

NLWJC- Kagan

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Takings (95) [4]



THE VICE PRESIDENT
WASHINGTON

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April 29, 1994

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN AND LINDA LANCE
OFFICE OF THE VICE PRESIDENT

SUBJECT: EXECUTIVE ORDER ON PRIVATE PROPERTY RIGHTS

I. ACTION-FORCING EVENT

The Reagan Administration Executive Order on "Governmental actions and interference with constitutionally protected property rights" (the so-called "takings" order), issued in 1988, is still in effect. It has been reviewed by a working group of all relevant White House Offices, including this office, the National Economic Council, the Office of Science and Technology Policy, the Office on Environmental Policy, the Council of Economic Advisers, the Domestic Policy Council, and the Office of Management and Budget.

Activities in Congress related to this issue, including attempts to codify the existing Executive Order, necessitate our formulation of a position on the issue at the earliest reasonable time. Senator Dole is expected to offer a "takings" amendment to the Safe Drinking Water Act on the Senate floor next week. Senators Baucus and Chafee recently wrote to you urging Administration action before such an amendment is offered. And, it is our view that, unless the Administration addresses the issue, it will be resolved for us in a fashion we do not like -- on the Safe Drinking Water Act, the Clean Water Act, or perhaps some other important environmental legislation.

II. BACKGROUND

The "Property Rights" Movement and Legislative Activity

As you know, those opposed to governmental, and particularly environmental, regulation have seized on and exploited the public's concern over protection of private property in an effort to thwart legitimate governmental action to protect the public interest. These efforts typically, and sometimes successfully, portray necessary regulation and protection of private property as mutually exclusive, which of course they are not.

These "property rights" interests have grown into a powerful force composed of many organizations and backed by conservative think tanks.

This movement has been active legislatively at both the state and federal levels. Bills to advance the "private property" cause have been introduced in the majority of state legislatures, although so far they have been enacted in only a few states. In the Congress, many and varied bills have been introduced in both Houses, ranging from Sen. Dole's effort to codify the Reagan Executive Order to Rep. Tauzin's effort to provide compensation for any government action that diminishes the value of property by more than 50%. In general, the bills attempt to thwart environmental, health and safety regulation by at least raising the specter of requiring compensation as a result of virtually all governmental regulation, thereby making such regulation economically infeasible.

The threat posed by this legislation at the federal level is real, and virtually all involved, including the environmental community, agree that the Congress is likely to pass some version of this legislation. The general view is that a majority of members believe that they need to vote in favor of "private property" in some form.

For reasons identified below, the existing Reagan order does not reflect this Administration's philosophy or the best agency practice on this issue. It should be rescinded. However, there is a real danger that rescission of the Reagan order without a suitable replacement from this Administration will both imply a lack of concern on your part for private property rights and increase the likelihood of Congress' adopting legislation that goes too far. On the other hand, to leave the Reagan order undisturbed will put the Administration in an awkward and largely untenable position during debate on amendments such as the Dole bill, which seeks to codify the Reagan order. If we have not revised the existing order, we will be hard-pressed to oppose such legislation on grounds related to the substance of that order. And, it is our hope that we will be able to prevail in the Senate if we choose to encourage codification of the Clinton order as a substitute for the Reagan order.

To this end, our preliminary discussions with moderate members of Congress, who are likely to believe they need to cast some vote in favor of private property, have been largely encouraging. Most see the existence of a Clinton Administration order as something protective of private property that they can support. Without it, their need to vote in favor of private property may require them to vote for more extreme measures since they have no available alternative.

Reagan Administration "Takings" Order

This order (EO 12630) was issued in 1988 and has remained in effect, although it has had little practical impact on the agencies since it has been narrowly interpreted and, to some extent, honored in the breach. It has at least three major substantive flaws:

1. According to the Department of Justice, its statements of what may amount to a constitutional "taking" reflect the Reagan Administration philosophy in the area and are not consistent with the current state of the law as interpreted by the Supreme Court. The statements suggest that a number of activities may be "takings" when current case law does not support that view, and it confuses constitutional "takings" requiring compensation with government activities which may have an impact on private property but do not amount to a constitutional and compensable "taking."

2. It requires the issuance of Attorney General's "guidelines" to the agencies regarding the constitutional requirements in the area, implying that the agencies are not permitted to make their own judgments about the applicable legal requirements. Those guidelines have not been updated since written in 1988, and do not reflect post-1988 Supreme Court decisions.

3. It requires that agencies perform a variety of different "takings" analyses of their activities and that they identify and discuss "significant takings implications" in rulemaking publications in the Federal Register and in the transmittal of legislative proposals to Congress. The bureaucratic requirements are cumbersome and ineffective. In addition, such a public discussion of the issue effectively waives the attorney-client and executive privileges and provides a road map for potential litigants seeking compensation from the government.

Draft Clinton Administration Order

The draft order retains as much of the Reagan order as possible, provides a Clinton Administration statement of its respect for private property, and eliminates the problematic aspects of the Reagan approach.

In summary, it

(1) States as your belief that protection of public health, safety and welfare is not inconsistent with respect for private property;

(2) Expresses your intention to minimize the impact of governmental actions on private property while committing you to carrying out the legitimate government function of protecting health, safety, and welfare;

(3) Requires that agencies, when considering actions with a substantial likelihood of effecting a taking, be guided by certain general principles including: full compliance with applicable constitutional requirements; making efforts to reduce the likelihood that compensation will have to be paid as the result of a taking; and undertaking efforts to limit adverse impacts on private property (even if they are not takings) to the extent possible and consistent with protection of health, safety and welfare;

(4) Requires agencies, when proposing regulations that have a substantial likelihood of having takings implications, to analyze (i) the likelihood that a taking will occur, (ii) the cost of compensation should a taking occur, and (iii) the alternatives that are available that would not constitute a taking; and

(5) Requires the agencies to report annually to the Attorney General and OMB all takings claims and awards made, and the regulatory action involved.

The major changes made to the Reagan order are as follows:

(1) Interpretive statements of constitutional law are eliminated. Instead, the order simply requires that the agencies ensure that their obligations are consistent with constitutional requirements as interpreted by the U.S. Supreme Court;

(2) Attorney General's guidelines on the legal requirements are not mandated. Instead, the DOJ is required to provide timely guidance to the agencies in response to agency requests.

(3) The "takings" analysis required of agencies is simplified and does not depend on the Reagan Administration philosophy of actions that may constitute takings. There is no requirement that agency analyses be published.

(4) The draft is more explicit than the Reagan order that this Administration intends to minimize all impacts on private property, even those that would not be a "taking" under the Constitution, to the extent that it can be done consistently with protection of the public health, safety, and the environment.

(5) The draft order makes explicit that it applies only to those agency actions that the agencies determine may have takings implications. The Reagan order is limited to actions "that may have takings implications," but is not clear about who determines which those actions are.

III. RECOMMENDATION

The Vice President, the Domestic Policy Council, the National Economic Council, the Office of Management and Budget, the Office of Science and Technology Policy, the Office on Environmental Policy, the Council of Economic Advisers, and all Executive Branch agencies concur in the recommendation that you approve the rescission of the current Executive Order and all guidelines issued under that Order, and that you approve the attached draft replacement Order, to be signed at a time to be scheduled.

IV. DECISION

Approve Approve as amended Let's discuss

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EXECUTIVE ORDER

PRIVATE PROPERTY RIGHTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to ensure that Executive department and agency decision-making comports with the Just Compensation Clause of the Fifth Amendment to the United States Constitution, the regulatory reform initiated by Executive Order No. 12866 entitled "Regulatory Planning and Review," and the principles stated herein, it is hereby ordered as follows:

Section 1. Statement of Purpose. Private ownership and use of property is a cornerstone of this country's constitutional heritage, historical tradition, and economic growth. Private property ownership and values are fundamentally consistent with, and supported by, the Federal Government's constitutional and statutory responsibilities to protect public and private property and the public health, safety, and welfare.

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. At the same time, the Fifth Amendment does not give individuals the right to use their property in ways that harm other property owners or the community at large. Thus, the Federal Government must be vigilant in recognizing and respecting the fundamental protection afforded private property rights while it fulfills its responsibilities to protect the public health, safety, and welfare.

In addition, government decision-makers must carefully evaluate the effect of their actions on constitutionally protected property rights in order to carry out their responsibilities for sound management of the government's limited financial resources. Each payment required under the Just Compensation Clause is an expenditure of taxpayer dollars, and actions that unnecessarily or inadvertently require such payments must be avoided.

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Moreover, some legitimate government actions necessary to the public health, safety, or welfare that are not takings under the Just Compensation Clause of the Fifth Amendment may nevertheless have some effect on private property. In such circumstances, even though no taking is involved, the government should work to avoid unnecessary restrictions on the use of private property.

The purpose of this order is to ensure that Executive departments and agencies properly balance their responsibilities to protect the public health, safety, and welfare and their responsibilities to protect private property. This order thus requires that Executive departments and agencies evaluate the constitutional implications arising from the Just Compensation Clause of the Fifth Amendment when planning and implementing governmental actions to ensure that the Federal Government's constitutional obligations are recognized, evaluated, and fulfilled. This order also ensures the agencies' awareness of the need to avoid unnecessary restrictions on the use of private property even when those restrictions would not constitute a taking under the Just Compensation Clause of the Fifth Amendment.

Sec. 2. Definitions. For purposes of this Executive order: (a) "Actions" refers to proposed federal regulations, proposed federal legislation, comments on proposed legislation, application of federal regulations to specific property, federal governmental actions physically invading or occupying private property, or other policy statements or actions related to federal regulation or direct physical invasion or occupancy, but does not include:

(1) actions in which the power of eminent domain is formally exercised;

(2) actions taken with respect to properties held in trust by the United States or actions in preparation for or during treaty negotiations with foreign nations;

(3) law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

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(4) studies or similar efforts or planning activities;

(5) communications between Executive departments or agencies and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by an Executive department or agency or are undertaken in response to an invitation by the State or local authority;

(6) the placement of military facilities or military activities involving the use of exclusively Federal property; or

(7) any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) A "taking" or "takings" refers to an action or actions that, in order to be valid, require the Federal Government to compensate a property owner under the Just Compensation Clause of the Fifth Amendment to the United States Constitution as interpreted by the United States Supreme Court.

(c) "Actions that have takings implications" refers to actions that, if implemented or enacted, have a substantial likelihood of effecting a taking pursuant to the Just Compensation Clause of the Fifth Amendment to the United States Constitution as interpreted by the United States Supreme Court.

(d) "Private property" refers to all property protected by the Just Compensation Clause of the Fifth Amendment to the United States Constitution.

(e) "Agency" refers to any authority of the United States that is an agency under 44 U.S.C. § 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. § 3502(10). All independent regulatory agencies are requested to comply with the provisions of this order.

Sec. 3. General Principles. With respect to actions that in the agency's judgment constitute actions that have takings implications, each agency shall consider the obligations imposed by the Just Compensation Clause of the Fifth Amendment to the United States Constitution to ensure that those obligations are recognized, evaluated, and fulfilled, and shall, consistent with

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achieving the lawful goal of the governmental action and to the extent permitted by law:

(a) Seek opportunities to reduce the risk of unwarranted or inadvertent burdens on the public fisc resulting from lawful government actions triggering valid takings claims.

(b) Seek opportunities to limit restrictions on the use of private property while fulfilling the government's responsibilities to protect the public health, safety, and welfare, even if the contemplated government action would not constitute a taking.

(c) When requiring a private party to obtain a license or permit in order to undertake a specific use of, or other action with respect to, private property, consider carefully any proposals to tailor conditions imposed upon the granting of the license or permit so as to reduce restrictions on the use of private property, even if such conditions would not otherwise constitute a taking.

Sec. 4. Agency Analyses. (a) With respect to proposed regulations that in the agency's judgment constitute actions that have takings implications, each agency shall, as part of its internal deliberative process and to the extent practicable and permitted by law, perform the following analyses and provide such analyses at the same time as any submission otherwise required to be made to the Office of Management and Budget in conjunction with the review of the proposed regulation under Executive Order No. 12866:

(1) an assessment of the likelihood that the proposed regulation may effect a taking;

(2) an estimate of the potential financial risk to the government in the event that a court later determines that the regulation constitutes a taking; and

(3) consideration of reasonably feasible alternatives, if any, to the proposed regulation that would achieve the government's purpose but would not effect a taking, and an explanation of why the planned regulation is preferable to the alternatives.

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(b) In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring an immediate response, the analysis may be done upon completion of the emergency action.

(c) Each agency shall designate the Regulatory Policy Officer appointed pursuant to Executive Order No. 12866 as the official to be responsible for ensuring compliance with this order with respect to the actions of that agency.

Sec. 5. Agency Guidance. (a) The Regulatory Working Group established by Executive Order No. 12866 shall serve, in response to an agency's request, as a forum to assist agencies in addressing regulatory issues involving takings implications.

(b) The Department of Justice shall provide legal guidance in a timely manner, in response to an agency's request, to assist the agencies in complying with this order.

Sec. 6. Reporting Requirements. Agencies shall identify each existing federal rule and regulation against which a takings award has been made or against which a taking claim is pending, including the amount of each claim or award, for fiscal year 1994 and thereafter. A takings award has been made or a takings claim is pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of this information shall be submitted to the Director of the Office of Management and Budget and to the Attorney General on an annual basis beginning no later than December 1994 for fiscal year 1994 and each December 31st for each fiscal year thereafter.

Sec. 7. Revocation. Executive Order No. 12630 and all guidelines and other directives issued pursuant thereto are hereby revoked.

Sec. 8. Judicial Review. This order is intended only to improve the internal management of the Executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party at law or equity against the United States, its agencies or

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instrumentalities, its officers or employees, or any other person.

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PRIVILEGED AND CONFIDENTIAL

September 19, 1994

Background Paragraph

On June 26, 1994, the Supreme Court ruled that state and local governments may not exact impact fees from developers to support public benefits such as greenways unless the exaction is "roughly proportional" to the benefit. The Dolan decision establishes that state or local government must demonstrate that a particular condition or requirement "is related in both nature and extent to the impact of the proposed development" or else be subject to constitutional takings claims. Property rights advocates applauded this decision and commentators have predicted that it could complicate the tasks of federal, state and local regulators.

Option 2: Sign a previously-drafted Executive Order.

To correct the flawed Reagan Executive Order on takings as well as to respond to Congressional support of private property rights, a draft Executive Order was circulated and proposed in April of this year. Since the previously drafted EO does not attempt to characterize takings analysis, it remains valid after Dolan, as confirmed by the Office of Legal Counsel.

A. Pros and Cons of a New Executive Order

Pros:

- 1) The new EO would rescind a Reagan EO that is legally flawed and would replace it with an accurate statement of the law.
- 2) A new EO would address the Reagan EO legal and policy errors that are being widely adopted in state legislation and even in court opinions.
- 3) Environmental and consumer groups would applaud the rescission of the Reagan EO and the signing of the new EO.
- [4) The new EO may provide cover for Congressional moderates who want to be seen as supporting property rights and restraining the power of government.]
- [5) If allowed to stand and if more widely enforced, the Reagan EO could hamper federal efforts to promulgate environmental and health and safety regulations.]

Cons:

- 1) The new EO would likely be viewed as less protective of property rights than the Reagan E.O. and therefore might increase pressure for Congressional action in the "opposite" direction.
- 2) Environmentalists and liberals might complain that the Administration should not focus its efforts on private property concerns when no major environmental legislation has been passed during this Administration.
- 3) The new Order may saddle this Administration with a new issue--debate over private property rights--that the Administration may not wish to tackle.

B. Timing of Any New Executive Order

If the Administration chooses to proceed with a new Executive Order, timing may be crucial. Specifically, we must decide whether to issue such an Order after Congressional adjournment but in time for the November elections, or whether to invite Congressional feedback on the E.O. and thereby delay its issuance until after the elections.

- 1) Immediate Action. Issuing the EO after Congressional adjournment would provide Democrats with a positive accomplishment to cite in their campaigns. This timing also would avoid an immediate call for enactment of the Reagan E.O. into legislation.

However, even likely favorable Members and interest groups have not participated significantly in the drafting of the new E.O. Our "unilateral" action might provoke annoyance and could damage chances for support for the EO from these quarters.

- 2) Consultation and Delay. Inviting responses from likely supporters, on and off the Hill, could strengthen support for the Administration position in this arena. While it would delay the E.O. until after the November elections, it seems unlikely that a new E.O. would affect any electoral outcomes.

Consultation may expose differences between moderate Democrats on the one hand, and environmentalists and liberals on the other. Should no acceptable compromise be reached, the delay and consultation process may frustrate potential allies and weaken support.

Wainstein
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SEP 26 1994

Sally Katzen's Comments on Marvin Krislov's Takings Draft

Under Option 2 ----

- 1) First sentence -- delete "and proposed"
- 2) Before the second sentence, insert:

"We reviewed all agency comments but did not present it to the President because our sounding on the Hill indicated that it was not enough to stay the call for legislation and might not provide enough cover for those wanting to vote against such legislation. By then "takings" amendments were being offered on environmental legislation, and we decided to say out of the fray."

- 3) Third Sentence -- Put in parentheses.
- 4) Add a new Pro between 2 and 3: "A new EO would enable this Administration to make its own pro-property rights statement.
- 4) Delete brackets around pro number 4.
- 5) Delete pro number 5.
- 6) Cons number 2: delete "complain;" insert "charge."

Under Part B., Timing -----

- 1) Second sentence, after "November elections," add: (there is no one who believes we should do so before Congress adjourns),"
- 2) Under item 1, after the first sentence, add, "Moreover, we have a statement we think is right and is about as far as we want to go." Delete the next sentence.
- 3) Item 2, second paragraph, add "However," at start.
- 4) Last sentence: after "process may," insert "turn allies into opponents or cause impasse. Delete the rest of the sentence.

September 19, 1994

Background Paragraph

On June 26, 1994, the Supreme Court ruled that state and local governments may not exact impact fees from developers to support public benefits such as greenways unless the exaction is "roughly proportional" to the benefit. The Dolan decision establishes that state or local government must demonstrate that a particular condition or requirement "is related in both nature and extent to the impact of the proposed development" or else be subject to constitutional takings claims. Property rights advocates applauded this decision and commentators have predicted that it could complicate the tasks of federal, state and local regulators.

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B. Timing of Any New Executive Order

If the Administration chooses to proceed with a new Executive Order, timing may be crucial. Specifically, we must decide whether to issue such an Order after Congressional adjournment but in time for the November elections, or whether to invite Congressional feedback on the E.O. and thereby delay its issuance until after the elections.

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2) Consultation and Delay. Inviting responses from likely supporters, on and off the Hill, could strengthen support for the Administration position in this arena. While it would delay the E.O. until after the November elections, it seems unlikely that a new E.O. would affect any electoral outcomes.

^{However,} Consultation may expose differences between moderate Democrats on the one hand, and environmentalists and liberals on the other. Should no acceptable compromise be reached, the delay and consultation process may frustrate potential allies and weaken support ~~and cause~~ ^{cause} ~~impose~~

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The Bumpers-Baucus Takings Amendment on the SDWA

The hastily prepared second degree "takings" amendment added by the Senate to the Safe Drinking Water Act has some serious problems. Although the second degree amendment is less drastic than Senator Dole's "takings" amendment (which would have required federal agencies to complete a "takings" impact analysis before issuing actions that could result in a diminution of use or value of private property), the authors of the alternative "takings" proposal may not have realized its far-reaching and perhaps unintended consequences.

The amendment requires federal agencies to "complete a private property taking impact analysis before issuing or promulgating any policy, regulation, proposed legislation, or related agency action which is likely to result in a taking of private property..." § (e)(1)(B)

As part of the "takings impact analysis," agencies must consider alternatives to their actions that will lessen the likelihood that a "takings" will occur. § (e)(2)(D) They must also estimate the potential liability of the government if the government is required to compensate a private property owner. § (e)(2)(E)

The amendment directs that "to the fullest extent possible" the policies, regulations, and public laws of the United States must be interpreted and administered in accordance with the policies it sets forth. § (e)(1)

The amendment's statement of purpose declares that agencies "should protect the health, safety, and welfare of the public, and, in doing so, to the extent practicable, avoid takings of private property..." § (c)

Any language to "avoid takings" must be deleted or qualified: "avoid unwarranted takings to the extent practicable;" "avoid unconstitutional takings;" "avoid takings that would violate the Fifth Amendment" or possibly "avoid takings of private property without just compensation." It should also be clear that it is not acceptable to protect health, safety and welfare and to avoid any possible taking by making gratuitous payments to anyone with any conceivable claim no matter how weak.

- This amendment applies across the board to all agencies (with few exceptions) and amends all policies, regulations, and laws by requiring that they be interpreted and administered in line with the amendment's policies "to the fullest extent possible." **This should be deleted.**
- The amendment gives unelected bureaucrats the authority to decide whether or not they will implement laws passed by Congress. Under the guise of avoiding "takings" or completing never-ending "takings" analyses, agencies could block or delay indefinitely executing Congressional decisions. Agency staff could obstruct needed protections for various reasons, including ideology; lack of understanding of what a "taking" is; hyper-

- The definition of a "taking" in this amendment includes condemnation actions (to build roads, dams, etc.) as well as regulatory inverse condemnation. The amendment exempts condemnation actions from the required taking analysis, but apparently not from the obligation to avoid "takings" to the extent practicable.
- Unlike President Reagan's Executive Order 12630, judicial review may be implied under this amendment. Section (g) "Statute of Limitations" apparently allows court actions to interpret and enforce the amendment up to six years after "submission of the certification of the applicable private property taking impact analysis with the Attorney General." **The original Bumpers language on no judicial review or similar language tracking the Reagan Executive Order's provisions should be used instead of the Dole revision. Also, making the actual analyses public would breach attorney client privilege, would provide a road map to litigation and would be a source of endless "horror" stories drafted by those agency personnel who are ideological, do not understand the Constitution or the law or who want to cover themselves by discussing any conceivable or inconceivable taking.**
- As would efforts to codify the Reagan Executive Order, this amendment grants potentially sweeping discretionary powers to the Attorney General to decide which Congressional laws to implement. The judicial review provision implies that agencies must submit a certification of the "takings" impact analysis to the Attorney General, though this requirement is not explicitly stated elsewhere in the amendment. The Attorney General's role is therefore vague and open to interpretation by agency staff. **Reagan Administration Solicitor General Charles Fried has identified the source of the Reagan Executive Order on takings as Attorney General Meese's "specific, aggressive, and it seemed to me, quite radical project." Granting future Attorney Generals carte blanche to pick and choose which laws to implement under the guise of a right to review or agency takings analyses or a requirement that such analyses be approved by the AG would turn the AG into a (de)regulatory Czar or Czarina. The AG can give legal advice to agencies but cannot be granted potentially sweeping powers to block regulations.**
- The "takings" analyses required by this amendment will be very expensive. Agencies are currently ill-equipped to conduct these fact-specific inquiries and more tax dollars would be needed or already scarce resources would have to be diverted in order to attempt to conduct these analyses.
- The amendment fails to recognize that government actions often seek to balance competing property interests and to protect private property owners from harmful uses of neighboring property.
It is important to add language making clear this clear; for example, any duty to avoid should be to avoid unwarranted property impacts, including those caused by failure to protect private and public property owners from pollution and other impacts of upstream, unwind, neighboring and other property uses.

cautious desire to analyze or avoid even the remotest possibility that a "taking" might occur; and good-faith efforts to comply with the amendment's policy to "avoid takings." An explicit, generally applicable provision must be added to ensure that for any of these reasons, the amendment does not result in indefinite delays in needed protections. For example, a requirement could be added that decisions on whether to perform any analyses be made within a time certain and that the analyses be completed within a time certain (90 or 120 days total). Alternatively, a requirement could be added that no action shall be delayed more than 90 or 120 days because of this section (amendment) could be added.

- By applying to "policies" and "related agency action[s]," this amendment will impose enormous paperwork requirements. The ambiguity of these terms could lead to "takings" analyses of any government action, no matter how minor. Provisions regarding "policies" and "related agency actions" must be deleted and the scope should be limited to major federal regulations (and possibly proposed legislation).

- The threshold trigger for the analysis in the second degree amendment is arguably just as overly broad as in President Reagan's Executive Order 12630 where actions that "could effect a taking" triggered paperwork requirements. The statutory term "likely" is ambiguous and could be subject to various interpretations. Under this threshold, bureaucrats would apply cumbersome "takings" analyses to claims that courts would determine did not warrant extensive inquiry.
 Addition of language making it clear that such determinations shall be limited to cases where the Supreme Court has found a taking under closely similar circumstances would reduce the ability of a future Administration to follow the Reagan Executive Order lead and reference Supreme Court dicta (or isolated aberrational rulings from trial or appeals courts). Also, it is very important to add language that limits analyses to cases where it is likely that a substantial number of takings judgments would result to avoid massive analyses of national rules that might result in one or two takings over a period of many years (e.g., current wetlands regulations have resulted in 3 takings judgments, at least one of which is under appeal). "Likely" may mean "more likely than not" but the latter language should be substituted.

- The constitutional "takings" analysis required by this amendment necessitates a property specific inquiry akin to a factual trial. Consequently, any attempt to conduct a "takings" inquiry in the abstract would be a meaningless exercise involving diverse interpretations and canned reviews. This would invite inconsistency in bureaucratic decision-making as to whether actions are "likely to result in a takings" and thus lead to erratic implementation of Congressional decisions. Similarly, the factual detail needed for agencies to "estimate the potential liability of the government if the government is required to compensate a private property owner" would impose unworkable demands on agencies unless they hired legions of lawyers and accountants.
 This is a fundamental problem, which it is difficult to see how to fix without major changes. The problem could perhaps be somewhat alleviated by adding language to make clear that analyses and estimates need only be done to the extent it does not hinder the ability of agencies to fully effectuate statutory and regulatory purposes.

cautious desire to analyze or avoid even the remotest possibility that a "taking" might occur; and good-faith efforts to comply with the amendment's policy to "avoid takings." An explicit, generally applicable provision must be added to ensure that for any of these reasons, the amendment does not result in indefinite delays in needed protections. For example, a requirement could be added that decisions on whether to perform any analyses be made within a time certain and that the analyses be completed within a time certain (90 or 120 days total). Alternatively, a requirement could be added that no action shall be delayed more than 90 or 120 days because of this section (amendment) could be added.

- By applying to "policies" and "related agency action[s]," this amendment will impose enormous paperwork requirements. The ambiguity of these terms could lead to "takings" analyses of any government action, no matter how minor. Provisions regarding "policies" and "related agency actions" must be deleted and the scope should be limited to major federal regulations (and possibly proposed legislation).
- The threshold trigger for the analysis in the second degree amendment is arguably just as overly broad as in President Reagan's Executive Order 12630 where actions that "could effect a taking" triggered paperwork requirements. The statutory term "likely" is ambiguous and could be subject to various interpretations. Under this threshold, bureaucrats would apply cumbersome "takings" analyses to claims that courts would determine did not warrant extensive inquiry. Addition of language making it clear that such determinations shall be limited to cases where the Supreme Court has found a taking under closely similar circumstances would reduce the ability of a future Administration to follow the Reagan Executive Order lead and reference Supreme Court dicta (or isolated aberrational rulings from trial or appeals courts). Also, it is very important to add language that limits analyses to cases where it is likely that a substantial number of takings judgments would result to avoid massive analyses of national rules that might result in one or two takings over a period of many years (e.g., current wetlands regulations have resulted in 3 takings judgments, at least one of which is under appeal). "Likely" may mean "more likely than not" but the latter language should be substituted.
- The constitutional "takings" analysis required by this amendment necessitates a property specific inquiry akin to a factual trial. Consequently, any attempt to conduct a "takings" inquiry in the abstract would be a meaningless exercise involving diverse interpretations and canned reviews. This would invite inconsistency in bureaucratic decision-making as to whether actions are "likely to result in a takings" and thus lead to erratic implementation of Congressional decisions. Similarly, the factual detail needed for agencies to "estimate the potential liability of the government if the government is required to compensate a private property owner" would impose unworkable demands on agencies unless they hired legions of lawyers and accountants. This is a fundamental problem, which it is difficult to see how to fix without major changes. The problem could perhaps be somewhat alleviated by adding language to make clear that analyses and estimates need only be done to the extent it does not hinder the ability of agencies to fully effectuate statutory and regulatory purposes.

Bumpers
as passed
by Senate
(modified by Dole)

As Modified

PENDING

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a perfecting amendment.

IN THE _____ AMENDMENT No. 1735 Sess.

By *Bumpers for Mitchell-Bumpers*
Baucus

To read Bill/Res. No. _____ health
Ser *90 to Amnt No. 1729* taking
Wages *pages* and for other purposes.

GJ

Mitchell - Bumpers Baucus

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by
_____ to the amendment (No. _____) pro-
posed by _____

Viz:

- 1 Strike all after the first section heading and insert
- 2 the following:
- 3 (a) SHORT TITLE.—This section may be cited as the
- 4 “Private Property Rights Act of 1994”.
- 5 (b) FINDINGS.—The Congress finds that—
- 6 (1) the protection of private property from a
- 7 taking by the Government without just compensation
- 8 is an integral protection for private citizens incor-
- 9 porated into the Constitution by the Fifth Amend-

1 ment and made applicable to the States by the
2 Fourteenth Amendment; and

3 (2) Federal agencies should take into consider-
4 ation the impact of Governmental actions on the use
5 and ownership of private property.

6 (c) PURPOSE.—The Congress, recognizing the impor-
7 tant role that the use and ownership of private property
8 plays in ensuring the economic and social well-being of the
9 Nation, declares that the Federal Government should pro-
10 tect the health, safety, and welfare of the public and, in
11 doing so, to the extent practicable, avoid takings of private
12 property.

13 (d) DEFINITIONS.—For purposes of this section—

14 (1) the term “agency” means an Executive
15 agency as defined under section 105 of title 5, Unit-
16 ed States Code, and—

17 (A) includes the United States Postal
18 Service; and

19 (B) does not include the General Account-
20 ing Office; and

21 (2) the term “taking of private property”
22 means any action whereby private property is taken
23 in such a way as to require compensation under the
24 Fifth Amendment to the United States Constitution.

1 (e) PRIVATE PROPERTY TAKING, IMPACT ANALY-
2 SIS.—

3 (1) IN GENERAL.—The Congress authorizes
4 and directs that, to the fullest extent possible—

5 (A) the policies, regulations, and public
6 laws of the United States shall be interpreted
7 and administered in accordance with the poli-
8 cies under this section; and

9 (B) all agencies of the Federal Government
10 shall complete a private property taking impact
11 analysis before issuing or promulgating any pol-
12 icy, regulation, proposed legislation, or related
13 agency action which is likely to result in a tak-
14 ing of private property, except that—

15 (i) this subparagraph shall not apply
16 to—

17 (I) an action in which the power
18 of eminent domain is formally exer-
19 cised;

20 (II) an action taken—

21 (aa) with respect to property
22 held in trust by the United
23 States; or

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(bb) in preparation for, or in connection with, treaty negotiations with foreign nations;

(III) a law enforcement action, including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(IV) a study or similar effort or planning activity;

(V) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, ~~regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;~~

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(VI) the placement of a military facility or a military activity involving the use of solely Federal property; and

(VII) any military or foreign affairs function (including a procurement function under a military or for-

1 eign affairs function), but not includ-
2 ing the civil works program of the
3 Army Corps of Engineers; and

4 (ii) in a case in which there is an im-
5 mediate threat to health or safety that con-
6 stitutes an emergency requiring immediate
7 response or the issuance of a regulation
8 pursuant to section 553(b)(B) of title 5,
9 United States Code, the taking impact
10 analysis may be completed after the emer-
11 gency action is carried out or the regula-
12 tion is published.

13 (2) CONTENT OF ANALYSIS.—A private prop-
14 erty taking impact analysis shall be a written state-
15 ment that includes—

16 (A) the specific purpose of the policy, regu-
17 lation, proposal, recommendation, or related
18 agency action;

19 (B) an assessment of the likelihood that a
20 taking of private property will occur under such
21 policy, regulation, proposal, recommendation, or
22 related agency action;

23 (C) an evaluation of whether such policy,
24 regulation, proposal, recommendation, or relat-

1 agement and Budget and the Attorney General iden-
2 tifying each agency action that has resulted in the
3 preparation of a taking impact analysis, the filing of
4 a taking claim, or an award of compensation pursu-
5 ant to the Just Compensation Clause of the Fifth
6 Amendment to the Constitution. The Director of the
7 Office of Management and Budget and the Attorney
8 General shall publish in the Federal Register, on an
9 annual basis, a compilation of the reports of all
10 agencies made pursuant to this paragraph.

11

21 (f) RULES OF CONSTRUCTION.—Nothing in this sec-
22 tion shall be construed to—

23 (1) limit any right or remedy, or bar any claim
24 of any person relating to such person's property
25 under any other law, including claims made under

8/9

1 section 1346 or 1402 of title 28, United States
2 Code, or chapter 91 of title 28, United States Code;
3 or

4 (2) constitute a conclusive determination of the
5 value of any property for purposes of an appraisal
6 for the acquisition of property, or for the determina-
7 tion of damages.

8 (g) STATUTE OF LIMITATIONS.—No action may be
9 filed in a court of the United States to enforce the provi-
10 sions of this section on or after the date occurring 6 years
11 after the date of the submission of the certification of the
12 applicable private property taking impact analysis with the
13 Attorney General.

1 ed agency action is likely to require compensa-
2 tion to private property owners;

3 (D) alternatives to the policy, regulation,
4 proposal, recommendation, or related agency ac-
5 tion that would achieve the intended purposes
6 of the agency action and lessen the likelihood
7 that a taking of private property will occur; and

8 (E) an estimate of the potential liability of
9 the Federal Government if the Government is
10 required to compensate a private property
11 owner.

12 (3) SUBMISSION TO OMB.—Each agency shall
13 provide an analysis required by this section as part
14 of any submission otherwise required to be made to
15 the Office of Management and Budget in conjunc-
16 tion with the proposed regulation.

17 (f) GUIDANCE AND REPORTING REQUIREMENTS.—

18 (1) GUIDANCE.—The Attorney General shall
19 provide legal guidance in a timely manner, in re-
20 sponse to a request by an agency, to assist the agen-
21 cy in complying with this section.

22 (2) REPORTING.—Not later than 1 year after
23 the date of enactment of this Act and at the end of
24 each 1-year period thereafter, each agency shall pro-
25 vide a report to the Director of the Office of Man-

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The Job Creation and Wage Enhancement Act

104TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

House Republicans will introduce the following bill

A BILL

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

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

3 SECTION 1. SHORT TITLE.

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

6 SEC. 2. TABLE OF CONTENTS.

7 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 in taxable years beginning after December 31, 1992.
 Sec. 2002. Repeal of special depreciation rules applicable under the adjusted current earnings provisions of the minimum tax.

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

Subtitle A—Risk 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.
 Sec. 3106. Guidance, plan for assessing new information, and report.
 Sec. 3107. Definitions.

Subtitle B—Requirement to Perform Risk Assessments and Cost/Benefit Analyses

- Sec. 3201. Requirement to prepare risk assessments and cost/benefit analyses.

Subtitle C—Sound Science

- Sec. 3301. Establishment of independent peer review panels.
 Sec. 3302. Procedures for peer review.
 Sec. 3303. Requirement for new risk assessment or cost/benefit analysis.

Subtitle D—Citizen Suits

- Sec. 3401. Civil action.

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. Civil action.
- Sec. 7009. 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.

TITLE IX—PRIVATE PROPERTY RIGHTS PROTECTIONS AND COMPENSATION

- Sec. 9001. Compensation for taking of private property.
- Sec. 9002. Definitions.

TITLE X—FEDERAL MANDATE ACCOUNTABILITY AND REFORM

- Sec. 10001. Short title.
- Sec. 10002. Definitions.
- Sec. 10003. Exclusions.

Subtitle A—Legislative Accountability and Reform

- Sec. 10101. Duties of congressional committees.
- Sec. 10102. Duties of the Director.
- Sec. 10103. Point of order.
- Sec. 10104. Enforcement in the House of Representatives.
- Sec. 10105. Exercise of rulemaking powers.
- Sec. 10106. Effective date.

Subtitle B—Regulatory Accountability and Reform

- Sec. 10201. Regulatory process.

- Sec. 10202. Statements to accompany significant regulatory actions.
 Sec. 10203. Assistance to the Congressional Budget Office.
 Sec. 10204. Pilot program on small government flexibility.

Subtitle C—Judicial Review

- Sec. 10301. Judicial review.

Subtitle D—Baseline Study

- Sec. 10401. Baseline study of costs and benefits.

Subtitle E—Limitation on Implementation of Federal Mandates; Review and Monitoring of Unfunded Federal Mandates and Implementation of Act

- Sec. 10501. Short title.
 Sec. 10502. Limitation on implementation of Federal mandates.
 Sec. 10503. Report on unfunded Federal mandates by Advisory Commission on Intergovernmental Relations.
 Sec. 10504. Monitoring implementation of Act.
 Sec. 10505. Special authorities of Advisory Commission.
 Sec. 10506. Definitions.
 Sec. 10507. Authorization of appropriations.

TITLE XI—ESTABLISHMENT OF FEDERAL MANDATE BUDGET COST CONTROL

- Sec. 11001. Amendments to the Congressional Budget Act of 1974.
 Sec. 321. OMB—CBO reports.
 Sec. 11002. President's annual budget submissions.
 Sec. 11003. Estimation and disclosure of costs of Federal mandates.

TITLE XII—TAXPAYER DEBT BUY-DOWN

- Sec. 12001. Designation of amounts for reduction of public debt.
 Sec. 12002. Public debt reduction trust fund.
 Sec. 12003. Taxpayer-generated sequestration of Federal spending to reduce the public debt.

TITLE XIII—SMALL BUSINESS INCENTIVES

- Sec. 13001. Increase in unified estate and gift tax credits.
 Sec. 13002. Increase in expense treatment for small businesses.
 Sec. 13003. Clarification of definition of principal place of business.
 Sec. 13004. 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

1 net capital gain for any taxable year shall be reduced (but not below zero)
2 by the amount which the taxpayer takes into account as investment income
3 under section 163(d)(4)(B)(iii).

4 "(d) TRANSITIONAL RULE.—

5 "(1) IN GENERAL.—In the case of a taxable year which includes
6 January 3, 1995, the amount taken into account as the net capital
7 gain under subsection (a) shall not exceed the net capital gain deter-
8 mined by only taking into account gains and losses properly taken into
9 account for the portion of the taxable year on or after January 3,
10 1995.

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

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

16 "(B) PASS-THRU ENTITY DEFINED.—For purposes of sub-
17 paragraph (A), the term 'pass-thru entity' means—

18 "(i) a regulated investment company,

19 "(ii) a real estate investment trust,

20 "(iii) an S corporation,

21 "(iv) a partnership,

22 "(v) an estate or trust, and

23 "(vi) a common trust fund."

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

27 "(16) LONG-TERM CAPITAL GAINS.—The deduction allowed by sec-
28 tion 1201."

29 (c) TECHNICAL AND CONFORMING CHANGES.—

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

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

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

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

41 "(2) CAPITAL GAINS AND LOSSES.—

1 “(A) LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—

2 In the case of a taxpayer other than a corporation, the amount
3 deductible on account of losses from sales or exchanges of capital
4 assets shall not exceed the amount includible on account of gains
5 from sales or exchanges of capital assets.

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

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

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

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

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

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

28 (8) The second sentence of section 871(a)(2) of such Code is
29 amended by inserting “such gains and losses shall be determined with-
30 out regard to section 1201 (relating to deduction for capital gains)
31 and” after “except that”.

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

34 (10)(A) Paragraph (2) of section 1211(b) of such Code is amend-
35 ed to read as follows:

36 “(2) the sum of—

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

39 “(B) one-half of the excess of the net long-term capital loss
40 over the net short-term capital gain.”

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

3 "(2) SPECIAL RULES.—

4 "(A) ADJUSTMENTS.—

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

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

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

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

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

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

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

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

28 (13) Paragraph (2) of section 527(b) of such Code is hereby re-
29 pealed.

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

34 (15) Paragraph (2) of section 801(a) of such Code is hereby re-
35 pealed.

36 (16) Subsection (c) of section 831 of such Code is amended by
37 striking paragraph (1) and redesignating the following paragraphs ac-
38 cordingly.

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

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

3 (i) by striking “65 percent” and inserting “82.5 percent”,

4 and

5 (ii) by striking “section 1201(a)” and inserting “subpara-
6 graph (A)”.

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

10 (19) Paragraph (1) of section 882(a) of such Code is amended by
11 striking “section 11, 55, or 1201(a)” and inserting “section 11 or 55”.

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

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

16 (22) Subsection (b) of section 1381 is amended by striking “or
17 1201”.

18 (23) Paragraph (1) of section 1445(e) of such Code is amended
19 by striking “35 percent (or, to the extent provided in regulations, 28
20 percent)” and inserting “17.5 percent (or, to the extent provided in
21 regulations, 19.8 percent)”.

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

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

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

28 (i) by striking “during a taxable year to which section 1(h)
29 or 1201(a) applies”, and

30 (ii) by striking “28 percent (34 percent)” and inserting “19.8
31 percent (17.5 percent”.

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

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

36 (ii) by striking “28 percent (34 percent)” and inserting “19.8
37 percent (17.5 percent”.

38 (d) EFFECTIVE DATE.—

39 (1) IN GENERAL.—Except as otherwise provided in this sub-
40 section, the amendments made by this section shall apply to taxable
41 years ending after the date of the enactment of this Act.

1 (2) TRANSITIONAL RULE.—The amendments made by subsection
2 (c) (other than paragraph (3)) shall not apply to gains and losses prop-
3 erty taken into account for the portion of the taxable year before Janu-
4 ary 3, 1995.

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

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

10 **SEC. 1002. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETER-**
11 **MINING GAIN OR LOSS.**

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

15 **“SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETER-**
16 **MINING GAIN OR LOSS.**

17 **“(a) GENERAL RULE.—**

18 **“(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—**Ex-
19 cept as otherwise provided in this subsection, if an indexed asset which
20 has been held for more than 1 year is sold or otherwise disposed of,
21 for purposes of this title the indexed basis of the asset shall be sub-
22 stituted for its adjusted basis.

23 **“(2) EXCEPTION FOR DEPRECIATION, ETC.—**The deduction for de-
24 preciation, depletion, and amortization shall be determined without re-
25 gard to the application of paragraph (1) to the taxpayer or any other
26 person.

27 **“(b) INDEXED ASSET.—**

28 **“(1) IN GENERAL.—**For purposes of this section, the term ‘in-
29 dexed asset’ means—

30 **“(A) stock in a corporation, and**

31 **“(B) tangible property (or any interest therein),**

32 **which is a capital asset or property used in the trade or business (as**
33 **defined in section 1231(b)).**

34 **“(2) CERTAIN PROPERTY EXCLUDED.—**For purposes of this sec-
35 tion, the term ‘indexed asset’ does not include—

36 **“(A) CREDITOR’S INTEREST.—**Any interest in property which
37 is in the nature of a creditor’s interest.

38 **“(B) OPTIONS.—**Any option or other right to acquire an in-
39 terest in property.

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

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

4 “(E) STOCK IN FOREIGN CORPORATIONS.—Stock in a foreign
5 corporation.

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

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

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

16 “(B) stock in a passive foreign investment company (as de-
17 fined in section 1296), and

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

20 “(c) INDEXED BASIS.—For purposes of this section:

21 “(1) GENERAL RULE.—Except as provided in paragraph (2), the
22 indexed basis for any asset is—

23 “(A) the adjusted basis of the asset, multiplied by

24 “(B) the applicable inflation ratio.

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

27 “(A) the gross national product deflator the calendar quarter
28 in which the disposition takes place, by

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

32 The applicable inflation ratio shall not be taken into account unless it
33 is greater than 1. The applicable inflation ratio for any asset shall be
34 rounded to the nearest one-tenth of 1 percent.

35 “(3) GROSS NATIONAL PRODUCT DEFLATOR.—The gross national
36 product deflator for any calendar quarter is the implicit price deflator
37 for the gross national product for such quarter (as shown in the first
38 revision thereof).

39 “(d) SHORT SALES.—

40 “(1) IN GENERAL.—In the case of a short sale of an indexed asset
41 with a short sale period in excess of 1 year, for purposes of this title,

1 the amount realized shall be an amount equal to the amount realized
2 (determined without regard to this paragraph) multiplied by the appli-
3 cable inflation ratio. In applying subsection (c)(3) for purposes of the
4 preceding sentence, the date on which the property is sold short shall
5 be treated as the date on which the holding period for the asset begins
6 and the closing date for the sale shall be treated as the date of disposi-
7 tion.

8 “(2) SHORT SALE OF SUBSTANTIALLY IDENTICAL PROPERTY.—If
9 the taxpayer or the taxpayer’s spouse sells short property substantially
10 identical to an asset held by the taxpayer, the asset held by the tax-
11 payer and the substantially identical property shall not be treated as
12 indexed assets for the short sale period.

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

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

18 “(1) ADJUSTMENTS AT ENTITY LEVEL.—

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

23 “(B) EXCEPTION FOR QUALIFICATION PURPOSES.—This sec-
24 tion shall not apply for purposes of sections 851(b) and 856(c).

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

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

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

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

40 “(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE IN-
41 VESTMENT TRUSTS.—Nothing in this paragraph shall require a

1 real estate investment trust to value its assets more frequently
2 than once each 36 months (except where such trust ceases to
3 exist). The ratio under subparagraph (A) for any calendar month
4 for which there is no valuation shall be the trustee's good faith
5 judgment as to such valuation.

6 "(3) QUALIFIED INVESTMENT ENTITY.—For purposes of this sub-
7 section, the term 'qualified investment entity' means—

8 "(A) a regulated investment company (within the meaning of
9 section 851), and

10 "(B) a real estate investment trust (within the meaning of
11 section 856).

12 "(f) OTHER PASS-THRU ENTITIES.—

13 "(1) PARTNERSHIPS.—

14 "(A) IN GENERAL.—In the case of a partnership, the adjust-
15 ment made under subsection (a) at the partnership level shall be
16 passed through to the partners.

17 "(B) SPECIAL RULE IN THE CASE OF SECTION 754 ELEC-
18 TIONS.—In the case of a transfer of an interest in a partnership
19 with respect to which the election provided in section 754 is in
20 effect—

21 "(i) the adjustment under section 743(b)(1) shall, with
22 respect to the transferor partner, be treated as a sale of the
23 partnership assets for purposes of applying this section, and

24 "(ii) with respect to the transferee partner, the partner-
25 ship's holding period for purposes of this section in such as-
26 sets shall be treated as beginning on the date of such adjust-
27 ment.

28 "(2) S CORPORATIONS.—In the case of an S corporation, the ad-
29 justment made under subsection (a) at the corporate level shall be
30 passed through to the shareholders.

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

34 "(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

35 "(1) IN GENERAL.—This section shall not apply to any sale or
36 other disposition of property between related persons except to the ex-
37 tent that the basis of such property in the hands of the transferee is
38 a substituted basis.

39 "(2) RELATED PERSONS DEFINED.—For purposes of this section,
40 the term 'related persons' means—

1 “(A) persons bearing a relationship set forth in section
2 267(b), and

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

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

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

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

13 “(A) A substantial improvement to property.

14 “(B) In the case of stock of a corporation, a substantial con-
15 tribution to capital.

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

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

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

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

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

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

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

TITLE II—NEUTRAL COST RECOVERY**SEC. 2001. DEPRECIATION ADJUSTMENT FOR CERTAIN PROPERTY
PLACED IN SERVICE IN TAXABLE YEARS BEGINNING
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:

**“(j) DEDUCTION ADJUSTMENT TO ALLOW EQUIVALENT OF
EXPENSING FOR CERTAIN PROPERTY PLACED IN SERVICE IN TAXABLE
YEARS BEGINNING AFTER DECEMBER 31, 1994—**

“(1) IN GENERAL.—In the case of tangible property placed in service in a taxable year beginning after December 31, 1994, the deduction allowable under this section with respect to such property for any taxable year (after the taxable year during which the property is placed in service) shall be—

“(A) the amount so allowable for such taxable year without regard to this subsection, multiplied by

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

For purposes of subparagraph (A), paragraphs (1) and (2) of section 168(b) shall be applied by substituting ‘150 percent’ for ‘200 percent’.

“(2) APPLICABLE NEUTRAL COST RECOVERY RATIO.—For purposes of paragraph (1), the applicable neutral cost recovery ratio for any taxable year is the number determined by—

“(A) dividing—

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

“(B) then multiplying the number determined under subparagraph (A) by the number equal to 1.035 to the *n*th 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.

1 The applicable neutral cost recovery ratio shall not be taken into ac-
 2 count unless it is greater than 1. The applicable neutral cost recovery
 3 ratio shall be rounded to the nearest one-tenth of 1 percent.

4 “(3) GROSS NATIONAL PRODUCT DEFLATOR.—For purposes of
 5 paragraph (2), the gross national product deflator for any calendar
 6 quarter is the implicit price deflator for the gross national product for
 7 such quarter (as shown in the first revision thereof).

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

11 “(5) ELECTION NOT TO HAVE SUBSECTION APPLY.—This sub-
 12 section shall not apply to any property if the taxpayer elects not to
 13 have this subsection apply to such property. Such an election, once
 14 made, shall be irrevocable.”

15 (b) MINIMUM TAX TREATMENT.—Paragraph (1) of section 56(a) of
 16 such Code is amended by adding at the end thereof the following new sub-
 17 paragraph:

18 “(E) USE OF NEUTRAL COST RECOVERY RATIO.—In the
 19 case of tangible property placed in service in a taxable year begin-
 20 ning after December 31, 1994, the deduction allowable under this
 21 paragraph with respect to such property for any taxable year
 22 (after the taxable year during which the property is placed in serv-
 23 ice) shall be—

24 “(i) the amount so allowable for such taxable year with-
 25 out regard to this subparagraph, multiplied by

26 “(ii) the applicable neutral cost recovery ratio for such
 27 taxable year (as determined under section 168(j)).

28 This subparagraph shall not apply to any property with respect to
 29 which there is an election in effect not to have section 168(j)
 30 apply.”

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

33 **SEC. 2002. REPEAL OF SPECIAL DEPRECIATION RULES APPLICABLE**
 34 **UNDER THE ADJUSTED CURRENT EARNINGS PROVI-**
 35 **SIONS OF THE MINIMUM TAX.**

36 (a) IN GENERAL.—Subparagraph (A) of section 56(g)(4) of the Inter-
 37 nal Revenue Code of 1986 (relating to adjustments) is amended to read as
 38 follows:

39 “(A) DEPRECIATION.—

40 “(i) IN GENERAL.—The depreciation deduction with re-
 41 spect to any property for any taxable year beginning after

1 December 31, 1994 shall be the same as the depreciation de-
 2 duction allowable in computing alternative minimum taxable
 3 income for such taxable year.

4 “(ii) BASIS RULES.—Notwithstanding subparagraph (I),
 5 the adjusted basis of any depreciable property held by the
 6 taxpayer as of the beginning of the taxpayer’s first taxable
 7 year beginning after December 31, 1994, shall be determined
 8 as if the provisions of clause (i) had also applied to taxable
 9 years beginning in 1993, 1994, or 1995.

10 “(iii) LOST BASIS RECOVERED OVER 5 YEARS.—The
 11 amount determined under clause (iv) shall be allowed as a de-
 12 duction ratably over the 60-month period beginning with the
 13 first month of the taxpayer’s first taxable year beginning
 14 after December 31, 1994.

15 “(iv) AMOUNT OF LOST BASIS.—The amount determined
 16 under this clause is the excess of—

17 “(I) the aggregate adjusted bases of depreciable
 18 property held by the taxpayer as of the beginning of the
 19 taxpayer’s first taxable year beginning after December
 20 31, 1994 which would have been determined (as of such
 21 time) under subparagraph (I) without regard to clause
 22 (ii), over

23 “(II) the aggregate adjusted bases of such property
 24 (as of such time) as determined under the rules of clause
 25 (ii).”

26 (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall
 27 apply to taxable years beginning after December 31, 1994.

28 **TITLE III—RISK ASSESSMENT AND** 29 **COST/BENEFIT ANALYSIS FOR NEW** 30 **REGULATIONS**

31 **Subtitle A—Risk Communication**

32 **SEC. 3101. SHORT TITLE.**

33 This subtitle may be cited as the “Risk Communication Act of 1995”.

34 **SEC. 3102. PURPOSES.**

35 The purposes of this subtitle are—

36 (1) to present the public and executive branch with the most sci-
 37 entifically objective information concerning the nature and magnitude
 38 of health, safety, and environmental risks in order to provide for sound
 39 regulatory decisions and public education;

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

1 (3) to require explanation of significant choices in the risk assess-
2 ment process which will allow for better peer review and public under-
3 standing; and

4 (4) to improve consistency within the executive branch in prepar-
5 ing risk assessments and risk characterizations.

6 SEC. 3103. EFFECTIVE DATE; APPLICABILITY; SAVINGS PROVISIONS.

7 (a) EFFECTIVE DATE.—Except as otherwise specifically provided in
8 this subtitle, the provisions of this subtitle shall take effect 2 years after
9 the date of enactment of this subtitle.

10 (b) APPLICABILITY.—(1) Except as provided in paragraph (2), this
11 title applies to all risk assessments and risk characterizations prepared by
12 or on behalf of the executive branch in connection with health, safety, and
13 environmental risks.

14 (2) This title does not apply to risk assessments or risk characteriza-
15 tions performed with respect to a situation that the head of any Federal
16 department, agency, or instrumentality considers to be an emergency or to
17 screening analyses where the results of such analyses are not used as the
18 basis for imposing restrictions on substances or activities and the results of
19 the analyses are not used to characterize a positive finding of risks from
20 substances or activities in any final agency document made available to the
21 general public.

22 (c) SAVINGS PROVISIONS.—Nothing in this title shall be construed to
23 modify any statutory standard or requirement designed to protect health,
24 safety, or the environment.

25 SEC. 3104. PRINCIPLES FOR RISK ASSESSMENT.

26 (a) IN GENERAL.—The head of each Federal department, agency, or
27 instrumentality shall apply the principles set forth in subsection (b) when
28 preparing risk assessments in order to assure that such risk assessments
29 and all of their components are, to the maximum extent possible, scientif-
30 ically objective and inclusive of all relevant data. Discussions or explanations
31 required under this section need not be repeated in each risk assessment
32 document as long as there is a reference to the relevant discussion or expla-
33 nation in another agency document.

34 (b) PRINCIPLES.—The principles to be applied when preparing risk as-
35 sessments are the following:

36 (1) Risk assessment shall explicitly distinguish scientific findings
37 in risk assessments from other considerations affecting the design and
38 choice of regulatory strategies.

39 (2) The risk assessment shall consider and discuss both negative
40 and positive laboratory or epidemiological data of sufficient quality
41 when presenting assessments of human health risks. Where conflicts

1 among such data appear to exist, the assessment shall include discus-
2 sion of possible reconciliation of conflicting information, which may in-
3 clude differences in study designs, comparative physiology, routes of ex-
4 posure, bioavailability, pharmacokinetics, and any other relevant factor.

5 (3) Where the risk assessment process involves selection of any
6 significant assumption, inference, or model, the department, agency, or
7 instrumentality preparing the assessment shall (A) present a represent-
8 ative list and explanation of plausible and alternative assumptions, in-
9 ferences, or models; (B) explain the basis for any choices; and (C) iden-
10 tify any policy or value judgments. The department, agency, or instru-
11 mentality preparing the assessment shall also indicate the extent to
12 which any significant model has been validated by or conflicts with em-
13 pirical data.

14 **SEC. 3105. PRINCIPLES FOR RISK CHARACTERIZATION.**

15 In characterizing risk in any risk assessment document, regulatory pro-
16 posal or decision, report to Congress, or other document which is made
17 available to the public, the department, agency, or instrumentality preparing
18 the assessment shall comply with each of the following:

19 (1) The head of such department, agency, or instrumentality shall
20 characterize the populations or natural resources at risk. If a numerical
21 estimate of risk is provided, the departments and agencies shall, to the
22 extent feasible, provide the best estimate or estimates for the popu-
23 lations or natural resources at risk, given the information available to
24 the department, agency, or instrumentality, along with a statement of
25 the reasonable range of scientific uncertainty. In addition to the best
26 estimate, the head of such department, agency, or instrumentality may
27 present plausible upper-bound or conservative estimates in conjunction
28 with plausible lower bounds estimates. Where appropriate, the head of
29 such department, agency, or instrumentality may present, in lieu of a
30 single best estimate, multiple estimates based on assumptions, infer-
31 ences, or models which are equally plausible, given current scientific
32 understanding.

33 (2) The head of such department, agency, or instrumentality shall
34 explain the range of exposure scenarios used in any risk assessment,
35 and, to the extent feasible, provide a statement of the size of the cor-
36 responding population at risk and the likelihood of such exposure sce-
37 narios.

38 (3) To the extent feasible, the head of such department, agency,
39 or instrumentality shall provide appropriate comparisons with estimates
40 of other risks, including those that are familiar to and routinely en-
41 countered by the general public.

1 (4) When the head of such department, agency, or instrumentality
2 provides a risk assessment or risk characterization for proposed and
3 final regulatory actions, such assessment or characterization shall in-
4 clude a statement of any known and significant substitution risks.

5 (5) In any case in which the head of such department, agency, or
6 instrumentality provides a public comment period with respect to a risk
7 assessment or regulation, and a commenter provides a risk assessment
8 and summary of results that is consistent with the principles and the
9 guidance provided under this subtitle, the head of such department,
10 agency, or instrumentality shall present the summary of results of such
11 risk assessment in connection with the presentation of the risk assess-
12 ment (if any) or regulation.

13 **SEC. 3106. GUIDANCE, PLAN FOR ASSESSING NEW INFORMATION, AND**
14 **REPORT.**

15 (a) **GUIDANCE.**—Within 18 months after the date of enactment of this
16 subtitle, the head of each department, agency, or instrumentality shall issue
17 guidance consistent with the risk assessment and characterization principles
18 stated in sections 3104 and 3105 and shall provide a format for summariz-
19 ing risk assessment results.

20 (b) **ADDITIONAL SUBJECTS ADDRESSED.**—In addition to including the
21 principles set forth in sections 3104 and 3105, the guidance issued under
22 this section shall include guidance on at least the following subjects:
23 interspecies scaling factors; use of different types of dose-response models;
24 thresholds; definitions, use, and interpretations of the maximum tolerated
25 dose; weighting of positive and negative findings from sensitive species; eval-
26 uation of benign tumors, and evaluation of different health endpoints.

27 (c) **PLAN.**—Within 2 years after the date of enactment of this subtitle,
28 the head of such department, agency, or instrumentality shall publish a plan
29 to review and revise any risk assessment with respect to which he deter-
30 mines there is significant new information or methodologies available that
31 could significantly alter the prior results of the risk assessment. The plan
32 shall provide procedures for receiving and considering new information and
33 risk assessments from the public. The plan may set priorities for review and
34 revision of risk assessments based on factors the head of such department,
35 agency, or instrumentality considers appropriate.

36 (d) **REPORT.**—Within 3 years after the enactment of this subtitle, the
37 head of such department, agency, or instrumentality shall provide a report
38 to the Congress evaluating the policy and value judgments of the type iden-
39 tified under paragraph (3) of section 3104 which are made in risk assess-
40 ments performed.

1 (e) PUBLIC COMMENT AND CONSULTATION.—The guidance, plan and
2 report under this section, shall be developed after notice and opportunity
3 for public comment, representatives of appropriate State agencies, and such
4 other departments and agencies, offices, organizations, or persons as may
5 be advisable.

6 (f) REVIEW.—Guidance promulgated under this section shall be re-
7 viewed by the head of such department, agency, or instrumentality con-
8 cerned at least every 4 years in accordance with subsection (d).

9 SEC. 3107. DEFINITIONS.

10 For purposes of this subtitle:

11 (1) The term “risk assessment” means the process of identifying
12 hazards and quantifying or describing the degree of risk they pose for
13 exposed individuals, populations, or resources. It also refers to the doc-
14 ument containing the explanation of how the assessment process has
15 been applied to an individual substance, activity, or condition.

16 (2) The term “risk characterization” means that element of a risk
17 assessment that involves presentation of the degree of risk in any regu-
18 latory proposal or decision, report to Congress, or other document
19 which is made available to the public. The term includes discussions
20 of uncertainties, conflicting data, estimates, extrapolations, inferences,
21 and opinions.

22 (3) The term “best estimate” means an estimate based on (A)
23 central estimates of risk using the most unbiased assumptions and
24 models, (B) an approach which combines multiple estimates based on
25 different scenarios and weighs the probability of each scenario or (C)
26 any other methodology designed to provide the most unbiased represen-
27 tation of the most plausible level of risk, given the current scientific
28 information available to the department, agency, or instrumentality
29 concerned.

30 (4) The term “negative data” means data indicating that under
31 certain conditions a given substance or activity did not induce an ad-
32 verse effect.

33 (5) The term “substitution risk” means a potential increased risk
34 to human health, safety, or the environment from a regulatory option
35 designed to decrease other risks.

36 **Subtitle B—Requirement to Perform Risk**
37 **Assessments and Cost/Benefit Analyses**

38 SEC. 3201. REQUIREMENT TO PREPARE RISK ASSESSMENTS AND
39 COST/BENEFIT ANALYSES.

40 (a) IN GENERAL.—Except as provided in subsection (b), the President
41 shall require that each executive branch agency shall prepare for each major

1 rule relating to human health, safety, or the environment that is proposed
2 by the agency after the date of enactment of this Act—

3 (1) a risk assessment in accordance with subtitle A;

4 (2) an assessment of the costs and benefits associated with imple-
5 mentation of, and compliance with, the major rule;

6 (3) an analysis comparing the economic and compliance costs of
7 the major rule with the likely benefits of the rule to human health and
8 the environment; and

9 (4) a certification by the head of the agency that—

10 (A) the risk assessment under paragraph (1) and the analysis
11 under paragraph (2) are based on a scientific evaluation of the
12 risk addressed by the major rule and are supported by the best
13 available scientific data, as determined by a peer review panel in
14 accordance with subtitle C;

15 (B) the major rule will substantially advance the purpose of
16 protecting human health or the environment, as applicable, against
17 the risk addressed by the major rule; and

18 (C) the major rule will produce benefits to human health or
19 the environment that will justify the costs incurred by local and
20 State governments, the Federal Government, and other public and
21 private entities as a result of implementation of and compliance
22 with the rule, as determined under paragraph (2).

23 (b) **MAJOR RULE DEFINED.**—For purposes of this section, the term
24 “major rule” has the meaning given that term in section 7004(b).

25 Subtitle C—Sound Science

26 SEC. 3301. ESTABLISHMENT OF INDEPENDENT PEER REVIEW PANELS.

27 (a) **ESTABLISHMENT.**—The head of a Federal agency shall establish
28 for each risk assessment and cost/benefit analysis required by this title an
29 independent peer review panel to certify that the assessment and analysis
30 incorporates the best available scientific data and methods of analysis.

31 (b) **MEMBERSHIP.**—Each peer review panel established under this sec-
32 tion shall consist of individuals who—

33 (1) are scientific experts in the appropriate disciplines with recent
34 professional experience with the substance for which risk assessment
35 and cost/benefit analysis is conducted by the panel;

36 (2) have recent professional experience conducting a risk assess-
37 ment, an assessment of the costs of a regulation, or an assessment of
38 the benefits of a regulation;

39 (3) have filed and made publicly available financial disclosure
40 forms; and

1 (4) have not been involved in any previous analysis of the tests
2 and evidence presented for certification by the review panel.

3 (c) **TERMINATION.**—A peer review panel shall terminate upon submis-
4 sion of a report under section 3302 with respect to the risk assessment and
5 cost/benefit analysis for which the panel was established.

6 **SEC. 3302. PROCEDURES FOR PEER REVIEW.**

7 (a) **SUBMISSION TO PANEL.**—The head of a Federal agency shall sub-
8 mit to the peer review panel established under this subtitle for a risk assess-
9 ment and cost/benefit analysis all data and testing (including the details of
10 the methodology) used by the agency for the assessment and analysis.

11 (b) **REPORT AND RECOMMENDATIONS.**—

12 (1) **IN GENERAL.**—Within 60 days after the date on which the
13 head of a Federal agency submits data and testing under subsection
14 (a) for a proposed major rule, the peer review panel shall transmit to
15 the head of the agency a report and recommendations on whether the
16 data and tests (including methodology) are the best available scientific
17 data and procedures under which the basis for the proposed major rule
18 may be examined.

19 (2) **CONTENTS.**—A report and recommendations under this sub-
20 section for an agency risk assessment and cost/benefit analysis shall
21 include—

22 (A) an evaluation of the technical and scientific merit of the
23 data and scientific method used for the assessment and analysis;

24 (B) a list of any considerations that were not taken into ac-
25 count in the assessment and analysis, but were considered appro-
26 priated by a majority of the members of the peer review panel; and

27 (C) a discussion of the methodology used for the assessment
28 and analysis.

29 (3) **COMMENTS AND APPENDIX.**—Each peer review report under
30 this subsection shall include—

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

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

35 **SEC. 3303. REQUIREMENT FOR NEW RISK ASSESSMENT OR COST/BEN-
36 EFIT ANALYSIS.**

37 If a peer review panel established under this subtitle includes in a re-
38 port under section 3302 for a proposed major rule a negative recommenda-
39 tion regarding the data or methods used for a risk assessment cost/benefit
40 analysis on which the major rule is based, the proposed major rule may not

1 be issued in final form unless the head of the agency which proposed the
2 major rule—

3 (1) prepares a new risk assessment or cost/benefit analysis, as ap-
4 plicable, for the proposed major rule in accordance with this title; and

5 (2) submits the new assessment and analysis for peer review in
6 accordance with this subtitle.

7 Subtitle D—Citizen Suits

8 SEC. 3401. CIVIL ACTION.

9 Whoever is adversely affected by any conduct in violation of this title
10 may in a civil action obtain appropriate relief. The court may award a pre-
11 vailing plaintiff in an action under this section a reasonable attorney's fees
12 as a part of the costs.

13 TITLE IV—ESTABLISHMENT OF FED- 14 ERAL REGULATORY BUDGET COST 15 CONTROL

16 SEC. 4001. AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 17 1974.

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

22 “PART B—FEDERAL REGULATORY BUDGET 23 COST CONTROL

24 “SEC. 321. OMB-CBO REPORTS.

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

28 “(1) For the first budget year beginning after the issuance of this
29 report, a projection of the aggregate direct cost to the private sector
30 of complying with all Federal regulations and rules in effect imme-
31 diately before issuance of the report containing the projection for that
32 budget year of the effect of current-year Federal regulations and rules
33 into the budget year and the outyears based on those regulations and
34 rules.

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

38 “(3) The estimated marginal cost (measured as a reduction in es-
39 timated gross domestic product) to the private sector of compliance
40 with all Federal regulations and rules in excess of 5 percent of the
41 gross domestic product.

1 “(4) The effect on the domestic economy of different types of Fed-
2 eral regulations and rules.

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

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

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

18 “(c) INITIAL BASELINE REPORT.—Within 30 days after the date of en-
19 actment of this section, OMB and CBO shall jointly issue a report to the
20 President and each House of Congress that contains an initial aggregate
21 regulatory baseline for the first budget year that begins at least 120 days
22 after that date of enactment. That baseline will be a projection of the aggre-
23 gate direct cost to the private sector of complying with all Federal regula-
24 tions and rules in effect immediately before issuance of the report contain-
25 ing the projection for that budget year of the effect of current-year Federal
26 regulations and rules into the budget year and the outyears based on those
27 regulations and rules.

28 “SEC. 322. AGGREGATE REGULATORY BASELINE.

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

39 “(b) OMB-CBO AGGREGATE REGULATORY BASELINE REPORTS.—(1)
40 The first budget year for which there shall be an aggregate regulatory base-

1 line shall be the budget year to which the initial OMB-CBO baseline report
2 issued under section 321(c) pertains.

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

7 “SEC. 323. RECONCILIATION AND ALLOCATIONS.

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

11 “(1) changes in laws and regulations and rules necessary to reduce
12 the aggregate direct cost to the private sector of complying with all
13 Federal regulations by 6.5 percent for the budget year (as measured
14 against the aggregate regulatory baseline for the first budget year to
15 which this part applies) and by equal percentage increments for each
16 of the outyears (until the aggregate level of such costs does not exceed
17 5 percent of the estimated gross domestic product for the same fiscal
18 year as the estimated costs that will be incurred) for Federal agencies
19 that issue regulations or rules producing direct costs to the private sec-
20 tor; and

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

25 “(A) In the first outyear, one-fourth of the percent of reduc-
26 tion in regulatory authority from the aggregate regulatory base.

27 “(B) In the second outyear, one-third of the percent of reduc-
28 tion in regulatory authority from the aggregate regulatory base.

29 “(C) In the third, fourth, fifth, and sixth years following the
30 budget year, one-half of the percent of reduction in regulatory au-
31 thority from the aggregate regulatory base.

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

34 “(b) ALLOCATION OF TOTALS.—(1) The Committees on the Budget of
35 the House or Representatives and the Senate shall each allocate aggregate
36 2-year regulatory authority among each committee of its House and by
37 major functional category for the first budget year beginning after the date
38 of enactment of this section and for the second, fourth, and sixth years fol-
39 lowing the budget year and then every other year thereafter.

1 “(2) As soon as practicable after receiving an allocation under para-
2 graph (1), each committee shall subdivide its allocation among its sub-
3 committees or among programs over which it has jurisdiction.

4 “(c) POINT OF ORDER.—(1) It shall not be in order in the House of
5 Representatives or the Senate to consider any bill or resolution, or amend-
6 ment thereto, which would cause the appropriate allocation made under sub-
7 section (b) for a fiscal year of regulatory authority to be exceeded.

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

11 “(d) DETERMINATIONS BY BUDGET COMMITTEES.—For purposes of
12 this section, the level of regulatory authority for a fiscal year shall be deter-
13 mined by the Committee on the Budget of the House of Representatives or
14 the Senate, as the case may be.

15 “(e) EXCEEDING ALLOCATION TOTALS.—Whenever any Committee of
16 the House of Representatives exceeds its allocation of aggregate 2-year reg-
17 ulatory authority under subsection (b)(1), any Member of the House of Rep-
18 resentatives may offer a bill in the House (which shall be highly privileged,
19 unamendable, and debateable for 30 minutes) which shall only prohibit the
20 issuance of regulations and rules by any agency under the jurisdiction of
21 that committee for the fiscal years covered by that allocation until that com-
22 mittee eliminates its breach.

23 “SEC. 324. ANALYSIS OF REGULATORY COSTS BY CONGRESSIONAL
24 BUDGET OFFICE.

25 “CBO shall prepare for each bill or resolution of a public character re-
26 ported by any committee of the House of Representatives or the Senate (ex-
27 cept the Committee on Appropriations of each House), and submit to such
28 committee—

29 “(1) an estimate of the costs which would be incurred by the pri-
30 vate sector in carrying out or complying with such bill or resolution in
31 the fiscal year in which it is to become effective and in each of the 4
32 fiscal years following such fiscal year, together with the basis of each
33 such estimate; and

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

37 “SEC. 325. DEFINITIONS.

38 “As used in this part:

39 “(1) The term ‘CBO’ refers to the Director of the Congressional
40 Budget Office.

1 “(2) The term ‘OMB’ refers to the Director of the Office of Man-
2 agement and Budget.

3 “(3) The term ‘regulatory authority’ or ‘regulatory cost’ means
4 the direct cost to the private sector of complying with Federal regula-
5 tions and rules.

6 “(4) The term ‘direct costs’ means (recognizing that direct costs
7 are not the only costs associated with Federal regulation) all expendi-
8 tures occurring as a direct result of complying with Federal regulation,
9 rule, statement, or legislation, except those applying to the military or
10 agency organization, management, and personnel.

11 “(5) The term ‘regulation’ or the term ‘rule’ means any agency
12 statement of general applicability and future effect designed to imple-
13 ment, interpret, or prescribe law or policy or describing the procedure
14 or practice requirements of any agency, but does not include—

15 “(A) administrative actions governed by the provisions of sec-
16 tions 556 and 557 of title 5, United States Code; or

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

19 “(6) The term ‘agency’ means any authority of the United States
20 that is an agency under title section 3502(1) of title 44, United States
21 Code, including independent agencies.”

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

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

25 “(29) a regulatory authority budget analysis of the aggregate di-
26 rect cost to the private sector of complying with all current and pro-
27 posed Federal regulations and rules and proposals for complying with
28 section 323 of the Congressional Budget Act of 1974 for the budget
29 year and the outyears.”

30 **SEC. 4003. ESTIMATION AND DISCLOSURE OF COSTS OF FEDERAL**
31 **REGULATION.**

32 **(a) COSTS TO PRIVATE SECTOR OF NEW FEDERAL REGULATIONS AND**
33 **RULES.**—Chapter 6 of title 5, United States Code, popularly known as the
34 “Regulatory Flexibility Act”, is amended—

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

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

39 “(d) Each initial regulatory flexibility analysis shall also contain a de-
40 scription of the nature and amount of monetary costs that will be incurred

1 by small entities, other businesses, and individuals in complying with the
2 proposed rule.”;

3 (3) in section 604(a)—

4 (A) in paragraph (2) by striking “and” after the semicolon;

5 (B) in paragraph (3) by striking the period and inserting “;
6 and”; and

7 (C) by adding at the end the following:

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

11 (4) in section 607 by inserting before the period the following: “,
12 except that estimates of monetary costs under sections 603(d) and
13 604(a)(4) shall only be in the form of a numerical description”.

14 (b) AGENCY REPORTS.—Each agency that prepares an initial regu-
15 latory flexibility analysis under chapter 6 of title 5, United States Code,
16 shall, at the same time submit to each House of Congress and to CBO and
17 OMB a cost estimate and cost/benefit analysis of any new proposed regula-
18 tions and rules that would have an aggregate direct cost to the private sec-
19 tor of at least \$10,000,000 for any fiscal year.

20 **TITLE V—STRENGTHENING OF** 21 **PAPERWORK REDUCTION ACT**

22 **SEC. 5001. SHORT TITLE.**

23 This title may be cited as the “Paperwork Reduction Act of 1995”.

24 **Subtitle A—Authorization of** 25 **Appropriations**

26 **SEC. 5101. AUTHORIZATION OF APPROPRIATIONS.**

27 Section 3520(a) of title 44, United States Code, is amended by striking
28 out “\$5,500,000 for each of the fiscal years 1987, 1988, and 1989.” and
29 inserting in lieu thereof “\$7,000,000 for fiscal year 1994, \$7,500,000 for
30 fiscal year 1995, \$8,000,000 for fiscal year 1996, \$8,500,000 for fiscal year
31 1997, and \$9,000,000 for fiscal year 1998.”.

32 **Subtitle B—Reducing the Burden of** 33 **Federal Paperwork on the Public**

34 **SEC. 5201. COVERAGE OF ALL FEDERALLY SPONSORED PAPERWORK** 35 **BURDENS.**

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

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

38 “(3) the term ‘burden’ means the time, effort, financial resources,
39 and opportunity costs imposed on persons to generate, capture, assem-
40 ble, process, maintain, and report information to or for a Federal agen-
41 cy, including—

- 1 “(A) the resources expended for obtaining, reviewing and un-
2 derstanding applicable instructions and requirements;
3 “(B) developing a way to comply with the applicable instruc-
4 tions and requirements;
5 “(C) adjusting the existing ways to comply with any pre-
6 viously applicable instructions and requirements;
7 “(D) searching existing data sources;
8 “(E) obtaining, compiling and maintaining the necessary
9 data;
10 “(F) implementing recordkeeping requirements;
11 “(G) completing and reviewing the collection of information;
12 “(H) retaining, sharing, notifying, reporting, transmitting, la-
13 beling, or otherwise disclosing to third parties or the public the in-
14 formation involved; and
15 “(I) carrying out any other information transaction which oc-
16 curs as a result of the collection of information;”;
17 (2) in paragraph (4) by striking out “of facts or opinions by” and
18 inserting in lieu thereof “(through maintenance, retention, notifying,
19 reporting, labeling or disclosure to third parties or the public) of facts
20 or opinions by or for”; and
21 (3) in paragraph (17) by inserting “, including the retention, re-
22 porting, notifying, or disclosure to third parties or the public of such
23 records” before the period.

24 **SEC. 5202. PAPERWORK REDUCTION GOALS.**

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

27 **“§ 3505. Assignment of tasks and deadlines**

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

29 “(1) set a governmentwide goal, consistent with improving agency
30 management of the process for the review of each collection of informa-
31 tion established under section 3506(e), to reduce by September 30,
32 1995, the burden of Federal collections of information existing on Sep-
33 tember 30, 1994, by at least 5 percent;

34 “(2) for the fiscal year beginning on October 1, 1995, and the fol-
35 lowing 3 fiscal years, set a governmentwide goal, consistent with im-
36 proving agency management of the process for the review of each col-
37 lection of information established under section 3506(e), to reduce the
38 burden of Federal collections of information existing at the end of the
39 immediately preceding fiscal year by at least 5 percent;

40 “(3) in establishing the governmentwide goal pursuant to para-
41 graph (2), establish a goal for each agency that—

1 “(A) represents the maximum practicable opportunity to re-
2 duce the paperwork burden imposed upon the public by such agen-
3 cy’s collections of information, after considering the recommenda-
4 tions of the senior agency official designated under section
5 3506(b)(1); and

6 “(B) permits the attainment of the governmentwide goal
7 when such agency’s goal is aggregated with the individual goals
8 of all other agencies included in the governmentwide goal; and

9 “(4) in each report issued under section 3514, beginning with the
10 report relating to fiscal year 1995, identify any agency initiatives to re-
11 duce the burden of the Federal collections of information associated
12 with—

13 “(A) businesses, especially small businesses and those en-
14 gaged in international competition;

15 “(B) State and local governments; and

16 “(C) educational institutions.”.

17 **Subtitle C—Enhancing Government Re-**
18 **ponsibility and Accountability for Re-**
19 **ducing the Burden of Federal Paper-**
20 **work**

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

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

24 (1) in paragraph (3) by redesignating subparagraphs (B) and (C)
25 as subparagraphs (C) and (D), respectively, and inserting after sub-
26 paragraph (A) the following new subparagraph:

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

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

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

33 “(6) coordinating with the Office of Federal Procurement Policy
34 to eliminate paperwork burdens associated with procurement and acqui-
35 sition;”;

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

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

39 “(8) minimizing the Federal paperwork burden imposed through
40 Federal collection of information, with particular emphasis on those in-
41 dividuals or entities most adversely affected, including—

1 “(A) businesses, especially small businesses and those en-
2 gaged in international competition;

3 “(B) State and local governments; and

4 “(C) educational institutions; and

5 “(9) initiating and conducting, with selected agencies and non-
6 Federal entities on a voluntary basis, pilot projects to test or dem-
7 onstrate the feasibility and benefit of changes or innovations in Federal
8 policies, rules, regulations, and agency procedures to improve informa-
9 tion management practices and related management activities (includ-
10 ing authority for the Director to waive the application of designated
11 agency regulations or administrative directives after giving timely no-
12 tice to the public and Congress regarding the need for such waiver).”.

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

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

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

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

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

21 “(3) the agency provides at least 30 days for public comment to
22 the agency and the Office of Management and Budget after publication
23 of the notice in the Federal Register, except as provided under section
24 3507 (g) and (k), and the agency head and the Director consider com-
25 ments received regarding the proposed collection of information; and”.

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

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

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

37 (2) by striking out “sixty” each place it appears and inserting
38 “30” in each such place;

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

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

1 SEC. 5304. IMPROVING PUBLIC AND AGENCY SCRUTINY OF PAPER-
2 WORK BURDENS PROPOSED FOR RENEWAL.

3 (a) APPROVAL OF INFORMATION COLLECTION REQUEST.—Section
4 3507(d) of title 44, United States Code, is amended—

5 (1) by inserting “(1)” after “(d)”; and

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

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

14 “(B) The agency, after having made a reasonable effort to seek com-
15 ment under subparagraph (A), but no later than 60 days before the expira-
16 tion date of the control number assigned by the Director for the currently
17 approved information collection request, shall—

18 “(i) evaluate the public comments received;

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

20 “(iii) provide to the Director the certification required by section
21 3506(f), including the text of the certification and any additional rel-
22 evant information regarding how the information collection request
23 comports with the principles and requirements of this chapter.

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

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

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

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

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

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

39 “(4) An agency may not make a substantive or material modification
40 to an information collection request after it has been approved by the Direc-

1 tor, unless the modification has been submitted to the Director for review
2 and approval or disapproval under this chapter.”

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

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

11 “(2) Within 60 days after the notice of proposed rulemaking is pub-
12 lished in the Federal Register, the Director may file public comments under
13 the standards set forth in section 3508 on the collection of information re-
14 quirement contained in the proposed rule.

15 “(3) When a final rule is published in the Federal Register, the agency
16 shall explain how any collection of information requirement contained in the
17 final rule responds to the comments, if any, filed by the Director or the pub-
18 lic, or explain the reasons such comments were rejected.

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

23 “(5) No provision in this section shall be construed to prevent the Di-
24 rector, at the discretion of such officer, from—

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

27 “(B) disapproving any collection of information requirement con-
28 tained in an agency rule, if the agency failed to comply with the re-
29 quirements of paragraph (1) of this subsection;

30 “(C) disapproving any collection of information requirement con-
31 tained in a final agency rule, if the Director finds within 60 days after
32 the publication of the final rule that such a collection of information
33 requirement cannot be approved under the standards set forth in sec-
34 tion 3508, after reviewing the agency’s response to the comments of
35 the Director filed under paragraph (2) of this subsection; or

36 “(D) disapproving any collection of information requirement, if the
37 Director determines that the agency has substantially modified, in the
38 final rule, the collection of information requirement contained in the
39 proposed rule and the agency has not given the Director the informa-
40 tion required under paragraph (1) with respect to the modified collec-

1 tion of information requirement, at least 60 days before the issuance
2 of the final rule.

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

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

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

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

13 “(j)(1) If the head of the agency, or the senior official designated
14 under section 3506(b)(1), decides to seek extension of the Director’s ap-
15 proval granted for a currently approved collection of information require-
16 ment, the agency shall, through the notice prescribed in subsection
17 (a)(2)(B) and such other practicable steps as may be reasonable, seek com-
18 ment from the agencies, and the public on the continued need for, and bur-
19 den imposed by, the collection of information requirement.

20 “(2) The agency, after having made a reasonable effort to seek com-
21 ment under paragraph (1), but no later than 60 days before the expiration
22 date of the control number assigned by the Director for the currently ap-
23 proved collection of information requirement, shall—

24 “(A) evaluate the public comments received;

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

26 “(C) provide to the Director the certification required by section
27 3506(f), including the text of the certification and any additional rel-
28 evant information regarding how the collection of information require-
29 ment comports with the principles and requirements of this chapter.

30 “(3) Upon receipt of such certification, and prior to the expiration date
31 of the control number for that collection of information requirement, the Di-
32 rector shall—

33 “(A) ensure that the agency has taken the actions specified in sec-
34 tion 3506(f)(2);

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

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

39 “(D) approve or disapprove the collection of information require-
40 ment under this chapter.

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

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

6 “(B) instruct the agency to undertake a rulemaking within a rea-
7 sonable time limited to consideration of changes to the collection of in-
8 formation requirement and thereafter to submit the collection of infor-
9 mation requirement for approval or disapproval under this chapter.

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

14 “(6) The Director may not approve a collection of information require-
15 ment for a period in excess of 3 years.”

16 **SEC. 5305. PROTECTION FOR WHISTLEBLOWERS OF UNAUTHORIZED**
17 **PAPERWORK BURDEN.**

18 Section 3507(h) of title 44, United States Code, is amended in the sec-
19 ond sentence by inserting before the period “, and any communication relat-
20 ing to a collection of information, the disclosure of which could lead to retal-
21 iation or discrimination against the communicator”.

22 **SEC. 5306. ENHANCING PUBLIC PARTICIPATION.**

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

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

25 (2) by adding at the end thereof:

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

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

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

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

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

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

1 “(B)(i) be coordinated with the agency responsible for the collec-
2 tion of information to which the request relates; and

3 “(ii) be coordinated with the Administrator for Federal Procure-
4 ment Policy, if the request relates to a collection of information appli-
5 cable to an actual or prospective Federal contractor or subcontractor
6 at any tier; and

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

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

10 “(ii) made available to the public upon request (and listed
11 and summarized in the annual report required under section
12 3514), unless confidentiality is requested by the person making
13 the request.”.

14 **SEC. 5307. EXPEDITING REVIEW OF AN AGENCY INFORMATION COL-
15 LECTION REQUEST WITH A REDUCED BURDEN.**

16 Section 3507 of title 44, United States Code (as amended by section
17 5304(b) of this title) is further amended by adding at the end thereof the
18 following new subsection:

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

25 “(1) the information collection request has a current control num-
26 ber; and

27 “(2) the Director determines that the revision—

28 “(A) reduces the burden resulting from the information col-
29 lection request; and

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

32 **Subtitle D—Enhancing Agency Respon-
33 sibility for Sharing and Disseminating
34 Public Information**

35 **SEC. 5401. PRESCRIBING GOVERNMENTWIDE STANDARDS FOR SHAR-
36 ING AND DISSEMINATING PUBLIC INFORMATION.**

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

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

1 “(1) developing policies and practices for agency dissemination
2 and sharing of public information consistent with the agency respon-
3 sibilities under section 3506(g); and

4 “(2) developing policy guidelines that instruct Federal agencies on
5 ways to fulfill agency responsibilities to disseminate and share informa-
6 tion that, to the extent appropriate and practicable—

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

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

11 “(C) avoid establishing, or permitting others to establish, ex-
12 clusive, restricted, or other distribution arrangements that inter-
13 fere with the availability of information dissemination products on
14 a timely and equitable basis; and

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

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

21 “(i) where otherwise required by statute;

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

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

29 **SEC. 5402. AGENCY RESPONSIBILITIES FOR SHARING AND DISSEMI-**
30 **NATING PUBLIC INFORMATION.**

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

33 “(g) The head of each agency shall, to the extent appropriate and prac-
34 ticable, and in conformance with the policy guidelines established under sec-
35 tion 3504(h), establish and maintain a management system for the dissemi-
36 nation and sharing of information that—

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

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

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

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

9 “(5) establishes and maintains inventories of all agency informa-
10 tion dissemination products in conformance with the requirements of
11 section 3511;

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

16 “(7) provides adequate notice when initiating, substantially modi-
17 fying, or terminating significant information dissemination products.”.

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

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

21 **“§ 3511. Inventory systems of information dissemination**
22 **products**

23 “(a) Each agency having significant information dissemination prod-
24 ucts shall establish and maintain a comprehensive inventory of such prod-
25 ucts, which shall include, at a minimum, the title of each such product, an
26 abstract of the contents of each product, the media in which each product
27 is available, and the cost, if any, of each product, subject to any require-
28 ments promulgated pursuant to subsection (c).

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

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

37 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sec-
38 tions for chapter 35 of title 44, United States Code, is amended by amend-
39 ing the item relating to section 3511 to read as follows:

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

1 **Subtitle E—Additional Government**
2 **Information Management Responsibility**

3 **SEC. 5501. STRENGTHENING THE STATISTICAL POLICY AND COORDI-**
4 **NATION FUNCTIONS OF THE DIRECTOR.**

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

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

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

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

14 “(C) ensuring the integrity, objectivity, impartiality and confiden-
15 tiality of the Federal statistical system;

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

21 “(E) coordinating, through the review of budget proposals and as
22 otherwise provided under this chapter, the functions of the Federal
23 Government with respect to gathering, interpreting and sharing statis-
24 tics and statistical information;

25 “(F) developing and implementing governmentwide policies, prin-
26 ciples, standards and guidelines concerning statistical collection proce-
27 dures and methods, statistical data classification, statistical informa-
28 tion presentation and sharing, and such statistical data sources as may
29 be required for the administration of Federal programs;

30 “(G) evaluating statistical program performance and agency com-
31 pliance with governmentwide policies, principles, standards and guide-
32 lines;

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

35 “(I) coordinating the participation of the United States in inter-
36 national statistical activities;

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

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

4 “(L) appointing a chief statistician who is a trained and experi-
5 enced professional to carry out the functions described under this para-
6 graph.

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

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

17 **SEC. 5502. USE OF ELECTRONIC INFORMATION COLLECTION AND DIS-**
18 **SEMINATION TECHNIQUES TO REDUCE BURDEN.**

19 Section 3504(g)(1) of title 44, United States Code, is amended—

20 (1) by inserting “development and” after “overseeing the”; and

21 (2) by inserting “(including standards that improve the ability of
22 agencies to use technology to reduce burden)” after “establishment of
23 standards”.

24 **SEC. 5503. AGENCY IMPLEMENTATION.**

25 Section 3514(a) of title 44, United States Code, is amended—

26 (1) in paragraph (9)(C) by striking out “and” at the end thereof;

27 (2) in paragraph (10)(C) by striking out the period and inserting
28 in lieu thereof a semicolon; and

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

30 “(11) a listing of any increase in the burden imposed on the public
31 during the year covered by the report resulting from a collection of in-
32 formation conducted or sponsored by or for an agency, which was im-
33 posed by such agency—

34 “(A) as specifically mandated by the provision of a statute;

35 or

36 “(B) as necessary to implement a statutory requirement,
37 which requirement shall be identified with particularity; and

38 “(12) a description of each such agency’s efforts in implementing,
39 and plans to implement, the applicable policies, standards and guide-
40 lines with respect to the functions under this chapter; and

1 “(13) a strategic information resources management plan for the
2 Federal Government, developed in consultation with the Administrator
3 of General Services, the Secretary of Commerce, and the Archivist of
4 the United States, that includes an analysis of cross-cutting issues of
5 governmentwide importance.”.

6 **SEC. 5504. AUTOMATIC DATA PROCESSING EQUIPMENT PLAN.**

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

8 (1) by redesignating paragraphs (3), (4), and (5) as paragraphs
9 (4), (5), and (6), respectively; and

10 (2) by inserting after paragraph (2) the following new paragraph:

11 “(3) developing and annually revising, in consultation with the Ad-
12 ministrator of General Services, a 5-year plan for meeting the auto-
13 matic data processing equipment (including telecommunications) and
14 other information technology needs of the Federal Government in ac-
15 cordance with the requirements of sections 110 and 111 of the Federal
16 Property and Administrative Services Act of 1949 (40 U.S.C. 757 and
17 759) and the purposes of this chapter.”.

18 **SEC. 5506. TECHNICAL AND CONFORMING AMENDMENTS.**

19 (a) **DEFINITIONS.**—Section 3502(10) of title 44, United States Code,
20 is amended by striking out “the Federal Housing Finance Board” and in-
21 sserting in lieu thereof “Federal Housing Finance Board”.

22 (b) **REVIEW PERIODS.**—Section 3507(g)(1) of title 44, United States
23 Code, is amended to read as follows: “(1) is needed prior to the expiration
24 of the time periods for public notice and review by the Director pursuant
25 to the requirements of this chapter.”.

26 (c) **DIRECTOR REVIEW.**—Section 3513(a) of title 44, United States
27 Code, is amended in the first sentence by inserting “resources” after “infor-
28 mation”.

29 (d) **RESPONSIVENESS.**—Section 3514(a) of title 44, United States
30 Code, is amended—

31 (1) in paragraph (9)(A) by inserting “and” at the end thereof;

32 (2) in paragraph (9)(B) by striking out the semicolon and insert-
33 ing a period; and

34 (3) by striking out paragraph (9)(C).

35 **Subtitle F—Effective Dates**

36 **SEC. 5601. EFFECTIVE DATES.**

37 (a) **IN GENERAL.**—Except as provided in subsection (b), the provisions
38 of this title shall become effective 120 days after the date of the enactment
39 of this Act.

40 (b) **IN PARTICULAR.**—section 5101 and this section shall become effec-
41 tive 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 Advo-

1 cacy may transmit to the agency a written statement of opposition of
2 the proposed rule.

3 “(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to
4 an agency a statement of opposition to a proposed rule in accordance
5 with paragraph (2), the agency shall publish the statement, together
6 with the response of the agency to the statement, in the Federal Reg-
7 ister at the time of publication of general notice of proposed rule-
8 making for the rule.”

9 (b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United
10 States Code, is amended by inserting “in accordance with section 612(d)”
11 before the period at the end of the last sentence.

12 SEC. 6004. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL
13 FOR ADVOCACY.

14 It is the sense of Congress that the Chief Counsel for Advocacy of the
15 Small Business Administration should be permitted to appear as amicus cu-
16 riae in any action or case brought in a court of the United States for the
17 purpose of reviewing a rule.

18 **TITLE VII—REGULATORY IMPACT**
19 **ANALYSES**

20 SEC. 7001. SHORT TITLE.

21 This title may be cited as the “Administrative Procedure Reform Act
22 of 1995”.

23 SEC. 7002. RULE MAKING NOTICES FOR MAJOR RULES.

24 Section 553 of title 5, United States Code, is amended by adding at
25 the end the following:

26 “(f)(1)(A) The head of an agency shall publish in the Federal Register,
27 at least 90 days before the date of publication of general notice under sub-
28 section (b) for a proposed major rule, a notice of intent to engage in rule
29 making.

30 “(B) A notice under subparagraph (A) for a proposed major rule shall
31 include, to the extent possible, the information required to be included in
32 a Regulatory Impact Analysis for the rule under section 7004(c) (1), (2),
33 and (8) of the Administrative Procedure Reform Act of 1995.

34 “(2) The head of an agency shall include in a general notice under sub-
35 section (b) for a major rule proposed by the agency—

36 “(A) a final Regulatory Impact Analysis for the rule prepared in
37 accordance with section 7004 of the Administrative Procedure Reform
38 Act of 1995; and

39 “(B) clear delineation of all changes in the information included
40 in the final Regulatory Impact Analysis under section 7004(c)(1) and
41 (2) of the Administrative Procedure Reform Act of 1995 from any such

1 information that was included in the notice for the rule under para-
2 graph (1)(B) of this subsection.

3 “(3) In this subsection, the term ‘major rule’ has the meaning given
4 that term in section 7004(b) of the Administrative Procedure Reform Act
5 of 1995.”

6 **SEC. 7003. HEARING REQUIREMENT FOR PROPOSED RULES; EXTEN-**
7 **SION OF COMMENT PERIOD.**

8 (a) **HEARING REQUIREMENT.**—Section 553 of title 5, United States
9 Code, is further amended—

10 (1) in subsection (b), in the matter following paragraph (3), by
11 inserting “(except subsection (g))” after “this subsection”; and

12 (2) by adding after subsection (f) (as added by section 7002 of
13 this title) the following:

14 “(g) If more than 100 interested persons acting individually submit
15 comments to an agency regarding any rule proposed by the agency, the
16 agency shall hold a public hearing on the proposed rule.”

17 (b) **EXTENSION OF COMMENT PERIOD.**—Section 553 of title 5, United
18 States Code, is further amended by adding after subsection (g) (as added
19 by subsection (a)(2) of this section) the following:

20 “(h) If during the 30-day period beginning on the date of publication
21 of notice under subsection (f)(1)(A) for a proposed major rule, or if during
22 the 30-day period beginning on the date of publication or service of notice
23 required by subsection (b) for a proposed rule, more than 100 persons indi-
24 vidualy contact the agency to request an extension of the period for making
25 submissions under subsection (c) pursuant to the notice, the agency—

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

28 “(2) may not adopt the rule until after that additional period.”

29 (c) **RESPONSE TO COMMENTS.**—Section 553(c) of title 5, United States
30 Code, is amended—

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

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

33 “(2) The head of an agency shall publish in the Federal Register with
34 each rule published under section 552(a)(1)(D) of this title, responses to the
35 substance of all comments received by the agency regarding the rule.”

36 **SEC. 7004. REGULATORY IMPACT ANALYSIS.**

37 (a) **APPLICATION OF EXECUTIVE ORDER AS STATUTORY REQUIRE-**
38 **MENT.**—Except as otherwise provided in this section, Executive Order
39 12291 (relating to Federal regulation requirements and regulatory impact
40 analysis), as in effect on September 29, 1993, shall apply to each agency
41 in accordance with the provisions of the Order.

- 1 (b) DEFINITION OF MAJOR RULE IN ORDER.—Notwithstanding section
2 1(b) of the Order, for purposes of subsection (a) of this section, the term
3 “major rule” means any proposed regulatory action—
4 (1) which affects more than 100 persons; or
5 (2) compliance with which will require the expenditure of more
6 than \$1,000,000 by any person which is not a Federal agency.
- 7 (c) CONTENTS OF REGULATORY IMPACT ANALYSES.—In lieu of the in-
8 formation specified in section 3(d) of the Order, each preliminary and final
9 Regulatory Impact Analysis required under section 3 of the Order for a rule
10 shall contain the following:
11 (1) An explanation of the necessity, appropriateness and reason-
12 ableness of the rule.
13 (2) A description of the current condition that the rule will ad-
14 dress and how that condition will be affected by the rule.
15 (3) A statement that the rule does not conflict with nor duplicate
16 any other rule, or an explanation of why the conflict or duplication ex-
17 ists.
18 (4) A statement of whether the rule is in accord with or in conflict
19 with any legal precedent.
20 (5) A statement of the factual, scientific, or technical basis for the
21 agency’s determination that the rule will accomplish its intended pur-
22 pose.
23 (6) A statement that describes and, to the extent practicable,
24 quantifies the risks to human health or the environment to be ad-
25 dressed by the rule.
26 (7) A demonstration that the rule provides the least costly or least
27 intrusive approach for meeting its intended purpose.
28 (8) A description of any alternative approaches considered by the
29 agency or suggested by interested persons and the reasons for their re-
30 jection.
31 (9) An estimate of the nature and number of persons to be regu-
32 lated or affected by the rule.
33 (10) An estimate of the economic costs of the rule, including those
34 incurred by persons in complying with the rule.
35 (11) An evaluation of the costs versus the benefits derived from
36 the rule, including evaluation of how those benefits outweigh the cost.
37 (12) Whether the rule will require onsite inspections.
38 (13) An estimate of the paperwork burden on persons regulated
39 or affected by the rule, such as the number of forms, impact state-
40 ments, surveys, and other documents required to be completed by the
41 person under the rule.

1 (14) Whether persons will be required by the rule to maintain any
2 records which will be subject to inspection.

3 (15) Whether persons will be required by the rule to obtain li-
4 censes, permits, or other certifications, and the fees and fines associ-
5 ated therewith.

6 (16) Whether persons will be required by the rule to appear before
7 the agency.

8 (17) Whether persons will be required by the rule to disclose infor-
9 mation on materials or processes, including trade secrets.

10 (18) Whether persons will be required by the rule to report any
11 particular type of incidents.

12 (19) Whether persons will be required by the rule to adhere to de-
13 sign or performance standards.

14 (20) Whether persons may need to retain or utilize any lawyer, ac-
15 countant, engineer, or other professional consultant in order to comply
16 with the regulations.

17 (21) An estimate of the costs to the agency for implementation
18 and enforcement of the regulations.

19 (22) Whether the agency can be reasonably expected to implement
20 the rule with the current level of appropriations.

21 (23) A statement that any person may submit comments on the
22 Regulatory Impact Analysis to the Administrator of the Office of Infor-
23 mation and Regulatory Affairs.

24 (d) DEFINITIONS.—In this section—

25 (1) the term "Order" means Executive Order 12291, as in effect
26 on September 29, 1993; and

27 (2) each of the terms "agency", "regulation", and "rule" has the
28 meaning given that term in section 1 of the Order, except that the term
29 "agency" includes an independent agency.

30 **SEC. 7006. ADDITIONAL RESPONSIBILITIES OF DIRECTOR OF THE OF-**
31 **FICE OF MANAGEMENT AND BUDGET.**

32 An agency may not adopt a major rule unless the final Regulatory Im-
33 pact Analysis for the rule is approved in writing by the Director of the Of-
34 fice of Management and Budget or by an individual designated by the Di-
35 rector for that purpose.

36 **SEC. 7006. STANDARD OF CLARITY.**

37 The head of an agency may not publish in the Federal Register any
38 proposed major rule, summary of a proposed major rule, or Regulatory Im-
39 pact Analysis unless the Director of the Office of Management and Budget
40 certifies that the proposed major rule, summary, or Analysis—

1 (1) is written in a reasonably simple and understandable manner
2 and is easily readable;

3 (2) is written to provide adequate notice of the content of the rule,
4 summary, or Analysis to affected persons and interested persons that
5 have some subject matter expertise;

6 (3) conforms to commonly accepted principles of grammar;

7 (4) contains only sentences that are as short as practical and or-
8 ganized in a sensible manner; and

9 (5) to the extent practicable, does not contain any double nega-
10 tives, confusing cross references, convoluted phrasing, unreasonably
11 complex language, or term of art or word with multiple meanings that
12 may be misinterpreted and is not defined in the rule, summary, or
13 analysis, respectively.

14 **SEC. 7007. REPORT BY OIRA.**

15 The Administrator of the Office of Information and Regulatory Affairs
16 shall submit a report to the Congress no later than 12 months after the
17 date of the enactment of this Act containing an analysis of rule making pro-
18 cedures of Federal agencies and an analysis of the impact of those rule
19 making procedures on the regulated public and regulatory process.

20 **SEC. 7008. CIVIL ACTION.**

21 Whoever is adversely affected by any conduct in violation of this title
22 may in a civil action obtain appropriate relief. The court may award a pre-
23 vailing plaintiff in an action under this section a reasonable attorney's fees
24 as a part of the costs.

25 **SEC. 7009. DEFINITIONS.**

26 For purposes of this title—

27 (1) except as provided in section 7004(d)(2), each of the terms
28 "agency", "rule", and "rule making" has the meaning given that term
29 in section 551 of title 5, United States Code; and

30 (2) the term "major rule" has the meaning given that term in sec-
31 tion 7004(b).

32 **TITLE VIII—PROTECTION AGAINST**
33 **FEDERAL REGULATORY ABUSE**
34 **Subtitle A—Citizens' Regulatory Bill of**
35 **Rights**

36 **SEC. 8101. CITIZENS' REGULATORY BILL OF RIGHTS.**

37 (a) **IN GENERAL.**—Except as provided in subsection (c), each person
38 that is the target of a Federal investigative or enforcement action shall,
39 upon the initiation of an inspection, investigation, or other official proceed-
40 ing directed against that person, have the right—

41 (1) to remain silent;

- 1 (2) to be advised as to whether the person has a right to a war-
 2 rant;
 3 (3) to be warned that statements can be used against them;
 4 (4) to have an attorney or accountant present;
 5 (5) to be informed as to the scope and purpose of the agency ac-
 6 tion;
 7 (6) to be present at the inspection, investigation, or proceeding;
 8 (7) to be reimbursed for unreasonable damages;
 9 (8) to be free of unreasonable seizures of property or assets; and
 10 (9) to receive attorneys fees and other expenses from the Govern-
 11 ment when the Government commences a frivolous civil action against
 12 such person, except that nothing in this paragraph shall be construed
 13 to affect the Equal Access to Justice Act.

14 (b) AGENCY RULES.—Each agency or other authority of the Federal
 15 Government with respect to which this section applies shall make appro-
 16 priate rules within 90 days after the date of the enactment of this Act to
 17 implement this section in the context of that agency's functions.

18 (c) LIMITATION ON APPLICATION OF REQUIREMENTS.—A requirement
 19 of this section shall not apply if compliance with the requirement would sub-
 20 stantially delay responding to an imminent danger to person or property.

21 **Subtitle B—Private Sector Whistleblowers'** 22 **Protection**

23 **SEC. 8201. SHORT TITLE.**

24 This subtitle may be cited as the "Private Sector Whistleblowers' Pro-
 25 tection Act of 1995".

26 **SEC. 8202. PURPOSE.**

27 The Federal regulatory system should be implemented consistent with
 28 the principle that any person subject to Government regulation should be
 29 protected against reprisal for disclosing information that the person believes
 30 is indicative of—

- 31 (1) violation or inconsistent application of any law, rule, regula-
 32 tion, policy, or internal standard;
 33 (2) arbitrary action or other abuse of authority;
 34 (3) mismanagement;
 35 (4) waste or misallocation of resources;
 36 (5) inconsistent, discriminatory or disproportionate enforcement
 37 proceedings;
 38 (6) endangerment of public health or safety;
 39 (7) personal favoritism; and
 40 (8) coercion for partisan political purposes;
 41 by any agency or its employees.

1 SEC. 8203. COVERAGE.

2 This subtitle shall apply to:

3 (1) Any agency of the Federal Government as defined in section
4 551 of title 5, United States Code.5 (2) Any agency of a State government that exercises authority
6 under Federal law, or that exercises authority under State law estab-
7 lishing a program approved by a Federal agency as a substitute for or
8 supplement to a program established by Federal law.

9 SEC. 8204. PROHIBITED REGULATORY PRACTICES.

10 (a) DEFINED.—For purposes of this subtitle, “prohibited regulatory
11 practice” means any action described in subsection (b)(i), (ii), or (iii) of this
12 section.

13 (b) PROHIBITION.—(1) No employee of an Agency who has authority—

14 (A) to take or direct other employees to take,

15 (B) to recommend, or

16 (C) to approve,

17 any regulatory action shall—

18 (i) take or fail to take, or threaten to take or fail to take,

19 (ii) recommend or direct that others take or fail to take, or threat-
20 en to so recommend or direct, or21 (iii) approve the taking or failing to take, or threaten to so ap-
22 prove,23 such regulatory action because of any disclosure by a person subject to the
24 action, or by any other person, of information that the person believed indic-
25 ative of—26 (I) violation or inconsistent application of any law, rule, regula-
27 tion, policy, or internal standard;

28 (II) arbitrary action or other abuse of authority;

29 (III) mismanagement;

30 (IV) waste or misallocation of resources;

31 (V) inconsistent, discriminatory or disproportionate enforcement;

32 (VI) endangerment of public health or safety;

33 (VII) personal favoritism; or

34 (VIII) coercion for partisan political purposes;

35 by any agency or its employees.

36 (2) An action shall be deemed to have been taken, not taken, approved,
37 or recommended because of the disclosure of information within the mean-
38 ing of paragraph (1) if the disclosure of information was a contributing fac-
39 tor to the decision to take, not to take, to approve, or to recommend.

1 SEC. 8205. PROHIBITED REGULATORY PRACTICE AS A DEFENSE TO
2 AGENCY ACTION.

3 (a) IN GENERAL.—In any administrative or judicial action or proceed-
4 ing, formal or informal, by an agency to create, apply or enforce any obliga-
5 tion, duty or liability under any law, rule or regulation against any person,
6 the person may assert as a defense that the agency or one or more employ-
7 ees of the agency have engaged in a prohibited regulatory practice with re-
8 spect to the person or to a related entity in connection with the action or
9 proceeding.

10 (b) COMPLIANCE.—If the existence of a prohibited regulatory practice
11 is established, the person may be required to comply with the obligation,
12 duty or liability to the extent compliance is required of and enforced against
13 other persons similarly situated, but no penalty, fine, damages, costs or
14 other obligation except compliance shall be imposed on the person.

15 SEC. 8206. ENFORCEMENT.

16 (a) CIVIL PENALTY.—Any agency, and any employee of an agency, en-
17 gaging in a prohibited regulatory practice may be assessed a civil penalty
18 of not more than \$25,000 for each such practice. In the case of a continu-
19 ing prohibited regulatory practice, each day that the practice continues shall
20 be deemed a separate practice.

21 (b) PROCEDURES.—The President shall, by regulation, establish proce-
22 dures providing for the administrative enforcement of the requirements of
23 subsection (a) of this section.

24 SEC. 8207. CITIZEN SUITS.

25 (a) COMMENCEMENT.—Any person injured or threatened by a prohib-
26 ited regulatory practice may commence a civil action on his own behalf
27 against any person or agency alleged to have engaged in or threatened to
28 engage in such practice.

29 (b) JURISDICTION AND VENUE.—Any action under subsection (a) of
30 this section shall be brought in the district court for any district in which
31 the alleged prohibited regulatory practice occurred or in which the alleged
32 injury occurred. The district court shall have jurisdiction, without regard to
33 the amount in controversy or the citizenship of the parties, to—

34 (1) restrain any agency or person who has engaged or is engaging
35 in any prohibited regulatory practice;

36 (2) order the cancellation or remission of any penalty, fine, dam-
37 ages, or other monetary assessment that resulted from a prohibited
38 regulatory practice;

39 (3) order the rescission of any settlement that resulted from a pro-
40 hibited regulatory practice;

1 (4) order the issuance of any permit or license that has been de-
2 nied or delayed as a result of a prohibited regulatory practice;

3 (5) order the agency and/or the employee engaging in a prohibited
4 regulatory practice to pay to the injured person such damages as may
5 be necessary to compensate the person for any harm resulting from the
6 practice, including damages for—

7 (A) injury to, deterioration of, or destruction of real or per-
8 sonal property;

9 (B) loss of profits from idle or underutilized resources, and
10 from business forgone;

11 (C) costs incurred, including costs of compliance where appro-
12 priate;

13 (D) loss in value of a business;

14 (E) reasonable legal, consulting and expert witness fees; or

15 (F) payments to third parties;

16 (6) order the payment of punitive damages, in an amount not to
17 exceed \$25,000 for each such prohibited regulatory practice, provided
18 that, in the case of a continuing prohibited regulatory practice, each
19 day that the practice continues shall be deemed a separate practice.

20 **SEC. 8208. OFFICE OF THE SPECIAL COUNSEL.**

21 (a) **REQUEST FOR INVESTIGATION.**—Any person who has reason to be-
22 lieve that any employee of any agency has engaged in a prohibited regu-
23 latory practice may request the Special Counsel established by section 1211
24 of title 5, United States Code, to investigate.

25 (b) **POWERS.**—The Special Counsel shall have the same power to inves-
26 tigate prohibited regulatory practices that it has to investigate prohibited
27 personnel practices pursuant to section 1212 of title 5, United States Code.

28 **TITLE IX—PRIVATE PROPERTY RIGHTS**
29 **PROTECTIONS AND COMPENSATION**

30 **SEC. 9001. COMPENSATION FOR TAKING OF PRIVATE PROPERTY.**

31 (a) **ELIGIBILITY.**—

32 (1) **IN GENERAL.**—A private property owner is entitled to receive
33 compensation in accordance with this section for any reduction in the
34 value of property owned by the private property owner, that—

35 (A) is a consequence of a limitation on an otherwise lawful
36 use of the property imposed by a final agency action; and

37 (B) is measurable and not negligible.

38 (2) **REDUCTIONS DEEMED NOT NEGLIGIBLE.**—For purposes of
39 paragraph (1)(B), a reduction in the value of property of 10 percent
40 or more is deemed not negligible.

1 (b) REQUEST FOR COMPENSATION.—Within 90 days after receipt of
2 notice of a final agency action with respect to which compensation is re-
3 quired under subsection (a), a private property owner may submit to the
4 head of the agency a request in writing for compensation under this section.

5 (c) AGENCY OFFER.—Within 180 days after the receipt of a request
6 for compensation submitted in accordance with subsection (b) with respect
7 to an agency action, the head of the agency shall stay the agency action
8 and provide to the private property owner an offer to compensate the pri-
9 vate property owner for the difference between—

10 (1) the fair market value of the property determined based on the
11 value of the property if the agency action were not implemented; minus

12 (2) the fair market value of the property determined based on the
13 value of the property if the agency action were implemented.

14 (d) PRIVATE PROPERTY OWNERS' RESPONSE.—A private property
15 owner shall have 60 days after the date of receipt of an offer under sub-
16 section (c) to accept or to reject the offer.

17 (e) ARBITRATION.—If a private property owner rejects the offer under
18 subsection (c), the private property owner may submit the matter for arbi-
19 tration to an arbitrator appointed by the head of the agency from a list of
20 arbitrators submitted by the American Arbitration Association. The arbitra-
21 tor shall determine the amount of compensation to which the property
22 owner is entitled under this section, in accordance with subsection (c) (1)
23 and (2). The arbitration shall be conducted in accordance with the real es-
24 tate valuation arbitration rules of that association. For purposes of this sec-
25 tion, an arbitration is binding on the head of an agency and the private
26 property owner as to the amount, if any, of compensation owed to the pri-
27 vate property owner under this section.

28 (f) PAYMENT.—The head of an agency shall pay a private property
29 owner any compensation required under the terms of an offer of the agency
30 head that is accepted by the private property owner in accordance with sub-
31 section (d), or under a decision of an arbiter under subsection (e), by not
32 later than 60 days after the date of the acceptance or the date of the issu-
33 ance of the decision, respectively.

34 **SEC. 9002. DEFINITIONS.**

35 In this title:

36 (1) The term "private property owner" means a non-Federal per-
37 son (other than an officer, employee, agent, department, or instrumen-
38 tality of a State, municipality, or political subdivision of a State, or a
39 State, municipality, or subdivision of a State) that—

40 (A) owns property referred to in paragraph (2) (A) or (B);

41 or

1 (B) holds property referred to in paragraph (2)(C).

2 (2) The term "property" means—

3 (A) land;

4 (B) any interest in land; and

5 (C) any proprietary water right.

6 (3) The term "agency action" has the meaning given that term
7 in section 551(13) of title 5, United States Code.

8 **TITLE X—FEDERAL MANDATE**
9 **ACCOUNTABILITY AND REFORM**

10 **SEC. 10001. SHORT TITLE.**

11 This title may be cited as the "Federal Mandate Accountability and
12 Reform Act of 1995".

13 **SEC. 10002. DEFINITIONS.**

14 For purposes of this title—

15 (1) **FEDERAL INTERGOVERNMENTAL MANDATE DEFINED.**—The
16 term "Federal intergovernmental mandate" means—

17 (A) any provision in a bill or joint resolution before Congress
18 or in a proposed or final Federal regulation that—

19 (i) would impose a duty that is enforceable by adminis-
20 trative, civil, or criminal penalty or by injunction (other than
21 a condition of Federal assistance or a duty arising from par-
22 ticipation in a voluntary Federal program, except as stated in
23 subparagraph (B)), upon States, local governments, or tribal
24 governments, or

25 (ii) would reduce or eliminate the amount of authoriza-
26 tion of Federal financial assistance that will be provided to
27 States, local governments, or tribal governments for the pur-
28 pose of complying with any such duty; or

29 (B) any provision in a bill or joint resolution before Congress
30 or in a proposed or final Federal regulation that relates to a then-
31 existing Federal program under which \$500,000,000 or more is
32 provided annually to States, local governments, and tribal govern-
33 ments under entitlement authority (as that term is defined in sec-
34 tion 3(9) of the Congressional Budget Act of 1974 (2 U.S.C.
35 622(9))), if—

36 (i)(I) the bill or joint resolution or regulation would in-
37 crease the stringency of conditions of assistance to States,
38 local governments, or tribal governments under the program,
39 or

40 (II) would place caps upon, or otherwise decrease, the
41 Federal Government's responsibility to provide funding to

1 States, local governments, or tribal governments under the
2 program; and

3 (ii) the States, local governments, or tribal governments
4 that participate in the Federal program lack authority under
5 that program to amend their financial or programmatic re-
6 sponsibilities to continue providing required services that are
7 affected by the bill or joint resolution or implementing regula-
8 tion.

9 (2) FEDERAL PRIVATE SECTOR MANDATE DEFINED.—The term
10 “Federal private sector mandate” means any provision in a bill or joint
11 resolution before Congress that (A) would impose a duty that is en-
12 forceable by administrative, civil, or criminal penalty or by injunction
13 (other than a condition of Federal assistance or a duty arising from
14 participation in a voluntary Federal program) upon the private sector,
15 or (B) would reduce or eliminate the amount of authorization of Fed-
16 eral financial assistance that will be provided to the private sector for
17 the purpose of complying with any such duty.

18 (3) INTERGOVERNMENTAL DIRECT COSTS AND PRIVATE SECTOR
19 DIRECT COSTS DEFINED.—

20 (A) The term “intergovernmental direct costs” means the ag-
21 gregate estimated amounts that all States, local governments, and
22 tribal governments will be required to spend in order to comply
23 with a Federal intergovernmental mandate, or, in the case of a bill
24 or joint resolution referred to in paragraph (1)(A)(ii), the amount
25 of Federal financial assistance eliminated or reduced.

26 (B) The term “private sector direct costs” means the aggre-
27 gate amounts that the private sector will be required to spend in
28 order to comply with a Federal private sector mandate.

29 (C) Each of the terms “intergovernmental direct costs” and
30 “private sector direct costs” shall not include amounts that it is
31 estimated that the States, local governments, tribal governments,
32 and the private sector would spend—

33 (i) to comply with or carry out all applicable Federal,
34 State, local, and tribal laws and regulations adopted before
35 the adoption of the Federal mandate; or

36 (ii) to continue to carry out State, local governmental,
37 and tribal governmental programs, in the case of govern-
38 ments, or their business or other activities, in the case of the
39 private sector established at the time of adoption of the Fed-
40 eral mandate;

1 (D) Each of the terms "intergovernmental direct costs" and
2 "private sector direct costs" shall not include expenditures to the
3 extent that they will be offset by any direct savings to be enjoyed
4 by the States, local governments, tribal governments, and the pri-
5 vate sector as a result of—

6 (i) their compliance with the Federal mandate; or

7 (ii) other changes in Federal law or regulation that are
8 enacted or adopted in the same bill or joint resolution or prop-
9 posed or final Federal regulation and that govern the same
10 activity as is affected by the Federal mandate.

11 (E) Intergovernmental direct costs and private sector direct
12 costs shall be determined on the assumption that States, local gov-
13 ernments, tribal governments, and the private sector will take all
14 reasonable steps necessary to mitigate the costs resulting from the
15 Federal mandate, and will comply with applicable standards of
16 practice and conduct established by recognized professional or
17 trade associations.

18 (4) AMOUNT OF FEDERAL FINANCIAL ASSISTANCE DEFINED.—The
19 amount of "Federal financial assistance" means—

20 (A) the amount of budget authority (as defined in section
21 3(2)(A) of the Congressional Budget Act of 1974 (2 U.S.C.
22 622(2)(A))) of any Federal grant assistance, and

23 (B) the subsidy amount (as defined as "cost" in section
24 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C.
25 661a(5)(a)) of any Federal program providing loan guarantees or
26 direct loans.

27 (5) OTHER DEFINITIONS.—

28 (A) AGENCY DEFINED.—The term "agency" has the meaning
29 stated in section 551(1) of title 5, United States Code, but does
30 not include independent regulatory agencies, as defined by section
31 3502(10) of title 44, United States Code.

32 (B) DIRECTOR DEFINED.—The term "Director" means the
33 Director of the Congressional Budget Office.

34 (C) LOCAL GOVERNMENT DEFINED.—The term "local govern-
35 ment" has the same meaning as in section 6501(6) of title 31,
36 United States Code.

37 (D) REGULATION OR RULE DEFINED.—The term "regula-
38 tion" or "rule" has the meaning of "rule" as defined in section
39 601(2) of title 5, United States Code.

40 (E) SMALL GOVERNMENT DEFINED.—The term "small gov-
41 ernment" means any small governmental jurisdiction as defined in

1 section 601(5) of title 5, United States Code, and any tribal gov-
2 ernment.

3 (F) STATE DEFINED.—The term “State” has the same mean-
4 ing as in section 6501(9) of title 31, United States Code.

5 (G) PRIVATE SECTOR DEFINED.—The term “private sector”
6 means individuals, partnerships, associations, corporations, busi-
7 ness trusts, or legal representatives, organized groups of individ-
8 uals, and educational, and other nonprofit institutions.

9 (H) FEDERAL MANDATE DEFINED.—For the purposes of sub-
10 title A of this title, the term “Federal mandate” means a Federal
11 intergovernmental mandate or a Federal private sector mandate,
12 as defined in this section. For the purposes of subtitle B of this
13 title, the term “Federal mandate” means a Federal intergovern-
14 mental mandate, as defined in this section.

15 **SEC. 10003. EXCLUSIONS.**

16 Anything in this title to the contrary notwithstanding, this title shall
17 not apply to—

18 (1) any provision in a bill or joint resolution before Congress and
19 any provision in a proposed or final Federal regulation that—

20 (A) enforces Constitutional rights of individuals;

21 (B) establishes or enforces any statutory rights that prohibit
22 discrimination on the basis of race, religion, gender, national ori-
23 gin, or handicapped or disability status;

24 (C) requires compliance with accounting and auditing proce-
25 dures with respect to grants or other money or property provided
26 by the United States Government;

27 (D) provides for emergency assistance or relief at the request
28 of any State, local government, or tribal government or any official
29 of any of them; or

30 (E) is necessary for the national security or the ratification
31 or implementation of international treaty obligations; or

32 (2) any legislation that the President designates as emergency leg-
33 islation and that the Congress so designates in statute.

34 **Subtitle A—Legislative Accountability and**
35 **Reform**

36 **SEC. 10101. DUTIES OF CONGRESSIONAL COMMITTEES.**

37 (a) COMMITTEE REPORT.—

38 (1) REGARDING FEDERAL MANDATES.—When a committee of au-
39 thorization of the House of Representatives or the Senate reports a bill
40 or joint resolution of public character that includes any Federal man-

1 date, the committee shall issue a report to accompany the bill or joint
2 resolution containing—

3 (A) an analysis, prepared in consultation with the Director,
4 including an identification and description of any Federal man-
5 dates in the bill or joint resolution, including the expected direct
6 costs to States, local governments, tribal governments, and the pri-
7 vate sector required to comply with the Federal mandate;

8 (B)(i) a statement of the amount, if any, of increase in au-
9 thorization of appropriations under existing Federal financial as-
10 sistance programs, or of authorization of appropriations for new
11 Federal financial assistance, provided by the bill or joint resolution
12 and usable for activities of States, local governments, or tribal
13 governments subject to Federal intergovernmental mandates; and

14 (ii) a statement of whether the committee intends that the
15 Federal intergovernmental mandates be partly or entirely un-
16 funded, and, if so, the reasons for that intention;

17 (C) a qualitative, and if possible, a quantitative assessment
18 of costs and benefits anticipated from the Federal intergovern-
19 mental mandates (such as, but not limited to, the enhancement of
20 health and safety and the protection of the natural environment);

21 (D) any existing sources of Federal assistance in addition to
22 those identified in subparagraph (B)(i) that may assist States,
23 local governments, and tribal governments in meeting the direct
24 costs of the Federal intergovernmental mandates; and

25 (E) an identification of one or more of the following: reduc-
26 tions in authorization of existing appropriations, a reduction in di-
27 rect spending, or an increase in receipts (consistent with the
28 amount identified in subparagraph (B)(i)).

29 (2) REGARDING PREEMPTION.—When a committee of authoriza-
30 tion of the House of Representatives or the Senate reports a bill or
31 joint resolution of public character, the committee report accompanying
32 the bill or joint resolution shall contain, if relevant to the bill or joint
33 resolution, an explicit statement of whether or not the bill or joint reso-
34 lution is intended to preempt any State, local, or tribal law, and if so,
35 an explanation of the reasons for enacting such preemption.

36 (b) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of
37 authorization of the House of Representatives or the Senate reports a bill
38 or joint resolution of a public character, the committee shall promptly pro-
39 vide the bill or joint resolution to the Director and shall identify to the Di-
40 rector any Federal mandates contained in the bill or resolution.

1 (c) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—Upon re-
2 ceiving a statement (including any supplemental statement) from the Direc-
3 tor pursuant to section 10102(c), a committee of the House of Representa-
4 tives or the Senate shall publish the statement in the committee report ac-
5 companying the bill or joint resolution to which the statement relates if the
6 statement is available soon enough to be included in the printed report. If
7 the statement is not published in the report, or if the bill or joint resolution
8 to which the statement relates is expected to be considered by the House
9 of Representatives or the Senate before the report is published, the commit-
10 tee shall cause the statement, or a summary thereof, to be published in the
11 Congressional Record in advance of floor consideration of the bill or joint
12 resolution.

13 SEC. 10102. DUTIES OF THE DIRECTOR.

14 (a) STUDIES.—

15 (1) As early as practicable in each new Congress, any committee
16 of the House of Representatives or the Senate which anticipates that
17 the committee will consider any proposed legislation establishing,
18 amending, or reauthorizing any Federal program likely to have a sig-
19 nificant budgetary impact on States, local governments, or tribal gov-
20 ernments, or likely to have a significant financial impact on the private
21 sector, including any legislative proposal submitted by the executive
22 branch likely to have such budgetary or financial impact, shall request
23 that the Director initiate a study of the proposed legislation in order
24 to develop information that may be useful in analyzing the costs of any
25 Federal mandates and of any unfunded Federal intergovernmental
26 mandates that may be included in the proposed legislation.

27 (2) In conducting the study under paragraph (1), the Director
28 shall—

29 (A) solicit and consider information or comments from elected
30 officials (including their designated representatives) of States,
31 local governments, and tribal governments, designated representa-
32 tives of the private sector, and such other persons as may provide
33 helpful information or comments,

34 (B) consider establishing advisory panels of elected officials
35 (including their designated representatives) of States, local govern-
36 ments, and tribal governments, designated representatives of the
37 private sector, and other persons if the Director determines, in his
38 discretion, that such advisory panels would be helpful in perform-
39 ing the Director's responsibilities under this section, and

40 (C) consult with the relevant committees of the House of
41 Representatives and of the Senate.

1 (b) CONSULTATION.—The Director shall, at the request of any commit-
2 tee of the House of Representatives or of the Senate, consult with and assist
3 such committee in analyzing the budgetary impact of any proposed legisla-
4 tion that may have a significant budgetary impact on State, local, or tribal
5 governments, or the financial impact of any proposed legislation that may
6 have a significant financial impact on the private sector.

7 (c) STATEMENTS ON NONAPPROPRIATIONS BILLS AND JOINT RESOLU-
8 TIONS.—

9 (1) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED
10 BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of
11 a public character reported by any committee of authorization of the
12 House of Representatives or of the Senate, the Director shall prepare
13 and submit to the committee a statement as follows:

14 (A) INTERGOVERNMENTAL DIRECT COSTS BELOW THRESH-
15 OLD.—If the Director estimates that the intergovernmental direct
16 costs of all Federal intergovernmental mandates in the bill or joint
17 resolution will not equal or exceed \$50,000,000 (adjusted annually
18 for inflation by the Consumer Price Index) in the fiscal year in
19 which it (as well as any necessary implementing regulation) is to
20 be effective or in any of the 4 fiscal years following such fiscal
21 year, the Director shall so state and shall briefly explain the basis
22 of the estimate.

23 (B) INTERGOVERNMENTAL DIRECT COSTS ABOVE THRESH-
24 OLD.—If the Director estimates that the intergovernmental direct
25 costs of all Federal intergovernmental mandates in the bill or joint
26 resolution will equal or exceed \$50,000,000 (adjusted annually for
27 inflation by the Consumer Price Index) in the fiscal year in which
28 it (as well as any necessary implementing regulation) is to be ef-
29 fective or in any of the 4 fiscal years following such fiscal year,
30 the Director shall so state and shall briefly explain the basis of
31 the estimate, and—

32 (i) shall include estimates (and shall briefly explain the
33 basis of the estimates) of—

34 (I) the total amount of intergovernmental direct
35 costs of complying with the Federal intergovernmental
36 mandates in the bill or joint resolution; and

37 (II) the amount, if any, of increase in authorization
38 of appropriations under existing Federal financial assist-
39 ance programs, or of authorization of appropriations for
40 new Federal financial assistance; provided by the bill or
41 joint resolution and usable by States, local governments,

1 or tribal governments for activities subject to the Federal
2 intergovernmental mandates;

3 (ii) shall also include estimates, if and to the extent that
4 the Director determines that such estimates are reasonably
5 feasible, of—

6 (I) future costs of Federal intergovernmental man-
7 dates to the extent that they significantly differ from or
8 extend beyond the time period of the estimate referred
9 to in the first clause of this subparagraph (B); and

10 (II) any disproportionate budgetary effects of Fed-
11 eral intergovernmental mandates and of any Federal fi-
12 nancial assistance in the bill or joint resolution upon any
13 particular regions of the country or particular States,
14 local governments, tribal governments, or urban or rural
15 or other types of communities; and

16 (iii) shall also state any amounts appropriated in the
17 prior fiscal year to fund the activities subject to the Federal
18 intergovernmental mandate.

19 (2) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS
20 AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public
21 character reported by any committee of authorization of the House of
22 Representatives or of the Senate, the Director shall prepare and submit
23 to the committee a statement as follows:

24 (A) PRIVATE SECTOR DIRECT COSTS BELOW THRESHOLD.—

25 If the Director estimates that the direct private sector costs of all
26 Federal private sector mandates in the bill or joint resolution will
27 not equal or exceed \$200,000,000 (adjusted annually for inflation
28 by the Consumer Price Index) in the fiscal year in which it (as
29 well as any necessary implementing regulation) is to be effective
30 or in any of the 4 fiscal years following such fiscal year, the Direc-
31 tor shall so state and shall briefly explain the basis of the esti-
32 mate.

33 (B) PRIVATE SECTOR DIRECT COSTS ABOVE THRESHOLD.—If

34 the Director estimates that the private sector direct costs of all
35 Federal private sector mandates in the bill or joint resolution will
36 equal or exceed \$200,000,000 (adjusted annually for inflation by
37 the Consumer Price Index) in the fiscal year in which it (as well
38 as any necessary implementing regulation) is to be effective or in
39 any of the 4 fiscal years following such fiscal year, the Director
40 shall so state and shall briefly explain the basis of the estimate,
41 and—

1 (i) shall include estimates (and shall briefly explain the
2 basis of the estimates) of—

3 (I) the total amount of private sector direct costs of
4 complying with the Federal private sector mandates in
5 the bill or joint resolution; and

6 (II) the amount, if any, of increase in authorization
7 of appropriations under existing Federal financial assist-
8 ance programs, or of authorization of appropriations for
9 new Federal financial assistance, provided by the bill or
10 joint resolution and usable by the private sector for ac-
11 tivities subject to the Federal private sector mandates;

12 (ii) shall also include estimates, if and to the extent that
13 the Director determines that such estimates are reasonably
14 feasible, of—

15 (I) future costs of Federal private sector mandates
16 to the extent that they differ significantly from or extend
17 beyond the time period of the estimate referred to in the
18 first clause of this subparagraph;

19 (II) any disproportionate financial effects of Federal
20 private sector mandates and of any Federal financial as-
21 sistance in the bill or joint resolution upon particular in-
22 dustries or sectors of the economy, States, regions, and
23 urban or rural or other types of communities; and

24 (III) the effect of Federal private sector mandates
25 in the bill or joint resolution on the national economy,
26 including on productivity, economic growth, full employ-
27 ment, creation of productive jobs, and international com-
28 petitiveness of American goods and services;

29 (iii) shall also state any amounts appropriated in the
30 prior fiscal year to fund activities subject to the Federal pri-
31 vate sector mandate.

32 (3) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE RE-
33 PORTS.—If the Director has prepared a statement that includes the de-
34 termination described in paragraph (1)(B) for a bill or joint resolution,
35 and if that bill or joint resolution is passed in an amended form (in-
36 cluding if passed by one House as an amendment in the nature of a
37 substitute for the language of a bill or joint resolution from the other
38 House) or is reported by a committee of conference in an amended
39 form, the committee of conference shall ensure, to the greatest extent
40 practicable, that the Director shall prepare a supplemental statement
41 for the bill or joint resolution. The requirements of section 10103 shall

1 not apply to the publication of any supplemental statement prepared
2 under this subsection.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be
4 appropriated to the Congressional Budget Office to carry out the provisions
5 of this title, and for no other purpose. \$8,200,000 for fiscal year 1995,
6 \$8,600,000 for fiscal year 1996, \$8,900,000 for fiscal year 1997, and
7 \$9,300,000 for fiscal year 1998.

8 (e) TECHNICAL AMENDMENT.—The State and Local Cost Estimate Act
9 of 1981, Public Law 97-108, is hereby repealed.

10 SEC. 10103. POINT OF ORDER.

11 (a) IN GENERAL IN THE HOUSE OF REPRESENTATIVES OR SENATE.—
12 It shall not be in order in the House of Representatives or Senate to con-
13 sider any bill or joint resolution that is reported by any committee of au-
14 thorization unless (based upon a ruling of the presiding Officer in the case
15 of the Senate)—

16 (1) a committee has published a statement of the Director in ac-
17 cordance with section 10101(c) prior to such consideration; and

18 (2) in the case of a bill or joint resolution containing Federal
19 intergovernmental mandates, either—

20 (A) the intergovernmental direct costs of all Federal intergov-
21 ernmental mandates in the bill or joint resolution are estimated
22 not to equal or exceed \$50,000,000 (adjusted annually for infla-
23 tion by the Consumer Price Index) in the fiscal year in which it
24 (as well as any necessary implementing regulation) is to be effec-
25 tive or in any of the 4 fiscal years following such fiscal year, or

26 (B)(i) the increase in authorization of appropriations under
27 existing Federal financial assistance programs, or of authorization
28 of appropriations for new Federal financial assistance, provided by
29 the bill or joint resolution and usable by States, local governments,
30 or tribal governments for activities subject to the Federal intergov-
31 ernmental mandates is at least equal to the estimated amount of
32 intergovernmental direct costs of the Federal intergovernmental
33 mandates; and

34 (ii) the committee of jurisdiction has identified in the bill or
35 joint resolution one or more of the following: a reduction in au-
36 thorization of existing appropriations, a reduction in direct spend-
37 ing, or an increase in receipts (consistent with the amount identi-
38 fied in clause (i).

39 (b) WAIVER.—

1 (1) IN GENERAL.—Subsection (a) may be waived or suspended in
2 the House of Representatives or Senate only by the affirmative vote of
3 a majority of its Members voting.

4 (2) SPECIAL RULE IN THE HOUSE OF REPRESENTATIVES.—It
5 shall not be in order in the House of Representatives to consider a rule
6 or order that waives the application of subsection (a) to a bill or joint
7 resolution reported by a committee of authorization.

8 (c) AMENDMENT TO RAISE AUTHORIZATION LEVEL.—Notwithstanding
9 the terms of subsection (a), it shall not be out of order pursuant to this
10 section to consider a bill or joint to which an amendment is proposed and
11 agreed to that would raise the amount of authorization of appropriations
12 to a level sufficient to satisfy the requirements of subsections (a)(2)(B) and
13 (a)(2)(C), nor shall it be out of order to consider such an amendment.

14 SEC. 10104. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

15 (a) MOTIONS TO STRIKE IN THE COMMITTEE OF THE WHOLE.—Clause
16 5 of rule XXIII of the Rules of the House of Representatives is amended
17 by adding at the end the following:

18 “(c) In the consideration of any measure for amendment in the Com-
19 mittee of the Whole containing any Federal mandate (as defined in section
20 10003(1) of the Federal Mandate Accountability and Reform Act of 1995)
21 that does not meet the requirements of sections 10003(a)(1) and (2) of that
22 Act, it shall always be in order, unless specifically waived by terms of a rule
23 governing consideration of that measure, to move to strike such Federal
24 mandate.”.

25 (b) COMMITTEE REPORTS REGARDING ROLL CALL VOTES ON FED-
26 ERAL MANDATES.—Clause 2(1)(2) of rule XI of the Rules of the House of
27 Representatives is amended by adding at the end the following:

28 “(C) With respect to each rollcall vote on an amendment regarding any
29 Federal mandate (as defined in section 10003(1) of the Federal Mandate
30 and Accountability and Reform Act of 1995), the total number of votes cast
31 for, and the total number of votes cast against, that amendment and the
32 name of each Member voting for and each Member voting against such
33 amendment, and whether by proxy or in person, and the names of those
34 members present but not voting, shall be included in the committee report.”.

35 (c) SEVEN-DAY LAYOVER.—Clause 2(1)(6) of rule XI of the Rules of
36 the House of Representatives is amended—

37 (1) by striking “(6) A” and by inserting inserting “(6)(A) Except
38 as provided by subdivision (B),”

39 (2) in its third sentence, by striking “(A)” and inserting “(i)” and
40 by striking “(B)” and inserting “(ii)”; and

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

1 “(B) A measure or matter reported by any committee that contains
2 any Federal mandate (as defined in section 10003(1) of the Federal Man-
3 date and Accountability and Reform Act of 1995) that does not meet the
4 requirements of sections 10103(a)(1) and (2) of that Act shall not be con-
5 sidered in the House until the seventh calendar day, excluding Saturdays,
6 Sundays, and legal holidays, on which the report of that committee upon
7 the measure or matter has been available to the Members of the House.”.

8 (d) COMMITTEE ON RULES REPORTS ON WAIVED POINTS OF
9 ORDER.—Clause 1 of rule XI of the Rules of the House of Representatives
10 is amended by adding at the end the following:

11 “(e) By January 2 of each odd-numbered year, the Committee on Rules
12 shall submit to the House a report identifying all waivers of points of order
13 relating to Federal mandates (as defined in section 10003(1) of the Federal
14 Mandate Accountability and Reform Act of 1995), including an explanation
15 setting forth the following information respecting each such waiver:

16 “(1) The bill or joint resolution for which the waiver was granted.

17 “(2) The justification made by the committee requesting the waiver
18 of the need for the waiver.

19 “(3) An explanation of why the Committee on Rules granted the
20 waiver.

21 “(4) The economic impact of that bill or joint resolution on State,
22 local, and tribal governments.”.

23 **SEC. 10106. EXERCISE OF RULEMAKING POWERS.**

24 The provisions of sections 10101, 10102, 10103, and 10104 are en-
25 acted by Congress—

26 (1) as an exercise of the rulemaking powers of the House of Rep-
27 resentatives and the Senate, and as such they shall be considered as
28 part of the rules of the House of Representatives and the Senate, re-
29 spectively, and such rules shall supersede other rules only to the extent
30 that they are inconsistent therewith; and

31 (2) with full recognition of the constitutional right of the House
32 of Representatives and the Senate to change such rules at any time,
33 in the same manner, and to the same extent as in the case of any other
34 rule of the House of Representatives or the Senate, respectively.

35 **SEC. 10106. EFFECTIVE DATE.**

36 This subtitle shall apply to bills and joint resolutions reported by a
37 committee on or after October 1, 1995.

1 **Subtitle B—Regulatory Accountability and**
2 **Reform**

3 **SEC. 10201. REGULATORY PROCESS.**

4 (a) Each agency shall assess the effects of Federal regulations on
5 States, local governments, and tribal governments, including specifically the
6 availability of resources to carry out any mandates in those regulations, and
7 seek to minimize those burdens that uniquely or significantly affect such
8 governmental entities, consistent with achieving statutory and regulatory ob-
9 jectives.

10 (b) Each agency shall develop an effective process to permit elected of-
11 ficials (including their designated representatives) and other representatives
12 of States, local governments, and tribal governments to provide meaningful
13 and timely input in the development of regulatory proposals containing sig-
14 nificant Federal mandates. Such a process shall be consistent with all appli-
15 cable laws.

16 (c)(1) Before establishing any regulatory requirements that might sig-
17 nificantly or uniquely affect small governments, agencies shall have devel-
18 oped a plan under which the agency shall—

19 (A) provide notice of the contemplated requirements to any poten-
20 tially affected small governments,

21 (B) seek the views of, and consult with, officials of affected small
22 governments pursuant to subsection (b), and

23 (C) inform, educate, and advise small governments on compliance
24 with the requirements.

25 (2) There are hereby authorized to be appropriated to each agency to
26 carry out the provisions of this section, and for no other purpose, such sums
27 as are necessary.

28 **SEC. 10202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY**
29 **ACTIONS.**

30 (a) **IN GENERAL.**—Before promulgating any final rule that includes
31 any Federal mandates upon States, local governments, or tribal govern-
32 ments that may result in the expenditures by States, local governments, or
33 tribal governments, in the aggregate, of \$100,000,000 or more (annually ad-
34 justed by the Consumer Price Index) in any one year, and before promulgat-
35 ing any general notice of proposed rulemaking that is likely to result in pro-
36 mulgation of any such rule, the agency shall prepare a written statement
37 containing—

38 (1) estimates by the agency, including the underlying analysis, of
39 the anticipated costs to States, local governments, and tribal govern-
40 ments of complying with the mandate, and of the extent to which such

1 costs may be paid with funds provided by the Federal Government or
2 otherwise paid through Federal financial assistance;

3 (2) estimates by the agency, if and to the extent that the agency
4 determines that such estimates are reasonably feasible, of—

5 (A) the costs of mandates in the regulation that will be borne
6 in various future time periods; and

7 (B) any disproportionate budgetary effects of the mandates
8 upon any particular regions of the country or particular States,
9 local governments, tribal governments, or rural or other types of
10 communities;

11 (3) a qualitative, and if possible, a quantitative assessment of costs
12 and benefits anticipated from the Federal mandate (such as, but not
13 limited to, the enhancement of health and safety and the protection of
14 the natural environment); and

15 (4)(A) a description of the extent of the agency's prior consulta-
16 tion with elected representatives (including their designated representa-
17 tives) of the affected States, local governments, and tribal governments
18 and of other affected parties, (B) a summary of the comments and con-
19 cerns that were presented by States, local governments, or tribal gov-
20 ernments either orally or in writing to the agency, (C) a summary of
21 the agency's evaluation of those comments and concerns, and (D) the
22 agency's position supporting the need to issue the regulation containing
23 the mandate (considering, among other things, the extent to which
24 costs may or may not be paid with funds provided by the Federal Gov-
25 ernment).

26 (b) **PROMULGATION.**—In promulgating a general notice of proposed
27 rulemaking or a final rule for which a statement under subsection (a) is re-
28 quired, the agency shall include in the promulgation a summary of the infor-
29 mation contained in the statement.

30 (c) **PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.**—Any
31 agency may prepare any statement required by subsection (a) in conjunction
32 with or as a part of any other statement or analysis, provided that the
33 statement or analysis satisfies the provisions of subsection (a).

34 **SEC. 10203. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.**

35 (a) The Director of the Office of Management and Budget shall collect
36 from agencies the statements prepared under section 10202 and provide
37 copies of them to the Director of the Congressional Budget Office promptly
38 after promulgation of the general notice of proposed rulemaking or of the
39 final rule for which the statement was prepared.

1 (b) Each agency shall provide to the Director of the Congressional
2 Budget Office such information and assistance as he may reasonably re-
3 quest to assist him in performing his responsibilities under this title.

4 **SEC. 10204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY.**

5 (a) The Director of the Office of Management and Budget, in consulta-
6 tion with Federal agencies, shall establish pilot programs in at least 2 agen-
7 cies to test innovative, and more flexible regulatory approaches that—

8 (1) reduce reporting and compliance burdens on small govern-
9 ments; and

10 (2) meet overall statutory goals and objectives.

11 (b) The pilot program shall focus on rules in effect or proposed rules,
12 or a combination thereof.

13 **Subtitle C—Judicial Review**

14 **SEC. 10301. JUDICIAL REVIEW.**

15 Any statement or report prepared under this title, any compliance or
16 noncompliance with the provisions of this title, and any determination con-
17 cerning the applicability of the provisions of this title shall not be subject
18 to judicial review. The provisions of this title shall not create any right or
19 benefit, substantive or procedural, enforceable by any person in any admin-
20 istrative or judicial action. No ruling or determination under this title shall
21 be considered by any court in determining the intent of Congress or for any
22 other purpose.

23 **Subtitle D—Baseline Study**

24 **SEC. 10401. BASELINE STUDY OF COSTS AND BENEFITS.**

25 (a) No later than 6 months after the date of enactment of this Act,
26 the Director of the Bureau of the Census, in consultation with the Director,
27 shall begin a study to examine the measurement and definition issues in-
28 volved in calculating the total costs and benefits to States, local govern-
29 ments, and tribal governments of compliance with Federal law. The study
30 shall consider the feasibility of measuring indirect costs and benefits as well
31 as direct costs and benefits of the Federal, State, local, and tribal relation-
32 ship. The study shall consider how to measure both the direct and indirect
33 benefits of Federal financial assistance and tax benefits to States, local gov-
34 ernments, and tribal governments.

35 (b) There are authorized to be appropriated to the Bureau of the Cen-
36 sus to carry out the purposes of this subtitle, \$1,000,000 for fiscal year
37 1995 and \$1,000,000 for fiscal year 1996.

1 **Subtitle E—Limitation on Implementation**
2 **of Federal Mandates; Review and Mon-**
3 **itoring of Unfunded Federal Mandates**
4 **and Implementation of Act**

5 **SEC. 10501. SHORT TITLE.**

6 This subtitle may be cited as the "Federal Mandate and Community
7 Assistance Reform Act".

8 **SEC. 10502. LIMITATION ON IMPLEMENTATION OF FEDERAL MAN-**
9 **DATES.**

10 A Federal agency that is responsible for implementing, enforcing, or
11 otherwise applying a Federal mandate shall apply the Federal mandate only
12 to the extent that the head of the agency determines that State and local
13 governments to which the Federal mandate would apply have been provided
14 Federal resources equivalent to the intergovernmental direct costs of the
15 Federal mandate.

16 **SEC. 10503. REPORT ON UNFUNDED FEDERAL MANDATES BY ADVI-**
17 **SORY COMMISSION ON INTERGOVERNMENTAL RELA-**
18 **TIONS.**

19 (a) **IN GENERAL.**—The Advisory Commission on Intergovernmental
20 Relations shall in accordance with this section—

21 (1) investigate and review on a regular basis the role of unfunded
22 Federal mandates in intergovernmental relations and their impact on
23 local, State, and Federal government objectives and responsibilities;
24 and

25 (2) study and make recommendations to the President and the
26 Congress regarding—

27 (A) a process by which State and local governments can partici-
28 pate in meeting national domestic objectives without the burden
29 created by unfunded Federal mandates, including recommenda-
30 tions for funding the Federal mandates imposed after the date of
31 the enactment of this Act on State and local governments;

32 (B) allowing flexibility for State and local governments in
33 complying with specific unfunded Federal mandates for which
34 terms of compliance are unnecessarily rigid or complex;

35 (C) reconciling any 2 or more unfunded Federal mandates
36 which impose contradictory or inconsistent requirements;

37 (D) terminating unfunded Federal mandates which are dupli-
38 cative, obsolete, or lacking in practical utility;

39 (E) suspending, on a temporary basis, unfunded Federal
40 mandates which are not vital to public health and safety and

1 which compound the fiscal difficulties of State and local govern-
2 ments, including recommendations for triggering such suspension;

3 (F) consolidating or simplifying unfunded Federal mandates,
4 or the planning or reporting requirements of such mandates, in
5 order to reduce duplication and facilitate compliance by State and
6 local governments with those mandates; and

7 (G) establishing common Federal definitions or standards to
8 be used by State and local governments in complying with un-
9 funded Federal mandates that use different definitions or stand-
10 ards for the same terms or principles.

11 Each recommendation under paragraph (2) shall, to the extent practicable,
12 identify the specific unfunded Federal mandate to which the recommenda-
13 tion applies.

14 (b) CRITERIA.—

15 (1) IN GENERAL.—The Advisory Commission shall establish cri-
16 teria for making recommendations under subsection (a).

17 (2) ISSUANCE OF PROPOSED CRITERIA.—The Advisory Commis-
18 sion shall issue proposed criteria under this subsection not later than
19 45 days after the date of the enactment of this Act, and thereafter pro-
20 vide a period of 30 days for submission by the public of comments on
21 the proposed criteria.

22 (3) FINAL CRITERIA.—Not later than 45 days after the date of
23 issuance of proposed criteria, the Advisory Commission shall—

24 (A) consider comments on the proposed criteria received
25 under paragraph (2);

26 (B) adopt and incorporate in final criteria any recommenda-
27 tions submitted in those comments that the Advisory Commission
28 determines will aid the Advisory Commission in carrying out its
29 duties under this section; and

30 (C) issue final criteria under this subsection.

31 (c) PRELIMINARY REPORT.—

32 (1) IN GENERAL.—Not later than 9 months after the date of the
33 enactment of this Act, the Advisory Commission shall—

34 (A) prepare and publish a preliminary report on its activities
35 under this subtitle, including preliminary recommendations pursu-
36 ant to subsection (a);

37 (B) publish in the Federal Register a notice of availability of
38 the preliminary report; and

39 (C) provide copies of the preliminary report to the public
40 upon request.

1 (2) PUBLIC HEARINGS.—The Advisory Commission shall hold pub-
 2 lic hearings on the preliminary recommendations contained in the pre-
 3 liminary report of the Advisory Commission under this subsection.

4 (d) FINAL REPORT.—Not later than 3 months after the date of the
 5 publication of the preliminary report under subsection (c), the Advisory
 6 Commission shall submit to the Congress, including the ranking minority
 7 party member of each of the Committee on Government Operations of the
 8 House of Representatives and the Committee on Governmental Affairs of
 9 the Senate, and the President a final report on the findings, conclusions,
 10 and recommendations of the Advisory Commission under this section.

11 SEC. 10504. MONITORING IMPLEMENTATION OF ACT.

12 (a) IN GENERAL.—The Advisory Commission shall monitor and evalu-
 13 ate the implementation of this title, including by conducting such hearings,
 14 and consulting with such Federal, State, local, and tribal governments, as
 15 the Advisory Commission considers appropriate for obtaining information
 16 and views about the purpose, implementation, and results of this title.

17 (b) BIENNIAL REPORT.—The Advisory Commission shall submit a re-
 18 port to the President and the Congress every 2 years which—

19 (1) presents the findings of the Advisory Commission under sub-
 20 section (a); and

21 (2) presents recommendations for improving the implementation of
 22 this title, including regarding any need for amending this title.

23 SEC. 10505. SPECIAL AUTHORITIES OF ADVISORY COMMISSION.

24 (a) EXPERTS AND CONSULTANTS.—For purposes of carrying out this
 25 subtitle, the Advisory Commission may procure temporary and intermittent
 26 services of experts or consultants under section 3109(b) of title 5, United
 27 States Code.

28 (b) DETAIL OF STAFF OF FEDERAL AGENCIES.—Upon request of the
 29 Executive Director of the Advisory Commission, the head of any Federal de-
 30 partment or agency may detail, on a reimbursable basis, any of the person-
 31 nel of that department or agency to the Advisory Commission to assist it
 32 in carrying out this subtitle.

33 (c) CONTRACT AUTHORITY.—The Advisory Commission may, subject to
 34 appropriations, contract with and compensate government and private agen-
 35 cies or persons for property and services used to carry out its duties under
 36 this subtitle.

37 SEC. 10506. DEFINITIONS.

38 In this subtitle:

39 (1) ADVISORY COMMISSION.—The term “Advisory Commission”
 40 means the Advisory Commission on Intergovernmental Relations.

41 (2) FEDERAL MANDATE.—The term “Federal mandate”—

1 (A) subject to subparagraph (B), means a requirement under
 2 Federal statute or regulation that a State or local government, or
 3 both, undertake an activity or provide a service; and

4 (B) does not include any Federal statute or regulation that—

- 5 (i) enforces the constitutional rights of individuals, or
 6 (ii) establishes or enforces any statutory prohibition
 7 against discrimination on the basis of race, religion, gender,
 8 national origin, age, or handicapped or disability status.

9 (3) UNFUNDED FEDERAL MANDATE.—The term “unfunded Fed-
 10 eral mandate” means—

11 (A) a Federal mandate other than one that relates to a pro-
 12 gram described in subparagraph (B)(i), and—

- 13 (i) which requires that a State or local government, or
 14 both, undertake an activity or provide a service; and
 15 (ii) for which the Federal Government does not provide
 16 sufficient funds to undertake such activity or provide such
 17 service; or

18 (B) a Federal mandate—

19 (i) that relates to a Federal program under which
 20 \$500,000,000 or more is provided annually to State and local
 21 governments under entitlement authority (as defined in sec-
 22 tion 622(9) of title 2, United States Code),

23 (ii) which requires that a State or local government, or
 24 both, undertake an activity or provide a service; and

25 (iii)(I) with respect to which the failure to undertake such ac-
 26 tivity or provide such service would result in a reduction of Fed-
 27 eral financial or technical assistance to the State or local govern-
 28 ment; or

29 (II) would impose costs on a State or local government that
 30 exceed the amount of Federal financial assistance provided to the
 31 State or local government under the program.

32 **SEC. 10507. AUTHORIZATION OF APPROPRIATIONS.**

33 There are authorized to be appropriated to the Advisory Commission—

34 (1) to carry out section 10503, \$500,000; and

35 (2) to carry out section 10504, \$200,000 for each of fiscal years
 36 1995, 1996, 1997, 1998, and 1999.

1 **TITLE XI—ESTABLISHMENT OF FED-**
2 **ERAL MANDATE BUDGET COST CON-**
3 **TROL**

4 **SEC. 11001. AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF**
5 **1974.**

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

10 **“PART B—FEDERAL MANDATE BUDGET COST**
11 **CONTROL**

12 **SEC. 321. OMB—CBO REPORTS.**

13 **“(a) OMB—CBO INITIAL REPORT.**—Within 1 year after the date of en-
14 actment of this section, OMB and CBO shall jointly issue a report to the
15 President and each House of Congress that contains the following:

16 **“(1) For the first budget year beginning after the issuance of this**
17 **report, a projection of the aggregate direct cost to States and local gov-**
18 **ernments of complying with all Federal mandates in effect immediately**
19 **before issuance of the report containing the projection for that budget**
20 **year of the effect of current-year Federal mandates into the budget**
21 **year and the outyears based on those mandates.**

22 **“(2) A calculation of the estimated aggregate direct cost to States**
23 **and local governments of compliance with all Federal mandates as a**
24 **percentage of the gross domestic product (GDP).**

25 **“(3) The estimated marginal cost (measured as a reduction in es-**
26 **timated gross domestic product) to States and local governments of**
27 **compliance with all Federal mandates in excess of the cap (to be deter-**
28 **mined under paragraph (5)) allowable for the sixth year following the**
29 **budget year and subsequent fiscal years.**

30 **“(4) The effect on the domestic economy of different types of Fed-**
31 **eral mandates.**

32 **“(5) The appropriate level of personnel, administrative overhead,**
33 **and programmatic savings that should be achieved on a fiscal year by**
34 **fiscal year basis by Federal agencies that issue mandates with direct**
35 **costs to States and local governments through the reduction of such**
36 **aggregate costs to States and local governments by 6.5 percent for the**
37 **budget year (as measured against the aggregate mandate baseline for**
38 **the first budget year to which this part applies) and by 6.5 percent in-**
39 **crements for each of the outyears (until the aggregate level of such**

1 costs does not exceed 3 percent of the estimated gross domestic product
2 for the same fiscal year as the estimated costs that will be incurred).

3 “(6) Recommendations for budgeting, technical, and estimating
4 changes to improve the Federal mandate budgeting process.

5 “(b) UPDATE REPORTS.—OMB and CBO shall issue update reports on
6 September 15th of the fifth year beginning after issuance of the initial re-
7 port and at 5-year intervals thereafter containing all the information re-
8 quired in the initial report, but based upon all Federal mandates in effect
9 immediately before issuance of the most recent update report.

10 “(c) INITIAL BASELINE REPORT.—Within 30 days after the date of en-
11 actment of this section, OMB and CBO shall jointly issue a report to the
12 President and each House of Congress that contains an initial aggregate
13 mandate baseline for the first budget year that begins at least 120 days
14 after that date of enactment. That baseline will be a projection of the aggre-
15 gate direct cost to States and local governments of complying with all Fed-
16 eral mandates in effect immediately before issuance of the report containing
17 the projection for that budget year of the effect of current-year Federal
18 mandates into the budget year and the outyears based on those mandates.
19 “SEC. 322. AGGREGATE MANDATE BASELINE.

20 “(a) IN GENERAL.—For the first budget year beginning after the date
21 of enactment of this section and for every other fiscal year thereafter, the
22 aggregate mandate baseline refers to a projection of the aggregate direct
23 cost to States and local governments of complying with all Federal man-
24 dates in effect immediately before issuance of the report containing the pro-
25 jection for that budget year of the effect of current-year Federal mandates
26 into the budget year and the outyears based on those mandates. However,
27 in the case of each of the succeeding fiscal years, the baseline shall be ad-
28 justed for the estimated growth during that year in the gross domestic prod-
29 uct (GDP).

30 “(b) OMB-CBO AGGREGATE MANDATE BASELINE REPORTS.—(1)
31 The first budget year for which there shall be an aggregate mandate base-
32 line shall be the budget year to which the initial OMB-CBO baseline report
33 issued under section 321(c) pertains.

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

38 “SEC. 323. RECONCILIATION AND ALLOCATIONS.

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

1 “(1) changes in laws, regulations, and rules necessary to reduce
2 the aggregate direct cost to States and local governments of complying
3 with all Federal mandates by 6.5 percent for the budget year (as meas-
4 ured against the aggregate mandate baseline for the first budget year
5 to which this part applies) and by 6.5 percent increments for each of
6 the outyears (until the aggregate level of such costs does not exceed
7 3 percent of the estimated gross domestic product for the same fiscal
8 year as the estimated costs that will be incurred) for Federal agencies
9 that issue mandates producing direct costs to States and local govern-
10 ments; and

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

15 “(A) In the first outyear, one-fourth of the percent of reduc-
16 tion in mandate authority from the aggregate mandate base.

17 “(B) In the second outyear, one-third of the percent of reduc-
18 tion in mandate authority from the aggregate mandate base.

19 “(C) In the third, fourth, fifth, and sixth years following the
20 budget year, one-half of the percent of reduction in mandate au-
21 thority from the aggregate mandate base.

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

24 “(b) ALLOCATION OF TOTALS.—(1) The Committees on the Budget of
25 the House of Representatives and the Senate shall each allocate aggregate
26 2-year mandate authority among each committee of its House and by major
27 functional category for the first budget year beginning after the date of en-
28 actment of this section and for the second, fourth, and sixth years following
29 the budget year and then every other year thereafter.

30 “(2) As soon as practicable after receiving an allocation under para-
31 graph (1), each committee shall subdivide its allocation among its sub-
32 committees or among programs over which it has jurisdiction.

33 “(c) POINT OF ORDER.—(1) It shall not be in order in the House of
34 Representatives or the Senate to consider any bill or resolution, or amend-
35 ment thereto, which would cause the appropriate allocation made under sub-
36 section (b) for a fiscal year of mandate authority to be exceeded.

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

40 “(d) DETERMINATIONS BY BUDGET COMMITTEES.—For purposes of
41 this section, the level of mandate authority for a fiscal year shall be deter-

1 mined by the Committee on the Budget of the House of Representatives or
2 the Senate, as the case may be.

3 “(e) EXCEEDING ALLOCATION TOTALS.—Whenever any Committee of
4 the House of Representatives exceeds its allocation of aggregate 2-year
5 mandate authority under subsection (b)(1), any Member of the House of
6 Representatives may offer a bill in the House (which shall be highly privi-
7 leged, unamendable, and debateable for 30 minutes) which shall only pro-
8 hibit the issuance of mandates by any agency under the jurisdiction of that
9 committee for the fiscal years covered by that allocation until that commit-
10 tee eliminates its breach.

11 “SEC. 324. ANALYSIS OF MANDATES COSTS BY CONGRESSIONAL BUDG-
12 ET OFFICE.

13 “CBO shall prepare for each bill or resolution of a public character re-
14 ported by any committee of the House of Representatives or the Senate (ex-
15 cept the Committee on Appropriations of each House), and submit to such
16 committee—

17 “(1) an estimate of the costs which would be incurred by States
18 and local governments in carrying out or complying with such bill or
19 resolution in the fiscal year in which it is to become effective and in
20 each of the 4 fiscal years following such fiscal year, together with the
21 basis of each such estimate; and

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

25 “SEC. 325. DEFINITIONS.

26 “As used in this part:

27 “(1) The term ‘CBO’ refers to the Director of the Congressional
28 Budget Office.

29 “(2) The term ‘OMB’ refers to the Director of the Office of Man-
30 agement and Budget.

31 “(3) The term ‘costs’ when referring to ‘mandates’ means the di-
32 rect cost to States and local governments of complying with Federal
33 mandates.

34 “(4) The term ‘direct costs’ means (recognizing that direct costs
35 are not the only costs associated with Federal mandates) all expendi-
36 tures occurring as a direct result of complying with Federal mandates,
37 except those applying to the military or agency organization, manage-
38 ment, and personnel.”

39 SEC. 11002. PRESIDENT’S ANNUAL BUDGET SUBMISSIONS.

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

1 “(29) a mandate authority budget analysis of the aggregate direct
2 cost to States and local governments of complying with all current and
3 proposed Federal mandates and proposals for complying with section
4 323 of the Congressional Budget Act of 1974 for the budget year and
5 the outyears.”

6 **SEC. 11003. ESTIMATION AND DISCLOSURE OF COSTS OF FEDERAL**
7 **MANDATES.**

8 **(a) COSTS TO STATE AND LOCAL GOVERNMENTS.**—Chapter 6 of title
9 5, United States Code, popularly known as the “Regulatory Flexibility Act”,
10 is amended—

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

12 “(d) Each initial regulatory flexibility analysis for a proposed rule that
13 establishes or implements a new Federal mandate shall also contain a de-
14 scription of the nature and amount of monetary costs that will be incurred
15 by State and local governments in complying with the Federal mandate.”;

16 (2) in section 604(a)—

17 (A) in paragraph (2) by striking “and” after the semicolon;

18 (B) in paragraph (3) by striking the period and inserting “;
19 and”;

20 (C) by adding at the end the following:

21 “(4) in the case of an analysis for a rule that establishes or imple-
22 ments a new Federal mandate, a statement of the nature and amount
23 of monetary costs that will be incurred by State and local governments
24 in complying with the Federal mandate.”; and

25 (3) in section 607 by inserting before the period the following: “,
26 except that estimates of monetary costs under sections 603(d) and
27 604(a)(4) shall only be in the form of a numerical description”.

28 **(b) AGENCY REPORTS.**—Each agency that under chapter 6 of title 5,
29 United States Code, prepares an initial regulatory flexibility analysis for a
30 proposed rule that establishes or implements a new Federal mandate shall
31 at the same time submit to each House of Congress and to CBO and OMB
32 a cost estimate and cost/benefit analysis of any new Federal mandate that
33 would have an aggregate direct cost to State and local governments of at
34 least \$10,000,000 for any fiscal year.

35 **TITLE XII—TAXPAYER DEBT BUY-DOWN**

36 **SEC. 12001. DESIGNATION OF AMOUNTS FOR REDUCTION OF PUBLIC**
37 **DEBT.**

38 **(a) IN GENERAL.**—Subchapter A of chapter 61 of the Internal Revenue
39 Code of 1986 (relating to returns and records) is amended by adding at the
40 end the following new part:

1 with amounts from such Trust Fund shall be canceled and retired and may
2 not be reissued.”

3 (b) CLERICAL AMENDMENT.—The table of sections for such subchapter
4 is amended by adding at the end the following new item:

“Sec. 9512. Public Debt Reduction Trust Fund.”

5 (c) EFFECTIVE DATE.—The amendments made by this section shall
6 apply to amounts received after the date of the enactment of this Act.

7 SEC. 12003. TAXPAYER-GENERATED SEQUESTRATION OF FEDERAL
8 SPENDING TO REDUCE THE PUBLIC DEBT.

9 (a) SEQUESTRATION TO REDUCE THE PUBLIC DEBT.—Part C of the
10 Balanced Budget and Emergency Deficit Control Act of 1985 is amended
11 by adding after section 253 the following new section:

12 “SEC. 253A. SEQUESTRATION TO REDUCE THE PUBLIC DEBT.

13 “(a) SEQUESTRATION.—Notwithstanding sections 255 and 256, within
14 15 days after Congress adjourns to end a session, and on the same day as
15 sequestration (if any) under sections 251, 252, and 253, but after any se-
16 questration required by those sections, there shall be a sequestration equiva-
17 lent to the estimated aggregate amount designated under section 6097 of
18 the Internal Revenue Code of 1986 for the last taxable year ending before
19 the beginning of that session of Congress, as estimated by the Department
20 of the Treasury on May 1 and as modified by the total of (1) any amounts
21 by which net discretionary spending is reduced by legislation below the dis-
22 cretionary spending limits (or, in the absence of such limits, any net deficit
23 change from the baseline amount calculated under section 257, except that
24 such baseline for fiscal year 1996 and thereafter shall be based upon fiscal
25 year 1995 enacted appropriations less any 1995 sequesters) and (2) the net
26 deficit change that has resulted from direct spending legislation.

27 “(b) APPLICABILITY.—

28 “(1) IN GENERAL.—Except as provided by paragraph (2), each ac-
29 count of the United States shall be reduced by a dollar amount cal-
30 culated by multiplying the level of budgetary resources in that account
31 at that time by the uniform percentage necessary to carry out sub-
32 section (a). All obligational authority reduced under this section shall
33 be done in a manner that makes such reductions permanent.

34 “(2) EXEMPT ACCOUNTS.—No order issued under this part may—

35 “(A) reduce benefits payable the old-age, survivors, and dis-
36 ability insurance program established under title II of the Social
37 Security Act;

38 “(B) reduce payments for net interest (all of major functional
39 category 900); or

- 1 “(C) make any reduction in the following accounts:
 2 “Federal Deposit Insurance Corporation, Bank Insur-
 3 ance Fund;
 4 “Federal Deposit Insurance Corporation, FSLIC Resolu-
 5 tion Fund;
 6 “Federal Deposit Insurance Corporation, Savings Asso-
 7 ciation Insurance Fund;
 8 “National Credit Union Administration, credit union
 9 share insurance fund; or
 10 “Resolution Trust Corporation.”.

11 (b) REPORTS.—Section 254 of the Balanced Budget and Emergency
 12 Deficit Control Act of 1985 is amended—

13 (1) in subsection (a), by inserting before the item relating to Au-
 14 gust 10 the following:

15 “May 1 . . . Department of Treasury report to Congress estimating
 16 amount of income tax designated pursuant to section 6097 of the Internal
 17 Revenue Code of 1986.”;

18 (2) in subsection (d)(1), by inserting “, and sequestration to re-
 19 duce the public debt.”;

20 (3) in subsection (d), by redesignating paragraph (5) as paragraph
 21 (6) and by inserting after paragraph (4) the following new paragraph:

22 “(5) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—
 23 The preview reports shall set forth for the budget year estimates for
 24 each of the following:

25 “(A) The aggregate amount designated under section 6097 of
 26 the Internal Revenue Code of 1986 for the last taxable year end-
 27 ing before the budget year.

28 “(B) The amount of reductions required under section 253A
 29 and the deficit remaining after those reductions have been made.

30 “(C) The sequestration percentage necessary to achieve the
 31 required reduction in accounts under section 253A(b).”; and

32 (4) in subsection (g), by redesignating paragraphs (4) and (5) as
 33 paragraphs (5) and (6), respectively, and by inserting after paragraph
 34 (3) the following new paragraph:

35 “(4) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—
 36 The final reports shall contain all of the information contained in the
 37 public debt taxation designation report required on May 1.”.

38 (c) EFFECTIVE DATE.—Notwithstanding section 275(b) of the Bal-
 39 anced Budget and Emergency Deficit Control Act of 1985, the expiration
 40 date set forth in that section shall not apply to the amendments made by

1 this section. The amendments made by this section shall cease to have any
2 effect after the first fiscal year during which there is no public debt.

3 TITLE XIII—SMALL BUSINESS 4 INCENTIVES

5 SEC. 13001. INCREASE IN UNIFIED ESTATE AND GIFT TAX CREDITS.

6 (a) ESTATE TAX CREDIT.—

7 (1) Subsection (a) of section 2010 of the Internal Revenue Code
8 of 1986 (relating to unified credit against estate tax) is amended by
9 striking “\$192,800” and inserting “the applicable credit amount”.

10 (2) Section 2010 of such Code is amended by redesignating sub-
11 section (c) as subsection (d) and by inserting after subsection (b) the
12 following new subsection:

13 “(c) APPLICABLE CREDIT AMOUNT.—For purposes of this section—

14 “(1) IN GENERAL.—The applicable credit amount is the amount
15 of the tentative tax which would be determined under the rate schedule
16 set forth in section 2001(c) if the amount with respect to which such
17 tentative tax is to be computed were the applicable amount determined
18 in accordance with the following table:

“In the case of estates of decedents dying, and gifts made: during	The applicable amount is:
1996	\$700,000
1997	\$725,000
1998 or thereafter	\$750,000.

20 “(3) COST-OF-LIVING ADJUSTMENTS.—In the case of any decedent
21 dying in a calendar year after 1996, the \$750,000 amount set forth
22 in paragraph (1) shall be increased by an amount equal to—

23 “(A) \$750,000, multiplied by

24 “(B) the cost-of-living adjustment determined under section
25 1(f)(3) for such calendar year by substituting ‘calendar year 1995’
26 for ‘calendar year 1992’ in subparagraph (B) thereof.

27 Any increase determined under the preceding sentence shall be rounded
28 to the nearest multiple of \$1,000.”

29 (3) Paragraph (1) of section 6018(a) of such Code is amended by
30 striking “\$600,000” and inserting “\$750,000 (adjusted as provided in
31 section 2010(c)(2))”.

32 (b) UNIFIED GIFT TAX CREDIT.—Paragraph (1) of section 2505(a) of
33 such Code is amended by striking “\$192,800” and inserting “the applicable
34 credit amount in effect under section 2010(c) for such calendar year”.

35 (c) EFFECTIVE DATE.—The amendments made by this section shall
36 apply to the estates of decedents dying, and gifts made, after December 31,
1995.

1 SEC. 13002. INCREASE IN EXPENSE TREATMENT FOR SMALL BUSI-

2

3 (a) GENERAL INCREASE.—Paragraph (1) of section 179(b) of the Internal
4 Revenue Code of 1986 (relating to dollar limitation) is amended by striking
5 “\$17,500” and inserting “\$25,000”.

6 (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall
7 apply to taxable years beginning after December 31, 1995.

8 SEC. 13003. CLARIFICATION OF DEFINITION OF PRINCIPAL PLACE OF
9 BUSINESS.

10 (a) IN GENERAL.—Subsection (f) of section 280A of the Internal Reve-
11 nue Code of 1986 is amended by redesignating paragraphs (2), (3), and (4)
12 as paragraphs (3), (4), and (5), respectively, and by inserting after para-
13 graph (1) the following new paragraph:

14 “(2) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection
15 (c), a home office shall in any case qualify as the principal place of
16 business if—

17 “(A) the office is the location where the taxpayer’s essential
18 administrative or management activities are conducted on a regu-
19 lar and systematic (and not incidental) basis by the taxpayer, and

20 “(B) the office is necessary because the taxpayer has no other
21 location for the performance of the administrative or management
22 activities of the business.”.

23 (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall
24 apply to taxable years beginning after December 31, 1995.

25 SEC. 13004. TREATMENT OF STORAGE OF PRODUCT SAMPLES.

26 (a) IN GENERAL.—Paragraph (2) of section 280A(c) of the Internal
27 Revenue Code of 1986 is amended by striking “inventory” and inserting
28 “inventory or product samples”.

29 (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall
30 apply to taxable years beginning after December 31, 1995.

The Job Creation and Wage Enhancement Act

104TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

House Republicans will introduce the following bill

A BILL

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

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

3 SECTION 1. SHORT TITLE.

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

6 SEC. 2. TABLE OF CONTENTS.

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

1 (4) order the issuance of any permit or license that has been de-
2 nied or delayed as a result of a prohibited regulatory practice;

3 (5) order the agency and/or the employee engaging in a prohibited
4 regulatory practice to pay to the injured person such damages as may
5 be necessary to compensate the person for any harm resulting from the
6 practice, including damages for—

7 (A) injury to, deterioration of, or destruction of real or per-
8 sonal property;

9 (B) loss of profits from idle or underutilized resources, and
10 from business forgone;

11 (C) costs incurred, including costs of compliance where appro-
12 priate;

13 (D) loss in value of a business;

14 (E) reasonable legal, consulting and expert witness fees; or

15 (F) payments to third parties;

16 (6) order the payment of punitive damages, in an amount not to
17 exceed \$25,000 for each such prohibited regulatory practice, provided
18 that, in the case of a continuing prohibited regulatory practice, each
19 day that the practice continues shall be deemed a separate practice.

20 **SEC. 8208. OFFICE OF THE SPECIAL COUNSEL.**

21 (a) **REQUEST FOR INVESTIGATION.**—Any person who has reason to be-
22 lieve that any employee of any agency has engaged in a prohibited regu-
23 latory practice may request the Special Counsel established by section 1211
24 of title 5, United States Code, to investigate.

25 (b) **POWERS.**—The Special Counsel shall have the same power to inves-
26 tigate prohibited regulatory practices that it has to investigate prohibited
27 personnel practices pursuant to section 1212 of title 5, United States Code.

28 **TITLE IX—PRIVATE PROPERTY RIGHTS**
29 **PROTECTIONS AND COMPENSATION**

30 **SEC. 9001. COMPENSATION FOR TAKING OF PRIVATE PROPERTY.**

31 (a) **ELIGIBILITY.**—

32 (1) **IN GENERAL.**—A private property owner is entitled to receive
33 compensation in accordance with this section for any reduction in the
34 value of property owned by the private property owner, that—

35 (A) is a consequence of a limitation on an otherwise lawful
36 use of the property imposed by a final agency action; and

37 (B) is measurable and not negligible.

38 (2) **REDUCTIONS DEEMED NOT NEGLIGIBLE.**—For purposes of
39 paragraph (1)(B), a reduction in the value of property of 10 percent
40 or more is deemed not negligible.

1 (b) REQUEST FOR COMPENSATION.—Within 90 days after receipt of
2 notice of a final agency action with respect to which compensation is re-
3 quired under subsection (a), a private property owner may submit to the
4 head of the agency a request in writing for compensation under this section.

5 (c) AGENCY OFFER.—Within 180 days after the receipt of a request
6 for compensation submitted in accordance with subsection (b) with respect
7 to an agency action, the head of the agency shall stay the agency action
8 and provide to the private property owner an offer to compensate the pri-
9 vate property owner for the difference between—

10 (1) the fair market value of the property determined based on the
11 value of the property if the agency action were not implemented; minus

12 (2) the fair market value of the property determined based on the
13 value of the property if the agency action were implemented.

14 (d) PRIVATE PROPERTY OWNERS' RESPONSE.—A private property
15 owner shall have 60 days after the date of receipt of an offer under sub-
16 section (c) to accept or to reject the offer.

17 (e) ARBITRATION.—If a private property owner rejects the offer under
18 subsection (c), the private property owner may submit the matter for arbi-
19 tration to an arbitrator appointed by the head of the agency from a list of
20 arbitrators submitted by the American Arbitration Association. The arbitra-
21 tor shall determine the amount of compensation to which the property
22 owner is entitled under this section, in accordance with subsection (c) (1)
23 and (2). The arbitration shall be conducted in accordance with the real es-
24 tate valuation arbitration rules of that association. For purposes of this sec-
25 tion, an arbitration is binding on the head of an agency and the private
26 property owner as to the amount, if any, of compensation owed to the pri-
27 vate property owner under this section.

28 (f) PAYMENT.—The head of an agency shall pay a private property
29 owner any compensation required under the terms of an offer of the agency
30 head that is accepted by the private property owner in accordance with sub-
31 section (d), or under a decision of an arbiter under subsection (e), by not
32 later than 60 days after the date of the acceptance or the date of the issu-
33 ance of the decision, respectively.

34 SEC. 9002. DEFINITIONS.

35 In this title:

36 (1) The term "private property owner" means a non-Federal per-
37 son (other than an officer, employee, agent, department, or instrumen-
38 tality of a State, municipality, or political subdivision of a State, or a
39 State, municipality, or subdivision of a State) that—

40 (A) owns property referred to in paragraph (2) (A) or (B);

41 or

(B) holds property referred to in paragraph (2)(C).

(2) The term "property" means—

(A) land;

(B) any interest in land; and

(C) any proprietary water right.

(3) The term "agency action" has the meaning given that term in section 551(13) of title 5, United States Code.

TITLE X—FEDERAL MANDATE ACCOUNTABILITY AND REFORM

SEC. 10001. SHORT TITLE.

This title may be cited as the "Federal Mandate Accountability and Reform Act of 1995".

SEC. 10002. DEFINITIONS.

For purposes of this title—

(1) **FEDERAL INTERGOVERNMENTAL MANDATE DEFINED.**—The term "Federal intergovernmental mandate" means—

(A) any provision in a bill or joint resolution before Congress or in a proposed or final Federal regulation that—

(i) would impose a duty that is enforceable by administrative, civil, or criminal penalty or by injunction (other than a condition of Federal assistance or a duty arising from participation in a voluntary Federal program, except as stated in subparagraph (B)), upon States, local governments, or tribal governments, or

(ii) would reduce or eliminate the amount of authorization of Federal financial assistance that will be provided to States, local governments, or tribal governments for the purpose of complying with any such duty; or

(B) any provision in a bill or joint resolution before Congress or in a proposed or final Federal regulation that relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to States, local governments, and tribal governments under entitlement authority (as that term is defined in section 3(9) of the Congressional Budget Act of 1974 (2 U.S.C. 622(9))), if—

(i)(I) the bill or joint resolution or regulation would increase the stringency of conditions of assistance to States, local governments, or tribal governments under the program, or

(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to



THE VICE PRESIDENT
WASHINGTON

94 APR 30 P12:25

April 29, 1994

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN AND LINDA LANCE
OFFICE OF THE VICE PRESIDENT

SUBJECT: EXECUTIVE ORDER ON PRIVATE PROPERTY RIGHTS

I. ACTION-FORCING EVENT

The Reagan Administration Executive Order on "Governmental actions and interference with constitutionally protected property rights" (the so-called "takings" order), issued in 1988, is still in effect. It has been reviewed by a working group of all relevant White House Offices, including this office, the National Economic Council, the Office of Science and Technology Policy, the Office on Environmental Policy, the Council of Economic Advisers, the Domestic Policy Council, and the Office of Management and Budget.

Activities in Congress related to this issue, including attempts to codify the existing Executive Order, necessitate our formulation of a position on the issue at the earliest reasonable time. Senator Dole is expected to offer a "takings" amendment to the Safe Drinking Water Act on the Senate floor next week. Senators Baucus and Chafee recently wrote to you urging Administration action before such an amendment is offered. And, it is our view that, unless the Administration addresses the issue, it will be resolved for us in a fashion we do not like -- on the Safe Drinking Water Act, the Clean Water Act, or perhaps some other important environmental legislation.

II. BACKGROUND

The "Property Rights" Movement and Legislative Activity

As you know, those opposed to governmental, and particularly environmental, regulation have seized on and exploited the public's concern over protection of private property in an effort to thwart legitimate governmental action to protect the public interest. These efforts typically, and sometimes successfully, portray necessary regulation and protection of private property as mutually exclusive, which of course they are not.

These "property rights" interests have grown into a powerful force composed of many organizations and backed by conservative think tanks.

This movement has been active legislatively at both the state and federal levels. Bills to advance the "private property" cause have been introduced in the majority of state legislatures, although so far they have been enacted in only a few states. In the Congress, many and varied bills have been introduced in both Houses, ranging from Sen. Dole's effort to codify the Reagan Executive Order to Rep. Tauzin's effort to provide compensation for any government action that diminishes the value of property by more than 50%. In general, the bills attempt to thwart environmental, health and safety regulation by at least raising the specter of requiring compensation as a result of virtually all governmental regulation, thereby making such regulation economically infeasible.

The threat posed by this legislation at the federal level is real, and virtually all involved, including the environmental community, agree that the Congress is likely to pass some version of this legislation. The general view is that a majority of members believe that they need to vote in favor of "private property" in some form.

For reasons identified below, the existing Reagan order does not reflect this Administration's philosophy or the best agency practice on this issue. It should be rescinded. However, there is a real danger that rescission of the Reagan order without a suitable replacement from this Administration will both imply a lack of concern on your part for private property rights and increase the likelihood of Congress' adopting legislation that goes too far. On the other hand, to leave the Reagan order undisturbed will put the Administration in an awkward and largely untenable position during debate on amendments such as the Dole bill, which seeks to codify the Reagan order. If we have not revised the existing order, we will be hard-pressed to oppose such legislation on grounds related to the substance of that order. And, it is our hope that we will be able to prevail in the Senate if we choose to encourage codification of the Clinton order as a substitute for the Reagan order.

To this end, our preliminary discussions with moderate members of Congress, who are likely to believe they need to cast some vote in favor of private property, have been largely encouraging. Most see the existence of a Clinton Administration order as something protective of private property that they can support. Without it, their need to vote in favor of private property may require them to vote for more extreme measures since they have no available alternative.

Reagan Administration "Takings" Order

This order (EO 12630) was issued in 1988 and has remained in effect, although it has had little practical impact on the agencies since it has been narrowly interpreted and, to some extent, honored in the breach. It has at least three major substantive flaws:

1. According to the Department of Justice, its statements of what may amount to a constitutional "taking" reflect the Reagan Administration philosophy in the area and are not consistent with the current state of the law as interpreted by the Supreme Court. The statements suggest that a number of activities may be "takings" when current case law does not support that view, and it confuses constitutional "takings" requiring compensation with government activities which may have an impact on private property but do not amount to a constitutional and compensable "taking."

2. It requires the issuance of Attorney General's "guidelines" to the agencies regarding the constitutional requirements in the area, implying that the agencies are not permitted to make their own judgments about the applicable legal requirements. Those guidelines have not been updated since written in 1988, and do not reflect post-1988 Supreme Court decisions.

3. It requires that agencies perform a variety of different "takings" analyses of their activities and that they identify and discuss "significant takings implications" in rulemaking publications in the Federal Register and in the transmittal of legislative proposals to Congress. The bureaucratic requirements are cumbersome and ineffective. In addition, such a public discussion of the issue effectively waives the attorney-client and executive privileges and provides a road map for potential litigants seeking compensation from the government.

Draft Clinton Administration Order

The draft order retains as much of the Reagan order as possible, provides a Clinton Administration statement of its respect for private property, and eliminates the problematic aspects of the Reagan approach.

In summary, it

(1) States as your belief that protection of public health, safety and welfare is not inconsistent with respect for private property;

(2) Expresses your intention to minimize the impact of governmental actions on private property while committing you to carrying out the legitimate government function of protecting health, safety, and welfare;

(3) Requires that agencies, when considering actions with a substantial likelihood of effecting a taking, be guided by certain general principles including: full compliance with applicable constitutional requirements; making efforts to reduce the likelihood that compensation will have to be paid as the result of a taking; and undertaking efforts to limit adverse impacts on private property (even if they are not takings) to the extent possible and consistent with protection of health, safety and welfare;

(4) Requires agencies, when proposing regulations that have a substantial likelihood of having takings implications, to analyze (i) the likelihood that a taking will occur, (ii) the cost of compensation should a taking occur, and (iii) the alternatives that are available that would not constitute a taking; and

(5) Requires the agencies to report annually to the Attorney General and OMB all takings claims and awards made, and the regulatory action involved.

The major changes made to the Reagan order are as follows:

(1) Interpretive statements of constitutional law are eliminated. Instead, the order simply requires that the agencies ensure that their obligations are consistent with constitutional requirements as interpreted by the U.S. Supreme Court;

(2) Attorney General's guidelines on the legal requirements are not mandated. Instead, the DOJ is required to provide timely guidance to the agencies in response to agency requests.

(3) The "takings" analysis required of agencies is simplified and does not depend on the Reagan Administration philosophy of actions that may constitute takings. There is no requirement that agency analyses be published.

(4) The draft is more explicit than the Reagan order that this Administration intends to minimize all impacts on private property, even those that would not be a "taking" under the Constitution, to the extent that it can be done consistently with protection of the public health, safety, and the environment.

(5) The draft order makes explicit that it applies only to those agency actions that the agencies determine may have takings implications. The Reagan order is limited to actions "that may have takings implications," but is not clear about who determines which those actions are.

III. RECOMMENDATION

The Vice President, the Domestic Policy Council, the National Economic Council, the Office of Management and Budget, the Office of Science and Technology Policy, the Office on Environmental Policy, the Council of Economic Advisers, and all Executive Branch agencies concur in the recommendation that you approve the rescission of the current Executive Order and all guidelines issued under that Order, and that you approve the attached draft replacement Order, to be signed at a time to be scheduled.

IV. DECISION

 Approve Approve as amended Let's discuss

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EXECUTIVE ORDER

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PRIVATE PROPERTY RIGHTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to ensure that Executive department and agency decision-making comports with the Just Compensation Clause of the Fifth Amendment to the United States Constitution, the regulatory reform initiated by Executive Order No. 12866 entitled "Regulatory Planning and Review," and the principles stated herein, it is hereby ordered as follows:

Section 1. Statement of Purpose. Private ownership and use of property is a cornerstone of this country's constitutional heritage, historical tradition, and economic growth. Private property ownership and values are fundamentally consistent with, and supported by, the Federal Government's constitutional and statutory responsibilities to protect public and private property and the public health, safety, and welfare.

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. At the same time, the Fifth Amendment does not give individuals the right to use their property in ways that harm other property owners or the community at large. Thus, the Federal Government must be vigilant in recognizing and respecting the fundamental protection afforded private property rights while it fulfills its responsibilities to protect the public health, safety, and welfare.

In addition, government decision-makers must carefully evaluate the effect of their actions on constitutionally protected property rights in order to carry out their responsibilities for sound management of the government's limited financial resources. Each payment required under the Just Compensation Clause is an expenditure of taxpayer dollars, and actions that unnecessarily or inadvertently require such payments must be avoided.

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Moreover, some legitimate government actions necessary to the public health, safety, or welfare that are not takings under the Just Compensation Clause of the Fifth Amendment may nevertheless have some effect on private property. In such circumstances, even though no taking is involved, the government should work to avoid unnecessary restrictions on the use of private property.

The purpose of this order is to ensure that Executive departments and agencies properly balance their responsibilities to protect the public health, safety, and welfare and their responsibilities to protect private property. This order thus requires that Executive departments and agencies evaluate the constitutional implications arising from the Just Compensation Clause of the Fifth Amendment when planning and implementing governmental actions to ensure that the Federal Government's constitutional obligations are recognized, evaluated, and fulfilled. This order also ensures the agencies' awareness of the need to avoid unnecessary restrictions on the use of private property even when those restrictions would not constitute a taking under the Just Compensation Clause of the Fifth Amendment.

Sec. 2. Definitions. For purposes of this Executive order: (a) "Actions" refers to proposed federal regulations, proposed federal legislation, comments on proposed legislation, application of federal regulations to specific property, federal governmental actions physically invading or occupying private property, or other policy statements or actions related to federal regulation or direct physical invasion or occupancy, but does not include:

(1) actions in which the power of eminent domain is formally exercised;

(2) actions taken with respect to properties held in trust by the United States or actions in preparation for or during treaty negotiations with foreign nations;

(3) law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

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(4) studies or similar efforts or planning activities;

(5) communications between Executive departments or agencies and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by an Executive department or agency or are undertaken in response to an invitation by the State or local authority;

(6) the placement of military facilities or military activities involving the use of exclusively Federal property; or

(7) any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) A "taking" or "takings" refers to an action or actions that, in order to be valid, require the Federal Government to compensate a property owner under the Just Compensation Clause of the Fifth Amendment to the United States Constitution as interpreted by the United States Supreme Court.

(c) "Actions that have takings implications" refers to actions that, if implemented or enacted, have a substantial likelihood of effecting a taking pursuant to the Just Compensation Clause of the Fifth Amendment to the United States Constitution as interpreted by the United States Supreme Court.

(d) "Private property" refers to all property protected by the Just Compensation Clause of the Fifth Amendment to the United States Constitution.

(e) "Agency" refers to any authority of the United States that is an agency under 44 U.S.C. § 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. § 3502(10). All independent regulatory agencies are requested to comply with the provisions of this order.

Sec. 3. General Principles. With respect to actions that in the agency's judgment constitute actions that have takings implications, each agency shall consider the obligations imposed by the Just Compensation Clause of the Fifth Amendment to the United States Constitution to ensure that those obligations are recognized, evaluated, and fulfilled, and shall, consistent with

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achieving the lawful goal of the governmental action and to the extent permitted by law:

(a) Seek opportunities to reduce the risk of unwarranted or inadvertent burdens on the public fisc resulting from lawful government actions triggering valid takings claims.

(b) Seek opportunities to limit restrictions on the use of private property while fulfilling the government's responsibilities to protect the public health, safety, and welfare, even if the contemplated government action would not constitute a taking.

(c) When requiring a private party to obtain a license or permit in order to undertake a specific use of, or other action with respect to, private property, consider carefully any proposals to tailor conditions imposed upon the granting of the license or permit so as to reduce restrictions on the use of private property, even if such conditions would not otherwise constitute a taking.

Sec. 4. Agency Analyses. (a) With respect to proposed regulations that in the agency's judgment constitute actions that have takings implications, each agency shall, as part of its internal deliberative process and to the extent practicable and permitted by law, perform the following analyses and provide such analyses at the same time as any submission otherwise required to be made to the Office of Management and Budget in conjunction with the review of the proposed regulation under Executive Order No. 12866:

(1) an assessment of the likelihood that the proposed regulation may effect a taking;

(2) an estimate of the potential financial risk to the government in the event that a court later determines that the regulation constitutes a taking; and

(3) consideration of reasonably feasible alternatives, if any, to the proposed regulation that would achieve the government's purpose but would not effect a taking, and an explanation of why the planned regulation is preferable to the alternatives.

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(b) In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring an immediate response, the analysis may be done upon completion of the emergency action.

(c) Each agency shall designate the Regulatory Policy Officer appointed pursuant to Executive Order No. 12866 as the official to be responsible for ensuring compliance with this order with respect to the actions of that agency.

Sec. 5. Agency Guidance. (a) The Regulatory Working Group established by Executive Order No. 12866 shall serve, in response to an agency's request, as a forum to assist agencies in addressing regulatory issues involving takings implications.

(b) The Department of Justice shall provide legal guidance in a timely manner, in response to an agency's request, to assist the agencies in complying with this order.

Sec. 6. Reporting Requirements. Agencies shall identify each existing federal rule and regulation against which a takings award has been made or against which a taking claim is pending, including the amount of each claim or award, for fiscal year 1994 and thereafter. A takings award has been made or a takings claim is pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of this information shall be submitted to the Director of the Office of Management and Budget and to the Attorney General on an annual basis beginning no later than December 1994 for fiscal year 1994 and each December 31st for each fiscal year thereafter.

Sec. 7. Revocation. Executive Order No. 12630 and all guidelines and other directives issued pursuant thereto are hereby revoked.

Sec. 8. Judicial Review. This order is intended only to improve the internal management of the Executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party at law or equity against the United States, its agencies or

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instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE,