifying and assessing the consequences
15 of any Government policies that adversely affect, or
16 have the potential to adversely affect, the inter-
17 national competitiveness of United States industries
18 and services;

19 (16) pursue the enforcement of international
20 agreements to which the United States is a party
21 that provide for the protection of intellectual prop-
22 erty rights, seek new international agreements to
23 minimize theft of intellectual property owned by
24 United States citizens and businesses, and otherwise
25 promote protection of intellectual property rights.

1 (b) INTERAGENCY ORGANIZATION.—The USTR shall
2 chair the interagency organization established under sec-
3 tion 242 of the Trade Expansion Act of 1962.

4 (c) NATIONAL SECURITY COUNCIL.—The USTR
5 shall be a member of the National Security Council.

6 (d) ADVISORY COUNCIL.—The USTR shall be Dep-
7 uty Chairman of the National Advisory Council on Inter-
8 national Monetary and Financial Policies established
9 under Executive Order 11269, issued February 14, 1966.

10 (e) AGRICULTURE.—(1) The USTR shall consult
11 with the Secretary of Agriculture or the designee of the
12 Secretary of Agriculture on all matters that potentially in-
13 volve international trade in agricultural products.

14 (2) If an international meeting for negotiation or con-
15 sultation includes discussion of international trade in agri-
16 cultural products, the USTR or the designee of the USTR
17 shall be Chairman of the United States delegation to such
18 meeting and the Secretary of Agriculture or the designee
19 of such Secretary shall be Vice Chairman. The provisions
20 of this paragraph shall not limit the authority of the
21 USTR under subsection (h) to assign to the Secretary of
22 Agriculture responsibility for the conduct of, or participa-
23 tion in, any trade negotiation or meeting.

24 (f) TRADE PROMOTION.—The USTR shall be the
25 chairperson of the Trade Promotion Coordinating Com-

1 mittee established under section 2312 of the Export En-
2 hancement Act of 1988 (15 U.S.C. 4727).

3 (g) NATIONAL ECONOMIC COUNCIL.—The USTR
4 shall be a member of the National Economic Council es-
5 tablished under Executive Order No. 12835, issued Janu-
6 ary 25, 1993.

7 (h) INTERNATIONAL TRADE NEGOTIATIONS.—Ex-
8 cept where expressly prohibited by law, the USTR, at the
9 request or with the concurrence of the head of any other
10 Federal agency, may assign the responsibility for conduct-
11 ing or participating in any specific international trade ne-
12 gotiation or meeting to the head of such agency whenever
13 the USTR determines that the subject matter of such
14 international trade negotiation is related to the functions
15 carried out by such agency.

16 **SEC. 17413. DEPUTY ADMINISTRATOR OF THE UNITED**
17 **STATES TRADE ADMINISTRATION.**

18 (a) ESTABLISHMENT.—There shall be in the Admin-
19 istration the Deputy Administrator of the United States
20 Trade Administration, who shall be appointed by the
21 President, by and with the advice and consent of the Sen-
22 ate.

23 (b) ABSENCE, DISABILITY, OR VACANCY OF
24 USTR.—The Deputy Administrator of the United States
25 Trade Administration shall act for and exercise the func-

1 tions of the USTR during the absence or disability of the
2 USTR or in the event the office of the USTR becomes
3 vacant. The Deputy Administrator of the United States
4 Trade Administration shall act for and exercise the func-
5 tions of the USTR until the absence or disability of the
6 USTR no longer exists or a successor to the USTR has
7 been appointed by the President and confirmed by the
8 Senate.

9 (c) FUNCTIONS OF DEPUTY ADMINISTRATOR OF THE
10 UNITED STATES TRADE ADMINISTRATION.—The Deputy
11 Administrator of the United States Trade Administration
12 shall exercise all functions, under the direction of the
13 USTR, transferred to or established in the Administra-
14 tion, except those functions exercised by the Deputy Unit-
15 ed States Trade Representatives, the Inspector General,
16 and the General Counsel of the Administration, as pro-
17 vided by this subtitle.

18 **SEC. 17414. DEPUTY UNITED STATES TRADE REPRESENTA-**
19 **TIVES.**

20 (a) ESTABLISHMENT.—There shall be in the Admin-
21 istration 2 Deputy United States Trade Representatives,
22 who shall be appointed by the President, by and with the
23 advice and consent of the Senate. The Deputy United
24 States Trade Representatives shall exercise all functions
25 under the direction of the USTR, and shall include—

1 (1) the Deputy United States Trade Represent-
2 ative for Negotiations; and

3 (2) the Deputy United States Trade Represent-
4 ative to the World Trade Organization.

5 (b) FUNCTIONS OF DEPUTY UNITED STATES TRADE
6 REPRESENTATIVES.—(1) The Deputy United States
7 Trade Representative for Negotiations shall exercise all
8 functions transferred under section 17431 and shall have
9 the rank and status of Ambassador.

10 (2) The Deputy United States Trade Representative
11 to the World Trade Organization shall exercise all func-
12 tions relating to representation to the World Trade Orga-
13 nization and shall have the rank and status of Amba-
14 sador.

15 **SEC. 17415. ASSISTANT ADMINISTRATORS.**

16 (a) ESTABLISHMENT.—There shall be in the Admin-
17 istration 3 Assistant Administrators, who shall be ap-
18 pointed by the President, by and with the advice and con-
19 sent of the Senate. The Assistant Administrators shall ex-
20 ercise all functions under the direction of the Deputy Ad-
21 ministrator of the United States Trade Administration
22 and include—

23 (1) the Assistant Administrator for Export Ad-
24 ministration;

1 (2) the Assistant Administrator for Import Ad-
2 ministration; and

3 (3) the Assistant Administrator for Trade and
4 Policy Analysis.

5 (b) FUNCTIONS OF ASSISTANT ADMINISTRATORS.—

6 (1) The Assistant Administrator for Export Administra-
7 tion shall exercise all functions transferred under section
8 17432(a)(1)(C).

9 (2) The Assistant Administrator for Import Adminis-
10 tration shall exercise all functions transferred under sec-
11 tion 17432(a)(1)(D).

12 (3) The Assistant Administrator for Trade and Policy
13 Analysis shall exercise all functions transferred under sec-
14 tion 17432(a)(1)(B) and all functions transferred under
15 section 17432(a)(2).

16 **SEC. 17416. GENERAL COUNSEL.**

17 There shall be in the Administration a General Coun-
18 sel, who shall be appointed by the President, by and with
19 the advice and consent of the Senate. The General Counsel
20 shall provide legal assistance to the USTR concerning the
21 activities, programs, and policies of the Administration.

22 **SEC. 17417. INSPECTOR GENERAL.**

23 There shall be in the Administration an Inspector
24 General who shall be appointed in accordance with the In-

1 spector General Act of 1978, as amended by section
2 17471(b) of this Act.

3 **SEC. 17418. CHIEF FINANCIAL OFFICER.**

4 There shall be in the Administration a Chief Finan-
5 cial Officer who shall be appointed in accordance with sec-
6 tion 901 of title 31, United States Code, as amended by
7 section 17471(e) of this Act. The Chief Financial Officer
8 shall perform all functions prescribed by the Deputy Ad-
9 ministrator of the United States Trade Administration,
10 under the direction of the Deputy Administrator.

11 **CHAPTER 3—TRANSFERS TO THE**
12 **ADMINISTRATION**

13 **SEC. 17431. OFFICE OF THE UNITED STATES TRADE REP-**
14 **RESENTATIVE.**

15 There are transferred to the USTR of the United
16 States Trade Administration all functions of the United
17 States Trade Representative and the Office of the United
18 States Trade Representative in the Executive Office of the
19 President and all functions of any officer or employee of
20 such Office.

21 **SEC. 17432. TRANSFERS FROM THE DEPARTMENT OF COM-**
22 **MERCE.**

23 (a) IN GENERAL.—There are transferred to the
24 USTR the following functions:

1 (1) All functions of, and all functions performed
2 under the direction of, the following officers and em-
3 ployees of the Department of Commerce:

4 (A) The Under Secretary of Commerce for
5 International Trade.

6 (B) The Assistant Secretary of Commerce
7 for International Economic Policy and the As-
8 sistant Secretary of Commerce for Trade Devel-
9 opment.

10 (C) The Under Secretary of Commerce for
11 Export Administration.

12 (D) The Assistant Secretary of Commerce
13 for Import Administration.

14 (2) All functions of the Secretary of Commerce
15 relating to the National Trade Data Bank.

16 (3) All functions of the Secretary of Commerce
17 under the Tariff Act of 1930, the Uruguay Round
18 Agreements Act, the Trade Act of 1974, and other
19 trade-related Acts for which responsibility is not oth-
20 erwise assigned under this title.

21 (b) UNITED STATES AND FOREIGN COMMERCIAL
22 SERVICE.—

23 (1) RENAMING AND ABOLITION OF CERTAIN
24 FUNCTIONS.—The United States and Foreign Com-
25 mercial Service shall, upon the effective date speci-

1 fied in section 17109(a), be known as the “United
2 States Trade Service” (hereafter in this subsection
3 referred to as the “USTS”). All operations of the
4 USTS in the United States (other than those per-
5 formed at the headquarters office referred to in sec-
6 tion 2301(c) of the Export Enhancement Act of
7 1988 (15 U.S.C. 4721(c)) with respect to the for-
8 eign operations of the USTS) are abolished.

9 (2) TRANSFER TO USTR.—The USTS and its
10 functions are transferred to the USTR. All functions
11 performed immediately before the effective date
12 specified in section 17109(a) by the Secretary of
13 Commerce or the Department of Commerce with re-
14 spect to the USTS are transferred to the USTR.

15 (3) DIRECTOR GENERAL.—(A) There shall be a
16 Director General of Trade who shall be appointed by
17 the President, by and with the advice and consent
18 of the Senate, who shall have the rank and status
19 of Ambassador, and who shall be the head of the
20 USTS and shall be responsible for other trade pro-
21 motion functions of the Administration. The Direc-
22 tor General of Trade shall report to the USTR.

23 (B) The individual serving as Assistant Sec-
24 retary of Commerce and Director General of Trade
25 immediately before the effective date specified in sec-

1 tion 17109(a) may serve as the Director General of
2 Trade on and after such effective date until a suc-
3 cessor has taken office. Compensation for any serv-
4 ice under this subparagraph shall be at the rate at
5 which the individual was compensated immediately
6 before the effective date specified in section
7 17109(a).

8 (4) TRANSFER OF USTS OFFICERS.—The trans-
9 fer to the USTR pursuant to this section of any
10 Commercial Service Officer serving immediately be-
11 fore the effective date specified in section 17109(a)
12 shall not cause such officer to be reduced in rank,
13 grade, or compensation.

14 **SEC. 17433. TRADE AND DEVELOPMENT AGENCY.**

15 (a) ABOLITION OF AGENCY.—The Trade and Devel-
16 opment Agency is abolished.

17 (b) CONFORMING AMENDMENT.—Section 661 of the
18 Foreign Assistance Act of 1961 (22 U.S.C. 2421) is re-
19 pealed.

20 **SEC. 17434. FUNCTIONS WITH RESPECT TO TEXTILE AGREE-**
21 **MENTS.**

22 (a) TRANSFER OF FUNCTIONS.—Notwithstanding
23 the provisions of Executive Order 11651 and Executive
24 Order 12475 (7 U.S.C. 1854 note), the functions of the
25 Committee for the Implementation of Textile Agreements

1 (hereafter in this section referred to as “CITA”) are
2 transferred to the USTR, except for all functions related
3 to the determination of the existence of serious damage
4 or actual threat thereof to the domestic United States tex-
5 tile industry which are transferred to the International
6 Trade Commission.

7 (b) ABOLITION OF CITA.—CITA is abolished.

8 **SEC. 17435. PLAN FOR CONSOLIDATION OF TRADE ACTIVI-**
9 **TIES.**

10 Within 6 months after the date of the enactment of
11 this Act, the USTR shall transmit to the Congress a com-
12 prehensive plan to consolidate Federal trade programs and
13 activities. The plan shall provide for—

14 (1) an itemized summary of all Federal trade
15 programs and activities identified by authorizing
16 statute or executive order, including staff allocation
17 and resource expenditures;

18 (2) a unified budget for reallocating Federal
19 trade priorities;

20 (3) identification of and recommendations for
21 the elimination of overlapping and duplicative mis-
22 sions and functions among Federal trade programs
23 and activities; and

24 (4) identification of present cooperative activi-
25 ties among Federal, State, and private trade pro-

1 grams, and recommendations for Federal priorities
2 and long-term opportunities for developing and in-
3 creasing such cooperation.

4 **CHAPTER 4—ADMINISTRATIVE**
5 **PROVISIONS**

6 **SEC. 17441. PERSONNEL PROVISIONS.**

7 (a) APPOINTMENTS.—The USTR may appoint and
8 fix the compensation of such officers and employees, in-
9 cluding investigators, attorneys, and administrative law
10 judges, as may be necessary to carry out the functions
11 of the USTR and the Administration. Except as otherwise
12 provided by law, such officers and employees shall be ap-
13 pointed in accordance with the civil service laws and their
14 compensation fixed in accordance with title 5, United
15 States Code.

16 (b) POSITIONS ABOVE GS–15.—(1) At the request
17 of the USTR, the Director of the Office of Personnel Man-
18 agement shall, under section 5108 of title 5, United States
19 Code, provide for the establishment in a grade level above
20 GS–15 of the General Service, and in the Senior Executive
21 Service, of a number of positions in the Administration
22 equal to the number of positions in that grade level which
23 were used primarily for the performance of functions and
24 offices transferred by this subtitle and which were as-

1 signed and filled on the day before the effective date of
2 this subtitle.

3 (2) Appointments to positions provided for under this
4 subsection may be made without regard to the provisions
5 of section 3324 of title 5, United States Code, if the indi-
6 vidual appointed in such position is an individual who is
7 transferred in connection with the transfer of functions
8 and offices under this subtitle and, on the day before the
9 effective date of this subtitle, holds a position and has du-
10 ties comparable to those of the position to which appointed
11 under this subsection.

12 (3) The authority under this subsection with respect
13 to any position established at a grade level above GS-15
14 shall terminate when the person first appointed to fill such
15 position ceases to hold such position.

16 (4) For purposes of section 414(a)(3)(A) of the Civil
17 Service Reform Act of 1978, an individual appointed
18 under this subsection shall be deemed to occupy the same
19 position as the individual occupied on the day before the
20 effective date of this subtitle.

21 (c) EXPERTS AND CONSULTANTS.—The USTR may
22 obtain the services of experts and consultants in accord-
23 ance with section 3109 of title 5, United States Code, and
24 compensate such experts and consultants for each day (in-
25 cluding traveltime) at rates not in excess of the maximum

1 rate of pay for a position at a grade level above GS–15
2 of the General Schedule under section 5332 of such title.
3 The USTR may pay experts and consultants who are serv-
4 ing away from their homes or regular place of business
5 travel expenses and per diem in lieu of subsistence at rates
6 authorized by sections 5702 and 5703 of such title for
7 persons in Government service employed intermittently.

8 (d) VOLUNTARY SERVICES.—(1)(A) The USTR is
9 authorized to accept voluntary and uncompensated serv-
10 ices without regard to the provisions of section 1342 of
11 title 31, United States Code, if such services will not be
12 used to displace Federal employees employed on a full-
13 time, part-time, or seasonal basis.

14 (B) The USTR is authorized to accept volunteer serv-
15 ice in accordance with the provisions of section 3111 of
16 title 5, United States Code.

17 (2) The USTR is authorized to provide for incidental
18 expenses, including but not limited to transportation, lodg-
19 ing, and subsistence for individuals who provide voluntary
20 services under subparagraph (A) or (B) of paragraph (1).

21 (3) An individual who provides voluntary services
22 under paragraph (1)(A) shall not be considered a Federal
23 employee for any purpose other than for purposes of chap-
24 ter 81 of title 5, United States Code, relating to com-

1 pensation for work injuries, and chapter 171 of title 28,
2 United States Code, relating to tort claims.

3 (e) FOREIGN SERVICE POSITIONS.—In order to as-
4 sure United States representation in trade matters at a
5 level commensurate with the level of representation main-
6 tained by industrial nations which are major trade com-
7 petitors of the United States, the Secretary of State shall
8 classify certain positions at Foreign Service posts as com-
9 mercial minister positions and shall assign members of the
10 Foreign Service performing functions of the Administra-
11 tion, with the concurrence of the USTR, to such positions
12 in nations which are major trade competitors of the Unit-
13 ed States. The Secretary of State shall obtain and use the
14 recommendations of the USTR with respect to the number
15 of positions to be so classified under this subsection.

16 **SEC. 17442. DELEGATION AND ASSIGNMENT.**

17 Except where otherwise expressly prohibited by law
18 or otherwise provided by this subtitle, the USTR may dele-
19 gate any of the functions transferred to the USTR by this
20 subtitle and any function transferred or granted to the
21 USTR after the effective date of this subtitle to such offi-
22 cers and employees of the Administration as the USTR
23 may designate, and may authorize successive redelegations
24 of such functions as may be necessary or appropriate. No
25 delegation of functions by the USTR under this section

1 or under any other provision of this subtitle shall relieve
2 the USTR of responsibility for the administration of such
3 functions.

4 **SEC. 17443. SUCCESSION.**

5 (a) ORDER OF SUCCESSION.—Subject to the author-
6 ity of the President, and except as provided in section
7 17413(b), the USTR shall prescribe the order by which
8 officers of the Administration who are appointed by the
9 President, by and with the advice and consent of the Sen-
10 ate, shall act for, and perform the functions of, the USTR
11 or any other officer of the Administration appointed by
12 the President, by and with the advice and consent of the
13 Senate, during the absence or disability of the USTR or
14 such other officer, or in the event of a vacancy in the office
15 of the USTR or such other officer.

16 (b) CONTINUATION.—Notwithstanding any other pro-
17 vision of law, and unless the President directs otherwise,
18 an individual acting for the USTR or another officer of
19 the Administration pursuant to subsection (a) shall con-
20 tinue to serve in that capacity until the absence or disabil-
21 ity of the USTR or such other officer no longer exists or
22 a successor to the USTR or such other officer has been
23 appointed by the President and confirmed by the Senate.

1 **SEC. 17444. REORGANIZATION.**

2 (a) IN GENERAL.—Subject to subsection (b), the
3 USTR is authorized to allocate or reallocate functions
4 among the officers of the Administration, and to establish,
5 consolidate, alter, or discontinue such organizational enti-
6 ties in the Administration as may be necessary or appro-
7 priate.

8 (b) EXCEPTION.—The USTR may not exercise the
9 authority under subsection (a) to establish, consolidate,
10 alter, or discontinue any organizational entity in the Ad-
11 ministration or allocate or reallocate any function of an
12 officer or employee of the Administration that is inconsis-
13 tent with any specific provision of this subtitle.

14 **SEC. 17445. RULES.**

15 The USTR is authorized to prescribe, in accordance
16 with the provisions of chapters 5 and 6 of title 5, United
17 States Code, such rules and regulations as the USTR de-
18 termines necessary or appropriate to administer and man-
19 age the functions of the USTR or the Administration.

20 **SEC. 17446. FUNDS TRANSFER.**

21 The USTR may, when authorized in an appropriation
22 Act in any fiscal year, transfer funds from one appropria-
23 tion to another within the Administration, except that no
24 appropriation for any fiscal year shall be either increased
25 or decreased by more than 10 percent and no such trans-

1 fer shall result in increasing any such appropriation above
2 the amount authorized to be appropriated therefor.

3 **SEC. 17447. CONTRACTS, GRANTS, AND COOPERATIVE**
4 **AGREEMENTS.**

5 (a) IN GENERAL.—Subject to the provisions of the
6 Federal Property and Administrative Services Act of
7 1949, the USTR may make, enter into, and perform such
8 contracts, leases, cooperative agreements, grants, or other
9 similar transactions with public agencies, private organiza-
10 tions, and persons, and make payments (in lump sum or
11 installments, and by way of advance or reimbursement,
12 and, in the case of any grant, with necessary adjustments
13 on account of overpayments and underpayments) as the
14 USTR considers necessary or appropriate to carry out the
15 functions of the USTR or the Administration.

16 (b) EXCEPTION.—Notwithstanding any other provi-
17 sion of this subtitle, the authority to enter into contracts
18 or to make payments under this subtitle shall be effective
19 only to such extent or in such amounts as are provided
20 in advance in appropriation Acts. This subsection does not
21 apply with respect to the authority granted under section
22 449.

1 **SEC. 17448. 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 Adminis-
17 tration.

18 (b) **USE OF USTR FACILITIES.**—The USTR, under
19 terms, at rates, and for periods that the USTR considers
20 to be in the public interest, may permit the use by public
21 and private agencies, corporations, associations or other
22 organizations, or individuals, of any real property, or any
23 facility, structure or other improvement thereon, under the
24 custody of the USTR. The USTR may require permittees
25 under this section to maintain or recondition, at their own

1 expense, the real property, facilities, structures, and im-
2 provements used by such permittees.

3 **SEC. 17449. GIFTS AND BEQUESTS.**

4 (a) IN GENERAL.—The USTR is authorized to ac-
5 cept, hold, administer, and utilize gifts and bequests of
6 property, both real and personal, for the purpose of aiding
7 or facilitating the work of the Administration. Gifts and
8 bequests of money and the proceeds from sales of other
9 property received as gifts or bequests shall be deposited
10 in the United States Treasury in a separate fund and shall
11 be disbursed on order of the USTR. Property accepted
12 pursuant to this subsection, and the proceeds thereof,
13 shall be used as nearly as possible in accordance with the
14 terms of the gift or bequest.

15 (b) TAX TREATMENT.—For the purpose of Federal
16 income, estate, and gift taxes, and State taxes, property
17 accepted under subsection (a) shall be considered a gift
18 or bequest to or for the use of the United States.

19 (c) INVESTMENT.—Upon the request of the USTR,
20 the Secretary of the Treasury may invest and reinvest in
21 securities of the United States or in securities guaranteed
22 as to principal and interest by the United States any mon-
23 eys contained in the fund provided for in subsection (a).
24 Income accruing from such securities, and from any other
25 property held by the USTR pursuant to subsection (a),

1 shall be deposited to the credit of the fund, and shall be
2 disbursed upon order of the USTR.

3 **SEC. 17450. WORKING CAPITAL FUND.**

4 (a) ESTABLISHMENT.—The USTR is authorized to
5 establish for the Administration a working capital fund,
6 to be available without fiscal year limitation, for expenses
7 necessary for the maintenance and operation of such com-
8 mon administrative services as the USTR shall find to be
9 desirable in the interest of economy and efficiency, includ-
10 ing—

11 (1) a central supply service for stationery and
12 other supplies and equipment for which adequate
13 stocks may be maintained to meet in whole or in
14 part the requirements of the Administration and its
15 components;

16 (2) central messenger, mail, and telephone serv-
17 ice and other communications services;

18 (3) office space and central services for docu-
19 ment reproduction and for graphics and visual aids;

20 (4) a central library service; and

21 (5) such other services as may be approved by
22 the Director of the Office of Management and Budg-
23 et.

24 (b) OPERATION OF FUND.—The capital of the fund
25 shall consist of any appropriations made for the purpose

1 of providing working capital and the fair and reasonable
2 value of such stocks of supplies, equipment, and other as-
3 sets and inventories on order as the USTR may transfer
4 to the fund, less the related liabilities and unpaid obliga-
5 tions. The fund shall be reimbursed in advance from avail-
6 able funds of agencies and offices in the Administration,
7 or from other sources, for supplies and services at rates
8 which will approximate the expense of operation, including
9 the accrual of annual leave and the depreciation of equip-
10 ment. The fund shall also be credited with receipts from
11 sale or exchange of property and receipts in payment for
12 loss or damage to property owned by the fund. There shall
13 be covered into the United States Treasury as miscellane-
14 ous receipts any surplus of the fund (all assets, liabilities,
15 and prior losses considered) above the amounts trans-
16 ferred or appropriated to establish and maintain the fund.
17 There shall be transferred to the fund the stocks of sup-
18 plies, equipment, other assets, liabilities, and unpaid obli-
19 gations relating to those services which the USTR deter-
20 mines will be performed.

21 **SEC. 17451. SERVICE CHARGES.**

22 (a) **AUTHORITY.**—Notwithstanding any other provi-
23 sion of law, the USTR may establish reasonable fees and
24 commissions with respect to applications, documents,
25 awards, loans, grants, research data, services, and assist-

1 ance administered by the Administration, and the USTR
2 may change and abolish such fees and commissions. Be-
3 fore establishing, changing, or abolishing any schedule of
4 fees or commissions under this section, the USTR may
5 submit such schedule to the Congress.

6 (b) DEPOSITS.—The USTR is authorized to require
7 a deposit before the USTR provides any item, information,
8 service, or assistance for which a fee or commission is re-
9 quired under this section.

10 (c) DEPOSIT OF MONEYS.—Moneys received under
11 this section shall be deposited in the Treasury in a special
12 account for use by the USTR and are authorized to be
13 appropriated and made available until expended.

14 (d) FACTORS IN ESTABLISHING FEES AND COMMIS-
15 SIONS.—In establishing reasonable fees or commissions
16 under this section, the USTR may take into account—

17 (1) the actual costs which will be incurred in
18 providing the items, information, services, or assist-
19 ance concerned;

20 (2) the efficiency of the Government in provid-
21 ing such items, information, services, or assistance;

22 (3) the portion of the cost that will be incurred
23 in providing such items, information, services, or as-
24 sistance which may be attributed to benefits for the
25 general public rather than exclusively for the person

1 to whom the items, information, services, or assist-
2 ance is provided;

3 (4) any public service which occurs through the
4 provision of such items, information, services, or as-
5 sistance; and

6 (5) such other factors as the USTR considers
7 appropriate.

8 (e) REFUNDS OF EXCESS PAYMENTS.—In any case
9 in which the USTR determines that any person has made
10 a payment which is not required under this section or has
11 made a payment which is in excess of the amount required
12 under this section, the USTR, upon application or other-
13 wise, may cause a refund to be made from applicable
14 funds.

15 **SEC. 17452. SEAL OF DEPARTMENT.**

16 The USTR shall cause a seal of office to be made
17 for the Administration of such design as the USTR shall
18 approve. Judicial notice shall be taken of such seal.

19 **CHAPTER 5—RELATED AGENCIES**

20 **SEC. 17461. INTERAGENCY TRADE ORGANIZATION.**

21 Section 242(a)(3) of the Trade Expansion Act of
22 1962 (19 U.S.C. 1872(a)(3)) is amended to read as fol-
23 lows:

24 “(3)(A) The interagency organization estab-
25 lished under subsection (a) shall be composed of—

1 “(i) the United States Trade Representa-
2 tive, who shall be the chairperson,

3 “(ii) the Secretary of Agriculture,

4 “(iii) the Secretary of the Treasury,

5 “(iv) the Secretary of Labor,

6 “(v) the Secretary of State, and

7 “(vi) the representatives of such other de-
8 partments and agencies as the United States
9 Trade Representative shall designate.

10 “(B) The United States Trade Representative
11 may invite representatives from other agencies, as
12 appropriate, to attend particular meetings if subject
13 matters of specific functional interest to such agen-
14 cies are under consideration. It shall meet at such
15 times and with respect to such matters as the Presi-
16 dent or the chairperson shall direct.”.

17 **SEC. 17462. NATIONAL SECURITY COUNCIL.**

18 The fourth paragraph of section 101(a) of the Na-
19 tional Security Act of 1947 (50 U.S.C. 402(a)) is amend-
20 ed—

21 (1) by redesignating clauses (5), (6), and (7) as
22 clauses (6), (7), and (8), respectively; and

23 (2) by inserting after clause (4) the following
24 new clause:

25 “(5) the United States Trade Representative;”.

1 **SEC. 17463. 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 **CHAPTER 6—CONFORMING AMENDMENTS**

10 **SEC. 17471. AMENDMENTS TO GENERAL PROVISIONS.**

11 (a) **PRESIDENTIAL SUCCESSION.**—Section 19(d)(1)
12 of title 3, United States Code, is amended by inserting
13 “the United States Trade Representative,” before “Sec-
14 retary of Labor,”.

15 (b) **INSPECTOR GENERAL.**—The Inspector General
16 Act of 1978 is amended—

17 (1) in subsection 9(a)(1) by inserting after sub-
18 paragraph (W) the following:

19 “(X) of the United States Trade Rep-
20 resentative, all functions of the Inspector Gen-
21 eral of the Department of Commerce and the
22 Office of the Inspector General of the Depart-
23 ment of Commerce relating to the functions
24 transferred to the United States Trade Rep-
25 resentative by section 17432 of the Department
26 of Commerce Dismantling Act; and”; and

1 (2) in section 11—

2 (A) in paragraph (1) by inserting “the
3 United States Trade Representative;” after
4 “the Attorney General;”; and

5 (B) in paragraph (2) by inserting “the
6 United States Trade Administration,” after
7 “Treasury;”.

8 (c) AMENDMENT TO THE TRADE ACT OF 1974.—(1)
9 Chapter 4 of title I of the Trade Act of 1974 is amended
10 to read as follows:

11 **“CHAPTER 4—REPRESENTATION IN**
12 **TRADE NEGOTIATIONS**

13 **“SEC. 141. FUNCTIONS OF THE UNITED STATES TRADE REP-**
14 **RESENTATIVE.**

15 “The United States Trade Representative of the
16 United States Trade Administration established under
17 section 201 of the Trade Reorganization Act of 1995
18 shall—

19 “(1) be the chief representative of the United
20 States for each trade negotiation under this chapter
21 or chapter 1 of title III of this Act, or subtitle A of
22 title I of the Omnibus Trade and Competitiveness
23 Act of 1988, or any other provision of law enacted
24 after the Department of Commerce Dismantling Act;

1 “(2) report directly to the President and the
2 Congress, and be responsible to the President and
3 the Congress for the administration of trade agree-
4 ments programs under this Act, the Omnibus Trade
5 and Competitiveness Act of 1988, the Trade Expan-
6 sion Act of 1962, section 350 of the Tariff Act of
7 1930, and any other provision of law enacted after
8 the Department of Commerce Dismantling Act;

9 “(3) advise the President and the Congress
10 with respect to nontariff barriers to international
11 trade, international commodity agreements, and
12 other matters which are related to the trade agree-
13 ments programs; and

14 “(4) be responsible for making reports to Con-
15 gress with respect to the matters set forth in para-
16 graphs (1) and (2).”.

17 (2) The table of contents in the first section of the
18 Trade Act of 1974 is amended by striking the items relat-
19 ing to chapter 4 and section 141 and inserting the follow-
20 ing:

“CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

“Sec. 141. Functions of the United States Trade Representative.”.

21 (d) FOREIGN SERVICE PERSONNEL.—The Foreign
22 Service Act of 1980 is amended by striking paragraph (3)
23 of section 202(a) (22 U.S.C. 3922(a)) and inserting the
24 following:

1 “(3) The United States Trade Representative of the
2 United States Trade Administration may utilize the For-
3 eign Service personnel system in accordance with this
4 Act—

5 “(A) with respect to the personnel performing
6 functions—

7 “(i) which were transferred to the Depart-
8 ment of Commerce from the Department of
9 State by Reorganization Plan No. 3 of 1979;
10 and

11 “(ii) which were subsequently transferred
12 to the United States Trade Representative by
13 section 17432 of the Department of Commerce
14 Dismantling Act; and

15 “(B) with respect to other personnel of the
16 United States Trade Administration to the extent
17 the President determines to be necessary in order to
18 enable the United States Trade Administration to
19 carry out functions which require service abroad.”.

20 (e) CHIEF FINANCIAL OFFICERS.—Section 901(b)(1)
21 of title 31, United States Code, is amended by adding at
22 the end the following:

23 “(Q) The United States Trade Administra-
24 tion.”.

1 **SEC. 17472. REPEALS.**

2 Sections 1 and 2 of the Act of June 5, 1939 (15
3 U.S.C. 1502 and 1503; 53 Stat. 808), relating to the
4 Under Secretary of Commerce, are repealed.

5 **SEC. 17473. CONFORMING AMENDMENTS RELATING TO EX-**
6 **ECUTIVE SCHEDULE POSITIONS.**

7 (a) POSITIONS AT LEVEL I.—Section 5312 of title
8 5, United States Code, is amended by amending the item
9 relating to the United States Trade Representative to read
10 as follows:

11 “United States Trade Representative, United
12 States Trade Administration.”.

13 (b) POSITIONS AT LEVEL II.—Section 5313 of title
14 5, United States Code, is amended by adding at the end
15 the following:

16 “Deputy Administrator of the United States
17 Trade Administration.

18 “Deputy United States Trade Representatives,
19 United States Trade Administration (2).

20 “Director General of Trade, United States
21 Trade Administration (2).”.

22 (c) POSITIONS AT LEVEL III.—Section 5314 of title
23 5, United States Code, is amended by adding at the end
24 the following:

25 “Assistant Administrators, United States Trade
26 Administration (3).”.

1 (d) POSITIONS AT LEVEL IV.—Section 5315 of title
2 5, United States Code, is amended—

3 (1) by striking the item relating to the Assist-
4 ant Secretary of Commerce and Director General of
5 the United States and Foreign Commercial Service;
6 and

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

8 “General Counsel, United States Trade Admin-
9 istration.

10 “Inspector General, United States Trade Ad-
11 ministration.

12 “Chief Financial Officer, United States Trade
13 Administration.”.

14 **CHAPTER 7—TRANSITIONAL, SAVINGS,**
15 **AND CONFORMING PROVISIONS**

16 **SEC. 17481. ADDITIONAL TRANSFERS.**

17 Any function of the Secretary of Commerce or the
18 Department of Commerce which—

19 (1) is not transferred by this subtitle; and

20 (2) is incidental to, necessary for, or primarily
21 related to, the performance of a function transferred
22 by this subtitle,

23 is transferred to the head of the Federal agency to which
24 the related function is transferred by this subtitle.

1 **SEC. 17482. INCIDENTAL TRANSFERS.**

2 After consultation with the Director of the Office of
3 Personnel Management, the Director of the Office of Man-
4 agement and Budget is authorized, at such times as the
5 Director of the Office of Management and Budget may
6 provide, to make such determinations as may be necessary
7 with regard to the transfer of positions within the Senior
8 Executive Service in connection with the functions and of-
9 fices transferred by this subtitle.

10 **SEC. 17483. EFFECT ON PERSONNEL.**

11 (a) IN GENERAL.—Except as otherwise provided by
12 this subtitle, the transfer pursuant to this subtitle of full-
13 time personnel (except special Government employees) and
14 part-time personnel holding permanent positions shall not
15 cause any such employee to be separated or reduced in
16 grade or compensation for one year after the date of trans-
17 fer of such employee under this subtitle.

18 (b) EXECUTIVE SCHEDULE POSITIONS.—Except as
19 otherwise provided by this subtitle, any person who, on
20 the day preceding the effective date of this subtitle, held
21 a position compensated in accordance with the Executive
22 Schedule prescribed in chapter 53 of title 5, United States
23 Code, and who, without a break in service, is appointed
24 in a Federal agency to which functions are transferred by
25 this subtitle to a position having duties comparable to the
26 duties performed immediately preceding such appointment

1 shall continue to be compensated in such new position at
2 not less than the rate provided for such previous position,
3 for the duration of the service of such person in such new
4 position.

5 (c) TERMINATION OF CERTAIN POSITIONS.—Except
6 for members of the Foreign Service, positions whose in-
7 cumbents are appointed by the President, by and with the
8 advice and consent of the Senate, the functions of which
9 are transferred by this subtitle, shall terminate on the ef-
10 fective date of this subtitle.

11 **SEC. 17484. SAVINGS PROVISIONS.**

12 (a) ADMINISTRATIVE ACTIONS RELATING TO PRO-
13 MULGATION OF RULES.—Any administrative action relat-
14 ing to the preparation or promulgation of a regulation by
15 a Federal agency relating to a function transferred under
16 this subtitle may be continued by the Federal agency to
17 which such function is transferred with the same effect
18 as if this subtitle had not been enacted.

19 (b) FEDERAL OFFICIAL AS PARTY IN ACTION.—If,
20 before the date on which this subtitle takes effect, the Of-
21 fice of the United States Trade Representative, or any of-
22 ficer thereof in his or her official capacity, is a party to
23 an action with respect to a function transferred by this
24 subtitle to a Federal agency, then such action shall be con-

1 tinued with the head of the agency substituted or added
2 as a party.

3 (c) JUDICIAL REVIEW.—Orders and actions of the
4 head of a Federal agency in the exercise of functions
5 transferred to the head of such agency by this subtitle
6 shall be subject to judicial review to the same extent and
7 in the same manner as if such orders and actions had been
8 by the Department of Commerce or the Office of the Unit-
9 ed States Trade Representative, or any office or officer
10 thereof, in the exercise of such functions immediately pre-
11 ceding their transfer. Any statutory requirements relating
12 to notice, hearings, action upon the record, or administra-
13 tive review that apply to any function transferred by this
14 subtitle shall apply to the exercise of such function by the
15 head of the Federal agency to which such function is
16 transferred by this subtitle.

17 **SEC. 17485. REFERENCE.**

18 With respect to any functions transferred by this sub-
19 title and exercised after the effective date of this subtitle,
20 reference in any other Federal law to—

- 21 (1) the Secretary of Commerce or the United
22 States Trade Representative; or
23 (2) the Department of Commerce or the Office
24 of the United States Trade Representative or any of-
25 ficer or office thereof,

1 shall be considered to refer to the head of the Federal
2 agency to whom such functions were transferred by this
3 subtitle.

4 **SEC. 17486. TRANSITION.**

5 With the consent of the Secretary of Commerce or
6 the United States Trade Representative, as the case may
7 be, the head of each Federal agency to which functions
8 or offices are transferred by this subtitle is authorized to
9 utilize—

10 (1) the services of such officers, employees, and
11 other personnel of the Department of Commerce or
12 the Office of the United States Trade Representa-
13 tive, as the case may be, with respect to functions
14 or offices transferred to that agency by this subtitle;
15 and

16 (2) funds appropriated to such functions or of-
17 fices for such period of time as may reasonably be
18 needed to facilitate the orderly implementation of
19 this subtitle.

20 **CHAPTER 8—MISCELLANEOUS**

21 **SEC. 17491. EFFECTIVE DATE.**

22 (a) IN GENERAL.—This subtitle shall take effect on
23 the effective date specified in section 17109(a), except that
24 at any time after the date of the enactment of this Act

1 the officers provided for in chapter 2 may be nominated
2 and appointed, as provided in such chapter.

3 (b) INTERIM COMPENSATION AND EXPENSES.—
4 Funds available to the Department of Commerce or the
5 Office of the United States Trade Representative (or any
6 official or component thereof), with respect to the func-
7 tions transferred by this subtitle, may be used, with ap-
8 proval of the Director of the Office of Management and
9 Budget, to pay the compensation and expenses of an offi-
10 cer appointed under subsection (a) who will carry out such
11 functions until funds for that purpose are otherwise avail-
12 able.

13 **SEC. 17492. INTERIM APPOINTMENTS.**

14 (a) IN GENERAL.—If one or more officers required
15 by this subtitle to be appointed by and with the advice
16 and consent of the Senate have not entered upon office
17 on the effective date of this subtitle and notwithstanding
18 any other provision of law, the President may designate
19 any officer who was appointed by and with the advice and
20 consent of the Senate, and who was such an officer on
21 the day before the effective date of this subtitle, to act
22 in the office until it is filled as provided by this subtitle.

23 (b) COMPENSATION.—Any officer acting in an office
24 pursuant to subsection (a) shall receive compensation at
25 the rate prescribed by this subtitle for such office.

1 **SEC. 17493. FUNDING REDUCTIONS RESULTING FROM RE-**
2 **ORGANIZATION.**

3 (a) FUNDING REDUCTIONS.—Notwithstanding sec-
4 tion 17610, beginning in the first fiscal year that begins
5 on or after the effective date of this subtitle, the amount
6 expended by the United States in performing all functions
7 which, immediately before the effective date of this sub-
8 title, were performed by the Department of Commerce or
9 any agency, officer, or employee thereof and are trans-
10 ferred by this subtitle may not exceed 75 percent of the
11 total amount expended by the United States in performing
12 all such functions during fiscal year 1994.

13 (b) IMPLEMENTATION PLAN.—(1) Not later than 90
14 days after the date of the enactment of this Act, the Direc-
15 tor of the Office of Management and Budget shall submit
16 a report to the Congress on a plan that—

17 (A) provides for the implementation of the
18 funding reductions required under subsection (a);
19 and

20 (B) makes legislative recommendations for ad-
21 ditional authority necessary or useful in implement-
22 ing such funding reductions.

23 (2) In preparing the report, the Office of Manage-
24 ment and Budget shall consult with the USTR.

1 **SEC. 17494. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out the provisions of this
4 subtitle. Amounts appropriated under this section shall be
5 available until expended.

6 **Subtitle E—Patent and Trademark**
7 **Office Corporation**

8 **SEC. 17501. SHORT TITLE.**

9 This subtitle may be cited as the “Patent and Trade-
10 mark Office Corporation Act of 1995”.

11 **CHAPTER 1—PATENT AND TRADEMARK**
12 **OFFICE**

13 **SEC. 17511. ESTABLISHMENT OF PATENT AND TRADEMARK**
14 **OFFICE AS A CORPORATION.**

15 Section 1 of title 35, United States Code, is amended
16 to read as follows:

17 **“§ 1. Establishment**

18 “(a) ESTABLISHMENT.—The Patent and Trademark
19 Office is established as a wholly owned Government cor-
20 poration subject to chapter 91 of title 31, except as other-
21 wise provided in this title.

22 “(b) OFFICES.—The Patent and Trademark Office
23 shall maintain an office in the District of Columbia, or
24 the metropolitan area thereof, for the service of process
25 and papers and shall be deemed, for purposes of venue
26 in civil actions, to be a resident of the District of Colum-

1 bia. The Patent and Trademark Office may establish of-
2 fices in such other places as it considers necessary or ap-
3 propriate in the conduct of its business.

4 “(c) REFERENCE.—For purposes of this title, the
5 Patent and Trademark Office shall also be referred to as
6 the ‘Office’.”.

7 **SEC. 17512. POWERS AND DUTIES.**

8 Section 2 of title 35, United States Code, is amended
9 to read as follows:

10 **“§ 2. Powers and Duties**

11 “(a) IN GENERAL.—The Patent and Trademark Of-
12 fice shall be responsible for—

13 “(1) the granting and issuing of patents and
14 the registration of trademarks;

15 “(2) conducting studies, programs, or ex-
16 changes of items or services regarding domestic and
17 international patent and trademark law or the ad-
18 ministration of the Office, including programs to
19 recognize, identify, assess, and forecast the tech-
20 nology of patented inventions and their utility to in-
21 dustry;

22 “(3) authorizing or conducting studies and pro-
23 grams cooperatively with foreign patent and trade-
24 mark offices and international organizations, in con-

1 nection with the granting and issuing of patents and
2 the registration of trademarks; and

3 “(4) disseminating to the public information
4 with respect to patents and trademarks.

5 “(b) SPECIFIC POWERS.—The Office—

6 “(1) shall have perpetual succession;

7 “(2) shall adopt and use a corporate seal, which
8 shall be judicially noticed and with which letters pat-
9 ent, certificates of trademark registrations, and pa-
10 pers issued by the Office shall be authenticated;

11 “(3) may sue and be sued in its corporate name
12 and be represented by its own attorneys in all judi-
13 cial and administrative proceedings;

14 “(4) may indemnify the Commissioner of Pat-
15 ents and Trademarks, and other officers, attorneys,
16 agents, and employees (including members of the
17 Management Advisory Board established in section
18 5), of the Office for liabilities and expenses incurred
19 within the scope of their employment;

20 “(5) may adopt, amend, and repeal bylaws,
21 rules, and regulations, governing the manner in
22 which its business will be conducted and the powers
23 granted to it by law will be exercised, without regard
24 to chapter 35 of title 44;

1 “(6) may acquire, construct, purchase, lease,
2 hold, manage, operate, improve, alter, and renovate
3 any real, personal, or mixed property, or any interest
4 therein, as it considers necessary to carry out its
5 functions, without regard to the provisions of the
6 Federal Property and Administrative Services Act of
7 1949;

8 “(7)(A) may make such purchases, contracts
9 for the construction, maintenance, or management
10 and operation of facilities, and contracts for supplies
11 or services, after advertising, in such manner and at
12 such times sufficiently in advance of opening bids, as
13 the Office determines is adequate to ensure notice
14 and an opportunity for competition, except that ad-
15 vertising shall not be required when the Office deter-
16 mines that the making of any such purchase or con-
17 tract without advertising is necessary, or that adver-
18 tising is not reasonably practicable;

19 “(B) may enter into and perform such pur-
20 chases and contracts for printing services, including
21 the process of composition, platemaking, presswork,
22 silk screen processes, binding, microform, and the
23 products of such processes, as it considers necessary
24 to carry out the functions of the Office, without re-

1 gard to sections 501 through 517 and 1101 through
2 1123 of title 44; and

3 “(C) may enter into and perform such other
4 contracts, leases, cooperative agreements, or other
5 transactions with international, foreign, and domes-
6 tic public agencies and private organizations, and
7 persons as is necessary in the conduct of its business
8 and on such terms as it considers appropriate;

9 “(8) may use, with their consent, services,
10 equipment, personnel, and facilities of other depart-
11 ments, agencies, and instrumentalities of the Fed-
12 eral Government, on a reimbursable basis, and to co-
13 operate with such other departments, agencies, and
14 instrumentalities in the establishment and use of
15 services, equipment, and facilities of the Office;

16 “(9) may obtain from the Administrator of
17 General Services such services as the Administrator
18 is authorized to provide to other agencies of the
19 United States, on the same basis as those services
20 are provided to other agencies of the United States;

21 “(10) may use, with the consent of the agency,
22 government, or international organization concerned,
23 the services, records, facilities, or personnel of any
24 State or local government agency or instrumentality

1 or foreign government or international organization
2 to perform functions on its behalf;

3 “(11) may determine the character of and the
4 necessity for its obligations and expenditures and
5 the manner in which they shall be incurred, allowed,
6 and paid, subject to the provisions of this title and
7 the Act of July 5, 1946 (commonly referred to as
8 the ‘Trademark Act of 1946’);

9 “(12) may retain and use all of its revenues
10 and receipts, including revenues from the sale, lease,
11 or disposal of any real, personal, or mixed property,
12 or any interest therein, of the Office, in carrying out
13 the functions of the Office, including for research
14 and development and capital investment, without ap-
15 portionment under the provisions of subchapter II
16 of chapter 15 of title 31;

17 “(13) shall have the priority of the United
18 States with respect to the payment of debts from
19 bankrupt, insolvent, and decedents’ estates;

20 “(14) may accept monetary gifts or donations
21 of services, or of real, personal, or mixed property,
22 in order to carry out the functions of the Office;

23 “(15) may execute, in accordance with its by-
24 laws, rules, and regulations, all instruments nec-

1 essary and appropriate in the exercise of any of its
2 powers;

3 “(16) may provide for liability insurance and
4 insurance against any loss in connection with its
5 property, other assets, or operations either by con-
6 tract or by self-insurance; and

7 “(17) shall pay any settlement or judgment en-
8 tered against it from the funds of the Office and not
9 from amounts available under section 1304 of title
10 31.”.

11 **SEC. 17513. ORGANIZATION AND MANAGEMENT.**

12 Section 3 of title 35, United States Code, is amended
13 to read as follows:

14 **“§ 3. Officers and employees**

15 “(a) COMMISSIONER.—

16 “(1) IN GENERAL.—The management of the
17 Patent and Trademark Office shall be vested in the
18 Commissioner of Patents and Trademarks (hereafter
19 in this title referred to as the ‘Commissioner’), who
20 shall be a citizen of the United States and who shall
21 be appointed by the President, by and with the ad-
22 vice and consent of the Senate. The Commissioner
23 shall be a person who, by reason of professional
24 background and experience in patent and trademark
25 law, is especially qualified to manage the Office.

1 “(2) DUTIES.—

2 “(A) IN GENERAL.—The Commissioner
3 shall be responsible for the management and di-
4 rection of the Office, including the issuance of
5 patents and the registration of trademarks.

6 “(B) ADVISING THE PRESIDENT.—The
7 Commissioner shall advise the President of all
8 activities of the Patent and Trademark Office
9 undertaken in response to obligations of the
10 United States under treaties and executive
11 agreements, or which relate to cooperative pro-
12 grams with those authorities of foreign govern-
13 ments that are responsible for granting patents
14 or registering trademarks. The Commissioner
15 shall also recommend to the President changes
16 in law or policy which may improve the ability
17 of U.S. citizens to secure and enforce patent
18 rights or trademark rights in the United States
19 or in foreign countries.

20 “(C) CONSULTING WITH THE MANAGE-
21 MENT ADVISORY BOARD.—The Commissioner
22 shall consult with the Management Advisory
23 Board established in section 5 on a regular
24 basis on matters relating to the operation of the
25 Patent and Trademark Office, and shall consult

1 with the Board before submitting budgetary
2 proposals to the Office of Management and
3 Budget or changing or proposing to change pat-
4 ent or trademark user fees or patent or trade-
5 mark regulations.

6 “(3) TERM.—The Commissioner shall serve a
7 term of six years, and may continue to serve until
8 a successor is appointed and assumes office. The
9 Commissioner may be reappointed to subsequent
10 terms.

11 “(4) OATH.—The Commissioner shall, before
12 taking office, take an oath to discharge faithfully the
13 duties of the Office.

14 “(5) COMPENSATION.—The Commissioner shall
15 receive compensation at the rate of pay in effect for
16 level II of the Executive Schedule under section
17 5313 of title 5.

18 “(6) REMOVAL.—The Commissioner may be re-
19 moved from office by the President only for cause.

20 “(7) DESIGNEE OF COMMISSIONER.—The Com-
21 missioner shall designate an officer of the Office who
22 shall be vested with the authority to act in the ca-
23 pacity of the Commissioner in the event of the ab-
24 sence or incapacity of the Commissioner.

25 “(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

1 “(1) DEPUTY COMMISSIONERS.—The Commis-
2 sioner shall appoint a Deputy Commissioner for Pat-
3 ents and a Deputy Commissioner for Trademarks
4 for terms that shall expire on the date on which the
5 Commissioner’s term expires. The Deputy Commis-
6 sioner for Patents shall be a person with dem-
7 onstrated experience in patent law and the Deputy
8 Commissioner for Trademarks shall be a person with
9 demonstrated experience in trademark law. The
10 Deputy Commissioner for Patents and the Deputy
11 Commissioner for Trademarks shall be the principal
12 policy advisors to the Commissioner on all aspects of
13 the activities of the Office that affect the adminis-
14 tration of patent and trademark operations, respec-
15 tively.

16 “(2) OTHER OFFICERS AND EMPLOYEES.—The
17 Commissioner shall—

18 “(A) appoint an Inspector General and
19 such other officers, employees (including attor-
20 neys), and agents of the Office as the Commis-
21 sioner considers necessary to carry out its func-
22 tions;

23 “(B) fix the compensation of such officers
24 and employees, subject to the limits set forth in
25 subsection (c); and

1 “(C) define the authority and duties of
2 such officers and employees and delegate to
3 them such of the powers vested in the Office as
4 the Commissioner may determine.

5 The Office shall not be subject to any administratively or
6 statutorily imposed limitation on positions or personnel,
7 and no positions or personnel of the Office shall be taken
8 into account for purposes of applying any such limitation,
9 except to the extent otherwise specifically provided by stat-
10 ute with respect to the Office.

11 “(c) LIMITS ON COMPENSATION.—Except as other-
12 wise provided in this title or any other provision of law,
13 the basic pay of an officer or employee of the Office for
14 any calendar year may not exceed the annual rate of basic
15 pay in effect for level III of the Executive Schedule under
16 section 5314 of title 5. The Commissioner shall by regula-
17 tion establish a limitation on the total compensation pay-
18 able to officers or employees of the Office, consistent with
19 the limitation under section 5307 of title 5.

20 “(d) INAPPLICABILITY OF TITLE 5 GENERALLY.—
21 Except as otherwise provided in this section, officers and
22 employees of the Office shall not be subject to the provi-
23 sions of title 5 relating to Federal employees.

24 “(e) CARRYOVER OF PERSONNEL.—

1 “(1) TO THE OFFICE.—Effective as of the ef-
2 fective date of the Patent and Trademark Office
3 Corporation Act of 1995, all officers and employees
4 of the Patent and Trademark Office on the day be-
5 fore such effective date shall become officers and
6 employees of the Office, without a break in service.

7 “(2) CONTINUATION IN OFFICE OF CERTAIN
8 OFFICERS.—

9 “(A) COMMISSIONER OF PATENTS AND
10 TRADEMARKS.—The individual serving as the
11 Commissioner of Patents and Trademarks on
12 the day before the effective date of the Patent
13 and Trademark Office Corporation Act of 1995
14 may serve as the Commissioner for a period of
15 1 year beginning on such effective date or, if
16 earlier, until a Commissioner has been ap-
17 pointed under subsection (a).

18 “(B) ASSISTANT COMMISSIONER FOR PAT-
19 ENTS.—The individual serving as the Assistant
20 Commissioner for Patents on the day before the
21 effective date of the Patent and Trademark Of-
22 fice Corporation Act of 1995 may serve as the
23 Deputy Commissioner for Patents for a period
24 of 1 year beginning on such effective date or,

1 if earlier, until a Deputy Commissioner for Pat-
2 ents has been appointed under subsection (b).

3 “(C) ASSISTANT COMMISSIONER FOR
4 TRADEMARKS.—The individual serving as the
5 Assistant Commissioner for Trademarks on the
6 day before the effective date of the Patent and
7 Trademark Office Corporation Act of 1995 may
8 serve as the Deputy Commissioner for Trade-
9 marks for a period of 1 year beginning on such
10 effective date or, if earlier, until a Deputy Com-
11 missioner for Trademarks has been appointed
12 under subsection (b).

13 “(f) EMPLOYEE PROTECTION.—Not later than the
14 effective date of the Patent and Trademark Office Cor-
15 poration Act of 1995, the Commissioner shall, notwith-
16 standing section 3531 of such Act, take appropriate meas-
17 ures to protect the employment interests of individuals
18 who become employees of the Office pursuant to sub-
19 section (e)(1). Such measures shall include provisions to
20 ensure that—

21 “(1) the Office will adopt labor agreements in
22 accordance with subsection (g);

23 “(2) no such individual shall, during the 2-year
24 period commencing on the effective date of the Pat-
25 ent and Trademark Office Corporation Act of 1995,

1 be subject to separation or any reduction in com-
2 pensation by reason of the establishment of the Of-
3 fice as a Government corporation pursuant to such
4 Act;

5 “(3) all sick leave, annual leave, and compen-
6 satory time accrued or accumulated under title 5 be-
7 fore the start of such 2-year period shall be obliga-
8 tions of the Office during such period; and

9 “(4) there shall be made available to such em-
10 ployees not less than 1 life insurance program and
11 not less than 3 health insurance programs, during
12 such 2-year period, which shall be reasonably com-
13 parable, in terms of employee premium cost and cov-
14 erage, to the Federal health and life insurance pro-
15 grams available to such employees on the day before
16 the start of such period.

17 “(g) LABOR AGREEMENTS.—

18 “(1) ADOPTION OF EXISTING AGREEMENTS.—
19 The Office shall adopt all labor agreements which
20 are in effect, as of the day before the effective date
21 of the Patent and Trademark Office Corporation Act
22 of 1995, with respect to such Office (as then in ef-
23 fect). Each such agreement shall remain in effect for
24 the 2-year period commencing on such date, unless

1 the agreement provides for a shorter duration or the
2 parties agree otherwise before such period ends.

3 “(2) CONTINUED APPLICABILITY OF CHAPTER 71.—
4 Chapter 71 of title 5 shall continue to apply with respect
5 to the Office after the Patent and Trademark Office Cor-
6 poration Act of 1995 takes effect.

7 “(h) TERMINATION RIGHTS.—Any employee referred
8 to in the first sentence of subsection (f) whose employment
9 with the Office is terminated during the 2-year period
10 commencing on the effective date of the Patent and Trade-
11 mark Office Corporation Act of 1995 shall be entitled to
12 rights and benefits, to be afforded by the Office, similar
13 to those such employee would have had under Federal law
14 if termination had occurred immediately before such date.

15 “(i) RETIREMENT.—

16 “(1) CONTINUED COVERAGE.—Any employee
17 referred to in the first sentence of subsection (f)
18 who, on the day before the effective date of the Pat-
19 ent and Trademark Office Corporation Act of 1995,
20 is subject to subchapter III of chapter 83 of title 5
21 or chapter 84 of such title shall, so long as such em-
22 ployee remains employed by the Office without a
23 break in service, remain subject to such subchapter
24 or chapter, as the case may be. Any employment
25 that satisfies the preceding sentence shall be consid-

1 ered employment by the Government of the United
2 States for purposes of such subchapter or chapter.
3 During any such employment, the Office shall be
4 considered to be the employing agency of the em-
5 ployee and shall make all agency contributions re-
6 quired under such subchapter or chapter with re-
7 spect to such employee.

8 “(2) DEPOSIT REQUIREMENT.—Not later than
9 1 year after the effective date of the Patent and
10 Trademark Office Corporation Act of 1995, the Of-
11 fice shall pay into the Treasury of the United
12 States, to the credit of the Civil Service Retirement
13 and Disability Fund, an amount determined by the
14 Office of Personnel Management to represent the
15 present value of the difference between (A) the fu-
16 ture cost of benefits payable from the Fund and due
17 the employees referred to in the first sentence of
18 subsection (f) that are attributable to employment
19 on or after the effective date of the Patent and
20 Trademark Office Corporation Act of 1995, and (B)
21 the contributions made by such employees and the
22 Office under paragraph (1). In determining the
23 amount due, the Office of Personnel Management
24 shall take into consideration the actual interest such

1 amount can be expected to earn when invested in the
2 Treasury.

3 “(j) COMPETITIVE STATUS.—For purposes of ap-
4 pointment to a position in the competitive service for
5 which an officer or employee of the Office is qualified,
6 such officer or employee—

7 “(1) shall not forfeit any competitive status, ac-
8 quired by such officer or employee before the effec-
9 tive date of the Patent and Trademark Office Cor-
10 poration Act of 1995, by reason of becoming an offi-
11 cer or employee of the Office pursuant to subsection
12 (e)(1); or

13 “(2) if not covered by paragraph (1), shall ac-
14 quire competitive status after completing at least 1
15 year of continuous service under a nontemporary ap-
16 pointment to a position within the Office (taking
17 into account any such service performed with the
18 former Patent and Trademark Office immediately
19 before such effective date).

20 “(k) SAVINGS PROVISIONS.—All orders, determina-
21 tions, rules, and regulations regarding compensation and
22 benefits and other terms and conditions of employment,
23 in effect for the Office and its officers and employees im-
24 mediately before the effective date of the Patent and
25 Trademark Office Corporation Act of 1995, shall continue

1 in effect with respect to the Office and its officers and
2 employees until modified, superseded, or set aside by the
3 Office or a court of appropriate jurisdiction or by oper-
4 ation of law.’’.

5 **SEC. 17514. MANAGEMENT ADVISORY BOARD.**

6 Chapter 1 of part I of title 35, United States Code,
7 is amended by inserting after section 4 the following:

8 **“§ 5. Patent and Trademark Office Management Advi-**
9 **sory Board**

10 **“(a) COMPENSATION.—**

11 **“(1) APPOINTMENT.—**The Patent and Trade-
12 mark Office shall have a Management Advisory
13 Board (hereafter in this title referred to as the
14 ‘Board’) of 18 members, 6 of whom shall be ap-
15 pointed by the President, 6 of whom shall be ap-
16 pointed by the Speaker of the House of Representa-
17 tives, and 6 of whom shall be appointed by the
18 President pro tempore of the Senate. Not more than
19 4 of the 6 members appointed by each appointing
20 authority shall be members of the same political
21 party.

22 **“(2) TERMS.—**Members of the Board shall be
23 appointed for a term of 6 years each, except that of
24 the members first appointed by each appointing au-
25 thority, 1 shall be for a term of 1 year, 1 shall be

1 for a term of 2 years, 1 shall be for a term of 3
2 years, 1 shall be for a term of 4 years, and 1 shall
3 be for a term of 5 years. No member may serve
4 more than 1 term.

5 “(3) CHAIR.—The President shall designate the
6 chair of the Board, whose term as chair shall be for
7 3 years.

8 “(4) TIMING OF APPOINTMENTS.—Initial ap-
9 pointments to the Board shall be made within 3
10 months after the effective date of the Patent and
11 Trademark Office Corporation Act of 1995, and va-
12 cancies shall be filled within 3 months after they
13 occur.

14 “(5) VACANCIES.—Vacancies shall be filled in
15 the manner in which the original appointment was
16 made under this subsection. Members appointed to
17 fill a vacancy occurring before the expiration of the
18 term for which the member’s predecessor was ap-
19 pointed shall be appointed only for the remainder of
20 that term. A member may serve after the expiration
21 of that member’s term until a successor is ap-
22 pointed.

23 “(b) BASIS FOR APPOINTMENTS.—Members of the
24 Board shall be citizens of the United States who shall be
25 chosen so as to represent the interests of diverse users

1 of the Patent and Trademark Office, and shall include in-
2 dividuals with substantial background and achievement in
3 corporate finance and management.

4 “(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—
5 Members of the Board shall be special Government em-
6 ployees within the meaning of section 202 of title 18.

7 “(d) MEETINGS.—The Board shall meet at the call
8 of the chair to consider an agenda set by the chair.

9 “(e) DUTIES.—The Board shall—

10 “(1) review the policies, goals, performance,
11 budget, and user fees of the Patent and Trademark
12 Office, and advise the Commissioner on these mat-
13 ters; and

14 “(2) within 60 days after the end of each fiscal
15 year, prepare an annual report on the matters re-
16 ferred to in paragraph (1), transmit the report to
17 the President and the Committees on the Judiciary
18 of the Senate and the House of Representatives, and
19 publish the report in the Patent and Trademark Of-
20 fice Official Gazette.

21 “(f) STAFF.—The Board shall employ a staff and
22 procure support services for the staff adequate to enable
23 the Board to carry out its functions, using funds available
24 to the Commissioner under section 42 of this title. Persons
25 employed by the Board shall receive compensation as de-

1 terminated by the Board, serve in accordance with terms
2 and conditions of employment established by the Board,
3 and be subject solely to the direction of the Board, not-
4 withstanding any other provision of law.

5 “(g) COMPENSATION.—Members of the Board may
6 accept reimbursement for expenses incurred in attending
7 meetings of the Board and compensation not to exceed
8 \$1000 per day for each day in attendance at meetings of
9 the Board.

10 “(h) ACCESS TO INFORMATION.—Members of the
11 Board shall be provided access to records and information
12 in the Patent and Trademark Office, except for personnel
13 or other privileged information and information concern-
14 ing patent applications required to be kept in confidence
15 by section 122 of this title.

16 “(i) APPLICABILITY OF FEDERAL ADVISORY COM-
17 MITTEE ACT.—The provisions of the Federal Advisory
18 Committee Act (5 U.S.C. App.) shall not apply to meet-
19 ings of the Board, but all meetings of the Board shall be
20 announced in the Federal Register at least 30 days in ad-
21 vance and all meetings shall be open to the public unless
22 closed by the Board for good cause.”.

1 **SEC. 17515. INDEPENDENCE FROM DEPARTMENT OF COM-**
2 **MERCE.**

3 Section 6 of title 35, United States Code, is amend-
4 ed—

5 (1) by striking “, under the direction of the
6 Secretary of Commerce,” each place it appears; and

7 (2) by striking “, subject to the approval of the
8 Secretary of Commerce,”.

9 **SEC. 17516. TRADEMARK TRIAL AND APPEAL BOARD.**

10 Section 17 of the Act of July 5, 1946 (commonly re-
11 ferred to as the “Trademark Act of 1946”) (15 U.S.C.
12 1067) is amended to read as follows:

13 “SEC. 17. (a) In every case of interference, opposition
14 to registration, application to register as a lawful concur-
15 rent user, or application to cancel the registration of a
16 mark, the Commissioner shall give notice to all parties and
17 shall direct a Trademark Trial and Appeal Board to deter-
18 mine and decide the respective rights of registration.

19 “(b) The Trademark Trial and Appeal Board shall
20 include the Commissioner, the Deputy Commissioner for
21 Patents, the Deputy Commissioner for Trademarks, and
22 members competent in trademark law who are appointed
23 by the Commissioner.”.

1 **SEC. 17517. BOARD OF PATENT APPEALS AND INTER-**
2 **FERENCES.**

3 Section 7 of title 35, United States Code, is amended
4 to read as follows:

5 **“§ 7. Board of Patent Appeals and Interferences**

6 “(a) ESTABLISHMENT AND COMPOSITION.—There
7 shall be in the Patent and Trademark Corporation a
8 Board of Patent Appeals and Interferences. The Commis-
9 sioner, the Deputy Commissioner for Patents, the Deputy
10 Commissioner for Trademarks, the officer principally re-
11 sponsible for the examination of patents, the officer prin-
12 cipally responsible for the examination of trademarks, and
13 the examiners-in-chief shall constitute the Board. The ex-
14 aminers-in-chief shall be persons of competent legal knowl-
15 edge and scientific ability.

16 “(b) DUTIES.—The Board of Patent Appeals and
17 Interferences shall, on written appeal of an applicant, re-
18 view adverse decisions of examiners upon applications for
19 patents and shall determine priority and patentability of
20 invention in interferences declared under section 135(a)
21 of this title. Each appeal and interference shall be heard
22 by at least 3 members of the Board, who shall be des-
23 ignated by the Commissioner. Only the Board of Patent
24 Appeals and Interferences may grant rehearings.”.

1 **SEC. 17518. SUITS BY AND AGAINST THE CORPORATION.**

2 Chapter 1 of part I of title 35, United States Code,
3 is amended—

4 (1) by redesignating sections 8 through 14 as
5 sections 9 through 15; and

6 (2) by inserting after section 7 the following
7 new section:

8 **“§ 8. Suits by and against the Corporation**

9 **“(a) IN GENERAL.—**

10 **“(1) ACTIONS UNDER UNITED STATES LAW.—**

11 Any civil action, suit, or proceeding to which the
12 Patent and Trademark Office is a party is deemed
13 to arise under the laws of the United States. Exclu-
14 sive jurisdiction over all civil actions by or against
15 the Office is in the Federal courts as provided by
16 law.

17 **“(2) CONTRACT CLAIMS.—**Any action, suit, or
18 proceeding against the Office founded upon contract
19 shall be subject to the limitations and exclusive rem-
20 edy provided in section 1346(a)(2) and sections
21 1491 through 1509 of title 28, whether or not such
22 contract claims are cognizable under the sections
23 507, 1346, 1402, 1491, 1496, 1497, 1501, 1503,
24 2071, 2072, 2411, 2501, 2512 of title 28). For pur-
25 poses of the Contract Disputes Act of 1978 (41
26 U.S.C. 601 and following), the Commissioner shall

1 be deemed to be the agency head with respect to
2 contract claims arising with respect to the Office.

3 “(3) TORT CLAIMS.—Any action, suit, or pro-
4 ceeding against the Office founded upon tort shall be
5 subject to the limitations and exclusive remedies pro-
6 vided in section 1346(b) and sections 2671 through
7 2680 of title 28, whether or not such tort claims are
8 cognizable under section 1346(b) of title 28.

9 “(4) PROHIBITION ON ATTACHMENT, LIENS,
10 ETC.—No attachment, garnishment, lien, or similar
11 process, intermediate or final, in law or equity, may
12 be issued against property of the Office.

13 “(5) SUBSTITUTION OF OFFICE AS PARTY.—
14 The Office shall be substituted as defendant in any
15 civil action, suit, or proceeding against an officer or
16 employee of the Office, if the Office determines that
17 the employee was acting within the scope of the offi-
18 cer or employee’s employment with the Office. If the
19 Office refuses to certify scope of employment, the of-
20 ficer or employee may at any time before trial peti-
21 tion the court to find and certify that the officer or
22 employee was acting within the scope of the officer
23 or employee’s employment. Upon certification by the
24 court, the Office shall be substituted as the party

1 defendant. A copy of the petition shall be served
2 upon the Office.

3 “(b) RELATIONSHIP WITH JUSTICE DEPARTMENT.—

4 “(1) EXERCISE BY OFFICE OF ATTORNEY GEN-
5 ERAL’S AUTHORITIES.—Except as provided in this
6 section, in relation to all judicial proceedings in
7 which the Office or an officer or employee thereof is
8 a party or in which the officer or employee thereof
9 is interested and which arise from or relate to offi-
10 cers or employees thereof acting within the scope of
11 their employment, torts, contracts, property, reg-
12 istration of patent and trademark practitioners, pat-
13 ents or trademarks, or fees, the officer or employee
14 thereof may exercise, without prior authorization
15 from the Attorney General, the authorities and du-
16 ties that otherwise would be exercised by the Attor-
17 ney General on behalf of the officer or employee
18 thereof under title 28, and other laws. In all other
19 judicial or administrative proceedings in which the
20 Office or an officer or employee of the Office is a
21 party or is interested, the Office may exercise these
22 authorities and duties only after obtaining author-
23 ization from the Attorney General.

24 “(2) APPEARANCES BY ATTORNEY GENERAL.—

25 The Attorney General may file an appearance on be-

1 half of the Office or an employee of the Office, with-
2 out the consent of the Office, in any suit in which
3 the Office is a party and represent the Office with
4 exclusive authority in the conduct, settlement, or
5 compromise of that suit.

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 appointed 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

1 other prerequisites of qualification or appearance re-
2 quired by the court or administrative body.”.

3 **SEC. 17519. ANNUAL REPORT OF COMMISSIONER.**

4 Section 15 of title 35, United States Code, as redesign-
5 nated by section 17518 of this Act, is amended to read
6 as follows:

7 **“§ 15. Annual report to Congress**

8 “The Commissioner shall report to the Congress, not
9 later than 90 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.”.

14 **SEC. 17520. SUSPENSION OR EXCLUSION FROM PRACTICE.**

15 Section 32 of title 35, United States Code, is amend-
16 ed by inserting before the last sentence the following: “The
17 Commissioner shall have the discretion to designate any
18 officer or employee of the Patent and Trademark Office
19 to conduct the hearing required by this section.”.

20 **SEC. 17521. FUNDING.**

21 Section 42 of title 35, United States Code, is amend-
22 ed to read as follows:

1 **“§ 42. Patent and Trademark Office funding**

2 “(a) FEES PAYABLE TO THE OFFICE.—All fees for
3 services performed by or materials furnished by the Patent
4 and Trademark Office shall be payable to the Office.

5 “(b) USE OF MONEYS.—Moneys of the Patent and
6 Trademark Office not otherwise used to carry out the
7 functions of the Office shall be kept in cash on hand or
8 on deposit, or invested in obligations of the United States
9 or guaranteed by the United States, or in obligations or
10 other instruments which are lawful investments for fidu-
11 ciary, trust, or public funds. Fees available to the Commis-
12 sioner under this title shall be used exclusively for the
13 processing of patent applications and for other services
14 and materials relating to patents. Fees available to the
15 Commissioner under section 31 of the Act of July 5, 1946
16 (commonly referred to as the ‘Trademark Act of 1946’)
17 (15 U.S.C. 1113) shall be used exclusively for the process-
18 ing of trademark registrations and for other services and
19 materials relating to trademarks.

20 “(c) BORROWING AUTHORITY.—The Patent and
21 Trademark Office is authorized to issue from time to time
22 for purchase by the Secretary of the Treasury its debentures,
23 bonds, notes, and other evidences of indebtedness
24 (hereafter in this subsection referred to as ‘obligations’)
25 in an amount not exceeding \$2,000,000 outstanding at
26 any one time, to assist in financing its activities. Such ob-

1 ligations shall be redeemable at the option of the Office
2 before maturity in the manner stipulated in such obliga-
3 tions and shall have such maturity as is determined by
4 the Office with the approval of the Secretary of the Treas-
5 ury. Each such obligation issued to the Treasury shall
6 bear interest at a rate not less than the current yield on
7 outstanding marketable obligations of the United States
8 of comparable maturity during the month preceding the
9 issuance of the obligation as determined by the Secretary
10 of the Treasury. The Secretary of the Treasury shall pur-
11 chase any obligations of the Office issued under this sub-
12 section and for such purpose the Secretary of the Treasury
13 is authorized to use as a public-debt transaction the pro-
14 ceeds of any securities issued under chapter 31 of title
15 31, and the purposes for which securities may be issued
16 under that chapter are extended to include such purpose.
17 Payment under this subsection of the purchase price of
18 such obligations of the Patent and Trademark Office shall
19 be treated as public debt transactions of the United
20 States.”.

21 **SEC. 17522. AUDITS.**

22 Chapter 4 of part I title 35, United States Code, is
23 amended by adding at the end the following new section:

1 **“§ 43. Audits**

2 “(a) IN GENERAL.—Financial statements of the Pat-
3 ent and Trademark Office shall be prepared on an annual
4 basis in accordance with generally accepted accounting
5 principles. Such statements shall be audited by an inde-
6 pendent certified public accountant chosen by the Sec-
7 retary. The audit shall be conducted in accordance with
8 standards that are consistent with generally accepted Gov-
9 ernment auditing standards and other standards estab-
10 lished by the Comptroller General, and with the generally
11 accepted auditing standards of the private sector, to the
12 extent feasible.

13 “(b) REVIEW BY COMPTROLLER GENERAL.—The
14 Comptroller General may review any audit of the financial
15 statement of the Patent and Trademark Office that is con-
16 ducted under subsection (a). The Comptroller General
17 shall report to the Congress and the Office the results of
18 any such review and shall include in such report appro-
19 priate recommendations.

20 “(c) AUDIT BY COMPTROLLER GENERAL.—The
21 Comptroller General may audit the financial statements
22 of the Office and such audit shall be in lieu of the audit
23 required by subsection (a). The Office shall reimburse the
24 Comptroller General for the cost of any audit conducted
25 under this subsection.

1 “(d) ACCESS TO OFFICE RECORDS.—All books, fi-
2 nancial records, report files, memoranda, and other prop-
3 erty that the Comptroller General deems necessary for the
4 performance of any audit shall be made available to the
5 Comptroller General.

6 “(e) APPLICABILITY IN LIEU OF TITLE 31 PROVI-
7 SIONS.—This section applies to the Office in lieu of the
8 provisions of section 9105 of title 31.”.

9 **SEC. 17523. TRANSFER.**

10 (a) TRANSFER OF FUNCTIONS.—Except as otherwise
11 provided in this subtitle, there are transferred to, and
12 vested in, the Patent and Trademark Office all functions,
13 powers, and duties vested by law in the Secretary of Com-
14 merce or the Department of Commerce or in the officers
15 or components in the Department of Commerce with re-
16 spect to the authority to grant patents and register trade-
17 marks, and in the Patent and Trademark Office, as in
18 effect on the day before the effective date of this subtitle,
19 and in the officers and components of such Office.

20 (b) TRANSFER OF FUNDS AND PROPERTY.—The
21 Secretary of Commerce shall transfer to the Patent and
22 Trademark Office, on the effective date of this subtitle,
23 so much of the assets, liabilities, contracts, property,
24 records, and unexpended and unobligated balances of ap-
25 propriations, authorizations, allocations, and other funds

1 employed, held, used, arising from, available to, or to be
 2 made available to the Department of Commerce, including
 3 funds set aside for accounts receivable which are related
 4 to functions, powers, and duties which are vested in the
 5 Patent and Trademark Office by this subtitle.

6 (c) TRANSFER OF SURCHARGE FUND.—On the effec-
 7 tive date of this subtitle, there are transferred to the Pat-
 8 ent and Trademark Office those residual and unappropri-
 9 ated balances remaining as of the effective date within the
 10 Patent and Trademark Office Surcharge Fund established
 11 by section 10101(b) of the Omnibus Budget Reconciliation
 12 Act of 1990 (35 U.S.C. 41 note).

13 **CHAPTER 2—EFFECTIVE DATE;** 14 **TECHNICAL AMENDMENTS**

15 **SEC. 17531. EFFECTIVE DATE.**

16 This subtitle shall take effect on the date that is 6
 17 months after the date of the enactment of this Act.

18 **SEC. 17532. TECHNICAL AND CONFORMING AMENDMENTS.**

19 (a) AMENDMENTS TO TITLE 35.—

20 (1) The table of contents for part I of title 35,
 21 United States Code, is amended by amending the
 22 item relating to chapter 1 to read as follows:

“1. Establishment, Officers and Employees, Functions 1”.

1 (2) The table of sections for chapter 1 of title
 2 35, United States Code, is amended to read as fol-
 3 lows:

4 **“CHAPTER 1—ESTABLISHMENT, OFFICERS**
 5 **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.”.

6 (3) The table of contents for chapter 4 of part I of
 7 title 35, United States Code, is amended by adding at the
 8 end the following new item:

“43. Audits.”.

9 (b) OTHER PROVISIONS OF LAW.—

10 (1) Section 9101(3) of title 31, United States
 11 Code, is amended by adding at the end the follow-
 12 ing:

13 “(O) the Patent and Trademark Office.”.

14 (2) Section 602(d) of the Federal Property and
 15 Administrative Services Act of 1949 (40 U.S.C. 474)
 16 is amended—

1 (A) in paragraph (20) by striking “or”
2 after the semicolon;

3 (B) in paragraph (21) by striking the pe-
4 riod and inserting “; or”; and

5 (C) by adding at the end the following:
6 “(22) the Patent and Trademark Office.”.

7 (3) Section 500(e) of title 5, United States
8 Code (5 U.S.C. 500(e)) is amended by striking
9 “Patent Office” and inserting “Patent and Trade-
10 mark Office”.

11 (4) Section 5102(c)(23) of title 5, United
12 States Code, is amended by striking “, Department
13 of Commerce”.

14 (5) Section 5316 of title 5, United States Code
15 (5 U.S.C. 5316) is amended by striking “Commis-
16 sioner of Patents, Department of Commerce.”,
17 “Deputy Commissioner of Patents and Trade-
18 marks.”, “Assistant Commissioner for Patents.”,
19 and “Assistant Commissioner for Trademarks.”.

20 (6) Section 12 of the Act of February 14, 1903
21 (15 U.S.C. 1511) is amended by striking “(d) Pat-
22 ent and Trademark Office;” and redesignating sub-
23 sections (a) through (g) as paragraphs (1) through
24 (6), respectively.

1 (7) The Act of April 12, 1892 (27 Stat. 395;
2 20 U.S.C. 91) is amended by striking “Patent Of-
3 fice” and inserting “Patent and Trademark Office”.

4 (8) Sections 505(m) and 512(o) of the Federal
5 Food, Drug, and Cosmetic Act (21 U.S.C. 355(m)
6 and 360b(o)) are each amended by striking “of the
7 Department of Commerce”.

8 (9) Section 105(e) of the Federal Alcohol Ad-
9 ministration Act (27 U.S.C. 205(e)) is amended by
10 striking “Patent Office” and inserting “Patent and
11 Trademark Office”.

12 (10) Section 1744 of title 28, United States
13 Code is amended—

14 (A) by striking “Patent Office” each place
15 it appears and inserting “Patent and Trade-
16 mark Office”; and

17 (B) by striking “Commissioner of Patents”
18 and inserting “Commissioner of Patents and
19 Trademarks”.

20 (11) Section 1745 of title 28, United States
21 Code, is amended by striking “United States Patent
22 Office” and inserting “Patent and Trademark Of-
23 fice”.

1 (12) Section 1928 of title 28, United States
2 Code, is amended by striking “Patent Office” and
3 inserting “Patent and Trademark Office”.

4 (13) Section 160 of the Atomic Energy Act of
5 1954 (42 U.S.C. 2190) is amended—

6 (A) by striking “Patent Office” and insert-
7 ing “Patent and Trademark Office”; and

8 (B) by striking “Commissioner of Patents”
9 and inserting “Commissioner of Patents and
10 Trademarks”.

11 (14) Section 305(c) of the National Aeronautics
12 and Space Act of 1958 (42 U.S.C. 2457(c)) is
13 amended by striking “Commissioner of Patents” and
14 inserting “Commissioner of Patents and Trade-
15 marks”.

16 (15) Section 12(a) of the Solar Heating and
17 Cooling Demonstration Act of 1974 (42 U.S.C.
18 5510(a)) is amended by striking “Commissioner of
19 the Patent Office” and inserting “Commissioner of
20 Patents and Trademarks”.

21 (16) Section 1111 of title 44, United States
22 Code, is amended by striking “Commissioner of Pat-
23 ents” and inserting “Commissioner of Patents and
24 Trademarks”.

1 (17) Sections 1114 and 1123 of title 44, United
2 States Code, are each amended by striking “Com-
3 missioner of Patents”.

4 (18) Section 1123 of title 44, United States
5 Code, is amended by striking “the Patent Office,”.

6 (19) Sections 1337 and 1338 of title 44, United
7 States Code, and the items relating to those sections
8 in the table of contents for chapter 13 of such title,
9 are repealed.

10 (20) Section 10(i) of the Trading With the
11 Enemy Act (50 U.S.C. App. 10(i)) is amended by
12 striking “Commissioner of Patents” and inserting
13 “Commissioner of Patents and Trademarks”.

14 (21) Section 8G(a)(2) of the Inspector General
15 Act of 1978 (5 U.S.C. App.) is amended by inserting
16 “the Patent and Trademark Office,” after “the
17 Panama Canal Commission,”.

18 (22) Section 255(g)(1)(A) of the Balanced
19 Budget and Emergency Deficit Control Act of 1985
20 (2 U.S.C. 905(g)(1)(A)) is amended by inserting
21 after the item relating to the United States Enrich-
22 ment Corporation the following new item:

23 “Patent and Trademark Office;”.

24 (23) Section 10101(b)(2)(B) of the Omnibus
25 Budget Reconciliation Act of 1990 (35 U.S.C. 41

1 note) is amended by striking “, to the extent pro-
2 vided in appropriation Acts,” and inserting “without
3 appropriation”.

4 SUBTITLE E—MISCELLANEOUS PROVISIONS

5 **SEC. 17601. REFERENCES.**

6 Any reference in any other Federal law, Executive
7 order, rule, regulation, or delegation of authority, or any
8 document of or pertaining to an office from which a func-
9 tion is transferred by this title—

10 (1) to the Secretary of Commerce or an officer
11 of the Department of Commerce, is deemed to refer
12 to the head of the department or office to which
13 such function is transferred; or

14 (2) to the Department of Commerce or an
15 agency in the Department of Commerce is deemed
16 to refer to the department or office to which such
17 function is transferred.

18 **SEC. 17602. EXERCISE OF AUTHORITIES.**

19 Except as otherwise provided by law, a Federal offi-
20 cial to whom a function is transferred by this title may,
21 for purposes of performing the function, exercise all au-
22 thorities under any other provision of law that were avail-
23 able with respect to the performance of that function to
24 the official responsible for the performance of the function

1 immediately before the effective date of the transfer of the
2 function under this title.

3 **SEC. 17603. SAVINGS PROVISIONS.**

4 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
5 rules, regulations, permits, grants, loans, contracts, agree-
6 ments, certificates, licenses, and privileges—

7 (1) that have been issued, made, granted, or al-
8 lowed to become effective by the President, the Sec-
9 retary of Commerce, any officer or employee of any
10 office transferred by this title, or any other Govern-
11 ment official, or by a court of competent jurisdic-
12 tion, in the performance of any function that is
13 transferred by this title, and

14 (2) that are in effect on the effective date of
15 such transfer (or become effective after such date
16 pursuant to their terms as in effect on such effective
17 date),

18 shall continue in effect according to their terms until
19 modified, terminated, superseded, set aside, or revoked in
20 accordance with law by the President, any other author-
21 ized official, a court of competent jurisdiction, or operation
22 of law.

23 (b) **PROCEEDINGS.**—This title shall not affect any
24 proceedings or any application for any benefits, service,
25 license, permit, certificate, or financial assistance pending

1 on the date of the enactment of this title before an office
2 transferred by this title, but such proceedings and applica-
3 tions shall be continued. Orders shall be issued in such
4 proceedings, appeals shall be taken therefrom, and pay-
5 ments shall be made pursuant to such orders, as if this
6 title had not been enacted, and orders issued in any such
7 proceeding shall continue in effect until modified, termi-
8 nated, superseded, or revoked by a duly authorized official,
9 by a court of competent jurisdiction, or by operation of
10 law. Nothing in this subsection shall be considered to pro-
11 hibit the discontinuance or modification of any such pro-
12 ceeding under the same terms and conditions and to the
13 same extent that such proceeding could have been discon-
14 tinued or modified if this title had not been enacted.

15 (c) SUITS.—This title shall not affect suits com-
16 menced before the date of the enactment of this title, and
17 in all such suits, proceeding shall be had, appeals taken,
18 and judgments rendered in the same manner and with the
19 same effect as if this title had not been enacted.

20 (d) NONABATEMENT OF ACTIONS.—No suit, action,
21 or other proceeding commenced by or against the Depart-
22 ment of Commerce or the Secretary of Commerce, or by
23 or against any individual in the official capacity of such
24 individual as an officer or employee of an office trans-

1 ferred by this title, shall abate by reason of the enactment
2 of this title.

3 (e) CONTINUANCE OF SUITS.—If any officer of the
4 Department of Commerce or the Commerce Programs
5 Resolution Agency in the official capacity of such officer
6 is party to a suit with respect to a function of the officer,
7 and under this title such function is transferred to any
8 other officer or office, then such suit shall be continued
9 with the other officer or the head of such other office, as
10 applicable, substituted or added as a party.

11 **SEC. 17604. TRANSFER OF ASSETS.**

12 Except as otherwise provided in this title, so much
13 of the personnel, property, records, and unexpended bal-
14 ances of appropriations, allocations, and other funds em-
15 ployed, used, held, available, or to be made available in
16 connection with a function transferred to an official or
17 agency by this title shall be available to the official or the
18 head of that agency, respectively, at such time or times
19 as the Director of the Office of Management and Budget
20 directs for use in connection with the functions trans-
21 ferred.

22 **SEC. 17605. DELEGATION AND ASSIGNMENT.**

23 Except as otherwise expressly prohibited by law or
24 otherwise provided in this title, an official to whom func-
25 tions are transferred under this title (including the head

1 of any office to which functions are transferred under this
2 title) may delegate any of the functions so transferred to
3 such officers and employees of the office of the official as
4 the official may designate, and may authorize successive
5 redelegations of such functions as may be necessary or ap-
6 propriate. No delegation of functions under this section
7 or under any other provision of this title shall relieve the
8 official to whom a function is transferred under this title
9 of responsibility for the administration of the function.

10 **SEC. 17606. AUTHORITY OF ADMINISTRATOR WITH RE-**
11 **SPECT TO FUNCTIONS TRANSFERRED.**

12 (a) DETERMINATIONS.—If necessary, the Adminis-
13 trator shall make any determination of the functions that
14 are transferred under this title.

15 (b) INCIDENTAL TRANSFERS.—The Administrator,
16 at such time or times as the Administrator shall provide,
17 may make such determinations as may be necessary with
18 regard to the functions transferred by this title, and to
19 make such additional incidental dispositions of personnel,
20 assets, liabilities, grants, contracts, property, records, and
21 unexpended balances of appropriations, authorizations, al-
22 locations, and other funds held, used, arising from, avail-
23 able to, or to be made available in connection with such
24 functions, as may be necessary to carry out the provisions
25 of this title. The Administrator shall provide for the termi-

1 nation of the affairs of all entities terminated by this title
2 and for such further measures and dispositions as may
3 be necessary to effectuate the purposes of this title.

4 **SEC. 17607. PROPOSED CHANGES IN LAW.**

5 Not later than one year after the date of the enact-
6 ment of this title, the Director of the Office of Manage-
7 ment and Budget shall submit to the Congress a descrip-
8 tion of any changes in Federal law necessary to reflect
9 abolishments, transfers, terminations, and disposals under
10 this title.

11 **SEC. 17608. CERTAIN VESTING OF FUNCTIONS CONSIDERED**
12 **TRANSFERS.**

13 For purposes of this title, the vesting of a function
14 in a department or office pursuant to reestablishment of
15 an office shall be considered to be the transfer of the func-
16 tion.

17 **SEC. 17609. DEFINITIONS.**

18 For purposes of this title, the following definitions
19 apply:

20 (1) ADMINISTRATOR.—The term “Adminis-
21 trator” means the Administrator of the Commerce
22 Programs Resolution Agency.

23 (2) AGENCY.—The term “Agency” means the
24 Commerce Programs Resolution Agency.

1 (3) FUNCTION.—The term “function” includes
2 any duty, obligation, power, authority, responsibility,
3 right, privilege, activity, or program.

4 (4) OFFICE.—The term “office” includes any
5 office, administration, agency, bureau, institute,
6 council, unit, organizational entity, or component
7 thereof.

8 (5) WIND-UP PERIOD.—The term “wind-up pe-
9 riod” means the period beginning on the effective
10 date specified in section 17109(a) and ending on the
11 termination date specified in section 17106(d).

12 **SEC. 17610. LIMITATION ON ANNUAL EXPENDITURES FOR**
13 **CONTINUED FUNCTIONS.**

14 (a) IN GENERAL.—The amount expended by the
15 United States each fiscal year for an agency, or for per-
16 formance of a transferred function which immediately be-
17 fore the effective date specified in section 17109(a) was
18 performed by an agency, officer, or employee of the De-
19 partment of Commerce, may not exceed 75 percent of the
20 total amount expended by the United States for that agen-
21 cy or for performance of that function during fiscal year
22 1994.

23 (b) EXEMPTIONS.—Subsection (a) shall not apply to
24 the performance of a function which immediately before
25 the effective date specified in section 17109(a) was per-

1 formed by the Bureau of the Census or the Patent and
2 Trademark Office.

3 **SEC. 17611. USER FEES.**

4 Within 6 months after the date of the enactment of
5 this Act, the head of each agency that performs a function
6 vested in the agency by this title shall report to Congress
7 its recommendations for implementing user fees to offset
8 operating costs for the provision of services in the per-
9 formance of that function.

10 **SEC. 17612. UNOBLIGATED BALANCES RETURNED TO**
11 **TREASURY.**

12 Any unobligated balances appropriated to carry out
13 any program referred to in this Act shall be transferred
14 to the general fund of the Treasury.

15 **SEC. 17613. ANNUAL GAO REPORT.**

16 (a) **REPORT.**—Not later than 1 year after the effec-
17 tive date specified in section 17109(a), and not later than
18 the end of each 1-year period thereafter, the Comptroller
19 General of the United States shall submit to the Congress
20 a report describing the costs, if any, during the 1-year pe-
21 riod preceding the submission of the report, that were in-
22 curred by United States exporters as a result of the trans-
23 fer of the functions of the Bureau of Export Administra-
24 tion of the Department of Commerce under this title, or
25 as a result of the limitation on expenditures required by

1 section 17493. Each such report shall cover, but not be
2 limited to, costs incurred by exporters as a result of—

3 (1) delays in the processing of export license
4 applications;

5 (2) a reduction in outreach activities of the
6 Government that educate exporters on complying
7 with exporting requirements under United States
8 law;

9 (3) delays in the processing of commodity clas-
10 sification requests by exporters regarding the appli-
11 cability of export controls to specific products and
12 technical data; and

13 (4) delays in the processing of requests by ex-
14 porters for advisory opinions by the Government re-
15 garding whether specific transactions are likely to be
16 approved or denied by the Government.

17 (b) TERMINATION OF PROVISIONS.—If, in any report
18 submitted under subsection (a), the Comptroller General
19 determines that costs described in such subsection were
20 incurred by United States exporters, then sections
21 17610(a) and 17493(a) shall cease to apply to the func-
22 tions of the Bureau of Export Administration of the De-
23 partment of Commerce transferred under this title.

24 **TITLE XVIII—WELFARE REFORM**

[Text to be supplied.]

1 **TITLE XIX—CONTRACT TAX**
2 **PROVISIONS**

[Text to be supplied.]

3 **TITLE XX—BUDGET PROCESS**

[Text to be supplied.]

