

Mr. TAUZIN. Mr. Chairman, is it the understanding of the gentleman, as we have discussed privately, that this amendment defines "fair market value" without consideration of the agency action. The agency action then occurs, and the next question is fair market value, after the agency action diminishes, if it does, the value of the property?

Mr. TAYLOR of Mississippi. Mr. Chairman, to clarify, the key words "at the time the agency action occurs" are included. It was in both of those. It is included in this.

The CHAIRMAN. If no Member is seeking time in opposition, all time has expired.

The question is on the amendment offered by the gentleman from Mississippi [Mr. TAYLOR] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

So the amendment to the amendment in the nature of a substitute, as amended, was agreed to.

AMENDMENT OFFERED BY MR. TRAFICANT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. TRAFICANT. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT to the amendment in the nature of a substitute offered by the gentleman from Florida, Mr. CANADY, as amended: After Sec. 7, insert the following:

#### SEC. 7. DUTY OF NOTICE TO OWNERS.

Whenever an agency takes an agency action limiting the use of private property, the agency shall give appropriate notice to the owners of that property directly affected explaining their rights under this Act and the procedures for obtaining any compensation that may be due to them under this Act.

Redesignate succeeding sections accordingly.

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. The gentleman from Ohio [Mr. TRAFICANT] will be recognized for 2½ minutes and a Member in opposition will be recognized for 2½ minutes.

The Chair recognizes the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Chairman, this amendment ensures that property owners will in fact be notified and given notice, and their rights will be explained, and the procedures for obtaining any compensation available under this act will be made known to them.

The big corporations and the big guys have attorneys that handle this. The little guys many times that are hurt, and the families that are hurt due to these limitations, may not necessarily know their rights under this bill.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, let me first commend the gentleman on an excellent addition to the bill.

Secondly, I want to also commend him for the fact that he was the original author for the original 10- to 20-percent change we just adopted. I thank him for contributing this change to the bill.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, the minority accepts the amendment.

The CHAIRMAN. If no Member rises in opposition, all time has expired.

The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

Mr. CANADY of Florida. Mr. Chairman, I move that the Committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from Florida [Mr. CANADY].

The motion was agreed to.

Accordingly the Committee rose, and the Speaker pro tempore (Mr. DOOLITTLE) having assumed the chair, Mr. SHUSTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, had come to no resolution thereon.

#### AUTHORIZING EXTENSION OF TIME FOR DEBATE ON AMENDMENTS TO H.R. 925, PRIVATE PROPERTY PROTECTION ACT OF 1995

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that consideration of the bill, H.R. 925, in the Committee of the Whole be extended by 10 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

#### PRIVATE PROPERTY PROTECTION ACT OF 1995

The SPEAKER pro tempore (Mr. DOOLITTLE). Pursuant to House Resolution 101 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 925.

□ 1226

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, with Mr. SHUSTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended, had been disposed of.

Pursuant to the order of the House, further consideration of the bill for amendment will end at 12:54.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA AS AMENDED

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina to the amendment in the nature of a substitute offered by the gentleman from Florida, Mr. CANADY, as amended: Strike section 6(f).

The CHAIRMAN. The gentleman from North Carolina [Mr. WATT] is recognized for 5 minutes.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the effect of this amendment will become apparent very quickly. If we read the provisions of the fifth amendment, my colleagues here have spent a lot of time and rhetoric talking about the fifth amendment. The provision we are talking about in this particular bill says "nor shall private property be taken for public use without just compensation." They have told us throughout this debate that the purpose of this bill is to assure that people who are deprived of their property receive just compensation. They have told us that a reduction in value of people's property is a taking, and therefore, they should be compensated for it under the fifth amendment.

Mr. Chairman, I want to talk about this for a little bit, and find out from my colleagues whether we believe this right is a right that is a first-class right, or whether it is a right which is a second-class right that we have under the Constitution.

Mr. Chairman, we started out with a bill that said "If you have a diminution in the value of your property, a reduction in the value of your property as a result of any agency action, you would be compensated." We then spent hours debating whether to limit that bill to compensation for just two kinds of agency action, that agency action being for the Endangered Species Act

and for the Clean Water Act, disregarding all of the other agency actions that might have the impact of reducing the value of an individual's property.

□ 1230

We then spent hours more debating the issue of whether the reduction in value that would be required to trigger this amendment, or this bill, would be 10 percent reduction or whether it would be 30 percent reduction, or where we finally got to under the last amendment, the 20 percent reduction.

I am not interested in talking about a constitutional right that triggers only if it is 70 percent. We do not have any constitutional rights in our country that trigger at 70 percent, or 80 percent, or even 90 percent. We cannot put a value on our constitutional rights.

Now we come to the amendment that I have offered, and I want to direct my colleagues' attention to the bill because in the first section of the bill, it says the Federal Government shall compensate on owner of property whose value has been diminished.

Then we read on over to the fine print of the bill and we got to the source of payment and it says, "Any payment made under this section to an owner and any judgment obtained by an owner in a civil action shall come out of the agency's budget" and the agency, if it gets a judgment against it, must come back and seek appropriations.

My question to my colleagues is, is this a constitutional right, or is it a second-class right?

The gentleman from Louisiana [Mr. TAUZIN] has been very articulate about the rights that we are talking about here. They are all constitutional rights. Do they apply only when the Clean Air Act steps on them or only when the Clean Water Act steps on them, or only when the Endangered Species Act?

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. Or is this a real constitutional right that we are willing to pay for as we pay for all other constitutional rights in this country?

So when our constituents come and say, "We can get recovery if our values are diminished," will we scratch our heads and say, "Oh, well, if we appropriate the money, you will get a recovery"?

If someone gets a judgment against the United States of America and the agency does not have the money, will we say to them, "Oh, no, the agency is bankrupt now. You must wait until next year's appropriation"? That is what the bill says. "It shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year."

I have never known anybody who got a judgment against the United States who we can put off until the next fiscal year and tell we are not going to pay that judgment until a year from now, or 2 years from now, or we may not pay it at all if they do not appropriate the funds.

The question I ask my colleagues in this amendment is to abolish this provision that says you can get your money only from an agency. There is no agency. This is the U.S. Government.

I call on my colleagues to make this a first-class constitutional right, not a second-class constitutional right.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, some things change in time and some things just do not change in time. I want to bring that into focus in my comments. Some things that do not change in time is the nature of government, the nature of a government that when it grows too large, then it begins to encroach on our constitutional rights and our ability to make a living off the land.

I want to share with Members a little bit of history, and, that is, that about 125 years ago, the U.S. Army sent General Custer into the West to conquer the Sioux Nation. In doing so, what they did not realize is that the Sioux were very keen people in regard to the promises that the American Government had made them, promises that were broken, promises that were broken when the American Army went in and they wounded and sometimes killed women and children. It was a broken promise between the American Government and the Sioux Nation. And so the American Government sent General Custer out to the West to conquer the Sioux Nation, not realizing that the Sioux were people who did not take very kindly to broken promises.

Of course, we know the history of what happened at Wounded Knee, and, that is, that when General Custer went in, a terrible battle ensued and there was a great slaughter and a great setback of the American Army at that time. But the Army retaliated and in conquering the West, went ahead and sent other troops out and they chased the Sioux Nation into Canada and finally captured and conquered them.

Sitting Bull, a great medicine man from the Sioux Nation, was asked to stand in this gallery, in this place, nearly 125 years ago, and I am standing in the same place that Sitting Bull stood when he addressed a joint session of the House and the Senate.

Yes, ladies and gentlemen, some things change but some things never do, because this is what Sitting Bull said when he stood exactly in this place. He said, "The government has made us many promises, more than I can remember, and they never kept but one. They promised to take our land and they took it."

As a lady from Idaho, I can tell you I live with that every day, because

more and more of our land is being taken. I appreciate the bill, H.R. 925. I think it is historic. It is part of living up to the Contract With America and beginning to reclaim our land.

Mr. SCOTT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I accept the idea that society ought to pay for societal policies. When the public wants a highway, it wants to enjoy the benefits of the highway, those who have to suffer by losing their land are compensated so that everyone else can enjoy the benefits of the public policy.

If this bill is going to work, we have to acknowledge that no agency has in it the money for these reimbursements. When we again fund money for highway, we not only have money for the road itself but also in the appropriation enough money to fulfill expenses and condemnation as part of that budget.

If this is going to be implemented, we have to have a budget from which these payments can be made. The Watt amendment, Mr. Chairman, provides that resource.

Mr. Chairman, I would hope that this amendment would pass. Otherwise, the bill just cannot operate.

I would ask, Mr. Chairman, the gentleman from North Carolina to respond, if he would, to the question of how the judgments would be enforced if his amendment is not passed.

Mr. WATT of North Carolina. If the gentleman would yield, as I understand it, in every other situation where a judgment is obtained against Government agencies, it is the Federal Government that stands behind that judgment and the full faith and credit of the United States is at risk any time a judgment is entered.

If this amendment is to have any meaningful effect, if this bill is to have any meaningful effect, and people who we have not guaranteed if this bill passes that they will be compensated will be subjected to the whims of the appropriation process or nonappropriation. It is like we have got these naughty Federal Government agencies over there that are somehow separate and part from the Federal Government, itself, and the laws that the Congress passes who are out there acting as renegades and we are looking for somebody to blame, and trying to tell our constituents that somehow we are compensating them and protecting them against these naughty Federal Government agencies and hiding our head when really the agencies and the rules that they are applying and promulgating that result in these reductions in value are pursuant to the laws we passed here in this body and this is all a charade designed to make it appear that it is not us that is causing the problem by passing the Endangered Species Act or the Clean Water Act, but it is some Federal Government agency over there that is separate from us over here in Congress and they

ought to go over there and get their judgment satisfied.

What I want to make sure the public understands is that there is no Federal Government agency, and Congress, that this is one Federal Government. If the Federal Government agency does something wrong, it is being done pursuant to a law that we have passed and we cannot just pass the buck over there and leave the public out there saying they have a valuable constitutional right, yet they have no assured means of collecting the judgment that is at play.

Mr. SCOTT. Mr. Chairman, I finally say that as we pass future laws, we could include in those appropriations the money for reimbursement under this law as well as for the promulgation of the policy just as we do with highways. I would hope that his amendment would pass so that we could implement the law as soon as possible and not have to get into the situations as the gentleman from North Carolina has indicated.

I yield to the gentleman from North Carolina [Mr. ROSE].

Mr. ROSE. I thank the gentleman for yielding.

I would like to say about my colleague from North Carolina's amendment, that without this amendment, this is an unworkable piece of legislation, assuming that you feel that it needs to be enacted. I intend to vote for the bill, but it will be a much better bill with your amendment in it. Without it, it is rather mean-spirited as you pointed out. With it in it, it is extremely focusing of the public's mind and the Government's mind that the whole Government, not just some particular agency, has got to pay for it. I encourage my colleagues to support the Watt amendment. It perfects this bill.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have a different interpretation than my friend from North Carolina because what this amendment does is gut this legislation. It guts the private property rights of property owners which we are trying to protect because it takes out what is the real stick in this legislation. The real stick is if the Government comes in and takes your property because of an endangered species designation or a wetland declaration and you lose the beneficial use of your property as guaranteed by the Constitution, you are not going to be compensated by the Government.

It is my hope that you do not see this used as an entitlement. This is intended to be used when property is lost, when the Government comes in and says there really is a need for this particular piece of property as a wetland, or there really is a particular need for this property because of an endangered species.

When we passed the Endangered Species Act and when we passed Clean

Water, it was never envisioned by this Congress that the basic water rights in the State of Texas would be abrogated because of a fountain darter.

□ 1245

It was never intended by this body when those two acts were passed that farmers and ranchers in the Texas hill country would lose the ability to control cedar on their property because of two birds. It was never intended when those acts were passed that a Golden Eagle's nest, and by the way, there never has been proof that there really was an eagle's nest in the example I cited, it was never intended that would stop the construction of a badly needed road in my congressional district.

Another particular story, Marge and Roger Krueger spent \$53,000 of their savings on a lot for their dream house in the Texas hill country. They and other owners have been barred from building their dream houses because the Golden Cheek Warbler was found in adjacent canyons. Surely that was not the intent when the Endangered Species Act was passed and I think our forefathers had great foresight in understanding that through the actions of Government, property could be taken, and that is why they made provision in the Constitution for payment when in fact those takings have taken place.

So again I say to my friend from North Carolina I appreciate the sincerity with which he comes to the floor, but I have to say in all candor to my friend, this is a gutting amendment if you support the basic and fundamental private property rights guaranteed under the Constitution.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I am glad to yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I am concerned about Marge and Roger Krueger. The question I would ask the gentleman is if whatever agency that caused that adverse impact to Marge's land runs out of money, and they have gotten a judgment against the United States or against that agency, and the agency then comes back a year later and asks for an appropriation, what kind of protection has the gentleman provided in this bill for Marge Krueger?

Mr. FIELDS of Texas. First you have the civil court, but then second let me say what this is designed to do.

Mr. WATT of North Carolina. They have the judgment already.

Mr. FIELDS of Texas. Reclaiming my time, what this stick of compensation is designed to do is to force the Federal Government in the first instance to make the right decision, to protect in this particular instance the warbler and the vireo. Other things could be done. You have State properties in this particular area where there was a concerted effort to save those birds. The fountain darter, there are things that could be done to propagate and actually increase the population and actu-

ally introduce this to the ecosystem of Texas. In regard to the eagle's nest I talked about just a minute ago, through cooperative effort people would bend over backwards in my area to protect if in fact that was an eagle's nest. But what has happened is we have lost the cooperation and the consultation with and of that local private landowner and that is what this legislation is designed to protect. This amendment guts it.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I am glad to yield to my friend from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding to make the point that it is the very language the gentleman's amendment would delete from the bill that provides the answer. It says that notwithstanding any other provision of law, payment must come from that agency. Therefore, the citizen can compel mandamus against that agency for payment.

Mr. CANADY of Florida. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just wanted to point out with respect to this amendment that it would eliminate the essential feature of this bill which provides an incentive for agencies to behave responsibly, for agencies to consider the real cost of their action, to take into account when they are imposing burdens on landowners, and I think for that reason this amendment would be counterproductive.

I believe that in many of the instances where we are currently seeing landowners burdened, we are seeing agencies that are overreaching, they are going beyond the real intent of the law, and agencies who are doing that can exercise their discretion not to do that. And I believe that would be the consequence, the major consequence of passing this law.

I want to also take this opportunity to thank all of those who have assisted and helped in the movement of this legislation. I want to particularly thank the gentleman from Texas [Mr. SMITH], the gentleman from California [Mr. POMBO], and the gentleman from Alaska [Mr. YOUNG], for their hard work in putting together the compromise, the substitute amendment which I have offered. Without their hard work on this issue we would not have been able to move this bill to the floor and I am very grateful to them for this.

I also want to thank particularly the gentleman from Idaho [Mr. CRAPO] for his hard work on this issue and his active participation in the floor debate. His very able participation here has been very important to the success of this bill.

Finally, it is very important also to thank the gentleman from Louisiana [Mr. TAUZIN] and the Members on the Democratic side who are participating in this effort. It is true that the gentleman from Louisiana [Mr. TAUZIN]

has worked on this issue for years. I am very pleased that we are now seeing this issue brought to the floor, and I believe we are going to see this issue move forward to the Senate, and I am hopeful that we are going to see this issue passed into law later this year. So I am very grateful to them.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. Mr. Chairman, I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think we all would like to thank the gentleman for the wonderful job he has done in managing this bill on the floor, and I appreciate all of the hard work you have put in in battling over the last 12 long hours.

Mr. Chairman, I would like to rise in opposition to this amendment and to bring it into perspective in that if you take the incentive away, the hammer away from the agencies, you run into the situation that is the result of this bill coming to the floor, where an agency like the Fish and Wildlife Service can list the fairy shrimp and declare most of California habitat and control most of California without any cost to the agency, without any fear that anything is going to happen to them. They have run amok. It is the bureaucracy out of control, it is the bureaucracy and the regulators with a free hand running all over the Western United States and the Southern United States, without anyone having the ability to come down on them, unless of course you happen to have 10 years and a half million dollars to spend on attorneys' fees.

That is what we are trying to correct in this bill. And I know what the gentleman's intentions are, but I feel that if this amendment were passed, it would completely damage the bill, so that we would not be able to accomplish what is truly needed, and that is to restore some responsibility to the agencies, and to put that hammer in the hands and I guess to restore the power to the people who are out there having to live under this.

I think this is an extremely damaging amendment, and I would urge all of my colleagues to vote "no" on it.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I will just take a minute and thank the gentleman for yielding. Let me concur in the last remarks. I do not want to use words like gutting and all of that, but this is extremely damaging. It takes from the bill the method of payment.

Let me say to my friend who offered the amendment, this is a first class right under the Constitution. Any citizen under this bill that wants to exercise that right can do so at 1 percent, 2 percent, 10 percent, 20 percent. This bill simply creates a new remedy for citizens at home under the criteria set

by this bill to get justice at home. For it to work the agency has to want to cooperate, and if you do not make the agency responsible for damage it does, and do not make the agency responsible for payment, you will never get cooperation. Just day before yesterday Mr. Babbitt just announced the first of its kind safe harbor provision for the red cockaded woodpecker offering to cooperate with a landowner instead of taking their land.

This is what we need.

The CHAIRMAN. All time has expired.

Under the previous order of the House of today, the question is on the amendment offered by the gentleman from North Carolina [Mr. WATT] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

#### RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Pursuant to clause 2 of rule XXIII, the Chair may reduce to not less than 5 minutes the time for any recorded vote that may be on another of the pending amendments without intervening business or debate.

The vote was taken by electronic device, and there were—ayes 127, noes 299, not voting 8, as follows:

[Roll No. 196]

#### AYES—127

Abercrombie	Green	Pastor
Ackerman	Gutierrez	Payne (NJ)
Becerra	Hastings (FL)	Pelosi
Beilenson	Hefner	Rahall
Bentsen	Hilliard	Reed
Berman	Hinchey	Reynolds
Bishop	Hoyer	Richardson
Bonior	Jackson-Lee	Rivers
Borski	Jefferson	Rose
Boucher	Johnson, E. B.	Roybal-Allard
Brown (FL)	Johnston	Rush
Cardin	Kaptur	Sabo
Clay	Kennedy (MA)	Sanders
Clayton	Kennedy (RI)	Sawyer
Clement	Kennelly	Schroeder
Clyburn	Kildee	Schumer
Coleman	LaFalce	Scott
Collins (MI)	Lantos	Serrano
Conyers	Lewis (GA)	Skaggs
Coyne	Lofgren	Slaughter
DeFazio	Lowey	Stark
DeLauro	Maloney	Stokes
Dellums	Manton	Studds
Deutsch	Markey	Thompson
Dingell	Martinez	Torres
Dixon	Matsui	Torrice
Doggett	McCarthy	Towns
Engel	McDermott	Tucker
Evans	McKinney	Velazquez
Farr	Meehan	Vento
Fattah	Meek	Visclosky
Fazio	Menendez	Ward
Fields (LA)	Mfume	Waters
Filner	Miller (CA)	Watt (NC)
Flake	Mineta	Waxman
Foglietta	Mink	Williams
Ford	Nadler	Wise
Frank (MA)	Neal	Woolsey
Frost	Oberstar	Wyden
Furse	Obey	Wynn
Gejdenson	Oliver	Yates
Gephardt	Owens	
Gibbons	Pallone	

#### NOES—299

Allard	Archer	Bachus
Andrews	Armey	Baessler

Baker (CA)	Gillmor	Neumann
Baker (LA)	Gilman	Ney
Baldacci	Goodlatte	Norwood
Ballenger	Goodling	Nussle
Barcia	Gordon	Ortiz
Barr	Goss	Orton
Barrett (NE)	Graham	Oxley
Barrett (WI)	Greenwood	Packard
Bartlett	Gunderson	Parker
Barton	Gutknecht	Paxon
Bass	Hall (OH)	Payne (VA)
Bateman	Hall (TX)	Peterson (FL)
Bereuter	Hamilton	Peterson (MN)
Bevill	Hancock	Petri
Bilbray	Hansen	Pickett
Bilirakis	Harman	Pombo
Bliley	Hastert	Pomeroy
Blute	Hastings (WA)	Porter
Boehlert	Hayes	Portman
Boehner	Hayworth	Poshard
Bonilla	Hefley	Pryce
Bono	Heineman	Quillen
Brewster	Herger	Quinn
Browder	Hilleary	Radanovich
Brown (OH)	Hobson	Ramstad
Brownback	Hoekstra	Regula
Bryant (TN)	Hoke	Riggs
Bunn	Holden	Roberts
Bunning	Horn	Roemer
Burr	Hostettler	Rogers
Burton	Houghton	Rohrabacher
Buyer	Hunter	Ros-Lehtinen
Callahan	Hutchinson	Roth
Calvert	Hyde	Roukema
Camp	Inglis	Royce
Canady	Istook	Salmon
Castle	Jacobs	Sanford
Chabot	Johnson (CT)	Saxton
Chambliss	Johnson (SD)	Scarborough
Chenoweth	Johnson, Sam	Schaefer
Christensen	Jones	Schiff
Chrysler	Kanjorski	Seastrand
Clinger	Kasich	Sensenbrenner
Coble	Kelly	Shadegg
Coburn	Kim	Shaw
Collins (GA)	King	Shays
Combest	Kingston	Shuster
Condit	Klecza	Sisisky
Cooley	Klink	Skeen
Costello	Klug	Skelton
Cox	Knollenberg	Smith (MI)
Cramer	Kolbe	Smith (NJ)
Crane	LaHood	Smith (TX)
Crapo	Largent	Smith (WA)
Creameans	Latham	Solomon
Cubin	LaTourette	Souder
Cunningham	Laughlin	Spence
Danner	Lazio	Spratt
Davis	Leach	Stearns
de la Garza	Levin	Stenholm
Deal	Lewis (CA)	Stockman
DeLay	Lewis (KY)	Stump
Diaz-Balart	Lightfoot	Stupak
Dickey	Lincoln	Talent
Dicks	Linder	Tanner
Dooley	Lipinski	Tate
Doolittle	Livingston	Tauzin
Doyle	LoBiondo	Taylor (MS)
Dreier	Longley	Taylor (NC)
Duncan	Lucas	Tejeda
Dunn	Luther	Thomas
Durbin	Manzullo	Thornberry
Edwards	Martini	Thornton
Ehlers	Mascara	Thurman
Ehrlich	McCollum	Tiahrt
Emerson	McCrery	Torkildsen
English	McDade	Traficant
Ensign	McHale	Upton
Eshoo	McHugh	Volkmer
Everett	McInnis	Vucanovich
Ewing	McIntosh	Waldholtz
Fawell	McKeon	Walker
Fields (TX)	McNulty	Walsh
Flanagan	Metcalf	Wamp
Foley	Meyers	Watts (OK)
Forbes	Mica	Weldon (FL)
Fowler	Miller (FL)	Weldon (PA)
Fox	Minge	Weller
Franks (CT)	Molinari	White
Franks (NJ)	Mollohan	Whitfield
Frelinghuysen	Montgomery	Wicker
Frisa	Moorhead	Wilson
Funderburk	Moran	Wolf
Gallegly	Morella	Young (AK)
Ganske	Murtha	Young (FL)
Gekas	Myers	Zeliff
Geren	Myrick	Zimmer
Gilchrist	Nethercutt	

## NOT VOTING—8

Brown (CA)	Collins (IL)	Moakley
Bryant (TX)	Dornan	Rangel
Chapman	Gonzalez	

□ 1312

The Clerk announced the following pair:

On this vote:

Mr. Rangel for, with Mr. Dornan against.

Mrs. THURMAN, Mr. LEVIN, and Mr. MCHALE changed their vote from "aye" to "no."

Mr. FAZIO, Mr. OBEY, and Mrs. LOWEY changed their vote from "no" to "aye."

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended, offered by the gentleman from Florida [Mr. CANADY].

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mr. STUMP. Mr. Chairman, I rise in support of H.R. 925, the Private Property Protection Act of 1995 and I encourage my colleagues to support the bill as well.

The bill is not an assault on the Constitution and it is not a scheme to benefit a select few as some propaganda has suggested. The bill simply affords Americans the protection that they have been guaranteed under the Constitution's fifth amendment. The bill is easily the most important measure to protect private property rights since the Bill of Rights was ratified in 1791.

Tomorrow, March 4, 1995, marks the 206th year that the U.S. Congress has met. When the First Congress met, there was great concern that the Constitution did not include a basic Bill of Rights to limit the powers of the Federal Government. In their wisdom, the First Congress proposed a Bill of Rights and determined that the Bill of Rights should guarantee compensation for the taking of private property for public use.

When the Bill of Rights was ratified in 1789, guarantee of compensation for the taking of private property became the fifth amendment to the Constitution.

Since the Bill of Rights was ratified, the fifth amendment has been relied upon to limit Federal intrusion into private lives without due process of law. When we look back over the past 200 years, it is easy to see a clear pattern of increased takings of private property. The number of takings have rapidly escalated over the past two decades in direct relation to the increase in Federal regulatory actions. Unfortunately, private property owners who are victims of regulatory takings are not receiving due process guaranteed to them under the fifth amendment.

The Federal regulatory morass has unfairly punished private property owners by restricting the use of their lands. While such Federal regulations clearly "take" from private property owners, tragically, the private property owner

must sue to get compensation due to them by the Federal Government.

We must not allow the Federal Government to continue to grow and regulate without regard for the public, of which private property owners are a part. We must not allow the Federal Government to take private lands for public purposes and then require the property owners to pay for costly, time consuming litigation in order to receive compensation.

We must pass H.R. 925 and protect the constitutional guarantee of compensation for the taking of private lands.

Mr. MINGE. Mr. Chairman, farmers and other landowners in the Second Congressional District are frustrated by a complex, burdensome, inefficient, and expensive set of procedures and restrictions dealing with wetlands and drainage. This has led to demands for compensation and reform of the process.

I am drafting and will introduce legislation to dramatically simplify the procedures and reduce the harsh effects of these drainage and wetlands restrictions. The problem must be solved, and it must be solved now.

The alternative approach set up in H.R. 925 of establishing a right to compensation for a loss of land value due to Federal restrictions is inviting but ill-advised. It will be a full employment act for attorneys and appraisers, potentially explosive liability, and an increase in the Federal debt. It is unworkable, unfair, and poorly thought out. For example, owners of areas with cattails that could be drained would be entitled to farmland value. Another example of the problem is how to handle parcels that are subject to, and then relieved of, restrictions. Should the land owner be obligated to refund the payment? Should the Federal Government have a lien on the land to receive the refund? Query, what is to be done about the situation where property both receives very substantial benefits from Federal activity that increases land value and then a more modest loss of value due to regulations?

The real goal is to eliminate the unreasonable burdens. The promise of compensation, contained in H.R. 925 that was hastily considered by the House of Representatives, is an inadequate, elusive, and unacceptable solution. For these reasons, I voted against the bill. Hopefully, the idea of reasonable compensation for unreasonable restrictions in H.R. 935 will be improved in the U.S. Senate to deal with the problems I have identified. If it is, I look forward to voting for the measure.

For the present, I look forward to working to lift the harsh burdens that are the real problem. Farmers in my area do not want a new and endless controversy. They want to farm. They are responsible stewards of the land.

Mr. LIGHTFOOT. Mr. Chairman, on March 2, 1995, I voted "aye" on the Tauzin amendment to H.R. 925. However, the computer did not record my vote. I would like to declare my support for this amendment which would protect the rights of property owners from overzealous government takings. I reaffirmed my support for this legislation by voting in favor of final passage of H.R. 925.

Mr. MFUME. Mr. Chairman, I rise in opposition to the H.R. 925, the Private Property Protection Act. The Private Property Protection Act comes under the guise of protecting private property rights, while in reality it pits the property rights of some against the rights of others and the rights of the community as a whole. Private property rights are sufficiently

protected under the fifth amendment to the Constitution; codifying a specific interpretation of these rights is not only unnecessary, but dangerous as well. I urge a "no" vote on this legislation.

The courts have outlined the factors to be considered on a case-by-case basis in determining if a "taking" has occurred, including the economic impact on the property owner, the public purpose for which the regulation was adopted, and the character of the governmental action. H.R. 925 calls for an extended, legislated, interpretation of the fifth amendment of the Constitution. This bill would require the Federal Government to pay a private property owner for any decrease in value to his/her land due to Federal regulations. The effect of this legislation would be to have the Government—i.e. the taxpayers—pay land owners not to destroy the environment.

Along with property rights come property responsibilities. Nobody has the right to use his or her property in a manner that may harm the public health or damage the property of another landowner or the community as a whole. American citizens are able to use environmental laws in order to protect their property from damage at the lands of irresponsible industries and landowners. Environmental laws, in turn, have been established to preserve our natural resources for the benefit of future generations and so that Mother Earth can survive.

The intent of H.R. 925 is to make it fiscally impossible to enforce such important legislation as the Clean Water Act, the Endangered Species Act, and other environmental initiatives. A broader interpretation of this bill could limit the ability of the Federal Government to enforce such laws as the Americans with Disabilities Act, the Civil Rights Act, and other laws which protect American citizens but may place a financial burden on business. The possibilities of abuse under this legislation are enormous. We must not fall for the "what's mine, is mine" pitch used by "takings" legislation advocates if it comes at the expense of the American taxpayer, or the community at large. I urge my colleagues to vote against H.R. 925.

Mr. RADANOVICH. Mr. Chairman, bureaucracies have little respect for private property.

In my district, for example, a constituent has been fighting an uphill battle with USDA's Forest Service over an easement right.

Here is a letter from Jeffrey Green, county counsel of Mariposa County—my home community and on whose board of supervisors I formerly served. He explains the problem in a straightforward way that I believe my colleagues will find illuminating, and I ask that it be included with my remarks in the RECORD.

I also want to point out that the problem discussed by Mr. Green has a further dimension that illustrates the indifference Federal bureaucrats can display. More than a year ago—January 10, 1994—the district ranger of Stanislaus National Forest wrote Mr. Green that the requested road use permit for my constituents would be ready within the next 30 days.

When that didn't happen, Mr. Green made further inquiry. On May 17, 1994, the district ranger wrote that he could ensure that the permit would be received shortly. Knowing I planned to use this awful apathy by the Forest Service in remarks on the House floor, my

counsel called the district ranger to ask whether the promised permit yet had issued. Sad to say, Mr. Chairman, the answer was "no."

These are intolerable circumstances that, I am learning go on every day across our country. Citizens are at the mercy of a corps of overpaid, underworked dolts who make a mockery of the term, "public service."

THE COUNTY COUNSEL,

*Mariposa County, CA, March 2, 1995.*

Re National Forest Service Use Permit for Billy J. Lovelace.

OFFICE OF CONGRESSMAN RADANOVICH,  
*Cannon Building, Washington, DC:*

I have previously forwarded to your office my correspondence relative to the above matter and the failure of the Forest Service, after numerous promises, to issue a Use Permit to Mr. Lovelace to access his property wherein he resides. You have requested that I provide you additional information as to why in my opinion this type of activity illustrates the federal government's failure to respect property rights of its citizens. Mr. Lovelace purchased his property with the access road to his dwelling already constructed. That access road did in fact cross a small portion of the Forest Service property and an easement existed for the use of that Forest Service strip of land. When the easement expired, the Forest Service basically took the position that Mr. Lovelace was going to have to find other access to his property, although as a practical matter no other access existed. Mr. Lovelace felt totally ineffectual in dealing with the National Forest Service personnel, as they made him feel that access to his property would be granted upon their whim only and not as any property right he may have acquired over a period of time. We all know that you cannot acquire a prescriptive easement against a governmental entity, however, there is a concept of fair play and due process when the federal government has allowed access over a period of years and then arbitrarily determined that it may not continue that access to the property owner. That is what happened in the Lovelace case and the possible denial of the Use Permit has caused great emotional distress to Mr. Lovelace. He feels totally helpless in dealing with the federal government and therefore contacted his County Supervisor, Doug Balmain, to intervene on his behalf. Supervisor Balmain and myself did in fact intervene on Mr. Lovelace's behalf and had a number of conversations with the Forest Service personnel. Essentially the first meetings indicated that the Forest Service was adopting a blanket policy without any regard to the private property rights of the individuals in that it was inappropriate to access private property over a Forest Service land if there was any other conceivable way to access the property. Of course, to the Forest Service, any conceivable way to access the property did not take into consideration the extreme expenses involved in most cases, and the topography of the land which may make it impossible to access. However, after a number of conversations and written correspondence, the Forest Service did in fact agree that Mr. Lovelace was entitled to a Use Permit to access his property. As you know, that permit has still not been issued even though it was promised well over a year ago. Certainly when Mr. Lovelace purchased his property, he felt he had a property right to access his dwelling over the road that had been constructed prior to his purchase. It was only after his purchase that he discovered that the Forest Service may restrict access to his property. In my opinion, as well as Supervisor Balmain's opinion, the federal government has a moral right and obligation to

deal honestly and fairly with citizens who are affected by its rules and regulations. Access to an individual's dwelling is certainly viewed by that individual as a property right and the threat of removing that access generates a great deal of distress for the property owner.

Based upon other experiences with the Forest Service, this is not an unusual way in which the Forest Service personnel deals with citizens' property rights and values. In one of the letters which my office received from the District Ranger regarding this matter, the following language was contained in the letter which, in effect, chastised Supervisor Balmain and myself for becoming involved in this issue: "Since the issues revolve around the administration and management of National Forest lands, all future correspondence will be carried out through the concerned individuals." I read that sentence to essentially tell Supervisor Balmain and myself to butt out of Supervisor Balmain's constituent's business with the federal government.

Should you desire any additional information regarding this matter, please feel free to contact me.

Very truly yours,

JEFFREY G. GREEN,

*County Counsel.*

Mr. COSTELLO. Mr. Chairman, I rise today to express my concern over legislation under consideration in the House today to place into statute guidance for takings allowance under the fifth amendment of the Constitution. While I support efforts to offer this guidance, I am concerned the original bill proposed by the majority goes too far.

This bill would require Federal agencies to reimburse private property owners if 10 percent of their land is affected by any Federal regulation. While the intent of this bill is good, the potential cost to the Federal Government for a 10-percent diminishment of property value is enormous.

In addition, the bill's basic provisions are unworkable. For instance, if the Federal Government raises the speed limit on a rural highway, property owners adjacent to the highway could claim their property has been devalued by at least 10 percent due to increased noise from greater automobile traffic or higher speed limits. They could then demand reimbursement from the Department of Transportation for that diminished land value.

I have made efforts to work with my colleagues to try and raise this threshold to a more reasonable level. I have voted for amendments to raise this threshold beyond the 10-percent level, to one which builds on current legal precedent but which is not too narrow. In addition, I am working with my Democratic colleagues who also favor protecting private property rights to narrow the bill to instances of likely takings—for wetlands protections, for example—instead of every Federal regulation. Making Federal regulations more reasonable is my goal, which is also why I have cosponsored wetlands reform in the past.

An effort was made to try and narrow this bill, but it did not go far enough. The amendment offered by Representative TAUZIN would have gone beyond just a wetlands provision to include rights of western water use, mining and other use western lands. It also raised the threshold to only 50 percent, one which I feel is still too unworkable. That is why I opposed the Tauzin amendment.

One amendment I did support would have required a private property impact assessment by an agency prior to any taking. This would have written into law an Executive order signed by President Ronald Reagan, that would allow property owners to seek compensation based on this assessment. Unfortunately, this amendment was rejected by a majority of my colleagues. However, this bill has improved as it has moved through the House, and it is my hope that in supporting this bill on final passage we may move it to the Senate and reach common ground to protect private property rights, and our Nation's critical environment areas, in a final package.

Mr. McDERMOTT. Mr. Chairman, I rise in strong opposition to H.R. 925. This is yet another proposal offered by the new majority to undermine our Nation's health, safety, and environmental standards in order to benefit their favorite special interest: the pollution industry.

This bill is a cruel joke which endangers helpless private property owners throughout the country and allows land abusers the opportunity to raid the Federal treasury.

Make no mistake, this bill is incapable of protecting the public from health or safety hazards.

In my State of Washington, clear cut logging on steep slopes caused extreme run-off and excessive flooding along the Tolt River. Slides sent trees and debris choking the river and deflecting flows.

Meanwhile, the flooding caused a family's mobile home to be washed down river and significantly eroded several other properties. The effect: property devaluation and serious expense to the downstream landowners, serious harm to the environment, and huge profits for the loggers.

This bill does nothing to either prevent such environmental damages or protect the landowners who undoubtedly will be harmed by the ensuing reckless developments.

In fact, even as amended, H.R. 925 makes the government liable for the negligent actions of industry polluters, reckless developers, and the property owners whose land is harmed by such development.

For example, when a developer seeks a permit to clear cut a steep slope as occurred in my State, or to fill in a wetland which endangers the property of downstream landowners, the government is damned if it grants the permit and damned if it doesn't.

If the government issues the permit, it then becomes liable for the damages incurred by the developers on the downstream property owner's lands. Yet, if the government denies the permit, this bill forces it to compensate the developer who requested it—no matter how negligent the developer's proposal may be.

By voting in favor of H.R. 925, the majority will commit our government to a financial conundrum which will drain the Federal treasury.

There are not enough health, education, nutrition, or family programs for the new majority to eliminate in order to pay for a bill which mandates such financial recklessness.

Mr. Chairman, I hope that you take a look beyond your political focus groups and examine the actual, real world implications of this dangerous bill.

I hope my colleagues find the wisdom and courage to vote against this horrifying piece of legislation which, as usual in this new majority, benefits a select few and harms the rest of us.

Mr. UNDERWOOD. Mr. Chairman, the fifth amendment to the U.S. Constitution clearly speaks to the issue of Federal land acquisition when it states: "[N]or shall private property be taken for public use, without just compensation." The Constitution is clear on the issue of Federal land takings and compels us to deal justly with the impact of Federal action on private land.

H.R. 925 is currently being touted as the cure for private land owners whose land has been devalued by Federal regulations. However, it does not answer Guam's outrage over Federal land policies.

The people of Guam have for many years been the victims of unjust land grabs and the heavy hand of Federal land policy. Within the borders of the war in the Pacific Park, land owners cannot develop their private property due to Federal regulations. Land owners at Ritidian Point, landlocked by the Andersen Air Force Base, are also denied free use of their land because access is restricted. Unfortunately, this legislation would not compensate these land owners or any others whose land is currently controlled by the Federal Government.

Guam needs more than just promises for the future; we need Congress to recognize and commit itself to resolving Guam's unique Federal land problems.

Mr. PETERSON of Minnesota. Mr. Chairman, today we are considering property rights legislation, one of the most important pieces of legislation we will vote on this year. The right to own property is one of the basic doctrines of our Constitution. The fifth amendment requires the Government to provide just compensation for property taken for public purposes. Property rights has come to the forefront of debate in rural America. This debate is vital to every landowner in this country, especially to the American farmer.

Over the past three decades, there has been an enormous expansion in Government regulation of private property. The intent of these regulations is for the most part positive. However, the rigidity of the regulations is completely unnecessary and over burdensome and often defeats the purpose of the objective of the regulation. The Federal Government makes it a practice to spell out step by step the method each person should use to accomplish the goal of a regulation. This rigidity is costly and actually creates more obstacles.

These regulation restrictions are out of control, specifically in regard to wetlands. For example, a farmer in my district bought 160 acres of land with the intent to farm the 160 acres. After talking to his local soil and conservation service [SCS], and looking at the records from the sight, including soil samples and all inclusive maps, the SCS office confirmed that no wetlands were contained on the land. My constituent then proceeded to purchase the land and begin to make the necessary changes to farm. His local SCS came out again to approve the site, and on the way out noticed some cattails in the field. The SCS then proceeded to discover, new wetlands which affected about 26 acres of land. This farmer would have reconsidered buying the property if he knew he could not farm on a large portion of his land.

As a result of this type of common practice by Federal agencies, private property owners repeatedly lose economic use of their property. In situations where the Government regu-

lates to the point that the property owner may not use his property, or the property is substantially devalued, it is only fair and just for the property owner to be compensated.

No one argues that we need to regulate certain activities and restrict certain practices on land for the common good and well being of the country. We need clean water, we need clean air. And we need to protect the environment. However, the burden of providing public good should not be on an individual landowner. If the American public benefits from restrictions on land uses, then the public should pay for the costs.

Furthermore, as recourse to Federal taking, wealthy people and big corporations have the resources to protect their property rights through the legal process. The average person on the other hand doesn't have the money and should not have to defend his or her property rights in the current lengthy, complicated and expensive legal process. More often than not, the small property owner has no way to combat the expansive authority and resources of Federal agencies. We must set up a process where people don't have to hire a lawyer, spend a lot of their own money, and waste millions of taxpayer dollars to defend their basic property rights.

For these reasons, I strongly support H.R. 925, private property rights legislation. H.R. 925 ensures that private property owners are compensated when the use or value of their property is limited. This bill lays out clear and specific guidelines for government officials and property owners in determining when Federal regulations go too far, and result in violate individual property rights. Federal agencies will have to weigh their actions cautiously before issuing regulations and will be required to pay for the imposed regulations.

People in this country who purchase and pay taxes on property should not have to endure their rights being stripped away. The Federal Government must be responsible for its actions. Congress must act now to minimize the taking of our constitutionally protected property rights. I urge my colleagues to support H.R. 925.

Ms. PELOSI. Mr. Chairman, I rise today to oppose H.R. 925, the Private Property Protection Act of 1995. This legislation will create an entitlement program for polluters, a billion dollar sweepstakes for land speculators, and will leave the American taxpayer holding the bag.

In the words of a Justice Department official who testified before the House Judiciary Committee, "hard-working American taxpayers \* \* \* will be forced to watch as their hard-earned wages are collected by the Government as taxes and paid out to corporations and large landowners as takings compensation."

At a time when so-called entitlement programs are under attack by the Republican Party, H.R. 925 would create an immense new entitlement program and bureaucracy with so much legal uncertainty that the only sure winners will be our Nation's lawyers.

Mr. Chairman, contrary to what the authors of this legislation would have us believe, American law is based on a deep respect for private property rights. The fifth amendment itself symbolizes this respect for property rights by ensuring that private property shall not be taken for public use without just compensation.

H.R. 925 represents a radical departure from long-settled Supreme Court doctrine. It abandons the modern definition of the fifth amendment's "takings" clause by requiring that private property owners be compensated if regulations limit land use and diminish property values by just 10 percent.

This means that almost any loss in market value would require compensation. This replaces an entire body of constitutional law with a clumsy measure that ignores the collective wisdom of two centuries of Supreme Court decisions.

Mr. Chairman, for over 200 years, private claims to compensation under the fifth amendment's "takings" clause have been successfully balanced against the public interest on a case-by-case basis.

H.R. 925 does not add to this delicate judicial balance in a constructive manner. Rather, it shatters legal precedent by imposing a heavy-handed new doctrine that will only result in unjust windfalls to wealthy corporations at a tremendous cost to the health, safety and pocketbooks of all Americans.

Who will pay for the costs of environmental clean-up when polluters degrade our environment? The American taxpayer. This bill protects the interests of polluters at the expense of the American taxpayer.

Mr. Chairman, we should heed the voice of our constituents as we consider this bill. In a recent CNN/Time poll, people were asked whether a landowner that is barred from installing a toxic waste dump should be compensated. Fully two-thirds of those interviewed, 66 percent, said no.

Let's not allow the American taxpayer to get "taken" by this legislation. I urge my colleagues to vote against H.R. 925.

Mr. JOHNSON of South Dakota. Mr. Chairman, once again the House Republican leadership has brought us a bill in H.R. 925, the Private Property Protection Act, which addresses a legitimately important issue, but which is overly broad, ill-considered and poorly drafted. I believe the debate on this important issue should continue, and so I will for now support this legislation in order for the Senate and the conference committees to have an opportunity to revise and improve the legislation. If no such significant improvement is forthcoming from those bodies, however, I am very doubtful that I will be able to vote for this bill on final passage.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise today in opposition to H.R. 925, the Private Property Protection Act. This bill establishes a dangerous and disturbing precedent that would allow individuals to do whatever they want with their property, regardless of whether it destroys their neighbors' property or not. Moreover, H.R. 925 would establish a new entitlement system to pay off these individuals to prevent them from using their property in a damaging way.

Imagine if this radical and extreme interpretation of the U.S. Constitution's fifth amendment had been adopted by an earlier Congress. We would have no civil rights, no child labor laws, no environmental standards, no car safety standards, no clean water requirements, no Americans with Disabilities Act, etc. We would live in a dirty, unsafe, and callous environment in which each individual and corporation would be out for his or her own best interest, regardless of the consequences on



their neighbors and surroundings. The Government's efforts to protect public health and safety would be completely compromised because agencies would have to choose between promulgating the laws we pass and going bankrupt or ignoring important federal laws.

Environmental justice efforts, and bills such as my Environmental Equal Rights Act would be completely undermined by H.R. 925 because environmentally disadvantaged communities would either have to allow a new waste facility site to be established or pay the polluter to not develop the site. This is dangerous, extreme and fundamentally unfair to the vast majority of Americans who own private property that is protected by our critical environmental, health, and public safety laws.

In fact, I prepared an amendment to this legislation that would ensure that private property owners could not seek compensation if an agency prevented them from using their land in a way that would decrease the property value of their neighbor's land. Currently, the bill prevents someone from seeking compensation if the agency's action seeks to prevent damage to other properties. Damage implies specific, visible harm to neighboring property. For example, if water or waste was backing up in someone's backyard. What about the loss of property value when an enormous, ugly waste treatment site is constructed at the end of your block? This has occurred throughout my district and it seems unfair that property owners should have to choose between watching their property value decrease or paying their neighbor not to construct a waste facility. My concerns with this legislation are so great, however, that I intend to oppose H.R. 925 completely.

What we have, Mr. Chairman, is a bad bill based on a bad idea. Members seem to be frustrated that Federal agencies are doing what they are required to do, which is to promulgate the laws that we pass. If this is the case, we should deal directly with this issue. But to pass a bill that makes taxpayers pay for our inaction is truly passing the buck. It is not only passing the buck but also endangering the future health and safety of the majority of our constituents. I urge my colleagues to join me in opposing this dangerous legislation.

Mr. SMITH of Texas. Mr. Chairman, some opponents of the Private Property Protection Act of 1995 are engaged in world class doublespeak.

Many of the same crowd that's run up a \$4.5 trillion debt of our children's money criticize the Private Property Protection Act of 1995 as a raid on the Treasury. Those who supported the largest tax hike in history worry that the bill will harm the middle class.

Many of the same gang that supported a Governmental takeover of private health care in America condemn this bill as a new bureaucracy. Those who created cradle to grave entitlements attack this bill as a new entitlement. And the people who will oppose tort reform next week worried that this bill will be a boon for lawyers.

It's amazing the creative excuses that defenders of big Government will resort to in order to protect their power to tell the American people what to do. But, Mr. Chairman, the American people, many of whom are watching this debate on C-SPAN today, know better.

They know who is responsible for the deficit-raising, tax-elevating, mandate-creating, heavy-regulating, entitlement-formulating, lawsuit-generating policies of the regulatory state. And the American people understand who will, and won't, end those policies.

And if the opponents of the Private Property Protection Act of 1995 would read our bill, they'd know that this bill does not create a new entitlement, does not create new bureaucracy, is not a boon for lawyers, is not a threat to the middle class, and does not eliminate our Nation's environmental laws.

Read our bill. It simply makes the general public share the costs of regulations designed to benefit the general public. It prevents the Government from hiding those costs by foisting them on a single, innocent landowner.

Read our bill. It doesn't prevent Government from protecting endangered species or preserving wetlands. We the people can protect as many endangered species and as many wetlands as we the people are willing to pay for.

Read our bill. It doesn't create a new entitlement. Right now certain Americans who own the wrong land in the wrong place at the wrong time are forced to bear the entire cost of Government regulation. This bill simply relieves their burden brought on by the Government.

Read our bill. This has nothing to do with a raid on the Treasury. This bill prevents the Government from stealing private property. It provides relief to the victims of regulatory theft. This relief would be made available from annual agency appropriations, not the U.S. Treasury.

Read our bill. The Private Property Protection Act of 1995 would benefit the middle class. It would provide the people who do the work, pay the taxes, and pull the wagon with the same rights as the blind cave spider, golden cheeked warbler, and fairy shrimp. And it would make Government regulators public servants once again. No longer would these officials be the masters of middle class Americans.

Mr. Chairman, objections to this bill have nothing to do with entitlements, bureaucracy, middle-class rights, or lawyers. They don't object to any of these things; they've spent their careers working hard to expand each of them.

They have everything to do with their love of big Government control of the lives of middle class Americans. They'll say anything to defend it; they'll even talk in double-speak.

Mr. Chairman, this Congress was elected to end big Government and prevent it from trampling the rights of the American middle class. That's why we rise today, Republican and Democrat, from all over this Nation, to support the Private Property Protection Act of 1995. I urge my colleagues to read this bill and when they do they'll support it.

Mr. PACKARD. Mr. Chairman, Government imposed regulations chip away at the very cornerstone of our society—private property. It is time to stop Government's encroachment on our fifth amendment rights. Overzealous Federal regulations intrude on property owner rights and restrict individual freedom. Government exists to protect and serve the needs of private property owners, not to trespass on them.

H.R. 925, the Private Property Protection Act works to restore the sanctity of private property by ensuring fair compensation for un-

fair Federal takings. Our Republican property rights proposal represents a simple but constitutionally protected concept. Whether the Government wants your property to build a road or to preserve an endangered rat's habitat, the intent of our Founding Fathers is clear. If you take it, pay for it. H.R. 925 provides landowners with their first line of defense against overreaching Government regulations.

Our Nation's greatness arises in large part from the opportunities afforded by the use and ownership of private property. The restrictions imposed by overzealous regulatory agencies and legislatures limits the ability of property owners to manage and use their land. Bureaucrats abrogating our property rights and abusing the fifth amendment, assault the very fabric of our society.

Mr. Chairman, Government should be encouraging, not discouraging ownership of private property. Fair compensation for unfair Federal land taking will restore Government accountability and legitimacy. The people want Government to stop meddling in their private affairs. H.R. 925, the Private Property Protection Act, gets Government off of the people's back.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. HANSEN) having assumed the chair, Mr. SHUSTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, pursuant to House Resolution 101, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?

If not, the question is on the amendment.

The amendment was agreed to.

□ 1315

The SPEAKER pro tempore (Mr. HANSEN). The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CANADY of Florida. Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 277, nays 148, not voting 9, as follows:

[Roll No. 197]

YEAS—277

Allard  
Archer

Armey  
Bachus

Baesler  
Baker (CA)



Baker (LA)	Geren	Obey
Baldacci	Gillmor	Ortiz
Ballenger	Gilman	Orton
Barcia	Goodlatte	Oxley
Barr	Goodling	Packard
Barrett (NE)	Gordon	Parker
Bartlett	Graham	Paxon
Barton	Green	Payne (VA)
Bass	Gunderson	Peterson (FL)
Bateman	Gutknecht	Peterson (MN)
Bentsen	Hall (OH)	Petri
Bereuter	Hall (TX)	Pickett
Bevill	Hamilton	Pombo
Bilbray	Hancock	Pomeroy
Billrakis	Hansen	Portman
Bishop	Harman	Poshard
Bliley	Hastert	Pryce
Boehner	Hastings (WA)	Quillen
Bonilla	Hayes	Radanovich
Bono	Hayworth	Regula
Brewster	Hefley	Reynolds
Browder	Hefner	Riggs
Brown (OH)	Heineman	Roberts
Brownback	Hergert	Roemer
Bryant (TN)	Hilleary	Rogers
Bunn	Hilliard	Rohrbacher
Bunning	Hobson	Ros-Lehtinen
Burr	Hoekstra	Ross
Burton	Hoke	Roth
Buyer	Holden	Royce
Callahan	Horn	Salmon
Calvert	Hostettler	Sanford
Camp	Houghton	Saxton
Canady	Hunter	Scarborough
Chabot	Hutchinson	Schaefer
Chambliss	Hyde	Scott
Chapman	Inglis	Seastrand
Chenoweth	Istook	Sensenbrenner
Christensen	Jacobs	Shadegg
Chrysler	Johnson (SD)	Shaw
Clinger	Johnson, Sam	Shuster
Coble	Jones	Sisisky
Coburn	Kasich	Skeen
Collins (GA)	Kelly	Skelton
Combest	Kim	Smith (MI)
Condit	King	Smith (NJ)
Cooley	Kingston	Smith (TX)
Costello	Knollenberg	Smith (WA)
Cox	Kolbe	Solomon
Cramer	LaHood	Souder
Crane	Lantos	Spence
Crapo	Largent	Spratt
Cremeans	Latham	Stearns
Cubin	LaTourette	Stenholm
Cunningham	Laughlin	Stockman
Danner	Leach	Stump
Davis	Lewis (CA)	Stupak
de la Garza	Lewis (KY)	Talent
Deal	Lightfoot	Tanner
DeLay	Lincoln	Tate
Diaz-Balart	Linder	Tauzin
Dickey	Livingston	Taylor (MS)
Dooley	LoBiondo	Taylor (NC)
Doolittle	Longley	Tejeda
Doyle	Lucas	Thomas
Dreier	Manzullo	Thornberry
Duncan	Martinez	Thornton
Dunn	Mascara	Thurman
Durbin	McCollum	Tiahrt
Edwards	McCrery	Trafficant
Ehrlich	McDade	Upton
Emerson	McHale	Volkmer
English	McHugh	Vucanovich
Ensign	McInnis	Waldholtz
Everett	McIntosh	Walker
Ewing	McKeon	Walsh
Fawell	McNulty	Wamp
Fazio	Metcalf	Watts (OK)
Fields (TX)	Meyers	Weldon (FL)
Flanagan	Mica	Weldon (PA)
Foley	Molinari	Weller
Forbes	Mollohan	White
Fowler	Montgomery	Whitfield
Fox	Moorhead	Wicker
Franks (CT)	Myers	Wilson
Frisa	Myrick	Wolf
Frost	Nethercutt	Young (AK)
Funderburk	Neumann	Young (FL)
Galleghy	Ney	Zeliff
Ganske	Norwood	
Gekas	Nussle	

NAYS—148

Abercrombie	Blute	Castle
Ackerman	Boehlert	Clay
Andrews	Bonior	Clayton
Barrett (WI)	Borski	Clement
Becerra	Boucher	Clyburn
Beilenson	Brown (FL)	Coleman
Berman	Cardin	Collins (MI)

Conyers	Kennelly	Rahall
Coyne	Kildee	Ramstad
DeFazio	Klecaska	Reed
DeLauro	Klink	Richardson
Dellums	Klug	Rivers
Deutsch	LaFalce	Roukema
Dicks	Lazio	Roybal-Allard
Dingell	Levin	Rush
Dixon	Lewis (GA)	Sabo
Doggett	Lipinski	Sanders
Ehlers	Lofgren	Sawyer
Engel	Lowey	Schiff
Eshoo	Luther	Schroeder
Evans	Maloney	Schumer
Farr	Manton	Serrano
Fattah	Markey	Shays
Fields (LA)	Martini	Skaggs
Filner	Matsui	Slaughter
Flake	McCarthy	Stark
Foglietta	McDermott	Stokes
Ford	Meehan	Studds
Frank (MA)	Meek	Thompson
Franks (NJ)	Menendez	Torkildsen
Frelinghuysen	Mfume	Torres
Furse	Miller (CA)	Torricelli
Gejdenson	Miller (FL)	Towns
Gephardt	Mineta	Tucker
Gibbons	Minge	Velazquez
Gilchrest	Mink	Vento
Goss	Moran	Visclosky
Greenwood	Morella	Ward
Gutierrez	Murtha	Waters
Hastings (FL)	Nadler	Watt (NC)
Hinchey	Neal	Waxman
Hoyer	Oberstar	Williams
Jackson-Lee	Olver	Wise
Jefferson	Owens	Woolsey
Johnson (CT)	Pallone	Wyden
Johnson, E.B.	Pastor	Wynn
Kanjorski	Payne (NJ)	Yates
Kaptur	Pelosi	Zimmer
Kennedy (MA)	Porter	
Kennedy (RI)	Quinn	

NOT VOTING—9

Brown (CA)	Dornan	McKinney
Bryant (TX)	Gonzalez	Moakley
Collins (IL)	Johnston	Rangel

□ 1331

The Clerk announced the following pair:

On this vote:

Mr. Dornan for, with Mrs. Collins of Illinois against.

Mr. ACKERMAN changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE TECHNICAL AND CONFORMING CHANGES IN H.R. 925, PRIVATE PROPERTY PROTECTION ACT OF 1995

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill H.R. 925, as amended, the Clerk be authorized to correct section numbers, cross-references, and punctuation, and to make such stylistic, clerical, technical, conforming, and other changes as may be necessary to reflect the action of the House in amending the bill.

The SPEAKER pro tempore (Mr. HANSEN). Is there objection to the request of the gentleman from Florida?

There was no objection.

GENERAL LEAVE

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 925, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

JOB CREATION AND WAGE ENHANCEMENT ACT OF 1995

Mr. DELAY. Pursuant to section 2 of House Resolution 101, I call up the bill (H.R. 9) 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, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The text of H.R. 9 is as follows:

H.R. 9

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

# SECTION 1. SHORT TITLE.

This Act may be cited as the "Job Creation and Wage Enhancement Act of 1995".

# SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

## TITLE I—CAPITAL GAINS REFORM

Sec. 1001. 50 percent capital gains deduction.

Sec. 1002. Indexing of certain assets for purposes of determining gain or loss.

Sec. 1003. Capital loss deduction allowed with respect to sale or exchange of principal residence.

## TITLE II—NEUTRAL COST RECOVERY

Sec. 2001. Depreciation adjustment for certain property placed in service after December 31, 1994.

## TITLE III—RISK ASSESSMENT AND COST/BENEFIT ANALYSIS FOR NEW REGULATIONS

Sec. 3001. Findings

### Subtitle A—Risk Assessment and Communication

Sec. 3101. Short title.

Sec. 3102. Purposes.

Sec. 3103. Effective date; applicability; savings provisions.

Sec. 3104. Principles for risk assessment.

Sec. 3105. Principles for risk characterization and communication.

Sec. 3106. Guidelines, plan for assessing new information, and report.

Sec. 3107. Definitions.

### Subtitle B—Analysis of Risk Reduction Benefits and Costs

Sec. 3201. Analysis of risk reduction benefits and costs.

### Subtitle C—Peer Review

Sec. 3301. Peer review program.

## TITLE IV—ESTABLISHMENT OF FEDERAL REGULATORY BUDGET COST CONTROL

Sec. 4001. Amendments to the Congressional Budget Act of 1974.

Sec. 4002. President's annual budget submissions.

Sec. 4003. Estimation and disclosure of costs of Federal regulation.

## TITLE V—STRENGTHENING OF PAPERWORK REDUCTION ACT

Sec. 5001. Short title.

Subtitle A—Authorization of Appropriations

Sec. 5101. Authorization of appropriations.

Subtitle B—Reducing the Burden of Federal Paperwork on the Public

Sec. 5201. Coverage of all federally sponsored paperwork burdens.

Sec. 5202. Paperwork reduction goals.

Subtitle C—Enhancing Government Responsibility and Accountability for Reducing the Burden of Federal Paperwork

Sec. 5301. Reemphasizing the responsibility of the Director to control the burden of Federal paperwork.

Sec. 5302. Enhancing agency responsibility to obtain public review of proposed paperwork burdens.

Sec. 5303. Expediting review at the Office of Management and Budget.

Sec. 5304. Improving public and agency scrutiny of paperwork burdens proposed for renewal.

Sec. 5305. Protection for whistleblowers of unauthorized paperwork burden.

Sec. 5306. Enhancing public participation.

Sec. 5307. Expediting review of an agency information collection request with a reduced burden.

Subtitle D—Enhancing Agency Responsibility for Sharing and Disseminating Public Information

Sec. 5401. Prescribing governmentwide standards for sharing and disseminating public information.

Sec. 5402. Agency responsibilities for sharing and disseminating public information.

Sec. 5403. Agency information inventory/locator system.

Subtitle E—Additional Government Information Management Responsibility

Sec. 5501. Strengthening the statistical policy and coordination functions of the Director.

Sec. 5502. Use of electronic information collection and dissemination techniques to reduce burden.

Sec. 5503. Agency implementation.

Sec. 5504. Automatic data processing equipment plan.

Sec. 5505. Technical and conforming amendments.

Subtitle F—Effective Dates

Sec. 5601. Effective dates.

TITLE VI—STRENGTHENING REGULATORY FLEXIBILITY

Sec. 6001. Judicial review.

Sec. 6002. Consideration of direct and indirect effects of rules.

Sec. 6003. Rules opposed by SBA Chief Counsel for Advocacy.

Sec. 6004. Sense of Congress regarding SBA Chief Counsel for Advocacy.

TITLE VII—REGULATORY IMPACT ANALYSES

Sec. 7001. Short title.

Sec. 7002. Rule making notices for major rules.

Sec. 7003. Hearing requirement for proposed rules; extension of comment period.

Sec. 7004. Regulatory impact analysis.

Sec. 7005. Additional responsibilities of Director of the Office of Management and Budget.

Sec. 7006. Standard of clarity.

Sec. 7007. Report by OIRA.

Sec. 7008. Definitions.

TITLE VIII—PROTECTION AGAINST FEDERAL REGULATORY ABUSE

Subtitle A—Citizens' Regulatory Bill of Rights

Sec. 8101. Citizens' regulatory bill of rights.

Subtitle B—Private Sector Whistleblowers' Protection

Sec. 8201. Short title.

Sec. 8202. Purpose.

Sec. 8203. Coverage.

Sec. 8204. Prohibited regulatory practices.

Sec. 8205. Prohibited regulatory practice as a defense to agency action.

Sec. 8206. Enforcement.

Sec. 8207. Citizen suits.

Sec. 8208. Office of the Special Counsel.

Sec. 8209. Relation to criminal investigations.

TITLE IX—PRIVATE PROPERTY RIGHTS PROTECTIONS AND COMPENSATION

Sec. 9001. Statement of purpose.

Sec. 9002. Compensation for Federal agency infringement or deprivation of rights to private property.

Sec. 9003. Severability.

Sec. 9004. Definitions.

TITLE X—ESTABLISHMENT OF FEDERAL MANDATE BUDGET COST CONTROL

Sec. 10001. Amendments to the Congressional Budget Act of 1974.

Sec. 10002. President's annual budget submissions.

Sec. 10003. Estimation and disclosure of costs of Federal mandates.

TITLE XI—TAXPAYER DEBT BUY-DOWN

Sec. 11001. Designation of amounts for reduction of public debt.

Sec. 11002. Public Debt Reduction Trust Fund.

Sec. 11003. Taxpayer-generated sequestration of Federal spending to reduce the public debt.

TITLE XII—SMALL BUSINESS INCENTIVES

Sec. 12001. Increase in unified estate and gift tax credits.

Sec. 12002. Increase in expense treatment for small businesses.

Sec. 12003. Clarification of definition of principal place of business.

Sec. 12004. Treatment of storage of product samples.

TITLE I—CAPITAL GAINS REFORM

SEC. 1001. 50 PERCENT CAPITAL GAINS DEDUCTION.

(a) GENERAL RULE.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended to read as follows:

“PART I—TREATMENT OF CAPITAL GAINS

“Sec. 1201. Capital gains deduction.

“SEC. 1201. CAPITAL GAINS DEDUCTION.

“(a) GENERAL RULE.—If for any taxable year a taxpayer has a net capital gain, 50 percent of such gain shall be a deduction from gross income.

“(b) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

“(c) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

“(d) TRANSITIONAL RULE.—

“(1) IN GENERAL.—In the case of a taxable year which includes January 1, 1995—

“(A) the amount taken into account as the net capital gain under subsection (a) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year on or after January 1, 1995, and

“(B) if the net capital gain for such year exceeds the amount taken into account under subsection (a), the rate of tax imposed by section 1 on such excess shall not exceed 28 percent.

“(2) SPECIAL RULES FOR PASS-THRU ENTITIES.—

“(A) IN GENERAL.—In applying paragraph (1) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

“(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term ‘pass-thru entity’ means—

“(i) a regulated investment company,

“(ii) a real estate investment trust,

“(iii) an S corporation,

“(iv) a partnership,

“(v) an estate or trust, and

“(vi) a common trust fund.”

(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of such Code is amended by inserting after paragraph (15) the following new paragraph:

“(16) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1201.”

(c) TECHNICAL AND CONFORMING CHANGES.—

(1) Section 13113 of the Revenue Reconciliation Act of 1993 (relating to 50-percent exclusion for gain from certain small business stock), and the amendments made by such section, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such section (and amendments) had never been enacted.

(2) Section 1 of such Code is amended by striking subsection (h).

(3) Paragraph (1) of section 170(e) of such Code is amended by striking “the amount of gain” in the material following subparagraph (B)(ii) and inserting “50 percent of the amount of gain”.

(4)(A) Paragraph (2) of section 172(d) of such Code is amended to read as follows:

“(2) CAPITAL GAINS AND LOSSES.—

“(A) LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets.

“(B) DEDUCTION UNDER SECTION 1201.—The deduction under section 1201 shall not be allowed.”

(B) Subparagraph (B) of section 172(d)(4) of such Code is amended by striking “paragraphs (1) and (3)” and inserting “paragraphs (1), (2)(B), and (3)”.

(5) Paragraph (4) of section 642(c) of such Code is amended to read as follows:

“(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1201 (relating to deduction for excess of capital gains over capital losses). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).”

(6) Paragraph (3) of section 643(a) of such Code is amended by adding at the end thereof the following new sentence: “The deduction under section 1201 (relating to deduction of excess of capital gains over capital losses) shall not be taken into account.”

(7) Paragraph (4) of section 691(c) of such Code is amended by striking “sections 1(h), 1201, and 1211” and inserting “sections 1201 and 1211”.

(8) The second sentence of section 871(a)(2) of such Code is amended by inserting "such gains and losses shall be determined without regard to section 1201 (relating to deduction for capital gains) and" after "except that".

(9) Subsection (d) of section 1044 of such Code is amended by striking the last sentence.

(10)(A) Paragraph (2) of section 1211(b) of such Code is amended to read as follows:

"(2) the sum of—

"(A) the excess of the net short-term capital loss over the net long-term capital gain, and

"(B) one-half of the excess of the net long-term capital loss over the net short-term capital gain."

(B) So much of paragraph (2) of section 1212(b) of such Code as precedes subparagraph (B) thereof is amended to read as follows:

"(2) SPECIAL RULES.—

"(A) ADJUSTMENTS.—

"(i) For purposes of determining the excess referred to in paragraph (1)(A), there shall be treated as short-term capital gain in the taxable year an amount equal to the lesser of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

"(II) the adjusted taxable income for such taxable year.

"(ii) For purposes of determining the excess referred to in paragraph (1)(B), there shall be treated as short-term capital gain in the taxable year an amount equal to the sum of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) or the adjusted taxable income for such taxable year, whichever is the least, plus

"(II) the excess of the amount described in subclause (I) over the net short-term capital loss (determined without regard to this subsection) for such year."

(11) Paragraph (1) of section 1402(i) of such Code is amended by inserting ", and the deduction provided by section 1201 shall not apply" before the period at the end thereof.

(12) Section 12 of such Code is amended by striking paragraph (4) and redesignating the following paragraphs accordingly.

(13) Paragraph (2) of section 527(b) of such Code is hereby repealed.

(14) Subparagraph (D) of section 593(b)(2) of such Code is amended by adding "and" at the end of clause (iii), by striking ", and" at the end of clause (iv) and inserting a period, and by striking clause (v).

(15) Paragraph (2) of section 801(a) of such Code is hereby repealed.

(16) Subsection (c) of section 831 of such Code is amended by striking paragraph (1) and redesignating the following paragraphs accordingly.

(17)(A) Subparagraph (A) of section 852(b)(3) of such Code is amended by striking ", determined as provided in section 1201(a), on" and inserting "of 17.5 percent of".

(B) Clause (iii) of section 852(b)(3)(D) of such Code is amended—

(i) by striking "65 percent" and inserting "82.5 percent", and

(ii) by striking "section 1201(a)" and inserting "subparagraph (A)".

(18) Clause (ii) of section 857(b)(3)(A) of such Code is amended by striking "determined at the rate provided in section 1201(a) on" and inserting "of 17.5 percent of".

(19) Paragraph (1) of section 882(a) of such Code is amended by striking "section 11, 55, 59A, or 1201(a)" and inserting "section 11, 55, or 59A".

(20) Subsection (b) of section 904 of such Code is amended by striking paragraphs (2)(B), (3)(B), (3)(D), and (3)(E).

(21) Subsection (b) of section 1374 of such Code is amended by striking paragraph (4).

(22) Subsection (b) of section 1381 is amended by striking "or 1201".

(23) Subsection (e) of section 1445 of such Code is amended—

(A) in paragraph (1) by striking "35 percent (or, to the extent provided in regulations, 28 percent)" and inserting "17.5 percent (or, to the extent provided in regulations, 19.8 percent)", and

(B) in paragraph (2) by striking "35 percent" and inserting "17.5 percent".

(24) Clause (i) of section 6425(c)(1)(A) of such Code is amended by striking "or 1201(a)".

(25) Clause (i) of section 6655(g)(1)(A) of such Code is amended by striking "or 1201(a)".

(26)(A) The second sentence of section 7518(g)(6)(A) of such Code is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) applies", and

(ii) by striking "28 percent (34 percent)" and inserting "19.8 percent (17.5 percent)".

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) of such Code applies", and

(ii) by striking "28 percent (34 percent)" and inserting "19.8 percent (17.5 percent)".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 1994.

(2) CONTRIBUTIONS.—The amendment made by subsection (c)(3) shall apply only to contributions on or after January 1, 1995.

(3) WITHHOLDING.—The amendment made by subsection (c)(23) shall apply only to amounts paid after the date of the enactment of this Act.

#### **SEC. 1002. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.**

(a) IN GENERAL.—Part II of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

#### **"SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.**

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Except as otherwise provided in this subsection, if an indexed asset which has been held for more than 1 year is sold or otherwise disposed of, for purposes of this title the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) EXCEPTION FOR DEPRECIATION, ETC.—The deduction for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) stock in a corporation, and

"(B) tangible property (or any interest therein), which is a capital asset or property used in the trade or business (as defined in section 1231(b)).

"(2) CERTAIN PROPERTY EXCLUDED.—For purposes of this section, the term 'indexed asset' does not include—

"(A) CREDITOR'S INTEREST.—Any interest in property which is in the nature of a creditor's interest.

"(B) OPTIONS.—Any option or other right to acquire an interest in property.

"(C) NET LEASE PROPERTY.—In the case of a lessor, net lease property (within the meaning of subsection (i)(3)).

"(D) CERTAIN PREFERRED STOCK.—Stock which is fixed and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(E) STOCK IN FOREIGN CORPORATIONS.—Stock in a foreign corporation.

"(F) STOCK IN S CORPORATIONS.—Stock in an S corporation.

"(3) EXCEPTION FOR STOCK IN FOREIGN CORPORATION WHICH IS REGULARLY TRADED ON NATIONAL OR REGIONAL EXCHANGE.—Paragraph (2)(E) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, the national market system operated by the National Association of Securities Dealers, or any domestic regional exchange for which quotations are published on a regular basis other than—

"(A) stock of a foreign investment company (within the meaning of section 1246(b)),

"(B) stock in a passive foreign investment company (as defined in section 1296), and

"(C) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

"(4) TREATMENT OF AMERICAN DEPOSITORY RECEIPTS.—For purposes of this section, an American depository receipt for stock in a foreign corporation shall be treated as stock in such corporation.

"(c) INDEXED BASIS.—For purposes of this section—

"(1) GENERAL RULE.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) APPLICABLE INFLATION RATIO.—The applicable inflation ratio for any asset is the percentage arrived at by dividing—

"(A) the gross domestic product deflator for the calendar quarter in which the disposition takes place, by

"(B) the gross domestic product deflator for the calendar quarter in which the asset was acquired by the taxpayer (or, if later, the calendar quarter ending on December 31, 1994).

The applicable inflation ratio shall never be less than 1. The applicable inflation ratio for any asset shall be rounded to the nearest 1/1000.

"(3) GROSS DOMESTIC PRODUCT DEFLATOR.—The gross domestic product deflator for any calendar quarter is the implicit price deflator for the gross domestic product for such quarter (as shown in the first revision thereof).

"(d) SHORT SALES.—

"(1) IN GENERAL.—In the case of a short sale of an indexed asset with a short sale period in excess of 1 year, for purposes of this title, the amount realized shall be an amount equal to the amount realized (determined without regard to this paragraph) multiplied by the applicable inflation ratio. In applying subsection (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date of acquisition and the closing date for the sale shall be treated as the date of disposition.

"(2) SHORT SALE OF SUBSTANTIALLY IDENTICAL PROPERTY.—If the taxpayer or the taxpayer's spouse sells short property substantially identical to an asset held by the taxpayer, the asset held by the taxpayer and the substantially identical property shall not be treated as indexed assets for the short sale period.

"(3) SHORT SALE PERIOD.—For purposes of this subsection, the short sale period begins on the day after property is sold and ends on the closing date for the sale.

“(e) TREATMENT OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

“(1) ADJUSTMENTS AT ENTITY LEVEL.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

“(B) EXCEPTION FOR QUALIFICATION PURPOSES.—This section shall not apply for purposes of sections 851(b) and 856(c).

“(2) ADJUSTMENTS TO INTERESTS HELD IN ENTITY.—

“(A) IN GENERAL.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

“(B) RATIO OF 90 PERCENT OR MORE.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

“(C) RATIO OF 10 PERCENT OR LESS.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

“(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE INVESTMENT TRUSTS.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

“(3) QUALIFIED INVESTMENT ENTITY.—For purposes of this subsection, the term ‘qualified investment entity’ means—

“(A) a regulated investment company (within the meaning of section 851), and

“(B) a real estate investment trust (within the meaning of section 856).

“(f) OTHER PASS-THRU ENTITIES.—

“(1) PARTNERSHIPS.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

“(2) S CORPORATIONS.—In the case of an S corporation, the adjustment made under subsection (a) at the corporate level shall be passed through to the shareholders.

“(3) COMMON TRUST FUNDS.—In the case of a common trust fund, the adjustment made under subsection (a) at the trust level shall be passed through to the participants.

“(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

“(1) IN GENERAL.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

“(2) RELATED PERSONS DEFINED.—For purposes of this section, the term ‘related persons’ means—

“(A) persons bearing a relationship set forth in section 267(b), and

“(B) persons treated as single employer under subsection (b) or (c) of section 414.

“(h) TRANSFERS TO INCREASE INDEXING ADJUSTMENT.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is to secure or increase an adjustment under subsection (a), the Secretary may disallow part or all of such adjustment or increase.

“(i) SPECIAL RULES.—For purposes of this section:

“(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

“(A) A substantial improvement to property.

“(B) In the case of stock of a corporation, a substantial contribution to capital.

“(C) Any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

“(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—The applicable inflation ratio shall be appropriately reduced for periods during which the asset was not an indexed asset.

“(3) NET LEASE PROPERTY DEFINED.—The term ‘net lease property’ means leased property where—

“(A) the term of the lease (taking into account options to renew) was 50 percent or more of the useful life of the property, and

“(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property.

“(4) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

“(5) SECTION CANNOT INCREASE ORDINARY LOSS.—To the extent that (but for this paragraph) this section would create or increase a net ordinary loss to which section 1231(a)(2) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

“(6) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

“(7) COLLAPSIBLE CORPORATIONS.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

“(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.”

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 of such Code is amended by inserting after the item relating to section 1021 the following new item:

“Sec. 1022. Indexing of certain assets for purposes of determining gain or loss.”

(c) ADJUSTMENT TO APPLY FOR PURPOSES OF DETERMINING EARNINGS AND PROFITS.—Subsection (f) of section 312 of such Code (relating to effect on earnings and profits of gain or loss and of receipt of tax-free distributions) is amended by adding at the end thereof the following new paragraph:

“(3) EFFECT ON EARNINGS AND PROFITS OF INDEXED BASIS.—

**For substitution of indexed basis for adjusted basis in the case of the disposition of certain assets, see section 1022(a)(1)."**

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after December 31, 1994, in taxable years ending after such date.

#### SEC. 1003. CAPITAL LOSS DEDUCTION ALLOWED WITH RESPECT TO SALE OR EXCHANGE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (c) of section 165 of the Internal Revenue Code of 1986 (relating to limitation on losses of individuals) is amended by striking “and” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting “; and”, and by adding at the end the following new paragraph:

“(4) losses arising from the sale or exchange of the principal residence (within the meaning of section 1034) of the taxpayer.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales and exchanges after December 31, 1994, in taxable years ending after such date.

#### TITLE II—NEUTRAL COST RECOVERY

#### SEC. 2001. DEPRECIATION ADJUSTMENT FOR CERTAIN PROPERTY PLACED IN SERVICE AFTER DECEMBER 31, 1994.

(a) IN GENERAL.—Section 168 of the Internal Revenue Code of 1986 (relating to accelerated cost recovery system) is amended by adding at the end thereof the following new subsection:

“(k) DEDUCTION ADJUSTMENT TO ALLOW EQUIVALENT OF EXPENSING FOR CERTAIN PROPERTY PLACED IN SERVICE AFTER DECEMBER 31, 1994.—

“(1) IN GENERAL.—In the case of tangible property placed in service after December 31, 1994, the deduction under this section with respect to such property—

“(A) shall be determined by substituting ‘150 percent’ for ‘200 percent’ in subsection (b)(1) in the case of property to which the 200 percent declining balance method would otherwise apply, and

“(B) for any taxable year after the taxable year during which the property is placed in service shall be—

“(i) the amount determined under this section for such taxable year without regard to this subparagraph, multiplied by

“(ii) the applicable neutral cost recovery ratio for such taxable year.

“(2) APPLICABLE NEUTRAL COST RECOVERY RATIO.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The applicable neutral cost recovery ratio for the property for any taxable year is the number determined by—

“(i) dividing—

“(I) the gross domestic product deflator for the calendar quarter ending in such taxable year which corresponds to the calendar quarter during which the property was placed in service by the taxpayer, by

“(II) the gross domestic product deflator for the calendar quarter during which the property was placed in service by the taxpayer, and

“(ii) then multiplying the number determined under clause (i) by the number equal to 1.035 to the nth power where ‘n’ is the number of full years in the period beginning on the 1st day of the calendar quarter during which the property was placed in service by the taxpayer and ending on the day before the beginning of the corresponding calendar quarter ending during such taxable year.

The applicable neutral cost recovery ratio shall never be less than 1. The applicable neutral cost recovery ratio shall be rounded to the nearest  $\frac{1}{1000}$ .

(B) SPECIAL RULE FOR CERTAIN PROPERTY.—In the case of property described in paragraph (2) or (3) of subsection (b) or in subsection (g), the applicable neutral cost recovery ratio shall be determined without regard to subparagraph (A)(ii).

(3) GROSS DOMESTIC PRODUCT DEFLATOR.—For purposes of paragraph (2), the gross domestic product deflator for any calendar quarter is the implicit price deflator for the gross domestic product for such quarter (as shown in the first revision thereof).

"(4) COORDINATION WITH INDEXING OF BASIS FOR PURPOSES OF DETERMINING GAIN OR LOSS.—Section 1022 shall not apply to any property to which this subsection applies.

"(5) ELECTION NOT TO HAVE SUBSECTION APPLY.—This subsection shall not apply to any property if the taxpayer elects not to have this subsection apply to such property. Such an election, once made, shall be irrevocable.

"(6) CHURNING TRANSACTIONS.—This subsection shall not apply to any property if this section would not apply to such property were subsection (f)(5)(A)(ii) applied by substituting '1995' for '1981' and '1994' for '1980'.

"(7) ADDITIONAL DEDUCTION NOT TO AFFECT BASIS OR RECAPTURE.—The additional amount determined under this section by reason of this subsection shall not be taken into account in determining the adjusted basis of any property or of any interest in a pass-thru entity (as defined in section 1201(d)(2)) which holds such property and shall not be treated as a deduction for depreciation for purposes of sections 1245 and 1250."

(b) MINIMUM TAX TREATMENT.—

(1) Paragraph (1) of section 56(a) of such Code is amended by adding at the end thereof the following new subparagraph:

"(E) USE OF NEUTRAL COST RECOVERY RATIO.—In the case of property to which section 168(k) applies and which is placed in service after December 31, 1994, the deduction allowable under this paragraph with respect to such property for any taxable year (after the taxable year during which the property is placed in service) shall be—

"(i) the amount so allowable for such taxable year without regard to this subparagraph, multiplied by

"(ii) the applicable neutral cost recovery ratio for such taxable year (as determined under section 168(k)).

This subparagraph shall not apply to any property with respect to which there is an election in effect not to have section 168(k) apply."

(2) Subparagraph (C) of section 56(g)(4) of such Code is amended by adding at the end the following new clause:

"(v) NEUTRAL COST RECOVERY DEDUCTION.—Clause (i) shall not apply to the additional deduction allowable by reason of section 168(k)."

(c) COORDINATION WITH DEPRECIATION LIMITATION ON CERTAIN AUTOMOBILES.—Clause (i) of section 280F(a)(1)(B) of such Code is amended by adding at the end the following new sentence: "For purposes of this clause, the unrecovered basis of any passenger automobile shall be treated as including the additional amount determined under section 168 by reason of subsection (k) thereof to the extent not allowed as a deduction by reason of this paragraph for any taxable year in the recovery period."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1994.

### **TITLE III—RISK ASSESSMENT AND COST/BENEFIT ANALYSIS FOR NEW REGULATIONS**

#### **SEC. 3001. FINDINGS.**

The Congress finds that:

(1) Environmental, health, and safety regulations have led to dramatic improvements in the environment and have significantly reduced human health risk; however, the Federal regulations that have led to these improvements have been more costly and less effective than they could have been; too often, regulatory priorities have not been based upon a realistic consideration of risk, risk reduction opportunities, and costs.

(2) The public and private resources available to address health, safety, and environ-

mental concerns are not unlimited; those resources need to be allocated to address the greatest needs in the most cost-effective manner and so that the incremental costs of regulatory options are reasonably related to the incremental benefits.

(3) To provide more cost-effective and costreasonable protection to human health and the environment, regulatory priorities should be based upon realistic consideration of risk; the priority setting process must include scientifically sound, objective, and unbiased risk assessments, comparative risk analysis, and risk management choices that are grounded in cost-benefit principles.

(4) Risk assessment has proven to be a useful decision making tool; however, improvements are needed in both the quality of assessments and the characterization and communication of findings; scientific and other data must be better collected, organized, and evaluated; most importantly, the critical information resulting from a risk assessment must be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public.

(5) The public stake holders must be fully involved in the risk-decision making process. They have the right-to-know about the risks addressed by regulation, the amount of risk to be reduced, the quality of the science used to support decisions, and the cost of implementing and complying with regulations. This knowledge will allow for public scrutiny and promote quality, integrity, and responsiveness of agency decisions.

#### **Subtitle A—Risk Assessment and Communication**

##### **SEC. 3101. SHORT TITLE.**

This subtitle may be cited as the "Risk Assessment and Communication Act of 1995".

##### **SEC. 3102. PURPOSES.**

The purposes of this subtitle are—

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

(2) to provide for full consideration and discussion of relevant data and potential methodologies;

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

(4) to improve consistency within the executive branch in preparing risk assessments and risk characterizations.

##### **SEC. 3103. EFFECTIVE DATE; APPLICABILITY; SAVINGS PROVISIONS.**

(a) EFFECTIVE DATE.—Except as otherwise specifically provided in this subtitle, the provisions of this subtitle shall take effect 18 months after the date of enactment of this subtitle.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this title applies to all risk assessments and risk characterizations prepared by, or on behalf of, any Federal agency in connection with Federal regulatory programs designed to protect human health, safety, or the environment.

(2) EXCEPTIONS.—(A) This title does not apply to risk assessments or risk characterizations performed with respect to either of the following:

(i) A situation that the head of the agency considers to be an emergency.

(ii) A screening analysis, including a screening analysis for purposes of product regulation, product reregistration, or premanufacturing notices.

(B) No analysis shall be treated as a screening analysis for purposes of subparagraph (A) if the results of such analyses are used either—

(i) as the basis for imposing restrictions on substances or activities, or

(ii) to characterize a positive finding of risks from substances or activities in any final agency document made available to the general public.

(3) LABELS.—This title shall not apply to any food, drug, or other product label or to any risk characterization appearing on any such label.

(c) SAVINGS PROVISIONS.—Nothing in this subtitle shall be construed to modify any statutory standard or requirement designed to protect health, safety, or the environment. Nothing in this subtitle shall be interpreted to preclude the consideration of any data or the calculation of any estimate to more fully describe risk or provide examples of scientific uncertainty or variability. Nothing in this title shall be construed to require the disclosure of any trade secret or other confidential information.

##### **SEC. 3104. PRINCIPLES FOR RISK ASSESSMENT.**

(a) IN GENERAL.—The head of each Federal agency shall apply the principles set forth in subsection (b) when preparing risk assessments in order to assure that such risk assessments and all of their components distinguish scientific findings from other considerations and are, to the maximum extent feasible, scientifically objective, unbiased, and inclusive of all relevant data. Discussions or explanations required under this section need not be repeated in each risk assessment document as long as there is a reference to the relevant discussion or explanation in another agency document.

(b) PRINCIPLES.—The principles to be applied when preparing risk assessments are as follows:

(1) When assessing human health risks, a risk assessment shall consider and discuss both laboratory and epidemiological data of sufficient quality which finds, or fails to find, a correlation between health risks and a potential toxin or activity. Where conflicts among such data appear to exist, or where animal data is used as a basis to assess human health, the assessment shall include discussion of possible reconciliation of conflicting information, and as appropriate, differences in study designs, comparative physiology, routes of exposure, bioavailability, pharmacokinetics, and any other relevant factor.

(2) Where a risk assessment involves selection of any significant assumption, inference, or model, the Federal agency preparing the assessment shall—

(A) present a representative list and explanation of plausible and alternative assumptions, inferences, or models;

(B) explain the basis for any choices;

(C) identify any policy or value judgments;

(D) fully describe any model used in the risk assessment and make explicit the assumptions incorporated in the model; and

(E) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

##### **SEC. 3105. PRINCIPLES FOR RISK CHARACTERIZATION AND COMMUNICATION.**

In characterizing risk in any risk assessment document, regulatory proposal or decision, report to Congress, or other document which is made available to the public, each Federal agency characterizing the risk shall comply with each of the following:

(1) ESTIMATES OF RISK.—The head of such agency shall describe the populations or natural resources which are the subject of the

risk characterization. If a numerical estimate of risk is provided, the agency shall, to the extent feasible and scientifically appropriate, provide—

(A) the best estimate or estimates for the specific populations or natural resources which are the subject of the characterization (based on the information available to the department, agency, or instrumentality); and

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

In addition to such best estimate or estimates, the Federal agency may present plausible upper-bound or conservative estimates in conjunction with plausible lower bounds estimates. Where appropriate, the Federal agency may present, in lieu of a single best estimate, multiple estimates based on assumptions, inferences, or models which are equally plausible, given current scientific understanding. To the extent practical and appropriate, the Federal agency shall provide descriptions of the distribution and probability of risk estimates to reflect differences in exposure variability in populations and uncertainties.

(2) **EXPOSURE SCENARIOS.**—The Federal agency shall explain the exposure scenarios used in any risk assessment, and, to the extent feasible, provide a statement of the size of the corresponding population at risk and the likelihood of such exposure scenarios.

(3) **COMPARISONS.**—To the extent feasible, the Federal agency shall provide a statement that places the nature and magnitude of risks to human health in context. Such statement shall include appropriate comparisons with estimates of risks that are familiar to and routinely encountered by the general public as well as other risks. The statement shall identify relevant distinctions among categories of risk and limitations to comparisons.

(4) **SUBSTITUTION RISKS.**—When a Federal agency provides a risk assessment or risk characterization for a proposed or final regulatory action, such assessment or characterization shall include a statement of any significant substitution risks to human health, where information on such risks has been provided to the agency.

(5) **SUMMARIES OF OTHER RISK ESTIMATES.**—If—

(A) a Federal agency provides a public comment period with respect to a risk assessment or regulation,

(B) a commenter provides a risk assessment, and a summary of results of such risk assessment, and

(C) such risk assessment is consistent with the principles and the guidance provided under this subtitle,

the agency shall present such summary in connection with the presentation of the agency's risk assessment or the regulation.

#### **SEC. 3106. GUIDELINES, PLAN FOR ASSESSING NEW INFORMATION, AND REPORT.**

(a) **GUIDELINES.**—Within 15 months after the date of enactment of this subtitle, the President shall issue guidelines for Federal agencies consistent with the risk assessment and characterization principles set forth in sections 3104 and 3105 and shall provide a format for summarizing risk assessment results. In addition, such guidelines shall include guidance on at least the following subjects: criteria for scaling animal studies to assess risks to human health; use of different types of dose-response models; thresholds; definitions, use, and interpretations of the maximum tolerated dose; weighting of evidence with respect to extrapolating human health risks from sensitive species; evaluation of benign tumors, and evaluation of different human health endpoints.

(b) **PLAN.**—Within 18 months after the date of enactment of this subtitle, each Federal

agency shall publish a plan to review and revise any risk assessment published prior to the expiration of such 18-month period if the agency determines that significant new information or methodologies are available that could significantly alter the results of the prior risk assessment. The plan shall provide procedures for receiving and considering new information and risk assessments from the public. The plan may set priorities for review and revision of risk assessments based on factors such Federal agency considers appropriate.

(c) **REPORT.**—Within 3 years after the enactment of this subtitle, each Federal agency shall provide a report to the Congress evaluating the categories of policy and value judgments identified under subparagraph (C) of section 3104(b)(2).

(d) **PUBLIC COMMENT AND CONSULTATION.**—The guidelines, plan and report under this section, shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State agencies and local governments, and such other departments and agencies, offices, organizations, or persons as may be advisable.

(e) **REVIEW.**—The President shall review the guidelines published under this section at least every 4 years.

#### **SEC. 3107. DEFINITIONS.**

For purposes of this subtitle:

(1) **RISK ASSESSMENT.**—The term “risk assessment” means the process of identifying hazards and quantifying or describing the degree of toxicity, exposure, or other risk they pose for exposed individuals, populations, or resources. Such term also refers to the document containing the explanation of how the assessment process has been applied to an individual substance, activity, or condition.

(2) **RISK CHARACTERIZATION.**—The term “risk characterization” means that element of a risk assessment that involves presentation of the degree of risk in any regulatory proposal or decision, report to Congress, or other document which is made available to the public. The term includes discussions of uncertainties, conflicting data, estimates, extrapolations, inferences, and opinions.

(3) **BEST ESTIMATE.**—The term “best estimate” means an estimate which, to the extent feasible and scientifically appropriate, is based on one of the following:

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

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

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

(4) **SUBSTITUTION RISK.**—The term “substitution risk” means a potential increased risk to human health, safety, or the environment from a regulatory option designed to decrease other risks.

(5) **FEDERAL AGENCY.**—The term “Federal agency” means an executive department, military department, or independent establishment as defined in part I of title 5 of the United States Code, except that such term also includes the Office of Technology Assessment.

#### **Subtitle B—Analysis of Risk Reduction Benefits and Costs**

#### **SEC. 3201. ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS.**

(a) **IN GENERAL.**—Except as provided in subsection (b), the President shall require each executive branch agency to prepare the following for each major rule designed to protect human health, safety, or the environment that is proposed or promulgated by

the agency after the date of enactment of this Act:

(1) For each such proposed or promulgated rule, an assessment of incremental costs and incremental risk reduction or other benefits associated with each significant regulatory alternative considered by the agency in connection with the rule or proposed rule.

(2) For each such proposed or promulgated rule, to the extent feasible, a comparison of any human health, safety, or environmental risks addressed by the regulatory alternatives to other risks chosen by the head of the agency, including at least 3 other risks regulated by the agency and to at least 3 other risks with which the public is familiar.

(3) For each such proposed or promulgated rule, a statement of other human health risks potentially posed by implementing or complying with the regulatory alternatives, including substitution risks.

(4) For each final rule, an assessment of the costs and risk reduction or other benefits associated with implementation of, and compliance with, the rule.

(5) For each final rule, a certification by the head of the agency of each of the following:

(A) A certification that the assessment under paragraph (4) is based on an objective and unbiased scientific and economic evaluation of all significant and relevant information provided to the agency by interested parties relating to the costs, risks, and risk reduction or other benefits addressed by the rule. Such information shall have been subjected to peer review to the extent required by section 3301.

(B) A certification that the rule will substantially advance the purpose of protecting human health or the environment, as applicable, against the risk addressed by the rule.

(C) A certification that the rule will produce benefits to human health or the environment that will justify the costs incurred by local and State governments, the Federal Government, and other public and private entities as a result of implementation of and compliance with the rule, as determined under paragraph (1).

(D) A certification that there is no regulatory alternative that is allowed by the statute under which the regulation is promulgated that would achieve an equivalent reduction in risk in a more cost-effective manner, along with a brief explanation of why other regulatory alternatives that were considered by the head of the agency were found to be less cost-effective.

(b) **PUBLICATION.**—For each major rule referred to in subsection (a) the head of each agency shall publish in a clear and concise manner in the Federal Register along with the proposed or final regulation, or otherwise make publicly available, the information required to be prepared under subsection (a) of this section.

(c) **DEFINITIONS.**—For purposes of this section:

(1) **COSTS.**—The term “costs” includes the direct and indirect costs to the United States government, costs to State and local governments, and costs to the private sector, of implementing and complying with a regulatory action.

(2) **MAJOR RULE.**—The term “major rule” means any regulation that is likely to result in one or more of the following:

(A) An annual effect on the economy of \$25,000,000 or more.

(B) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(C) Significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Subtitle C—Peer Review

##### SEC. 3301. PEER REVIEW PROGRAM.

(a) ESTABLISHMENT.—For regulatory programs addressing human health, safety, or the environment, the head of each Federal agency shall develop a systematic program for peer review of risk assessments and economic assessments used by the agency. Such program shall be applicable across the agency and—

(1) shall provide for the creation of peer review panels consisting of independent and external experts who are broadly representative and balanced to the extent feasible;

(2) may provide for differing levels of peer review depending on the significance or the complexity of the problems or the need for expeditiousness;

(3) shall not exclude peer reviewers merely because they represent entities that may have a potential interest in the outcome, provided that interest is fully disclosed to the agency; and

(4) shall provide open opportunity to become part of a peer review panel at a minimum by soliciting nominations through a Federal Register announcement.

(b) REQUIREMENT FOR PEER REVIEW.—Each Federal agency shall provide for peer review of scientific and economic information used for purposes of any evaluation under section 3201(a)(5)(A) or for purposes of any significant risk or cost assessment prepared in connection with a major rule. In addition, the Director of the Office of Management and Budget shall order that peer review be provided for any major risk assessment or cost assessment that may have a significant impact on public policy decisions.

##### (c) CONTENTS.—

(1) IN GENERAL.—Each peer review under this section shall include a report to the Federal agency concerned with respect to each of the following:

(A) An evaluation of the technical, scientific, and economic merit of the data and methods used for the assessment and analysis.

(B) A list of any considerations that were not taken into account in the assessment and analysis, but were considered appropriated by a majority of the members of the peer review panel.

(C) A discussion of the methodology used for the assessment and analysis.

(2) COMMENTS AND APPENDIX.—Each peer review report under this subsection shall include—

(A) all comments supported by a majority of the members of the peer review panel submitting the report; and

(B) an appendix which sets forth the dissenting opinions that any peer review panel member wants to express.

(3) SEPARATION OF ASSESSMENTS.—Peer review of human health, safety, environmental, and economic assessments may be separated for purpose of this subtitle.

(d) RESPONSE TO PEER REVIEW.—The head of the Federal agency shall provide a written response to all significant peer review comments.

(e) AVAILABILITY TO PUBLIC.—All peer review comments or conclusions and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

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

assessment previously subjected to peer review.

(g) NATIONAL PANELS.—The President shall appoint National Peer Review Panels to annually review the risk assessment and cost assessment practices of each Federal agency for programs designed to protect human health, safety, or the environment. The Panel shall submit a report to the Congress no less frequently than annually containing the results of such review.

(h) MAJOR RULE DEFINED.—For purposes of this section, the term "major rule" has the same meaning as provided by section 3201(c) except that "\$100,000,000" shall be substituted for "\$25,000,000".

#### TITLE IV—ESTABLISHMENT OF FEDERAL REGULATORY BUDGET COST CONTROL

##### SEC. 4001. AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

(a) FEDERAL REGULATORY BUDGET COST CONTROL SYSTEM.—Title III of the Congressional Budget Act of 1974 is amended by inserting before section 300 the following new center heading "PART A—GENERAL PROVISIONS" and by adding at the end the following new part:

#### "PART B—FEDERAL REGULATORY BUDGET COST CONTROL

##### "SEC. 321. OMB-CBO REPORTS.

"(a) OMB-CBO INITIAL REPORT.—Within 1 year after the date of enactment of this section, OMB and CBO shall jointly issue a report to the President and each House of Congress that contains the following:

"(1) For the first budget year beginning after the issuance of this report, a projection of the aggregate direct cost to the private sector of complying with all Federal regulations and rules in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal regulations and rules into the budget year and the outyears based on those regulations and rules.

"(2) A calculation of the estimated aggregate direct cost to the private sector of compliance with all Federal regulations and rules as a percentage of the gross domestic product (GDP).

"(3) The estimated marginal cost (measured as a reduction in estimated gross domestic product) to the private sector of compliance with all Federal regulations and rules in excess of 5 percent of the gross domestic product.

"(4) The effect on the domestic economy of different types of Federal regulations and rules.

"(5) The appropriate level of personnel, administrative overhead, and programmatic savings that should be achieved on a fiscal year by fiscal year basis by Federal agencies that issue regulations or rules with direct costs to the private sector through the reduction of such aggregate costs to the private sector by equal percentage increments in the 6 years following the budget year until the aggregate level of such costs does not exceed 5 percent of the estimated gross domestic product for the same fiscal year as the estimated costs that will be incurred.

"(6) Recommendations for budgeting, technical, and estimating changes to improve the Federal regulatory budgeting process.

"(b) UPDATE REPORTS.—OMB and CBO shall issue update reports on September 15th of the fifth year beginning after issuance of the initial report and at 5-year intervals thereafter containing all the information required in the initial report, but based upon all Federal regulations and rules in effect immediately before issuance of the most recent update report.

"(c) INITIAL BASELINE REPORT.—Within 30 days after the date of enactment of this section, OMB and CBO shall jointly issue a re-

port to the President and each House of Congress that contains an initial aggregate regulatory baseline for the first budget year that begins at least 120 days after that date of enactment. That baseline will be a projection of the aggregate direct cost to the private sector of complying with all Federal regulations and rules in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal regulations and rules into the budget year and the outyears based on those regulations and rules.

##### "SEC. 322. AGGREGATE REGULATORY BASELINE.

"(a) IN GENERAL.—For the first budget year beginning after the date of enactment of this section and for every other fiscal year thereafter, the aggregate regulatory baseline refers to a projection of the aggregate direct cost to the private sector of complying with all Federal regulations and rules in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal regulations and rules into the budget year and the outyears based on those regulations and rules. However, in the case of each of the succeeding fiscal years, the baseline shall be adjusted for the estimated growth during that year in the gross domestic product (GDP).

"(b) OMB-CBO AGGREGATE REGULATORY BASELINE REPORTS.—(1) The first budget year for which there shall be an aggregate regulatory baseline shall be the budget year to which the initial OMB-CBO baseline report issued under section 321(c) pertains.

"(2) In the case of each budget year after the budget year referred to in paragraph (1), not later than September 15 of the current year, OMB and CBO shall jointly issue a report containing the baseline referred to in subsection (a) for that budget year.

##### "SEC. 323. RECONCILIATION AND ALLOCATIONS.

"(a) RECONCILIATION DIRECTIVES.—In addition to the requirements of section 310, a concurrent resolution on the budget for any fiscal year shall specify—

"(1) changes in laws and regulations and rules necessary to reduce the aggregate direct cost to the private sector of complying with all Federal regulations by 6.5 percent for the budget year (as measured against the aggregate regulatory baseline for the first budget year to which this part applies) and by equal percentage increments for each of the outyears (until the aggregate level of such costs does not exceed 5 percent of the estimated gross domestic product for the same fiscal year as the estimated costs that will be incurred) for Federal agencies that issue regulations or rules producing direct costs to the private sector; and

"(2) changes in laws necessary to achieve reductions in the level of personnel and administrative overhead and to achieve programmatic savings for the budget year and the outyears for those agencies of the following:

"(A) In the first outyear, one-fourth of the percent of reduction in regulatory authority from the aggregate regulatory base.

"(B) In the second outyear, one-third of the percent of reduction in regulatory authority from the aggregate regulatory base.

"(C) In the third, fourth, fifth, and sixth years following the budget year, one-half of the percent of reduction in regulatory authority from the aggregate regulatory base.

Section 310(c) shall not apply with respect to directions made under this section.

"(b) ALLOCATION OF TOTALS.—(1) The Committees on the Budget of the House of Representatives and the Senate shall each allocate aggregate 2-year regulatory authority among each committee of its House and by



major functional category for the first budget year beginning after the date of enactment of this section and for the second, fourth, and sixth years following the budget year and then every other year thereafter.

"(2) As soon as practicable after receiving an allocation under paragraph (1), each committee shall subdivide its allocation among its subcommittees or among programs over which it has jurisdiction.

"(c) POINT OF ORDER.—(1) It shall not be in order in the House of Representatives or the Senate to consider any bill or resolution, or amendment thereto, which would cause the appropriate allocation made under subsection (b) for a fiscal year of regulatory authority to be exceeded.

"(2) WAIVER.—The point of order set forth in paragraph (1) may only be waived by the affirmative vote of at least three-fifths of the Members voting, a quorum being present.

"(d) DETERMINATIONS BY BUDGET COMMITTEES.—For purposes of this section, the level of regulatory authority for a fiscal year shall be determined by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

"(e) EXCEEDING ALLOCATION TOTALS.—Whenever any Committee of the House of Representatives exceeds its allocation of aggregate 2-year regulatory authority under subsection (b)(1), any Member of the House of Representatives may offer a bill in the House (which shall be highly privileged, unamendable, and debateable for 30 minutes) which shall only prohibit the issuance of regulations and rules by any agency under the jurisdiction of that committee for the fiscal years covered by that allocation until that committee eliminates its breach.

#### **"SEC. 324. ANALYSIS OF REGULATORY COSTS BY CONGRESSIONAL BUDGET OFFICE.**

"CBO shall prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

"(1) an estimate of the costs which would be incurred by the private sector in carrying out or complying with such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis of each such estimate; and

"(2) a comparison of the estimate of costs described in paragraph (1) with any available estimates of costs made by such committee or by any Federal agency.

#### **"SEC. 325. DEFINITIONS.**

"As used in this part:

"(1) The term 'CBO' refers to the Director of the Congressional Budget Office.

"(2) The term 'OMB' refers to the Director of the Office of Management and Budget.

"(3) The term 'regulatory authority' or 'regulatory cost' means the direct cost to the private sector of complying with Federal regulations and rules.

"(4) The term 'direct costs' means (recognizing that direct costs are not the only costs associated with Federal regulation) all expenditures occurring as a direct result of complying with Federal regulation, rule, statement, or legislation, except those applying to the military or agency organization, management, and personnel.

"(5) The term 'regulation' or the term 'rule' means any agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of any agency, but does not include—

"(A) administrative actions governed by the provisions of sections 556 and 557 of title 5, United States Code; or

"(B) rules or regulations issued with respect to a military or foreign affairs function of the United States.

"(6) The term 'agency' means any authority of the United States that is an agency under title section 3502(1) of title 44, United States Code, including independent agencies."

#### **SEC. 4002. PRESIDENT'S ANNUAL BUDGET SUBMISSIONS.**

Section 1105(a) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(32) a regulatory authority budget analysis of the aggregate direct cost to the private sector of complying with all current and proposed Federal regulations and rules and proposals for complying with section 323 of the Congressional Budget Act of 1974 for the budget year and the outyears."

#### **SEC. 4003. ESTIMATION AND DISCLOSURE OF COSTS OF FEDERAL REGULATION.**

Chapter 6 of title 5, United States Code, popularly known as the "Regulatory Flexibility Act", is amended—

(1) in section 603(a) in the second sentence by inserting before the period the following: "and the monetary costs to small entities, other businesses, and individuals of complying with the proposed rule";

(2) by adding at the end of section 603 the following:

"(d) Each initial regulatory flexibility analysis shall also contain a description of the nature and amount of monetary costs that will be incurred by small entities, other businesses, and individuals in complying with the proposed rule.";

(3) in section 604(a)—

(A) in paragraph (2) by striking "and" after the semicolon;

(B) in paragraph (3) by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(4) a statement of the nature and amount of monetary costs that will be incurred by small entities, other businesses, and individuals in complying with the rule."; and

(4) in section 607 by inserting before the period the following: ", except that estimates of monetary costs under sections 603(d) and 604(a)(4) shall only be in the form of a numerical description".

#### **TITLE V—STRENGTHENING OF PAPERWORK REDUCTION ACT**

##### **SEC. 5001. SHORT TITLE.**

This title may be cited as the "Paperwork Reduction Act of 1995".

##### **Subtitle A—Authorization of Appropriations**

##### **SEC. 5101. AUTHORIZATION OF APPROPRIATIONS.**

Section 3520(a) of title 44, United States Code, is amended by striking out "\$5,500,000 for each of the fiscal years 1987, 1988, and 1989." and inserting in lieu thereof "\$7,000,000 for fiscal year 1994, \$7,500,000 for fiscal year 1995, \$8,000,000 for fiscal year 1996, \$8,500,000 for fiscal year 1997, and \$9,000,000 for fiscal year 1998."

##### **Subtitle B—Reducing the Burden of Federal Paperwork on the Public**

##### **SEC. 5201. COVERAGE OF ALL FEDERALLY SPONSORED PAPERWORK BURDENS.**

Section 3502 of title 44, United States Code, is amended—

(1) by amending paragraph (3) to read as follows:

"(3) the term 'burden' means the time, effort, financial resources, and opportunity costs imposed on persons to generate, capture, assemble, process, maintain, and report information to or for a Federal agency, including—

"(A) the resources expended for obtaining, reviewing and understanding applicable instructions and requirements;

"(B) developing a way to comply with the applicable instructions and requirements;

"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

"(D) searching existing data sources;

"(E) obtaining, compiling and maintaining the necessary data;

"(F) implementing recordkeeping requirements;

"(G) completing and reviewing the collection of information;

"(H) retaining, sharing, notifying, reporting, transmitting, labeling, or otherwise disclosing to third parties or the public the information involved; and

"(I) carrying out any other information transaction which occurs as a result of the collection of information";

(2) in paragraph (4) by striking out "of facts or opinions by" and inserting in lieu thereof "(through maintenance, retention, notifying, reporting, labeling or disclosure to third parties or the public) of facts or opinions by or for"; and

(3) in paragraph (17) by inserting ", including the retention, reporting, notifying, or disclosure to third parties or the public of such records" before the period.

##### **SEC. 5202. PAPERWORK REDUCTION GOALS.**

Section 3505 of title 44, United States Code, is amended to read as follows:

##### **"§ 3505. Assignment of tasks and deadlines**

"In carrying out the functions under this chapter, the Director shall—

"(1) set a governmentwide goal, consistent with improving agency management of the process for the review of each collection of information established under section 3506(e), to reduce by September 30, 1995, the burden of Federal collections of information existing on September 30, 1994, by at least 5 percent;

"(2) for the fiscal year beginning on October 1, 1995, and the following 3 fiscal years, set a governmentwide goal, consistent with improving agency management of the process for the review of each collection of information established under section 3506(e), to reduce the burden of Federal collections of information existing at the end of the immediately preceding fiscal year by at least 5 percent;

"(3) in establishing the governmentwide goal pursuant to paragraph (2), establish a goal for each agency that—

"(A) represents the maximum practicable opportunity to reduce the paperwork burden imposed upon the public by such agency's collections of information, after considering the recommendations of the senior agency official designated under section 3506(b)(1); and

"(B) permits the attainment of the governmentwide goal when such agency's goal is aggregated with the individual goals of all other agencies included in the governmentwide goal; and

"(4) in each report issued under section 3514, beginning with the report relating to fiscal year 1995, identify any agency initiatives to reduce the burden of the Federal collections of information associated with—

"(A) businesses, especially small businesses and those engaged in international competition;

"(B) State and local governments; and

"(C) educational institutions."

##### **Subtitle C—Enhancing Government Responsibility and Accountability for Reducing the Burden of Federal Paperwork**

##### **SEC. 5301. REEMPHASIZING THE RESPONSIBILITY OF THE DIRECTOR TO CONTROL THE BURDEN OF FEDERAL PAPERWORK.**

Section 3504(c) of title 44, United States Code, is amended—

(1) in paragraph (3) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and inserting after

subparagraph (A) the following new subparagraph:

“(B) display, to the extent practicable, an estimate of the burden for each response;”;

(2) by amending paragraphs (5) and (6) to read as follows:

“(5) establishing procedures under which an agency is to estimate the burden under this chapter to comply with the proposed collection of information;

“(6) coordinating with the Office of Federal Procurement Policy to eliminate paperwork burdens associated with procurement and acquisition;”;

(3) by striking out the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

“(8) minimizing the Federal paperwork burden imposed through Federal collection of information, with particular emphasis on those individuals or entities most adversely affected, including—

“(A) businesses, especially small businesses and those engaged in international competition;

“(B) State and local governments; and

“(C) educational institutions; and

“(9) initiating and conducting, with selected agencies and non-Federal entities on a voluntary basis, pilot projects to test or demonstrate the feasibility and benefit of changes or innovations in Federal policies, rules, regulations, and agency procedures to improve information management practices and related management activities (including authority for the Director to waive the application of designated agency regulations or administrative directives after giving timely notice to the public and Congress regarding the need for such waiver).”.

#### **SEC. 5302. ENHANCING AGENCY RESPONSIBILITY TO OBTAIN PUBLIC REVIEW OF PROPOSED PAPERWORK BURDENS.**

Section 3507(a) of title 44, United States Code, is amended—

(1) in paragraph (2)(B) by inserting “a summary of the request,” after “title for the information collection request,”;

(2) by striking out “and” at the end of paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

“(3) the agency provides at least 30 days for public comment to the agency and the Office of Management and Budget after publication of the notice in the Federal Register, except as provided under section 3507 (g) and (k), and the agency head and the Director consider comments received regarding the proposed collection of information; and”.

#### **SEC. 5303. EXPEDITING REVIEW AT THE OFFICE OF MANAGEMENT AND BUDGET.**

Section 3507(b) of title 44, United States Code, is amended—

(1) by striking out the first sentence and inserting in lieu thereof “The Director shall within 30 days after publication of the notice under subsection (a)(3) that is applicable to a proposed information collection request not contained in a proposed rule, notify the agency involved of the decision to approve or disapprove the proposed information collection request and shall make such decisions publicly available. Any decision to disapprove an information collection request shall include an explanation of the reasons for such decision.”;

(2) by striking out “sixty” each place it appears and inserting “30” in each such place;

(3) by striking out “thirty” and inserting in lieu thereof “30”; and

(4) by striking out “one” and inserting in lieu thereof “1”.

#### **SEC. 5304. IMPROVING PUBLIC AND AGENCY SCRUTINY OF PAPERWORK BURDENS PROPOSED FOR RENEWAL.**

(a) APPROVAL OF INFORMATION COLLECTION REQUEST.—Section 3507(d) of title 44, United States Code, is amended—

(1) by inserting “(1)” after “(d)”;

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

“(2)(A) If the head of the agency, or the senior official designated under section 3506(b)(1), decides to seek extension of the Director’s approval granted for a currently approved information collection request, the agency shall, through the notice prescribed in subsection (a)(2)(B) and such other practicable steps as may be reasonable, seek comment from the agencies, and the public on the continued need for, and burden imposed by, the collection of information.

“(B) The agency, after having made a reasonable effort to seek comment under subparagraph (A), but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved information collection request, shall—

“(i) evaluate the public comments received;

“(ii) conduct the review established under section 3506(e); and

“(iii) provide to the Director the certification required by section 3506(f), including the text of the certification and any additional relevant information regarding how the information collection request comports with the principles and requirements of this chapter.

“(C) Upon receipt of such certification, and prior to the expiration of the control number for that information collection request, the Director shall—

“(i) ensure that the agency has taken the actions specified under section 3506(f)(2);

“(ii) evaluate the public comments received by the agency or by the Director;

“(iii) determine whether the agency certification complies with the standards under section 3506(f)(1); and

“(iv) approve or disapprove the information collection request under this chapter.

“(3) If a certification is not provided to the Director prior to the beginning of the 60-day period before the expiration of the control number as provided under paragraph (2)(B), the agency shall submit the information collection request for review and approval or disapproval under this chapter.

“(4) An agency may not make a substantive or material modification to an information collection request after it has been approved by the Director, unless the modification has been submitted to the Director for review and approval or disapproval under this chapter.”.

(b) APPROVAL OF INFORMATION COLLECTION REQUIREMENTS.—Section 3507 of title 44, United States Code, is further amended by adding at the end thereof the following new subsections:

“(i)(1) As soon as practicable, but no later than publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information requirement and upon request, information necessary to make the determination required under this chapter.

“(2) Within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments under the standards set forth in section 3508 on the collection of information requirement contained in the proposed rule.

“(3) When a final rule is published in the Federal Register, the agency shall explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed by the Director

or the public, or explain the reasons such comments were rejected.

“(4) The Director has no authority to disapprove any collection of information requirement specifically contained in an agency rule, if the Director has received notice and failed to comment on the rule within 60 days after the notice of proposed rulemaking.

“(5) No provision in this section shall be construed to prevent the Director, at the discretion of such officer, from—

“(A) disapproving any information collection request which was not specifically required by an agency rule;

“(B) disapproving any collection of information requirement contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

“(C) disapproving any collection of information requirement contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that such a collection of information requirement cannot be approved under the standards set forth in section 3508, after reviewing the agency’s response to the comments of the Director filed under paragraph (2) of this subsection; or

“(D) disapproving any collection of information requirement, if the Director determines that the agency has substantially modified, in the final rule, the collection of information requirement contained in the proposed rule and the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information requirement, at least 60 days before the issuance of the final rule.

“(6) The Director shall make publicly available any decision to disapprove a collection of information requirement contained in an agency rule, together with the reasons for such decision.

“(7) The authority of the Director under this subsection is subject to subsection (c).

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

“(9) The decision of the Director to approve or not to act upon a collection of information requirement contained in an agency rule shall not be subject to judicial review.

“(j)(1) If the head of the agency, or the senior official designated under section 3506(b)(1), decides to seek extension of the Director’s approval granted for a currently approved collection of information requirement, the agency shall, through the notice prescribed in subsection (a)(2)(B) and such other practicable steps as may be reasonable, seek comment from the agencies, and the public on the continued need for, and burden imposed by, the collection of information requirement.

“(2) The agency, after having made a reasonable effort to seek comment under paragraph (1), but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information requirement, shall—

“(A) evaluate the public comments received;

“(B) conduct the review established under section 3506(e); and

“(C) provide to the Director the certification required by section 3506(f), including the text of the certification and any additional relevant information regarding how the collection of information requirement comports with the principles and requirements of this chapter.

“(3) Upon receipt of such certification, and prior to the expiration date of the control

number for that collection of information requirement, the Director shall—

“(A) ensure that the agency has taken the actions specified in section 3506(f)(2);

“(B) evaluate the public comments received by the agency or by the Director;

“(C) determine whether the agency certification complies with the standards under section 3506(f)(1); and

“(D) approve or disapprove the collection of information requirement under this chapter.

“(4) If under the provisions of paragraph (3), the Director disapproves a collection of information requirement, or recommends or instructs the agency to make a substantive or material change to a collection of information requirement, the Director shall—

“(A) publish an explanation thereof in the Federal Register; and

“(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information requirement and thereafter to submit the collection of information requirement for approval or disapproval under this chapter.

“(5) Nothing in this subsection affects the review process for a collection of information requirement contained in a proposed rule, including a proposed change to an existing collection of information requirement, under subsection (i) with respect to such collection of information requirement.

“(6) The Director may not approve a collection of information requirement for a period in excess of 3 years.”.

#### **SEC. 5305. PROTECTION FOR WHISTLEBLOWERS OF UNAUTHORIZED PAPERWORK BURDEN.**

Section 3507(h) of title 44, United States Code, is amended in the second sentence by inserting before the period “, and any communication relating to a collection of information, the disclosure of which could lead to retaliation or discrimination against the communicator”.

#### **SEC. 5306. ENHANCING PUBLIC PARTICIPATION.**

Section 3517 of title 44, United States Code, is amended—

(1) by inserting “(a)” before “In development”; and

(2) by adding at the end thereof:

“(b)(1) Under procedures established by the Director, a person may request the Director to review any collection of information conducted by or for an agency to determine, if—

“(A) the collection of information is subject to the requirements of this chapter;

“(B) the collection of information has been approved in conformity with this chapter; and

“(C) the person that is to respond to the collection of information is entitled to the public protections afforded by this chapter.

“(2) Any review requested under paragraph (1), unless the request is determined frivolous or does not on its face state a valid basis for such review, shall—

“(A) be completed by the Director within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension;

“(B)(i) be coordinated with the agency responsible for the collection of information to which the request relates; and

“(ii) be coordinated with the Administrator for Federal Procurement Policy, if the request relates to a collection of information applicable to an actual or prospective Federal contractor or subcontractor at any tier; and

“(C) result in a written determination by the Director, that shall be—

“(i) furnished to the person making the request; and

“(ii) made available to the public upon request (and listed and summarized in the annual report required under section 3514), unless confidentiality is requested by the person making the request.”.

#### **SEC. 5307. EXPEDITING REVIEW OF AN AGENCY INFORMATION COLLECTION REQUEST WITH A REDUCED BURDEN.**

Section 3507 of title 44, United States Code (as amended by section 5304(b) of this title) is further amended by adding at the end thereof the following new subsection:

“(k) Upon request by the head of an agency, the Director shall approve a proposed change to an existing information collection request (unless such proposed change is subject to subsection (i)) within 30 days after the Director receives the proposed change. The information collection request shall thereafter remain in effect at least for the remainder of the period for which it was previously approved by the Director, if—

“(1) the information collection request has a current control number; and

“(2) the Director determines that the revision—

“(A) reduces the burden resulting from the information collection request; and

“(B) does not substantially change the information collection request.”.

#### **Subtitle D—Enhancing Agency Responsibility for Sharing and Disseminating Public Information**

#### **SEC. 5401. PRESCRIBING GOVERNMENTWIDE STANDARDS FOR SHARING AND DISSEMINATING PUBLIC INFORMATION.**

Section 3504(h) of title 44, United States Code, is amended to read as follows:

“(h) The functions of the Director related to agency dissemination and sharing of public information shall include—

“(1) developing policies and practices for agency dissemination and sharing of public information consistent with the agency responsibilities under section 3506(g); and

“(2) developing policy guidelines that instruct Federal agencies on ways to fulfill agency responsibilities to disseminate and share information that, to the extent appropriate and practicable—

“(A) make information dissemination products available on timely, equitable and cost effective terms;

“(B) encourage a diversity of public and private information dissemination products;

“(C) avoid establishing, or permitting others to establish, exclusive, restricted, or other distribution arrangements that interfere with the availability of information dissemination products on a timely and equitable basis; and

“(D) avoid establishing restrictions or regulations, including the charging of fees or royalties, on the reuse, resale, or redissemination of Federal information dissemination products by the public; and

“(E) set user charges for information dissemination products at a level sufficient to recover the cost of dissemination, except—

“(i) where otherwise required by statute;

“(ii) where the information is collected, processed, and disseminated for the benefit of a specific identifiable group beyond the benefit to the general public; or

“(iii) where user charges are established at less than cost of dissemination because of a determination that higher charges would interfere with the proper performance of the agency's functions.”.

#### **SEC. 5402. AGENCY RESPONSIBILITIES FOR SHARING AND DISSEMINATING PUBLIC INFORMATION.**

Section 3506 of title 44, United States Code, is amended by adding at the end thereof the following new subsection:

“(g) The head of each agency shall, to the extent appropriate and practicable, and in

conformance with the policy guidelines established under section 3504(h), establish and maintain a management system for the dissemination and sharing of information that—

“(1) ensures that the public has timely, equitable and cost-effective access to the agency's information dissemination products;

“(2) disseminates and shares information in a manner that achieves the best balance between maximizing the usefulness of the information and minimizing the cost to the Government and the public;

“(3) takes advantage of all appropriate channels, Federal and non-Federal, including State and local governments, libraries and private sector entities, in discharging agency responsibilities for the dissemination and sharing of information;

“(4) considers whether an information dissemination product available from other Federal or non-Federal sources is equivalent to an agency information dissemination product and reasonably achieves the objectives of the agency;

“(5) establishes and maintains inventories of all agency information dissemination products in conformance with the requirements of section 3511;

“(6) establishes and maintains communications with members of the public and with State and local governments so that the agency shares information and otherwise creates information dissemination products that meet their respective needs; and

“(7) provides adequate notice when initiating, substantially modifying, or terminating significant information dissemination products.”.

#### **SEC. 5403. AGENCY INFORMATION INVENTORY/LOCATOR SYSTEM.**

(a) IN GENERAL.—Section 3511 of title 44, United States Code, is amended to read as follows:

#### **“§3511. Inventory systems of information dissemination products**

“(a) Each agency having significant information dissemination products shall establish and maintain a comprehensive inventory of such products, which shall include, at a minimum, the title of each such product, an abstract of the contents of each product, the media in which each product is available, and the cost, if any, of each product, subject to any requirements promulgated pursuant to subsection (c).

“(b) The inventory created pursuant to subsection (a) shall be made available for public access by electronic means, and in such other media as are appropriate and practicable, at no charge to the public.

“(c) The Director, in consultation with the Secretary of Commerce, the Archivist of the United States, the Public Printer, and the Librarian of Congress, may establish a mechanism for developing technical standards and other minimum requirements for the agency inventory systems created under subsection (a).”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 35 of title 44, United States Code, is amended by amending the item relating to section 3511 to read as follows:

“3511. Inventory systems of information dissemination products.”.

#### **Subtitle E—Additional Government Information Management Responsibility**

#### **SEC. 5501. STRENGTHENING THE STATISTICAL POLICY AND COORDINATION FUNCTIONS OF THE DIRECTOR.**

Section 3504(d) of title 44, United States Code, is amended to read as follows:

“(d)(1) The statistical policy and coordination functions of the Director shall include—

“(A) coordinating and providing leadership for development of the Federal statistical system;

“(B) developing and periodically reviewing and, as necessary, revising long-range plans for the improved coordination and performance of the statistical activities and programs of the Federal Government;

“(C) ensuring the integrity, objectivity, impartiality and confidentiality of the Federal statistical system;

“(D) reviewing budget proposals of agencies to ensure that the proposals are consistent with such long-range plans and developing a summary and analysis of the budget submitted by the President to the Congress for each fiscal year of the allocation for all statistical activities;

“(E) coordinating, through the review of budget proposals and as otherwise provided under this chapter, the functions of the Federal Government with respect to gathering, interpreting and sharing statistics and statistical information;

“(F) developing and implementing governmentwide policies, principles, standards and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and sharing, and such statistical data sources as may be required for the administration of Federal programs;

“(G) evaluating statistical program performance and agency compliance with governmentwide policies, principles, standards and guidelines;

“(H) promoting the timely release by agencies of statistical data to the public;

“(I) coordinating the participation of the United States in international statistical activities;

“(J) preparing an annual report to submit to the Congress on the statistical policy and coordination function;

“(K) integrating the functions described under this paragraph with the other information resources management functions specified under this chapter; and

“(L) appointing a chief statistician who is a trained and experienced professional to carry out the functions described under this paragraph.

“(2) The Director shall establish an inter-agency working group on statistical policy, consisting of the heads of the agencies with major statistical programs, headed by the chief statistician to coordinate agency activities in carrying out the functions under paragraph (1).

“(3) The Director shall provide opportunities for long-term training in the statistical policy functions of the chief statistician to employees of the Federal Government. Each trainee shall be selected at the discretion of the Director based on agency requests and shall serve for at least 6 months and no more than 1 year. All costs of the training are to be paid by the agency requesting training.”

#### **SEC. 5502. USE OF ELECTRONIC INFORMATION COLLECTION AND DISSEMINATION TECHNIQUES TO REDUCE BURDEN.**

Section 3504(g)(1) of title 44, United States Code, is amended—

(1) by inserting “development and” after “overseeing the”; and

(2) by inserting “(including standards that improve the ability of agencies to use technology to reduce burden)” after “establishment of standards”.

#### **SEC. 5503. AGENCY IMPLEMENTATION.**

Section 3514(a) of title 44, United States Code, is amended—

(1) in paragraph (9)(C) by striking out “and” at the end thereof;

(2) in paragraph (10)(C) by striking out the period and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

“(11) a listing of any increase in the burden imposed on the public during the year covered by the report resulting from a collection of information conducted or sponsored by or for an agency, which was imposed by such agency—

“(A) as specifically mandated by the provision of a statute; or

“(B) as necessary to implement a statutory requirement, which requirement shall be identified with particularity;

“(12) a description of each such agency's efforts in implementing, and plans to implement, the applicable policies, standards and guidelines with respect to the functions under this chapter; and

“(13) a strategic information resources management plan for the Federal Government, developed in consultation with the Administrator of General Services, the Secretary of Commerce, and the Archivist of the United States, that includes an analysis of cross-cutting issues of governmentwide importance.”

#### **SEC. 5504. AUTOMATIC DATA PROCESSING EQUIPMENT PLAN.**

Section 3504(g) of title 44, United States Code, is amended—

(1) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

“(3) developing and annually revising, in consultation with the Administrator of General Services, a 5-year plan for meeting the automatic data processing equipment (including telecommunications) and other information technology needs of the Federal Government in accordance with the requirements of sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759) and the purposes of this chapter.”

#### **SEC. 5505. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) DEFINITIONS.—Section 3502(10) of title 44, United States Code, is amended by striking out “the Federal Housing Finance Board” and inserting in lieu thereof “Federal Housing Finance Board”.

(b) REVIEW PERIODS.—Section 3507(g)(1) of title 44, United States Code, is amended to read as follows: “(1) is needed prior to the expiration of the time periods for public notice and review by the Director pursuant to the requirements of this chapter.”

(c) DIRECTOR REVIEW.—Section 3513(a) of title 44, United States Code, is amended in the first sentence by inserting “resources” after “information”.

(d) RESPONSIVENESS.—Section 3514(a) of title 44, United States Code, is amended—

(1) in paragraph (9)(A) by inserting “and” at the end thereof;

(2) in paragraph (9)(B) by striking out the semicolon and inserting a period; and

(3) by striking out paragraph (9)(C).

#### **Subtitle F—Effective Dates**

#### **SEC. 5601. EFFECTIVE DATES.**

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this title shall become effective 120 days after the date of the enactment of this Act.

(b) IN PARTICULAR.—section 5101 and this section shall become effective upon the date of the enactment of this Act.

#### **TITLE VI—STRENGTHENING REGULATORY FLEXIBILITY**

#### **SEC. 6001. JUDICIAL REVIEW.**

(a) IN GENERAL.—Section 611 of title 5, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 6 of title 5, United States Code, is amended by striking the item relating to section 611.

#### **SEC. 6002. CONSIDERATION OF DIRECT AND INDIRECT EFFECTS OF RULES.**

(a) IN GENERAL.—Title 5, United States Code, is amended by inserting after section 610 the following new section:

#### **“§611. Consideration of direct and indirect effects of rules**

“In determining under this chapter whether or not a rule is likely to have a significant impact on a substantial number of small entities, an agency shall consider both the direct and indirect effects of the rule.”

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 6 of title 5, United States Code, is amended by inserting after the item relating to section 610 the following:

“611. Consideration of direct and indirect effects of rules.”

#### **SEC. 6003. RULES OPPOSED BY SBA CHIEF COUNSEL FOR ADVOCACY.**

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

“(d) STATEMENT OF OPPOSITION.—

“(1) TRANSMITTAL OF PROPOSED RULES AND INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA CHIEF COUNSEL FOR ADVOCACY.—On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration—

“(A) a copy of the proposed rule; and

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

“(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

“(2) STATEMENT OF OPPOSITION.—On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of opposition of the proposed rule.

“(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to an agency a statement of opposition to a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.”

(b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United States Code, is amended by inserting “in accordance with section 612(d)” before the period at the end of the last sentence.

#### **SEC. 6004. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.**

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

#### **TITLE VII—REGULATORY IMPACT ANALYSES**

#### **SEC. 7001. SHORT TITLE.**

This title may be cited as the “Administrative Procedure Reform Act of 1995”.

#### **SEC. 7002. RULE MAKING NOTICES FOR MAJOR RULES.**

Section 553 of title 5, United States Code, is amended by adding at the end the following:

“(f)(1)(A) The head of an agency shall publish in the Federal Register, at least 90 days before the date of publication of general notice under subsection (b) for a proposed

major rule, a notice of intent to engage in rule making.

“(B) A notice under subparagraph (A) for a proposed major rule shall include, to the extent possible, the information required to be included in a Regulatory Impact Analysis for the rule under section 7004(c) (1), (2), and (8) of the Administrative Procedure Reform Act of 1995.

“(2) The head of an agency shall include in a general notice under subsection (b) for a major rule proposed by the agency—

“(A) a final Regulatory Impact Analysis for the rule prepared in accordance with section 7004 of the Administrative Procedure Reform Act of 1995; and

“(B) clear delineation of all changes in the information included in the final Regulatory Impact Analysis under section 7004(c)(1) and (2) of the Administrative Procedure Reform Act of 1995 from any such information that was included in the notice for the rule under paragraph (1)(B) of this subsection.

“(3) In this subsection, the term ‘major rule’ has the meaning given that term in section 7004(b) of the Administrative Procedure Reform Act of 1995.”.

#### **SEC. 7003. HEARING REQUIREMENT FOR PROPOSED RULES; EXTENSION OF COMMENT PERIOD.**

(a) **HEARING REQUIREMENT.**—Section 553 of title 5, United States Code, is further amended—

(1) in subsection (b), in the matter following paragraph (3), by inserting “(except subsection (g))” after “this subsection”; and

(2) by adding after subsection (f) (as added by section 7002 of this title) the following:

“(g) If more than 100 interested persons acting individually submit comments to an agency regarding any rule proposed by the agency, the agency shall hold a public hearing on the proposed rule.”.

(b) **EXTENSION OF COMMENT PERIOD.**—Section 553 of title 5, United States Code, is further amended by adding after subsection (g) (as added by subsection (a)(2) of this section) the following:

“(h) If during the 30-day period beginning on the date of publication of notice under subsection (f)(1)(A) for a proposed major rule, or if during the 30-day period beginning on the date of publication or service of notice required by subsection (b) for a proposed rule, more than 100 persons individually contact the agency to request an extension of the period for making submissions under subsection (c) pursuant to the notice, the agency—

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

“(2) may not adopt the rule until after that additional period.”.

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

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

(2) by adding at the end the following:

“(2) The head of an agency shall publish in the Federal Register with each rule published under section 552(a)(1)(D) of this title, responses to the substance of the comments received by the agency regarding the rule.”.

#### **SEC. 7004. REGULATORY IMPACT ANALYSIS.**

(a) **APPLICATION OF EXECUTIVE ORDER AS STATUTORY REQUIREMENT.**—Except as otherwise provided in this section, Executive Order 12291 (relating to Federal regulation requirements and regulatory impact analysis), as in effect on September 29, 1993, shall apply to each agency in accordance with the provisions of the Order.

(b) **DEFINITION OF MAJOR RULE IN ORDER.**—Notwithstanding section 1(b) of the Order, for purposes of subsection (a) of this section, the term “major rule” means any proposed rulemaking—

(1) which affects more than 100 persons; or

(2) compliance with which will require the expenditure of more than \$1,000,000 by any single person which is not a Federal agency.

(c) **CONTENTS OF REGULATORY IMPACT ANALYSES.**—In lieu of the information specified in section 3(d) of the Order, each preliminary and final Regulatory Impact Analysis required under section 3 of the Order for a rule shall contain the following:

(1) An explanation of the necessity, appropriateness and reasonableness of the rule.

(2) A description of the current condition that the rule will address and how that condition will be affected by the rule.

(3) A statement that the rule does not conflict with nor duplicate any other rule, or an explanation of why the conflict or duplication exists.

(4) A statement of whether the rule is in accord with or in conflict with any legal precedent.

(5) A statement of the factual, scientific, or technical basis for the agency's determination that the rule will accomplish its intended purpose.

(6) A statement that describes and, to the extent practicable, quantifies the risks to human health or the environment to be addressed by the rule.

(7) A demonstration that the rule provides the least costly or least intrusive approach for meeting its intended purpose.

(8) A description of any alternative approaches considered by the agency or suggested by interested persons and the reasons for their rejection.

(9) An estimate of the nature and number of persons to be regulated or affected by the rule.

(10) An estimate of the economic costs of the rule, including those incurred by persons in complying with the rule.

(11) An evaluation of the costs versus the benefits derived from the rule, including evaluation of how those benefits outweigh the cost.

(12) Whether the rule will require onsite inspections.

(13) An estimate of the paperwork burden on persons regulated or affected by the rule, such as the number of forms, impact statements, surveys, and other documents required to be completed by the person under the rule.

(14) Whether persons will be required by the rule to maintain any records which will be subject to inspection.

(15) Whether persons will be required by the rule to obtain licenses, permits, or other certifications, and the fees and fines associated therewith.

(16) Whether persons will be required by the rule to appear before the agency.

(17) Whether persons will be required by the rule to disclose information on materials or processes, including trade secrets.

(18) Whether persons will be required by the rule to report any particular type of incidents.

(19) Whether persons will be required by the rule to adhere to design or performance standards.

(20) Whether persons may need to retain or utilize any lawyer, accountant, engineer, or other professional consultant in order to comply with the regulations.

(21) An estimate of the costs to the agency for implementation and enforcement of the regulations.

(22) Whether the agency can be reasonably expected to implement the rule with the current level of appropriations.

(23) A statement that any person may submit comments on the Regulatory Impact Analysis to the Administrator of the Office of Information and Regulatory Affairs.

The requirements of this section shall be consistent with, and not duplicative of, the requirements of section 3201.

(d) **DEFINITIONS.**—In this section—

(1) the term “Order” means Executive Order 12291, as in effect on September 29, 1993; and

(2) each of the terms “agency”, “regulation”, and “rule” has the meaning given that term in section 1 of the Order, except that the term “agency” includes an independent agency.

#### **SEC. 7005. ADDITIONAL RESPONSIBILITIES OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.**

An agency may not adopt a major rule unless the final Regulatory Impact Analysis for the rule is approved in writing by the Director of the Office of Management and Budget or by an individual designated by the Director for that purpose.

#### **SEC. 7006. STANDARD OF CLARITY.**

To the extent practicable, the head of an agency may not publish in the Federal Register any proposed major rule, summary of a proposed major rule, or Regulatory Impact Analysis unless the Director of the Office of Management and Budget certifies that the proposed major rule, summary, or Analysis—

(1) is written in a reasonably simple and understandable manner and is easily readable;

(2) is written to provide adequate notice of the content of the rule, summary, or Analysis to affected persons and interested persons that have some subject matter expertise;

(3) conforms to commonly accepted principles of grammar;

(4) contains only sentences that are as short as practical and organized in a sensible manner; and

(5) to the extent practicable, does not contain any double negatives, confusing cross references, convoluted phrasing, unreasonably complex language, or term of art or word with multiple meanings that may be misinterpreted and is not defined in the rule, summary, or analysis, respectively.

#### **SEC. 7007. REPORT BY OIRA.**

The Director of the Office of Management and Budget shall submit a report to the Congress no later than 24 months after the date of the enactment of this Act containing an analysis of rule making procedures of Federal agencies and an analysis of the impact of those rule making procedures on the regulated public and regulatory process.

#### **SEC. 7008. DEFINITIONS.**

For purposes of this title—

(1) except as provided in section 7004(d)(2), each of the terms “agency”, “rule”, and “rule making” has the meaning given that term in section 551 of title 5, United States Code; and

(2) the term “major rule” has the meaning given that term in section 7004(b).

### **TITLE VIII—PROTECTION AGAINST FEDERAL REGULATORY ABUSE**

#### **Subtitle A—Citizens' Regulatory Bill of Rights**

#### **SEC. 8101. CITIZENS' REGULATORY BILL OF RIGHTS.**

(a) **IN GENERAL.**—Except as provided in subsection (c), each person that is the target of a Federal investigative or enforcement action shall, upon the initiation of an inspection, investigation, or other official proceeding directed against that person, have the right—

(1) to remain silent;

(2) to be advised as to whether the person has a right to a warrant;

(3) to be warned that statements can be used against them;

(4) to have an attorney or accountant present;

(5) to be informed as to the scope and purpose of the agency action;

(6) to be present at the inspection, investigation, or proceeding;

(7) to be reimbursed for unreasonable damages;

(8) to be free of unreasonable seizures of property or assets; and

(9) to receive attorneys fees and other expenses from the Government when the Government commences a frivolous civil action against such person, except that nothing in this paragraph shall be construed to affect the Equal Access to Justice Act.

(b) AGENCY RULES.—Each agency or other authority of the Federal Government with respect to which this section applies shall make appropriate rules within 90 days after the date of the enactment of this Act to implement this section in the context of that agency's functions.

(c) LIMITATION ON APPLICATION OF REQUIREMENTS.—A requirement of this section shall not apply if compliance with the requirement would—

(1) substantially delay responding to an imminent danger to person or property; or

(2) substantially or unreasonably impede a criminal investigation.

#### **Subtitle B—Private Sector Whistleblowers' Protection**

##### **SEC. 8201. SHORT TITLE.**

This subtitle may be cited as the "Private Sector Whistleblowers' Protection Act of 1995".

##### **SEC. 8202. PURPOSE.**

The Federal regulatory system should be implemented consistent with the principle that any person subject to Government regulation should be protected against reprisal for disclosing information that the person believes is indicative of—

(1) violation or inconsistent application of any law, rule, regulation, policy, or internal standard;

(2) arbitrary action or other abuse of authority;

(3) mismanagement;

(4) waste or misallocation of resources;

(5) inconsistent, discriminatory or disproportionate enforcement proceedings;

(6) endangerment of public health or safety;

(7) personal favoritism; and

(8) coercion for partisan political purposes; by any agency or its employees.

##### **SEC. 8203. COVERAGE.**

This subtitle shall apply to:

(1) Any agency of the Federal Government as defined in section 551 of title 5, United States Code.

(2) Any agency of a State government that exercises authority under Federal law, or that exercises authority under State law establishing a program approved by a Federal agency as a substitute for or supplement to a program established by Federal law.

##### **SEC. 8204. PROHIBITED REGULATORY PRACTICES.**

(a) DEFINED.—For purposes of this subtitle, "prohibited regulatory practice" means any action described in subsection (b)(i), (ii), or (iii) of this section.

(b) PROHIBITION.—(1) No employee of an Agency who has authority—

(A) to take or direct other employees to take,

(B) to recommend, or

(C) to approve, any regulatory action shall—

(i) take or fail to take, or threaten to take or fail to take,

(ii) recommend or direct that others take or fail to take, or threaten to so recommend or direct, or

(iii) approve the taking or failing to take, or threaten to so approve,

such regulatory action because of any disclosure by a person subject to the action, or by any other person, of information that the person believed indicative of—

(I) violation or inconsistent application of any law, rule, regulation, policy, or internal standard;

(II) arbitrary action or other abuse of authority;

(III) mismanagement;

(IV) waste or misallocation of resources;

(V) inconsistent, discriminatory or disproportionate enforcement;

(VI) endangerment of public health or safety;

(VII) personal favoritism; or

(VIII) coercion for partisan political purposes;

by any agency or its employees.

(2) An action shall be deemed to have been taken, not taken, approved, or recommended because of the disclosure of information within the meaning of paragraph (1) if the disclosure of information was a contributing factor to the decision to take, not to take, to approve, or to recommend.

##### **SEC. 8205. PROHIBITED REGULATORY PRACTICE AS A DEFENSE TO AGENCY ACTION.**

(a) IN GENERAL.—In any administrative or judicial action or proceeding, formal or informal, by an agency to create, apply or enforce any obligation, duty or liability under any law, rule or regulation against any person, the person may assert as a defense that the agency or one or more employees of the agency have engaged in a prohibited regulatory practice with respect to the person or to a related entity in connection with the action or proceeding.

(b) COMPLIANCE.—If the existence of a prohibited regulatory practice is established, the person may be required to comply with the obligation, duty or liability to the extent compliance is required of and enforced against other persons similarly situated, but no penalty, fine, damages, costs or other obligation except compliance shall be imposed on the person.

##### **SEC. 8206. ENFORCEMENT.**

(a) CIVIL PENALTY.—Any agency, and any employee of an agency, engaging in a prohibited regulatory practice may be assessed a civil penalty of not more than \$25,000 for each such practice. In the case of a continuing prohibited regulatory practice, each day that the practice continues shall be deemed a separate practice.

(b) PROCEDURES.—The President shall, by regulation, establish procedures providing for the administrative enforcement of the requirements of subsection (a) of this section.

##### **SEC. 8207. CITIZEN SUITS.**

(a) COMMENCEMENT.—Any person injured or threatened by a prohibited regulatory practice may commence a civil action on his own behalf against any person or agency alleged to have engaged in or threatened to engage in such practice.

(b) JURISDICTION AND VENUE.—Any action under subsection (a) of this section shall be brought in the district court for any district in which the alleged prohibited regulatory practice occurred or in which the alleged injury occurred. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to—

(1) restrain any agency or person who has engaged or is engaging in any prohibited regulatory practice;

(2) order the cancellation or remission of any penalty, fine, damages, or other monetary assessment that resulted from a prohibited regulatory practice;

(3) order the rescission of any settlement that resulted from a prohibited regulatory practice;

(4) order the issuance of any permit or license that has been denied or delayed as a result of a prohibited regulatory practice;

(5) order the agency and/or the employee engaging in a prohibited regulatory practice to pay to the injured person such damages as may be necessary to compensate the person for any harm resulting from the practice, including damages for—

(A) injury to, deterioration of, or destruction of real or personal property;

(B) loss of profits from idle or underutilized resources, and from business forgone;

(C) costs incurred, including costs of compliance where appropriate;

(D) loss in value of a business;

(E) reasonable legal, consulting and expert witness fees; or

(F) payments to third parties;

(6) order the payment of punitive damages, in an amount not to exceed \$25,000 for each such prohibited regulatory practice, provided that, in the case of a continuing prohibited regulatory practice, each day that the practice continues shall be deemed a separate practice.

##### **SEC. 8208. OFFICE OF THE SPECIAL COUNSEL.**

(a) REQUEST FOR INVESTIGATION.—Any person who has reason to believe that any employee of any agency has engaged in a prohibited regulatory practice may request the Special Counsel established by section 1211 of title 5, United States Code, to investigate.

(b) POWERS.—The Special Counsel shall have the same power to investigate prohibited regulatory practices that it has to investigate prohibited personnel practices pursuant to section 1212 of title 5, United States Code.

##### **SEC. 8209. RELATION TO CRIMINAL INVESTIGATIONS.**

Nothing in this subtitle shall be construed so as substantially or unreasonably to impede a criminal investigation.

#### **TITLE IX—PRIVATE PROPERTY RIGHTS PROTECTIONS AND COMPENSATION**

##### **SEC. 9001. STATEMENT OF PURPOSE.**

It is the purpose of this title to compensate private property owners with respect to certain actions that are taken by the Federal Government for public purposes and that limit the use of private property by property owners.

##### **SEC. 9002. COMPENSATION FOR FEDERAL AGENCY INFRINGEMENT OR DEPRIVATION OF RIGHTS TO PRIVATE PROPERTY.**

(a) ELIGIBILITY.—

(1) IN GENERAL.—A private property owner is entitled to receive compensation from the United States in accordance with this section for any agency infringement or deprivation of rights to property that is owned by the private property owner.

(2) AGENCY INFRINGEMENT OR DEPRIVATION OF RIGHTS TO PROPERTY DEFINED.—For purposes of paragraph (1), the term "agency infringement or deprivation of rights to property" means a limitation or condition that—

(A) is imposed by a final agency action on a use of property that would be lawful but for the agency action, and

(B) results in a reduction in the value of the property equal to ten percent or more.

(3) CIRCUMSTANCES IN WHICH COMPENSATION NOT REQUIRED.—A private property owner shall not be entitled to receive compensation under this subsection for any of the following:

(A) A limitation on any action that would constitute a violation of applicable State or local law (including an action that would violate a local zoning ordinance or would constitute a nuisance under any applicable State or local law).

(B) A limitation on any use of private property, imposed pursuant to a determination by the President that the use poses or would pose a serious and imminent threat to public health and safety or to the health and safety of workers, or other individuals, lawfully on the property.

(C) A limitation imposed pursuant to the Federal navigational servitude.

(4) LIMITATION ON CUMULATIVE AMOUNT OF COMPENSATION.—No payment may be made pursuant to this subsection with respect to property if the sum of such payment and all other payments made pursuant to this subsection with respect to the property would exceed the fair market value of the property (as determined at the time of the payment).

(5) STATE OR LOCAL LIMITATIONS IMPOSED PURSUANT TO FEDERAL MANDATES.—A limitation or condition shall be considered to be a Federal agency infringement or deprivation of rights to property for purposes of paragraph (1) if it is a consequence of a limitation or condition on the use of the property by the private property owner that is imposed by a State or local government pursuant to an agency action that is intended to, or does, bind the State or local government.

(b) REQUEST FOR COMPENSATION.—Within 90 days after receipt of notice of an agency action with respect to which compensation is required under subsection (a), a private property owner may submit to the head of the agency a request in writing for compensation under this section.

(c) AGENCY DETERMINATION AND OFFER.—

(1) IN GENERAL.—Upon receipt of a request for compensation, submitted in accordance with subsection (b), with respect to an agency action affecting private property as described in subsection (a), the head of the agency that took the action shall determine whether the private property owner submitting the request has demonstrated entitlement to compensation under subsection (a). If the head of the agency finds that the private property owner has so demonstrated, the head of the agency shall offer to compensate the private property owner for the reduction in the value of the property, as demonstrated by the private property owner.

(2) TIMING OF DETERMINATION AND OFFER.—The head of an agency shall make the determination and offer, if any, required by paragraph (1) with respect to a request for compensation not later than 180 days after receiving the request.

(d) PRIVATE PROPERTY OWNERS' RESPONSE.—A private property owner shall have 60 days after the date of receipt of an offer under subsection (c) to accept or to reject the offer.

(e) ARBITRATION.—If the head of an agency determines, under subsection (c), that a private property owner is not entitled to compensation under subsection (a), or a private property owner rejects an offer made under subsection (c), the private property owner may submit the matter for arbitration to an arbitrator appointed by the head of the agency from a list of arbitrators submitted by the American Arbitration Association. The arbitrator shall determine whether the request meets the requirements of subsection (a) (if such determination is called for by the submission of the property owner) and shall determine the amount of compensation to which the property owner is entitled under this section, in accordance with subsection (c). The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of that association. For purposes of this section, an arbitration is binding on the head of an agency and the private property owner as to whether the property owner is entitled to compensation under subsection (a) and as to the amount, if any, of compensation owed to the private property owner under this section.

(f) PAYMENT.—The head of an agency shall pay a private property owner any compensation required under the terms of an offer of the agency head that is accepted by the private property owner in accordance with subsection (d), or under a decision of an arbiter under subsection (e), by not later than 60 days after the date of the acceptance or the date of the issuance of the decision, respectively.

(g) NATURE OF REMEDY.—

(1) PROHIBITION OF LIMITATION ON OTHER CLAIMS.—No provision of this title shall be construed to limit the rights of any person to pursue any claim or cause of action under the Constitution or any other law (including a claim or cause of action concerning personal property).

(2) PROHIBITION OF USE AS CONDITION PRECEDENT.—Submission of a request for compensation, or receipt of compensation, under this title shall not be a condition precedent for any claim or cause of action under any law.

(h) LIMITATION ON DOUBLE RECOVERY.—

(1) COURT AWARDS OF DAMAGES.—Notwithstanding subsection (g), a court may credit a payment made pursuant to subsection (a) for any reduction in the value of property against the amount of damages awarded pursuant to any claim or cause of action, under the Constitution or any other law, that arises from the same reduction in the value of the same property.

(2) PAYMENTS UNDER THIS TITLE.—The amount awarded pursuant to any claim or cause of action, under the Constitution or any other law, for any reduction in the value of a property shall be credited against the amount of any payment made pursuant to subsection (a) with respect to the same reduction in the value of the same property.

(i) SOURCE OF PAYMENT FUNDS.—

(1) USE OF AGENCY FUNDS.—Except as provided in paragraphs (2) and (3), and notwithstanding any other provision of law, any payment made pursuant to subsection (a) shall be paid from the annual appropriation of the agency or agencies taking the action for which the payment is required. For the purpose of making such a payment, the head of the agency may transfer or reprogram any funds available to the agency.

(2) ALTERNATIVE SOURCE OF FUNDS.—If the agency taking the action referred to in paragraph (2) or (5) of subsection (a) does not have sufficient funds available to complete the payment required by this section with respect to the action, the Comptroller General of the United States shall identify the most appropriate Federal source of funds to complete the payment and the President shall complete the payment using funds from such source, notwithstanding any other provision of law.

(3) LAND EXCHANGE.—In lieu of payment under paragraph (1) or (2), the President may enter into an agreement with the private property owner who is entitled to the compensation for which the payment is required to provide all or part of the compensation by exchanging all or part of the affected private property for property owned by the United States and identified by the President as suitable for such an exchange. The properties transferred as part of such an exchange shall be of equal value, as determined under section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)).

#### SEC. 9003. SEVERABILITY.

If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remainder of this title and the application of such provision to other persons and circumstances shall not be affected.

#### SEC. 9004. DEFINITIONS.

For purposes of this title:

(1) AGENCY.—The term "agency" has the meaning given that term in section 551(1) of title 5, United States Code.

(2) AGENCY ACTION.—The term "agency action" has the meaning given that term in section 551(13) of title 5, United States Code.

(3) FAIR MARKET VALUE.—Unless stated otherwise, the term "fair market value of the property" means the fair market value of property determined as of the date on which the private property owner makes a claim under this title with respect to the property.

(4) FINAL AGENCY ACTION.—The term "final agency action" means an agency action that is intended to or does bind a private property owner with respect to the use of the property. Such term includes but is not limited to the following:

(A) Denial of a permit.

(B) Issuance of a cease and desist order.

(C) Issuance of a statement under section 7(b)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(3)).

(D) Issuance of a permit with conditions.

(E) Commencement of a civil or criminal proceeding arising out of failure to secure a permit.

(5) PRIVATE PROPERTY OWNER.—The term "private property owner" means a person (other than the United States, a department, agency, or instrumentality thereof, or an officer, employee, or agent thereof when acting on behalf of his or her employing authority) that—

(A) owns property referred to in paragraph

(6)(A); or

(B) holds property referred to in paragraph

(6)(B).

(6) PROPERTY.—The term "property" means—

(A) land; and

(B) the right to use or receive water.

(7) REDUCTION IN THE VALUE OF PROPERTY.—The term "reduction in the value of property" means the difference, if greater than zero, between—

(A) the fair market value of property, as determined based on the value of the property if an agency action referred to in paragraph (2) or (5) of section 9002(a), as the case may be, were not implemented; minus

(B) the fair market value of property, as determined based on the value of the property if an agency action referred to in paragraph (2) or (5) of section 9002(a), as the case may be, were implemented.

(8) USE.—The term "use" means a prior, existing, or potential utilization of property, by the private property owner, which is—

(A) predictable; and

(B) consistent with the utilization of property of the same general type or with property usage in the geographic area in which the property is located.

### TITLE X—ESTABLISHMENT OF FEDERAL MANDATE BUDGET COST CONTROL

#### SEC. 10001. AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

(a) FEDERAL REGULATORY BUDGET COST CONTROL SYSTEM.—Title III of the Congressional Budget Act of 1974, as amended by section 4001(a) of this Act, is further amended by adding after part B the following new part:

#### "PART C—FEDERAL MANDATE BUDGET COST CONTROL

##### "SEC. 331. OMB-CBO REPORTS.

"(a) OMB-CBO INITIAL REPORT.—Within 1 year after the date of enactment of this section, OMB and CBO shall jointly issue a report to the President and each House of Congress that contains the following:

"(1) For the first budget year beginning after the issuance of this report, a projection of the aggregate direct cost to States and



local governments of complying with all Federal mandates in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal mandates into the budget year and the outyears based on those mandates.

"(2) A calculation of the estimated aggregate direct cost to States and local governments of compliance with all Federal mandates as a percentage of the gross domestic product (GDP).

"(3) The estimated marginal cost (measured as a reduction in estimated gross domestic product) to States and local governments of compliance with all Federal mandates in excess of the cap (to be determined under paragraph (5)) allowable for the sixth year following the budget year and subsequent fiscal years.

"(4) The effect on the domestic economy of different types of Federal mandates.

"(5) The appropriate level of personnel, administrative overhead, and programmatic savings that should be achieved on a fiscal year by fiscal year basis by Federal agencies that issue mandates with direct costs to States and local governments through the reduction of such aggregate costs to States and local governments by 6.5 percent for the budget year (as measured against the aggregate mandate baseline for the first budget year to which this part applies) and by 6.5 percent increments for each of the outyears (until the aggregate level of such costs does not exceed 3 percent of the estimated gross domestic product for the same fiscal year as the estimated costs that will be incurred).

"(6) Recommendations for budgeting, technical, and estimating changes to improve the Federal mandate budgeting process.

"(b) UPDATE REPORTS.—OMB and CBO shall issue update reports on September 15th of the fifth year beginning after issuance of the initial report and at 5-year intervals thereafter containing all the information required in the initial report, but based upon all Federal mandates in effect immediately before issuance of the most recent update report.

"(c) INITIAL BASELINE REPORT.—Within 30 days after the date of enactment of this section, OMB and CBO shall jointly issue a report to the President and each House of Congress that contains an initial aggregate mandate baseline for the first budget year that begins at least 120 days after that date of enactment. That baseline will be a projection of the aggregate direct cost to States and local governments of complying with all Federal mandates in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal mandates into the budget year and the outyears based on those mandates.

#### "SEC. 332. AGGREGATE MANDATE BASELINE.

"(a) IN GENERAL.—For the first budget year beginning after the date of enactment of this section and for every other fiscal year thereafter, the aggregate mandate baseline refers to a projection of the aggregate direct cost to States and local governments of complying with all Federal mandates in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal mandates into the budget year and the outyears based on those mandates. However, in the case of each of the succeeding fiscal years, the baseline shall be adjusted for the estimated growth during that year in the gross domestic product (GDP).

"(b) OMB-CBO AGGREGATE MANDATE BASELINE REPORTS.—(1) The first budget year for which there shall be an aggregate mandate baseline shall be the budget year to which the initial OMB-CBO baseline report issued under section 331(c) pertains.

"(2) In the case of each budget year after the budget year referred to in paragraph (1), not later than September 15 of the current year, OMB and CBO shall jointly issue a report containing the baseline referred to in subsection (a) for that budget year.

#### "SEC. 333. RECONCILIATION AND ALLOCATIONS.

"(a) RECONCILIATION DIRECTIVES.—In addition to the requirements of section 310, a concurrent resolution on the budget for any fiscal year shall specify—

"(1) changes in laws, regulations, and rules necessary to reduce the aggregate direct cost to States and local governments of complying with all Federal mandates by 6.5 percent for the budget year (as measured against the aggregate mandate baseline for the first budget year to which this part applies) and by 6.5 percent increments for each of the outyears (until the aggregate level of such costs does not exceed 3 percent of the estimated gross domestic product for the same fiscal year as the estimated costs that will be incurred) for Federal agencies that issue mandates producing direct costs to States and local governments; and

"(2) changes in laws necessary to achieve reductions in the level of personnel and administrative overhead and to achieve programmatic savings for the budget year and the outyears for those agencies of the following:

"(A) In the first outyear, one-fourth of the percent of reduction in mandate authority from the aggregate mandate base.

"(B) In the second outyear, one-third of the percent of reduction in mandate authority from the aggregate mandate base.

"(C) In the third, fourth, fifth, and sixth years following the budget year, one-half of the percent of reduction in mandate authority from the aggregate mandate base.

Section 310(c) shall not apply with respect to directions made under this section.

"(b) ALLOCATION OF TOTALS.—(1) The Committees on the Budget of the House of Representatives and the Senate shall each allocate aggregate 2-year mandate authority among each committee of its House and by major functional category for the first budget year beginning after the date of enactment of this section and for the second, fourth, and sixth years following the budget year and then every other year thereafter.

"(2) As soon as practicable after receiving an allocation under paragraph (1), each committee shall subdivide its allocation among its subcommittees or among programs over which it has jurisdiction.

"(c) POINT OF ORDER.—(1) It shall not be in order in the House of Representatives or the Senate to consider any bill or resolution, or amendment thereto, which would cause the appropriate allocation made under subsection (b) for a fiscal year of mandate authority to be exceeded.

"(2) WAIVER.—The point of order set forth in paragraph (1) may only be waived by the affirmative vote of at least three-fifths of the Members voting, a quorum being present.

"(d) DETERMINATIONS BY BUDGET COMMITTEES.—For purposes of this section, the level of mandate authority for a fiscal year shall be determined by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

"(e) EXCEEDING ALLOCATION TOTALS.—Whenever any Committee of the House of Representatives exceeds its allocation of aggregate 2-year mandate authority under subsection (b)(1), any Member of the House of Representatives may offer a bill in the House (which shall be highly privileged, unamendable, and debateable for 30 minutes) which shall only prohibit the issuance of mandates by any agency under the jurisdiction of that committee for the fiscal years

covered by that allocation until that committee eliminates its breach.

#### "SEC. 334. ANALYSIS OF MANDATES COSTS BY CONGRESSIONAL BUDGET OFFICE.

"CBO shall prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

"(1) an estimate of the costs which would be incurred by States and local governments in carrying out or complying with such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis of each such estimate; and

"(2) a comparison of the estimate of costs described in paragraph (1) with any available estimates of costs made by such committee or by any Federal agency.

#### "SEC. 335. DEFINITIONS.

"As used in this part:

"(1) The term 'CBO' refers to the Director of the Congressional Budget Office.

"(2) The term 'OMB' refers to the Director of the Office of Management and Budget.

"(3) The term 'costs' when referring to 'mandates' means the direct cost to States and local governments of complying with Federal mandates.

"(4) The term 'direct costs' means (recognizing that direct costs are not the only costs associated with Federal mandates) all expenditures occurring as a direct result of complying with Federal mandates, except those applying to the military or agency organization, management, and personnel."

#### SEC. 10002. PRESIDENT'S ANNUAL BUDGET SUBMISSIONS.

Section 1105(a) of title 31, United States Code, as amended by section 4002 of this Act, is further amended by adding after paragraph (32) the following new paragraph:

"(33) a mandate authority budget analysis of the aggregate direct cost to States and local governments of complying with all current and proposed Federal mandates and proposals for complying with section 333 of the Congressional Budget Act of 1974 for the budget year and the outyears."

#### SEC. 10003. ESTIMATION AND DISCLOSURE OF COSTS OF FEDERAL MANDATES.

(a) COSTS TO STATE AND LOCAL GOVERNMENTS.—Chapter 6 of title 5, United States Code, popularly known as the "Regulatory Flexibility Act", is amended—

(1) in section 603, as amended by section 4003(2) of this Act, by adding after subsection (d) the following:

"(e) Each initial regulatory flexibility analysis for a proposed rule that establishes or implements a new Federal mandate shall also contain a description of the nature and amount of monetary costs that will be incurred by State and local governments in complying with the Federal mandate."; and

(2) in section 604(a), as amended by section 4003(3) of this Act—

(A) in paragraph (3) by striking "and" after the semicolon;

(B) in paragraph (4) by striking the period and inserting "; and"; and

(C) by adding after paragraph (4) the following:

"(5) in the case of an analysis for a rule that establishes or implements a new Federal mandate, a statement of the nature and amount of monetary costs that will be incurred by State and local governments in complying with the Federal mandate."

(b) AGENCY REPORTS.—Each agency that under chapter 6 of title 5, United States Code, prepares an initial regulatory flexibility analysis for a proposed rule that establishes or implements a new Federal mandate shall at the same time submit to each House

of Congress and to CBO and OMB a cost estimate and cost/benefit analysis of any new Federal mandate that would have an aggregate direct cost to State and local governments of at least \$10,000,000 for any fiscal year.

#### **TITLE XI—TAXPAYER DEBT BUY-DOWN**

##### **SEC. 11001. DESIGNATION OF AMOUNTS FOR REDUCTION OF PUBLIC DEBT.**

(a) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following new part:

##### **“PART IX—DESIGNATION FOR REDUCTION OF PUBLIC DEBT**

“Sec. 6097. Designation.

##### **“SEC. 6097. DESIGNATION.**

“(a) IN GENERAL.—Every individual with adjusted income tax liability for any taxable year may designate that a portion of such liability (not to exceed 10 percent thereof) shall be used to reduce the public debt.

“(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of tax imposed by chapter 1 for the taxable year. The designation shall be made on the first page of the return or on the page bearing the taxpayer's signature.

“(c) ADJUSTED INCOME TAX LIABILITY.—For purposes of this section, the term ‘adjusted income tax liability’ means income tax liability (as defined in section 6096(b)) reduced by any amount designated under section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund).”

(b) CLERICAL AMENDMENT.—The table of parts for such subchapter A is amended by adding at the end the following new item:

“Part IX. Designation for reduction of public debt.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

##### **SEC. 11002. PUBLIC DEBT REDUCTION TRUST FUND.**

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following section:

##### **“SEC. 9512. PUBLIC DEBT REDUCTION TRUST FUND.**

“(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the ‘Public Debt Reduction Trust Fund’, consisting of any amount appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

“(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Public Debt Reduction Trust Fund amounts equivalent to the amounts designated under section 6097 (relating to designation for public debt reduction).

“(c) EXPENDITURES.—Amounts in the Public Debt Reduction Trust Fund shall be used by the Secretary of the Treasury for purposes of paying at maturity, or to redeem or buy before maturity, any obligation of the Federal Government included in the public debt (other than an obligation held by the Federal Old-Age and Survivors Insurance Trust Fund, the Civil Service Retirement and Disability Fund, or the Department of Defense Military Retirement Fund). Any obligation which is paid, redeemed, or bought with amounts from the Public Debt Reduction Trust Fund shall be canceled and retired and may not be reissued.”

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

“Sec. 9512. Public Debt Reduction Trust Fund.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after the date of the enactment of this Act.

##### **SEC. 11003. TAXPAYER-GENERATED SEQUESTRATION OF FEDERAL SPENDING TO REDUCE THE PUBLIC DEBT.**

(a) SEQUESTRATION TO REDUCE THE PUBLIC DEBT.—Part C of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding after section 253 the following new section:

##### **“SEC. 253A. SEQUESTRATION TO REDUCE THE PUBLIC DEBT.**

“(a) SEQUESTRATION.—Notwithstanding sections 255 and 256, within 15 days after Congress adjourns to end a session, and on the same day as sequestration (if any) under sections 251, 252, and 253, but after any sequestration required by those sections, there shall be a sequestration equivalent to the estimated aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending one year before the beginning of that session of Congress, as estimated by the Department of the Treasury on October 1 and as modified by the total of (1) any amounts by which net discretionary spending is reduced by legislation below the discretionary spending limits enacted after the enactment of this section related to the fiscal year subject to the sequestration (or, in the absence of such limits, any net deficit change from the baseline amount calculated under section 257 (except that such baseline for fiscal year 1996 and thereafter shall be based upon fiscal year 1995 enacted appropriations less any 1995 sequestrations)) and (2) the net deficit change that has resulted from all direct spending legislation enacted after the enactment of this section related to the fiscal year subject to the sequestration, as estimated by OMB. If the reduction in spending under paragraphs (1) and (2) for a fiscal year is greater than the estimated aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 respecting that fiscal year, then there shall be no sequestration under this section.

“(b) APPLICABILITY.—

“(1) IN GENERAL.—Except as provided by paragraph (2), each account of the United States shall be reduced by a dollar amount calculated by multiplying the level of budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (a). All obligatory authority reduced under this section shall be done in a manner that makes such reductions permanent.

“(2) EXEMPT ACCOUNTS.—No order issued under this part may—

“(A) reduce benefits payable the old-age and survivors insurance program established under title II of the Social Security Act;

“(B) reduce payments for net interest (all of major functional category 900); or

“(C) make any reduction in the following accounts:

“Federal Deposit Insurance Corporation, Bank Insurance Fund;

“Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

“Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

“National Credit Union Administration, credit union share insurance fund; or

“Resolution Trust Corporation.”

(b) REPORTS.—Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subsection (a), by inserting after the item relating to the GAO compliance report the following:

“October 1 . . . Department of Treasury report to Congress estimating amount of income tax designated pursuant to section 6097 of the Internal Revenue Code of 1986.”;

(2) in subsection (d)(1), by inserting “, and sequestration to reduce the public debt.”;

(3) in subsection (d), by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

“(5) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

“(A) The aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the budget year.

“(B) The amount of reductions required under section 253A and the deficit remaining after those reductions have been made.

“(C) The sequestration percentage necessary to achieve the required reduction in accounts under section 253A(b).”; and

(4) in subsection (g), by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

“(4) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The final reports shall contain all of the information contained in the public debt taxation designation report required on October 1.”

(c) EFFECTIVE DATE.—Notwithstanding section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, the expiration date set forth in that section shall not apply to the amendments made by this section. The amendments made by this section shall cease to have any effect after the first fiscal year during which there is no public debt.

#### **TITLE XII—SMALL BUSINESS INCENTIVES**

##### **SEC. 12001. INCREASE IN UNIFIED ESTATE AND GIFT TAX CREDITS.**

(a) ESTATE TAX CREDIT.—

(1) Subsection (a) of section 2010 of the Internal Revenue Code of 1986 (relating to unified credit against estate tax) is amended by striking “\$192,800” and inserting “the applicable credit amount”.

(2) Section 2010 of such Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) APPLICABLE CREDIT AMOUNT.—For purposes of this section—

“(1) IN GENERAL.—The applicable credit amount is the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the applicable exclusion amount determined in accordance with the following table:

<b>“In the case of estates of decedents dying, and gifts made, during:</b>	<b>The applicable exclusion amount is:</b>
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1996 .....	\$700,000
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1997 .....	\$725,000
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1998 or thereafter .....	\$750,000.
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“(2) COST-OF-LIVING ADJUSTMENTS.—In the case of any decedent dying, and gift made, in a calendar year after 1998, the \$750,000 amount set forth in paragraph (1) shall be increased by an amount equal to—

“(A) \$750,000, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 1997’ for ‘calendar year 1992’ in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$1,000."

(3) Paragraph (1) of section 6018(a) of such Code is amended by striking "\$600,000" and inserting "the applicable exclusion amount in effect under section 2010(c) (as adjusted under paragraph (2) thereof) for the calendar year which includes the date of death".

(4) Paragraph (2) of section 2001(c) of such Code is amended by striking "\$21,040,000" and inserting "the amount at which the effective tax rate under this section is 55 percent".

(5) Subparagraph (A) of section 2102(c)(3) of such Code is amended by striking "\$192,800" and inserting "the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death".

(b) **UNIFIED GIFT TAX CREDIT.**—Paragraph (1) of section 2505(a) of such Code is amended by striking "\$192,800" and inserting "the applicable credit amount in effect under section 2010(c) for such calendar year".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 1995.

#### **SEC. 12002. INCREASE IN EXPENSE TREATMENT FOR SMALL BUSINESSES.**

(a) **GENERAL RULE.**—Paragraph (1) of section 179(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking "\$17,500" and inserting "\$25,000".

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

#### **SEC. 12003. CLARIFICATION OF DEFINITION OF PRINCIPAL PLACE OF BUSINESS.**

(a) **IN GENERAL.**—Subsection (f) of section 280A of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) **PRINCIPAL PLACE OF BUSINESS.**—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

"(A) the office is the location where the taxpayer's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the taxpayer, and

"(B) the office is necessary because the taxpayer has no other location for the performance of the administrative or management activities of the business."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

#### **SEC. 12004. TREATMENT OF STORAGE OF PRODUCT SAMPLES.**

(a) **IN GENERAL.**—Paragraph (2) of section 280A(c) of the Internal Revenue Code of 1986 is amended by striking "inventory" and inserting "inventory or product samples".

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

MOTION OFFERED BY MR. DELAY

Mr. DELAY. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Motion offered by Mr. DELAY: Mr. DELAY of Texas moves to strike all after section 1 of the bill and insert a text composed of four divisions as follows: (1) division A, consisting of the text of H.R. 830, as passed by the House; (2) division B, consisting of the text of H.R. 925, as passed by the House; (3) division C, consisting of the text of H.R. 926, as passed by the House, and (4) division D, consisting of the text of H.R. 1022, as passed by the House.

The text of the bills referred to in the foregoing motion; H.R. 830, H.R. 925, H.R. 926, and H.R. 1022, is as follows:

H.R. 830

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the "Paperwork Reduction Act of 1995".

#### **SEC. 2. COORDINATION OF FEDERAL INFORMATION POLICY.**

Chapter 35 of title 44, United States Code, is amended to read as follows:

#### **"CHAPTER 35—COORDINATION OF 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 Service.

"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.

#### **"§ 3501. Purposes**

"The purposes of this chapter are to—

"(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

"(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

"(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

"(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

"(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

"(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

"(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

"(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

"(A) privacy and confidentiality, including section 552a of title 5;

"(B) security of information, including the Computer Security Act of 1987 (Public Law 100-235); and

"(C) access to information, including section 552 of title 5;

"(9) ensure the integrity, quality, and utility of the Federal statistical system;

"(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

"(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this chapter.

#### **"§ 3502. Definitions**

"As used in this chapter—

"(1) the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

"(A) the General Accounting Office;

"(B) Federal Election Commission;

"(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

"(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

"(2) the term 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

"(A) reviewing instructions;

"(B) acquiring, installing, and utilizing technology and systems;

"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

"(D) searching data sources;

"(E) completing and reviewing the collection of information; and

"(F) transmitting, or otherwise disclosing the information;

"(3) the term 'collection of information' means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(B) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes;

"(4) the term 'Director' means the Director of the Office of Management and Budget;

“(5) the term ‘independent regulatory agency’ means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

“(6) the term ‘information resources’ means information and related resources, such as personnel, equipment, funds, and information technology;

“(7) the term ‘information resources management’ means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

“(8) the term ‘information system’ means a discrete set of information resources and processes, automated or manual, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

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

“(10) the term ‘person’ means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

“(11) the term ‘practical utility’ means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

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

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

“(A) retain such records;

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

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

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

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

“(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

“(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

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

“(a)(1) The Director shall—

“(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

“(B) provide direction and oversee—

“(i) the review and approval of the collection of information and the reduction of the information collection burden;

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

“(iii) statistical activities;

“(iv) records management activities;

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

“(vi) the acquisition and use of information technology.

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

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

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

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

“(A) the use of the Government Information Locator Service; and

“(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

“(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

“(4) oversee the development and implementation of best practices in information resources management, including training; and

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

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

“(1) review and approve proposed agency collections of information;

“(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition, and payment and to reduce information collection burdens on the public;

“(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

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

“(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information; and

“(6) place an emphasis on minimizing the burden on small businesses with 50 or fewer employees.

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

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

“(2) promote public access to public information and fulfill the purposes of this chap-

ter, including through the effective use of information technology.

“(e) With respect to statistical policy and coordination, the Director shall—

“(1) coordinate the activities of the Federal statistical system to ensure—

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

“(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

“(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

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

“(A) statistical collection procedures and methods;

“(B) statistical data classification;

“(C) statistical information presentation and dissemination;

“(D) timely release of statistical data; and

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

“(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

“(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

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

“(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

“(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—

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

“(B) consist of—

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

“(ii) representatives of other statistical agencies under rotating membership; and

“(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—

“(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

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

“(f) With respect to records management, the Director shall—

“(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this chapter;

“(2) review compliance by agencies with—

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

“(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

“(3) oversee the application of records management policies, principles, standards,

and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

“(g) With respect to privacy and security, the Director shall—

“(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies;

“(2) oversee and coordinate compliance with sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

“(3) require Federal agencies, consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

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

“(i) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—

“(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

“(B) oversee the development and implementation of standards under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d));

“(2) monitor the effectiveness of, and compliance with, directives issued under sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759);

“(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

“(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

“(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

“(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

“(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

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

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

“(i) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least 10 percent, and set annual agency goals to—

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

“(i) represent the maximum practicable opportunity in each agency; and

“(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

“(B) improve information resources management in ways that increase the produc-

tivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

“(2) with selected agencies and non-Federal entities on a voluntary basis, initiate and conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this chapter, particularly with regard to minimizing the Federal information collection burden; and

“(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—

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

“(B) plans for—

“(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

“(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

“(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this chapter; and

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

“(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may waive the application of any regulation or administrative directive issued by an agency with which the project is conducted, including any regulation or directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.

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

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

“(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

“(B) complying with the requirements of this chapter and related policies established by the Director.

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

“(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate a senior official who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated for the military departments, the respective duties of the officials shall be clearly delineated.

“(3) The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.

“(4) Each agency program official shall be responsible and accountable for information

resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

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

“(i) manage information resources to—

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

“(B) increase program efficiency and effectiveness; and

“(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

“(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

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

“(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

“(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

“(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

“(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and

“(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

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

“(i) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—

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

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

“(ii) a functional description of the information to be collected;

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

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

“(v) a test of the collection of information through a pilot program, if appropriate; and

“(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

“(B) ensure that each information collection—

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

“(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

“(iii) contains a statement to inform the person receiving the collection of information—

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

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

“(III) an estimate, to the extent practicable, of the burden of the collection; and

“(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

“(C) assess the information collection burden of proposed legislation affecting the agency;

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

“(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

“(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

“(iii) enhance the quality, utility, and clarity of the information to be collected; and

“(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

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

“(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

“(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

“(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

“(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—

“(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

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

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

“(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

“(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

“(F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

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

“(H) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

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

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

“(4) place an emphasis on minimizing the burden on small businesses with 50 or fewer employees.

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

“(1) ensure that the public has timely, equal, and equitable access to the agency's public information, including ensuring such access through—

“(A) encouraging a diversity of public and private sources for information based on government public information,

“(B) in cases in which the agency provides public information maintained in electronic format, providing timely, equal, and equitable access to the underlying data (in whole or in part); and

“(C) agency dissemination of public information in an efficient, effective, and economical manner;

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

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

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

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

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

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

“(D) establish user fees for public information that exceed the cost of dissemination, except that the Director may waive the application of this subparagraph to an agency, if—

“(i) the head of the agency submits a written request to the Director, publishes a notice of the request in the Federal Register, and provides a copy of the request to the public upon request;

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

“(iii) the granting of the waiver would not materially impair the timely and equitable availability of public information to the public.

“(e) With respect to statistical policy and coordination, each agency shall—

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

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

“(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

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

“(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

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

“(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

“(g) With respect to privacy and security, each agency shall—

“(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

“(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

“(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

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

“(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

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

“(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

“(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

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

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

“(B) used to select, control, and evaluate the results of major information systems initiatives.

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

“(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

“(1) the agency has—

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

“(B) evaluated the public comments received under section 3506(c)(2);

“(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations,

and other related materials as the Director may specify; and

"(D) published a notice in the Federal Register—

"(i) stating that the agency has made such submission; and

"(ii) setting forth—

"(I) a title for the collection of information;

"(II) a summary of the collection of information;

"(III) a brief description of the need for the information and the proposed use of the information;

"(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

"(V) an estimate of the burden that shall result from the collection of information; and

"(VI) notice that comments may be submitted to the agency and Director;

"(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

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

"(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except for good cause or as provided under subsection (j).

"(c)(I) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

"(2) The Director shall provide the notification under paragraph (I), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

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

"(A) the approval may be inferred;

"(B) a control number shall be assigned without further delay; and

"(C) the agency may collect the information for not more than 1 year.

"(d)(I) For any proposed collection of information contained in a proposed rule—

"(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

"(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

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

"(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

"(B) the reasons such comments were rejected.

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

"(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion—

"(A) from disapproving any collection of information which was not specifically required by an agency rule;

"(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (I) of this subsection;

"(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule, and after considering the agency's response to the Director's comments filed under paragraph (2), that the collection of information cannot be approved under the standards set forth in section 3508; or

"(D) from disapproving any collection of information contained in a final rule, if—

"(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

"(ii) the agency has not given the Director the information required under paragraph (I) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

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

"(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

"(e)(I) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

"(2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

"(3) This subsection shall not require the disclosure of—

"(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

"(B) any communication relating to a collection of information, the disclosure of which could lead to retaliation or discrimination against the communicator.

"(f)(I) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void—

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

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

"(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

"(g) The Director may not approve a collection of information for a period in excess of 3 years.

"(h)(I) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall—

"(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

"(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

"(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall—

"(A) publish an explanation thereof in the Federal Register; and

"(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this chapter.

"(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter.

"(i)(I) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

"(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

"(j)(I) The agency head may request the Director to authorize collection of information prior to expiration of time periods established under this chapter, if an agency head determines that—

"(A) a collection of information—

"(i) is needed prior to the expiration of such time periods; and

"(ii) is essential to the mission of the agency; and

"(B) the agency cannot reasonably comply with the provisions of this chapter within such time periods because—

"(i) public harm is reasonably likely to result if normal clearance procedures are followed; or

"(ii) an unanticipated event has occurred and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information related to the event or is reasonably likely to cause a statutory or court-ordered deadline to be missed.

"(2) The Director shall approve or disapprove any such authorization request



within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this chapter for a maximum of 90 days after the date on which the Director received the request to authorize such collection.

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

“Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

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

“The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this chapter.

**“§ 3510. Cooperation of agencies in making information available**

“(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

“(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

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

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

“In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—

“(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the ‘Service’), which shall identify the major informa-

tion systems, holdings, and dissemination products of each agency;

“(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

“(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

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

“(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

“(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

**“§ 3512. Public protection**

“(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the collection of information involved was made after December 31, 1981, and at the time of the failure did not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter.

“(b) Actions taken by agencies which are not in compliance with subsection (a) of this section shall give rise to a complete defense or bar to such action by an agency, which may be raised at any time during the agency decision making process or judicial review of the agency decision under any available process for judicial review.

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

“(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

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

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

“(2) improve agency performance and the accomplishment of agency missions.

**“§ 3514. Responsiveness to Congress**

“(a)(1) The Director shall—

“(A) keep the Congress and congressional committees fully and currently informed of the major activities under this chapter; and

“(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

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

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

“(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

“(ii) a list of all violations of this chapter and of any rules, guidelines, policies, and procedures issued pursuant to this chapter;

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

“(iv) a list of agencies that in the preceding year did not reduce information collection burdens by at least 10 percent pursuant to section 3505, a list of the programs and statutory responsibilities of those agencies that precluded that reduction, and recommendations to assist those agencies to reduce information collection burdens in accordance with that section;

“(B) improved the quality and utility of statistical information;

“(C) improved public access to Government information; and

“(D) improved program performance and the accomplishment of agency missions through information resources management.

“(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

**“§ 3515. Administrative powers**

“Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

**“§ 3516. Rules and regulations**

“The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

**“§ 3517. Consultation with other agencies and the public**

“(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

“(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, the person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

“(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

“(2) take appropriate remedial action, if necessary.

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

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

“(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

“(c)(1) Except as provided in paragraph (2), this chapter shall not apply to obtaining,

causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions—

“(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

“(B) during the conduct of—

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

“(ii) an administrative action or investigation involving an agency against specific individuals or entities;

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

“(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order No. 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

“(2) This chapter applies to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

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

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

#### “§3519. Access to information

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

#### “§3520. Authorization of appropriations

“There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter such sums as may be necessary.”.

#### SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect October 1, 1995.

H.R. 925

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

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

#### SEC. 2. FEDERAL POLICY AND DIRECTION.

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

(b) APPLICATION TO FEDERAL AGENCY ACTION.—Each Federal agency, officer, and em-

ployee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

#### SEC. 3. RIGHT TO COMPENSATION.

(a) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that portion by 20 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action. If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

#### SEC. 4. EFFECT OF STATE LAW.

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

#### SEC. 5. EXCEPTIONS.

(a) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

(1) hazard to public health or safety; or

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

(b) NAVIGATION SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

#### SEC. 6. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

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

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

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

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this sec-

tion, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

#### SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

#### SEC. 8. DUTY OF NOTICE TO OWNERS.

Whenever an agency takes an agency action limiting the use of private property, the agency shall give appropriate notice to the owners of that property explaining their rights under this Act and the procedures directly affected for obtaining any compensation that may be due to them under this Act.

#### SEC. 9. RULES OF CONSTRUCTION.

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

(b) EFFECT OF PAYMENT.—Payment of compensation under this Act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

#### SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term “property” means land and includes the right to use or receive water;

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

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

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

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

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

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

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the “Reclamation Acts” (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

(6) the term "fair market value" means the most probable price at which property would change hands, in a competitive and open market under all conditions requisite to a fair sale, between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, at the time the agency action occurs;

(7) the term "State" includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(8) the term "law of the State" includes the law of a political subdivision of a State.

H.R. 926

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Reform and Relief Act".

### TITLE I—STRENGTHENING REGULATORY FLEXIBILITY

#### SEC. 101. JUDICIAL REVIEW.

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

##### "§611. Judicial review

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

"(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

"(B) prepared a final regulatory flexibility analysis pursuant to section 604,

an affected small entity may petition for the judicial review of such certification or analysis in accordance with the terms of this subsection. A court having jurisdiction to review such rule for compliance with the provisions of section 553 or under any other provision of law shall have jurisdiction to review such certification or analysis. In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed not later than one year notwithstanding any other provision of law after the date the analysis is made available to the public.

"(2) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

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

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

"(B) In the case where the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with the requirements of section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory flexibility analysis was prepared

by the agency without observance of procedure required by section 604.

"(5) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (4) (or such longer period as the court may provide), the agency fails, as appropriate—

"(A) to prepare the analysis required by section 604; or

"(B) to take corrective action consistent with the requirements of section 604,

the court may stay the rule or grant such other relief as it deems appropriate.

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

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

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law."

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

#### SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL FOR ADVOCACY.

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

"(d) ACTION BY THE SBA CHIEF COUNSEL FOR ADVOCACY.—

"(1) TRANSMITTAL OF PROPOSED RULES AND INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA CHIEF COUNSEL FOR ADVOCACY.—On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) a copy of the proposed rule; and

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

"(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

"(2) STATEMENT OF EFFECT.—On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of the effect of the proposed rule on small entities.

"(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to an agency a statement of effect on a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.

"(4) SPECIAL RULE.—Any proposed rules issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such an institution, credit unions, or government sponsored housing enterprises or to protect the Federal deposit insurance funds shall not be subject to the requirements of this subsection."

(b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United States Code, is

amended by inserting "in accordance with section 612(d)" before the period at the end of the last sentence.

#### SEC. 103. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

### TITLE II—REGULATORY IMPACT ANALYSES

#### SEC. 201. DEFINITIONS.

Section 551 of title 5, United States Code, is amended by striking "and" at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a semicolon, and by adding at the end the following:

"(15) 'major rule' means any rule subject to section 553(c) that is likely to result in—

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

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; and

"(16) 'Director' means the Director of the Office of Management and Budget."

#### SEC. 202. RULEMAKING NOTICES FOR MAJOR RULES.

Section 553 of title 5, United States Code, is amended by adding at the end the following:

"(f)(1) Each agency shall for a proposed major rule publish in the Federal Register, at least 90 days before the date of publication of the general notice required under subsection (b), a notice of intent to engage in rulemaking.

"(2) A notice under paragraph (1) for a proposed major rule shall include, to the extent possible, the information required to be included in a regulatory impact analysis for the rule under subsection (i)(4)(B) and (D).

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

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

"(A) a summary of a final regulatory impact analysis of the rule in accordance with subsection (i); and

"(B) a clear delineation of all changes in the information included in the final regulatory impact analysis under subsection (i) from any such information that was included in the notice for the rule under subsection (b).

The agency shall provide the complete text of a final regulatory impact analysis upon request.

"(5) The issuance of a notice of intent to engage in rulemaking under paragraph (1) and the issuance of a preliminary regulatory impact analysis under paragraph (3) shall not be considered final agency action for purposes of section 704.

"(6) In a rulemaking involving a major rule, the agency conducting the rulemaking shall make a written record describing the subject of all contacts the agency made with persons outside the agency relating to such rulemaking. If the contact was made with a

non-governmental person, the written record of such contact shall be made available, upon request to the public."

**SEC. 203. HEARING REQUIREMENT FOR PROPOSED RULES; AND EXTENSION OF COMMENT PERIOD.**

(a) HEARING REQUIREMENT.—Section 553 of title 5, United States Code, as amended by section 202, is further amended by adding after subsection (f) the following:

"(g) If more than 100 interested persons acting individually submit requests for a hearing to an agency regarding any major rule proposed by the agency, the agency shall hold such a hearing on the proposed rule."

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

"(h) If during the 90-day period beginning on the date of publication of a notice under subsection (f) for a proposed major rule, or if during the period beginning on the date of publication or service of notice required by subsection (b) for a proposed major rule, more than 100 persons individually contact the agency to request an extension of the period for making submissions under subsection (c) pursuant to the notice, the agency—

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

"(2) may not adopt the rule until after the additional period."

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

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following:

"(2) Each agency shall publish in the Federal Register, with each rule published under section 552(a)(1)(D), responses to the substance of the comments received by the agency regarding the rule."

**SEC. 204. REGULATORY IMPACT ANALYSIS.**

Section 553 of title 5, United States Code, as amended by section 203, is amended by adding after subsection (h) the following:

"(i)(1) Each agency shall, in connection with every major rule, prepare, and, to the extent permitted by law, consider, a regulatory impact analysis. Such analysis may be combined with any regulatory flexibility analysis performed under sections 603 and 604.

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

"(3) Except as provided in subsection (j), agencies shall prepare—

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

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

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

"(A) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits.

"(B) An explanation of the necessity, legal authority, and reasonableness of the rule and a description of the condition that the rule is to address.

"(C) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and

the identification of those likely to bear the costs.

"(D) An analysis of alternative approaches, including market based mechanisms, that could substantially achieve the same regulatory goal at a lower cost and an explanation of the reasons why such alternative approaches were not adopted, together with a demonstration that the rule provides for the least costly approach.

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

"(F) A statement of whether the rule will require on-site inspections or whether persons will be required by the rule to maintain any records which will be subject to inspection, and a statement of whether the rule will require persons to obtain licenses, permits, or other certifications including specification of any associated fees or fines.

"(G) An estimate of the costs to the agency for implementation and enforcement of the rule and of whether the agency can be reasonably expected to implement the rule with the current level of appropriations.

"(5)(A) the Director is authorized to review and prepare comments on any preliminary or final regulatory impact analysis, notice of proposed rulemaking, or final rule based on the requirements of this subsection.

"(B) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary impact analysis or notice of proposed rulemaking and shall refrain from publishing its preliminary regulatory impact analysis or notice of proposed rulemaking until such review is concluded. The Director's review may not take longer than 90 days after the date of the request of the Director.

"(6)(A) An agency may not adopt a major rule unless the final regulatory impact analysis for the rule is approved or commented upon in writing by the Director or by an individual designated by the Director for that purpose.

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

"(7) Notwithstanding section 551(16), for purposes of this subsection with regard to any rule proposed or issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, the term 'Director' means the head of such agency, Administration, or Office."

**SEC. 205. STANDARD OF CLARITY.**

Section 553 of title 5, United States Code, as amended in section 204, is amended by adding after subsection (i) the following:

"(j) To the extent practicable, the head of an agency shall seek to ensure that any proposed major rule or regulatory impact analysis of such a rule is written in a reasonably simple and understandable manner and provides adequate notice of the content of the rule to affected persons."

**SEC. 206. EXEMPTIONS.**

Section 553 of title 5, United States Code, as amended by section 205, is further amend-

ed by adding after subsection (j) the following:

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

"(A) any regulation that responds to an emergency situation if such regulation is reported to the Director as soon as is practicable;

"(B) any regulation for which consideration under the procedures of this section would conflict with deadlines imposed by statute or by judicial order;

"(C) any regulation proposed or issued in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such institution, credit unions, or government sponsored housing enterprises regulated by the Office of Federal Housing Enterprise Oversight;

"(D) any agency action that the head of the agency certifies is limited to interpreting, implementing, or administering the internal revenue laws of the United States, including any regulation proposed or issued in connection with ensuring the collection of taxes from a subsidiary of a foreign company doing business in the United States; and

"(E) any regulation proposed or issued pursuant to section 553 of title 5, United States Code, in connection with imposing trade sanctions against any country that engages in illegal trade activities against the United States that are injurious to American technology, jobs, pensions, or general economic well-being.

A regulation described in subparagraph (B) shall be reported to the Director with a brief explanation of the conflict and the agency, in consultation with the Director, shall, to the extent permitted by statutory or judicial deadlines, adhere to the process of this section.

"(2) The Director may in accordance with the purposes of this section exempt any class or category of regulations from any or all requirements of this section.

"(3) For purposes of paragraph (1), the term 'emergency situation' means a situation that is—

"(A) immediately impending and extraordinary in nature, or

"(B) demanding attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans or substantial endangerment to private property or the environment if no action is taken."

**SEC. 207. REPORT.**

The Director of the Office of Management and Budget shall submit a report to the Congress no later than 24 months after the date of the enactment of this Act containing an analysis of rulemaking procedures of Federal agencies and an analysis of the impact of those rulemaking procedures on the regulated public and regulatory process.

**SEC. 208. EFFECTIVE DATE.**

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

**TITLE III—PROTECTIONS**

**SEC. 301. PRESIDENTIAL ACTION.**

Pursuant to the authority of section 7301 of title 5, United States Code, the President shall, within 180 days of the date of the enactment of this title, prescribe regulations for employees of the executive branch to ensure that Federal laws and regulations shall be administered consistent with the principle that any person shall, in connection with the enforcement of such laws and regulations—

(1) be protected from abuse, reprisal, or retaliation, and

(2) be treated fairly, equitably, and with due regard for such person's rights under the Constitution.

H.R. 1022

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Assessment and Cost-Benefit Act of 1995".

#### SEC. 2. FINDINGS.

The Congress finds that:

(1) Environmental, health, and safety regulations have led to dramatic improvements in the environment and have significantly reduced human health risk; however, the Federal regulations that have led to these improvements have been more costly and less effective than they could have been; too often, regulatory priorities have not been based upon a realistic consideration of risk, risk reduction opportunities, and costs.

(2) The public and private resources available to address health, safety, and environmental concerns are not unlimited; those resources need to be allocated to address the greatest needs in the most cost-effective manner and so that the incremental costs of regulatory alternatives are reasonably related to the incremental benefits.

(3) To provide more cost-effective and cost-reasonable protection to human health and the environment, regulatory priorities should be based upon realistic consideration of risk; the priority setting process must include scientifically sound, objective, and unbiased risk assessments, comparative risk analysis, and risk management choices that are grounded in cost-benefit principles.

(4) Risk assessment has proven to be a useful decision making tool; however, improvements are needed in both the quality of assessments and the characterization and communication of findings; scientific and other data must be better collected, organized, and evaluated; most importantly, the critical information resulting from a risk assessment must be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public.

(5) The public stake holders must be fully involved in the risk-decision making process. They have the right-to-know about the risks addressed by regulation, the amount of risk to be reduced, the quality of the science used to support decisions, and the cost of implementing and complying with regulations. This knowledge will allow for public scrutiny and promote quality, integrity, and responsiveness of agency decisions.

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

#### SEC. 3. COVERAGE OF ACT.

This Act does not apply to any of the following:

(1) A situation that the head of an affected Federal agency determines to be an emergency. In such circumstance, the head of the agency shall comply with the provisions of this Act within as reasonable a time as is practical.

(2) Activities necessary to maintain military readiness.

(3) Any individual food, drug, or other product label, or to any risk characterization appearing on any such label, if the individual product label is required by law to be approved by a Federal department or agency prior to use.

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

#### SEC. 4. UNFUNDED MANDATES.

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

#### SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) **COSTS.**—The term "costs" includes the direct and indirect costs to the United States Government, to State, local, and tribal governments, and to the private sector, wage earners, consumers, and the economy, of implementing and complying with a rule or alternative strategy.

(2) **BENEFIT.**—The term "benefit" means the reasonably identifiable significant health, safety, environmental, social and economic benefits that are expected to result directly or indirectly from implementation of a rule or alternative strategy.

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

(4) **PROGRAM DESIGNED TO PROTECT HUMAN HEALTH.**—The term "program designed to protect human health" does not include regulatory programs concerning health insurance, health provider services, or health care diagnostic services.

(5) **EMERGENCY.**—As used in this Act, the term "emergency" means a situation that is immediately impending and extraordinary in nature, demanding attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans, or substantial endangerment to private property or the environment if no action is taken.

#### SEC. 6. AVAILABILITY OF INFORMATION AMONG FEDERAL AGENCIES.

Covered Federal agencies shall make existing databases and information developed under this Act available to other Federal agencies, subject to applicable confidentiality requirements, for the purpose of meeting the requirements of this Act. Within 15 months after the date of enactment of this Act, the President shall issue guidelines for Federal agencies to comply with this section.

### TITLE I—RISK ASSESSMENT AND COMMUNICATION

#### SEC. 101. SHORT TITLE.

This title may be cited as the "Risk Assessment and Communication Act of 1995".

#### SEC. 102. PURPOSES.

The purposes of this title are—

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

(2) to provide for full consideration and discussion of relevant data and potential methodologies;

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

(4) to improve consistency within the executive branch in preparing risk assessments and risk characterizations.

#### SEC. 103. EFFECTIVE DATE; APPLICABILITY; SAVINGS PROVISIONS.

(a) **EFFECTIVE DATE.**—Except as otherwise specifically provided in this title, the provisions of this title shall take effect 18 months after the date of enactment of this title.

#### (b) APPLICABILITY.—

(1) **IN GENERAL.**—Except as provided in paragraph (3), this title applies to all significant risk assessment documents and significant risk characterization documents, as defined in paragraph (2).

(2) **SIGNIFICANT RISK ASSESSMENT DOCUMENT OR SIGNIFICANT RISK CHARACTERIZATION DOCUMENT.**—(A) As used in this title, the terms "significant risk assessment document" and "significant risk characterization document" include, at a minimum, risk assessment documents or risk characterization documents prepared by or on behalf of a covered Federal agency in the implementation of a regulatory program designed to protect human health, safety, or the environment, used as a basis for one of the items referred to in subparagraph (B), and—

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

(ii) inserted by the agency in the administrative record for that item.

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

(i) Any proposed or final major rule, including any analysis or certification under title II, promulgated as part of any Federal regulatory program designed to protect human health, safety, or the environment.

(ii) Any proposed or final environmental clean-up plan for a facility or Federal guidelines for the issuance of any such plan. As used in this clause, the term "environmental clean-up" means a corrective action under the Solid Waste Disposal Act, a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration and waste management carried out by or on behalf of a covered Federal agency with respect to any substance other than municipal waste.

(iii) Any proposed or final permit condition placing a restriction on facility siting or operation under Federal laws administered by the Environmental Protection Agency or the Department of the Interior. Nothing in this section (iii) shall apply to the requirements of section 404 of the Clean Water Act.

(iv) Any report to Congress.

(v) Any regulatory action to place a substance on any official list of carcinogens or toxic or hazardous substances or to place a new health effects value on such list, including the Integrated Risk Information System Database maintained by the Environmental Protection Agency.

(vi) Any guidance, including protocols of general applicability, establishing policy regarding risk assessment or risk characterization.

(C) The terms "significant risk assessment document" and "significant risk characterization document" shall also include the following:

(i) Any such risk assessment and risk characterization documents provided by a covered Federal agency to the public and which are likely to result in an annual increase in costs of \$25,000,000 or more.

(ii) Environmental restoration and waste management carried out by or on behalf of the Department of Defense with respect to any substance other than municipal waste.

(D) Within 15 months after the date of the enactment of this Act, each covered Federal agency administering a regulatory program designed to protect human health, safety, or the environment shall promulgate a rule establishing those additional categories, if any, of risk assessment and risk characterization documents prepared by or on behalf

of the covered Federal agency that the agency will consider significant risk assessment documents or significant risk characterization documents for purposes of this title. In establishing such categories, the head of the agency shall consider each of the following:

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

(ii) The administrative burdens of including documents in the categories.

(iii) The need to make expeditious administrative decisions regarding documents in the categories.

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

(v) Such other factors as may be appropriate.

(E)(i) Not later than 18 months after the date of the enactment of this Act, the President, acting through the Director of the Office of Management and Budget, shall determine whether any other Federal agencies should be considered covered Federal agencies for purposes of this title. Such determination, with respect to a particular Federal agency, shall be based on the impact of risk assessment documents and risk characterization documents on—

(I) regulatory programs administered by that agency; and

(II) the communication of risk information by that agency to the public. The effective date of such a determination shall be no later than 6 months after the date of the determination.

(ii) Not later than 15 months after the President, acting through the Director of the Office of Management and Budget, determines pursuant to clause (i) that a Federal agency should be considered a covered Federal agency for purposes of this title, the head of that agency shall promulgate a rule pursuant to subparagraph (D) to establish additional categories of risk assessment and risk characterization documents described in that subparagraph.

(3) EXCEPTIONS.—(A) This title does not apply to risk assessment or risk characterization documents containing risk assessments or risk characterizations performed with respect to the following:

(i) A screening analysis, where appropriately labeled as such, including a screening analysis for purposes of product regulation or premanufacturing notices.

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

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

(B) No analysis shall be treated as a screening analysis for purposes of subparagraph (A) if the results of such analysis are used as the basis for imposing restrictions on substances or activities.

(C) The risk assessment principle set forth in section 104(b)(1) need not apply to any risk assessment or risk characterization document described in clause (iii) of paragraph (2)(B). The risk characterization and communication principle set forth in section 105(4) need not apply to any risk assessment or risk characterization document described in clause (v) or (vi) of paragraph (2)(B).

(c) SAVINGS PROVISIONS.—The provisions of this title shall be supplemental to any other provisions of law relating to risk assessments and risk characterizations, except that nothing in this title shall be construed to modify any statutory standard or statutory requirement designed to protect health, safety, or the environment. Nothing in this title shall be interpreted to preclude the con-

sideration of any data or the calculation of any estimate to more fully describe risk or provide examples of scientific uncertainty or variability. Nothing in this title shall be construed to require the disclosure of any trade secret or other confidential information.

#### SEC. 104. PRINCIPLES FOR RISK ASSESSMENT.

(a) IN GENERAL.—The head of each covered Federal agency shall apply the principles set forth in subsection (b) in order to assure that significant risk assessment documents and all of their components distinguish scientific findings from other considerations and are, to the extent feasible, scientifically objective, unbiased, and inclusive of all relevant data and rely, to the extent available and practicable, on scientific findings. Discussions or explanations required under this section need not be repeated in each risk assessment document as long as there is a reference to the relevant discussion or explanation in another agency document which is available to the public.

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

(1) When discussing human health risks, a significant risk assessment document shall contain a discussion of both relevant laboratory and relevant epidemiological data of sufficient quality which finds, or fails to find, a correlation between health risks and a potential toxin or activity. Where conflicts among such data appear to exist, or where animal data is used as a basis to assess human health, the significant risk assessment document shall, to the extent feasible and appropriate, include discussion of possible reconciliation of conflicting information, and as relevant, differences in study designs, comparative physiology, routes of exposure, bioavailability, pharmacokinetics, and any other relevant factor, including the sufficiency of basic data for review. The discussion of possible reconciliation should indicate whether there is a biological basis to assume a resulting harm in humans. Animal data shall be reviewed with regard to its relevancy to humans.

(2) Where a significant risk assessment document involves selection of any significant assumption, inference, or model, the document shall, to the extent feasible—

(A) present a representative list and explanation of plausible and alternative assumptions, inferences, or models;

(B) explain the basis for any choices;

(C) identify any policy or value judgments;

(D) fully describe any model used in the risk assessment and make explicit the assumptions incorporated in the model; and

(E) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

#### SEC. 105. PRINCIPLES FOR RISK CHARACTERIZATION AND COMMUNICATION.

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

(1) ESTIMATES OF RISK.—The risk characterization shall describe the populations or natural resources which are the subject of the risk characterization. If a numerical estimate of risk is provided, the agency shall, to the extent feasible, provide—

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

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

In addition to such best estimate or estimates, the risk characterization document may present plausible upper-bound or conservative estimates in conjunction with plausible lower bounds estimates. Where ap-

propriate, the risk characterization document may present, in lieu of a single best estimate, multiple best estimates based on assumptions, inferences, or models which are equally plausible, given current scientific understanding. To the extent practical and appropriate, the document shall provide descriptions of the distribution and probability of risk estimates to reflect differences in exposure variability or sensitivity in populations and attendant uncertainties. Sensitive subpopulations or highly exposed subpopulations include, where relevant and appropriate, children, the elderly, pregnant women, and disabled persons.

(2) EXPOSURE SCENARIOS.—The risk characterization document shall explain the exposure scenarios used in any risk assessment, and, to the extent feasible, provide a statement of the size of the corresponding population at risk and the likelihood of such exposure scenarios.

(3) COMPARISONS.—The document shall contain a statement that places the nature and magnitude of risks to human health, safety, or the environment in context. Such statement shall, to the extent feasible, provide comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks, and, where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Federal agency resulting from comparable activities and exposure pathways. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks and the preventability or nonpreventability of risks.

(4) SUBSTITUTION RISKS.—Each significant risk assessment or risk characterization document shall include a statement of any significant substitution risks to human health, where information on such risks has been provided to the agency.

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

(A) a commenter provides a covered Federal agency with a relevant risk assessment document or a risk characterization document, and a summary thereof, during a public comment provided by the agency for a significant risk assessment document or a significant risk characterization document, or, where no comment period is provided but a commenter provides the covered Federal agency with the relevant risk assessment document or risk characterization document, and a summary thereof, in a timely fashion, and

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

the agency shall, to the extent feasible, present such summary in connection with the presentation of the agency's significant risk assessment document or significant risk characterization document. Nothing in this paragraph shall be construed to limit the inclusion of any comments or material supplied by any person to the administrative record of any proceeding.

A document may satisfy the requirements of paragraph (3), (4) or (5) by reference to information or material otherwise available to the public if the document provides a brief summary of such information or material.

#### SEC. 106. RECOMMENDATIONS OR CLASSIFICATIONS BY A NON-UNITED STATES-BASED ENTITY.

No covered Federal agency shall automatically incorporate or adopt any recommendation or classification made by a non-United

States-based entity concerning the health effects value of a substance without an opportunity for notice and comment, and any risk assessment document or risk characterization document adopted by a covered Federal agency on the basis of such a recommendation or classification shall comply with the provisions of this title. For the purposes of this section, the term "non-United States-based entity" means—

- (1) any foreign government and its agencies;
- (2) the United Nations or any of its subsidiary organizations;
- (3) any other international governmental body or international standards-making organization; or
- (4) any other organization or private entity without a place of business located in the United States or its territories.

#### SEC. 107. GUIDELINES AND REPORT.

(a) **GUIDELINES.**—Within 15 months after the date of enactment of this title, the President shall issue guidelines for Federal agencies consistent with the risk assessment and characterization principles set forth in sections 104 and 105 and shall provide a format for summarizing risk assessment results. In addition, such guidelines shall include guidance on at least the following subjects: criteria for scaling animal studies to assess risks to human health; use of different types of dose-response models; thresholds; definitions, use, and interpretations of the maximum tolerated dose; weighting of evidence with respect to extrapolating human health risks from sensitive species; evaluation of benign tumors, and evaluation of different human health endpoints.

(b) **REPORT.**—Within 3 years after the enactment of this title, each covered Federal agency shall provide a report to the Congress evaluating the categories of policy and value judgments identified under subparagraph (C) of section 104(b)(2).

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

(d) **REVIEW.**—The President shall review and, where appropriate, revise the guidelines published under this section at least every 4 years.

#### SEC. 108. RESEARCH AND TRAINING IN RISK ASSESSMENT.

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

(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmammalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

(4) Long-term needs to adequately train individuals in risk assessment and risk assess-

ment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

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

(c) **REPORT.**—Not later than 6 months after the date of the enactment of this Act, the head of each covered agency shall submit to the Congress a report on the evaluations conducted under subsection (a) and the strategy and schedule developed under subsection (b). The head of each covered agency shall report to the Congress periodically on the evaluations, strategy, and schedule.

#### SEC. 109. STUDY OF COMPARATIVE RISK ANALYSIS.

(a) **IN GENERAL.**—(1) The Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall conduct, or provide for the conduct of, a study using comparative risk analysis to rank health, safety, and environmental risks and to provide a common basis for evaluating strategies for reducing or preventing those risks. The goal of the study shall be to improve methods of comparative risk analysis.

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

(b) **SCOPE OF STUDY.**—The study shall have sufficient scope and breadth to evaluate comparative risk analysis and to test approaches for improving comparative risk analysis and its use in setting priorities for health, safety, and environmental risk reduction. The study shall compare and evaluate a range of diverse health, safety, and environmental risks.

(c) **STUDY PARTICIPANTS.**—In conducting the study, the Director shall provide for the participation of a range of individuals with varying backgrounds and expertise, both technical and nontechnical, comprising broad representation of the public and private sectors.

(d) **DURATION.**—The study shall begin within 180 days after the date of the enactment of this Act and terminate within 2 years after the date on which it began.

(e) **RECOMMENDATIONS FOR IMPROVING COMPARATIVE RISK ANALYSIS AND ITS USE.**—Not later than 90 days after the termination of the study, the Director shall submit to the Congress the report of the National Research Council with recommendations regarding the use of comparative risk analysis and ways to improve the use of comparative risk analysis for decision-making in appropriate Federal agencies.

#### SEC. 110. DEFINITIONS.

For purposes of this title:

(1) **RISK ASSESSMENT DOCUMENT.**—The term "risk assessment document" means a document containing the explanation of how hazards associated with a substance, activity, or condition have been identified, quantified, and assessed. The term also includes a written statement accepting the findings of any such document.

(2) **RISK CHARACTERIZATION DOCUMENT.**—The term "risk characterization document" means a document quantifying or describing the degree of toxicity, exposure, or other risk posed by hazards associated with a substance, activity, or condition to which individuals, populations, or resources are exposed. The term also includes a written

statement accepting the findings of any such document.

(3) **BEST ESTIMATE.**—The term "best estimate" means a scientifically appropriate estimate which is based, to the extent feasible, on one of the following:

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

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

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

(4) **SUBSTITUTION RISK.**—The term "substitution risk" means a potential risk to human health, safety, or the environment from a regulatory alternative designed to decrease other risks.

(5) **COVERED FEDERAL AGENCY.**—The term "covered Federal agency" means each of the following:

(A) The Environmental Protection Agency.

(B) The Occupational Safety and Health Administration.

(C) The Department of Transportation (including the National Highway Transportation Safety Administration).

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Mine Safety and Health Administration.

(L) The Nuclear Regulatory Commission.

(M) Any other Federal agency considered a covered Federal agency pursuant to section 103(b)(2)(E).

(6) **FEDERAL AGENCY.**—The term "Federal agency" means an executive department, military department, or independent establishment as defined in part I of title 5 of the United States Code, except that such term also includes the Office of Technology Assessment.

(7) **DOCUMENT.**—The term "document" includes material stored in electronic or digital form.

#### TITLE II—ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS

##### SEC. 201. ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS.

(a) **IN GENERAL.**—The President shall require each Federal agency to prepare the following for each major rule within a program designed to protect human health, safety, or the environment that is proposed or promulgated by the agency after the date of enactment of this Act:

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

(A) require no government action;

(B) will accommodate differences among geographic regions and among persons with different levels of resources with which to comply; and

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

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

(2) An analysis of the incremental costs and incremental risk reduction or other benefits associated with each alternative strategy identified or considered by the agency. Costs and benefits shall be quantified to the



extent feasible and appropriate and may otherwise be qualitatively described.

(3) A statement that places in context the nature and magnitude of the risks to be addressed and the residual risks likely to remain for each alternative strategy identified or considered by the agency. Such statement shall, to the extent feasible, provide comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks, and, where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Federal agency resulting from comparable activities and exposure pathways. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks and the preventability or nonpreventability of risks.

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

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

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

(B) on net employment; and

(C) to the extent practicable, on the cumulative financial burden of compliance with the rule and other existing regulations on persons producing products.

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

#### SEC. 202. DECISION CRITERIA.

(a) IN GENERAL.—No final rule subject to the provisions of this title shall be promulgated unless the agency certifies the following:

(1) That the analyses under section 201 are based on objective and unbiased scientific and economic evaluations of all significant and relevant information and risk assessments provided to the agency by interested parties relating to the costs, risks, and risk reduction and other benefits addressed by the rule.

(2) That the incremental risk reduction or other benefits of any strategy chosen will be likely to justify, and be reasonably related to, the incremental costs incurred by State, local, and tribal governments, the Federal Government, and other public and private entities.

(3) That other alternative strategies identified or considered by the agency were found either (A) to be less cost-effective at achieving a substantially equivalent reduction in risk, or (B) to provide less flexibility to State, local, or tribal governments or regulated entities in achieving the otherwise applicable objectives of the regulation, along with a brief explanation of why alternative strategies that were identified or considered by the agency were found to be less cost-effective or less flexible.

(b) EFFECT OF DECISION CRITERIA.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the decision criteria of subsection (a) shall supplement and, to the extent there is a conflict, supersede the decision criteria for rulemaking otherwise applicable under the statute pursuant to which the rule is promulgated.

(2) SUBSTANTIAL EVIDENCE.—Notwithstanding any other provision of Federal law, no major rule shall be promulgated by any Federal agency pertaining to the protection of health, safety, or the environment unless the requirements of section 201 and subsection (a) are met and the certifications required

therein are supported by substantial evidence of the rulemaking record.

(c) PUBLICATION.—The agency shall publish in the Federal Register, along with the final regulation, the certifications required by subsection (a).

(d) NOTICE.—Where the agency finds a conflict between the decision criteria of this section and the decision criteria of an otherwise applicable statute, the agency shall so notify the Congress in writing.

#### SEC. 203. OFFICE OF MANAGEMENT AND THE BUDGET GUIDANCE.

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

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

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

#### SEC. 204. ENVIRONMENTAL CLEAN-UP.

For purposes of this title, any determination by a Federal agency to approve or reject any proposed or final environmental clean-up plan for a facility the costs of which are likely to exceed \$5,000,000 shall be treated as major rule subject to the provisions of this title (other than the provisions of section 201(a)(5)). As used in this section, the term "environmental clean-up" means a corrective action under the Solid Waste Disposal Act, a remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration and waste management carried out by or on behalf of a Federal agency with respect to any substance other than municipal waste.

### TITLE III—PEER REVIEW

#### SEC. 301. PEER REVIEW PROGRAM.

(a) ESTABLISHMENT.—For regulatory programs designed to protect human health, safety, or the environment, the head of each Federal agency shall develop a systematic program for independent and external peer review required by subsection (b). Such program shall be applicable across the agency and—

(1) shall provide for the creation of peer review panels consisting of experts and shall be broadly representative and balanced and to the extent relevant and appropriate, may include representatives of State, local, and tribal governments, small businesses, other representatives of industry, universities, agriculture, labor, consumers, conservation organizations, or other public interest groups and organizations;

(2) may provide for differing levels of peer review and differing numbers of experts on peer review panels, depending on the significance or the complexity of the problems or the need for expeditiousness;

(3) shall not exclude peer reviewers with substantial and relevant expertise merely because they represent entities that may have a potential interest in the outcome, provided that interest is fully disclosed to the agency and in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included on the panel;

(4) may provide specific and reasonable deadlines for peer review panels to submit reports under subsection (c); and

(5) shall provide adequate protections for confidential business information and trade secrets, including requiring peer reviewers to enter into confidentiality agreements.

(b) REQUIREMENT FOR PEER REVIEW.—In connection with any rule that is likely to result in an annual increase in costs of \$100,000,000 or more (other than any rule or

other action taken by an agency to authorize or approve any individual substance or product), each Federal agency shall provide for peer review in accordance with this section of any risk assessment or cost analysis which forms the basis for such rule or of any analysis under section 201(a). In addition, the Director of the Office of Management and Budget may order that peer review be provided for any major risk assessment or cost assessment that is likely to have a significant impact on public policy decisions.

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

(d) RESPONSE TO PEER REVIEW.—The head of the Federal agency shall provide a written response to all significant peer review comments.

(e) AVAILABILITY TO PUBLIC.—All peer review comments or conclusions and the agency's responses shall be made available to the public and shall be made part of the administrative record.

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

(g) NATIONAL PANELS.—The President shall appoint National Peer Review Panels to annually review the risk assessment and cost assessment practices of each Federal agency for programs designed to protect human health, safety, or the environment. The Panel shall submit a report to the Congress no less frequently than annually containing the results of such review.

### TITLE IV—JUDICIAL REVIEW

#### SEC. 401. JUDICIAL REVIEW.

Compliance or noncompliance by a Federal agency with the requirements of this Act shall be reviewable pursuant to the statute granting the agency authority to act or, as applicable, that statute and the Administrative Procedure Act. The court with jurisdiction to review final agency action under the statute granting the agency authority to act shall have jurisdiction to review, at the same time, the agency's compliance with the requirements of this Act. When a significant risk assessment document or risk characterization document subject to title I is part of the administrative record in a final agency action, in addition to any other matters that the court may consider in deciding whether the agency's action was lawful, the court shall consider the agency action unlawful if such significant risk assessment document or significant risk characterization document does not substantially comply with the requirements of sections 104 and 105.

### TITLE V—PLAN

#### SEC. 501. PLAN FOR ASSESSING NEW INFORMATION.

(a) PLAN.—Within 18 months after the date of enactment of this Act, each covered Federal agency (as defined in title I) shall publish a plan to review and, where appropriate revise any significant risk assessment document or significant risk characterization document published prior to the expiration of such 18-month period if, based on information available at the time of such review, the agency head determines that the application of the principles set forth in sections 104 and 105 would be likely to significantly alter the results of the prior risk assessment or risk characterization. The plan shall provide procedures for receiving and considering new information and risk assessments from the

public. The plan may set priorities and procedures for review and, where appropriate, revision of such risk assessment documents and risk characterization documents and of health or environmental effects values. The plan may also set priorities and procedures for review, and, where appropriate, revision or repeal of major rules promulgated prior to the expiration of such period. Such priorities and procedures shall be based on the potential to more efficiently focus national economic resources within Federal regulatory programs designed to protect human health, safety, or the environment on the most important priorities and on such other factors as such Federal agency considers appropriate.

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

#### TITLE VI—PRIORITIES

##### SEC. 601. PRIORITIES.

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

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

(2) The number of individuals affected.

(3) The incremental costs and risk reduction benefits associated with regulatory or other strategies.

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

(5) Intergovernmental relationships among Federal, State, and local governments among programs designed to protect public health.

(6) Statutory, regulatory, or administrative obstacles to allocating national economic resources based on the most cost-effective, cost-reasonable priorities considering Federal, State, and local programs.

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

(c) BIENNIAL REPORTS.—The President shall issue biennial reports to Congress, after notice and opportunity for public comment, to recommend priorities for modifications to, elimination of, or strategies for existing Federal regulatory programs designed to protect public health. Within 6 months after the issuance of the report, the President shall notify the Congress in writing of the recommendations which can be implemented without further legislative changes and the agency shall consider the priorities set forth in the report and priorities developed and submitted by State, local, and tribal governments when preparing a budget or strategic plan for any such regulatory program.

The SPEAKER pro tempore. Pursuant to section 2 of House Resolution 101, the previous question is ordered on the motion to amend and on the bill.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DELAY].

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SPRATT

Mr. SPRATT. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. SPRATT. In its present form I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. SPRATT moves to recommit the bill H.R. 9 to the Committee on Science with instructions to report the same back to the House forthwith with the following amendment:

In Division D of H.R. 9, consisting of the text of H.R. 1022, as passed by the House, strike the following text:

“Section 204. Environmental Clean-up.

“For the purposes of this title, any determination by a Federal agency to approve or reject any proposed or final environmental clean-up plan for a facility the costs of which are likely to exceed \$5,000,000 shall be treated as a major rule subject to the provisions of this title (other than the provisions of section 205(a)(5)). As used in this section, “environmental clean-up” means a corrective action under the Solid Waste Disposal Act, a remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration and waste management carried out by or on behalf of a Federal agency with respect to any substance other than municipal waste.”

Mr. DELAY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. The gentleman from South Carolina [Mr. SPRATT] is recognized for 5 minutes.

Mr. SPRATT. Mr. Speaker, in the waning minutes of debate on H.R. 1022, the Risk Assessment and Cost-Benefit Analysis Act, Mr. WALKER offered a final amendment which was barely considered at all because we had run out of time. The Walker amendment then passed on a voice vote. This amendment expands the scope of H.R. 1022 far beyond what I think most Members appreciated, because there was no time to explain it when it came before us.

Basically, this Walker amendment provides that when any Federal agency approves or rejects any environmental cleanup plan, and the costs of the clean up plan will exceed \$5 million, then the Risk Assessment Cost-Benefit Act is triggered. What in turn that means is that a full-blown risk assessment and cost-benefit analysis is required before the agency can move forward with the plan. If the benefits do not exceed the costs under the act, then the plan cannot be carried forward.

What is the environmental cleanup plan, a \$5 million cleanup plan? First of all, the amendment says an environmental cleanup plan is any corrective action taken under CERCLA, the Superfund Act, or under the Solid Waste Disposal Act. That is the first application of it.

Mr. Speaker, I think we all agree that CERCLA or Superfund has taken too much time and involved too many lawyers. If we allow this amendment to stand in this bill, then we have just found another way to take more time and involve more lawyers, and I do not think that is the direction we want to move in. That is enough of a problem with the amendment.

But it goes beyond that, because it also says an environmental clean up decision is “any other environmental restoration and waste management carried out on behalf of a Federal agency with respect to any substance other than municipal waste.” So this amendment applies to any environmental restoration decision taken with respect to a Federal facility and any waste management decision. That is Clean Water Act disposal, even Clean Air Act disposal problems. What does this mean?

All DOE facilities, Department of Energy facilities scattered across 17 States, from Savannah River to Oak Ridge, TN to Rocky Flats, to Hanford, WA, there is an enormous array of cleanup problems that could cost billions upon billions of approximate dollars, approximate, that have been accumulated over 50 years, toxic waste, hazardous waste, and very, very dangerous radioactive waste.

This amendment means that the Department of Energy does not have to deal with these nuclear and toxic waste problems if the cost-benefit analysis does not show the benefits will exceed costs.

This means that these problems, which have been overlooked and delayed for 50 years, will have to go through further delay because before DOE can do anything with respect to them, they have to put them through risk assessment and cost-benefit analysis. And this means that the risk assessment/cost-benefit analysis track becomes preempted.

Each one of these 17 sites now in the DOE complex now has a complicated, difficult negotiation ongoing with the State regulatory authorities, and most of them have compliance agreements. The States are no longer involved. What rules is risk assessment and cost-benefit analysis. At Hanford, at Rocky Flats, at Savannah River, all across the country.

The Department of Defense also has major cleanup decisions to make with respect to all the bases it closes. In fact, when we adopted the Base Closing Act, we said you cannot close a base and leave it and turn it over to local communities or new developers until you have resolved all the environmental cleanup problems.

Now the Department of Defense must add on to the time delays it is already experiencing the additional burden of doing cost-benefit analysis. If the cost-benefit analysis does not show the benefits will exceed the costs, then DOD will simply leave those problems unattended. They have been immunized by this bill if the benefits do not exceed the costs, leave them unattended, turn them over to a local community, and then guess what? The next landowner inherits the property with the sites there, but without immunity.

If that is not enough, this also applies to waste management. The word "waste management" is used. Waste management does not mean environmental problems that have accumulated through neglect or ignorance of the law over the past years. It means management of ongoing waste streams, waste water emissions into streams. This means DOD, DOE, and others that discharge in a waste management scheme, do not have to comply with waste management decisions unless the benefits can be proven to exceed the costs.

Now, we do not know all the ramifications of this provision, but think a few things are clear. This is not good law; it was made too hastily, it is ill-considered, ill-conceived, and should be stricken from the bill. Let us start over.

Mr. BROWN of California. Mr. Speaker, on February 28, in the waning minutes of the debate on the Risk Assessment and Cost-Benefit Act, H.R. 1022, the House added 17 short lines that potentially do a lot of damage. In adopting the Walker amendment, we have classified virtually every proposed or final environmental cleanup plan for a facility as a major rule subject to all the exacting provisions of the act.

This is yet another instance where, in our rush to pass legislation that improves the regulatory process, we have unnecessarily created a bigger mess than we started with.

Earlier in the debate we dramatically shrunk agency emergency exemption powers to get out from under this burden. Under the Walker amendment, we have dramatically reduced the dollar limit. The combination of these two provisions will end environmental enforcement as we know it to the detriment of anyone who lives near a site which could benefit from a federally aided cleanup. It also will be the last straw for many who would consider rehabbing industrial and Government sites to provide badly needed jobs.

Not all of the ramifications of this provision are known, but this we do know: First, it is going to cost a great deal more time and money to clean up a brownfield site and make it economically useful.

Second, any unemployed regulatory lawyers or environmental lawyers should be shouting hallelujah because they can prolong in court most facility cleanups under the Clean Air Act, the Clean Water Act, the Superfund law, the Department of Defense cleanup programs, and the Department of Energy cleanups.

Third, anyone in the business of doing environmental studies is set for life.

Fourth, since cleanups are now to be based strictly on cost-benefit analyses, States rights to participate in the process and the needs

and preferences of local communities no longer matter.

Since this provision applies to every agency of the Federal Government, we do not know what else has been swept up. What is the effect on the Coast Guard, on FEMA, on the Nuclear Regulatory Commission, on our international commitments? No one knows.

Once again we have rushed through an amendment without thinking, without hearings, and without understanding the consequences of our actions. Let's recommit this bill with instructions so that we can avoid the economic and environmental harm that we will otherwise inadvertently spread throughout the country.

I urge my colleagues to vote for the motion to recommit.

Mr. MINETA. Mr. Speaker, I rise in strong support of the motion to recommit.

Mr. Speaker, the motion would direct the deletion of the Walker amendment on environmental cleanup. Rarely has such an ill-considered provision been added to legislation with so little discussion of its broad consequences.

Let me talk about the broad consequences of the amendment. This amendment will greatly delay environmental cleanups, undercut community participation in determining the level of cleanup, preempt States, and slow down the base closure and transfer process. I don't believe we should support any of those results.

What is the major complaint we have heard about Superfund? It takes too long to achieve cleanup and it is a field day for lawyers.

Let me be clear, adding the entire cost-benefit and risk analysis provisions of this bill on top of the current requirements of Superfund will surely delay cleanups. The law today precludes parties from delaying cleanup through court action. Don't forget that this bill also allows for judicial review of agency decisions. Lawyers will have the time of their lives and delay cleanups for years.

Delaying cleanups will have nothing but disastrous effects on the cost of cleanups. Although the proponents of the bill think they are reducing costs, this bill could result in greatly increased costs with less protection to show for it. The human cost through additional time of exposure is immeasurable, but we can measure the additional cost of cleanup which will occur if contaminants are allowed to migrate while the cleanup decision is tied up in court. I cannot support additional work for lawyers while human health is endangered and costs are increasing.

In addition, because this bill also applies to Department of Defense cleanups, the entire base closure process will be brought to its knees. What is the most important issue to local governments in the base closure process? Getting the property out of Federal ownership and into productive use. The Walker amendment will delay that process for years.

The Walker amendment preempts State and local governments from any effective role in determining cleanups. Currently, Federal cleanups are required to consider State laws and local preferences. The amendment overlays a Federal cost-benefit test over any local preference.

This could lead to less protective standards in direct contravention to local desires. Local input on long-term protectiveness, redevelopment considerations, and preservation of local amenities will fall silent in the face of cost considerations, even if the State or local government is willing to pay for them.

If you favor further delays in environmental cleanup; if you favor creating another new issue for lawyers to fight about in court; if you favor delaying the transfer of closed military installations to the local government; if you favor increasing the cost of cleanup; if you favor preempting the States in protecting their citizens; if you favor ignoring the desires of local government in addressing cleanups, then you can vote "no."

But if you want to look out for the interests of your constituents and the interests of State and local governments, you should support the motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas [Mr. DELAY] is recognized for 5 minutes in opposition to the motion to recommit.

Mr. DELAY. Mr. Speaker, I rise in opposition to this motion to recommit, and in support of H.R. 9.

Over the last week, in a bipartisan fashion, the House has taken a dramatic step in favor of the American people. We have finally started the process of freeing small business, of protecting private property owners, of inserting some sanity into our rule-making process.

Today, with H.R. 9, we put the Federal Government on notice: Don't tread unfairly on the American taxpayer.

As we all know, over the last several decades, the Federal Government has run roughshod over the American people. We have taxed them. We have taken their land. We have taken their businesses.

In this last election, the people said enough. They voted out incumbents in huge numbers, and threw out the leadership in both Houses of Congress for the first time in 40 years.

This 104th Congress has been called a second American revolution.

H.R. 9 is an important battle in the second American revolution.

If you are for real change and real reform, you will support H.R. 9. If you want to defend the status quo, if you believe that the American people are wrong in their disregard for the heavy hand of the Federal Government, you will vote for the motion to recommit.

I urge my colleagues to vote down the motion to recommit, and vote for H.R. 9.

□ 1345

The SPEAKER pro tempore (Mr. HANSEN). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. SPRATT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 180, noes 239, not voting 15, as follows:

[Roll No. 198]

## AYES—180

Abercrombie Gibbons Olver  
Ackerman Gordon Ortiz  
Andrews Gutierrez Orton  
Baldacci Hall (OH) Owens  
Barrett (WI) Hamilton Pallone  
Becerra Harman Pastor  
Beilenson Hastings (FL) Payne (NJ)  
Bentsen Hefner Payne (VA)  
Berman Hilliard Peterson (FL)  
Bevill Hinchey Peterson (MN)  
Bishop Holden Pomeroy  
Boehlert Hoyer Poshard  
Bonior Jackson-Lee Rahall  
Borski Jacobs Reed  
Boucher Jefferson Richardson  
Browder Johnson (SD) Rivers  
Brown (FL) Johnson, E.B. Roemer  
Brown (OH) Kanjorski Rose  
Cardin Kaptur Roybal-Allard  
Chapman Kennedy (MA) Rush  
Clay Kennedy (RI) Sabo  
Clayton Kennelly Sanders  
Clement Kildee Sawyer  
Clyburn Kleczka Schroeder  
Coleman Klink Schumer  
Collins (MI) LaFalce Scott  
Conyers Lantos Serrano  
Costello Levin Skaggs  
Coyne Lewis (GA) Skelton  
Cramer Lincoln Slaughter  
Deal Lipinski Spratt  
DeFazio Lofgren Stark  
DeLauro Lowey Stenholm  
Dellums Luther Stokes  
Deutsch Maloney Studts  
Dicks Manton Stupak  
Dingell Markey Tanner  
Dixon Martinez Tejada  
Doggett Mascara Thompson  
Dooley Matsui Thornton  
Doyle McCarthy Thurman  
Durbin McDermott Torres  
Edwards McHale Torricelli  
Engel McKinney Towns  
Eshoo McNulty Traficant  
Evans Meehan Tucker  
Farr Meek Velazquez  
Fattah Menendez Vento  
Fazio Mfume Visclosky  
Fields (LA) Mineta Volkmer  
Filner Minge Ward  
Flake Mink Waters  
Foglietta Mollohan Watt (NC)  
Ford Moran Waxman  
Frank (MA) Morella Williams  
Frost Murtha Wise  
Furse Nadler Woolsey  
Gejdenson Neal Wyden  
Gephardt Oberstar Wynn  
Geren Obey Yates

## NOES—239

Allard Castle Everett  
Archer Chabot Ewing  
Armey Chambliss Fawell  
Bachus Chenoweth Fields (TX)  
Baesler Christensen Flanagan  
Baker (CA) Chrysler Foley  
Baker (LA) Clinger Forbes  
Ballenger Coble Fowler  
Barcia Coburn Fox  
Barr Collins (GA) Franks (CT)  
Barrett (NE) Combest Franks (NJ)  
Bartlett Condit Frelinghuysen  
Barton Cooley Frisa  
Bass Cox Funderburk  
Bateman Crane Gallegly  
Bereuter Crapo Ganske  
Bilbray Cremeans Gekas  
Bilirakis Cubin Gilchrist  
Bliley Cunningham Gillmor  
Blute Danner Gilman  
Boehner Davis Goodlatte  
Bonilla de la Garza Goodling  
Bono DeLay Goss  
Brewster Diaz-Balart Graham  
Brownback Dickey Greenwood  
Bryant (TN) Doolittle Gunderson  
Bunn Dreier Gutknecht  
Bunning Duncan Hall (TX)  
Burton Dunn Hancock  
Buyer Ehlers Hansen  
Callahan Ehrlich Hastert  
Calvert Emerson Hastings (WA)  
Camp Hayworth Peterson (FL)  
Canady Ensign Hefley

Heineman McIntosh Sensenbrenner  
Herger McKeon Shadegg  
Hilleary Metcalf Shaw  
Hobson Meyers Shays  
Hoekstra Mica Shuster  
Hoke Miller (FL) Sisisky  
Horn Molinari Skeen  
Hostettler Moorhead Smith (MI)  
Houghton Myers Smith (NJ)  
Hunter Myrick Smith (TX)  
Hutchinson Nethercutt Smith (WA)  
Hyde Neumann Solomon  
Ingليس Ney Souder  
Istook Norwood Spence  
Johnson (CT) Nussle Stearns  
Johnson, Sam Oxley Stockman  
Jones Packard Stump  
Kasich Parker Talent  
Kelly Paxon Tate  
Kim Petri Tauzin  
King Pickett Taylor (MS)  
Kingston Pombo Taylor (NC)  
Klug Porter Thomas  
Knollenberg Portman Thornberry  
Kolbe Pryce Tiahrt  
LaHood Quillen Torkildsen  
Largent Quinn Upton  
Latham Radanovich Vucanovich  
LaTourette Ramstad Waldholtz  
Lazio Regula Walker  
Leach Reynolds Walsh  
Lewis (CA) Riggs Wamp  
Lewis (KY) Roberts Watts (OK)  
Lightfoot Rogers Weldon (FL)  
Linder Rohrabacher Weldon (PA)  
Livingston Ros-Lehtinen Weller  
LoBiondo Roth White  
Longley Roukema Whitfield  
Lucas Royce Wicker  
Manzanillo Salamon Wilson  
Martini Sanford Wolf  
McCollum Saxton Young (AK)  
McCrery Scarborough Young (FL)  
McDade Schaefer Zeliff  
McHugh Schaffer Zimmer  
McInnis Seastrand

## NOT VOTING—15

Brown (CA) Gonzalez Miller (CA)  
Bryant (TX) Green Moakley  
Burr Hayes Montgomery  
Collins (IL) Johnston Pelosi  
Dornan Laughlin Rangel

□ 1401

The Clerk announced the following pairs:

On this vote:

Mr. Rangel for, with Mr. Dornan against.  
Mrs. Collins of Illinois for, with Mr. Burr against.

Mr. SKELTON changed his vote from “no” to “aye.”

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. POMBO. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 277, nays 141, not voting 17, as follows:

[Roll No. 199]

## YEAS—277

Allard Bartlett Blute  
Archer Barton Boehner  
Armey Bass Bonilla  
Bachus Bateman Bono  
Baesler Bentsen Brewster  
Baker (CA) Bereuter Browder  
Baker (LA) Bevill Brownback  
Ballenger Bryant (TN)  
Barcia Bilirakis Bunn  
Barr Bishop Bunning  
Barrett (NE) Bliley Burr

Burton Hastings (WA) Pickett  
Buyer Hayworth Pombo  
Callahan Hefley Pomeroy  
Calvert Hefner Portman  
Camp Heineman Poshard  
Canady Herger Pryce  
Castle Hilliard Quillen  
Chabot Hilliard Quinn  
Chambliss Hobson Radanovich  
Chapman Hoekstra Ramstad  
Chenoweth Hoke Regula  
Christensen Holden Riggs  
Chrysler Horn Roberts  
Clinger Hostettler Roemer  
Coble Houghton Rogers  
Coburn Hunter Rohrabacher  
Collins (GA) Hutchinson Ros-Lehtinen  
Combest Hyde Rose  
Condit Inglis Roth  
Cooley Istook Royce  
Cox Jacobs Salmon  
Cramer Johnson (SD) Sanford  
Crane Johnson, Sam Saxton  
Crapo Jones Scarborough  
Cremeans Kasich Schaefer  
Cubin Kelly Schiff  
Cunningham Kim Seastrand  
Danner King Sensenbrenner  
Davis Kingston Shadegg  
de la Garza Klug Shaw  
Deal Knollenberg Shuster  
DeLay Kolbe Sisisky  
Diaz-Balart LaHood Skeen  
Dickey Largent Skelton  
Dooley Latham Smith (MI)  
Doolittle LaTourette Smith (NJ)  
Doyle Lazio Smith (TX)  
Dreier Leach Smith (WA)  
Duncan Lewis (CA) Solomon  
Dunn Lewis (KY) Souder  
Edwards Lightfoot Spence  
Ehlers Lincoln Spratt  
Ehrlich Linder Stearns  
Emerson Livingston Stenholm  
English LoBiondo Stockman  
Ensign Longley Stump  
Everett Lucas Stupak  
Ewing Manzullo Talent  
Fawell Martini Tanner  
Fazio McCollum Tate  
Fields (TX) McCrery Tauzin  
Flanagan McDade Taylor (MS)  
Foley McHugh Taylor (NC)  
Forbes McInnis Tejada  
Fowler McIntosh Thomas  
Fox McKeon Thornberry  
Franks (CT) McNulty Thornton  
Franks (NJ) Metcalf Thurman  
Frelinghuysen Meyers Tiahrt  
Frisa Mica Torkildsen  
Frost Miller (FL) Traficant  
Funderburk Minge Upton  
Gallegly Molinari Volkmer  
Ganske Mollohan Vucanovich  
Gekas Moorhead Waldholtz  
Geren Moran Walker  
Gillmor Myrick Walsh  
Gilman Nethercutt Wamp  
Gingrich Neumann Watts (OK)  
Goodlatte Ney Weldon (FL)  
Goodling Norwood Weldon (PA)  
Gordon Nussle Weller  
Goss Ortiz White  
Graham Orton Whitfield  
Gunderson Oxley Wicker  
Gutknecht Packard Wilson  
Hall (TX) Parker Wolf  
Hamilton Paxon Young (AK)  
Hancock Payne (VA) Young (FL)  
Hansen Peterson (FL) Zeliff  
Harman Peterson (MN)  
Hastert Petri

## NAYS—141

Abercrombie Clay Doggett  
Ackerman Clayton Durbin  
Andrews Clement Engel  
Baldacci Clyburn Eshoo  
Barrett (WI) Coleman Evans  
Becerra Conyers Farr  
Beilenson Costello Fattah  
Berman Coyne Fields (LA)  
Boehlert DeFazio Filner  
Bonior DeLauro Flake  
Borski Dellums Foglietta  
Boucher Dellums Ford  
Brown (FL) Dicks Frank (MA)  
Brown (OH) Dingell Furse  
Cardin Dixon Gejdenson

Gephardt	Mascara	Sabo
Gibbons	Matsui	Sanders
Gilchrest	McCarthy	Sawyer
Greenwood	McDermott	Schroeder
Gutierrez	McHale	Schumer
Hall (OH)	McKinney	Scott
Hastings (FL)	Meehan	Serrano
Hinchey	Meek	Shays
Hoyer	Menendez	Skaggs
Jackson-Lee	Mfume	Slaughter
Jefferson	Mineta	Stark
Johnson, E.B.	Mink	Stokes
Kanjorski	Morella	Studds
Kaptur	Murtha	Thompson
Kennedy (MA)	Nadler	Torres
Kennedy (RI)	Neal	Torricelli
Kennelly	Oberstar	Towns
Kildee	Obey	Tucker
Klecza	Olver	Velazquez
Klink	Owens	Vento
LaFalce	Pallone	Visclosky
Lantos	Pastor	Ward
Levin	Payne (NJ)	Waters
Lewis (GA)	Porter	Watt (NC)
Lipinski	Rahall	Waxman
Lofgren	Reed	Williams
Lowe	Reynolds	Wise
Luther	Richardson	Woolsey
Maloney	Rivers	Wyden
Manton	Roukema	Wynn
Markey	Roybal-Allard	Yates
Martinez	Rush	Zimmer

## NOT VOTING—17

Brown (CA)	Green	Moakley
Bryant (TX)	Hayes	Montgomery
Collins (IL)	Johnson (CT)	Myers
Collins (MI)	Johnston	Pelosi
Dornan	Laughlin	Rangel
Gonzalez	Miller (CA)	

□ 1421

The Clerk announced the following pair:

On this vote:

Mr. Dornan for, with Mr. Moakley against.

Mr. VOLKMER changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## LEGISLATIVE PROGRAM

(Mr. GEPHARDT asked and was given permission to address the House for 1 minute.)

Mr. GEPHARDT. Mr. Speaker, I ask for 1 minute in order to inquire of the distinguished majority leader about the schedule.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. GEPHARDT. I yield to the gentleman from Texas.

Mr. ARMEY. I thank the gentleman for yielding.

Mr. Speaker, on Monday, March 6, the House will meet at 12:30 p.m. for morning hour and 2 p.m. for legislative business. We will take up the rule and the debate of H.R. 988, the Attorney Accountability Act. We do not expect a vote to be called on the rule for H.R. 988, and we expect no votes before 5 p.m. on Monday. We hope to complete legislative business on Monday night as close to 9 p.m. as possible.

On Tuesday, the House will meet at 9:30 a.m. for morning hour and 11 a.m. for legislative business. We expect to complete H.R. 988 and being consideration of H.R. 1058, the Securities Litigation Reform Act, which is subject to a rule. It is our understanding that

there are several events scheduled on Tuesday night that Members on both sides of the aisle will wish to attend. For that reason, we plan to finish legislative business on Tuesday between 6:30 and 7 p.m.

On Wednesday, as we announced last week, it is our desire to begin legislative business at 10 a.m. At that time, we expect to finish H.R. 1058, and move to consideration of H.R. 1075, the Common Sense Product Liability and Legal Reform Act, which is subject to a rule.

On Thursday and Friday, the House will meet at 10 a.m. for legislative business to complete consideration of H.R. 1075. It is our hope to have Members on their way home to their families and their districts by 3 p.m. on Friday.

Mr. GEPHARDT. Would the gentleman be able to tell us what he expects the rule to be providing for consideration of the product liability caps bill?

Mr. ARMEY. If the gentleman will yield, the Committee on Rules has not met on that. I cannot advise you at this time on what that rule will be. We will be consulting with the minority in that process.

Mr. GEPHARDT. Amendments are due to the Committee on Rules this afternoon by 3 p.m. I was just wondering if it was expected that all amendments submitted will be made in order. But it is my understanding they have to be presented by 3.

Mr. ARMEY. If the gentleman will yield, the gentleman is absolutely correct. Again, I cannot tell the gentleman anything further than that about the rule at this time.

Mr. GEPHARDT. Further inquiring, could the gentleman confirm on the longer term schedule, does the gentleman expect the term limits and rescissions bill to come to the floor the following week, March 13?

Mr. ARMEY. If the gentleman will yield, we anticipate the term limits will be brought to the floor on the 13th and 14th of March, and we expect rescissions to be on the floor the 15th or the 16th of March.

Mr. GEPHARDT. I take it, then, that welfare reform and spending cuts and the tax bill would come in the weeks after that?

Mr. ARMEY. If the gentleman would yield, the gentleman is absolutely correct.

Mr. GEPHARDT. I yield to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. I thank the distinguished minority leader for yielding.

I would appreciate engaging the distinguished majority leader in a couple of questions if I could.

First of all, I would like to thank him, he was not on the floor when I rose 2 weeks ago to thank him for his cooperation on getting not just Members with their families but staffs with their families on Valentine's Day. Certainly the majority leader does not want to hear more of my terrible, horrible poetry to try to get us back on

the family-friendly schedule. I don't want to have to resort to torture to do that. But certainly a lot of Members and their families want to see increased efficiency in terms of the congressional schedule. They want to see if we work 70-hour, 80-hour weeks, that maybe there are procedures that we can use at the end of the day so that we do not see repeats of Monday and Thursday night of this past week, of staying in an hour over when we could have informed Members that we had the last vote.

I would just ask the majority leader a couple of questions. First of all, can you give us any more idea, with predictability in mind, on the schedule for Wednesday and Thursday of next week, specific times?

Mr. ARMEY. If the gentleman would yield, let me just say, I cannot give you a more definitive answer at this time. It is always a matter of how well the day goes. We try to watch it, we try to schedule and stay in long enough to be sure that on the ensuing day we are able to complete that work which we hope to complete.

If the gentleman would continue to yield, Mr. Speaker, I understand the concern of the gentleman from Indiana [Mr. ROEMER]. His expression of concern the other day about wanting to be home and tuck in his children touched me, and if I could just make a recommendation, please do not read them your poems when you do that. We want them to have a good night's sleep. But we will try to do the best we can.

I too have had the pleasure at another time of tucking in my little ones and I know how special that can be and I do want to be attentive to it.

Mr. ROEMER. If the gentleman would answer a few more questions, do we intend to be in on Saturdays in March or April at this point?

Mr. ARMEY. If the gentleman would yield, it is possible, though I dare speak with some, what should I say, qualified confidence that I think I can dare say it seems fairly, perhaps even very unlikely. I have no expectation that I can see that that would happen. But I do have to make a reservation of a possibility that that could happen.

□ 1430

It is my sincere hope and expectation that that will not be the case.

Mr. ROEMER. Finally, a question to the majority leader.

Many of us know that there are very, very difficult sessions ahead. We know that the Republicans are on a 100-day schedule for the contract. But after the first 100 days very difficult decisions are going to face this body on appropriations matters, on budget matters, and on rescission matters and on a farm bill that is critical to many of our States.

Can the gentleman give us some sense of the predictability and how efficacious we are going to be in terms of the schedule between April and August,