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1ST SESSION

H.R. 9

IN THE SENATE OF THE UNITED STATES

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Received; read twice and referred to the Committee on Governmental Affairs

AN ACT

To create jobs, enhance wages, strengthen property rights, maintain certain economic liberties, decentralize and reduce the power of the Federal Government with respect to the States, localities, and citizens of the United States, and to increase the accountability of Federal officials.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Job Creation and
5 Wage Enhancement Act of 1995”.

1 **DIVISION A**

2 **SEC. 101. SHORT TITLE.**

3 This division may be cited as the “Paperwork Reduc-
4 tion Act of 1995”.

5 **SEC. 102. COORDINATION OF FEDERAL INFORMATION POL-
6 ICY.**

7 Chapter 35 of title 44, United States Code, is amend-
8 ed to read as follows:

9 **“CHAPTER 35—COORDINATION OF
10 FEDERAL INFORMATION POLICY**

“Sec.

“3501. Purposes.

“3502. Definitions.

“3503. Office of Information and Regulatory Affairs.

“3504. Authority and functions of Director.

“3505. Assignment of tasks and deadlines.

“3506. Federal agency responsibilities.

“3507. Public information collection activities; submission to Director; approval
and delegation.

“3508. Determination of necessity for information; hearing.

“3509. Designation of central collection agency.

“3510. Cooperation of agencies in making information available.

“3511. Establishment and operation of Government Information Locator Serv-
ice.

“3512. Public protection.

“3513. Director review of agency activities; reporting; agency response.

“3514. Responsiveness to Congress.

“3515. Administrative powers.

“3516. Rules and regulations.

“3517. Consultation with other agencies and the public.

“3518. Effect on existing laws and regulations.

“3519. Access to information.

“3520. Authorization of appropriations.

11 **“§ 3501. Purposes**

12 “The purposes of this chapter are to—

13 “(1) minimize the paperwork burden for indi-
14 viduals, small businesses, educational and nonprofit

1 institutions, Federal contractors, State, local and
2 tribal governments, and other persons resulting from
3 the collection of information by or for the Federal
4 Government;

5 “(2) ensure the greatest possible public benefit
6 from and maximize the utility of information cre-
7 ated, collected, maintained, used, shared and dis-
8 seminated by or for the Federal Government;

9 “(3) coordinate, integrate, and to the extent
10 practicable and appropriate, make uniform Federal
11 information resources management policies and
12 practices as a means to improve the productivity, ef-
13 ficiency, and effectiveness of Government programs,
14 including the reduction of information collection bur-
15 dens on the public and the improvement of service
16 delivery to the public;

17 “(4) improve the quality and use of Federal in-
18 formation to strengthen decisionmaking, accountabil-
19 ity, and openness in Government and society;

20 “(5) minimize the cost to the Federal Govern-
21 ment of the creation, collection, maintenance, use,
22 dissemination, and disposition of information;

23 “(6) strengthen the partnership between the
24 Federal Government and State, local, and tribal gov-
25 ernments by minimizing the burden and maximizing

1 the utility of information created, collected, main-
2 tained, used, disseminated, and retained by or for
3 the Federal Government;

4 “(7) provide for the dissemination of public in-
5 formation on a timely basis, on equitable terms, and
6 in a manner that promotes the utility of the infor-
7 mation to the public and makes effective use of
8 information technology;

9 “(8) ensure that the creation, collection, main-
10 tenance, use, dissemination, and disposition of infor-
11 mation by or for the Federal Government is consist-
12 ent with applicable laws, including laws relating to—

13 “(A) privacy and confidentiality, including
14 section 552a of title 5;

15 “(B) security of information, including the
16 Computer Security Act of 1987 (Public Law
17 100–235); and

18 “(C) access to information, including sec-
19 tion 552 of title 5;

20 “(9) ensure the integrity, quality, and utility of
21 the Federal statistical system;

22 “(10) ensure that information technology is ac-
23 quired, used, and managed to improve performance
24 of agency missions, including the reduction of infor-
25 mation collection burdens on the public; and

1 “(11) improve the responsibility and account-
2 ability of the Office of Management and Budget and
3 all other Federal agencies to Congress and to the
4 public for implementing the information collection
5 review process, information resources management,
6 and related policies and guidelines established under
7 this chapter.

8 **“§ 3502. Definitions**

9 “As used in this chapter—

10 “(1) the term ‘agency’ means any executive
11 department, military department, Government cor-
12 poration, Government controlled corporation, or
13 other establishment in the executive branch of the
14 Government (including the Executive Office of the
15 President), or any independent regulatory agency,
16 but does not include—

17 “(A) the General Accounting Office;

18 “(B) Federal Election Commission;

19 “(C) the governments of the District of
20 Columbia and of the territories and possessions
21 of the United States, and their various subdivi-
22 sions; or

23 “(D) Government-owned contractor-oper-
24 ated facilities, including laboratories engaged in

1 national defense research and production activi-
2 ties;

3 “(2) the term ‘burden’ means time, effort, or fi-
4 nancial resources expended by persons to generate,
5 maintain, or provide information to or for a Federal
6 agency, including the resources expended for—

7 “(A) reviewing instructions;

8 “(B) acquiring, installing, and utilizing
9 technology and systems;

10 “(C) adjusting the existing ways to comply
11 with any previously applicable instructions and
12 requirements;

13 “(D) searching data sources;

14 “(E) completing and reviewing the collec-
15 tion of information; and

16 “(F) transmitting, or otherwise disclosing
17 the information;

18 “(3) the term ‘collection of information’ means
19 the obtaining, causing to be obtained, soliciting, or
20 requiring the disclosure to third parties or the pub-
21 lic, of facts or opinions by or for an agency, regard-
22 less of form or format, calling for either—

23 “(A) answers to identical questions posed
24 to, or identical reporting or recordkeeping re-
25 quirements imposed on, ten or more persons,

1 other than agencies, instrumentalities, or
2 employees of the United States; or

3 “(B) answers to questions posed to agen-
4 cies, instrumentalities, or employees of the
5 United States which are to be used for general
6 statistical purposes;

7 “(4) the term ‘Director’ means the Director of
8 the Office of Management and Budget;

9 “(5) the term ‘independent regulatory agency’
10 means the Board of Governors of the Federal Re-
11 serve System, the Commodity Futures Trading Com-
12 mission, the Consumer Product Safety Commission,
13 the Federal Communications Commission, the Fed-
14 eral Deposit Insurance Corporation, the Federal En-
15 ergy Regulatory Commission, the Federal Housing
16 Finance Board, the Federal Maritime Commission,
17 the Federal Trade Commission, the Interstate Com-
18 merce Commission, the Mine Enforcement Safety
19 and Health Review Commission, the National Labor
20 Relations Board, the Nuclear Regulatory Commis-
21 sion, the Occupational Safety and Health Review
22 Commission, the Postal Rate Commission, the Secu-
23 rities and Exchange Commission, and any other
24 similar agency designated by statute as a Federal
25 independent regulatory agency or commission;

1 “(6) the term ‘information resources’ means in-
2 formation and related resources, such as personnel,
3 equipment, funds, and information technology;

4 “(7) the term ‘information resources manage-
5 ment’ means the process of managing information
6 resources to accomplish agency missions and to im-
7 prove agency performance, including through the re-
8 duction of information collection burdens on the
9 public;

10 “(8) the term ‘information system’ means a dis-
11 crete set of information resources and processes,
12 automated or manual, organized for the collection,
13 processing, maintenance, use, sharing, dissemina-
14 tion, or disposition of information;

15 “(9) the term ‘information technology’ has the
16 same meaning as the term ‘automatic data process-
17 ing equipment’ as defined by section 111(a)(2) of
18 the Federal Property and Administrative Services
19 Act of 1949 (40 U.S.C. 759(a)(2));

20 “(10) the term ‘person’ means an individual,
21 partnership, association, corporation, business trust,
22 or legal representative, an organized group of indi-
23 viduals, a State, territorial, or local government or
24 branch thereof, or a political subdivision of a State,

1 territory, or local government or a branch of a politi-
2 cal subdivision;

3 “(11) the term ‘practical utility’ means the abil-
4 ity of an agency to use information, particularly the
5 capability to process such information in a timely
6 and useful fashion;

7 “(12) the term ‘public information’ means any
8 information, regardless of form or format, that an
9 agency discloses, disseminates, or makes available to
10 the public; and

11 “(13) the term ‘recordkeeping requirement’
12 means a requirement imposed by or for an agency
13 on persons to maintain specified records, including a
14 requirement to—

15 “(A) retain such records;

16 “(B) notify third parties or the public of
17 the existence of such records;

18 “(C) disclose such records to third parties
19 or the public; or

20 “(D) report to third parties or the public
21 regarding such records.

22 **“§ 3503. Office of Information and Regulatory Affairs**

23 “(a) There is established in the Office of Manage-
24 ment and Budget an office to be known as the Office of
25 Information and Regulatory Affairs.

1 “(b) There shall be at the head of the Office an Ad-
2 ministrator who shall be appointed by the President, by
3 and with the advice and consent of the Senate. The Direc-
4 tor shall delegate to the Administrator the authority to
5 administer all functions under this chapter, except that
6 any such delegation shall not relieve the Director of re-
7 sponsibility for the administration of such functions. The
8 Administrator shall serve as principal adviser to the Direc-
9 tor on Federal information resources management policy.

10 **“§ 3504. Authority and functions of Director**

11 “(a)(1) The Director shall—

12 “(A) develop, coordinate and oversee the imple-
13 mentation of Federal information resources manage-
14 ment policies, principles, standards, and guidelines;
15 and

16 “(B) provide direction and oversee—

17 “(i) the review and approval of the collec-
18 tion of information and the reduction of the
19 information collection burden;

20 “(ii) agency dissemination of and public
21 access to information;

22 “(iii) statistical activities;

23 “(iv) records management activities;

24 “(v) privacy, confidentiality, security,
25 disclosure, and sharing of information; and

1 “(vi) the acquisition and use of informa-
2 tion technology.

3 “(2) The authority of the Director under this chapter
4 shall be exercised consistent with applicable law.

5 “(b) With respect to general information resources
6 management policy, the Director shall—

7 “(1) develop and oversee the implementation of
8 uniform information resources management policies,
9 principles, standards, and guidelines;

10 “(2) foster greater sharing, dissemination, and
11 access to public information, including through—

12 “(A) the use of the Government Informa-
13 tion Locator Service; and

14 “(B) the development and utilization of
15 common standards for information collection,
16 storage, processing and communication, includ-
17 ing standards for security, interconnectivity and
18 interoperability;

19 “(3) initiate and review proposals for changes
20 in legislation, regulations, and agency procedures to
21 improve information resources management prac-
22 tices;

23 “(4) oversee the development and implementa-
24 tion of best practices in information resources man-
25 agement, including training; and

1 “(5) oversee agency integration of program and
2 management functions with information resources
3 management functions.

4 “(c) With respect to the collection of information and
5 the control of paperwork, the Director shall—

6 “(1) review and approve proposed agency collec-
7 tions of information;

8 “(2) coordinate the review of the collection of
9 information associated with Federal procurement
10 and acquisition by the Office of Information and
11 Regulatory Affairs with the Office of Federal Pro-
12 curement Policy, with particular emphasis on apply-
13 ing information technology to improve the efficiency
14 and effectiveness of Federal procurement, acquisi-
15 tion, and payment and to reduce information collec-
16 tion burdens on the public;

17 “(3) minimize the Federal information collec-
18 tion burden, with particular emphasis on those indi-
19 viduals and entities most adversely affected;

20 “(4) maximize the practical utility of and public
21 benefit from information collected by or for the
22 Federal Government;

23 “(5) establish and oversee standards and guide-
24 lines by which agencies are to estimate the burden

1 to comply with a proposed collection of information;
2 and

3 “(6) place an emphasis on minimizing the bur-
4 den on small businesses with 50 or fewer employees.

5 “(d) With respect to information dissemination, the
6 Director shall develop and oversee the implementation of
7 policies, principles, standards, and guidelines to—

8 “(1) apply to Federal agency dissemination of
9 public information, regardless of the form or format
10 in which such information is disseminated; and

11 “(2) promote public access to public informa-
12 tion and fulfill the purposes of this chapter, includ-
13 ing through the effective use of information tech-
14 nology.

15 “(e) With respect to statistical policy and coordina-
16 tion, the Director shall—

17 “(1) coordinate the activities of the Federal sta-
18 tistical system to ensure—

19 “(A) the efficiency and effectiveness of the
20 system; and

21 “(B) the integrity, objectivity, impartiality,
22 utility, and confidentiality of information col-
23 lected for statistical purposes;

24 “(2) ensure that budget proposals of agencies
25 are consistent with system-wide priorities for main-

1 taining and improving the quality of Federal statis-
2 tics and prepare an annual report on statistical pro-
3 gram funding;

4 “(3) develop and oversee the implementation of
5 Governmentwide policies, principles, standards, and
6 guidelines concerning—

7 “(A) statistical collection procedures and
8 methods;

9 “(B) statistical data classification;

10 “(C) statistical information presentation
11 and dissemination;

12 “(D) timely release of statistical data; and

13 “(E) such statistical data sources as may
14 be required for the administration of Federal
15 programs;

16 “(4) evaluate statistical program performance
17 and agency compliance with Governmentwide poli-
18 cies, principles, standards and guidelines;

19 “(5) promote the sharing of information col-
20 lected for statistical purposes consistent with privacy
21 rights and confidentiality pledges;

22 “(6) coordinate the participation of the United
23 States in international statistical activities, including
24 the development of comparable statistics;

1 “(7) appoint a chief statistician who is a
2 trained and experienced professional statistician to
3 carry out the functions described under this sub-
4 section;

5 “(8) establish an Interagency Council on Statis-
6 tical Policy to advise and assist the Director in car-
7 rying out the functions under this subsection that
8 shall—

9 “(A) be headed by the chief statistician;
10 and

11 “(B) consist of—

12 “(i) the heads of the major statistical
13 programs; and

14 “(ii) representatives of other statis-
15 tical agencies under rotating membership;
16 and

17 “(9) provide opportunities for training in statis-
18 tical policy functions to employees of the Federal
19 Government under which—

20 “(A) each trainee shall be selected at the
21 discretion of the Director based on agency re-
22 quests and shall serve under the chief statisti-
23 cian for at least 6 months and not more than
24 1 year; and

1 “(B) all costs of the training shall be paid
2 by the agency requesting training.

3 “(f) With respect to records management, the Direc-
4 tor shall—

5 “(1) provide advice and assistance to the Archi-
6 vist of the United States and the Administrator of
7 General Services to promote coordination in the ad-
8 ministration of chapters 29, 31, and 33 of this title
9 with the information resources management policies,
10 principles, standards, and guidelines established
11 under this chapter;

12 “(2) review compliance by agencies with—

13 “(A) the requirements of chapters 29, 31,
14 and 33 of this title; and

15 “(B) regulations promulgated by the Ar-
16 chivist of the United States and the Adminis-
17 trator of General Services; and

18 “(3) oversee the application of records manage-
19 ment policies, principles, standards, and guidelines,
20 including requirements for archiving information
21 maintained in electronic format, in the planning and
22 design of information systems.

23 “(g) With respect to privacy and security, the Direc-
24 tor shall—

1 “(1) develop and oversee the implementation of
2 policies, principles, standards, and guidelines on pri-
3 vacy, confidentiality, security, disclosure and sharing
4 of information collected or maintained by or for
5 agencies;

6 “(2) oversee and coordinate compliance with
7 sections 552 and 552a of title 5, the Computer Se-
8 curity Act of 1987 (40 U.S.C. 759 note), and relat-
9 ed information management laws; and

10 “(3) require Federal agencies, consistent with
11 the Computer Security Act of 1987 (40 U.S.C. 759
12 note), to identify and afford security protections
13 commensurate with the risk and magnitude of the
14 harm resulting from the loss, misuse, or unauthor-
15 ized access to or modification of information col-
16 lected or maintained by or on behalf of an agency.

17 “(h) With respect to Federal information technology,
18 the Director shall—

19 “(1) in consultation with the Director of the
20 National Institute of Standards and Technology and
21 the Administrator of General Services—

22 “(A) develop and oversee the implementa-
23 tion of policies, principles, standards, and
24 guidelines for information technology functions
25 and activities of the Federal Government, in-

1 including periodic evaluations of major informa-
2 tion systems; and

3 “(B) oversee the development and imple-
4 mentation of standards under section 111(d) of
5 the Federal Property and Administrative Serv-
6 ices Act of 1949 (40 U.S.C. 759(d));

7 “(2) monitor the effectiveness of, and compli-
8 ance with, directives issued under sections 110 and
9 111 of the Federal Property and Administrative
10 Services Act of 1949 (40 U.S.C. 757 and 759);

11 “(3) coordinate the development and review by
12 the Office of Information and Regulatory Affairs of
13 policy associated with Federal procurement and ac-
14 quisition of information technology with the Office of
15 Federal Procurement Policy;

16 “(4) ensure, through the review of agency budg-
17 et proposals, information resources management
18 plans and other means—

19 “(A) agency integration of information re-
20 sources management plans, program plans and
21 budgets for acquisition and use of information
22 technology; and

23 “(B) the efficiency and effectiveness of
24 inter-agency information technology initiatives

1 to improve agency performance and the accom-
2 plishment of agency missions; and

3 “(5) promote the use of information technology
4 by the Federal Government to improve the produc-
5 tivity, efficiency, and effectiveness of Federal pro-
6 grams, including through dissemination of public in-
7 formation and the reduction of information collection
8 burdens on the public.

9 **“§ 3505. Assignment of tasks and deadlines**

10 “(a) In carrying out the functions under this chapter,
11 the Director shall—

12 “(1) in consultation with agency heads, set an
13 annual Governmentwide goal for the reduction of in-
14 formation collection burdens by at least 10 percent,
15 and set annual agency goals to—

16 “(A) reduce information collection burdens
17 imposed on the public that—

18 “(i) represent the maximum prac-
19 ticable opportunity in each agency; and

20 “(ii) are consistent with improving
21 agency management of the process for the
22 review of collections of information estab-
23 lished under section 3506(c); and

24 “(B) improve information resources man-
25 agement in ways that increase the productivity,

1 efficiency and effectiveness of Federal pro-
2 grams, including service delivery to the public;

3 “(2) with selected agencies and non-Federal en-
4 tities on a voluntary basis, initiate and conduct pilot
5 projects to test alternative policies, practices, regula-
6 tions, and procedures to fulfill the purposes of this
7 chapter, particularly with regard to minimizing the
8 Federal information collection burden; and

9 “(3) in consultation with the Administrator of
10 General Services, the Director of the National Insti-
11 tute of Standards and Technology, the Archivist of
12 the United States, and the Director of the Office of
13 Personnel Management, develop and maintain a
14 Governmentwide strategic plan for information re-
15 sources management, that shall include—

16 “(A) a description of the objectives and the
17 means by which the Federal Government shall
18 apply information resources to improve agency
19 and program performance;

20 “(B) plans for—

21 “(i) reducing information burdens on
22 the public, including reducing such bur-
23 dens through the elimination of duplication
24 and meeting shared data needs with shared
25 resources;

1 “(ii) enhancing public access to and
2 dissemination of, information, using elec-
3 tronic and other formats; and

4 “(iii) meeting the information tech-
5 nology needs of the Federal Government in
6 accordance with the purposes of this chap-
7 ter; and

8 “(C) a description of progress in applying
9 information resources management to improve
10 agency performance and the accomplishment of
11 missions.

12 “(b) For purposes of any pilot project conducted
13 under subsection (a)(2), the Director may waive the appli-
14 cation of any regulation or administrative directive issued
15 by an agency with which the project is conducted, includ-
16 ing any regulation or directive requiring a collection of in-
17 formation, after giving timely notice to the public and the
18 Congress regarding the need for such waiver.

19 **“§ 3506. Federal agency responsibilities**

20 “(a)(1) The head of each agency shall be responsible
21 for—

22 “(A) carrying out the agency’s information re-
23 sources management activities to improve agency
24 productivity, efficiency, and effectiveness; and

1 “(B) complying with the requirements of this
2 chapter and related policies established by the Direc-
3 tor.

4 “(2)(A) Except as provided under subparagraph (B),
5 the head of each agency shall designate a senior official
6 who shall report directly to such agency head to carry out
7 the responsibilities of the agency under this chapter.

8 “(B) The Secretary of the Department of Defense
9 and the Secretary of each military department may each
10 designate a senior official who shall report directly to such
11 Secretary to carry out the responsibilities of the depart-
12 ment under this chapter. If more than one official is des-
13 ignated for the military departments, the respective duties
14 of the officials shall be clearly delineated.

15 “(3) The senior official designated under paragraph
16 (2) shall head an office responsible for ensuring agency
17 compliance with and prompt, efficient, and effective imple-
18 mentation of the information policies and information re-
19 sources management responsibilities established under
20 this chapter, including the reduction of information collec-
21 tion burdens on the public. The senior official and employ-
22 ees of such office shall be selected with special attention
23 to the professional qualifications required to administer
24 the functions described under this chapter.

1 “(4) Each agency program official shall be respon-
2 sible and accountable for information resources assigned
3 to and supporting the programs under such official. In
4 consultation with the senior official designated under
5 paragraph (2) and the agency Chief Financial Officer (or
6 comparable official), each agency program official shall de-
7 fine program information needs and develop strategies,
8 systems, and capabilities to meet those needs.

9 “(b) With respect to general information resources
10 management, each agency shall—

11 “(1) manage information resources to—

12 “(A) reduce information collection burdens
13 on the public;

14 “(B) increase program efficiency and effec-
15 tiveness; and

16 “(C) improve the integrity, quality, and
17 utility of information to all users within and
18 outside the agency, including capabilities for en-
19 suring dissemination of public information, pub-
20 lic access to government information, and pro-
21 tections for privacy and security;

22 “(2) in accordance with guidance by the Direc-
23 tor, develop and maintain a strategic information re-
24 sources management plan that shall describe how in-

1 information resources management activities help ac-
2 complish agency missions;

3 “(3) develop and maintain an ongoing process
4 to—

5 “(A) ensure that information resources
6 management operations and decisions are inte-
7 grated with organizational planning, budget, fi-
8 nancial management, human resources manage-
9 ment, and program decisions;

10 “(B) in cooperation with the agency Chief
11 Financial Officer (or comparable official), de-
12 velop a full and accurate accounting of informa-
13 tion technology expenditures, related expenses,
14 and results; and

15 “(C) establish goals for improving informa-
16 tion resources management’s contribution to
17 program productivity, efficiency, and effective-
18 ness, methods for measuring progress towards
19 those goals, and clear roles and responsibilities
20 for achieving those goals;

21 “(4) in consultation with the Director, the Ad-
22 ministrator of General Services, and the Archivist of
23 the United States, maintain a current and complete
24 inventory of the agency’s information resources, in-

1 including directories necessary to fulfill the require-
2 ments of section 3511 of this chapter; and

3 “(5) in consultation with the Director and the
4 Director of the Office of Personnel Management,
5 conduct formal training programs to educate agency
6 program and management officials about informa-
7 tion resources management.

8 “(c) With respect to the collection of information and
9 the control of paperwork, each agency shall—

10 “(1) establish a process within the office headed
11 by the official designated under subsection (a), that
12 is sufficiently independent of program responsibility
13 to evaluate fairly whether proposed collections of in-
14 formation should be approved under this chapter,
15 to—

16 “(A) review each collection of information
17 before submission to the Director for review
18 under this chapter, including—

19 “(i) an evaluation of the need for the
20 collection of information;

21 “(ii) a functional description of the in-
22 formation to be collected;

23 “(iii) a plan for the collection of the
24 information;

1 “(iv) a specific, objectively supported
2 estimate of burden;

3 “(v) a test of the collection of infor-
4 mation through a pilot program, if appro-
5 priate; and

6 “(vi) a plan for the efficient and effec-
7 tive management and use of the informa-
8 tion to be collected, including necessary re-
9 sources;

10 “(B) ensure that each information collec-
11 tion—

12 “(i) is inventoried, displays a control
13 number and, if appropriate, an expiration
14 date;

15 “(ii) indicates the collection is in ac-
16 cordance with the clearance requirements
17 of section 3507; and

18 “(iii) contains a statement to inform
19 the person receiving the collection of infor-
20 mation—

21 “(I) the reasons the information
22 is being collected;

23 “(II) the way such information is
24 to be used;

1 “(III) an estimate, to the extent
2 practicable, of the burden of the col-
3 lection; and

4 “(IV) whether responses to the
5 collection of information are vol-
6 untary, required to obtain a benefit,
7 or mandatory; and

8 “(C) assess the information collection bur-
9 den of proposed legislation affecting the agency;

10 “(2)(A) except for good cause or as provided
11 under subparagraph (B), provide 60-day notice in
12 the Federal Register, and otherwise consult with
13 members of the public and affected agencies con-
14 cerning each proposed collection of information, to
15 solicit comment to—

16 “(i) evaluate whether the proposed collec-
17 tion of information is necessary for the proper
18 performance of the functions of the agency, in-
19 cluding whether the information shall have
20 practical utility;

21 “(ii) evaluate the accuracy of the agency’s
22 estimate of the burden of the proposed collec-
23 tion of information;

24 “(iii) enhance the quality, utility, and clar-
25 ity of the information to be collected; and

1 “(iv) minimize the burden of the collection
2 of information on those who are to respond, in-
3 cluding through the use of automated collection
4 techniques or other forms of information tech-
5 nology; and

6 “(B) for any proposed collection of information
7 contained in a proposed rule (to be reviewed by the
8 Director under section 3507(d)), provide notice and
9 comment through the notice of proposed rulemaking
10 for the proposed rule and such notice shall have the
11 same purposes specified under subparagraph (A) (i)
12 through (iv);

13 “(3) certify (and provide a record supporting
14 such certification, including public comments re-
15 ceived by the agency) that each collection of infor-
16 mation submitted to the Director for review under
17 section 3507—

18 “(A) is necessary for the proper perform-
19 ance of the functions of the agency, including
20 that the information has practical utility;

21 “(B) is not unnecessarily duplicative of in-
22 formation otherwise reasonably accessible to the
23 agency;

24 “(C) reduces to the extent practicable and
25 appropriate the burden on persons who shall

1 provide information to or for the agency, in-
2 cluding with respect to small entities, as defined
3 under section 601(6) of title 5, the use of such
4 techniques as—

5 “(i) establishing differing compliance
6 or reporting requirements or timetables
7 that take into account the resources avail-
8 able to those who are to respond;

9 “(ii) the clarification, consolidation, or
10 simplification of compliance and reporting
11 requirements; or

12 “(iii) an exemption from coverage of
13 the collection of information, or any part
14 thereof;

15 “(D) is written using plain, coherent, and
16 unambiguous terminology and is understand-
17 able to those who are to respond;

18 “(E) is to be implemented in ways consist-
19 ent and compatible, to the maximum extent
20 practicable, with the existing reporting and rec-
21 ordkeeping practices of those who are to re-
22 spond;

23 “(F) indicates for each recordkeeping re-
24 quirement the length of time persons are re-
25 quired to maintain the records specified;

1 “(G) contains the statement required
2 under paragraph (1)(B)(iii);

3 “(H) has been developed by an office that
4 has planned and allocated resources for the effi-
5 cient and effective management and use of the
6 information to be collected, including the proc-
7 essing of the information in a manner which
8 shall enhance, where appropriate, the utility of
9 the information to agencies and the public;

10 “(I) uses effective and efficient statistical
11 survey methodology appropriate to the purpose
12 for which the information is to be collected; and

13 “(J) to the maximum extent practicable,
14 uses information technology to reduce burden
15 and improve data quality, agency efficiency and
16 responsiveness to the public; and

17 “(4) place an emphasis on minimizing the bur-
18 den on small businesses with 50 or fewer employees.

19 “(d) With respect to information dissemination, each
20 agency shall—

21 “(1) ensure that the public has timely, equal,
22 and equitable access to the agency’s public informa-
23 tion, including ensuring such access through—

1 “(A) encouraging a diversity of public and
2 private sources for information based on gov-
3 ernment public information,

4 “(B) in cases in which the agency provides
5 public information maintained in electronic for-
6 mat, providing timely, equal, and equitable ac-
7 cess to the underlying data (in whole or in
8 part); and

9 “(C) agency dissemination of public infor-
10 mation in an efficient, effective, and economical
11 manner;

12 “(2) regularly solicit and consider public input
13 on the agency’s information dissemination activities;

14 “(3) provide adequate notice when initiating,
15 substantially modifying, or terminating significant
16 information dissemination products; and

17 “(4) not, except where specifically authorized by
18 statute—

19 “(A) establish an exclusive, restricted, or
20 other distribution arrangement that interferes
21 with timely and equitable availability of public
22 information to the public;

23 “(B) restrict or regulate the use, resale, or
24 redissemination of public information by the
25 public;

1 “(C) charge fees or royalties for resale or
2 redissemination of public information; or

3 “(D) establish user fees for public informa-
4 tion that exceed the cost of dissemination, ex-
5 cept that the Director may waive the applica-
6 tion of this subparagraph to an agency, if—

7 “(i) the head of the agency submits a
8 written request to the Director, publishes a
9 notice of the request in the Federal Reg-
10 ister, and provides a copy of the request to
11 the public upon request;

12 “(ii) the Director sets forth in writing
13 a statement of the scope, conditions, and
14 duration of the waiver and the reasons for
15 granting it, and makes such statement
16 available to the public upon request; and

17 “(iii) the granting of the waiver would
18 not materially impair the timely and equi-
19 table availability of public information to
20 the public.

21 “(e) With respect to statistical policy and coordina-
22 tion, each agency shall—

23 “(1) ensure the relevance, accuracy, timeliness,
24 integrity, and objectivity of information collected or
25 created for statistical purposes;

1 “(2) inform respondents fully and accurately
2 about the sponsors, purposes, and uses of statistical
3 surveys and studies;

4 “(3) protect respondents’ privacy and ensure
5 that disclosure policies fully honor pledges of con-
6 fidentiality;

7 “(4) observe Federal standards and practices
8 for data collection, analysis, documentation, sharing,
9 and dissemination of information;

10 “(5) ensure the timely publication of the results
11 of statistical surveys and studies, including informa-
12 tion about the quality and limitations of the surveys
13 and studies; and

14 “(6) make data available to statistical agencies
15 and readily accessible to the public.

16 “(f) With respect to records management, each agen-
17 cy shall implement and enforce applicable policies and pro-
18 cedures, including requirements for archiving information
19 maintained in electronic format, particularly in the plan-
20 ning, design and operation of information systems.

21 “(g) With respect to privacy and security, each agen-
22 cy shall—

23 “(1) implement and enforce applicable policies,
24 procedures, standards, and guidelines on privacy,
25 confidentiality, security, disclosure and sharing of

1 information collected or maintained by or for the
2 agency;

3 “(2) assume responsibility and accountability
4 for compliance with and coordinated management of
5 sections 552 and 552a of title 5, the Computer Se-
6 curity Act of 1987 (40 U.S.C. 759 note), and relat-
7 ed information management laws; and

8 “(3) consistent with the Computer Security Act
9 of 1987 (40 U.S.C. 759 note), identify and afford
10 security protections commensurate with the risk and
11 magnitude of the harm resulting from the loss, mis-
12 use, or unauthorized access to or modification of in-
13 formation collected or maintained by or on behalf of
14 an agency.

15 “(h) With respect to Federal information technology,
16 each agency shall—

17 “(1) implement and enforce applicable Govern-
18 mentwide and agency information technology man-
19 agement policies, principles, standards, and guide-
20 lines;

21 “(2) assume responsibility and accountability
22 for information technology investments;

23 “(3) promote the use of information technology
24 by the agency to improve the productivity, efficiency,
25 and effectiveness of agency programs, including the

1 reduction of information collection burdens on the
2 public and improved dissemination of public infor-
3 mation;

4 “(4) propose changes in legislation, regulations,
5 and agency procedures to improve information tech-
6 nology practices, including changes that improve the
7 ability of the agency to use technology to reduce
8 burden; and

9 “(5) assume responsibility for maximizing the
10 value and assessing and managing the risks of major
11 information systems initiatives through a process
12 that is—

13 “(A) integrated with budget, financial, and
14 program management decisions; and

15 “(B) used to select, control, and evaluate
16 the results of major information systems initia-
17 tives.

18 **“§ 3507. Public information collection activities; sub-**
19 **mission to Director; approval and delega-**
20 **tion**

21 “(a) An agency shall not conduct or sponsor the col-
22 lection of information unless in advance of the adoption
23 or revision of the collection of information—

24 “(1) the agency has—

1 “(A) conducted the review established
2 under section 3506(c)(1);

3 “(B) evaluated the public comments re-
4 ceived under section 3506(c)(2);

5 “(C) submitted to the Director the certifi-
6 cation required under section 3506(c)(3), the
7 proposed collection of information, copies of
8 pertinent statutory authority, regulations, and
9 other related materials as the Director may
10 specify; and

11 “(D) published a notice in the Federal
12 Register—

13 “(i) stating that the agency has made
14 such submission; and

15 “(ii) setting forth—

16 “(I) a title for the collection of
17 information;

18 “(II) a summary of the collection
19 of information;

20 “(III) a brief description of the
21 need for the information and the pro-
22 posed use of the information;

23 “(IV) a description of the likely
24 respondents and proposed frequency

1 of response to the collection of infor-
2 mation;

3 “(V) an estimate of the burden
4 that shall result from the collection of
5 information; and

6 “(VI) notice that comments may
7 be submitted to the agency and Direc-
8 tor;

9 “(2) the Director has approved the proposed
10 collection of information or approval has been in-
11 ferred, under the provisions of this section; and

12 “(3) the agency has obtained from the Director
13 a control number to be displayed upon the collection
14 of information.

15 “(b) The Director shall provide at least 30 days for
16 public comment prior to making a decision under sub-
17 section (c), (d), or (h), except for good cause or as pro-
18 vided under subsection (j).

19 “(c)(1) For any proposed collection of information
20 not contained in a proposed rule, the Director shall notify
21 the agency involved of the decision to approve or dis-
22 approve the proposed collection of information.

23 “(2) The Director shall provide the notification under
24 paragraph (1), within 60 days after receipt or publication

1 of the notice under subsection (a)(1)(D), whichever is
2 later.

3 “(3) If the Director does not notify the agency of a
4 denial or approval within the 60-day period described
5 under paragraph (2)—

6 “(A) the approval may be inferred;

7 “(B) a control number shall be assigned with-
8 out further delay; and

9 “(C) the agency may collect the information for
10 not more than 1 year.

11 “(d)(1) For any proposed collection of information
12 contained in a proposed rule—

13 “(A) as soon as practicable, but no later than
14 the date of publication of a notice of proposed rule-
15 making in the Federal Register, each agency shall
16 forward to the Director a copy of any proposed rule
17 which contains a collection of information and any
18 information requested by the Director necessary to
19 make the determination required under this sub-
20 section; and

21 “(B) within 60 days after the notice of pro-
22 posed rulemaking is published in the Federal Reg-
23 ister, the Director may file public comments pursu-
24 ant to the standards set forth in section 3508 on the

1 collection of information contained in the proposed
2 rule.

3 “(2) When a final rule is published in the Federal
4 Register, the agency shall explain—

5 “(A) how any collection of information con-
6 tained in the final rule responds to the comments,
7 if any, filed by the Director or the public; or

8 “(B) the reasons such comments were rejected.

9 “(3) If the Director has received notice and failed to
10 comment on an agency rule within 60 days after the notice
11 of proposed rulemaking, the Director may not disapprove
12 any collection of information specifically contained in an
13 agency rule.

14 “(4) No provision in this section shall be construed
15 to prevent the Director, in the Director’s discretion—

16 “(A) from disapproving any collection of infor-
17 mation which was not specifically required by an
18 agency rule;

19 “(B) from disapproving any collection of infor-
20 mation contained in an agency rule, if the agency
21 failed to comply with the requirements of paragraph
22 (1) of this subsection;

23 “(C) from disapproving any collection of infor-
24 mation contained in a final agency rule, if the Direc-
25 tor finds within 60 days after the publication of the

1 final rule, and after considering the agency’s re-
2 sponse to the Director’s comments filed under para-
3 graph (2), that the collection of information cannot
4 be approved under the standards set forth in section
5 3508; or

6 “(D) from disapproving any collection of infor-
7 mation contained in a final rule, if—

8 “(i) the Director determines that the agen-
9 cy has substantially modified in the final rule
10 the collection of information contained in the
11 proposed rule; and

12 “(ii) the agency has not given the Director
13 the information required under paragraph (1)
14 with respect to the modified collection of infor-
15 mation, at least 60 days before the issuance of
16 the final rule.

17 “(5) This subsection shall apply only when an agency
18 publishes a notice of proposed rulemaking and requests
19 public comments.

20 “(6) The decision by the Director to approve or not
21 act upon a collection of information contained in an agen-
22 cy rule shall not be subject to judicial review.

23 “(e)(1) Any decision by the Director under subsection
24 (c), (d), (h), or (j) to disapprove a collection of informa-
25 tion, or to instruct the agency to make substantive or ma-

1 terial change to a collection of information, shall be pub-
2 licly available and include an explanation of the reasons
3 for such decision.

4 “(2) Any written communication between the Admin-
5 istrator of the Office of Information and Regulatory Af-
6 fairs, or any employee of the Office of Information and
7 Regulatory Affairs, and an agency or person not employed
8 by the Federal Government concerning a proposed collec-
9 tion of information shall be made available to the public.

10 “(3) This subsection shall not require the disclosure
11 of—

12 “(A) any information which is protected at all
13 times by procedures established for information
14 which has been specifically authorized under criteria
15 established by an Executive order or an Act of Con-
16 gress to be kept secret in the interest of national
17 defense or foreign policy; or

18 “(B) any communication relating to a collection
19 of information, the disclosure of which could lead to
20 retaliation or discrimination against the communica-
21 tor.

22 “(f)(1) An independent regulatory agency which is
23 administered by 2 or more members of a commission,
24 board, or similar body, may by majority vote void—

1 “(A) any disapproval by the Director, in whole
2 or in part, of a proposed collection of information
3 that agency; or

4 “(B) an exercise of authority under subsection
5 (d) of section 3507 concerning that agency.

6 “(2) The agency shall certify each vote to void such
7 disapproval or exercise to the Director, and explain the
8 reasons for such vote. The Director shall without further
9 delay assign a control number to such collection of infor-
10 mation, and such vote to void the disapproval or exercise
11 shall be valid for a period of 3 years.

12 “(g) The Director may not approve a collection of in-
13 formation for a period in excess of 3 years.

14 “(h)(1) If an agency decides to seek extension of the
15 Director’s approval granted for a currently approved col-
16 lection of information, the agency shall—

17 “(A) conduct the review established under sec-
18 tion 3506(c), including the seeking of comment from
19 the public on the continued need for, and burden im-
20 posed by the collection of information; and

21 “(B) after having made a reasonable effort to
22 seek public comment, but no later than 60 days be-
23 fore the expiration date of the control number as-
24 signed by the Director for the currently approved
25 collection of information, submit the collection of in-

1 formation for review and approval under this sec-
2 tion, which shall include an explanation of how the
3 agency has used the information that it has col-
4 lected.

5 “(2) If under the provisions of this section, the Direc-
6 tor disapproves a collection of information contained in an
7 existing rule, or recommends or instructs the agency to
8 make a substantive or material change to a collection of
9 information contained in an existing rule, the Director
10 shall—

11 “(A) publish an explanation thereof in the Fed-
12 eral Register; and

13 “(B) instruct the agency to undertake a rule-
14 making within a reasonable time limited to consider-
15 ation of changes to the collection of information con-
16 tained in the rule and thereafter to submit the col-
17 lection of information for approval or disapproval
18 under this chapter.

19 “(3) An agency may not make a substantive or mate-
20 rial modification to a collection of information after such
21 collection has been approved by the Director, unless the
22 modification has been submitted to the Director for review
23 and approval under this chapter.

24 “(i)(1) If the Director finds that a senior official of
25 an agency designated under section 3506(a) is sufficiently

1 independent of program responsibility to evaluate fairly
2 whether proposed collections of information should be ap-
3 proved and has sufficient resources to carry out this re-
4 sponsibility effectively, the Director may, by rule in ac-
5 cordance with the notice and comment provisions of chap-
6 ter 5 of title 5, United States Code, delegate to such offi-
7 cial the authority to approve proposed collections of infor-
8 mation in specific program areas, for specific purposes,
9 or for all agency purposes.

10 “(2) A delegation by the Director under this section
11 shall not preclude the Director from reviewing individual
12 collections of information if the Director determines that
13 circumstances warrant such a review. The Director shall
14 retain authority to revoke such delegations, both in gen-
15 eral and with regard to any specific matter. In acting for
16 the Director, any official to whom approval authority has
17 been delegated under this section shall comply fully with
18 the rules and regulations promulgated by the Director.

19 “(j)(1) The agency head may request the Director to
20 authorize collection of information prior to expiration of
21 time periods established under this chapter, if an agency
22 head determines that—

23 “(A) a collection of information—

24 “(i) is needed prior to the expiration of
25 such time periods; and

1 “(ii) is essential to the mission of the agen-
2 cy; and

3 “(B) the agency cannot reasonably comply with
4 the provisions of this chapter within such time peri-
5 ods because—

6 “(i) public harm is reasonably likely to re-
7 sult if normal clearance procedures are fol-
8 lowed; or

9 “(ii) an unanticipated event has occurred
10 and the use of normal clearance procedures is
11 reasonably likely to prevent or disrupt the col-
12 lection of information related to the event or is
13 reasonably likely to cause a statutory or court-
14 ordered deadline to be missed.

15 “(2) The Director shall approve or disapprove any
16 such authorization request within the time requested by
17 the agency head and, if approved, shall assign the collec-
18 tion of information a control number. Any collection of
19 information conducted under this subsection may be con-
20 ducted without compliance with the provisions of this
21 chapter for a maximum of 90 days after the date on which
22 the Director received the request to authorize such collec-
23 tion.

1 **“§ 3508. Determination of necessity for information;**
2 **hearing**

3 “Before approving a proposed collection of informa-
4 tion, the Director shall determine whether the collection
5 of information by the agency is necessary for the proper
6 performance of the functions of the agency, including
7 whether the information shall have practical utility. Before
8 making a determination the Director may give the agency
9 and other interested persons an opportunity to be heard
10 or to submit statements in writing. To the extent, if any,
11 that the Director determines that the collection of infor-
12 mation by an agency is unnecessary for any reason, the
13 agency may not engage in the collection of information.

14 **“§ 3509. Designation of central collection agency**

15 “The Director may designate a central collection
16 agency to obtain information for two or more agencies if
17 the Director determines that the needs of such agencies
18 for information will be adequately served by a single collec-
19 tion agency, and such sharing of data is not inconsistent
20 with applicable law. In such cases the Director shall pre-
21 scribe (with reference to the collection of information) the
22 duties and functions of the collection agency so designated
23 and of the agencies for which it is to act as agent (includ-
24 ing reimbursement for costs). While the designation is in
25 effect, an agency covered by the designation may not ob-
26 tain for itself information for the agency which is the duty

1 of the collection agency to obtain. The Director may mod-
2 ify the designation from time to time as circumstances re-
3 quire. The authority to designate under this section is sub-
4 ject to the provisions of section 3507(f) of this chapter.

5 **“§ 3510. Cooperation of agencies in making informa-**
6 **tion available**

7 “(a) The Director may direct an agency to make
8 available to another agency, or an agency may make avail-
9 able to another agency, information obtained by a collec-
10 tion of information if the disclosure is not inconsistent
11 with applicable law.

12 “(b)(1) If information obtained by an agency is re-
13 leased by that agency to another agency, all the provisions
14 of law (including penalties which relate to the unlawful
15 disclosure of information) apply to the officers and em-
16 ployees of the agency to which information is released to
17 the same extent and in the same manner as the provisions
18 apply to the officers and employees of the agency which
19 originally obtained the information.

20 “(2) The officers and employees of the agency to
21 which the information is released, in addition, shall be
22 subject to the same provisions of law, including penalties,
23 relating to the unlawful disclosure of information as if the
24 information had been collected directly by that agency.

1 **“§ 3511. Establishment and operation of Government**
2 **Information Locator Service**

3 “In order to assist agencies and the public in locating
4 information and to promote information sharing and equi-
5 table access by the public, the Director shall—

6 “(1) cause to be established and maintained a
7 distributed agency-based electronic Government In-
8 formation Locator Service (hereafter in this section
9 referred to as the ‘Service’), which shall identify the
10 major information systems, holdings, and dissemina-
11 tion products of each agency;

12 “(2) require each agency to establish and main-
13 tain an agency information locator service as a com-
14 ponent of, and to support the establishment and op-
15 eration of the Service;

16 “(3) in cooperation with the Archivist of the
17 United States, the Administrator of General Serv-
18 ices, the Public Printer, and the Librarian of Con-
19 gress, establish an interagency committee to advise
20 the Secretary of Commerce on the development of
21 technical standards for the Service to ensure com-
22 patibility, promote information sharing, and uniform
23 access by the public;

24 “(4) consider public access and other user
25 needs in the establishment and operation of the
26 Service;

1 “(5) ensure the security and integrity of the
2 Service, including measures to ensure that only in-
3 formation which is intended to be disclosed to the
4 public is disclosed through the Service; and

5 “(6) periodically review the development and ef-
6 fectiveness of the Service and make recommenda-
7 tions for improvement, including other mechanisms
8 for improving public access to Federal agency public
9 information.

10 **“§ 3512. Public protection**

11 “(a) Notwithstanding any other provision of law, no
12 person shall be subject to any penalty for failing to main-
13 tain or provide information to any agency if the collection
14 of information involved was made after December 31,
15 1981, and at the time of the failure did not display a cur-
16 rent control number assigned by the Director, or fails to
17 state that such request is not subject to this chapter.

18 “(b) Actions taken by agencies which are not in com-
19 pliance with subsection (a) of this section shall give rise
20 to a complete defense or bar to such action by an agency,
21 which may be raised at any time during the agency deci-
22 sion making process or judicial review of the agency deci-
23 sion under any available process for judicial review.

1 **“§ 3513. Director review of agency activities; report-**
2 **ing; agency response**

3 “(a) In consultation with the Administrator of Gen-
4 eral Services, the Archivist of the United States, the Di-
5 rector of the National Institute of Standards and Tech-
6 nology, and the Director of the Office of Personnel Man-
7 agement, the Director shall periodically review selected
8 agency information resources management activities to as-
9 certain the efficiency and effectiveness of such activities
10 to improve agency performance and the accomplishment
11 of agency missions.

12 “(b) Each agency having an activity reviewed under
13 subsection (a) shall, within 60 days after receipt of a re-
14 port on the review, provide a written plan to the Director
15 describing steps (including milestones) to—

16 “(1) be taken to address information resources
17 management problems identified in the report; and

18 “(2) improve agency performance and the ac-
19 complishment of agency missions.

20 **“§ 3514. Responsiveness to Congress**

21 “(a)(1) The Director shall—

22 “(A) keep the Congress and congressional com-
23 mittees fully and currently informed of the major ac-
24 tivities under this chapter; and

25 “(B) submit a report on such activities to the
26 President of the Senate and the Speaker of the

1 House of Representatives annually and at such other
2 times as the Director determines necessary.

3 “(2) The Director shall include in any such report
4 a description of the extent to which agencies have—

5 “(A) reduced information collection burdens on
6 the public, including—

7 “(i) a summary of accomplishments and
8 planned initiatives to reduce collection of infor-
9 mation burdens;

10 “(ii) a list of all violations of this chapter
11 and of any rules, guidelines, policies, and proce-
12 dures issued pursuant to this chapter;

13 “(iii) a list of any increase in the collection
14 of information burden, including the authority
15 for each such collection; and

16 “(iv) a list of agencies that in the preced-
17 ing year did not reduce information collection
18 burdens by at least 10 percent pursuant to sec-
19 tion 3505, a list of the programs and statutory
20 responsibilities of those agencies that precluded
21 that reduction, and recommendations to assist
22 those agencies to reduce information collection
23 burdens in accordance with that section;

24 “(B) improved the quality and utility of statis-
25 tical information;

1 Director shall provide interested agencies and persons
2 early and meaningful opportunity to comment.

3 “(b) Any person may request the Director to review
4 any collection of information conducted by or for an agen-
5 cy to determine, if, under this chapter, the person shall
6 maintain, provide, or disclose the information to or for the
7 agency. Unless the request is frivolous, the Director shall,
8 in coordination with the agency responsible for the collec-
9 tion of information—

10 “(1) respond to the request within 60 days
11 after receiving the request, unless such period is ex-
12 tended by the Director to a specified date and the
13 person making the request is given notice of such ex-
14 tension; and

15 “(2) take appropriate remedial action, if nec-
16 essary.

17 **“§ 3518. Effect on existing laws and regulations**

18 “(a) Except as otherwise provided in this chapter, the
19 authority of an agency under any other law to prescribe
20 policies, rules, regulations, and procedures for Federal in-
21 formation resources management activities is subject to
22 the authority of the Director under this chapter.

23 “(b) Nothing in this chapter shall be deemed to affect
24 or reduce the authority of the Secretary of Commerce or
25 the Director of the Office of Management and Budget pur-

1 suant to Reorganization Plan No. 1 of 1977 (as amended)
2 and Executive order, relating to telecommunications and
3 information policy, procurement and management of tele-
4 communications and information systems, spectrum use,
5 and related matters.

6 “(c)(1) Except as provided in paragraph (2), this
7 chapter shall not apply to obtaining, causing to be ob-
8 tained, soliciting, or requiring the disclosure to third par-
9 ties or the public, of facts or opinions—

10 “(A) during the conduct of a Federal criminal
11 investigation or prosecution, or during the disposi-
12 tion of a particular criminal matter;

13 “(B) during the conduct of—

14 “(i) a civil action to which the United
15 States or any official or agency thereof is a
16 party; or

17 “(ii) an administrative action or investiga-
18 tion involving an agency against specific indi-
19 viduals or entities;

20 “(C) by compulsory process pursuant to the
21 Antitrust Civil Process Act and section 13 of the
22 Federal Trade Commission Improvements Act of
23 1980; or

24 “(D) during the conduct of intelligence activi-
25 ties as defined in section 4-206 of Executive Order

1 No. 12036, issued January 24, 1978, or successor
2 orders, or during the conduct of cryptologic activities
3 that are communications security activities.

4 “(2) This chapter applies to obtaining, causing to be
5 obtained, soliciting, or requiring the disclosure to third
6 parties or the public, of facts or opinions during the con-
7 duct of general investigations (other than information col-
8 lected in an antitrust investigation to the extent provided
9 in subparagraph (C) of paragraph (1)) undertaken with
10 reference to a category of individuals or entities such as
11 a class of licensees or an entire industry.

12 “(d) Nothing in this chapter shall be interpreted as
13 increasing or decreasing the authority conferred by Public
14 Law 89–306 on the Administrator of the General Services
15 Administration, the Secretary of Commerce, or the Direc-
16 tor of the Office of Management and Budget.

17 “(e) Nothing in this chapter shall be interpreted as
18 increasing or decreasing the authority of the President,
19 the Office of Management and Budget or the Director
20 thereof, under the laws of the United States, with respect
21 to the substantive policies and programs of departments,
22 agencies and offices, including the substantive authority
23 of any Federal agency to enforce the civil rights laws.

1 **“§ 3519. Access to information**

2 “Under the conditions and procedures prescribed in
3 section 716 of title 31, the Director and personnel in the
4 Office of Information and Regulatory Affairs shall furnish
5 such information as the Comptroller General may require
6 for the discharge of the responsibilities of the Comptroller
7 General. For the purpose of obtaining such information,
8 the Comptroller General or representatives thereof shall
9 have access to all books, documents, papers and records,
10 regardless of form or format, of the Office.

11 **“§ 3520. Authorization of appropriations**

12 “There are authorized to be appropriated to the Of-
13 fice of Information and Regulatory Affairs to carry out
14 the provisions of this chapter such sums as may be nec-
15 essary.”.

16 **SEC. 103. EFFECTIVE DATE.**

17 The amendments made by this division shall take ef-
18 fect October 1, 1995.

19 **DIVISION B**

20 **SEC. 201. SHORT TITLE.**

21 This division may be cited as the “Private Property
22 Protection Act of 1995”.

23 **SEC. 202. FEDERAL POLICY AND DIRECTION.**

24 (a) GENERAL POLICY.—It is the policy of the Federal
25 Government that no law or agency action should limit the
26 use of privately owned property so as to diminish its value.

1 (b) APPLICATION TO FEDERAL AGENCY ACTION.—
2 Each Federal agency, officer, and employee should exer-
3 cise Federal authority to ensure that agency action will
4 not limit the use of privately owned property so as to di-
5 minish its value.

6 **SEC. 203. RIGHT TO COMPENSATION.**

7 (a) IN GENERAL.—The Federal Government shall
8 compensate an owner of property whose use of any portion
9 of that property has been limited by an agency action,
10 under a specified regulatory law, that diminishes the fair
11 market value of that portion by 20 percent or more. The
12 amount of the compensation shall equal the diminution in
13 value that resulted from the agency action. If the diminu-
14 tion in value of a portion of that property is greater than
15 50 percent, at the option of the owner, the Federal Gov-
16 ernment shall buy that portion of the property for its fair
17 market value.

18 (b) DURATION OF LIMITATION ON USE.—Property
19 with respect to which compensation has been paid under
20 this Act shall not thereafter be used contrary to the limita-
21 tion imposed by the agency action, even if that action is
22 later rescinded or otherwise vitiated. However, if that ac-
23 tion is later rescinded or otherwise vitiated, and the owner
24 elects to refund the amount of the compensation, adjusted

1 for inflation, to the Treasury of the United States, the
2 property may be so used.

3 **SEC. 204. EFFECT OF STATE LAW.**

4 If a use is a nuisance as defined by the law of a State
5 or is already prohibited under a local zoning ordinance,
6 no compensation shall be made under this division with
7 respect to a limitation on that use.

8 **SEC. 205. EXCEPTIONS.**

9 (a) PREVENTION OF HAZARD TO HEALTH OR SAFE-
10 TY OR DAMAGE TO SPECIFIC PROPERTY.—No compensa-
11 tion shall be made under this division with respect to an
12 agency action the primary purpose of which is to prevent
13 an identifiable—

14 (1) hazard to public health or safety; or

15 (2) damage to specific property other than the
16 property whose use is limited.

17 (b) NAVIGATION SERVITUDE.—No compensation
18 shall be made under this division with respect to an agency
19 action pursuant to the Federal navigation servitude, as de-
20 fined by the courts of the United States, except to the
21 extent such servitude is interpreted to apply to wetlands.

22 **SEC. 206. PROCEDURE.**

23 (a) REQUEST OF OWNER.—An owner seeking com-
24 pensation under this division shall make a written request
25 for compensation to the agency whose agency action re-

1 sulted in the limitation. No such request may be made
2 later than 180 days after the owner receives actual notice
3 of that agency action.

4 (b) NEGOTIATIONS.—The agency may bargain with
5 that owner to establish the amount of the compensation.
6 If the agency and the owner agree to such an amount,
7 the agency shall promptly pay the owner the amount
8 agreed upon.

9 (c) CHOICE OF REMEDIES.—If, not later than 180
10 days after the written request is made, the parties do not
11 come to an agreement as to the right to and amount of
12 compensation, the owner may choose to take the matter
13 to binding arbitration or seek compensation in a civil ac-
14 tion.

15 (d) ARBITRATION.—The procedures that govern the
16 arbitration shall, as nearly as practicable, be those estab-
17 lished under title 9, United States Code, for arbitration
18 proceedings to which that title applies. An award made
19 in such arbitration shall include a reasonable attorney's
20 fee and other arbitration costs (including appraisal fees).
21 The agency shall promptly pay any award made to the
22 owner.

23 (e) CIVIL ACTION.—An owner who does not choose
24 arbitration, or who does not receive prompt payment when
25 required by this section, may obtain appropriate relief in

1 a civil action against the agency. An owner who prevails
2 in a civil action under this section shall be entitled to, and
3 the agency shall be liable for, a reasonable attorney's fee
4 and other litigation costs (including appraisal fees). The
5 court shall award interest on the amount of any compensa-
6 tion from the time of the limitation.

7 (f) SOURCE OF PAYMENTS.—Any payment made
8 under this section to an owner, and any judgment obtained
9 by an owner in a civil action under this section shall, not-
10 withstanding any other provision of law, be made from the
11 annual appropriation of the agency whose action occa-
12 sioned the payment or judgment. If the agency action re-
13 sulted from a requirement imposed by another agency,
14 then the agency making the payment or satisfying the
15 judgment may seek partial or complete reimbursement
16 from the appropriated funds of the other agency. For this
17 purpose the head of the agency concerned may transfer
18 or reprogram any appropriated funds available to the
19 agency. If insufficient funds exist for the payment or to
20 satisfy the judgment, it shall be the duty of the head of
21 the agency to seek the appropriation of such funds for the
22 next fiscal year.

23 **SEC. 207. LIMITATION.**

24 Notwithstanding any other provision of law, any obli-
25 gation of the United States to make any payment under

1 this division shall be subject to the availability of appro-
2 priations.

3 **SEC. 208. DUTY OF NOTICE TO OWNERS.**

4 Whenever an agency takes an agency action limiting
5 the use of private property, the agency shall give appro-
6 priate notice to the owners of that property directly af-
7 fected explaining their rights under this division and the
8 procedures for obtaining any compensation that may be
9 due to them under this division.

10 **SEC. 209. RULES OF CONSTRUCTION.**

11 (a) EFFECT ON CONSTITUTIONAL RIGHT TO COM-
12 PENSATION.—Nothing in this division shall be construed
13 to limit any right to compensation that exists under the
14 Constitution or under other laws of the United States.

15 (b) EFFECT OF PAYMENT.—Payment of compensa-
16 tion under this division (other than when the property is
17 bought by the Federal Government at the option of the
18 owner) shall not confer any rights on the Federal Govern-
19 ment other than the limitation on use resulting from the
20 agency action.

21 **SEC. 210. DEFINITIONS.**

22 For the purposes of this division—

23 (1) the term “property” means land and in-
24 cludes the right to use or receive water;

1 (2) a use of property is limited by an agency
2 action if a particular legal right to use that property
3 no longer exists because of the action;

4 (3) the term “agency action” has the meaning
5 given that term in section 551 of title 5, United
6 States Code, but also includes the making of a grant
7 to a public authority conditioned upon an action by
8 the recipient that would constitute a limitation if
9 done directly by the agency;

10 (4) the term “agency” has the meaning given
11 that term in section 551 of title 5, United States
12 Code;

13 (5) the term “specified regulatory law”
14 means—

15 (A) section 404 of the Federal Water Pol-
16 lution Control Act (33 U.S.C. 1344);

17 (B) the Endangered Species Act of 1973
18 (16 U.S.C. 1531 et seq.);

19 (C) title XII of the Food Security Act of
20 1985 (16 U.S.C. 3801 et seq.); or

21 (D) with respect to an owner’s right to use
22 or receive water only—

23 (i) the Act of June 17, 1902, and all
24 Acts amendatory thereof or supplementary

1 **TITLE I—STRENGTHENING**
2 **REGULATORY FLEXIBILITY**

3 **SEC. 311. JUDICIAL REVIEW.**

4 (a) AMENDMENT.—Section 611 of title 5, United
5 States Code, is amended to read as follows:

6 **“§611. Judicial review**

7 “(a)(1) Except as provided in paragraph (2), not
8 later than one year, notwithstanding any other provision
9 of law, after the effective date of a final rule with respect
10 to which an agency—

11 “(A) certified, pursuant to section 605(b), that
12 such rule would not have a significant economic im-
13 pact on a substantial number of small entities; or

14 “(B) prepared a final regulatory flexibility anal-
15 ysis pursuant to section 604,

16 an affected small entity may petition for the judicial re-
17 view of such certification or analysis in accordance with
18 the terms of this subsection. A court having jurisdiction
19 to review such rule for compliance with the provisions of
20 section 553 or under any other provision of law shall have
21 jurisdiction to review such certification or analysis. In the
22 case where an agency delays the issuance of a final regu-
23 latory flexibility analysis pursuant to section 608(b), a pe-
24 tition for judicial review under this subsection shall be
25 filed not later than one year, notwithstanding any other

1 provision of law, after the date the analysis is made avail-
2 able to the public.

3 “(2) For purposes of this subsection, the term ‘af-
4 fected small entity’ means a small entity that is or will
5 be adversely affected by the final rule.

6 “(3) Nothing in this subsection shall be construed to
7 affect the authority of any court to stay the effective date
8 of any rule or provision thereof under any other provision
9 of law.

10 “(4)(A) In the case where the agency certified that
11 such rule would not have a significant economic impact
12 on a substantial number of small entities, the court may
13 order the agency to prepare a final regulatory flexibility
14 analysis pursuant to section 604 if the court determines,
15 on the basis of the rulemaking record, that the certifi-
16 cation was arbitrary, capricious, an abuse of discretion,
17 or otherwise not in accordance with law.

18 “(B) In the case where the agency prepared a final
19 regulatory flexibility analysis, the court may order the
20 agency to take corrective action consistent with the re-
21 quirements of section 604 if the court determines, on the
22 basis of the rulemaking record, that the final regulatory
23 flexibility analysis was prepared by the agency without ob-
24 servance of procedure required by section 604.

1 “(5) If, by the end of the 90-day period beginning
2 on the date of the order of the court pursuant to para-
3 graph (4) (or such longer period as the court may pro-
4 vide), the agency fails, as appropriate—

5 “(A) to prepare the analysis required by section
6 604; or

7 “(B) to take corrective action consistent with
8 the requirements of section 604,
9 the court may stay the rule or grant such other relief as
10 it deems appropriate.

11 “(6) In making any determination or granting any
12 relief authorized by this subsection, the court shall take
13 due account of the rule of prejudicial error.

14 “(b) In an action for the judicial review of a rule,
15 any regulatory flexibility analysis for such rule (including
16 an analysis prepared or corrected pursuant to subsection
17 (a)(4)) shall constitute part of the whole record of agency
18 action in connection with such review.

19 “(c) Nothing in this section bars judicial review of
20 any other impact statement or similar analysis required
21 by any other law if judicial review of such statement or
22 analysis is otherwise provided by law.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply only to final agency rules issued
25 after the date of enactment of this division.

1 **SEC. 312. RULES COMMENTED ON BY SBA CHIEF COUNSEL**
2 **FOR ADVOCACY.**

3 (a) IN GENERAL.—Section 612 of title 5, United
4 States Code, is amended by adding at the end the follow-
5 ing new subsection:

6 “(d) ACTION BY THE SBA CHIEF COUNSEL FOR AD-
7 VOCACY.—

8 “(1) TRANSMITTAL OF PROPOSED RULES AND
9 INITIAL REGULATORY FLEXIBILITY ANALYSIS TO
10 SBA CHIEF COUNSEL FOR ADVOCACY.—On or before
11 the 30th day preceding the date of publication by an
12 agency of general notice of proposed rulemaking for
13 a rule, the agency shall transmit to the Chief Coun-
14 sel for Advocacy of the Small Business Administra-
15 tion—

16 “(A) a copy of the proposed rule; and

17 “(B)(i) a copy of the initial regulatory
18 flexibility analysis for the rule if required under
19 section 603; or

20 “(ii) a determination by the agency that an
21 initial regulatory flexibility analysis is not re-
22 quired for the proposed rule under section 603
23 and an explanation for the determination.

24 “(2) STATEMENT OF EFFECT.—On or before
25 the 15th day following receipt of a proposed rule and
26 initial regulatory flexibility analysis from an agency

1 under paragraph (1), the Chief Counsel for Advoca-
2 cacy may transmit to the agency a written statement
3 of the effect of the proposed rule on small entities.

4 “(3) RESPONSE.—If the Chief Counsel for Ad-
5 vocacy transmits to an agency a statement of effect
6 on a proposed rule in accordance with paragraph
7 (2), the agency shall publish the statement, together
8 with the response of the agency to the statement, in
9 the Federal Register at the time of publication of
10 general notice of proposed rulemaking for the rule.

11 “(4) SPECIAL RULE.—Any proposed rules is-
12 sued by an appropriate Federal banking agency (as
13 that term is defined in section 3(q) of the Federal
14 Deposit Insurance Act (12 U.S.C. 1813(q)), the Na-
15 tional Credit Union Administration, or the Office of
16 Federal Housing Enterprise Oversight, in connection
17 with the implementation of monetary policy or to en-
18 sure the safety and soundness of federally insured
19 depository institutions, any affiliate of such an insti-
20 tution, credit unions, or government sponsored hous-
21 ing enterprises or to protect the Federal deposit in-
22 surance funds shall not be subject to the require-
23 ments of this subsection.”.

24 (b) CONFORMING AMENDMENT.—Section 603(a) of
25 title 5, United States Code, is amended by inserting “in

1 accordance with section 612(d)” before the period at the
2 end of the last sentence.

3 **SEC. 313. SENSE OF CONGRESS REGARDING SBA CHIEF**
4 **COUNSEL FOR ADVOCACY.**

5 It is the sense of Congress that the Chief Counsel
6 for Advocacy of the Small Business Administration should
7 be permitted to appear as amicus curiae in any action or
8 case brought in a court of the United States for the pur-
9 pose of reviewing a rule.

10 **TITLE II—REGULATORY IMPACT**
11 **ANALYSES**

12 **SEC. 321. DEFINITIONS.**

13 Section 551 of title 5, United States Code, is amend-
14 ed by striking “and” at the end of paragraph (13), by
15 striking the period at the end of paragraph (14) and in-
16 serting a semicolon, and by adding at the end the follow-
17 ing:

18 “(15) ‘major rule’ means any rule subject to
19 section 553(c) that is likely to result in—

20 “(A) an annual effect on the economy of
21 \$50,000,000 or more;

22 “(B) a major increase in costs or prices for
23 consumers, individual industries, Federal,
24 State, or local government agencies, or geo-
25 graphic regions, or

1 “(C) significant adverse effects on competi-
2 tion, employment, investment, productivity, in-
3 novation, or on the ability of United States-
4 based enterprises to compete with foreign-based
5 enterprises in domestic and export markets; and

6 “(16) ‘Director’ means the Director of the Of-
7 fice of Management and Budget.”.

8 **SEC. 322. RULEMAKING NOTICES FOR MAJOR RULES.**

9 Section 553 of title 5, United States Code, is amend-
10 ed by adding at the end the following:

11 “(f)(1) Each agency shall for a proposed major rule
12 publish in the Federal Register, at least 90 days before
13 the date of publication of the general notice required
14 under subsection (b), a notice of intent to engage in rule-
15 making.

16 “(2) A notice under paragraph (1) for a proposed
17 major rule shall include, to the extent possible, the infor-
18 mation required to be included in a regulatory impact
19 analysis for the rule under subsection (i)(4)(B) and (D).

20 “(3) For a major rule proposed by an agency, the
21 head of the agency shall include in a general notice under
22 subsection (b), a preliminary regulatory impact analysis
23 for the rule prepared in accordance with subsection (i).

24 “(4) For a final major rule, the agency shall include
25 with the statement of basis and purpose—

1 “(A) a summary of a final regulatory impact
2 analysis of the rule in accordance with subsection
3 (i); and

4 “(B) a clear delineation of all changes in the in-
5 formation included in the final regulatory impact
6 analysis under subsection (i) from any such informa-
7 tion that was included in the notice for the rule
8 under subsection (b).

9 The agency shall provide the complete text of a final regu-
10 latory impact analysis upon request.

11 “(5) The issuance of a notice of intent to engage in
12 rulemaking under paragraph (1) and the issuance of a
13 preliminary regulatory impact analysis under paragraph
14 (3) shall not be considered final agency action for pur-
15 poses of section 704.

16 “(6) In a rulemaking involving a major rule, the
17 agency conducting the rulemaking shall make a written
18 record describing the subject of all contacts the agency
19 made with persons outside the agency relating to such
20 rulemaking. If the contact was made with a non-govern-
21 mental person, the written record of such contact shall be
22 made available, upon request to the public.”.

1 **SEC. 323. HEARING REQUIREMENT FOR PROPOSED RULES;**
2 **AND EXTENSION OF COMMENT PERIOD.**

3 (a) HEARING REQUIREMENT.—Section 553 of title 5,
4 United States Code, as amended by section 322, is further
5 amended by adding after subsection (f) the following:

6 “(g) If more than 100 interested persons acting indi-
7 vidually submit requests for a hearing to an agency re-
8 garding any major rule proposed by the agency, the agen-
9 cy shall hold such a hearing on the proposed rule.”.

10 (b) EXTENSION OF COMMENT PERIOD.—Section 553
11 of title 5, United States Code, as amended by subsection
12 (a), is further amended by adding after subsection (g) the
13 following:

14 “(h) If during the 90-day period beginning on the
15 date of publication of a notice under subsection (f) for a
16 proposed major rule, or if during the period beginning on
17 the date of publication or service of notice required by sub-
18 section (b) for a proposed major rule, more than 100 per-
19 sons individually contact the agency to request an exten-
20 sion of the period for making submissions under sub-
21 section (c) pursuant to the notice, the agency—

22 “(1) shall provide an additional 30-day period
23 for making those submissions; and

24 “(2) may not adopt the rule until after the ad-
25 ditional period.”.

1 (c) RESPONSE TO COMMENTS.—Section 553(c) of
2 title 5, United States Code, is amended—

3 (1) by inserting “(1)” after “(c)”; and

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

5 “(2) Each agency shall publish in the Federal Reg-
6 ister, with each rule published under section 552(a)(1)(D),
7 responses to the substance of the comments received by
8 the agency regarding the rule.”.

9 **SEC. 324. REGULATORY IMPACT ANALYSIS.**

10 Section 553 of title 5, United States Code, as amend-
11 ed by section 323, is amended by adding after subsection
12 (h) the following:

13 “(i)(1) Each agency shall, in connection with every
14 major rule, prepare, and, to the extent permitted by law,
15 consider, a regulatory impact analysis. Such analysis may
16 be combined with any regulatory flexibility analysis per-
17 formed under sections 603 and 604.

18 “(2) Each agency shall initially determine whether a
19 rule it intends to propose or issue is a major rule. The
20 Director shall have authority to order a rule to be treated
21 as a major rule and to require any set of related rules
22 to be considered together as a major rule.

23 “(3) Except as provided in subsection (j), agencies
24 shall prepare—

1 “(A) a preliminary regulatory impact analysis,
2 which shall be transmitted, along with a notice of
3 proposed rulemaking, to the Director at least 60
4 days prior to the publication of notice of proposed
5 rulemaking, and

6 “(B) a final regulatory impact analysis, which
7 shall be transmitted along with the final rule at least
8 30 days prior to the publication of a major rule.

9 “(4) Each preliminary and final regulatory impact
10 analysis shall contain the following information:

11 “(A) A description of the potential benefits of
12 the rule, including any beneficial effects that cannot
13 be quantified in monetary terms and the identifica-
14 tion of those likely to receive the benefits.

15 “(B) An explanation of the necessity, legal au-
16 thority, and reasonableness of the rule and a de-
17 scription of the condition that the rule is to address.

18 “(C) A description of the potential costs of the
19 rule, including any adverse effects that cannot be
20 quantified in monetary terms, and the identification
21 of those likely to bear the costs.

22 “(D) An analysis of alternative approaches, in-
23 cluding market based mechanisms, that could sub-
24 stantially achieve the same regulatory goal at a
25 lower cost and an explanation of the reasons why

1 such alternative approaches were not adopted, to-
2 gether with a demonstration that the rule provides
3 for the least costly approach.

4 “(E) A statement that the rule does not conflict
5 with, or duplicate, any other rule or a statement of
6 the reasons why such a conflict or duplication exists.

7 “(F) A statement of whether the rule will re-
8 quire on-site inspections or whether persons will be
9 required by the rule to maintain any records which
10 will be subject to inspection, and a statement of
11 whether the rule will require persons to obtain li-
12 censes, permits, or other certifications, including
13 specification of any associated fees or fines.

14 “(G) An estimate of the costs to the agency for
15 implementation and enforcement of the rule and of
16 whether the agency can be reasonably expected to
17 implement the rule with the current level of appro-
18 priations.

19 “(5)(A) the Director is authorized to review and pre-
20 pare comments on any preliminary or final regulatory im-
21 pact analysis, notice of proposed rulemaking, or final rule
22 based on the requirements of this subsection.

23 “(B) Upon the request of the Director, an agency
24 shall consult with the Director concerning the review of
25 a preliminary impact analysis or notice of proposed rule-

1 making and shall refrain from publishing its preliminary
2 regulatory impact analysis or notice of proposed rule-
3 making until such review is concluded. The Director's re-
4 view may not take longer than 90 days after the date of
5 the request of the Director.

6 “(6)(A) An agency may not adopt a major rule unless
7 the final regulatory impact analysis for the rule is ap-
8 proved or commented upon in writing by the Director or
9 by an individual designated by the Director for that pur-
10 pose.

11 “(B) Upon receiving notice that the Director intends
12 to comment in writing with respect to any final regulatory
13 impact analysis or final rule, the agency shall refrain from
14 publishing its final regulatory impact analysis or final rule
15 until the agency has responded to the Director's comments
16 and incorporated those comments in the agency's response
17 in the rulemaking file. If the Director fails to make such
18 comments in writing with respect to any final regulatory
19 impact analysis or final rule within 90 days of the date
20 the Director gives such notice, the agency may adopt such
21 final regulatory impact analysis or final rule.

22 “(7) Notwithstanding section 551(16), for purposes
23 of this subsection with regard to any rule proposed or is-
24 sued by an appropriate Federal banking agency (as that
25 term is defined in section 3(q) of the Federal Deposit In-

1 surance Act (12 U.S.C. 1813(q)), the National Credit
2 Union Administration, or the Office of Federal Housing
3 Enterprise Oversight, the term ‘Director’ means the head
4 of such agency, Administration, or Office.’’.

5 **SEC. 325. STANDARD OF CLARITY.**

6 Section 553 of title 5, United States Code, as amend-
7 ed in section 324, is amended by adding after subsection
8 (i) the following:

9 “(j) To the extent practicable, the head of an agency
10 shall seek to ensure that any proposed major rule or regu-
11 latory impact analysis of such a rule is written in a reason-
12 ably simple and understandable manner and provides ade-
13 quate notice of the content of the rule to affected per-
14 sons.’’.

15 **SEC. 326. EXEMPTIONS.**

16 Section 553 of title 5, United States Code, as amend-
17 ed by section 325, is further amended by adding after sub-
18 section (j) the following:

19 “(k)(1) The provisions of this section regarding
20 major rules shall not apply to—

21 “(A) any regulation that responds to an emer-
22 gency situation if such regulation is reported to the
23 Director as soon as is practicable;

24 “(B) any regulation for which consideration
25 under the procedures of this section would conflict

1 with deadlines imposed by statute or by judicial
2 order;

3 “(C) any regulation proposed or issued in con-
4 nection with the implementation of monetary policy
5 or to ensure the safety and soundness of federally
6 insured depository institutions, any affiliate of such
7 institution, credit unions, or government sponsored
8 housing enterprises regulated by the Office of Fed-
9 eral Housing Enterprise Oversight;

10 “(D) any agency action that the head of the
11 agency certifies is limited to interpreting, implement-
12 ing, or administering the internal revenue laws of
13 the United States, including any regulation proposed
14 or issued in connection with ensuring the collection
15 of taxes from a subsidiary of a foreign company
16 doing business in the United States; and

17 “(E) any regulation proposed or issued pursu-
18 ant to section 553 of title 5, United States Code, in
19 connection with imposing trade sanctions against
20 any country that engages in illegal trade activities
21 against the United States that are injurious to
22 American technology, jobs, pensions, or general eco-
23 nomic well-being.

24 A regulation described in subparagraph (B) shall be re-
25 ported to the Director with a brief explanation of the con-

1 flict and the agency, in consultation with the Director,
2 shall, to the extent permitted by statutory or judicial dead-
3 lines, adhere to the process of this section.

4 “(2) The Director may in accordance with the pur-
5 poses of this section exempt any class or category of regu-
6 lations from any or all requirements of this section.

7 “(3) For purposes of paragraph (1), the term ‘emer-
8 gency situation’ means a situation that is—

9 “(A) immediately impending and extraordinary
10 in nature, or

11 “(B) demanding attention due to a condition,
12 circumstance, or practice reasonably expected to
13 cause death, serious illness, or severe injury to hu-
14 mans or substantial endangerment to private prop-
15 erty or the environment if no action is taken.”.

16 **SEC. 327. REPORT.**

17 The Director of the Office of Management and Budg-
18 et shall submit a report to the Congress no later than 24
19 months after the date of the enactment of this Act con-
20 taining an analysis of rulemaking procedures of Federal
21 agencies and an analysis of the impact of those rule-
22 making procedures on the regulated public and regulatory
23 process.

1 **SEC. 328. EFFECTIVE DATE.**

2 The amendment made by this title shall apply only
3 to final agency rules issued after rulemaking begun after
4 the date of enactment of this Act.

5 **TITLE III—PROTECTIONS**

6 **SEC. 331. PRESIDENTIAL ACTION.**

7 Pursuant to the authority of section 7301 of title 5,
8 United States Code, the President shall, within 180 days
9 of the date of the enactment of this Act, prescribe regula-
10 tions for employees of the executive branch to ensure that
11 Federal laws and regulations shall be administered con-
12 sistent with the principle that any person shall, in connec-
13 tion with the enforcement of such laws and regulations—

14 (1) be protected from abuse, reprisal, or retalia-
15 tion, and

16 (2) be treated fairly, equitably, and with due re-
17 gard for such person's rights under the Constitution.

18 **DIVISION D**

19 **SEC. 401. SHORT TITLE.**

20 This division may be cited as the “Risk Assessment
21 and Cost-Benefit Act of 1995”.

22 **SEC. 402. FINDINGS.**

23 The Congress finds that:

24 (1) Environmental, health, and safety regula-
25 tions have led to dramatic improvements in the envi-
26 ronment and have significantly reduced human

1 health risk; however, the Federal regulations that
2 have led to these improvements have been more cost-
3 ly and less effective than they could have been; too
4 often, regulatory priorities have not been based upon
5 a realistic consideration of risk, risk reduction op-
6 portunities, and costs.

7 (2) The public and private resources available
8 to address health, safety, and environmental con-
9 cerns are not unlimited; those resources need to be
10 allocated to address the greatest needs in the most
11 cost-effective manner and so that the incremental
12 costs of regulatory alternatives are reasonably relat-
13 ed to the incremental benefits.

14 (3) To provide more cost-effective and cost-reas-
15 onable protection to human health and the environ-
16 ment, regulatory priorities should be based upon re-
17 alistic consideration of risk; the priority setting proc-
18 ess must include scientifically sound, objective, and
19 unbiased risk assessments, comparative risk analy-
20 sis, and risk management choices that are grounded
21 in cost-benefit principles.

22 (4) Risk assessment has proven to be a useful
23 decision making tool; however, improvements are
24 needed in both the quality of assessments and the
25 characterization and communication of findings; sci-

1 entific and other data must be better collected, orga-
2 nized, and evaluated; most importantly, the critical
3 information resulting from a risk assessment must
4 be effectively communicated in an objective and un-
5 biased manner to decision makers, and from decision
6 makers to the public.

7 (5) The public stake holders must be fully in-
8 volved in the risk-decision making process. They
9 have the right-to-know about the risks addressed by
10 regulation, the amount of risk to be reduced, the
11 quality of the science used to support decisions, and
12 the cost of implementing and complying with regula-
13 tions. This knowledge will allow for public scrutiny
14 and promote quality, integrity, and responsiveness of
15 agency decisions.

16 (6) Although risk assessment is one important
17 method to improve regulatory decision-making, other
18 approaches to secure prompt relief from the burden
19 of unnecessary and overly complex regulations will
20 also be necessary.

21 **SEC. 403. COVERAGE OF DIVISION.**

22 This division does not apply to any of the following:

23 (1) A situation that the head of an affected
24 Federal agency determines to be an emergency. In
25 such circumstance, the head of the agency shall com-

1 ply with the provisions of this division within as rea-
2 sonable a time as is practical.

3 (2) Activities necessary to maintain military
4 readiness.

5 (3) Any individual food, drug, or other product
6 label, or to any risk characterization appearing on
7 any such label, if the individual product label is re-
8 quired by law to be approved by a Federal depart-
9 ment or agency prior to use.

10 (4) Approval of State programs or plans by
11 Federal agencies.

12 **SEC. 404. UNFUNDED MANDATES.**

13 Nothing in this division itself shall, without Federal
14 funding and further Federal agency action, create any new
15 obligation or burden on any State or local government or
16 otherwise impose any financial burden on any State or
17 local government in the absence of Federal funding, except
18 with respect to routine information requests.

19 **SEC. 405. DEFINITIONS.**

20 For purposes of this division:

21 (1) COSTS.—The term “costs” includes the di-
22 rect and indirect costs to the United States Govern-
23 ment, to State, local, and tribal governments, and to
24 the private sector, wage earners, consumers, and the

1 economy, of implementing and complying with a rule
2 or alternative strategy.

3 (2) BENEFIT.—The term “benefit” means the
4 reasonably identifiable significant health, safety, en-
5 vironmental, social and economic benefits that are
6 expected to result directly or indirectly from imple-
7 mentation of a rule or alternative strategy.

8 (3) MAJOR RULE.—The term “major rule”
9 means any regulation that is likely to result in an
10 annual increase in costs of \$25,000,000 or more.
11 Such term does not include any regulation or other
12 action taken by an agency to authorize or approve
13 any individual substance or product.

14 (4) PROGRAM DESIGNED TO PROTECT HUMAN
15 HEALTH.—The term “program designed to protect
16 human health” does not include regulatory programs
17 concerning health insurance, health provider serv-
18 ices, or health care diagnostic services.

19 (5) EMERGENCY.—As used in this division, the
20 term “emergency” means a situation that is imme-
21 diately impending and extraordinary in nature, de-
22 manding attention due to a condition, circumstance,
23 or practice reasonably expected to cause death, seri-
24 ous illness, or severe injury to humans, or substan-

1 tial endangerment to private property or the envi-
2 ronment if no action is taken.

3 **SEC. 406. AVAILABILITY OF INFORMATION AMONG FED-**
4 **ERAL AGENCIES.**

5 Covered Federal agencies shall make existing
6 databases and information developed under this division
7 available to other Federal agencies, subject to applicable
8 confidentiality requirements, for the purpose of meeting
9 the requirements of this division. Within 15 months after
10 the date of enactment of this division, the President shall
11 issue guidelines for Federal agencies to comply with this
12 section.

13 **TITLE I—RISK ASSESSMENT AND**
14 **COMMUNICATION**

15 **SEC. 411. SHORT TITLE.**

16 This title may be cited as the “Risk Assessment and
17 Communication Act of 1995”.

18 **SEC. 412. PURPOSES.**

19 The purposes of this title are—

20 (1) to present the public and executive branch
21 with the most scientifically objective and unbiased
22 information concerning the nature and magnitude of
23 health, safety, and environmental risks in order to
24 provide for sound regulatory decisions and public
25 education;

1 (2) to provide for full consideration and discus-
2 sion of relevant data and potential methodologies;

3 (3) to require explanation of significant choices
4 in the risk assessment process which will allow for
5 better peer review and public understanding; and

6 (4) to improve consistency within the executive
7 branch in preparing risk assessments and risk char-
8 acterizations.

9 **SEC. 413. EFFECTIVE DATE; APPLICABILITY; SAVINGS PRO-**
10 **VISIONS.**

11 (a) EFFECTIVE DATE.—Except as otherwise specifi-
12 cally provided in this title, the provisions of this title shall
13 take effect 18 months after the date of enactment of this
14 Act.

15 (b) APPLICABILITY.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (3), this title applies to all significant risk as-
18 sessment documents and significant risk character-
19 ization documents, as defined in paragraph (2).

20 (2) SIGNIFICANT RISK ASSESSMENT DOCUMENT
21 OR SIGNIFICANT RISK CHARACTERIZATION DOCU-
22 MENT.—(A) As used in this title, the terms “signifi-
23 cant risk assessment document” and “significant
24 risk characterization document” include, at a mini-
25 mum, risk assessment documents or risk character-

1 ization documents prepared by or on behalf of a cov-
2 ered Federal agency in the implementation of a reg-
3 ulatory program designed to protect human health,
4 safety, or the environment, used as a basis for one
5 of the items referred to in subparagraph (B), and—

6 (i) included by the agency in that item; or

7 (ii) inserted by the agency in the adminis-
8 trative record for that item.

9 (B) The items referred to in subparagraph (A)
10 are the following:

11 (i) Any proposed or final major rule, in-
12 cluding any analysis or certification under title
13 II, promulgated as part of any Federal regu-
14 latory program designed to protect human
15 health, safety, or the environment.

16 (ii) Any proposed or final environmental
17 clean-up plan for a facility or Federal guidelines
18 for the issuance of any such plan. As used in
19 this clause, the term “environmental clean-up”
20 means a corrective action under the Solid
21 Waste Disposal Act, a removal or remedial ac-
22 tion under the Comprehensive Environmental
23 Response, Compensation, and Liability Act of
24 1980, and any other environmental restoration
25 and waste management carried out by or on be-

1 half of a covered Federal agency with respect to
2 any substance other than municipal waste.

3 (iii) Any proposed or final permit condition
4 placing a restriction on facility siting or oper-
5 ation under Federal laws administered by the
6 Environmental Protection Agency or the De-
7 partment of the Interior. Nothing in this sec-
8 tion (iii) shall apply to the requirements of sec-
9 tion 404 of the Clean Water Act.

10 (iv) Any report to Congress.

11 (v) Any regulatory action to place a sub-
12 stance on any official list of carcinogens or
13 toxic or hazardous substances or to place a new
14 health effects value on such list, including the
15 Integrated Risk Information System Database
16 maintained by the Environmental Protection
17 Agency.

18 (vi) Any guidance, including protocols of
19 general applicability, establishing policy regard-
20 ing risk assessment or risk characterization.

21 (C) The terms “significant risk assessment doc-
22 ument” and “significant risk characterization docu-
23 ment” shall also include the following:

24 (i) Any such risk assessment and risk
25 characterization documents provided by a cov-

1 ered Federal agency to the public and which are
2 likely to result in an annual increase in costs of
3 \$25,000,000 or more.

4 (ii) Environmental restoration and waste
5 management carried out by or on behalf of the
6 Department of Defense with respect to any sub-
7 stance other than municipal waste.

8 (D) Within 15 months after the date of the en-
9 actment of this Act, each covered Federal agency ad-
10 ministering a regulatory program designed to protect
11 human health, safety, or the environment shall pro-
12 mulgate a rule establishing those additional cat-
13 egories, if any, of risk assessment and risk charac-
14 terization documents prepared by or on behalf of the
15 covered Federal agency that the agency will consider
16 significant risk assessment documents or significant
17 risk characterization documents for purposes of this
18 title. In establishing such categories, the head of the
19 agency shall consider each of the following:

20 (i) The benefits of consistent compliance
21 by documents of the covered Federal agency in
22 the categories.

23 (ii) The administrative burdens of includ-
24 ing documents in the categories.

1 (iii) The need to make expeditious admin-
2 istrative decisions regarding documents in the
3 categories.

4 (iv) The possible use of a risk assessment
5 or risk characterization in any compilation of
6 risk hazards or health or environmental effects
7 prepared by an agency and commonly made
8 available to, or used by, any Federal, State, or
9 local government agency.

10 (v) Such other factors as may be appro-
11 priate.

12 (E)(i) Not later than 18 months after the date
13 of the enactment of this Act, the President, acting
14 through the Director of the Office of Management
15 and Budget, shall determine whether any other Fed-
16 eral agencies should be considered covered Federal
17 agencies for purposes of this title. Such determina-
18 tion, with respect to a particular Federal agency,
19 shall be based on the impact of risk assessment doc-
20 uments and risk characterization documents on—

21 (I) regulatory programs administered by
22 that agency; and

23 (II) the communication of risk information
24 by that agency to the public.

1 The effective date of such a determination shall be
2 no later than 6 months after the date of the deter-
3 mination.

4 (ii) Not later than 15 months after the Presi-
5 dent, acting through the Director of the Office of
6 Management and Budget, determines pursuant to
7 clause (i) that a Federal agency should be consid-
8 ered a covered Federal agency for purposes of this
9 title, the head of that agency shall promulgate a rule
10 pursuant to subparagraph (D) to establish addi-
11 tional categories of risk assessment and risk charac-
12 terization documents described in that subpara-
13 graph.

14 (3) EXCEPTIONS.—(A) This title does not apply
15 to risk assessment or risk characterization docu-
16 ments containing risk assessments or risk character-
17 izations performed with respect to the following:

18 (i) A screening analysis, where appro-
19 priately labeled as such, including a screening
20 analysis for purposes of product regulation or
21 premanufacturing notices.

22 (ii) Any health, safety, or environmental
23 inspections.

1 (iii) The sale or lease of Federal resources
2 or regulatory activities that directly result in
3 the collection of Federal receipts.

4 (B) No analysis shall be treated as a screening
5 analysis for purposes of subparagraph (A) if the re-
6 sults of such analysis are used as the basis for im-
7 posing restrictions on substances or activities.

8 (C) The risk assessment principle set forth in
9 section 414(b)(1) need not apply to any risk assess-
10 ment or risk characterization document described in
11 clause (iii) of paragraph (2)(B). The risk character-
12 ization and communication principle set forth in sec-
13 tion 415(4) need not apply to any risk assessment
14 or risk characterization document described in
15 clause (v) or (vi) of paragraph (2)(B).

16 (c) SAVINGS PROVISIONS.—The provisions of this
17 title shall be supplemental to any other provisions of law
18 relating to risk assessments and risk characterizations, ex-
19 cept that nothing in this title shall be construed to modify
20 any statutory standard or statutory requirement designed
21 to protect health, safety, or the environment. Nothing in
22 this title shall be interpreted to preclude the consideration
23 of any data or the calculation of any estimate to more
24 fully describe risk or provide examples of scientific uncer-
25 tainty or variability. Nothing in this title shall be con-

1 strued to require the disclosure of any trade secret or
2 other confidential information.

3 **SEC. 414. PRINCIPLES FOR RISK ASSESSMENT.**

4 (a) IN GENERAL.—The head of each covered Federal
5 agency shall apply the principles set forth in subsection
6 (b) in order to assure that significant risk assessment doc-
7 uments and all of their components distinguish scientific
8 findings from other considerations and are, to the extent
9 feasible, scientifically objective, unbiased, and inclusive of
10 all relevant data and rely, to the extent available and prac-
11 ticable, on scientific findings. Discussions or explanations
12 required under this section need not be repeated in each
13 risk assessment document as long as there is a reference
14 to the relevant discussion or explanation in another agency
15 document which is available to the public.

16 (b) PRINCIPLES.—The principles to be applied are as
17 follows:

18 (1) When discussing human health risks, a sig-
19 nificant risk assessment document shall contain a
20 discussion of both relevant laboratory and relevant
21 epidemiological data of sufficient quality which finds,
22 or fails to find, a correlation between health risks
23 and a potential toxin or activity. Where conflicts
24 among such data appear to exist, or where animal
25 data is used as a basis to assess human health, the

1 significant risk assessment document shall, to the
2 extent feasible and appropriate, include discussion of
3 possible reconciliation of conflicting information, and
4 as relevant, differences in study designs, compara-
5 tive physiology, routes of exposure, bioavailability,
6 pharmacokinetics, and any other relevant factor, in-
7 cluding the sufficiency of basic data for review. The
8 discussion of possible reconciliation should indicate
9 whether there is a biological basis to assume a re-
10 sulting harm in humans. Animal data shall be re-
11 viewed with regard to its relevancy to humans.

12 (2) Where a significant risk assessment docu-
13 ment involves selection of any significant assump-
14 tion, inference, or model, the document shall, to the
15 extent feasible—

16 (A) present a representative list and expla-
17 nation of plausible and alternative assumptions,
18 inferences, or models;

19 (B) explain the basis for any choices;

20 (C) identify any policy or value judgments;

21 (D) fully describe any model used in the
22 risk assessment and make explicit the assump-
23 tions incorporated in the model; and

1 (E) indicate the extent to which any sig-
2 nificant model has been validated by, or con-
3 flicts with, empirical data.

4 **SEC. 415. PRINCIPLES FOR RISK CHARACTERIZATION AND**
5 **COMMUNICATION.**

6 Each significant risk characterization document shall
7 meet each of the following requirements:

8 (1) ESTIMATES OF RISK.—The risk character-
9 ization shall describe the populations or natural re-
10 sources which are the subject of the risk character-
11 ization. If a numerical estimate of risk is provided,
12 the agency shall, to the extent feasible, provide—

13 (A) the best estimate or estimates for the
14 specific populations or natural resources which
15 are the subject of the characterization (based
16 on the information available to the Federal
17 agency); and

18 (B) a statement of the reasonable range of
19 scientific uncertainties.

20 In addition to such best estimate or estimates, the
21 risk characterization document may present plau-
22 sible upper-bound or conservative estimates in con-
23 junction with plausible lower bounds estimates.

24 Where appropriate, the risk characterization docu-
25 ment may present, in lieu of a single best estimate,

1 multiple best estimates based on assumptions, infer-
2 ences, or models which are equally plausible, given
3 current scientific understanding. To the extent prac-
4 tical and appropriate, the document shall provide de-
5 scriptions of the distribution and probability of risk
6 estimates to reflect differences in exposure varia-
7 bility or sensitivity in populations and attendant un-
8 certainties. Sensitive subpopulations or highly ex-
9 posed subpopulations include, where relevant and
10 appropriate, children, the elderly, pregnant women,
11 and disabled persons.

12 (2) EXPOSURE SCENARIOS.—The risk charac-
13 terization document shall explain the exposure sce-
14 narios used in any risk assessment, and, to the ex-
15 tent feasible, provide a statement of the size of the
16 corresponding population at risk and the likelihood
17 of such exposure scenarios.

18 (3) COMPARISONS.—The document shall con-
19 tain a statement that places the nature and mag-
20 nitude of risks to human health, safety, or the envi-
21 ronment in context. Such statement shall, to the ex-
22 tent feasible, provide comparisons with estimates of
23 greater, lesser, and substantially equivalent risks
24 that are familiar to and routinely encountered by the
25 general public as well as other risks, and, where ap-

1 appropriate and meaningful, comparisons of those risks
2 with other similar risks regulated by the Federal
3 agency resulting from comparable activities and ex-
4 posure pathways. Such comparisons should consider
5 relevant distinctions among risks, such as the vol-
6 untary or involuntary nature of risks and the pre-
7 ventability or nonpreventability of risks.

8 (4) SUBSTITUTION RISKS.—Each significant
9 risk assessment or risk characterization document
10 shall include a statement of any significant substi-
11 tution risks to human health, where information on
12 such risks has been provided to the agency.

13 (5) SUMMARIES OF OTHER RISK ESTIMATES.—
14 If—

15 (A) a commenter provides a covered Fed-
16 eral agency with a relevant risk assessment doc-
17 ument or a risk characterization document, and
18 a summary thereof, during a public comment
19 provided by the agency for a significant risk as-
20 sessment document or a significant risk charac-
21 terization document, or, where no comment pe-
22 riod is provided but a commenter provides the
23 covered Federal agency with the relevant risk
24 assessment document or risk characterization

1 document, and a summary thereof, in a timely
2 fashion, and

3 (B) the risk assessment document or risk
4 characterization document is consistent with the
5 principles and the guidance provided under this
6 title,

7 the agency shall, to the extent feasible, present such
8 summary in connection with the presentation of the
9 agency's significant risk assessment document or
10 significant risk characterization document. Nothing
11 in this paragraph shall be construed to limit the in-
12 clusion of any comments or material supplied by any
13 person to the administrative record of any proceed-
14 ing.

15 A document may satisfy the requirements of paragraph
16 (3), (4) or (5) by reference to information or material oth-
17 erwise available to the public if the document provides a
18 brief summary of such information or material.

19 **SEC. 416. RECOMMENDATIONS OR CLASSIFICATIONS BY A**
20 **NON-UNITED STATES-BASED ENTITY.**

21 No covered Federal agency shall automatically incor-
22 porate or adopt any recommendation or classification
23 made by a non-United States-based entity concerning the
24 health effects value of a substance without an opportunity
25 for notice and comment, and any risk assessment docu-

1 ment or risk characterization document adopted by a cov-
2 ered Federal agency on the basis of such a recommenda-
3 tion or classification shall comply with the provisions of
4 this title. For the purposes of this section, the term “non-
5 United States-based entity” means—

6 (1) any foreign government and its agencies;

7 (2) the United Nations or any of its subsidiary
8 organizations;

9 (3) any other international governmental body
10 or international standards-making organization; or

11 (4) any other organization or private entity
12 without a place of business located in the United
13 States or its territories.

14 **SEC. 417. GUIDELINES AND REPORT.**

15 (a) GUIDELINES.—Within 15 months after the date
16 of enactment of this Act, the President shall issue guide-
17 lines for Federal agencies consistent with the risk assess-
18 ment and characterization principles set forth in sections
19 414 and 415 and shall provide a format for summarizing
20 risk assessment results. In addition, such guidelines shall
21 include guidance on at least the following subjects: criteria
22 for scaling animal studies to assess risks to human health;
23 use of different types of dose-response models; thresholds;
24 definitions, use, and interpretations of the maximum toler-
25 ated dose; weighting of evidence with respect to extrapo-

1 lating human health risks from sensitive species; evalua-
2 tion of benign tumors, and evaluation of different human
3 health endpoints.

4 (b) REPORT.—Within 3 years after the date of the
5 enactment of this Act, each covered Federal agency shall
6 provide a report to the Congress evaluating the categories
7 of policy and value judgments identified under subpara-
8 graph (C) of section 414(b)(2).

9 (c) PUBLIC COMMENT AND CONSULTATION.—The
10 guidelines and report under this section, shall be developed
11 after notice and opportunity for public comment, and after
12 consultation with representatives of appropriate State,
13 local, and tribal governments, and such other departments
14 and agencies, offices, organizations, or persons as may be
15 advisable.

16 (d) REVIEW.—The President shall review and, where
17 appropriate, revise the guidelines published under this sec-
18 tion at least every 4 years.

19 **SEC. 418. RESEARCH AND TRAINING IN RISK ASSESSMENT.**

20 (a) EVALUATION.—The head of each covered agency
21 shall regularly and systematically evaluate risk assessment
22 research and training needs of the agency, including,
23 where relevant and appropriate, the following:

24 (1) Research to reduce generic data gaps, to
25 address modelling needs (including improved model

1 sensitivity), and to validate default options, particu-
2 larly those common to multiple risk assessments.

3 (2) Research leading to improvement of meth-
4 ods to quantify and communicate uncertainty and
5 variability among individuals, species, populations,
6 and, in the case of ecological risk assessment, eco-
7 logical communities.

8 (3) Emerging and future areas of research, in-
9 cluding research on comparative risk analysis, expo-
10 sure to multiple chemicals and other stressors,
11 noncancer endpoints, biological markers of exposure
12 and effect, mechanisms of action in both mammalian
13 and nonmammalian species, dynamics and prob-
14 abilities of physiological and ecosystem exposures,
15 and prediction of ecosystem-level responses.

16 (4) Long-term needs to adequately train indi-
17 viduals in risk assessment and risk assessment appli-
18 cation. Evaluations under this paragraph shall in-
19 clude an estimate of the resources needed to provide
20 necessary training.

21 (b) STRATEGY AND ACTIONS TO MEET IDENTIFIED
22 NEEDS.—The head of each covered agency shall develop
23 a strategy and schedule for carrying out research and
24 training to meet the needs identified in subsection (a).

1 (c) REPORT.—Not later than 6 months after the date
2 of the enactment of this Act, the head of each covered
3 agency shall submit to the Congress a report on the eval-
4 uations conducted under subsection (a) and the strategy
5 and schedule developed under subsection (b). The head of
6 each covered agency shall report to the Congress periodi-
7 cally on the evaluations, strategy, and schedule.

8 **SEC. 419. STUDY OF COMPARATIVE RISK ANALYSIS.**

9 (a) IN GENERAL.—(1) The Director of the Office of
10 Management and Budget, in consultation with the Office
11 of Science and Technology Policy, shall conduct, or pro-
12 vide for the conduct of, a study using comparative risk
13 analysis to rank health, safety, and environmental risks
14 and to provide a common basis for evaluating strategies
15 for reducing or preventing those risks. The goal of the
16 study shall be to improve methods of comparative risk
17 analysis.

18 (2) Not later than 90 days after the date of the enact-
19 ment of this Act, the Director, in collaboration with the
20 heads of appropriate Federal agencies, shall enter into a
21 contract with the National Research Council to provide
22 technical guidance on approaches to using comparative
23 risk analysis and other considerations in setting health,
24 safety, and environmental risk reduction priorities.

1 (b) SCOPE OF STUDY.—The study shall have suffi-
2 cient scope and breadth to evaluate comparative risk anal-
3 ysis and to test approaches for improving comparative risk
4 analysis and its use in setting priorities for health, safety,
5 and environmental risk reduction. The study shall com-
6 pare and evaluate a range of diverse health, safety, and
7 environmental risks.

8 (c) STUDY PARTICIPANTS.—In conducting the study,
9 the Director shall provide for the participation of a range
10 of individuals with varying backgrounds and expertise,
11 both technical and nontechnical, comprising broad rep-
12 resentation of the public and private sectors.

13 (d) DURATION.—The study shall begin within 180
14 days after the date of the enactment of this Act and termi-
15 nate within 2 years after the date on which it began.

16 (e) RECOMMENDATIONS FOR IMPROVING COMPARA-
17 TIVE RISK ANALYSIS AND ITS USE.—Not later than 90
18 days after the termination of the study, the Director shall
19 submit to the Congress the report of the National Re-
20 search Council with recommendations regarding the use
21 of comparative risk analysis and ways to improve the use
22 of comparative risk analysis for decision-making in appro-
23 priate Federal agencies.

24 **SEC. 420. DEFINITIONS.**

25 For purposes of this title:

1 (1) RISK ASSESSMENT DOCUMENT.—The term
2 “risk assessment document” means a document con-
3 taining the explanation of how hazards associated
4 with a substance, activity, or condition have been
5 identified, quantified, and assessed. The term also
6 includes a written statement accepting the findings
7 of any such document.

8 (2) RISK CHARACTERIZATION DOCUMENT.—The
9 term “risk characterization document” means a doc-
10 ument quantifying or describing the degree of tox-
11 icity, exposure, or other risk posed by hazards asso-
12 ciated with a substance, activity, or condition to
13 which individuals, populations, or resources are ex-
14 posed. The term also includes a written statement
15 accepting the findings of any such document.

16 (3) BEST ESTIMATE.—The term “best esti-
17 mate” means a scientifically appropriate estimate
18 which is based, to the extent feasible, on one of the
19 following:

20 (A) Central estimates of risk using the
21 most plausible assumptions.

22 (B) An approach which combines multiple
23 estimates based on different scenarios and
24 weighs the probability of each scenario.

1 (C) Any other methodology designed to
2 provide the most unbiased representation of the
3 most plausible level of risk, given the current
4 scientific information available to the Federal
5 agency concerned.

6 (4) SUBSTITUTION RISK.—The term “substi-
7 tution risk” means a potential risk to human health,
8 safety, or the environment from a regulatory alter-
9 native designed to decrease other risks.

10 (5) COVERED FEDERAL AGENCY.—The term
11 “covered Federal agency” means each of the follow-
12 ing:

13 (A) The Environmental Protection Agency.

14 (B) The Occupational Safety and Health
15 Administration.

16 (C) The Department of Transportation
17 (including the National Highway Transpor-
18 tation Safety Administration).

19 (D) The Food and Drug Administration.

20 (E) The Department of Energy.

21 (F) The Department of the Interior.

22 (G) The Department of Agriculture.

23 (H) The Consumer Product Safety Com-
24 mission.

1 (I) The National Oceanic and Atmospheric
2 Administration.

3 (J) The United States Army Corps of En-
4 gineers.

5 (K) The Mine Safety and Health Adminis-
6 tration.

7 (L) The Nuclear Regulatory Commission.

8 (M) Any other Federal agency considered
9 a covered Federal agency pursuant to section
10 413(b)(2)(E).

11 (6) FEDERAL AGENCY.—The term “Federal
12 agency” means an executive department, military de-
13 partment, or independent establishment as defined
14 in part I of title 5 of the United States Code, except
15 that such term also includes the Office of Tech-
16 nology Assessment.

17 (7) DOCUMENT.—The term “document” in-
18 cludes material stored in electronic or digital form.

19 **TITLE II—ANALYSIS OF RISK RE-**
20 **DUCTION BENEFITS AND**
21 **COSTS**

22 **SEC. 421. ANALYSIS OF RISK REDUCTION BENEFITS AND**
23 **COSTS.**

24 (a) IN GENERAL.—The President shall require each
25 Federal agency to prepare the following for each major

1 rule within a program designed to protect human health,
2 safety, or the environment that is proposed or promul-
3 gated by the agency after the date of enactment of this
4 division:

5 (1) An identification of reasonable alternative
6 strategies, including strategies that—

7 (A) require no government action;

8 (B) will accommodate differences among
9 geographic regions and among persons with dif-
10 ferent levels of resources with which to comply;
11 and

12 (C) employ performance or other market-
13 based mechanisms that permit the greatest
14 flexibility in achieving the identified benefits of
15 the rule.

16 The agency shall consider reasonable alternative
17 strategies proposed during the comment period.

18 (2) An analysis of the incremental costs and in-
19 cremental risk reduction or other benefits associated
20 with each alternative strategy identified or consid-
21 ered by the agency. Costs and benefits shall be
22 quantified to the extent feasible and appropriate and
23 may otherwise be qualitatively described.

24 (3) A statement that places in context the na-
25 ture and magnitude of the risks to be addressed and

1 the residual risks likely to remain for each alter-
2 native strategy identified or considered by the agen-
3 cy. Such statement shall, to the extent feasible, pro-
4 vide comparisons with estimates of greater, lesser,
5 and substantially equivalent risks that are familiar
6 to and routinely encountered by the general public
7 as well as other risks, and, where appropriate and
8 meaningful, comparisons of those risks with other
9 similar risks regulated by the Federal agency result-
10 ing from comparable activities and exposure path-
11 ways. Such comparisons should consider relevant
12 distinctions among risks, such as the voluntary or
13 involuntary nature of risks and the preventability or
14 nonpreventability of risks.

15 (4) For each final rule, an analysis of whether
16 the identified benefits of the rule are likely to exceed
17 the identified costs of the rule.

18 (5) An analysis of the effect of the rule—

19 (A) on small businesses with fewer than
20 100 employees;

21 (B) on net employment; and

22 (C) to the extent practicable, on the cumu-
23 lative financial burden of compliance with the
24 rule and other existing regulations on persons
25 producing products.

1 (b) PUBLICATION.—For each major rule referred to
2 in subsection (a) each Federal agency shall publish in a
3 clear and concise manner in the Federal Register along
4 with the proposed and final regulation, or otherwise make
5 publicly available, the information required to be prepared
6 under subsection (a).

7 **SEC. 422. DECISION CRITERIA.**

8 (a) IN GENERAL.—No final rule subject to the provi-
9 sions of this title shall be promulgated unless the agency
10 certifies the following:

11 (1) That the analyses under section 421 are
12 based on objective and unbiased scientific and eco-
13 nomic evaluations of all significant and relevant in-
14 formation and risk assessments provided to the
15 agency by interested parties relating to the costs,
16 risks, and risk reduction and other benefits ad-
17 dressed by the rule.

18 (2) That the incremental risk reduction or other
19 benefits of any strategy chosen will be likely to jus-
20 tify, and be reasonably related to, the incremental
21 costs incurred by State, local, and tribal govern-
22 ments, the Federal Government, and other public
23 and private entities.

24 (3) That other alternative strategies identified
25 or considered by the agency were found either (A)

1 to be less cost-effective at achieving a substantially
2 equivalent reduction in risk, or (B) to provide less
3 flexibility to State, local, or tribal governments or
4 regulated entities in achieving the otherwise applica-
5 ble objectives of the regulation, along with a brief
6 explanation of why alternative strategies that were
7 identified or considered by the agency were found to
8 be less cost-effective or less flexible.

9 (b) EFFECT OF DECISION CRITERIA.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of Federal law, the decision criteria of sub-
12 section (a) shall supplement and, to the extent there
13 is a conflict, supersede the decision criteria for rule-
14 making otherwise applicable under the statute pur-
15 suant to which the rule is promulgated.

16 (2) SUBSTANTIAL EVIDENCE.—Notwithstanding
17 any other provision of Federal law, no major rule
18 shall be promulgated by any Federal agency pertain-
19 ing to the protection of health, safety, or the envi-
20 ronment unless the requirements of section 421 and
21 subsection (a) are met and the certifications re-
22 quired therein are supported by substantial evidence
23 of the rulemaking record.

1 (c) PUBLICATION.—The agency shall publish in the
2 Federal Register, along with the final regulation, the cer-
3 tifications required by subsection (a).

4 (d) NOTICE.—Where the agency finds a conflict be-
5 tween the decision criteria of this section and the decision
6 criteria of an otherwise applicable statute, the agency shall
7 so notify the Congress in writing.

8 **SEC. 423. OFFICE OF MANAGEMENT AND BUDGET GUID-**
9 **ANCE.**

10 The Office of Management and Budget shall issue
11 guidance consistent with this title—

12 (1) to assist the agencies, the public, and the
13 regulated community in the implementation of this
14 title, including any new requirements or procedures
15 needed to supplement prior agency practice; and

16 (2) governing the development and preparation
17 of analyses of risk reduction benefits and costs.

18 **SEC. 424. ENVIRONMENTAL CLEAN-UP.**

19 For purposes of this title, any determination by a
20 Federal agency to approve or reject any proposed or final
21 environmental clean-up plan for a facility the costs of
22 which are likely to exceed \$5,000,000 shall be treated as
23 major rule subject to the provisions of this title (other
24 than the provisions of section 421(a)(5)). As used in this
25 section, the term “environmental clean-up” means a cor-

1 rective action under the Solid Waste Disposal Act, a reme-
2 dial action under the Comprehensive Environmental Re-
3 sponse, Compensation, and Liability Act of 1980, and any
4 other environmental restoration and waste management
5 carried out by or on behalf of a Federal agency with re-
6 spect to any substance other than municipal waste.

7 **TITLE III—PEER REVIEW**

8 **SEC. 431. PEER REVIEW PROGRAM.**

9 (a) ESTABLISHMENT.—For regulatory programs de-
10 signed to protect human health, safety, or the environ-
11 ment, the head of each Federal agency shall develop a sys-
12 tematic program for independent and external peer review
13 required by subsection (b). Such program shall be applica-
14 ble across the agency and—

15 (1) shall provide for the creation of peer review
16 panels consisting of experts and shall be broadly rep-
17 resentative and balanced and to the extent relevant
18 and appropriate, may include representatives of
19 State, local, and tribal governments, small busi-
20 nesses, other representatives of industry, univer-
21 sities, agriculture, labor, consumers, conservation or-
22 ganizations, or other public interest groups and or-
23 ganizations;

24 (2) may provide for differing levels of peer re-
25 view and differing numbers of experts on peer review

1 panels, depending on the significance or the com-
2 plexity of the problems or the need for expeditious-
3 ness;

4 (3) shall not exclude peer reviewers with sub-
5 stantial and relevant expertise merely because they
6 represent entities that may have a potential interest
7 in the outcome, provided that interest is fully dis-
8 closed to the agency and in the case of a regulatory
9 decision affecting a single entity, no peer reviewer
10 representing such entity may be included on the
11 panel;

12 (4) may provide specific and reasonable dead-
13 lines for peer review panels to submit reports under
14 subsection (c); and

15 (5) shall provide adequate protections for con-
16 fidential business information and trade secrets, in-
17 cluding requiring peer reviewers to enter into con-
18 fidentiality agreements.

19 (b) REQUIREMENT FOR PEER REVIEW.—In connec-
20 tion with any rule that is likely to result in an annual
21 increase in costs of \$100,000,000 or more (other than any
22 rule or other action taken by an agency to authorize or
23 approve any individual substance or product), each Fed-
24 eral agency shall provide for peer review in accordance
25 with this section of any risk assessment or cost analysis

1 which forms the basis for such rule or of any analysis
2 under section 431(a). In addition, the Director of the Of-
3 fice of Management and Budget may order that peer re-
4 view be provided for any major risk assessment or cost
5 assessment that is likely to have a significant impact on
6 public policy decisions.

7 (c) CONTENTS.—Each peer review under this section
8 shall include a report to the Federal agency concerned
9 with respect to the scientific and economic merit of data
10 and methods used for the assessments and analyses.

11 (d) RESPONSE TO PEER REVIEW.—The head of the
12 Federal agency shall provide a written response to all sig-
13 nificant peer review comments.

14 (e) AVAILABILITY TO PUBLIC.—All peer review com-
15 ments or conclusions and the agency's responses shall be
16 made available to the public and shall be made part of
17 the administrative record.

18 (f) PREVIOUSLY REVIEWED DATA AND ANALYSIS.—
19 No peer review shall be required under this section for
20 any data or method which has been previously subjected
21 to peer review or for any component of any analysis or
22 assessment previously subjected to peer review.

23 (g) NATIONAL PANELS.—The President shall appoint
24 National Peer Review Panels to annually review the risk
25 assessment and cost assessment practices of each Federal

1 agency for programs designed to protect human health,
2 safety, or the environment. The Panel shall submit a re-
3 port to the Congress no less frequently than annually con-
4 taining the results of such review.

5 **TITLE IV—JUDICIAL REVIEW**

6 **SEC. 441. JUDICIAL REVIEW.**

7 Compliance or noncompliance by a Federal agency
8 with the requirements of this Act shall be reviewable pur-
9 suant to the statute granting the agency authority to act
10 or, as applicable, that statute and the Administrative Pro-
11 cedure Act. The court with jurisdiction to review final
12 agency action under the statute granting the agency au-
13 thority to act shall have jurisdiction to review, at the same
14 time, the agency's compliance with the requirements of
15 this Act. When a significant risk assessment document or
16 risk characterization document subject to title I is part
17 of the administrative record in a final agency action, in
18 addition to any other matters that the court may consider
19 in deciding whether the agency's action was lawful, the
20 court shall consider the agency action unlawful if such sig-
21 nificant risk assessment document or significant risk char-
22 acterization document does not substantially comply with
23 the requirements of sections 444 and 445.

TITLE V—PLAN**2 SEC. 451. PLAN FOR ASSESSING NEW INFORMATION.**

3 (a) PLAN.—Within 18 months after the date of en-
4 actment of this Act, each covered Federal agency (as de-
5 fined in title I) shall publish a plan to review and, where
6 appropriate revise any significant risk assessment docu-
7 ment or significant risk characterization document pub-
8 lished prior to the expiration of such 18-month period if,
9 based on information available at the time of such review,
10 the agency head determines that the application of the
11 principles set forth in sections 414 and 415 would be likely
12 to significantly alter the results of the prior risk assess-
13 ment or risk characterization. The plan shall provide pro-
14 cedures for receiving and considering new information and
15 risk assessments from the public. The plan may set prior-
16 ities and procedures for review and, where appropriate, re-
17 vision of such risk assessment documents and risk charac-
18 terization documents and of health or environmental ef-
19 fects values. The plan may also set priorities and proce-
20 dures for review, and, where appropriate, revision or re-
21 peal of major rules promulgated prior to the expiration
22 of such period. Such priorities and procedures shall be
23 based on the potential to more efficiently focus national
24 economic resources within Federal regulatory programs
25 designed to protect human health, safety, or the environ-

1 ment on the most important priorities and on such other
2 factors as such Federal agency considers appropriate.

3 (b) PUBLIC COMMENT AND CONSULTATION.—The
4 plan under this section, shall be developed after notice and
5 opportunity for public comment, and after consultation
6 with representatives of appropriate State, local, and tribal
7 governments, and such other departments and agencies,
8 offices, organizations, or persons as may be advisable.

9 **TITLE VI—PRIORITIES**

10 **SEC. 461. PRIORITIES.**

11 (a) IDENTIFICATION OF OPPORTUNITIES.—In order
12 to assist in the public policy and regulation of risks to
13 public health, the President shall identify opportunities to
14 reflect priorities within existing Federal regulatory pro-
15 grams designed to protect human health in a cost-effective
16 and cost-reasonable manner. The President shall identify
17 each of the following:

18 (1) The likelihood and severity of public health
19 risks addressed by current Federal programs.

20 (2) The number of individuals affected.

21 (3) The incremental costs and risk reduction
22 benefits associated with regulatory or other strate-
23 gies.

24 (4) The cost-effectiveness of regulatory or other
25 strategies to reduce risks to public health.

1 (5) Intergovernmental relationships among Fed-
2 eral, State, and local governments among programs
3 designed to protect public health.

4 (6) Statutory, regulatory, or administrative ob-
5 stacles to allocating national economic resources
6 based on the most cost-effective, cost-reasonable pri-
7 orities considering Federal, State, and local pro-
8 grams.

9 (b) STATE, LOCAL, AND TRIBAL PRIORITIES.—In
10 identifying national priorities, the President shall consider
11 priorities developed and submitted by State, local, and
12 tribal governments.

13 (c) BIENNIAL REPORTS.—The President shall issue
14 biennial reports to Congress, after notice and opportunity
15 for public comment, to recommend priorities for modifica-
16 tions to, elimination of, or strategies for existing Federal
17 regulatory programs designed to protect public health.
18 Within 6 months after the issuance of the report, the
19 President shall notify the Congress in writing of the rec-
20 ommendations which can be implemented without further
21 legislative changes and the agency shall consider the prior-
22 ities set forth in the report and priorities developed and
23 submitted by State, local, and tribal governments when

1 preparing a budget or strategic plan for any such regu-
2 latory program.

Passed the House of Representatives March 3,
1995.

Attest:

ROBIN H. CARLE,
Clerk.

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HR 9 RFS—3

HR 9 RFS—4

HR 9 RFS—5

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